



Child & Adult Care Food Program

Administrative Review (Appeal) Procedures

Child Nutrition Programs
Finance & Support Services
P.O. Box 110500
Juneau, Alaska 99811-0500
Phone (907) 465-4788

IMPORTANT NOTICE OF RIGHTS

Under 7 CFR § 226.6(k)(5)(ii), if you wish to appeal the notice of action by the department, you must submit a request for administrative review in writing not later than 15 calendar days after you receive the notice of action by the department. A request for administrative review should be mailed to the following address:

Office of the Commissioner
Department of Education & Early Development
PO Box 110500
Juneau, Alaska 99811

The administrative review process is governed by 7 Code of Federal Regulations § 226.6(k), set out below. Paragraph (k)(2) lists the actions that are subject to administrative review. Paragraph (k)(3) lists the actions that are not subject to administrative review. Paragraph (k)(5) describes the administrative review procedures. If you seek an administrative review, you must follow these procedural requirements.

7 Code of Federal Regulations § 226.6(k):

(k) Administrative reviews for institutions and responsible principals and responsible individuals—

(1) General. The State agency must develop procedures for offering administrative reviews to institutions and responsible principals and responsible individuals. The procedures must be consistent with paragraph (k) of this section.

(2) Actions subject to administrative review. Except as provided in § 226.8(g), the State agency must offer an administrative review for the following actions:

(i) Application denial. Denial of a new or renewing institution's application for participation (see paragraph (b) of this section, on State agency review of an institution's application; and paragraphs (c)(1) and (c)(2) of this section, on State agency denial of a new or renewing institution's application);

(ii) Denial of sponsored facility application. Denial of an application submitted by a sponsoring organization on behalf of a facility;

(iii) Notice of proposed termination. Proposed termination of an institution's agreement (see paragraphs (c)(2)(iii)(C), (c)(3)(iii)(C), and (c)(5)(i)(B) of this section, dealing with proposed termination of agreements with renewing institutions, participating institutions, and participating institutions suspended for health or safety violations);

(iv) Notice of proposed disqualification of a responsible principal or responsible individual. Proposed disqualification of a responsible principal or responsible

individual (see paragraphs (c)(1)(iii)(C), (c)(2)(iii)(C), (c)(3)(iii)(C), and (c)(5)(i)(B) of this section, dealing with proposed disqualification of responsible principals or responsible individuals in new, renewing, and participating institutions, and participating institutions suspended for health or safety violations);

(v) Suspension of participation. Suspension of an institution's participation (see paragraphs (c)(5)(i)(B) and (c)(5)(ii)(D) of this section, dealing with suspension for health or safety reasons or submission of a false or fraudulent claim);

(vi) Start-up or expansion funds denial. Denial of an institution's application for start-up or expansion payments (see § 226.7(h));

(vii) Advance denial. Denial of a request for an advance payment (see § 226.10(b));

(viii) Recovery of advances. Recovery of all or part of an advance in excess of the claim for the applicable period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments (see § 226.10(b)(3));

(ix) Claim denial. Denial of all or a part of an institution's claim for reimbursement (except for a denial based on a late submission under § 226.10(e)) (see §§ 226.10(f) and 226.14(a));

(x) Claim deadline exceptions and requests for upward adjustments to a claim. Decision by the State agency not to forward to FNS an exception request by an institution for payment of a late claim, or a request for an upward adjustment to a claim (see § 226.10(e));

(xi) Overpayment demand. Demand for the remittance of an overpayment (see § 226.14(a)); and

(xii) Other actions. Any other action of the State agency affecting an institution's participation or its claim for reimbursement.

