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AUDIT
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TO: Audrey Rowe
Administrator
Food and Nutrition Service

ATTN: Mark Porter
Acting Director
Office of Internal Controls
Audits and Investigations

FROM: Gil H. Harden
Assistant Inspector General
for Audit

SUBJECT: Review of Management Controls for the Child and Adult Care Food Program

This report presents the results of the subject review. Your written response to the official draft is included at the end of this report. Excerpts of your September 29, 2011, response and the Office of Inspector General's position are incorporated into the applicable sections of the report.

Based on your response, we have reached management decision on all of the report's recommendations. Please follow your internal agency procedures in forwarding final action correspondence to the Office of the Chief Financial Officer. Also, please note that Departmental Regulation 1720-1 requires final action to be completed within 1 year of the date of management decision to preclude being listed in the Department's annual Performance and Accountability Report.

We appreciate the courtesies and cooperation extended to us by members of your staff during our audit fieldwork and subsequent discussions.

Table of Contents

| | |
|--|-----------|
| Executive Summary | 1 |
| Background and Objectives | 4 |
| Background..... | 4 |
| Objectives..... | 5 |
| Section 1: Financial Integrity..... | 6 |
| Finding 1: State Agencies Should Verify Bank Account Transactions of Sponsors' Spending | 6 |
| Recommendation 1 | 10 |
| Recommendation 2 | 10 |
| Recommendation 3 | 11 |
| Recommendation 4 | 11 |
| Recommendation 5 | 12 |
| Section 2: Program Integrity | 13 |
| Finding 2: Oversight Mechanisms to Ensure Program Integrity Need Improvement..... | 13 |
| Recommendation 6 | 15 |
| Recommendation 7 | 16 |
| Recommendation 8 | 16 |
| Finding 3: FNS Can Improve the Effectiveness of the National Disqualified List..... | 17 |
| Recommendation 9 | 20 |
| Recommendation 10 | 20 |
| Recommendation 11 | 20 |
| Recommendation 12 | 21 |
| Recommendation 13 | 21 |
| Recommendation 14 | 22 |
| Recommendation 15 | 22 |
| Scope and Methodology..... | 23 |
| Abbreviations | 24 |

| | |
|---|-----------|
| Exhibit A: Summary of Monetary Results | 25 |
| Exhibit B: Sites Visited | 26 |
| Exhibit C: Summary of Questioned Costs for Sponsor A | 27 |
| Exhibit D: Summary of Questioned Costs for Sponsor B..... | 28 |
| Exhibit E: Sponsor A’s Overstated Meal Claims | 29 |
| Agency’s Response | 30 |

Review of Management Controls for the Child and Adult Care Food Program

Executive Summary

In 1999, we audited the Food and Nutrition Service's (FNS) Child and Adult Care Food Program (CACFP), which provides funding to help ensure that children and adults in day care receive nutritious meals.¹ At the time, CACFP was "highly vulnerable to abuse," as evidenced by the cases we found of sponsors enriching themselves at the program's expense (sponsors are non-profit organizations that administer the program at the local level). We recommended that FNS improve control of the program through "aggressive, clear, and consistent guidance and oversight." FNS made some immediate improvements at the time, and planned to fully implement improved controls by October 1, 2005. In this follow-up audit, nothing came to our attention to indicate that, except in two cases, the controls implemented by FNS in response to our prior recommendations were not operating as prescribed.² Below, we summarize opportunities for FNS to address the remaining two: preventing conflicts of interest in sponsors' governing boards and identifying program participants who claim reimbursement for meals they did not serve (overclaiming). With 3.3 million people receiving CACFP meals each day at a cost of \$2.5 billion in fiscal year (FY) 2010, improving these controls can significantly strengthen the program.

During our audit, potential program abuse by two sponsors came to our attention, so we expanded our review to examine how they were using their CACFP funds. In total, we determined that they had spent nearly \$2.5 million contrary to program rules. The sponsors' misuse of CACFP funds varied from spending over \$10,000 to put on a car show to cashing a \$110,000 check which the director claimed she used to pay personal taxes.

We concluded that financial reviews by State agencies (which administer the program for FNS) could be improved. The State reviews verified support for sponsors' representation of their expenses for a sample month, which meant that if sponsors provided sufficient paperwork (e.g., receipts) to support the reported expenses, reviewers were unlikely to spot other suspicious transactions. In contrast, we reviewed all our sampled sponsors' expenditures for the review periods, such as by examining their CACFP bank statements or accounting records. By asking the sponsors to provide documents that supported bank transactions for a specified period, we identified significant unallowable expenditures by sponsors.

In following up on our prior recommendations, we determined that the guidance FNS put in place to prevent conflicts of interest and overclaiming was not specific enough to be effective. We also found that some entries in FNS' national list of disqualified CACFP participants were

¹ *Food and Nutrition Service, Child and Adult Care Food Program, National Report on Program Abuses* (Audit Report 27601-0007-SF, dated August 1999).

² The report included 23 recommendations and FNS revised program controls in response to 15 of the 23 recommendations. The remaining 8 recommendations neither required nor resulted in revised program controls.

inaccessible and incomplete. The examples below illustrate how FNS' actions after the initial audit did not go far enough to prevent certain problems.

Conflict of Interest

In response to our concern about family members or staff constituting a majority of a sponsor's governing board, FNS added a general statement to CACFP regulations requiring each sponsor to document that its board of directors has "adequate oversight" of the program. This language does not address the situations we found, such as the voting majority of one sponsor's board consisting of members who were also paid employees (the president or a vice-president) or family.

As board members, these employees approved policies affecting their own compensation, including establishing a process by which the employees effectively determined each other's pay. As a result, independent oversight to prevent abuses was lacking. For example, the sponsor's four principal employees received bonuses of 18 to 30 percent of pay in 2008, far in excess of the established 5 percent maximum. The sponsors' personnel practices also raised conflict-of-interest concerns by appearing to favor board members and family (e.g., paying their health care costs while other staff paid their own, and contracting with a family member without competitive bidding).

FNS' *Management Improvement Guidance* specifically addresses conflicts of interest, suggesting that sponsors' boards be "composed of a majority of members of the community who are not financially interested in its activities, or related to its personnel or to each other."³ However, since the management guidance is optional, State agencies and sponsors were not required to follow it. Regulations only require that sponsors demonstrate that boards exercise "adequate oversight" of the program.⁴ FNS expressed concerns that it may lack the authority to impose requirements relating to the composition of sponsor boards of directors and that the requirements might conflict with States' authorities to set such requirements. However, the agency did not provide specific information or documentation to substantiate these concerns.⁵

Overclaiming

In response to our recommendation for detecting overclaims, FNS required sponsor reviews to include a reconciliation of a provider's attendance and enrollment records to its meal claims for a 5-day period prior to the day of the visit, and comparison of the records for the prior days to enrollment and attendance on the day of the visit. Any discrepancies are to be resolved, as they can be indicators of inflated meal counts and potential overclaiming.

³ FNS Management Improvement Guidance (Standards for Sponsors of Centers), section 1.1, dated 1997.

⁴ 7 CFR 226.6 (b)(18)(iii)(A), dated January 1, 2008.

⁵ FNS included a definition of "independent governing board of directors" in a CACFP integrity final rule issued on June 13, 2011, but the rule does not specifically address the concern discussed herein.

