

CACFP Administrative Handbook

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8. Audits, Deficiencies and Appeals

Audit Information

A CACFP year begins October 1 and ends September 30. All CACFP records must be kept for three CACFP years plus the current CACFP year. If any audit findings are not resolved, the records must be kept as long as required to resolve all questions raised by the audit. All records must be readily available, upon request, to auditors and representatives of the Kansas State Department of Education (KSDE) or the U.S. Department of Agriculture (USDA). Any issues that compromise stored CACFP records must be reported promptly to KSDE.

The purpose of an audit is to determine the fiscal integrity of the sponsor and to verify the accuracy of the financial transactions and reimbursement claims submitted to KSDE. There are two types of audits: (1) an audit conducted by KSDE auditors to meet limited scope audit requirements and (2) an audit conducted by an independent audit firm to meet Single Audit requirements as detailed below.

<i>Type of Organization</i>	Federal Financial Assistance	
	<i>Less than 750,000</i>	<i>Over 750,000</i>
Nonprofit	KSDE Limited Scope Audit	Single Audit
Public	KSDE Limited Scope Audit	Single Audit
For-profit	KSDE Limited Scope Audit	KSDE will audit

Audit Conducted by KSDE

For-Profit Organizations

At least once every two years, KSDE will conduct audits of for-profit organizations. Any two-year audit will cover both years within the biennial period. The audit for new sponsors will include the first month of participation in CACFP and all remaining months of operations.

Nonprofit Organizations Spending Less Than \$750,000

KSDE will audit nonprofit organizations that spend under \$750,000 in federal funds.

Audit Conducted by Independent Firm (Single Audit)

A Single audit is required for organizations that spend over \$750,000 in federal funds. The Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards 2 CFR Part 200 establishes uniform audit standards for non-federal entities that receive federal financial assistance. The circular is entitled “Audits of States, Local Governments, and Nonprofit Organizations”.

Important provisions in the Uniform Guidance 2 CFR Part 200 include:

- ◆ Non-federal organizations that expend \$750,000 or more in a year in federal funds must have a single or program-specific audit conducted for that year. A single audit will cover the entire operation of the organization. A program-specific audit is an audit of only one federal program.
- ◆ If a non-federal organization expends federal funds under only one federal program, the organization may elect to have a program-specific audit. Example: If CACFP funds are the only federal funds expended by the organization, the organization may elect to have a program-specific audit of only the CACFP.
- ◆ The audit report must be completed and the report submitted to KSDE within **nine months** after the end of the audit period.
- ◆ Federal funds may be used to pay for audits of organizations that expend \$750,000 or more in a year. Federal funds may not be used to pay for audits of organizations that expend less than \$750,000 in a year. See *Audit Grants* later in this chapter.
- ◆ An auditor is a public accountant who meets the general standards specified in “Generally Accepted Government Auditing Standards” (GAGAS). An internal auditor does not meet the specified standards; however, a military auditor may be an exception.

Requirements in Obtaining a Single Audit

Sponsors must adhere to the procurement standards and procurement methods from *Chapter 7, Financial Management*. The procurement process must provide maximum open and free competition. Specific prior written approval from KSDE must be obtained if CACFP funds are used to pay for the cost of the audit.

- ◆ If the total cost for the Single Audit is under \$20,000, price or rate quotations must be obtained from an adequate number (two or more) of qualified sources.
- ◆ If the total cost for the Single Audit is over \$20,000, the request for a firm to conduct a Single Audit must be publicly solicited and bidding procedures followed.

Details are in *Chapter 7, Financial Management*. Additional procurement requirements for Audit Grant Funds are specified later in this chapter. All contracts with audit firms must contain the Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (8-A) signed by the audit firm.

Choosing an Audit Firm

The audit firm must be licensed to practice in the state in which the CACFP is being conducted.

It is possible for one firm to provide both accounting and auditing services for an organization. If a sponsor uses one firm for accounting and auditing services, the two functions must be independent. The sponsor must have written assurance from the firm that:

- ◆ the two functions will not be completed by the same person(s) and
- ◆ the auditor(s) completing the audit is not subordinate(s) to the accountant.

When requesting proposals for audit services, the objectives and scope of the audit should be made clear. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of external quality control reviews, and price.

Audit Grants

Audit grants to assist with the cost of obtaining a required audit of the CACFP are available from KSDE. Eligible applicants are sponsors that expended \$750,000 or more in federal funds during the sponsor's prior fiscal year. To the extent that adequate funds are available and subject to KSDE approval, KSDE may pay 50 percent or more of the approved CACFP audit cost.

