

**Virginia Department of Health
Child and Adult Care Food Program (CACFP)
Appeal Procedures
(Revised April 2014)**

Code of Federal Regulations 7 CFR § 226.6 (k) Institution Appeal Requirements

Federal Institution appeal requirements include that each State agency shall establish an appeal procedure to be followed by an institution, a responsible principal, or a responsible individual.

Actions Subject to Administrative Review:

Application denial. Denial of a new or renewing institution's application for participation (see paragraph (b) of this section, on State agency review of an institution's application; and paragraphs (c)(1) and (c)(2) of this section, on State agency denial of a new or renewing institution's application);

Denial of sponsored facility application. Denial of an application submitted by a sponsoring organization on behalf of a facility;

Notice of proposed termination. Proposed termination of an institution's agreement (see paragraphs (c)(2)(iii)(C), (c)(3)(iii)(C), and (c)(5)(i)(B) of this section, dealing with proposed termination of agreements with renewing institutions, participating institutions, and participating institutions suspended for health or safety violations);

Notice of proposed disqualification of a responsible principal or responsible individual. Proposed disqualification of a responsible principal or responsible individual (see paragraphs (c)(1)(iii)(C), (c)(2)(iii)(C), (c)(3)(iii)(C), and (c)(5)(i)(B) of this section, dealing with proposed disqualification of responsible principals or responsible individuals in new, renewing, and participating institutions, and participating institutions suspended for health or safety violations);

Suspension of participation. Suspension of an institution's participation (see paragraphs (c)(5)(i)(B) and (c)(5)(ii)(D) of this section, dealing with suspension for health or safety reasons or submission of a false or fraudulent claim);

Start-up or expansion funds denial. Denial of an institution's application for start-up or expansion payments (see § 226.7(h));

Advance denial. Denial of a request for an advance payment (see § 226.10(b));

Recovery of advances. Recovery of all or part of an advance in excess of the claim for the applicable period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments (see §226.10(b)(3));

Claim denial. Denial of all or a part of an institution's claim for reimbursement (except for a denial based on a late submission under § 226.10(e)) (see §§ 226.10(f) and 226.14(a));

Claim deadline exceptions and requests for upward adjustment to a claim. Decision by the State Agency not to forward to FNS an exception request by an institution for payment of a late claim, or a request for an upward adjustment to a claim. (see § 226.10(e));

Overpayment demand. Demand for the remittance of an overpayment (see § 226.14(a)); and

Other actions. Any other action of the State agency affecting an institution's participation or its claim for reimbursement.

Actions Not Subject to Administrative Review:

USDA Food and Nutrition Service decisions on claim deadline exceptions and requests for upward adjustments to a claim. A decision by FNS to deny an exception request by an institution for payment of a late claim, or for an upward adjustment to a claim (see § 226.10(e));

Determination of serious deficiency. A determination that an institution is seriously deficient (see paragraphs (c)(1)(iii)(A), (c)(2)(iii)(A), (c)(3)(iii)(A), and (c)(5)(i)(B) of this section, dealing with proposed disqualification of responsible principals or responsible individuals in new, renewing, and participating institutions, and participating institutions suspended for health or safety violations);

Disqualification and placement on State agency list and National disqualified list. Disqualification of an institution or a responsible principal or responsible individual, and the subsequent placement on the State agency list and the National disqualified list (see paragraphs (c)(1)(iii)(E), (c)(2)(iii)(E), (c)(3)(iii)(E), and (c)(5)(i)(C) of this section, dealing with proposals to disqualify related to new, renewing, and participating institutions, and in institutions suspended for health or safety violations); or

Termination. Termination of a participating institution's agreement, including termination of a participating institution's agreement based on the disqualification of the institution by another State agency or FNS (see paragraphs (c)(3)(i) and (c)(7)(ii) of this section); or

State agency determination that corrective action is inadequate. A determination by the State agency that the corrective action taken by an institution or by a responsible principal or individual does not completely and permanently correct a serious deficiency;