We found that State agency procedures for conducting the reconciliations did not consistently include all elements of the review. FNS should address this by providing more specific guidance detailing how the reconciliations should be conducted (i.e., identifying the specific data elements – meal counts, numbers of children in attendance, etc. – to be compared). FNS should also establish a threshold defining when a discrepancy rises to the level that it should be investigated (e.g., attendance was about half of what would be expected). Although FNS did recommend that State agencies establish directions for deciding “when a provider error rises to the level of a serious deficiency,” this was not required.⁶ While our review identified numerous significant variations between current- and prior-day attendance, we found that sponsors did not investigate or resolve these discrepancies. For example, attendance recorded at eight California day care homes was 40-percent or more higher on the prior days than on the day the reviewer was there. Six New York day care homes also recorded significantly higher attendance on the days before the reviewer’s visit than on the day of the visit (for example, three on the visit day compared to six on the prior days). The reviewers in these cases did not reconcile the discrepancies.

Through specific and clear requirements, along with improved financial reviews, FNS can further strengthen its management control of previously identified CACFP weaknesses.

Recommendation Summary

We recommend that FNS, in consultation with OIG-Investigations, recoup \$2.5 million for the two sponsors’ unallowable expenditures and instruct the State agencies to ensure the sponsors have not misused other CACFP funds. FNS should also require that State agencies improve their financial reviews of sponsors’ use of CACFP funds. Last, we recommend that the agency specify requirements for preventing conflicts of interest and investigating meal claim discrepancies.

Agency Response

In its written response, dated September 30, 2011, FNS concurred with the reported findings and recommendations. The complete written response is included at the end of the report.

OIG Position

We accept FNS’ management decision for all of the recommendations.

⁶ *Federal Register*, Volume 69, Number 169, Page 53518, dated September 1, 2004.

Background and Objectives

Background

Under the U.S. Department of Agriculture, FNS' CACFP helps improve nutrition for children and adults in day care by reimbursing institutions for the cost of meals meeting certain nutritional standards. Each day, more than 3.2 million children and 112,000 adults receive nutritious meals and snacks through the program,⁷ at a cost of \$2.5 billion in FY 2010.

The program is administered by FNS through its regional offices, State agencies, and institutions. Each CACFP layer has oversight responsibilities to ensure the next complies with program requirements.

- FNS establishes the overall regulatory framework for the program and develops associated guidance. FNS reimbursements can be used to pay both meal costs (e.g., food, serving supplies, cooks' salaries) and, to some extent, related administrative expenses (e.g., office supplies, reviewers' salaries). Through its regional offices, FNS enters into agreements with State agencies to administer the program. Regional offices approve State agencies' annual plans and budgets, and perform periodic management evaluation reviews of State agencies to ensure they comply with applicable regulations.
- The program is administered in each State by a State agency. These agencies enter into agreements with and provide supervisory and technical help to institutions. State agencies are required to: (1) review and approve institutions' budgets and management plans, (2) establish reimbursement procedures, (3) regularly review institutions to ensure they follow CACFP rules, and (4) ensure they correct deficiencies.
- Institutions include non-profit sponsoring organizations (sponsors) and independent centers (centers that contract directly with a State agency rather than through a sponsor). Institutions enter into agreements with the State agency and accept full responsibility for their meal service complying with all program requirements.

Meal service sites include both independent centers and facilities. Facilities operate under the auspices of a sponsor and include both day care homes and sponsored centers. Sponsors can administer the CACFP at multiple sites, but each site keeps its own records of attendance and meals served.

The CACFP reimburses administrative costs for day care home sponsors based on a fixed amount per home sponsored and center sponsors are allowed to use up to 15 percent of meal reimbursements for administrative costs. In the case of a center not owned by the sponsor (independent center), the sponsor is allowed to retain up to 15 percent of meal reimbursements from the amount due to the center (not to exceed the sponsor's actual administrative costs).

⁷ Website <http://www.fns.usda.gov/cnd/care/>, accessed May 25, 2010.

We undertook this audit to follow up on FNS' implementation of the recommendations we made in our 1999 nationwide audit report on CACFP.⁸ The prior review included audits and investigations of 49 CACFP sponsors and revealed the program was highly vulnerable to abuse. In response to our recommendations, FNS proposed program changes designed to strengthen CACFP operations and monitoring at the State agency and sponsor levels.

Objectives

Our objective was to evaluate the effectiveness of corrective actions FNS implemented in response to recommendations we made in our 1999 nationwide CACFP report. Due to information obtained during the audit, we expanded our review of two of the six sponsors in our sample to perform a detailed analysis of the propriety of their use of CACFP funds.

⁸ *Food and Nutrition Service, Child and Adult Care Food Program, National Report on Program Abuses* (Audit Report 27601-0007-SF, dated August 1999).

Section 1: Financial Integrity

Finding 1: State Agencies Should Verify Bank Account Transactions of Sponsors' Spending

We audited six CACFP sponsors and determined that two had used nearly \$2.5 million in program funds to pay for costs not allowed by program rules. The sponsors' violations varied from using over \$10,000 in program funds to put on a car show to cashing a \$110,000 check which the sponsor claimed she used to pay personal taxes. Their misuse of funds points to the sponsors' systemic program abuse. We also concluded that State agencies' financial reviews could be improved. Specifically, the reviews focused on matching sponsors' representation of their expenses for a sample month to supporting documents (e.g., receipts). This meant that if the supporting documents were valid, reviewers were unlikely to spot other suspicious transactions. Without strengthening this oversight control, FNS is at increased risk of not identifying and recovering misused CACFP funds.

Regulations require State agencies to approve sponsors' budgets and assess sponsors' compliance with program requirements, including assuring that program funds are used only for allowable expenses.⁹ Neither the agencies' agreements with FNS nor their agreements with sponsors specify how State agency reviews should assess sponsors' compliance with CACFP financial rules. Beyond FNS general regulatory direction, State agencies are largely left to devise their own financial review procedures.

Two of the three State agencies we audited developed checklists and procedures for use in assessing sponsors' compliance with various CACFP requirements such as nutrition, eligibility, meal claims, etc. We focused on the financial elements of these procedures, which generally asked the reviewer to examine documentation of the sponsors' expenses for a selected month to ensure that (1) expenses were adequately supported, (2) costs charged were allowable, (3) amounts paid were consistent with the approved budget, and (4) for sponsors of child care centers, administrative costs charged, if any, did not exceed 15 percent of reimbursement.

This process, however, does not require sponsors to fully account for their expenditure of CACFP funds. A sponsor may use funds for both allowable and unallowable expenditures, but provide a reviewer with receipts for just the allowable costs. If the amount of the allowable expenditures seems reasonable (i.e., approximating the annual budget divided by 12), and the reviewer only confirms support for the receipts provided, the reviewer may never become aware of the unallowable expenditures.

In contrast, our review started from records that fully identified the sponsors' expenditure of CACFP funds, such as bank statements or check registers. By reviewing documentation supporting CACFP bank account transactions for a specified period, we identified nearly \$2.5 million in unallowable costs. We provide examples of how the sponsors we reviewed misused program funds in the details below (see also Exhibits C and D).

⁹ 7 Code of Federal Regulations (CFR) 226.7 (g), dated January 1, 2008.

