

Section 3000

Program Agreement

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Program Agreement

Upon approval of an organization's application, the Texas Department of Agriculture (TDA) enters into an agreement with the organization that stipulates the rights and responsibilities of TDA and the contractor (contracting entity (CE)). The Permanent Agreement is a legally binding document between TDA and the organization named on the agreement and is not transferable and cannot be sold.

A potential CE that is not currently participating in a TDA-administered nutrition program must submit the Permanent Agreement with its application for participation. A CE that participates in one or more TDA-administered nutrition program and applies for another program or subset will complete and submit a *Permanent Agreement Contracting Entity Specific Amendment* with the application for the new program or subset.

CEs must comply with all policies, guidance, state rules (Texas Administrative Code), notices, Program handbooks, and handbook revisions issued by TDA. CEs must also comply with all instructions, guidance, regulations and handbooks issued by the United States Department of Agriculture (USDA).

TDA notifies CEs of newly released policies, revised policies, forms and handbooks, and requirements via email and the TX-UNPS bulletin board. Upon receipt of a notification, CEs can go to the TDA website at <http://www.squaremeals.org>, select Child and Adult Care Food Program, then CACFP Policy & Handbook or CACFP Administration & Forms as appropriate.

USDA or organizations USDA has contracted with periodically perform Program research or Program evaluations. CEs and sponsored sites are required to cooperate with USDA or organizations USDA contracts with when contacted to be part of research or evaluation. A Program evaluation would be similar to a review conducted by TDA staff.

Failure to cooperate with USDA or organizations USDA contracts with could result in adverse action, up to and including placement in the serious deficiency process and termination of the Permanent Agreement.

3100 Program Requirements

An independent CE is fully responsible for the operation of the Program in its center. A CE that is a sponsor is fully responsible for the operation of the Program in the sites it sponsors (both affiliated and unaffiliated). A CE's responsibilities can be divided into the following general categories:

- Avoiding conflicts of interest;
- Providing and claiming reimbursable meals;
- Operating a nonprofit food service;
- Managing the Program;
- Training and monitoring; and
- Maintaining Program documentation.

NOTE: If a CE fails to comply with any of these Program requirements and responsibilities, its participation in the CACFP may be adversely affected up to and including placement in the serious deficiency process, termination of its Permanent Agreement, and placement on the National Disqualified List (NDL).

3110 Conflicts of Interest

A conflict of interest means a conflict between an individual's personal financial interests and his/her public obligations.

FNS Instruction 796-2, *Financial Management –Child and Adult Care Food Program*, allows a CE to claim costs for certain transactions when the relationship between the parties is fully disclosed.

Organizations participating in the Program are required to identify and disclose related party transactions, less-than-arms-length transactions, ownership interest in equipment, supplies, vehicles and facilities, or disclose any other information to aide TDA in making an informed assessment in determining if costs are allowable.

CEs must establish and maintain a written code of standards of conduct. This document must be made available upon request to any member of its organization or any employee or representative of TDA, USDA, the Government Accountability Office (GAO) or an independent auditor.

Refer to Section 7000, *Financial Management*, for more information regarding conflicts of interest. If a CE has any concerns or questions regarding the appropriateness of a procurement transaction, it should contact its Education Service Center (ESC) or Community Operations Field office for guidance prior to completing the transaction.

3120 Reimbursable Meals

A CE must ensure that meals served and claimed for reimbursement are eligible according to Program requirements. Sponsors must ensure the same for their sponsored sites. To be eligible, or reimbursable, meals must:

- Meet Program meal pattern requirements
- Be served to eligible children
- Be served according to federal and state regulations and policies
- Be supported with required documentation

3130 Nonprofit Food Service

A CE must operate a nonprofit food service in compliance with Program requirements. CEs must use all Program funds to conduct or improve the food service operation principally for the benefit of the children. Refer to Section 7000, *Financial Management* for guidance on proper use of funds and financial management, and Section 9000, *Terms, Definitions and Acronyms* for the definition of nonprofit food service.

