

# Fiscal Action Procedures

Corrective Action is required for any violation of either critical or general areas of the review.

## Types of Fiscal Action CNU May Take

Depending on the type of noncompliance, CNU will apply one of the three types of fiscal action identified below:

1. *Reclaim Reimbursement*—Reclaim reimbursements paid to the SFA.
2. *Reimbursement of the Nonprofit School Food Service Account for Unallowable Costs*—Require the SFA to adjust the food service account to offset the amounts of any payments made for unallowable costs with nonprogram funds.
3. *Withholding Payments / Financial Hold* —Place the SFA's funds on financial hold until CNU accepts the SFA's corrective action.

### Payments will be Withheld When

1. The SFA fails to submit documented corrective action by the assigned due date. 210.18(k)(1)(i)
2. The SFA submits incomplete corrective action by the assigned due date. 210.18(k)(1)(ii)
3. USDA Regulation indicates such an action is appropriate.
4. CNU finds a Critical Area error has not been corrected from a previous review. 210.18(k)(1)(iii)
- 5.

### Duration of Withholding:

Program payments will be withheld until corrective action is completed, received, and confirms that the problem has been corrected.210.18(k)(2)

The Administrative Review (AR) is divided into the following program compliance monitoring categories: 2 Critical Areas and General Areas including Resource Management.

- **The Critical Areas of the AR include:**
  - Performance Standard 1 (PS1), Meal Access and Reimbursement:**  
(Findings pertaining to following issues may trigger fiscal action)
    - Certification and benefit issuance
    - Verification
    - Meal counting and claiming, consolidating and reporting accurate claims
  - Performance Standard 2 (PS2) Meal Pattern and Nutritional Quality**  
(Findings pertaining to the standard requiring reimbursable meals may trigger fiscal action)
    - Meal components and quantities
    - Offer versus Serve
    - Dietary specification and nutrient analysis

CNU must take fiscal action for all PS1 violations and specific PS2 violations. CNU is authorized to withhold funds for repeat or egregious violations.

### **Fiscal Action for Critical Area Findings:**

1. Critical Area Findings may result in fiscal action being taken against the SFA.
2. All program payments must be withheld if documented corrective action is not received by the due date, or if the corrective action was not implemented.
3. Program payments will be withheld if the same critical violation was found on a previous review and the SFA continues to have the same error for the same cause.
4. PS1 and PS2 findings may be classified as systemic or non-systemic. The determination of systemic or non-systemic findings must be made through a consultation between CNU leadership and the area specialists. This determination can impact fiscal action.
5. PS1 and PS2 findings may be classified as repeated findings. Determination of repeated findings as defined by USDA must be made through consultation between CNU leadership and the area specialist.

### **Performance Standard 1:**

- Fiscal action will be applied SFA wide for eligibility findings.
  - 3% Error Threshold
    - Below 3%: Fiscal Action may not be assessed.
    - 3% or greater: Fiscal Action must be assessed.

### **Performance Standard 2:**

- Fiscal action must be applied to all meals missing components and/or production records. 210.18(l)(2)(i)
- Fiscal action will only be applied to other PS 2 violations, if all 4 of the following are met:
  - It is a repeat finding from a prior Administrative Review;
  - CNU has provided technical assistance related to that specific finding;
  - CNU has previously required and monitored corrective action for that finding; and
  - The SFA remains non-compliant with the meal requirements.
- Fiscal action will be applied for the following types of PS 2 repeat findings only if criteria in the second bullet above are met:
  - For repeated violations involving milk type and vegetable subgroups cited, must apply fiscal action as follows:
    - If an unallowable milk type is offered or there is no milk variety, any meals selected with the unallowable milk type or when there is no milk variety must also be disallowed/reclaimed; 210.18(l)(2)(ii)(A)
      - for pre-K, if unallowable milk type if offered, then provide technical assistance without fiscal action.
    - If one vegetable subgroup is not offered over the course of the week reviewed, all meals served in the deficient week may be disallowed/reclaimed. 210.18(l)(2)(ii)(B)
  - For repeated violations involving food quantities and whole grain-rich foods, CNU may apply fiscal action as follows: 210.18(l)(2)(iii)
    - If the meals contain insufficient quantities of the required food components, the affected meals may be disallowed/reclaimed; 210.18(l)(2)(iii)(A)

- If no whole grain-rich foods are offered during the week of review, meals for the entire week of review may be disallowed and/or reclaimed; 210.18(l)(2)(iii)(B)
- If insufficient whole grain-rich foods are offered during the week of review, meals for one or more days during the week of review may be disallowed/reclaimed; 210.18(l)(2)(iii)(C)
- If a weekly vegetable subgroup is offered in insufficient quantity to meet the weekly vegetable subgroup requirement, meals for one day of the week of review may be disallowed/reclaimed; and 210.18(l)(2)(iii)(D)
- If the amount of juice offered exceeds the weekly limitation, meals for the entire week of review may be disallowed/reclaimed. 210.18(l)(2)(iii)(E)
- For repeated violations of calorie, saturated fat, sodium, and trans fat dietary specifications, CNU has discretion to apply fiscal action to the reviewed school as follows: 210.18(l)(2)(iv)
  - If the average meal offered over the course of the week of review does not meet one of the dietary specifications, meals for the entire week of review may be disallowed/reclaimed; and 210.18(l)(2)(iv)(A)
  - Fiscal action is limited to the school selected for the targeted menu review and must be supported by a nutrient analysis of the meals at issue using USDA-approved software. 210.18(l)(2)(iv)(B)
    - Pre-K is not included in the dietary specification, provide technical assistance for the finding(s).
- For PS2 violations, fiscal action will be applied district wide if violation is systemic.
- For PS2 violations, fiscal action will be applied to the reviewed school only if non-systemic.

