



OFFICE OF NUTRITION – CHILD AND ADULT CARE FOOD PROGRAM APPEAL PROCEDURES

The Ohio Department of Education and Workforce (hereby known as the Department), Office of Nutrition, is the State Agency charged with administering the Child and Adult Care Food Program (“CACFP”). Pursuant to 7 CFR 226, the Department may take certain actions to assure a participating institution and/or responsible individual’s past, present and future compliance with the CACFP. Except as provided in Section 226.8(g), the following Department actions are subject to administrative review (appeal):

- 1) Denial of a new or renewing institution’s application for participation;
- 2) Denial of an application submitted by a sponsoring organization on behalf of a facility;
- 3) Proposed termination of an institution’s agreement;
- 4) Proposed disqualification of a responsible principal or responsible individual;
- 5) Suspension of an institution’s participation;
- 6) Denial of an institution’s application for start-up or expansion payments;
- 7) Denial of a request for an advance payment;
- 8) Recovery of all or part of an advance in excess of the claim for the applicable period;
- 9) Denial of all or a part of an institution’s claim for reimbursement (except late submission under 226.10(e));
- 10) Decision by the State agency not to forward to the United States Department of Agriculture, Food and Nutrition Service (FNS) an exception request by an institution for payment of a late claim or a request for an upward adjustment to a claim (see Section 226.10(e));
- 11) Demand for the remittance of an overpayment;
- 12) Any other action of the State agency affecting an institution’s participation or its claim for reimbursement.

Per requirements at 7 CFR 226.6(k)(4)(i)-(iii), the CACFP Appeal Procedures (administrative review procedures) will be provided annually to all institutions and to an institution and to each responsible principal and responsible individual when the Department takes any action subject to an administrative review as described in 7 CFR 226.6(k)(2). Additionally, the appeal procedures are available on the Ohio Department of Education and Workforce’s [website](#).

If an action is taken, per 7 CFR 226.6(k)(5)(i) the institution’s Executive Director, Chairman of the Board of Directors, and the responsible principals and responsible individuals will 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.

All requests for appeal (“Appeal Request”) by an institution must be made in writing and must specifically state whether the Appellant is requesting an in-person hearing, or whether the Appellant plans to submit written documentation only. The appeal must be postmarked by the U.S. Postal Service, delivered, or emailed **no later than fifteen (15) calendar days** following receipt of written notification of action (“Action Letter”). If the fifteenth day falls on a Saturday, Sunday or federal legal holiday, the request may be postmarked, delivered, or emailed on the next day that is not Saturday, Sunday or a federal legal holiday. All Appeal Requests should be sent to: **Office of Legal Counsel, Ohio Department of Education and Workforce, 25 South Front Street, Mail Stop 607, Columbus, Ohio 43215-4183, Jessica.Oldham@education.ohio.gov**.

The Department will acknowledge receipt of the Appeal Request in writing **no later than ten (10) calendar days** after its receipt. If the tenth day falls on a Saturday, Sunday or federal legal holiday, the request will be emailed on the next day that is not Saturday, Sunday or a federal legal holiday. The Department's letter acknowledging receipt will indicate the date upon which the Appeal Request was received by the Department. Also, upon receipt of the Appeal Request, the Department will assign an independent and impartial administrative review official to conduct an administrative review pursuant to 7 CFR 226.6(k). The institution and the responsible principals and responsible individuals may retain legal counsel or be represented by another person.

The Appellant may refute the charges contained in the Action Letter by submitting written materials to the administrative review official not later than thirty (30) days after receipt of notice of action.

As stated above, if the Appellant would like an in-person hearing to be held, in lieu of, or in addition to a review of the written information, the institution must specifically request an in-person hearing in its written Appeal Request. If an in-person hearing is not requested in the written Appeal Request, the administrative review official will only review and consider written information submitted by each party within thirty (30) days after receipt of notice of action.

If a hearing is requested, the Appellant and the Department shall be given **at least 10 calendar days** advance written notice of the hearing time and place by email, read receipt requested. If the Appellant's representative(s) fail to appear at a scheduled hearing, the Appellant thereby waives its right to a personal appearance before the administrative review official. Scheduled hearings may be rescheduled if the Appellant institution notifies the administrative review official prior to the hearing date, and the review official agrees to reschedule.

Within **60 calendar days** after the Department receives the Appellant's request for administrative review, the administrative review official shall inform both the Department and the Appellant of his/her final decision. This timeframe is an administrative requirement for the Department and may not be used as a basis for overturning the Department's action if a decision is not made within the specified timeframe.

Additional Conditions:

- Any information upon which the Department's Action Letter was based shall be available to the Appellant for inspection from the date the Department receives the Appeal Request.
- A Department representative may attend the hearing. The Department representative may respond to testimony and answer questions of the administrative review official.
- The administrative review official shall be an independent and impartial official, not accountable to any person authorized to make decisions subject to appeal under 7CFR226.6(k).
- The administrative review official shall make a determination based on information provided by the Department, the Appellant and Federal and State laws, regulations, policies, and procedures governing the Program.