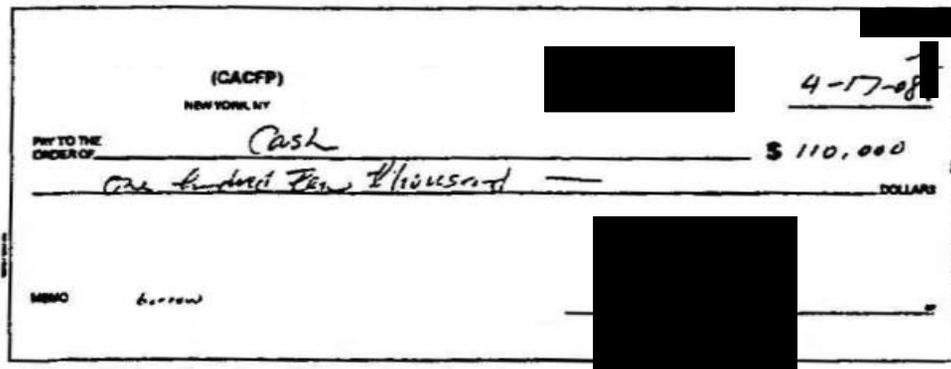
State agencies' ability to monitor sponsors' use of program funds is limited. Although sponsors must submit annual budgets – detailing the amounts of program funds they expect to expend by cost category – to their State agency for approval, sponsors are not required to report, after the fact, how much they actually did spend. Requiring periodic (preferably monthly, but not less than annually) reporting of actual expenditures would improve sponsor accountability, and provide State agencies a useful tool for identifying potential misspending. State agencies could then reconcile reported expenditures to program payments to ensure funds are fully accounted for, and use the reported actual expenditures as the basis for selecting a sample of expenditures for validation. To facilitate reconciliation, the report should use the same cost categories as are used on the sponsor's approved annual budget.

Sponsor A

For the period January 2008 through June 2009, we determined that sponsor A under the New York State agency misused about \$2 million in CACFP funds, in addition to claiming reimbursement for meals it had not served. Examples of questioned costs follow; see Exhibit C for a complete listing.

Although prohibited by regulations, sponsor A's director used about \$1.8 million in CACFP funds for non-program purposes.¹⁰ Approximately \$1.5 million went to pay expenses for the director's private corporation—a for-profit school venture. For example, she paid \$545,683 to a business owned by her [REDACTED] and [REDACTED] to [REDACTED] in her for-profit schools. She also used \$723,000 in program funds to help her corporation through what she described as financial hardship. Other misuses of funds included the director withdrawing \$110,000 (see figure 1) and depositing it into her own personal account to pay her income taxes.

Figure 1: Funds taken from CACFP account



¹⁰ 7 CFR 226.7 (b), dated January 1, 2008.

When we discussed these issues with the director, she said that she knew the transactions violated CACFP rules but felt that since she intended to pay them back there was no harm. In August 2009, she acknowledged that she had used approximately \$1 million in program funds over a 10-month period but had not yet repaid over \$656,000. We were unable to confirm her figures.

Sponsor A also paid over \$250,000 to a family-owned company for food and supplies without required approval. The purchases were for program purposes, but sponsors have to obtain their State agency's prior written approval for "less-than-arms-length" transactions, such as those involving immediate family.¹¹

According to the Office of Management and Budget (OMB), allowable costs under an award (e.g., sponsors' CACFP reimbursement) should be reasonable and necessary to carry out the program, applying ordinary prudence.¹² By this definition, we determined that \$20,488 paid to host a party was unnecessary (the party was for both children enrolled in CACFP and those in the director's for-profit schools).

We also determined that sponsor A had overclaimed meals. To determine if reimbursements that sponsor A claimed matched the meals it served, we compared claims submitted to the State agency for January and March 2009 with onsite meal service records. The sponsor's reimbursement requests were on average 16 percent higher—about 22,000 more meals in total—than site records showed. For example, in January the sponsor claimed that it had served 11,484 meals at one site when only 6,612 were recorded: a 74 percent difference. (See Exhibit E for our full comparison.)

In discussing the discrepancies, sponsor A explained that she instructed her staff to inflate meal counts because she served four meals per day as she felt the children needed an extra meal since they were onsite all day. While nothing prevents sponsors from serving additional meals if they choose, CACFP only reimburses for three. In addition, some sponsor staff stated that they served meals to teachers and parents that were included in the meal counts, which is against program rules.¹³

Sponsor B

From January 2008 to February 2009, we determined that sponsor B misused nearly \$457,000 in program funds. Examples of questioned costs follow; see Exhibit D for a complete listing.

Sponsor B used \$321,057 in program funds for unallowable costs, including costs that were personal in nature or otherwise unrelated to the CACFP. Some of the unallowable costs related to two side businesses operated by the sponsor, a [REDACTED] shop and a [REDACTED] (the

¹¹ FNS Instruction No. 796-2, revision 3, sections VIII.E & F, and exhibit A, section T, dated May 2001.

¹² OMB Circular No. A-122, *Cost Principles for Non-Profit Organizations*, as incorporated into 2 CFR 230, attachment A, sections A-2 & A-3. See also FNS Instruction No. 796-2, revision 3, section VII.A.3, dated May 2001.

¹³ Public Law (P.L.) 97-35, dated August 13, 1981.

sponsor expended \$21,294 to operate the shop and \$26,506 to operate the [REDACTED], plus an additional \$80,266 to rent space for these businesses). We also found the sponsor used \$84,555 in CACFP funds for personal expenses, including a payment of \$10,547 on a personal loan, and spent various amounts for golfing, clothes, and cruises.

Sponsor B also expended \$83,759 in program funds to pay for costs that are specifically prohibited by FNS' financial management instructions; specifically, \$64,288 to improve rented property, \$15,050 to retain an attorney, \$3,908 to pay tax penalties, and \$513 in bank fees.

Sponsor B also spent program funds without obtaining required prior approval from the Texas State agency. The sponsor paid \$32,857 to a [REDACTED] of one of the sponsor's [REDACTED] for [REDACTED]. As discussed above, such "less-than-arms-length" transactions involving immediate family require State agencies' written approval. Additionally, the sponsor expended \$690 for bank stop-payment fees.¹⁴

We concluded that over \$55,093 of sponsor B's costs were neither reasonable nor necessary to operate the program, including paying for promotional activities (\$25,860), an employee retreat (\$11,040), non-travel related meals (\$9,232), and other miscellaneous costs (\$8,961).

We also questioned \$47,244 in various costs that sponsor B could not support, such as a number of payments to hotels and restaurants. FNS requires that sponsors maintain documents adequate to demonstrate that costs are incurred in compliance with program requirements.¹⁵

Sponsor C

In addition to the two sponsors discussed above, we also questioned a third sponsor's use of funds. Sponsor C leased a car with CACFP funds in September 2006—which is allowed—but [REDACTED] did not keep the mileage log required to split costs between personal and program use.¹⁶ The sponsor's director acknowledged using the car to commute to work (considered personal use); accordingly, we could not determine how much of the \$20,590 in lease costs (as of April 2009) were personal costs for which [REDACTED] should be responsible.

In June 2007, the New York State agency's review identified some problems with sponsor A—such as its accounting software's inability "to show exactly where the CACFP funds have been used" and commingled funds. The sponsor, though, showed \$176,910 in support (receipts, etc.) for the selected month's reimbursements of \$177,863 (March 2007), and set up a separate CACFP bank account as the agency's review recommended.