State agency or FNS decision regarding removal from the National disqualified list. A determination, by either the State agency or by FNS, that the corrective action taken by an institution or a responsible principal or individual is not adequate to warrant the removal of the institution or the responsible principal or individual from the National disqualified list;

State agency's refusal to consider an application submitted by an institution or facility on the National disqualified list. The State agency's refusal to consider an institution's application when either the institution or one of its principals is on the National disqualified list, or the State agency's refusal to consider an institution's submission of an application on behalf of a facility when either the facility or one of its principals is on the National disqualified list.

Provision of Administrative Review Procedures: Appeal procedures shall be made available to institutions, responsible principals, or responsible individuals, as follows:

Annually (institutions only);

At time of any action subject to an administrative review;

Upon request.

Virginia Department of Health Administrative Review (Appeal) Procedures.

The Virginia Department of Health will follow these procedures when an institution or a responsible principal or responsible individual appeals any action; except for circumstances as described in the Abbreviated Administrative Review section in this document:

Notice of action. The institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, will be given notice of the action being taken or proposed, the basis for the action, and the procedures under which the institution and the responsible principals or responsible individuals may request an administrative review of the action. The Virginia Department of Health will send this notice by certified mail, return receipt; an equivalent private delivery service (such as FedEx), fax and/or email. The electronic mail notification is considered sent and received by the appellant according to the time/date stamp on the email unless the electronic mail notification is returned to sender or the sender is notified of a failed delivery;

Time to request administrative review. The request for administrative review must be submitted in writing not later than 15 calendar days after the date the notice of action is received, and the Virginia Department of Health will acknowledge the receipt of the request for an administrative review within 10 days of its receipt of the request. The request must be sent by certified mail, return receipt; an equivalent private delivery service (such as FedEx); fax; and/or email.

Representation. The institution and the responsible principals and responsible individuals may retain legal counsel, or may be represented by another person.

Review of record. Any information on which the Virginia Department of Health's action was based, will be available to the institution and the responsible principals and responsible individuals for inspection from the date of receipt of the request for an administrative review.

Opposition. The institution and the responsible principals and responsible individuals may refute the findings contained in the notice of action in person or by submitting written documentation to the administrative review official. In order to be considered, written documentation must be submitted to the administrative review official not later than 30 days after receipt of the notice of action.

Hearing. A hearing must be held by the administrative review official in addition to, or in lieu of, a review of written information only if the institution or the responsible principals and responsible individuals request a hearing in the written request for an administrative review. If the institution's representative, or the responsible principals or responsible individuals or their representative, fail to appear at a scheduled hearing, they waive the right to a personal appearance before the administrative review official, unless the administrative review official agrees to reschedule the hearing. The appellant will only have one opportunity to request a rescheduled hearing. Requests by the appellant to reschedule a hearing will be determined at the discretion of the administrative review official. A representative of the Virginia Department of Health will be allowed, but not required, to attend the hearing to respond to the testimony of the institution and the responsible principals and responsible individuals and to answer questions posed by the administrative review official. If a hearing is requested, the institution, the responsible principals and responsible individuals, and the Virginia Department of Health must be provided with at least 10 days advance notice of the time and place of the hearing.

Administrative review official. The administrative review official must be independent and impartial. This means that, although the administrative review official may be an employee of a Virginia state agency, he/she must not have been involved in the action that is the subject of the administrative review, or have a direct personal or financial interest in the outcome of the administrative review. The institution and the responsible principals and responsible individuals must be permitted to contact the administrative review official directly if they so desire.

Basis for decision. The administrative review official must make a determination based solely on the information provided by the Virginia Department of Health, the institution, and the responsible principals and responsible individuals, and based on Federal and State laws, regulations, policies, and procedures governing the Program.