The CACFP sponsor is responsible for obtaining an audit and paying for the audit. All audits must comply with CACFP compliance standards and Uniform Grant Guidance in 2 CFR Part 200. KSDE will not reimburse a sponsor for an audit that does not (1) test CACFP, or (2) meet CACFP compliance standards, or (3) meet Uniform Grant Guidance.

To be eligible for an audit grant, a sponsor must follow the procedures in the audit grant mailing, which includes sending a minimum of two written requests to accounting firms via certified mail, return receipt required. For more information about audit grants, contact KSDE. Applications will be mailed in January to sponsors spending more than \$750,000 in federal funds during the previous fiscal year. Audits must be completed and KSDE must receive the audit report by August 1.

KSDE Audit Process

Entrance and Exit Conferences

The auditor should conduct an entrance conference with the Authorized Representative explaining the scope of the audit. At this time, the auditor should learn whom he/she is to work with during the audit, discuss questions pertaining to the sponsor and request the necessary documentation for the audit.

At the conclusion of the audit, the auditor should discuss the findings, questioned costs, recommendations, and other concerns of the audit with the Authorized Representative.

Audit Procedures

The audit will review the sponsor's structure, operations and financial transactions for a specific period of time. The auditor will use "Generally Accepted Government Auditing Standards" (GAGAS). The auditor will evaluate financial statements, internal controls, compliance, and audit follow-up from the previous audit, if applicable.

Auditors are required to test the organization for CACFP compliance with federal statutes and regulations and verify the accuracy of reimbursement claims. To test for CACFP compliance, the auditor will look at a sample of meal records, enrollment records, Income Eligibility Forms and other records.

Audit Report

At the end of the audit, the auditor will compile an audit report. The report will include, but is not limited to:

- ◆ Reports on internal controls and compliance
- ◆ Findings and questioned costs

Audit Findings

Several teams within the Kansas State Department of Education will process the audit report. The Auditing Team summarizes the audit report. If the audit report indicates an underclaim or overclaim in the sponsor's reimbursement, the School Finance Team will calculate estimated financial adjustments. The audit summary and the estimated financial adjustments are forwarded to Child Nutrition & Wellness.

Child Nutrition & Wellness composes a summary letter of the audit report and financial adjustment. The letter is sent to the Authorized Representative and contains the recommendations for corrective action, if applicable. A corrective action plan is a plan submitted by the sponsor to correct any deficiencies found by the auditors. The letter also contains the appeal procedures if there are financial adjustments.

To appeal the findings the Authorized Representative must follow the instructions and deadlines contained in the letter.

If the findings are correct or the sponsor has no documentation to appeal the findings, the amount owed KSDE will be due upon receipt of the initial letter. If the amount due is excessive, the Authorized Representative may contact Child Nutrition & Wellness, KSDE to request a repayment plan.

Serious Deficiencies for Institutions (Sponsoring Agencies)

For more information on the Serious Deficiency Process see the Serious Deficiency, Suspension, & Appeals for State Agencies & Sponsoring Organizations Child and Adult Care Food Program Handbook at

http://www.fns.usda.gov/sites/default/files/CACFP_Serious_Deficiency_Handbook.pdf.

CACFP deficiencies (serious and systemic) include, but are not limited to, any of the following:

New Applicants

- ◆ Submission of false information on the application, including but not limited to a determination that the sponsor 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 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 [7CFR226.6(c)(1)(ii)(A)].
- ◆ Any other action affecting the sponsor's ability to administer the CACFP in accordance with CACFP requirements [7CFR226.6(c)(1)(ii)(B)].

Renewing Sponsors

- ◆ Submission of false information on the application, including but not limited to a determination that the sponsor 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 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 [7CFR226.6(c)(2)(ii)(A)].
- ◆ Failure to operate the CACFP with one or more of the following:
 - Financial viability
 - Administrative capability
 - Internal controls which ensure accountability [7CFR226.6(c)(2)(ii)(B)]
- ◆ Failure to comply with bid procedures and contract requirements of applicable federal procurement regulations [7CFR226.6(c)(2)(ii)(C)].
- ◆ Use of a food service management company that is in violation of health codes [7CFR226.6(c)(2)(ii)(D)].
- ◆ Failure by a sponsoring organization of day care homes to properly classify day care homes as Tier 1 or Tier 2 [7CFR226.6(c)(2)(ii)(E)].
- ◆ Failure by a sponsoring organization to properly train staff or train and/or monitor sponsored centers or homes [7CFR226.6(c)(2)(ii)(F)].
- ◆ Failure to perform any of the other financial and administrative responsibilities [7CFR226.6(c)(2)(ii)(G)].
- ◆ Failure to properly implement and administer the day care home termination and appeal procedures [7CFR226.69(c)(2)(ii)(H)].
- ◆ Any other action affecting the sponsor's ability to administer the CACFP in accordance with CACFP requirements [7CFR226.6(c)(2)(ii)(I)].