In August 2008—2 months before we started our fieldwork—the Texas State agency reviewed sponsor B and found that it had complied in performing its financial responsibilities.

¹⁴ FNS Instruction No. 796-2, revision 3, sections VIII.I.17 b (2), VIII.I.24 b (1), VIII.I.18, and VIII.I.22 b (1), dated May 2001.

¹⁵ FNS Instruction No. 796-2, revision 3, section VII.A.3 j, dated May 2001.

¹⁶ FNS Instruction No. 796-2, revision 3, section VIII.I.39 c, dated May 2001

While our review months did not coincide with the State agencies', we concluded that their methodologies might not result in their identifying some of the more egregious examples we uncovered. For example, verifying sponsor A's receipts to its CACFP bank account—even if funds were not commingled—would not have detected the \$110,000 check since there was no corresponding receipt or ledger entry. However, since both legitimate and illegitimate expenses involve moving money from sponsors' CACFP bank accounts, we recommend FNS require State agencies to start financial reviews from financial records, such as monthly bank account statements, and validate all transactions for a selected period with documented support.

The need for improved financial review controls does not excuse improper conduct by sponsors, and we have accordingly referred sponsors A and B to OIG's Office of Investigations. We also discussed our findings with the respective FNS regional offices and State agencies, which concurred with our conclusions. During the course of our audit, we issued a management alert to FNS in July 2009. This alerted FNS to sponsor B's unallowable costs and advised the State agency to review its sponsor compliance program and take corrective action, including recovering misused funds and having the sponsor terminated from the program if appropriate.

Recommendation 1

Require State agencies, during reviews, to verify a selected month (or more as warranted) of a sponsor's CACFP bank account activity against documents adequate to support that the transactions meet program requirements.

Agency Response

FNS concurs with this recommendation. A review of bank statements was a standard part of the Child Care Assessment Project (CCAP) data collection and revealed a number of "questionable costs" that would otherwise have gone unnoticed if the CCAP data collectors had only looked at receipts. Procedures for conducting "bank statement verifications" will be addressed in guidance by December 2011.

OIG Position

We accept FNS' management decision on this recommendation.

Recommendation 2

Instruct State agencies to require center sponsors to report, no less often than annually, their actual expenditures of program funds and the amount of meal reimbursement funds retained from centers (if any) for administrative costs.

Agency Response

FNS concurs with this recommendation. Although FNS evaluates the State agency's written policies or procedures for tracking sponsors' administrative expenses on a year-to-date basis, FNS will propose a report of aggregate year-to-date administrative expenses for center sponsors, no less frequently than annually. This report will be addressed in guidance.

OIG Position

We accept FNS' management decision on this recommendation.

Recommendation 3

Consult with OIG-Investigations to determine the appropriate action to be taken to recoup the \$2,029,691 in program funds misused by sponsor A. Require the State agency to ensure sponsor A has accounted for all program funds and has recovered any that are not accounted for or were spent improperly.

Agency Response

FNS concurs with this recommendation and agrees with recovering any misused funds as appropriate according to federal law and CACFP regulations. FNS will confer with OIG prior to determining the appropriate action to take.

OIG Position

We accept FNS' management decision on this recommendation.

Recommendation 4

Consult with OIG-Investigations to determine the appropriate action to be taken to recoup the \$456,942 in program funds misused by sponsor B.

Agency Response

FNS concurs with this recommendation. FNS agrees with recovering any misused funds as appropriate according to federal law and CACFP regulations. FNS will confer with OIG prior to determining the appropriate action to take.

OIG Position

We accept FNS' management decision on this recommendation.

Recommendation 5

Instruct the Texas State agency to determine the portion of vehicle costs charged by sponsor C to the program (including lease, fuel, insurance, etc.) that are non-program related, and collect this amount back from the State agency.

Agency Response

FNS concurs with this recommendation. FNS will direct the Texas State agency to recover any unallowable costs as appropriate according to federal law and CACFP regulations.

OIG Position

We accept FNS' management decision on this recommendation.

Section 2: Program Integrity

Finding 2: Oversight Mechanisms to Ensure Program Integrity Need Improvement

FNS' corrective actions for two of the recommendations in our 1999 CACFP report were not adequate to prevent conflicts of interest or detect overclaims. This occurred because the guidance FNS implemented for these recommendations was not specific enough to be effective. In response to our conflict-of-interest concern about family members or a sponsor's staff constituting a majority of its governing board, the agency added a general statement to CACFP regulations requiring each sponsor to document that its board of directors has "adequate oversight" of the program. FNS also implemented a requirement that States and sponsors reconcile meal and attendance records during on-site reviews.

Without targeting corrective actions more precisely to address previously identified oversight weaknesses, the integrity of CACFP continues to be at risk.

In our 1999 report, we recommended that FNS provide guidance to sponsors about their governing boards' independence and composition. In general, we were concerned that boards whose majority had conflicted interests (e.g., family members or sponsor employees) ran a higher risk of not exercising proper oversight. Since board members monitor and approve sponsor spending and operations, keeping such related parties from comprising a board majority helps ensure program integrity.

FNS initially responded by issuing *Management Improvement Guidance* which suggests that a sponsor's board should be "composed of a majority of members of the community who are not financially interested in its activities, or related to its personnel or to each other; [and] does not vote on decisions relating to their own compensation (or for a related party) and is otherwise independent and accountable."¹⁷ While the language addressed our concerns, we concluded use of the guidance was optional, so neither sponsors nor State agencies were required to follow its provisions.¹⁸ The agency also developed program regulations which required sponsors to document that their boards provided "adequate oversight" of the program, but did not specifically address the composition of sponsor boards.¹⁹ However, our current audit found that the composition of sponsors' boards continues to raise conflict-of-interest concerns, such as board members voting on their own compensation.

Between 2007 and 2009, sponsor B's most highly-paid employees, or persons closely related to them, made up a majority of the sponsor's board. As board members, these employees voted on personnel policies affecting their own compensation (base pay, raises, and bonuses). With paid employees (or their close relations) making up a majority of the board, independent board

¹⁷ FNS' *Management Improvement Guidance, Standards for Sponsors of Centers*, section 1.1, dated 1997. FNS' position is that the guidance reflects requirements, but based on our audit work, we do not concur.

¹⁸ OIG Audit Report 27601-0007-SF, finding 2, recommendation 2c, "OIG Position," dated August 1999.

¹⁹ 7 CFR 226.6 (b)(18)(iii)(A), dated January 1, 2008. FNS was nonresponsive to our request for an explanation of why the *Management Improvement Guidance* requirements were not incorporated into the regulations.

oversight was not possible. To illustrate the result, the president (the board chair) approved bonuses and pay increases for the vice-presidents (two of whom were board members, including the president's spouse), and the board as a whole voted on the president's compensation; effectively, the president determined the pay of board members who were responsible for setting his pay, and vice versa. To further illustrate, the four most highly-paid employees (the four officers) received bonuses in 2008 ranging from over \$14,000 to over \$34,000 (18 to 30 percent of the employee's pay), which significantly exceeded the amount (up to 5 percent of pay) the board had itself approved at its previous annual meeting.

