

Section 3000

Program Agreement

Table of Contents

3100 Program Requirements

- 3110 Conflicts of Interest
- 3120 Reimbursable Meals
- 3130 Nonprofit Food Service
- 3140 Program Management
- 3150 Waiver of Program Requirements
- 3160 Program Documentation

3200 Program Payments

- 3210 Special Payments
 - 3211 Start-up Funds
 - 3212 Expansion Funds
 - 3213 Provider Licensing Funds
- 3220 Food Service Payments
 - 3221 Reimbursement for Meals
 - 3222 Disbursing Reimbursement to Providers
 - 3223 Administrative Payments
- 3230 Advance Payment
 - 3231 Eligibility
 - 3232 Processing and Receipt Deadlines
 - 3233 Determining the Amount of Advance Payment
 - 3234 Disbursing Advance Payment to Providers
 - 3235 Recouping Advance Payments
 - 3236 Discontinuing Advance Payments
- 3240 Earned Interest

3300 Technical Assistance

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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)). In the Day Care Home component of the CACFP, all CEs are sponsoring organizations (sponsors). 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 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 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 providers 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 an administrative 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 organizations Permanent Agreement.

3100 Program Requirements

A CE is fully responsible for the operation of the Program in all day care homes that it sponsors. A CE's responsibilities can be divided into the following general categories:

- Avoiding conflicts of interest;
- Claiming reimbursable meals;
- Operating a nonprofit food service program;
- 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 CACFP 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. 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 enrolled 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. Additionally, the CE accepts final administrative and financial responsibility for food service operations in all of its day care homes.

CEs may not contract out the management of the Program; however, they may contract some Program activities required in the administration 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 its own selection. However, the CE is responsible for ensuring that the software supports their 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 Program are available at no cost on the FND website at www.squaremeals.org, as well as the USDA website at www.fns.usda.gov/cnd/ or www.fns.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 providers must maintain all records necessary for state and federal authorities and their agents to evaluate the operation of the Program. The CE must maintain CACFP records separately from the records of other nutrition programs in which it participates. If participation in the CACFP is terminated for any reason, the CE 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 CACFP services provided and for which a claim was submitted.

If there is unresolved litigation, claims, audits, or investigations, CEs must maintain the record 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.

There are documentation requirements for providers as well and CEs must ensure that the providers comply with these requirements. Refer to Item 4430.1 for provider record keeping and retention requirements.

3200 Program Payments

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:
 - Administrative activities related to sponsoring day care homes.
 - Providing meals (to be paid to the day care homes).
 - Obtaining required audits (as funds are available), if requested.

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

- USDA rates of reimbursement,
- Number of reimbursable meals served to eligible children in day care homes,
- Number of day care homes under the CE's sponsorship, and
- Eligibility category of each home or each child (Tier I or II).

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 Special Payments

3211 Start-Up Funds

CEs that sponsor fewer than 50 day care homes may request start-up funds to expand DCH operations by completing and submitting the *Start Up or Expansion Payments Application*. When available, TDA may allocate start-up funds to assist in the recruitment of providers to a maximum participation of 50. Start-up funds only pay for the direct costs of recruiting providers, for example, staff and travel. Indirect costs will not be funded. Start-up funding can only be received one time.

In its application, the CE must provide:

- An acceptable recruitment plan.
- An organizational history of managing funds and ongoing activities.

If TDA approves a CE's application for start-up funds, the CE must sign and submit the *Start Up or Expansion Payments Agreement* that contains or identifies:

- The recruitment plan.
- The amount of start-up funds TDA will provide.
- A budget for expanding the DCH-operation.
- The length of time needed to expand DCH-operations.
- A provision for repaying funds that were not used according to Program requirements.
- A ban on the use of start-up funds to recruit providers who are already participating with an approved sponsoring organization.

CEs have the option of receiving funding for one or two months of recruitment efforts. CEs will not receive start-up funding for the providers they already sponsor.

EXAMPLE: A CE currently sponsors 10 day care homes and wants to recruit an additional 40 homes. $40 \text{ homes} \times \$118 \text{ (current administrative rate per provider, 1}^{\text{st}} \text{ 50 providers)} \times 1 \text{ month (minimum)} = \$4720 \text{ (minimum start-up funding)}$; $40 \times \$118 \times 2 \text{ months (maximum)} = \$9440 \text{ (maximum start-up funding)}$.

At the end of the recruitment period specified in the agreement, the CE must submit records detailing its use of the start-up funds. Based on a review of the records, TDA may request a repayment of the funds that were not used according to Program requirements, for example, training of currently sponsored providers. Regardless of whether the CE expanded DCH operations, it may retain the start-up funds received on condition that the funds were used according to Program requirements.

3212 Expansion Funds

A CE can also request expansion funds to assist in the recruitment of day care homes in low-income or rural areas. CEs may request one or two months of funding. Recruitment plans for expansion funds cannot exceed 50 homes. Additionally, recruitment plans cannot extend beyond two months. The maximum expansion funding is the same as the start-up fund allocation.

A CE will not receive expansion funds for the homes it already sponsors. CEs are only eligible for expansion funds once during any 12-month period. Additionally, CEs can only receive expansion funds one time for a particular geographic area. If a CE has received start-up funds to expand its DCH operation, it must wait at least one year from the time it satisfied all the obligations detailed in its start-up funds agreement before it is eligible to receive expansion funds.

The CE will sign and submit the *Start Up or Expansion Payments Application* and *Start Up or Expansion Payments Agreement*.