Participating Sponsors

- ◆ Submission of false information to KSDE [7CFR226.6(c)(3)(ii)(A)].
- ◆ Permitting an individual who is on the National Disqualified List to serve in a CACFP capacity in a sponsoring organization, sponsored center, or day care home [7CFR226.6(c)(3)(ii)(B)].
- ◆ Failure to operate the CACFP with one or more of the following:
 - Financial viability
 - Administrative capability
 - Internal controls which ensure accountability [7CFR226.6(c)(3)(ii)(C)].
- ◆ Failure to comply with bid procedures and contract requirements of applicable federal procurement regulations [7CFR226.6(c)(3)(ii)(D)].
- ◆ Failure to return to KSDE [7CFR226.6(c)(3)(ii)(E):
 - Advanced payments (home sponsors only)
 - Disallowed start-up or expansion payments
- ◆ Failure to maintain adequate records [7CFR226.6(c)(3)(ii)(F)].
- ◆ Failure to adjust meal orders to conform to variations in the number of participants [7CFR226.6(c)(3)(ii)(G)].
- ◆ Claiming reimbursement for meals not served to participants [7CFR226.6(c)(3)(ii)(H)].
- ◆ Claiming reimbursement for a significant number of meals that do not meet CACFP requirements [7CFR226.6(c)(3)(ii)(I)].
- ◆ Use of a food service management company that is in violation of health codes [7CFR226.6(c)(3)(ii)(J)].
- ◆ Failure of a sponsoring organization to disburse payments to its facilities in accordance with regulations or its management plan [7CFR226.6(c)(3)(ii)(K)].
- ◆ Claiming reimbursement for meals served by a for-profit child care center during a calendar month in which less than 25% of the participants qualified (SRS child care subsidies or free/reduced price) [7CFR226.6(c)(3)(ii)(L)].
- ◆ Claiming reimbursement for meals served by a for-profit adult day care center during a calendar month in which less than 25% of the participants qualified (Medicaid) [7CFR226.6(c)(3)(ii)(M)].
- ◆ Failure by a sponsoring organization of day care homes to properly classify day care homes as Tier 1 or Tier 2 [7CFR226.6(c)(3)(ii)(N)].
- ◆ Failure by a sponsoring organization to properly train staff or train and/or monitor sponsored centers or homes [7CFR226.6(c)(3)(ii)(O)].
- ◆ Use of day care home funds by a sponsoring organization to pay for the sponsoring organization's non-CACFP administrative expenses [7CFR226.6(c)(3)(ii)(P)].
- ◆ Failure to perform any of the other financial and administrative responsibilities [7CFR226.6(c)(3)(ii)(Q)].
- ◆ Failure to properly implement and administer the day care home termination and appeal procedures [7CFR226.6(c)(3)(ii)(R)].
- ◆ Permitting an individual that has been declared ineligible for any other publicly funded program, to serve in a CACFP capacity [7CFR226.6(c)(3)(ii)(S)].
- ◆ Conviction of an activity that indicates a lack of business integrity [7CFR226.69(c)(3)(ii)(T)].
- ◆ Any other action affecting the sponsor's ability to administer the CACFP in accordance with CACFP requirements [7CFR226.6(c)(3)(ii)(U)].

Fraud Penalty

Any person who embezzles, willingly misapplies, steals or obtains by fraud any funds, assets, property, or other forms of assistance provided through the CACFP and valued at:

- ◆ \$100 or more may be fined not more than \$10,000 or imprisoned not more than 5 years, or both
- ◆ Less than \$100 may be fined not more than \$1,000 or imprisoned not more than 1 year, or both

Seriously Deficient Process

A sponsor that is not capable of managing the CACFP and has one or more program deficiencies may be declared seriously deficient. If a sponsor is declared seriously deficient, it will be given the opportunity to correct the deficiencies through a corrective action plan (CAP). The CAP must completely and permanently correct the deficiency. If the sponsor corrects the deficiency the serious deficiency may be deferred. If the sponsor does not correct the deficiencies, KSDE will move to terminate the sponsor. Sponsors that are declared seriously deficient and terminated will be placed on the national disqualified list and are ineligible to participate in child nutrition programs for a minimum of 7 years or until all debt is repaid.