We found that sponsor B employed many of the senior staff's family members (parents and children) and that personnel practices appeared to favor them. For example, the sponsor paid some health care costs for senior staff or family members that other employees had to pay themselves. The sponsor also contracted with a [REDACTED] for [REDACTED] without soliciting competitive bids beforehand, or drawing up a contract for the work to be performed. In addition, the [REDACTED] of the sponsor's [REDACTED] was hired as a [REDACTED] but was paid twice as much as other employees doing the same job. We did not analyze the decisions of sponsor B's board to determine if the decisions were warranted. However, these conditions do give rise to the same independence and oversight concerns that led us in 1999 to recommend that FNS exercise tighter control over board composition.

We concluded that FNS needs to require sponsors to sign an annual disclosure of potential conflicts of interest, to identify relationships between officers, board members, and employees, or any dealings with "less-than-arm's-length" entities. The disclosure form should detail the potential ramifications of a failure to disclose such relationships. This would help ensure that sponsors are aware of the restrictions on dealing with related parties and assist State agencies to better identify potential conflicts of interest when performing periodic sponsor reviews. We are also recommending that FNS require sponsor boards of directors to be comprised primarily of persons without a financial interest in the sponsor's activities. FNS expressed concerns that doing so might conflict with States' authorities to set such requirements, but did not provide specific information or documentation to substantiate these concerns.²⁰

Similarly, our 1999 report recommended that FNS improve oversight controls for sponsors' meal reimbursements by recommending that attendance and enrollment records at meal service sites be reconciled with meal claims. In response, FNS revised regulations to require reviewers to correlate attendance, enrollment, and meal count information for 5 consecutive days preceding their visit, and then reconcile any discrepancies identified.²¹ Reviewers were also to compare the prior day counts to the enrollment and attendance for the day of the visit and reconcile any discrepancies. While some variation is to be expected (a child or two present on prior days may be absent when the reviewer visits), significant discrepancies can signal serious problems, such as providers inflating meal counts and the corresponding attendance records to cover program abuse.

²⁰ FNS stated that it would provide a definition of "independent governing board of directors" in a future final rule, but this had not been published at the time of the audit.

²¹ 7 CFR 226.16 (d)(4)(ii), dated January 1, 2008.

We found that two State agencies' procedures for implementing the regulation differed, and neither fully implemented the regulation's requirements (the third State agency, California, issued no instructions to guide their reviewers).

- The New York State agency required comparing attendance and meals for only the visit day.
- The Texas State agency required determining a 5-day attendance-to-meal pattern, but not reconciling it to current attendance.

When FNS revised program regulations in 2004, it suggested (but did not require) that State agencies provide guidance about when "provider error rises to the level of a serious deficiency."²² As a result, most of the reconciliation reviews we examined during the audit neither identified nor resolved significant variations. For example, we reviewed a sample of 35 providers at a California sponsor, and found the sponsor had not noted any concerns in their 5-day attendance-to-meal reconciliations. However, our analysis showed that 8 of the 35 providers had 40-percent or more higher attendance on the days when the reviewer was not there than on the day she was. One provider, for example, reported two children attending on the visit day, but five the previous 5 days. Similarly, reconciliation reviews of 20 providers for a New York sponsor concluded there were consistent meal count patterns even though we found that 6 of the providers had significant variations (e.g., in one instance, three children were present when the reviewer visited, but the provider recorded six attending the previous 5 days).

Overall, FNS has made significant strides in improving its management control over CACFP. We concluded that the agency did not effectively implement 2 of the 23 recommendations in our prior nationwide report, but by strengthening the mechanisms it has in place, FNS can improve sponsors' accountability.²³

Recommendation 6

Require that a majority of a sponsor's board be composed of members of the community who are not financially interested in its activities, or related to its personnel or to each other; and that board members recuse themselves from votes on decisions relating to their own compensation and that of immediate family members and financially related parties.

Agency Response

FNS concurs with this recommendation. FNS agrees that the independence of sponsor boards is important to the integrity of the Program. FNS' Management Improvement Guidance currently

²² *Federal Register*, Volume 69, Number 169, pages 53518 and 53545, dated September 1, 2004. FNS stated that it was precluded from mandating such requirements by the Administrative Procedures Act, but is currently assessing State agencies' implementation of review requirements, and may propose strengthening review requirements based on the results.

²³ The report included 23 recommendations and FNS revised program controls in response to 15 of the 23 recommendations. The remaining 8 recommendations neither required nor resulted in revised program controls.

requires sponsor boards to be composed of a majority of members of the community who are not financially interested in its activities, or related to its personnel or to each other. Further, the CACFP Integrity Rule [7 CFR Part 226.2], issued during the course of this audit (June 13, 2011) adds a new definition of “independent governing board of directors” which requires the board to meet regularly and to have the authority to hire and fire the institution’s executive director. In the development of this final rule FNS conducted extensive research of States’ specific statutory requirements regarding private nonprofit organizations’ governing boards of directors, and determined that this definition of board independence is the best approach to providing State agencies with more specific authority to assess the independence of sponsor boards.

OIG Position

We accept FNS’ management decision on this recommendation.

Recommendation 7

Require sponsors to sign an annual disclosure form of potential conflicts of interest, including specific identification of any dealings with “less-than-arms-length” entities and any relationships between officers, board members, and employees. Language in the disclosure form should provide for appropriate remedies in the event a sponsor submits a false statement.

Agency Response

FNS concurs with this recommendation. FNS will require institutions to add the disclosure and certification as an “annual submission” (refer to Healthy Hunger-Free Kids Act of 2010) implementation memo CACFP-19-2011 on “CACFP Applications,” issued 4/8/11) included in a proposed regulation. The proposed regulation will also specify that submission of a false statement will be considered a serious deficiency subject to approved corrective action or termination from participation in the program.

OIG Position

We accept FNS’ management decision on this recommendation.

Recommendation 8

Develop standardized procedures for conducting reconciliation reviews, which (1) clearly define the records to be reconciled, (2) describe follow-up actions to be taken when discrepancies are noted, and (3) describe appropriate corrective action to be taken for deficiencies that cannot be reconciled or explained.

Agency Response

FNS concurs with this recommendation. FNS will issue additional guidance to include standard procedures for reconciliation reviews, specific effective corrective actions to identify and resolve reconciliation issues, and policy clarification on the disallowance of ineligible meals. This guidance will be issued following the analysis of the results of in-depth reviews conducted of State agency CACFP operations conducted in FY2010 and FY2011, which assessed the degree to which State agencies have effective policies and procedures in place for the proper implementation of the five-day reconciliation requirement.

OIG Position

We accept FNS' management decision on this recommendation.

Finding 3: FNS Can Improve the Effectiveness of the National Disqualified List

The usefulness of FNS' national list of disqualified participants is weakened by inaccessible and incomplete data, and inconsistent application. In general, this occurred because FNS had not made all critical information available to State agencies, and users were not consistently following prescribed procedures nationwide. Additionally, the guidance provided by FNS could be improved to help State agencies use the list most effectively. As a result, FNS has reduced assurance that a State agency's decision to disqualify a CACFP participant would be enforced nationwide.

If institutions, such as sponsors, do not correct serious deficiencies—e.g., persistently overclaiming meals—then State agencies are to terminate them and their “responsible principals” and prohibit their further participation in the CACFP for 7 years (or until they take corrective action).²⁴ FNS maintains a list of those barred from participation, as reported by each State agency, and distributes it to authorized State agency personnel to keep disqualified institutions or individuals from setting up business in a new State to avoid the consequences of their CACFP deficiencies in another. Regulations require State agencies to deny CACFP applications received from any institution or individual on the national disqualified list.²⁵

However, State agencies' and sponsors' inability to access some or all of the information on the list may reduce its usefulness as a mechanism to control ineligible participation. In addition, we found instances where information was missing from the list and there were wide differences in how each State agency used the list. We discuss these issues below.