### Duration of Fiscal Action:

Fiscal action must be extended back to the beginning of the school year or that point in time during the current school year when the infraction first occurred for all violations of Performance Standard 1 and specific violations of Performance Standard 2. Based on the severity and longevity of the problem, CNU may extend fiscal action back to previous school years. If corrective action occurs, CNU may limit the duration of fiscal action for Performance Standard 1 and Performance Standard 2 violations as follows: 210.18(l)(3)

- **Performance Standard 1 - certification and benefit issuance violations:** The total number of free and reduced price meals claimed for the review period and the month of the on-site review must be adjusted to reflect the State calculated certification and benefit issuance adjustment factors. 210.18(l)(3)(i)
- **Other Performance Standard 1 and Performance Standard 2 violations:** With the exception of violations described above, CNU may limit fiscal action from the point corrective action occurs back through the beginning of the review period for errors. 210.18(l)(3)(ii)
  - If corrective action occurs during the on-site review month or after, CNU must apply fiscal action from the point corrective action occurs back through the beginning of the on-site review month, *and* for the review period; 210.18(l)(3)(ii)(A)

- If corrective action occurs during the review period, CNU must apply fiscal action from the point corrective action occurs back through the beginning of the review period; 210.18(l)(3)(ii)(B)
- If corrective action occurs prior to the review period, no fiscal action would be required; and 210.18(l)(3)(ii)(C)
- If corrective action occurs in a claim month between the review period and the on-site review month, CNU would apply fiscal action only to the review period. 210.18(l)(3)(ii)(D)
- **Performance-based cash assistance:** In addition to fiscal action described above, SFAs found to be out of compliance with the meal patterns or nutrition standards set forth in §210.10 may not earn performance-based cash assistance unless immediate corrective action occurs. 210.18(l)(4)
  - School food authorities will not be eligible for the performance-based reimbursement beginning the month immediately following the administrative review and, at CNU discretion, for the month of review.
  - Performance-based cash assistance may resume beginning in the first full month the SFA demonstrates to the satisfaction of CNU that corrective action has taken place.

**The General Areas of the AR pertain to the SFA’s program administration in the following 10 areas:**

- Civil Rights
- School Food Authority (SFA) On-Site Monitoring
- Local School Wellness Policy and School Meal Environment
- Smart Snacks in Schools
- Professional Standards
- Water
- Food Safety, Storage, and Buy American
- Reporting and Recordkeeping
- School Breakfast Program and Summer Food Service Program Outreach
- Other Federal Program Reviews (If Applicable)
  - Afterschool Snack Program
  - Seamless Summer Option (SSO)
  - Fresh Fruit and Vegetable Program (FFVP)

**The Resource Management Review pertains to the following financial areas:**

- Maintenance of the nonprofit school food service account
- Paid lunch equity
- Revenue from nonprogram foods
- Indirect Costs

**Fiscal Action for General Areas and Resource Management Findings:**

General Area Findings observed during an initial review may result in fiscal action, including, but not limited to:

- reimbursement of the nonprofit school food service account for unallowable costs;

- withholding of payments in instances where the same types of findings continue to occur over an extended period of time—repeated findings or systemic—and/or the finding is considered to be willful and/or egregious; and
- if the documented corrective action is not provided within the deadlines specified, corrective action is not complete, or corrective action was not taken as specified in the documented corrective action. 210.18(k)(1)(iv)

### **Reimbursement Paid to the Nonprofit School Food Service Account for Unallowable Costs Not Related to the Critical Areas of Review**

Any unallowable cost related to Resource Management and/or the General Areas of the AR, as well as any other unallowable cost for other findings, will require the SFA to reimburse the unallowable cost to the non-profit food service account from the non-federal fund. Reimbursement paid to the nonprofit school food service account for unallowable costs will occur when CNU determines that the SFA has paid unallowable costs with the nonprofit school food service account funds in the following conditions:

- Unallowable costs for General Area or Resource Management findings related to the SFA's financial management practices.
- Unallowable costs for other findings as required by state law or regulations, including violations related to state small purchase threshold.

### **Willful & Egregious**

Non compliance is willful when done deliberately or intentionally.

Non compliance is egregious when it is conspicuously bad.

**If the findings are determined to be willful or egregious, CNU will apply the most stringent fiscal action allowed by USDA.**

Depending on the severity, longevity, and willfulness and/or egregiousness of the finding, CNU may take fiscal action for the day of review, month of review, back to the beginning of the school year or beyond as described in the *Authorities* section of the *USDA Administrative Review Guidance Manual (7 CFR 210.19(c)(2)(ii))*.

### **\$600 Disregard**

In some cases CNU may disregard the overclaim of meals.

- CNU MAY disregard an overclaim if the overclaim does not exceed \$600 per program, i.e., NSLP (including SSO, FFVP and the NSLP Afterschool Snack Service), SBP, and SMP.
- The disregard may be made once per Federal fiscal year for any review or activity.
- CNU MAY NOT disregard an overclaim where there is substantial evidence of criminal law violations or civil fraud statutes.
- The \$600 disregard does not apply to closed claims for sites in the base year when fiscal action is required to fix the meal counts. (AR Guidance Manual, pg. 46)