

School Nutrition Programs Withholding Procedure

Background

7 CFR 210.24 and 7 CFR 220.18 require 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 (SFA) which has failed to comply with the provisions of this part. 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 7 CFR 210.25 and 7 CFR 220.19. 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 shall withhold Program payments to any School Food Authority that has not complied with the provisions outlined in 7 CFR 210.

The State agency **must** withhold all Program payments to a School Food Authority as follows:

- If documented corrective action for critical area violations found in an Administrative Review is not provided with the deadlines specified in 7 CFR 210.18(j)(2), within 30 days or by the extension deadline.
- If the State agency finds that corrective action for critical area violations found in an Administrative Review is not completed.

The State agency **may** withhold Program payments to a School Food Authority at its discretion as follows:

- If the State agency found a critical area violation on a previous review and the School Food Authority continues to have the same error for the same cause.
 - If the State agency finds that documented corrective action for general area violations is not provided within the deadlines specified in 7 CFR 210.18(j)(2), within 30 days or by the extension deadline, corrective action is not complete, or corrective action was not taken as specified in the documented corrective action.
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Duration of Withholding

The SFA should continue to submit claims for reimbursement by each [month's claiming deadlines](#), however no payments will be generated out of the system until the hold is removed. 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 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 7 CFR 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 for reimbursement is denied or withheld as result of general non-compliance or Administrative Reviews conducted by the State agency. Notice will be sent to the email addresses for the Business Manager, Superintendent, and Food Service Director on the "SNP Contact Info" tab of the SNP Organization Application in the School Nutrition Programs Application Packet in the Harvest Child Nutrition System. 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 Overview

School Food Authority (SFA) appellants are assured of a fair and impartial hearing before an independent official at which they be represented by legal counsel. Decisions are rendered in a timely manner not to exceed 120 days from the date of the receipt of request for review. SFAs are afforded the right to either a review of the record with the right to file written information, or a hearing which they may attend in person, and adequate notice is given of the time, date, place, and procedures of the hearing.

Appeal Procedures

1. Written request for review shall be filed with the State Director, Child Nutrition Programs, Vermont Agency of Education, 1 National Life Drive, Davis 5, Montpelier, VT 05620-2501, no later than 15 calendar days from the date the SFA received notice of fiscal action.
2. The State agency shall acknowledge the receipt of the request for appeal within 10 calendar days.
3. The 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 no more than 30 calendar days after the SFA received the notice of fiscal action.
4. The SFA may retain legal counsel or may be represented by another person.
5. A hearing shall be held by the review official in addition to, or in lieu of, a review of written information submitted by the SFA only if the SFA so specifies in the letter of request for review.
6. Failure of the SFA's representative to appear at a scheduled hearing shall constitute the SFA'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.
7. If a hearing is requested, the SFA shall be provided with at least 10 calendar days advance written notice of the time, date, and place by certified mail, or its equivalent, or sent electronically by email or facsimile.
8. Any information on which the State agency's action was based shall be available to the SFA from the date of receipt of the request for review.
9. 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 in 7CFR 210.18(p).
10. Any information on which the State agency's action was based shall be available to the SFA for inspection as of the date of receipt of the request for review.
11. The review official shall make a determination based on information provided by the State agency and the SFA, and on program regulations.
12. Within 60 calendar days of the State agency's receipt of the request for review, the review official shall inform the State agency and the SFA of the determination of the review official, by written notice, sent by certified mail, or its equivalent, or electronically by email or facsimile. The final determination shall take effect upon receipt of the written notice of the final decision by the School Food Authority.
13. The State agency's action shall remain in effect during the appeal process.
14. The determination by the State review official is the final administrative determination to be afforded to the SFA.

Nondiscrimination Statement

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language), should contact the responsible state or local agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: <https://www.usda.gov/sites/default/files/documents/ad-3027.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

1. **mail:**
U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410; or
2. **fax:**
(833) 256-1665 or (202) 690-7442; or
3. **email:**
Program.Intake@usda.gov

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