When evaluating requests for expansion funds, TDA will:

- Consider the anticipated amount of funding and alternate sources of funding that are available to a CE for expansion efforts.
- Give preference to CEs that have successfully sponsored 50 or more homes for at least one year. (CEs that sponsor fewer than 50 homes are eligible to receive expansion funds, but are encouraged to apply for start-up funds instead.)

At the end of the recruitment period specified in the agreement, the CE must submit records detailing its use of the expansion funds. Based on a review of the records, TDA may request a repayment of the funds that were not used according to Program requirements, for example, training of currently sponsored providers. Regardless of whether the CE expanded DCH operations, it may retain the expansion funds received on condition that the funds were used according to Program requirements.

3213 Provider Licensing Funds

CEs may use administrative Program funds to defray certain licensing-related expenses for unlicensed or unregistered, low-income providers. The maximum use of funds is \$300 per provider in any combination of expansion, start-up or administrative payments.

EXCEPTION: The use of expansion funds applies only to assist unlicensed and unregistered income-eligible providers located in **low-income** or **rural** areas.

Licensing related expenses must be in the CEs approved budget before the CE can use administrative Program funds to finance the licensing or registration of a provider.

NOTE: CACFP funds can be used only once to assist a provider in becoming licensed or registered. The use of Program funds to assist a provider who is already, or has previously been, licensed or registered to provide child care, is not allowed.

At the end of the Program year, the CE must submit records detailing its use of Program funds for licensing related expenses. Based on a review of the records, TDA may request a repayment of Program funds that were used to defray certain licensing-related expenses, but were not used according to Program requirements; for example, the CE expended more than \$300 on an individual provider.

3220 Food Service Payments

3221 Reimbursement for Meals

Providers are reimbursed for part of the cost associated with meal service in the CACFP. Providers must ensure that meals served to children meet CACFP requirements. Refer to Section 4000, *Managing the Program*, for more specific information related to food service payments.

CEs may reimburse providers for meals that they serve to their own children if:

- The provider's household meets family size and income guidelines for free or reduced-priced meals.
- The provider's children are enrolled for child care at the provider's day care home.
- At least one nonresident child is present at the meal service.

A provider who participates in the CACFP can provide "substitute" care for another participating provider.

The children of one provider may be treated as "nonresidential children" for the purpose of claiming reimbursement for a meal that is served by a different provider if:

- The children are enrolled for child care at the substitute day care home.
- The provider (parent/guardian) for whom substitute care is being given does not claim reimbursement for any meals during the period of substitute care.

Within five workdays of the date that the CE receives reimbursement from TDA, it must reimburse each of its providers. The provider's payments are based on the Tier status of the provider (Tier I or Tier II), the Tier status of the enrolled children (if the provider is Tier II), and the number of meals served to enrolled children by each provider, minus any advance payments received by the provider.

EXCEPTIONS:

- CEs may withhold meal reimbursement to a provider in an amount equal to food costs it incurred on behalf of that provider. However, the provider must first give written consent before any reimbursement can be withheld.
- CEs may withhold meal reimbursement if a provider received advance payments that exceeded the appropriate reimbursement, or served ineligible meals.

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

- The CE discovers an error in its records or a provider's records after they have submitted 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 CE must return to TDA any food service payments that it was unable to disburse. For example, the Provider has moved or discontinued providing care; or the check written to a provider is not deposited by its expiration date.

If a CE 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 provider and provider ID number for whom the funds were intended,
- Reason it was unable to disburse the funds to the provider,
- Claim month and year to which the funds apply, and
- CE ID number.

The CE 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

3222 Disbursing Reimbursement to Providers

CEs must disburse reimbursement to their providers within five workdays of receipt of the reimbursement.

3223 Administrative Payments

A CE will receive administrative payments as reimbursement for the allowable expenses it incurs while sponsoring the CACFP activities of its providers. CEs must report all administrative expenses with the claim each month. CEs must report expenses, for example, payroll taxes, when they accrue rather than when they are paid.

Administrative payments will be based on the standard monthly reimbursement rate per eligible provider (provided annually by USDA) multiplied by the number of eligible day care home providers sponsored for the claim month.

NOTE: A provider's meal reimbursement cannot be used to pay a CE's administrative expenses.

When determining the number of eligible day care homes operating for a claim month, do not include any that did not submit a claim or did not serve any reimbursable meal/meals for the claim month.

Although CEs may incur administrative costs on behalf of a day care home in a given month in which the provider does not claim reimbursable meals, the CE may not claim administrative reimbursement for that home in that claim month.

3230 Advance Payment

3231 Eligibility

A CE may be eligible to receive advance payment 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.

3232 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.

3233 Determining the Amount of Advance Payment

A CE may choose to receive a full, partial or half advance payment for either administrative costs or for meal reimbursement, or a combination of both.

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 the number of providers they have submitted for sponsorship (for administrative cost advances) and the anticipated number of meals to be served to enrolled children during the month multiplied by the reimbursement rate per meal specified by USDA (for meal reimbursement advances). Once the CE has a claim history, advances are calculated based on the last claim submitted.

3234 Disbursing Advance Payment to Providers

CEs that choose to receive full, partial or half advance payment of meal reimbursement must disburse the total amount to their providers within five workdays of receipt of the advance.

3235 Recouping Advance Payments

TDA recoups advance payments for the current Program year from the July and August claims.

If, after recoupment of the advances during those months, 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 until the debt is repaid.

3236 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 payment(s) 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.

3240 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*.

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 TDA Community Operations Field offices is located in Section 11000, *Resources*.