3140 Program Management

By entering into an agreement with TDA, the CE assumes final administrative and financial responsibility for management of a proper, efficient, and effective food service, and will comply with all Program requirements. CEs that are sponsoring organizations accept final administrative and financial responsibility for food service operations in all of its sites.

CES may not contract out the management of the Program; however, they may contract some Program activities required in the administration/management of the CACFP.

Should the CE choose to retain the services of a contractor to perform one or more Program activity, the CE is required to retain oversight of the work performed and accepts final administrative and financial responsibility for the work performed by the contractor, including repayment of any funds due to non-compliance(s).

CES **may not** contract the following Program activities:

- Monitoring,
- Corrective action,
- Preparation of application materials, and
- Claims submission.

It is important to note that, although a CE may not contract out the responsibility for certain activities; it is acceptable to contract for services in support of that activity. For example, the CE must retain responsibility for the monitoring activity; however, it may contract for the performance of monitoring reviews.

These administrative and financial responsibilities are described in federal and state laws, regulations, and policies, and in the CE's approved application and Permanent Agreement. The CE must not deviate from its approved application/management plan or budget without TDA's prior written approval.

Specific Program activities that **may** be subcontracted include, but are not limited, to:

- Bookkeeping,
- Auditing,
- Data processing,
- Service of a nutritionist,
- Staff trainings, and
- Monitoring reviews.

In order to contract specific Program activities, the CE must ensure that the

- Services to be performed by the contractor are required in the administration/management of the CACFP;
- Services have been properly procured according to Program procurement guidelines;
- Terms of the agreement are adequate for the services to be performed;
- Costs are reasonable in relation to the services to be performed; and
- Costs are not contingent on the CE's receipt of CACFP reimbursement.

Written agreements must be established with a contractor if the activities to be performed by the contractor are directly related to the CACFP. Refer to Section 7000, *Financial Management* Item 7330.2, *Contract Provisions* for specifics.

Program Management Software: TDA does not approve or endorse software packages for use by CEs to manage participation in the CACFP. CEs may purchase program management software of their own selection. However, the CE is responsible for ensuring that the software supports its participation in the CACFP according to Program requirements.

NOTE: Federal Publishing Limited, Inc. (aka Federal Publication), of Miramar, Florida, markets a publication entitled “**USDA** United States Department of Agriculture and **FDA** Food and Drug Administration Compliance Journal 2007”. This publication is not issued or approved by USDA, nor is it required for CEs’ participation in the CACFP. Materials and guidance regarding compliance with the Program are available at no cost on our website at www.snptexas.org, as well as the USDA websites at www.fns.usda.gov/cnd/ or www.fnd.usda.gov/fns/food_safety.htm.

3150 Waiver of Program Requirements

A CE may submit a written request to waive certain Program requirements. Prior to submitting a request to waive a Program requirement the CE must evaluate its intent for requesting the waiver. A waiver will not be granted if it cannot be determined that granting the waiver will support the purpose and intent of the Program.

The written request must include:

- 1. Challenge(s) the CE is seeking to solve, goal(s) of the waiver to improve services, and the expected outcomes –**
 - Describe the problem that the CE is seeking to solve. Include a description of any impediments to the efficient operation and administration of the program.
 - Describe what has been done to solve this problem within the scope of the regulatory requirements and what in the regulations or statute prevents this problem from being solved.
 - Describe of the goal of the waiver to improve services under the applicable program(s) and the expected outcomes if the waiver is granted.
 - Describe how the waiver would improve services under the applicable program(s).
- 2. Regulatory citation(s) and requirement(s) –** Identify the specific statutory or regulatory requirements requested to be waived for the applicable program(s).