Time for issuing a decision. Within 60 days of the Virginia Department of Health receipt of the request for an administrative review, the administrative review official must inform the Virginia Department of Health, the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, of the administrative review's outcome. This timeframe is a Federal administrative requirement for all state agencies and may not be used as a basis for overturning the Virginia Department of Health's action if a decision is not made within the specified timeframe.

Final decision. The determination made by the administrative review official is the final administrative determination to be afforded the institution and the responsible principals and responsible individuals.

Record of result of administrative reviews. The Virginia Department of Health will maintain searchable records of all administrative reviews and their disposition.

Combined administrative reviews for responsible principals and responsible individuals. The Virginia Department of Health will conduct the administrative review of the proposed disqualification of the responsible principals and responsible individuals as part of the administrative review of the application denial, proposed termination, and/or proposed disqualification of the institution with which the responsible principals or responsible individuals are associated. However, at the administrative review official's discretion, separate administrative reviews may be held if the institution does not request an administrative review or if either the institution or the responsible principal or responsible individual demonstrates that their interests conflict.

Abbreviated administrative review. The administrative review official will conduct all abbreviated administrative reviews. The Virginia Department of Health will limit the administrative review to a review of written submissions concerning the accuracy of the State agency's determination if the application was denied or the State Agency proposes to terminate the institution's agreement because:

- (1) the information submitted on the application was false (see paragraphs (c)(1)(ii)(A), (c)(2)(ii)(A), and (c)(3)(ii)(A) of 7 CFR § 226.6);
- (2) the institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the national disqualified list (see paragraph (b)(12) of 7 CFR § 226.6);
- (3) the institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is ineligible to participate in any other publicly funded program by reason of violation of the requirements of the Program (see paragraph (b)(13) and (c)(3)(ii)(S) of 7 CFR § 226.6); or
- (4) the institution, one of its sponsored facilities, or one of the principals of the institution or its facilities has been convicted for any activity that indicates a lack of business integrity (see paragraphs (b)(14) and (c)(3)(ii)(T) of 7 CFR § 226.6).

Effect of action. The Virginia Department of Health's action will remain in effect during the administrative review. The effect of this requirement is as follows:

Overpayment demand. During the period of the administrative review, the Virginia Department of Health will not take action to collect or offset the overpayment. However, the Virginia Department of Health will assess interest beginning with the initial demand for remittance of the overpayment and continuing through the period of administrative review unless the administrative review official overturns the State agency's action.

Recovery of advances. During the administrative review, the Virginia Department of Health will continue its efforts to recover advances in excess of the claim for reimbursement for the applicable period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments.

Program payments. The availability of Program payments during an administrative review of the denial of a new institution's application, denial of a renewing institution's application, proposed termination of a participating institution's agreement, and suspension of an institution are addressed in paragraphs (c)(1)(iii)(D), (c)(2)(iii)(D), (c)(3)(iii)(D), (c)(5)(i)(D), and (c)(5)(ii)(E), respectively, of the Code of Federal Regulations, 7 CFR § 226.6.

How do I file for an appeal?

First, read these instructions and the procedures outlined above completely and thoroughly. Any failure to comply with these procedures may result in the loss of your appeal rights.

The written request for review shall be filed by the appellant not later than 15 calendar days from the date the appellant received the notice of action from the Virginia Department of Health. The written request may be faxed to the CACFP Prevention Specialist, at (804) 864-7854, but it is prudent to also send a follow-up request via certified mail, return receipt requested, and addressed to

CACFP Prevention Specialist
Virginia Department of Health
Division of Community Nutrition
109 Governor Street, 9th Floor
Richmond, VA 23219

IMPORTANT NOTE: The request must include the following:

- The name, address, title and signature of the person requesting the appeal and should include telephone and fax numbers, if available,
- A copy of the certified letter from the Virginia Department of Health in which the action being appealed is documented;
- The date the letter was received;
- A specific request for a face to face hearing if one is desired, (otherwise an administrative review of the record will be conducted); and
- A statement of the relief being requested.