- The Department's action shall remain in effect during the appeal process; however, the Appellant institution and its facilities may operate during the appeal of termination. Reimbursement claims for eligible meals and allowable administrative costs will continue to be paid to the Appellant institution, provided that the validity of the claims can be substantiated. Pursuant to 7CFR 226.6(c)(5), if State or local health or licensing officials have cited an institution for serious health or safety violations, the Department must immediately suspend the institution's CACFP participation, initiate action to terminate the institution's agreement, and initiate action to disqualify the institution and the responsible principals and responsible individuals prior to any formal action to revoke the institutions licensure or approval. If the Department determines that the Appellant institution or facility poses an imminent threat to the health and safety of its participants or poses a threat to the health and safety of the public, the Department will immediately suspend the program operation prior to an appeal and without the opportunity for corrective action. Reimbursement will be withheld until the outcome of the administrative review.
- Pursuant to 7 CFR 226.6(k)(10)(i)-(ii) during the period of the administrative review, the Department is prohibited from taking action to collect or offset the overpayment. However, the Department 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 Department's action. During the administrative review, the Department 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.
- Pursuant to 7 CFR 226.6(k)(8) the administrative review of the proposed disqualification of the responsible principals and responsible individuals must be conducted 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.
- Abbreviated Administrative Review: Pursuant to 7 CFR 226.6(k)(9), the state agency must limit the administrative review to a review of written submissions concerning the accuracy of the Department's determination if the application was denied or the Department proposes to terminate the institutions agreement because: a) the information submitted on the application was false, b) the institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the National Disqualified List, is ineligible to participate in any other publicly funded program by reason of violation of the requirement of the Program, or has been convicted for any activity that indicates a lack of business integrity.
- The determination by the administrative review official is the final administrative determination afforded to the Appellant.
- The Department will maintain records of all administrative reviews and their disposition.

Suspension Review:

This section is only applicable to institutions that receive a proposed suspension letter.

- Institutions that receive a proposed suspension of participation notice due to the institution's submission of a false or fraudulent claim may request a review of the proposed suspension. The notice will specify:
 - 1) That the State agency is proposing to suspend the institution's participation;
 - 2) That the proposed suspension is based on the institution's submission of a false or fraudulent claim, as described in the serious deficiency notice;
 - 3) The effective date of the suspension (which may be no earlier than 10 days after the institution receives the suspension notice);
 - 4) The name, address and telephone number of the suspension review official who will conduct the suspension review; and
 - 5) That if the institution wishes to have a suspension review, it must request a review and submit to the suspension review official written documentation opposing the proposed suspension within 10 days of the institution's receipt of the notice.
- Pursuant to 7 CFR 226.6(c)(5)(ii)(C) if the institution requests a review of the State agency's proposed suspension of participation, the suspension review must be heard by a suspension review official who must:
 - 1) Be an independent and impartial person other than, and not accountable to, any person involved in the decision to initiate suspension proceedings;
 - 2) Immediately notify the State agency that the institution has contested the proposed suspension and must obtain from the State agency its notice of proposed suspension of participation, along with all supporting documentation; and
 - 3) Render a decision on suspension of participation within 10 days of the deadline for receiving the institution's documentation opposing the proposed suspension.
- Pursuant to 7 CFR 226.6(c)(5)(ii)(D) if the suspension review official determines that the State agency's proposed suspension is not appropriate, the State agency is prohibited from suspending participation. If the suspension review official determines, based on a preponderance of the evidence, that the State agency's action was appropriate, the State agency must suspend the institution's participation (including all Program payments), effective on the date of the suspension review decision. The State agency must notify the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, that the institution's participation has been suspended. At the same time the notice is issued, the State agency must also update the State agency list and provide a copy of the notice to the appropriate FNSRO. The notice must also specify:
 - 1) That the State agency is suspending the institution's participation (including Program payments);
 - 2) The effective date of the suspension (the date of the suspension review decision);
 - 3) The procedures for seeking an administrative review (in accordance with [paragraph \(k\)](#) of this section) of the suspension; and
 - 4) That if the administrative review official overturns the suspension, the institution may claim reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

Actions not subject to administrative review or appeal:

- a. FNS decisions on claim deadline exceptions and requests for upward adjustments to a claim.
- b. The Department's determination of serious deficiency.
- c. The Department's determination that corrective action was not complete and permanent.
- d. Disqualification and placement on the Department's list and the National Disqualified List (NDL);
- e. 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;
- f. The Department or FNS's decision that an institution's corrective action is inadequate to be removed from the NDL; and
- g. The Department's refusal to consider an application to participate when either the institution or one of its principals is on the NDL, or the Department's refusal to consider an application submitted by a sponsoring organization on behalf of a sponsored facility when either the facility or one of its principals is on the NDL.

USDA Nondiscrimination Statement:

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, audiotope, 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/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28-17Fax2Mail.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.