NOTE: TDA and USDA will not consider waiver requests that relate to any of the following topics:

- Nutritional content of meals served
- Federal reimbursement rates
- Provision of free and reduced price meals
- Limits on the price charged for a reduced price meal
- Maintenance of effort (not decrease or affect the expenditure of funds from state and local sources for the maintenance of the Child Nutrition Programs)
- Equitable participation of children in private schools
- Distribution of funds to TDA and CEs

- Disclosure of individual income eligibility information
- Prohibition of the operation of a profit producing program
- Sale of competitive foods
- USDA Foods
- Special Supplemental Nutrition Program (WIC)
- Enforcement of any constitutional or statutory right of an individual

3. Description of alternative procedures and anticipated impact of implementation –

- Provide a description of the alternative procedures that could be used to solve the problem while maintaining the intent and purpose of the applicable program(s) if the waiver is granted.
- Describe the anticipated impact on applicable program operations, including technology, State systems, and monitoring.

4. Anticipated implementation challenges – Describe any anticipated challenges the CE may face with implementation of the waiver, if granted.

5. Anticipated implementation date and time period for which waiver is needed –

Provide the beginning and ending date for the requested waiver.

NOTE: USDA provides approval of waivers for a limited time period. After the initial waiver period has expired, the CE may request renewal of a waiver.

6. Overall cost to the applicable program(s) –

- Describe how the waiver will not increase the overall costs of the applicable program and, if it does, how any additional costs will be paid from non-Federal funds. For example, provide an explanation of what the anticipated cost will be, if any.
- Address whether the waiver will increase program participation and claims for reimbursement.

7. Proposed monitoring and review procedures –

- Describe how the CE will monitor and review operations of the waiver to ensure the proper oversight and integrity of the applicable program(s). If applicable, include monitoring details to ensure increased costs of the applicable program will not be paid from Federal funds.

8. Proposed reporting requirements –

- Describe how the CE will report to TDA on the outcome of the waiver implementation, if it is approved, including details on how the implementation of the waiver and its effect on the efficient operation and administration of the applicable program will be evaluated. For example, what data points would be useful to determine if the waiver was successfully implemented? The CE must report this information to TDA within 60 days of the end of the waiver period.

9. Notification to the public –

- Describe how the CE provided notice and information to the public regarding the proposed waiver prior to submitting the waiver request to TDA. A link or copy of the public notice about the proposed waiver must be included with submission of this form to TDA.

NOTE: Acceptable methods public notification include, but are not limited to, the following:

- Posting notice on the CE's website;
- Providing public notice through a printed announcement in the local/state newspaper.

CEs may use the TDA *Child Nutrition Program Waiver Request Form* located at <http://www.squaremeals.org>. The completed request should be submitted to TDA at least 90 days prior to the desired implementation to allow adequate time for review.

Upon receipt TDA will evaluate the request and forward the request to USDA for final approval or denial. Denial of a request is not an appealable action.

3160 Program Documentation

CEs and sites must maintain all records necessary for state and federal authorities and their agents to evaluate the operation of the Program. A CEs and sites must maintain Program records separately from the records of other nutrition programs in which they participate. If a CE's or site's participation in the at-risk afterschool care center component of the Program is terminated for any reason, they must maintain, for a period of three years from the last day of the Program year to which they pertain, all records related to the Program services that they provided and for which a claim was submitted.

If there is unresolved litigation, claims, audits, or investigations, CEs and sites must maintain the records until the matters are resolved or for three years, whichever is longer. These actions are considered resolved when a final order is issued in litigation or when the CE and TDA sign a written agreement.

3200 Program Payments and USDA Foods

During a CE's participation in the Program, it can expect to receive the following from TDA:

- Program management training.
- Technical assistance.
- Program payments to assist with the cost of:
 - Providing meals.
 - Obtaining required audits (as funds are available), if requested.
- A cash reimbursement in lieu of USDA Foods, if applicable.

The amount and type of assistance that a CE receives will depend on the nature of their organization and the availability of USDA funds.

A CE receives reimbursement based on a combination of factors, including the:

- USDA rates of reimbursement, and
- The number of reimbursable meals served to eligible children., and
- Eligibility category of each child (all at-risk meals are reimbursed at the free rate).