(3) Actions not subject to administrative review. The State agency is prohibited from offering administrative reviews of the following actions:

(i) FNS decisions on claim deadline exceptions and requests for upward adjustments to a claim. A decision by FNS to deny an exception request by an institution for payment of a late claim, or for an upward adjustment to a claim (see § 226.10(e));

(ii) Determination of serious deficiency. A determination that an institution is seriously deficient (see paragraphs (c)(1)(iii)(A), (c)(2)(iii)(A), (c)(3)(iii)(A), and (c)(5)(i)(B) of this section, dealing with proposed disqualification of responsible principals or responsible individuals in new, renewing, and participating institutions, and participating institutions suspended for health or safety violations);

(iii) State agency determination that corrective action is inadequate. A determination by the State agency that the corrective action taken by an institution or by a responsible principal or individual does not completely and permanently correct a serious deficiency;

(iv) Disqualification and placement on State agency list and National disqualified list. Disqualification of an institution or a responsible principal or responsible individual, and the subsequent placement on the State agency list and the National disqualified list (see paragraphs (c)(1)(iii)(E), (c)(2)(iii)(E), (c)(3)(iii)(E), and (c)(5)(i)(C) of this section, dealing with proposals to disqualify related to new, renewing, and participating institutions, and in institutions suspended for health or safety violations);

(v) Termination. Termination of a participating institution's agreement, including termination of a participating institution's agreement based on the disqualification of the institution by another State agency or FNS (see paragraphs (c)(3)(i) and (c)(7)(ii) of this section);

(vi) State agency or FNS decision regarding removal from the National disqualified list. A determination, by either the State agency or by FNS, that the corrective action taken by an institution or a responsible principal or individual is not adequate to warrant the removal of the institution or the responsible principal or individual from the National disqualified list; or

(vii) State agency's refusal to consider an application submitted by an institution or facility on the National disqualified list. The State agency's refusal to consider an institution's application when either the institution or one of its principals is on the National disqualified list, or the State agency's refusal to consider an institution's submission of an application on behalf of a facility when either the facility or one of its principals is on the National disqualified list.

(4) Provision of administrative review procedures to institutions and responsible principals and responsible individuals. The State agency's administrative review procedures must be provided:

- (i) Annually to all institutions;
- (ii) To an institution and to each responsible principal and responsible individual when the State agency takes any action subject to an administrative review as described in paragraph (k)(2) of this section; and
- (iii) Any other time upon request.

(5) Procedures. Except as described in paragraph (k)(9) of this section, which sets forth the circumstances under which an abbreviated administrative review is held, the State agency must follow the procedures in this paragraph (k)(5) when an institution or a responsible principal or responsible individual appeals any action subject to administrative review as described in paragraph (k)(2) of this section.

(i) Notice of action. The institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, must be given notice of the action being taken or proposed, the basis for the action, and the procedures under which the institution and the responsible principals or responsible individuals may request an administrative review of the action.

(ii) Time to request administrative review. The request for administrative review must be submitted in writing not later than 15 calendar days after the date the notice of action is received, and the State agency must acknowledge the receipt of the request for an administrative review within 10 calendar days of its receipt of the request.

(iii) Representation. The institution and the responsible principals and responsible individuals may retain legal counsel, or may be represented by another person.

(iv) Review of record. Any information on which the State agency's action was based must be available to the institution and the responsible principals and responsible individuals for inspection from the date of receipt of the request for an administrative review.

(v) Opposition. The institution and the responsible principals and responsible individuals may refute the findings contained in the notice of action in person or by submitting written documentation to the administrative review official. In order to be considered, written documentation must be submitted to the administrative review official not later than 30 calendar days after receipt of the notice of action.

(vi) Hearing. A hearing must be held by the administrative review official in addition to, or in lieu of, a review of written information only if the institution or the responsible principals and responsible individuals request a hearing in the written request for an administrative review. If the institution's representative, or the responsible principals or

responsible individuals or their representative, fail to appear at a scheduled hearing, they waive the right to a personal appearance before the administrative review official, unless the administrative review official agrees to reschedule the hearing. A representative of the State agency must be allowed to attend the hearing to respond to the testimony of the institution and the responsible principals and responsible individuals and to answer questions posed by the administrative review official. If a hearing is requested, the institution, the responsible principals and responsible individuals, and the State agency must be provided with at least 10 calendar days advance notice of the time and place of the hearing.

