

Child Nutrition Programs Withholding Procedure for NSLP Administrative Reviews

Background

[Title 7 CFR 210.24](#) requires that in accordance with Departmental regulations at [2 CFR 200.338 through 200.342](#), the State agency shall withhold Program payments, in whole or in part, to any school food authority which has failed to comply with the provisions of this part ([7 CFR Part 210](#)—National School Lunch Program). Program payments shall be withheld until the school food authority takes corrective action satisfactory to the State agency or gives evidence that such corrective action will be taken, or until the State agency terminates the grant in accordance with §210.25 of this part. Subsequent to the State agency's acceptance of the corrective actions, payments will be released for any meals served in accordance with the provisions of this part during the period the payments were withheld.

Withholding of Funds

The State Agency **must** withhold all Program payments to School Food Authorities and other sub recipients under the following conditions:

- A. The School Food Authority or sub recipient does not provide documented corrective action for critical area violations found in an Administrative Review 30 days from the deadline for completion of each required corrective action or the extension deadline.
- B. The School Food Authority does not complete the corrective action for the critical area violation found in an Administrative Review or the State Agency finds that the corrective action for the critical or general area violation was not completed.

The State Agency **may** withhold Program payments to School Food Authorities and sub recipients at its discretion under the following conditions:

- A. The School Food Authority does not provide documented corrective action for general review violations found in Administrative Reviews within 30 days or the extension deadline, the corrective action is not complete, or the corrective action specified was not actually taken
- B. The School Food Authority had a critical area violation on a previous review and the State Agency finds the same error for the same cause
- C. The School Food Authority does not respond to an AOE Child Nutrition request for assistance in the collection of materials or information in order to complete corrective action plans or Administrative Review preparation



Duration of Withholding

Program payments must be withheld until corrective action is completed, documented corrective action is received and deemed acceptable by the State agency, or the State agency completes a follow-up review and confirms that the problem has been fully and completely corrected. Once the State Agency accepts the corrective actions, payments will be released for all meals served during the period the payments were withheld. In very serious cases, the State Agency will evaluate whether the degree of non-compliance warrants termination in accordance with § 210.25.

At its discretion, the State Agency may reduce the amount to be withheld from a School Food Authority by as much as 60 percent of the total Program payments when it is determined to be in the best interest of the Program. FNS may authorize a State Agency to limit withholding of funds to an amount less than 40 percent of the total Program payments, if FNS determines such action to be in the best interest of the Program.

Notice of Withholding

School Food Authorities shall be notified in writing, via email, when all or part of a claim is denied or withheld as result of Administrative Reviews conducted by the State Agency. Notice will be sent to the email addresses on the SNP Organization Application in the electronic system for the Business Manager/ Sponsoring Official, Superintendent, and Child Nutrition Director. Additional staff members involved in the Administrative Review may also be included in the email notification. This notification will include procedures for the School Food Authority to follow to appeal this State Agency action.

Appeal/Review

All School Food Authorities are assured a fair and impartial hearing before an independent official. The School Food Authority may be represented by legal counsel if desired. Decisions must be rendered in a timely manner not to exceed 120 days from the date of the request for appeal/review. The School Food Authority may request an in person hearing or a review of the record with the right to submit written information. Adequate notice of date, time, location and procedures of the hearing must be given.

Appeal Procedures

1. The written request for a review shall be postmarked within 15 calendar days of the date the School Food Authority received the notice of the denial of all or a part of the Claim for Reimbursement or withholding of payment.
2. The State Agency shall acknowledge the receipt of the request for appeal within 10 calendar days.
3. The School Food Authority (SFA) may refute the action specified in the notice in person and by written documentation to the review official. In order to be considered, written documentation must be filed with the review official not more than 30 calendar days after the SFA received the notice. The SFA may retain legal counsel or may be represented by another person. A hearing shall be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant SFA only if the SFA so specifies in

the letter of request for review. Failure of the School Food Authority's representative to appear at a scheduled hearing shall constitute the School Food Authority's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the State Agency shall be allowed to attend the hearing to respond to the SFA's testimony and to answer questions posed by the review official.

4. If the School Food Authority has requested a hearing, the SFA and the State Agency shall be provided with at least 10 calendar days advance written notice, sent by certified mail, or its equivalent, or sent electronically by email or facsimile, of the time, date and place of the hearing.
5. Any information on which the State Agency's action was based shall be available to the School Food Authority for inspection from the date of receipt of the request for review.
6. The review official shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section.
7. The review official shall make a determination based on information provided by the State Agency and the School Food Authority, and on program regulations.
8. Within 60 calendar days of the State agency's receipt of the request for review, by written notice, sent by certified mail, or its equivalent, or electronically by email, the review official shall inform the State Agency and the School Food Authority of the determination of the review official. The final determination shall take effect upon receipt of the written notice of the final decision by the School Food Authority
9. The State Agency's action shall remain in effect during the appeal process; and
10. The determination by the State review official is the final administrative determination to be afforded to the appellant.

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