If a CE receives unearned reimbursement, it must return the unearned portion to TDA.

Unearned reimbursement can occur due to many factors, such as:

- Claim submission errors resulting in a downward adjustment by the CE
- Meal disallowances taken as a result of an administrative review
- Unallowable costs determined as a result of an administrative review

3210 Food Service Payments

3211 Reimbursement for Meals

CEs (and sponsored sites) are reimbursed for part of the cost associated with meal service in the CACFP. CEs must ensure that meals served to children meet CACFP requirements. Sponsors must ensure meals served by their sites meet CACFP requirements.

At each meal service, the CE/site must take an actual count of children who are present and the number of meals served to them. The count must be taken at the point of service (that is, where a child receives a reimbursable meal), and recorded on the *Daily Meal Count and Attendance Record* (H1535), and/or the *Daily Meal Count and Attendance Record (At-Risk)* (H1535-AT), or alternate form.

Each month the CE must submit this data by completing its claim in TX-UNPS or manually via the paper *CACFP – Centers Claim for Reimbursement*. TDA will use this data to determine the reimbursement for each meal service each month.

A CE must submit an adjusted claim and return any food service overpayment to TDA if:

- The CE discovers an error in its records or its site's records after submission of a claim for the affected month; or
- An audit of the CE's organization results in a finding or exception that an overpayment was made.

A CE must submit the adjusted claim prior to returning any funds to TDA. After the adjusted claim is processed, TDA will notify the CE of any debt and provide instructions for returning the funds. Generally, the debt will be deducted from the next claim submitted.

Additionally, a sponsor must return to TDA any food service payments it is unable to disburse to a site. For example, site has moved/closed, or the check written to a site is not deposited by its expiration date.

If a sponsor must return food service payments that it was unable to disburse it must submit a letter that includes the:

- Amount of funds being returned,
- Name of the site, and site ID number, for which the funds were intended,
- Reason it was unable to disburse the funds to the site,
- Claim month and year to which the funds apply, and
- CE ID number.

The sponsor must send the letter along with the funds to TDA, and should retain a copy of the letter and supporting documentation for its records. **NOTE:** Do not send cash.

Returned food service payments must be sent to:

Texas Department of Agriculture
Food and Nutrition
Attn: Director for Business Operations
P.O. Box 12847
Austin, Texas 78711

3212 Disbursing Reimbursement to Sponsored Sites

Only applies to CEs that sponsor unaffiliated sites.

CEs must disburse reimbursement to their sponsored sites within five workdays of receipt of the reimbursement. Refer to Item 4264.2, *Sponsors of Unaffiliated Sites* in this handbook for documentation requirements.

3220 Advance Payments

3221 Eligibility

A CE may be eligible to receive advance payments if the CE:

- Requested advances in its application.
- Is not indebted to TDA from a previous Program year in any Child Nutrition Program in which it participates.

3222 Processing and Receipt Deadlines

When funds are available, TDA will provide advance payments. If funds are not available to provide both advance payments and reimbursement for claims, TDA will only reimburse claims.

Advances will not be issued for the months of September and October of each year. During those months TDA will only reimburse CEs for their claims.

3223 Determining the Amount of Advance Payment

A CE may choose to receive a full, partial or half advance payment for meal reimbursement.

A full advance is 100 percent of the amount of reimbursement projected to be earned during the month for which the advance payment is issued. A partial advance is 75 percent of this same amount, and a half advance is 50 percent of that same amount.

The initial advance payment for new CEs that don't have a claim history is based on anticipated number of meals that would be served to children during the month multiplied by the reimbursement rate per meal specified by USDA. Once a CE has a claim history, advances are calculated based on the last claim submitted.

3224 Disbursing Advance Payments to Sponsored Sites

Only applies to CEs that sponsor unaffiliated sites.

CEs must disburse advances to their sponsored sites within five workdays of receipt of the advance. Refer to Item 4254.2, *Sponsors of Unaffiliated Sites* in this handbook for documentation requirements.

