

Section 8000

Denials, Terminations and Appeals

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Denials, Terminations and Appeals

8100 Denials

TDA will deny an application and may terminate the Permanent Agreement if it is determined at any time that an applicant or contracting entity (CE):

- Is ineligible to participate in the CACFP.
- Submitted false information to TDA, including but not limited to, a determination that the CE has concealed a conviction for any activity that occurred during the 7 years preceding their application and that indicates a lack of business integrity. A lack of business integrity includes, but is not limited to, fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity.
- Failed to return an advance payment that exceeds the amount earned for serving approved meals or an unearned reimbursement.
- Failed to maintain required records.
- Claimed reimbursement for meals that did not meet meal pattern requirements.
- Claimed reimbursement from multiple programs for the same meal served to the same child or claimed a child more than once per individual meal in the CACFP (concurrent participation).
- Claimed reimbursement for meals that were not served to participating children.
- Has an outstanding or unresolved single audit.
- Failed to comply with procurement standards or contract requirements.
- Is unable to properly operate the CACFP.
- Has defrauded the CACFP.
- Failed to complete a corrective action, as detailed in a corrective action plan.
- Permitted a member of the organization's governing body, an agent, a consultant, or an employee who has been convicted of a fraudulent activity, to engage in any activity related to the administration of the CACFP.
- Has been determined to be seriously deficient in the ability to comply with requirements in the CACFP and placed on the National Disqualified List (NDL).
- Has been determined to be seriously deficient in the ability to comply with requirements in any other Child Nutrition Program (CNP) and been disqualified or excluded from participation in that Program.
- Failed to submit a complete and correct application within the specified time.
- Failed to meet basic eligibility requirements.

- Did not disburse payment to sponsored sites according to the CE's management plan, and in compliance with requirements.
- Failed to submit a balanced and reasonable budget.
- Failed to operate the CACFP in conformance with the requirements specified in the application, including fiscal accountability demonstrated through compliance with financial management standards contained in FNS Instruction 796-2, *Financial Management – Child and Adult Care Food Program*.
- Used a food service management company/vendor that is in violation of health codes;
- Failed to properly train or monitor sponsored sites;
- Failed to perform financial and administrative responsibilities; or
- Engaged in any other action affecting the CE's ability to administer the CACFP in accordance with requirements as stated in this handbook and the Permanent Agreement.

If an organization's application is denied, TDA will notify the organization, in writing, of the specific reason for denial. The organization has the right to appeal the denial of their application. See Item 8310 for other actions subject to appeal.

NOTE: If an organization's application is denied, they may reapply at any time.

8200 Terminations

The Permanent Agreement may be terminated in whole or in part. A termination "in part" applies to situations where a CE participates in more than one CNP and withdraws from or is determined to be ineligible for at least one but not all of the programs.

If a CE is determined to be ineligible to participate in a CNP as a result of serious deficiency in the ability to comply with requirements, its Permanent Agreement must be terminated "in whole." Meaning participation in all CNPs would be terminated, if applicable.

TDA must terminate a CE's Permanent Agreement if the CE:

- Ceases to be eligible for the CACFP (i.e. loses tax exempt status);
- Is disqualified from the CACFP in another State or by USDA FNS;
- Is disqualified from the CACFP by TDA;
- Is disqualified or excluded from participation in another CNP by TDA, another State or USDA FNS; or
- Any other action affecting the CE's ability to administer the CACFP in accordance with the Program Agreement.

Failure to Renew

Although CEs enter into a Permanent Agreement with TDA to operate the CACFP, they must still submit specific information annually to renew participation. If a CE notifies TDA in writing that it does not intend to renew its participation in the CACFP its Permanent Agreement will be amended (if the CE participates in more than one component of the CACFP or another CNP) or terminated by mutual consent, as appropriate.

However, a CE will be placed in the serious deficiency process if it begins the renewal process and fails to:

- Submit all required documentation or information;
- Correct submitted information or submit additional information as requested by TDA; or
- Notify TDA that its failure to complete the renewal process is because it has decided to withdraw from the CACFP and/or terminate its Permanent Agreement.

Termination by Mutual Consent

TDA and a CE may mutually consent to terminate the Permanent Agreement at any time.