If your request is determined to be timely (within the 15 day period), you will receive acknowledgment of that fact from the CACFP Prevention Specialist. If your request is determined to be not timely filed, you will be notified that no review will be conducted and that the original determination has become final.

What are your rights?

You have a right to review the record upon which the determination was based, the right to file written information, and the right to a hearing which you and/or your attorney may attend in person. However, if you wish to exercise the right to an in-person hearing you must so indicate in your letter requesting the review or by default no hearing will be held and a review of the record will take place based upon written submissions only.

If the information upon which the Virginia Department of Health's action was based was not included with the notice of adverse action letter, you have a right to receive it for inspection before the regulatory timetable is started. If you request a hearing you will be given at least 10 calendar days advance written notice, sent by certified mail, return receipt requested, of the date, time and place of the hearing.

If you have not requested a hearing, you will have up to 30 days from the date you received the notice of adverse action (which will include the basis for the action) to post mark your written reply and associated documentation. Appellants are assured of a fair and impartial review or hearing before an independent official. Determinations will be made within 60 days of the Virginia Department of Health receipt of the request for an administrative review.

You may be represented by legal counsel. A representative of the Virginia Department of Health shall be allowed but not required to attend the hearing to respond to the appellant's testimony and to answer questions posed by the review official. In cases involving OIG Audits, a representative of the appropriate OIG Audit Office shall also be allowed but not required to attend the hearing to respond to the appellant's testimony and to answer questions posed by the review official.

You also have the right to contact the Administrative Review Official assigned to the case to ask any questions you may have. Please feel free to ask questions and seek clarification of issues as you may require.

What are your responsibilities?

The determination by the Administrative Review Official is the final administrative determination to be afforded to you. As such, you should put forward your best efforts to present compelling arguments supported by evidence, comprehensive and extensive documentation, and regulatory citations which support your contentions.

This is your opportunity to demonstrate how the Virginia Department of Health or Audit agency made an error in the interpretation or application of program law or regulations or with facts that formed the basis for its conclusions. In these reviews, the burden of proof rests upon you, the appellant, to disprove the government charges. In proving your contentions and supporting your argument, there is nothing that can substitute for good quality, accurate, extensive, authentic documentation. Often documentation takes the form of copies of the original forms and documents examined by the auditor or by the program specialist and upon which they have based their findings. You may find it helpful to highlight specific areas or provide explanatory notes to accompany the documentation.

Please note that if an appellant submits documentation examined by the auditor or by the program specialist upon which they have based their finding, and it is found to be changed or altered in any fashion without clear and specific identification of the changes made, the appellant can be found to have submitted fraudulent information and made seriously deficient in their CACFP operations.

Most sanctions do not involve emergency life or death issues or serious immediate hazards to the health and well being of program benefit recipients. Most sanctions are not precipitated by clearly fraudulent or even criminal activities. Most involve serious inadequacies in meeting program requirements regarding meal pattern compliance, recordkeeping, attendance irregularities, eligibility record inadequacies and similar instances of documentation and recordkeeping failures. Unfortunately, the very documentation that auditor or program specialist has been identified as inadequate or missing is generally the documentation you will need to provide in order to rebut the findings against you. Please remember, a hearing, with only verbal exchanges, is not a sufficient substitute for adequate documentation.

Determination of the Administrative Review Official:

Within 60 calendar days, the Administrative Review Official (ARO) will make a written determination based upon:

Written information submitted by the Virginia Department of Health and written information submitted by the Institution or individual in support of its position, and,

Information presented orally at a hearing and supported with subsequent documentation as directed by the ARO.

This determination is the Virginia Department of Health's final decision on the matter. It is not subject to further administrative review or reconsideration. The determination will be sent as an attachment of electronic mail and/or by certified mail - return receipt requested, and will take effect immediately upon receipt by the appellant institution or its representative.

If you have any questions, or need clarification of any issue, please feel free to contact the CACFP Prevention Specialist who is assigned to the case.