²⁴ As stated in 7 CFR 226.6 (c)(7)(v), dated January 1, 2008, Responsible principals (or individuals) refers to (1) an institution's principal, whether compensated or not, (2) any other individual employed by, or under contract with, an institution or sponsored center, or (3) an uncompensated individual, who the State agency determines to be responsible for an institution's serious deficiency. See 7 CFR 226.2, dated January 1, 2003.

²⁵ 7 CFR 226.6 (b)(1)(xii), dated January 1, 2008, is cited and applies to new applications. 7 CFR 226.6 (b)(2)(ii), dated January 1, 2008, applies the same requirement to renewal applications.

Inaccessible Information

FNS requires State agencies to submit specified information about disqualified institutions and individuals, such as names, addresses, and dates of birth. FNS compiles this information into a national list and makes it available to State agencies each month. However, due to concerns about disclosing private information, FNS excludes dates of birth from the list viewable by authorized State agency personnel. Due to privacy concerns, FNS also does not provide sponsors access to the list, although it originally had intended to do so. This seriously hinders State agencies' ability to identify matches. Names and addresses are of limited use, as an individual may have the same name as a different person, may use different forms of his or her name (i.e., legal name and nickname) in different places, or may change his or her name or address. If a State agency identifies a potential match, it submits the information to FNS for validation (FNS retains access to dates of birth). If FNS identifies a potential match, it will notify the State agency of the match for final verification.

This circular process makes using the list to determine ineligibility less efficient because State agencies cannot themselves eliminate false matches, such as different people having the same names. FNS officials said that they withheld birth dates because the Privacy Act restricts distributing personal identifying information (e.g., social security numbers).²⁶ The Act, though, does not specifically mention birth dates. FNS could not provide us the basis, such as an opinion from the Office of the General Counsel (OGC), for its determination that birth dates were covered by the Privacy Act.

Incomplete Information

In December 2007, FNS recognized that the national disqualified list contained inconsistent and incomplete information. In response, FNS issued guidance to standardize what State agencies should submit about disqualified participants, and how to do so.²⁷ However, our analysis of the disqualified list FNS distributed in July 2010 showed that while disqualified institutions only have about 1 percent incomplete entries for zip codes, addresses, etc., information was missing for disqualified individuals at much higher rates. For example, the list does not indicate when about 3 percent of the disqualified individuals were terminated from CACFP.

More seriously, the listings for nearly 19 percent of the individuals did not show birth dates, which FNS requires State agencies to submit. As discussed above, these are critical in helping FNS identify false matches in cases where two people have the same (or similar) names. In general, these gaps may be mitigated by including edit checks for entries in the standardized reporting form FNS provides to State agencies—e.g., a spreadsheet that requires a complete address or draws attention to missing entries with highlighted call-out boxes.

²⁶ 5 U.S.C. 552a; P.L. 93-579, dated December 31, 1974.

²⁷ CACFP Policy Memo No. 02-08, dated December 14, 2007.

Inconsistent Application

Without detailed guidance from FNS, each of the State agencies we visited used the disqualified list differently.

- In California, staff compare the names of sponsors and their senior officers to those on the disqualified list. The agency also runs the disqualified list through its database of participating providers, which can generate hundreds of field entry matches (names, addresses, zip codes, etc.). Staff then manually reviews the results for potential matches to send to FNS for verification.
- In Texas, staff manually compares the names and addresses of new CACFP participants to the disqualified list. If the addresses are close (Texas also considers nearby cities) and the names match, the results are sent to FNS for verification. (Texas also distributes the list to sponsors through its State agency website—which runs counter to FNS’ policy—and expects the sponsors to review the list to ensure they are not working with disqualified facilities or individuals).
- In New York, staff use their own list of those they have disqualified because it contains helpful information that the national list does not, such as birth dates. (FNS’ Privacy Act concerns derive from distributing birth dates nationally, not individual State agencies’ using the information from their own CACFP participants.) While more efficient, abandoning the national list leaves the agency vulnerable to disqualified individuals who move from State to State.

These varying matching procedures may lead to inconsistently identifying disqualified participants. By using outside sources, for example, the New York State agency’s matching process will likely find a different set of disqualified participants than California’s, which relies on comparing database fields. Similarly, Texas’ consideration of cities near an address may identify a different set than New York, which relies strictly on addresses matching.

Many of these issues resulted from the manual nature of the current national disqualified list process, which is prone to human error and delays. We believe these problems could be best addressed by automating the national disqualified list. A properly developed automated system could be broadly available to users at both the sponsor and State agency levels having a need to verify the eligibility of program applicants. Data input by users at these levels (on newly-disqualified persons and entities) would be available to system users in a more timely manner. Controls in the system could ensure that data entered were complete, and edit checks could guard against inaccuracies. The system could perform the verifications and provide immediate feedback to users while at the same time safeguarding sensitive personal information.

We discussed these conditions with FNS National Office officials, and they concurred with our conclusion that the national disqualified list was not functioning as intended. While our review did not identify any disqualified participants on FNS’ July 2010 national disqualified list participating in CACFP, we believe that the aggregate effect of the deficiencies discussed above reduces FNS’ assurance that this will continue to be the case.

Recommendation 9

Develop submission forms for State agencies with edit checks requiring entries to be complete.

Agency Response

A policy memo containing required National Disqualified List (NDL) submission forms was issued in December 2007 to specifically address information required for placement on, or removal from, the NDL. Although electronic edit checks are not able to be added to the current form, they will be added when the system is revised to incorporate electronic data entry by State agencies. FNS plans to release a web-based NDL database to State agencies by the end of FY 2012. In addition, FNS will issue a policy memo clarifying information required for placement on or removal from the NDL in FY 2012.

OIG Position

We accept FNS' management decision on this recommendation.

Recommendation 10

Obtain an opinion from OGC about whether birth dates can be distributed to State agencies as part of the national disqualified list. If OGC determines they can, distribute the list with birth dates.

Agency Response

FNS concurs with this recommendation. FNS will pursue obtaining an opinion from OGC about whether or not birth dates (which are considered to be personally identifiable information) can be distributed to State agencies as part of the NDL. If OGC determines it to be allowable, FNS will enable State agency staff to access the list with birth dates included.

OIG Position

We accept FNS' management decision on this recommendation.

Recommendation 11

Distribute specific and standardized requirements to State agencies about how to use the national disqualified list (what data elements should be compared, when to consider a match to have occurred, etc.).

Agency Response

FNS concurs with this recommendation. FNS will distribute additional guidance on how to use the NDL to ensure that disqualified institutions and individuals are precluded from CACFP

participation. FNS is currently updating a previous policy memo that will further clarify information required for placement on or removal from the NDL to be issued in FY 2012.

OIG Position

We accept FNS' management decision on this recommendation.

Recommendation 12

Require that program application materials and national disqualified list submittals include (1) full legal names and (2) any names formerly used.

Agency Response

FNS concurs with this recommendation. FNS will include in the NDL guidance the requirement that specifies NDL submittals include the full legal names and any names formerly used of all involved principals.