Termination by mutual consent generally occurs as a result of the CE's decision to withdraw from the CACFP and can occur at any time during the program year, including at the time of renewal.

Termination by mutual consent will also occur when the organization's EIN, or other documentation establishing the organization's legal identity has changed.

NOTE: Termination by mutual consent is not an adverse action. Therefore, a CE cannot appeal this termination.

8300 Appeals

A CE may only request an appeal of certain adverse actions. An adverse action is an action that denies or reduces CACFP benefits to the CE. The lists below detail which actions can and which actions cannot be appealed.

8310 Actions Subject to Appeal

A CE has the right to appeal:

- Denial of a new or renewal application.
- Denial of a sponsored site's application.
- Proposed termination and proposed disqualification.
- Suspension of participation (due to imminent threat to health or safety or submission of false or fraudulent claims).
- Denial of advances.
- Recovery of advances (demand from TDA for repayment of advances not covered by claims submitted or due to non-claiming for the month(s) of the advance(s)).
- Denial of all or part of a claim, except the denial due to late submission.
- TDA's denial to submit the CE's request for a good cause exception to the United States Department of Agriculture (USDA) for consideration of payment.
- Overpayment demand.
- Other actions taken by TDA, which affect the CE's participation or claim for reimbursement.

A CE may not appeal:

- USDA denial of a claim.
- Determination of serious deficiency.
- Determination that corrective action is inadequate.
- Disqualification and placement on the National Disqualified List (NDL).
- Termination of a participating organization's Permanent Agreement as a result of the Serious Deficiency Process, including termination of a participating organization's Permanent Agreement based on the disqualification of that organization by another State agency or USDA.
- Denial of removal from the NDL.
- TDA's refusal to consider the application of an organization when the organization or one of its principals is on the NDL.
- TDA's refusal to consider the application submitted on behalf of a sponsored site when the site or one of its principals is on the NDL.
- Termination by mutual consent.

8320 Appeal Process

Requests for an appeal must be received by TDA within 15 days of receipt of notification of an adverse action. The appeal must:

- Be in writing;
- State the basis for the appeal of the adverse action;
- Include a legible copy of the adverse action letter.

If you wish to have an in-person hearing, you must request a hearing at the time you file your written appeal. If you do not include a written hearing request in your appeal, you waive the right to a hearing and the appeal will be decided upon review of the documents in the record, unless the Administrative Review Official (ARO) determines that the failure to make a timely request was due to circumstances beyond the control of the appellant.

TDA has the discretion to refer a request for a hearing to the State Office of Administrative Hearings (SOAH) for resolution. Should you wish to have your hearing held by the State Office of Administrative Hearings (SOAH), you must make that request at the time of your written appeal.

Your appeal must be mailed or faxed to:

**FOOD AND NUTRITION APPEALS
TEXAS DEPARTMENT OF AGRICULTURE
LEGAL DIVISION
ATTN: DOCKET CLERK
PO BOX 12847
AUSTIN TEXAS 78711
FAX (800) 909-8530**

You may hand-deliver or submit your appeal via overnight/special delivery service to the following street address:

**TEXAS DEPARTMENT OF AGRICULTURE
LEGAL DIVISION
1700 NORTH CONGRESS, 11TH FLOOR
AUSTIN TEXAS 78701**

The rules regarding the appeal procedures for CACFP are found in Title 4 of the Texas Administrative Code Sections 1.1000 – 1.1004.

NOTE: Documentation a CE wants to have considered for the appeal must be submitted within 30 days of receipt of an adverse action. The CE can submit the document with the request for an appeal, or separately.

CEs that wish to confirm receipt of their appeal request may contact the Appeals Division at (512) 463-4075.

EXCEPTION: CEs that want to appeal an adverse action that was based on the findings of a federal audit or review, must submit a written request to USDA at:

**ADMINISTRATIVE REVIEW DIVISION
USDA – FNS RM. 523
3101 PARK CENTER
ALEXANDRIA, VIRGINIA 22031**

The USDA Administrative Review Division must receive the request for an appeal within 15 days after the CE's receipt of notification of adverse action.

CEs must include a copy of the adverse action notification received from USDA, or from TDA, acting on behalf of or as directed by USDA, as applicable.