Appeals

A sponsor may appeal any of the following actions:

1. Denial of a sponsor's application for participation
2. Denial of an application submitted by a sponsor on behalf of a facility
3. Notice of proposed termination of participation of a sponsor or facility and for notice of proposed disqualification of a responsible principal or responsible individual
4. Suspension of a sponsor's participation
5. Denial of a sponsor's application for start-up or expansion funds
6. Denial of an advance payment and/or recovery of excess advance payment (sponsors of family day care homes only)
7. Denial of all or part of the claim for reimbursement
8. Demand for the remittance of an overpayment
9. Denial by KSDE to forward to USDA's Food and Nutrition Services an exception request for payment of late claim or request for an upward adjustment to a claim
10. Any other action by KSDE affecting the participation of a sponsor in the CACFP or the sponsor's claim for reimbursement

Appeal Procedures

Step 1 – Notice of Action

KSDE will send a Notice of Action to the Authorized Representative, Executive Director, Board Chairperson and Responsible Principal and Individual by certified mail, return receipt requested. The written notification will state the grounds for the adverse action and that the sponsor has the right to appeal the action.

Step 2 – Request for Review

The sponsor may appeal the action by submitting a written request for review to KSDE not later than 15 calendar days from receipt of the Notice of Action. The Request for Review must specify whether the sponsor wants to refute the charges: (1) by submitting written documentation and/or (2) through a hearing. A hearing will be held ONLY if requested by the sponsor. KSDE will acknowledge receipt of the Request for Review within 10 calendar days.

Step 3 – Review/Hearing Process

Any information on which the KSDE's Notice of Action was based will be available upon request to the sponsor for inspection from the date of receipt of the Request for Review.

KSDE will appoint a review/hearing official. The official's determination will be based on CACFP regulations and guidance, information provided by Child Nutrition & Wellness and information provided by the sponsor.

- ◆ **Review of Written Documentation** – The sponsor may refute the charges contained in the Notice of Action by providing written documentation to the official not later than 30 calendar days after the sponsor receives the Notice of Action.
- ◆ **Hearing** – If the sponsor requests a hearing, at least 10-calendar days advance written notice of the time and place of the hearing will be sent by certified mail, return receipt requested. The sponsor may retain legal counsel or may be represented by another person. The sponsor's representative(s) may attend the hearing in person. Failure of the sponsor's representative to appear at a scheduled hearing will constitute the sponsor's waiver of the right to a personal appearance before the official, unless the official agrees to reschedule the hearing. Representative(s) of Child Nutrition & Wellness shall be allowed to attend the hearing to respond to the sponsor's testimony and to answer questions posed by the official.

The KSDE's Notice of Action shall remain in effect during the appeal process. However, the sponsor and its facilities may continue to operate under the CACFP during an appeal of a proposed termination, unless the action is based on imminent dangers to the health or welfare of participants. If a sponsor or a facility has been terminated for this reason, Child Nutrition & Wellness must so specify in its Notice of Action. A sponsor electing to continue operating while appealing a proposed termination will be reimbursed for any allowable administrative costs and any eligible meals served during the period of the appeal.

Step 4 – Determination

Within 60 calendar days of KSDE's receipt of the Request for Review, the official must inform KSDE and the sponsor of the findings based on the review of written documentation and/or the hearing. The determination by the official is the final administrative determination afforded the sponsoring organization.

Suspension of Participation

Public Health or Safety

If the Kansas Department of Health and Environment (KDHE) has cited a sponsoring organization for serious health or safety violations and informed the KSDE about the violations, the KSDE will immediately:

- ◆ Suspend the sponsor's participation on CACFP
- ◆ Initiate action to terminate the sponsor's agreement and
- ◆ Initiate action to disqualify the sponsor and the responsible principals/individuals

If the KSDE determines that there is an imminent threat to the health or safety of participants, or that the sponsor has engaged in activities that threaten the public health or safety, the KSDE will immediately notify the KDHE and take action that is consistent with the KDHE recommendations.