OIG Position

We accept FNS' management decision on this recommendation.

Recommendation 13

Develop and implement an automated system that includes the following features: (1) availability to both State agency and sponsor personnel having a legitimate need for access to the system, (2) timely availability of data in the system, (3) immediate feedback on results to users, (4) controls to ensure the completeness and accuracy of data, and (5) the proper safeguarding of personally identifiable information, in accordance with the Privacy Act and other applicable requirements.

Agency Response

FNS concurs with this recommendation. As a long standing objective of FNS, the process to redesign and web-enable the NDL database and allow for system edits is underway. This will allow State agencies to access and enter data in a timely manner and the system edits will aid in ensuring more complete and accurate data. State agencies will be able to directly submit data for immediate verification of potential matches. Access will be made available to sponsoring organizations as required. In addition, FNS will develop standard operating procedures to manage the NDL at the federal level upon implementation of the web-based NDL system. The web-based NDL system is scheduled to be released during the fourth quarter of 2012.

OIG Position

We accept FNS' management decision on this recommendation.

Recommendation 14

Instruct the New York State agency to use the national list to identify disqualified participants.

Agency Response

FNS concurs with this recommendation. FNS will instruct the New York State agency to use the NDL to identify disqualified participants noting that such identification is required of each state agency in current regulation.

OIG Position

We accept FNS' management decision on this recommendation.

Recommendation 15

Instruct the Texas State agency to cease distributing the national disqualified list to sponsors.

Agency Response

CACFP regulations require sponsors to have access to the NDL. FNS will issue guidance to Texas and all state agencies on proper procedures for sponsors to access the NDL.

OIG Position

We accept FNS' management decision on this recommendation.

Scope and Methodology

In order to evaluate FNS' implementation of our 1999 report's recommendations, we judgmentally selected the States of California, Texas, and New York because they (1) received the largest total CACFP reimbursements, (2) had the highest average daily attendance, (3) served the most meals, and (4) gave a nationwide perspective of the CACFP.

We reviewed two sponsors of centers and four sponsors of both homes and centers. One of the six sponsors was selected based on a complaint received through OIG's hotline. The remaining sponsors were selected based on information obtained at the corresponding State and FNS regional offices, such as claim amounts and location of the sponsor. In FY 2008, these sponsors received almost \$29 million in program funds. We conducted fieldwork from October 2008 to January 2011.

In developing the issues in this report, we performed the following steps and procedures:

- Reviewed all applicable laws, regulations, policies, procedures, and instructions to become familiar with CACFP.
- Interviewed FNS' national and regional office staff about the agency's response to our prior recommendations. We also obtained and reviewed FNS' management evaluations of States' implementation of revised program regulations.
- Interviewed State agency officials and reviewed State agency files to evaluate their implementation of revised program regulations.
- Reviewed sponsor records that supported reimbursement claims, program spending, and overall CACFP administration. Records reviewed included sponsors' accounting records and ledgers, receipts, cancelled checks, bank statements, and training and monitoring documents.
- Interviewed sponsor officials and staff for information about operations.
- Judgmentally selected homes and centers, based on reimbursements and general proximity, operating under the sponsors and conducted site visits to examine records, interview personnel, and observe operations.

For two of the sample sponsors (sponsors A and B), we expanded our review to examine the sponsors' use of program funds in more detail, due to indications that the sponsors may have improperly spent the funds.

We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Abbreviations

| | |
|-------------|---|
| CACFP | Child and Adult Care Food Program |
| FNS | Food and Nutrition Service |
| NDL | National Disqualified List |
| OGC | Office of the General Counsel |
| OIG | Office of Inspector General |
| OMB | Office of Management and Budget |
| USDA..... | United States Department of Agriculture |

Exhibit A: Summary of Monetary Results

| Finding Number | Recommendation Number | Description | Amount | Category |
|-----------------------|------------------------------|-------------------------------------|--------------------|--|
| 1 | 3 | Sponsor A's misuse of program funds | \$2,029,691 | Questioned Costs and Loans, Recovery Recommended |
| 1 | 4 | Sponsor B's misuse of program funds | \$ 456,942 | Questioned Costs and Loans, Recovery Recommended |
| TOTAL | | | \$2,486,633 | |

The table above identifies \$2,029,691 in questioned costs for sponsor A and \$456,942 for sponsor B.

Exhibit B: Sites Visited

| Organization/Entity | Location |
|---|--|
| <u>Food and Nutrition Service</u> National Office Western Regional Office Southwest Regional Office Northeast Regional Office | Alexandria, Virginia San Francisco, California Dallas, Texas Boston, Massachusetts |
| <u>State Agencies</u> California Department of Education Texas Department of Agriculture New York Department of Health | Sacramento, California Austin, Texas Albany, New York |
| <u>Institutions</u> Sponsor A Sponsor B Sponsor C Sponsor D Sponsor E Sponsor F | New York Texas Texas California New York New York |
| <u>Facilities</u> 40 Day Care Homes 28 Day Care Centers 30 Day Care Homes 8 Day Care Centers | San Diego, California area Dallas/Fort Worth, Texas area Dallas/Fort Worth, Texas area New York City, New York area |

The table above lists the FNS offices, sponsors, and day care homes and centers we visited in New York, California, and Texas.

Exhibit C: Summary of Questioned Costs for Sponsor A

| Type of Questioned Cost | Sub-Category Total | Category Total |
|---|---------------------------|-----------------------|
| Paid general expenses for the director's for-profit corporation. | \$723,000 | |
| Purchase and install [REDACTED] at the for-profit corporation's schools. | \$545,683 | |
| Purchase of property and first month's mortgage payment. | \$220,000 | |
| Purchase of inventory for the director's [REDACTED] business venture | \$156,800 | |
| Paid the director's personal income taxes | \$110,000 | \$1,755,483 |
| Transactions conducted with a business owned by the director's [REDACTED] | \$253,720 | \$ 253,720 |
| Party for both program and non-program school children. | \$ 20,488 | \$ 20,488 |
| TOTAL | | \$2,029,691 |

The table above represents questioned costs for Sponsor A.

Exhibit D: Summary of Questioned Costs for Sponsor B

| Type of Questioned Cost | Sub-Category Total | Category Total |
|--|--------------------|-------------------------------|
| Personal | \$ 84,555 | |
| Non-program activities | \$152,743 | |
| Leasehold improvements | \$ 64,288 | |
| Attorney retainer | \$ 15,050 | |
| IRS penalties | \$ 3,908 | |
| Bank insufficient fund fees | \$ 513 | \$321,057 |
| Promotional activities | \$ 25,860 | |
| Employee Retreat | \$ 11,040 | |
| Meals (non-travel related) | \$ 9,232 | |
| Miscellaneous | \$ 8,961 | \$ 55,093 |
| Related-party transactions | \$ 32,857 | |
| Bank stop payment fees | \$ 690 | \$ 33,547 |
| Miscellaneous (e.g., payments to hotels and restaurants) | \$ 47,244 | \$ 47,244 |
| TOTAL | | \$456,942²⁸ |

The table above shows the types and amounts of questionable costs for sponsor B.

²⁸ \$1 difference due to rounding.