3225 Recouping Advance Payments

TDA recoups at-risk afterschool care center advance payments for the current Program year beginning with May claims. (NOTE: If a CE participates in traditional CCC as well recoupment begins in July).

If, after recoupment of the advances from the May claim a CE has an outstanding balance, TDA will recoup the remainder from each subsequent claim until the debt is repaid. During this recoupment period the CE will not receive an advance for the next Program year unless or until the debt is paid.

3226 Discontinuing Advance Payments

Discontinuation of advance payments could occur for the following reasons:

- TDA believes a CE will be unable to submit a valid claim for reimbursement covering the month(s) for which advance payments have already been made.
- TDA has evidence that the CE has been deficient in operating the Program in the current or prior Program year.
- The CE owes for an advance overpayment at the end of the Program year

- The CE owes any other debt to TDA.
- The CE does not submit valid claims and/or required audit reports.
- The CE submits a written request to stop receiving advances.

Once advances have been discontinued, the CE may submit a request that advances be reinstated via the advance request screen in TX-UNPS if it wants to begin receiving advances again.

If advance payments are discontinued for any reason, the CE will not receive retroactive advance payments for the month(s) in which its advances were discontinued.

3230 Earned Interest

A CE may retain and use any interest it earns on reimbursements and advances as long as the interest is used for allowable Program costs and is reported as income to the Program; however, there are different requirements that apply to the interest earned on reimbursement and advances. For example, there is a limit to the amount of interest a CE can retain and use in the Program when the interest is earned on advance funds. For additional guidance on reporting earned interest, refer to FNS Instruction 796-2, *Financial Management – Child and Adult Care Food Program*.

3240 USDA Foods

Child care centers that meet *The Emergency Food Assistance Program* (TEFAP) definition of “charitable institution” may participate in both the CACFP and the TEFAP. TEFAP is an emergency food assistance program that supplies USDA Foods to eligible recipients through organizations such as soup kitchens, pantries, or other organizations. Federal regulations do not allow recipients of USDA Foods, either through direct distribution or in prepared meals, to be charged (payments in money, materials or services) for receipt of USDA Foods.

CACFP cash-in-lieu funds must be kept separate from other funds, including TEFAP administrative funds, since cash-in-lieu funds must only be used to purchase or obtain foods for use in the CACFP. Child care centers may use CACFP cash-in-lieu funds at food banks to obtain non-USDA Foods.

3241 USDA Foods or Cash-in-lieu

Each year during the application process, TDA conducts a survey to determine if CACFP CEs would prefer to receive USDA Foods or a cash payment instead of USDA Foods. This cash payment is referred to as “cash-in-lieu of commodities.”

USDA Foods are foods that USDA purchases in large quantities. They can be a useful addition to a CE's Program if they are able to use them without waste. If a sufficient percentage of CACFP CEs prefer to receive the value of the USDA Foods to which they are entitled in cash, rather than the USDA Foods themselves, TDA will provide cash to all CEs for each lunch and supper served to eligible children according to the established reimbursement rate.

The amount of cash-in-lieu of commodities is a standard rate that is adjusted by USDA each July 1.

3242 Cash-in-lieu

CACFP CEs are:

- Not allowed to use cash-in-lieu funds to pay fees charged by food banks for donated foods that include USDA Foods.
- Allowed to use cash-in-lieu funds to pay fees charged by food banks to provide food donated from a source other than USDA.
- Allowed to use funds other than cash-in-lieu funds to pay fees charged by food banks for donated foods that include USDA Foods.

A CE must document the source of any funds it uses to obtain USDA Foods.

3300 Technical Assistance

Education Service Center (ESC) and TDA staff is available to provide technical assistance to help a CE complete the CACFP application and operate the Program. If a CE has a question that is not answered in this handbook or if clarification of information contained in this handbook is needed, the CE should call its ESC or TDA to request assistance.

A list of ESC offices and Food and Nutrition Community Operations Field offices is located in Section 11000, *Resources*.