- ◆ **Notice of Suspension**

The KSDE will notify the authorized representative, executive director, board chairperson and responsible principal and individual that the sponsor's participation, including payments, has been suspended. The notice will (1) state that the sponsor has been determined to be seriously deficient, (2) describe the basis for the seriously deficient determination, and (3) propose to terminate the sponsor's agreement and disqualify the sponsor and responsible principals and responsible individuals. The notice will also inform the sponsor that, if the sponsor voluntarily terminates its agreement with the KSDE after notification of the proposed termination, the sponsor and the responsible principals and responsible individuals will be disqualified. The notice will inform the sponsor that the seriously deficient determination cannot be appealed, but the suspension, proposed termination and proposed disqualifications can be appealed. The notice will explain that if the suspension is overturned by the review official, the sponsor may claim reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

- ◆ **Termination and Disqualification**

When the time for requesting an appeal expires or when the review official upholds the KSDE's proposed termination and disqualifications, the KSDE will send a notice to the Authorized Representative, Executive Director, Board Chairperson and Responsible Principal and Individual stating that the sponsor's agreement has been terminated and the sponsor, Authorized Representative, Executive Director, Board Chairperson, and responsible principals/individuals have been disqualified.

- ◆ **CACFP Payments**

The KSDE is prohibited from paying any claims for reimbursement from a suspended sponsor. However, if the sponsor prevails in the appeal of the proposed termination, the KSDE will pay any claims for reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

False Claims

If the KSDE determines that a sponsor has knowingly submitted a false or fraudulent claim, the KSDE **may** initiate action to suspend the sponsor's participation. The KSDE must initiate action (1) to terminate the sponsor's agreement and (2) to disqualify the sponsor and the responsible principals and responsible individuals. The submission of a false or fraudulent claim is a serious deficiency.

◆ **Notice of Proposed Suspension**

If the KSDE decides to pursue suspension, a Notice of Proposed Suspension will be mailed to the Authorized Representative, Executive Director, Board Chairperson and Responsible Principal and Individual. The notice will:

- propose to suspend the sponsor's participation, including payments,
- state that the suspension is based on the sponsor's submission of a false or fraudulent claim,
- set an effective date for 10 days after the sponsor receives the suspension notice,
- declare the sponsor seriously deficient,
- propose to terminate the sponsor's Program Agreement,
- propose to disqualify the sponsor, Executive Director, Board Chairperson, and Responsible Principal and Individual,
- inform the sponsor that, if the sponsor voluntarily terminates its agreement with the KSDE after notification of the proposed termination, the sponsor and Responsible Principal and Individual will be disqualified, and
- inform the sponsor that the seriously deficient determination can not be appealed, but the proposed suspension, proposed termination and proposed disqualifications can be appealed.

◆ **Appeal of Proposed Suspension**

The sponsor may appeal the proposed action by submitting (1) a written Request for Review and (2) written documentation opposing the proposed termination to the KSDE **within 10 days** of receipt of the notice. The review official will render a decision on the proposed suspension within an additional 10 days.

If the review official determines that the proposed suspension is not appropriate, the KSDE is prohibited from suspending participation.

If the review official determines, based on a preponderance of the evidence, that the KSDE's action was appropriate, the KSDE must suspend the sponsor's participation (including all CACFP payments), effective on the date of the decision.

◆ **Notice of Suspension (Due to Submitting False Claims)**

When the time for requesting an appeal expires or when the review official upholds the proposed suspension, the KSDE will notify the Authorized Representative, Executive Director, and Board Chairperson, and Responsible Principal and Individual, that the sponsor's participation has been suspended. The notice will state (1) the sponsor will not receive CACFP payments, (2) the effective date of the suspension, (3) the suspension can be appealed, and (4) if the review official overturns the proposed termination, the sponsor may claim reimbursement for eligible meals served and allowable costs incurred during the suspension period.

◆ **CACFP Payments**

The KSDE is prohibited from paying any claims for reimbursement from a suspended sponsor. However, if the sponsor has multiple center sites and/or family day care homes, the KSDE must ensure that the homes and sponsored centers continue to receive reimbursement for eligible meals served during the suspension period. If the sponsor prevails in the appeal of the proposed termination, the KSDE must pay any claims for reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

Maximum Time for a Suspension

A suspension of participation cannot be in effect for more than 120 days following the suspension review decision.

National Disqualified List (NDL) Early Removal Requests

KSDE will consider requests by organizations, responsible principals, individuals, and home providers to be removed from the NDL before seven years. Day care home providers must contact the home sponsor for a Home Provider Request for Removal from the NDL form. Organizations and individuals must contact KSDE for the Organization/Individual Request for Removal from the NDL form.