(vii) Administrative review official. The administrative review official must be independent and impartial. This means that, although the administrative review official may be an employee of the State agency, he/she must not have been involved in the action that is the subject of the administrative review, or have a direct personal or financial interest in the outcome of the administrative review. The institution and the responsible principals and responsible individuals must be permitted to contact the administrative review official directly if they so desire.

(viii) Basis for decision. The administrative review official must make a determination based solely on the information provided by the State agency, the institution, and the responsible principals and responsible individuals, and based on Federal and State laws, regulations, policies, and procedures governing the Program.

(ix) Time for issuing a decision. Within 60 calendar days of the State agency's receipt of the request for an administrative review, the administrative review official must inform the State agency, the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, of the administrative review's outcome. This timeframe is an administrative requirement for the State agency and may not be used as a basis for overturning the State agency's action if a decision is not made within the specified timeframe.

(x) Final decision. The determination made by the administrative review official is the final administrative determination to be afforded the institution and the responsible principals and responsible individuals.

(6) Federal audit findings. FNS may assert a claim against the State agency, in accordance with the procedures set forth in § 226.14(c), when an administrative review results in the dismissal of a claim against an institution asserted by the State agency based upon Federal audit findings.

(7) Record of result of administrative reviews. The State agency must maintain searchable records of all administrative reviews and their disposition.

(8) Combined administrative reviews for responsible principals and responsible individuals. The State agency must conduct the administrative review of the proposed disqualification of the responsible principals and responsible individuals as part of the administrative review of the application denial, proposed termination, and/or proposed disqualification of the institution with which the responsible principals or responsible individuals are associated. However, at the administrative review official's discretion, separate administrative reviews may be held if the institution does not request an administrative review or if either the institution or the responsible principal or responsible individual demonstrates that their interests conflict.

(9) Abbreviated administrative review. The State agency must limit the administrative review to a review of written submissions concerning the accuracy of the State agency's determination if the application was denied or the State agency proposes to terminate the institution's agreement because:

(i) The information submitted on the application was false (see paragraphs (c)(1)(ii)(A), (c)(2)(ii)(A), and (c)(3)(ii)(A) of this section);

(ii) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the national disqualified list (see paragraph (b)(12) of this section);

(iii) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program (see paragraph (b)(13) and (c)(3)(ii)(S) of this section); or

(iv) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities has been convicted for any activity that indicates a lack of business integrity (see paragraphs (b)(14) and (c)(3)(ii)(T) of this section).

(10) Effect of State agency action. The State agency's action must remain in effect during the administrative review. The effect of this requirement on particular State agency actions is as follows.

(i) Overpayment demand. During the period of the administrative review, the State agency is prohibited from taking action to collect or offset the overpayment. However, the State agency must assess interest beginning with the initial demand for remittance of the overpayment and continuing through the period of administrative review unless the administrative review official overturns the State agency's action.

(ii) Recovery of advances. During the administrative review, the State agency must continue its efforts to recover advances in excess of the claim for reimbursement for the applicable period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments.

(iii) Program payments. The availability of Program payments during an administrative review of the denial of a new institution's application, denial of a renewing institution's application, proposed termination of a participating institution's agreement, and suspension of an institution are addressed in paragraphs (c)(1)(iii)(D), (c)(2)(iii)(D), (c)(3)(iii)(D), (c)(5)(i)(D), and (c)(5)(ii)(E), respectively, of this section.

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language), should contact the responsible state or local agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: <https://www.usda.gov/sites/default/files/documents/ad-3027.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

1. **mail:**
U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410; or
2. **fax:**
(833) 256-1665 or (202) 690-7442; or
3. **email:**
Program.Intake@usda.gov

This institution is an equal opportunity provider.