

CACFP APPEALS AND FAIR HEARINGS

Each new or renewing organization must submit information sufficient to document that it is financially **viable**, is administratively **capable** of operating the CACFP in accordance with 7CFR226, and has internal controls in effect to ensure **accountability**.

The following is a list of serious deficiencies that could affect the continued participation of a CACFP organization:

- A. Submission of false information on the organization's application, including but not limited to a determination that the organization has concealed a conviction for any activity that occurred during the past seven years and that indicates a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification, or obstruction of justice, or any other activity indicating a lack of business integrity as defined by the State Agency.
- B. Permitting an individual who is on the National Disqualified list to serve in a principal capacity with the organization or, if a sponsoring organization, permitting such an individual to serve as a principal in a sponsored center or as a day care home.
- C. Failure to operate the CACFP in conformance with the performance standards found in 226.6(b)(18) and briefly listed in the first paragraph on this page.
- D. Failure to comply with the bid procedures and contract requirements that apply to federal procurement regulations.
- E. Failure to return to the State Agency any advance payments that exceeded the amount earned for serving eligible meals, or failure to return disallowed start-up or expansion payments.

Federal Regulations 226.6(k) addresses in detail the appeals and fair hearing procedures. Portion of this regulation are as follows:

The following are actions taken by the State Agency which can be appealed:

1. A denial of an institution's application for participation;
2. A denial of an application submitted by a sponsoring organization on behalf of a facility;
3. A notice of proposed termination of the participation of an institution;

4. A notice of proposed disqualification of a responsible principal or responsible individual;
5. A suspension of an institution's participation (agreement);
6. A denial of an institution's application for start-up or expansion payments;
7. A denial of an advance payment;
8. Recovery of all or part of an advance in excess of the claim;
9. A denial of all or part of the claim for reimbursement (except for late submission under Sec. 226.10 (e));
10. A denial by the State Agency to forward to FNS an exception request by the institution or sponsoring organization for payment of a late claim or a request for an upward adjustment to a claim;
11. Demand for the remittance of an overpayment; and
12. Any other action of the State Agency affecting the participating of an institution in the Program or the institution's claim for reimbursement.

The following outlines the process for appeal procedures:

1. The institution shall be advised in writing of the grounds on which the State Agency based its action. The notice of action, which shall be sent by certified mail, return receipt requested, shall also include a statement indicating that the institution has the right to appeal the action;
2. The written request for review shall be filed by the appellant not later than 15 calendar days from the date the appellant received the notice of action, and the State Agency shall acknowledge the receipt of the request for appeal within 10 calendar days;
3. The appellant may refute the charges contained in the notice of action in person and by written documentation to the review official. In order to be considered, written documentation must be filed with the review official not later than 30 calendar days after the appellant received the notice of action. The appellant may retain legal counsel, or may be represented by another person. A hearing shall be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter of request for review. Failure of the appellant institution's representative to appear at a scheduled hearing shall constitute the appellant institution's waiver of the right to personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the State Agency shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the review official;

4. If the appellant has requested a hearing, the appellant and the State Agency shall be provided with at least 10 calendar days advance written notice, sent by certified mail, return receipt requested, of the time and place of the hearing;
5. Any information on which the State Agency's action was based shall be available to the appellant for inspection from the date of receipt of the request for review;
6. The review official shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section;
7. The review official shall make a determination based on information provided by the State Agency and the appellant, and on the Program regulations;
8. Within 60 calendar days of the State Agency's receipt of the request for review, the review official shall inform the State Agency and the appellant of the determination of the review;
9. The State Agency's action shall remain in effect during the appeal process. However, participating institutions and facilities may continue to operate under the Program during an appeal of termination, unless the action is based on imminent dangers to the health or welfare of participants. If the institution of facility has been terminated for this reason, the State Agency shall so specify in its notice of action. Institutions electing to continue operating while appealing terminations shall be reimbursed for any meals served during the period of the appeal until such time as the appeal decision is made; and
10. The determination by the State review official is the final administrative determination to be afforded to the appellant;
11. Appeals shall not be allowed on decisions made by FNS on requests for exceptions to the claims submission deadlines stated in 7 CFR 226.10(e) or requests for upward adjustments to claims;
12. In cases where appeal results in the dismissal of a claim against an institution which was asserted by the State Agency upon Federal audit findings, FNS may assert a claim against the State Agency in accordance with the procedures outlined in 7 CFR 226.14(c). Appellants are assured of a fair and impartial hearing. Adequate notice is given of the place, date and procedures of the hearing. The same procedures are applied to all appellants in the State with an established time limit of 120 days for the entire appeal process. The State Agency is required to advise institutions of their rights to appeal each time an appealable action is taken, to all institutions at least once a year at the time of application for participation in the Program and other time during the year to institutions who request it.

The State Agency will provide a qualified independent hearing official. The appellant may be represented by legal counsel or may represent themselves at the hearing.

The hearing will be conducted by the hearing official. At the hearing, the appellant has the following rights:

The right to present evidence and give testimony;

The right to cross-examine witnesses who testify and to submit rebuttal evidence;
and

The right to be represented by legal council.

The hearing official will issue a report containing recommendations for the disposition of the case.

If an organization has any questions about its rights to an appeal as described or it wishes to discuss the action without instituting a formal appeal, it should contact the State Agency immediately. Even though an action may be resolved informally with the State Agency, a request for a hearing before a hearing official must be made within fifteen days of the date the organization received notice of the appealable action or the right to a formal hearing is lost.