Exhibit E: Sponsor A's Overstated Meal Claims

| Day Care Centers | (A) Meals Served ²⁹ | (B) Meals Claimed for Reimbursement | (C) Meals Over/(Under) Claimed (B less A) | (D) Percentage of Over/(Under) Statement ³⁰ (C divided by A) |
|--------------------------|-----------------------------------|--|--|--|
| January 2009 | | | | |
| 1 | 11,644 | 13,696 | 2,052 | 18% |
| 2 | 10,395 | 11,983 | 1,588 | 15% |
| 3 | 8,592 | 8,912 | 320 | 4% |
| 4 | 10,745 | 14,481 | 3,736 | 35% |
| 5 | 6,612 | 11,484 | 4,872 | 74% |
| 6 | 5,892 | 5,935 | 43 | 1% |
| 7 | 7,843 | 7,930 | 87 | 1% |
| 8 | 684 | 798 | 114 | 17% |
| Subtotals – January 2009 | 62,407 | 75,219 | 12,812 | 21% |
| March 2009 | | | | |
| 1 | 13,237 | 15,370 | 2,133 | 16% |
| 2 | 12,462 | 12,876 | 414 | 3% |
| 3 | 9,792 | 9,871 | 79 | 1% |
| 4 | 13,539 | 15,391 | 1,852 | 14% |
| 5 | 8,372 | 13,289 | 4,917 | 59% |
| 6 | 6,834 | 6,616 | (218) | (3%) |
| 7 | 8,936 | 8,912 | (24) | 0% |
| 8 | 876 | 876 | 0 | 0% |
| Subtotals – March 2009 | 74,048 | 83,201 | 9,153 | 12% |
| TOTALS | 136,455 | 158,420 | 21,965 | 16% |

The table represents the amount of meals claimed in excess as compared to the amount that was actually served on site.

²⁹ Per meal count records maintained by the individual day care centers.

³⁰ This figure represents the number of meals over- or under-claimed as a percentage of the number of meals served.

**USDA'S
FOOD AND NUTRITION SERVICE'S
RESPONSE TO AUDIT REPORT**



**United States
Department of
Agriculture**

Food and
Nutrition
Service

3101 Park
Center Drive
Room 712

Alexandria, VA
22302-1500

DATE: September 29, 2011

AUDIT
NUMBER: 27601-12-SF

TO: Gil H. Harden
Assistant Inspector General for Audit

FROM: /s/ <Jeffrey J. Tribiano> (for): Audrey Rowe
Administrator
Food and Nutrition Service

SUBJECT: Review of Management Controls for the Child and Adult Care Food
Program

This letter responds to the official draft audit report number 2601-12-SF, Review of Management Controls for the Child and Adult Care Food Program. Specifically, the Food and Nutrition Service (FNS) is responding to the fifteen recommendations within the report. FNS agrees with OIG's objectives to strengthen internal controls of the program through "aggressive, clear, and consistent guidance and oversight" and to ensure that State agencies, CACFP institutions (sponsoring organizations and independent centers) and facilities (family day care homes and sponsored centers) are acting responsibly and within the parameters of the CACFP requirements.

FNS supports implementation of effective management controls to address identified concerns within the report. OIG identified several opportunities for improved controls: preventing conflicts of interest in sponsors' governing boards; identifying program participants who claim reimbursement for meals they did not serve (overclaiming); and improving procedures related to the National Disqualified List (NDL). In addition, OIG recommends that FNS take action to address several specific issues identified in the States reviewed. FNS actions planned along with the proposed dates of implementation are specified in the responses to the recommendations below.

Recommendation 1

Require State agencies, during reviews, to verify a selected month (or more as warranted) of a sponsor's CACFP bank account activity to documents adequate to support that the transactions meet program requirements.

FNS Response

FNS concurs with this recommendation. A review of bank statements was a standard part of the Child Care Assessment Project (CCAP) data collection and revealed a number of

“questionable costs” that would otherwise have gone unnoticed if the CCAP data collectors had only looked at receipts. Procedures for conducting “bank statement verifications” will be addressed in guidance by December 2011.

Estimated Completion Date: May 31, 2012

Recommendation 2

Instruct State agencies to require center sponsors to report, no less often than annually, their actual expenditures of program funds and the amount of meal reimbursement funds retained from centers (if any) for administrative costs.

FNS Response

FNS concurs with this recommendation. Although FNS evaluates the State agency’s written policies or procedures for tracking sponsors’ administrative expenses on a year-to-date basis, FNS will propose a report of aggregate year-to-date administrative expenses for center sponsors, no less frequently than annually. This report will be addressed in guidance.

Estimated Completion Date: October 31, 2012

Recommendation 3

Consult with OIG-Investigations to determine the appropriate action to be taken to recoup the \$2,029,691 in program funds misused by sponsor A. Require the State agency to ensure sponsor A has accounted for all program funds and has recovered any that are not accounted for or were spent improperly.

FNS Response

FNS concurs with this recommendation and agrees with recovering any misused funds as appropriate according to federal law and CACFP regulations. FNS will confer with OIG prior to determining the appropriate action to take.

Estimated Completion Date: October 31, 2012

Recommendation 4

Consult with OIG-Investigations to determine the appropriate action to be taken to recoup the \$456,942 in program funds misused by sponsor B.

FNS Response

FNS concurs with this recommendation. FNS agrees with recovering any misused funds as appropriate according to federal law and CACFP regulations. FNS will confer with OIG prior to determining the appropriate action to take.

Estimated Completion Date: October 31, 2012

Recommendation 5

Instruct the Texas State agency to determine the portion of vehicle costs charged by sponsor C to the program (including lease, fuel, insurance, etc.) that are non-program related, and collect this amount back from the State agency.

FNS Response

FNS concurs with this recommendation. FNS will direct the Texas State agency to recover any unallowable costs as appropriate according to federal law and CACFP regulations.

Estimated Completion Date: December 31, 2011

Recommendation 6

Require sponsors' boards to be composed of a majority of members of the community who are not financially interested in its activities, or related to its personnel or to each other; and that board members recuse themselves from votes on decisions relating to their own compensation and that of immediate family members and financially related parties.

FNS Response

FNS concurs with this recommendation. FNS agrees that the independence of sponsor boards is important to the integrity of the Program. FNS's Management Improvement Guidance currently requires sponsor boards to be composed of a majority of members of the community who are not financially interested in its activities, or related to its personnel or to each other. Further, the CACFP Integrity Rule [7 CFR Part 226.2], issued during the course of this audit (June 13, 2011) adds a new definition of "independent governing board of directors" which requires the board to meet regularly and to have the authority to hire and fire the institution's executive director. In the development of this final rule FNS conducted extensive research of States' specific statutory requirements regarding private nonprofit organizations' governing boards of directors, and determined that this definition of board independence is the best approach to providing State agencies with more specific authority to assess the independence of sponsor boards.

The issuance of this new rule will give FNS the opportunity to provide additional training on this issue and focus State agency attention on sponsor compliance. Additionally, FNS will continue to offer technical assistance on board independence and address issues as they arise.

Completion Date: June 13, 2011

Recommendation 7

Require sponsors to sign an annual disclosure of potential conflicts of interest, including specific identification of any dealings with “less-than-arms-length” entities and any relationships between officers, board members, and employees. Language in the disclosure form should provide for appropriate remedies in the event a sponsor submits a false statement.

FNS Response

FNS concurs with this recommendation. FNS will require institutions to add the disclosure and certification as an “annual submission” (refer to Healthy Hunger-Free Kids Act of 2010) implementation memo CACFP-19-2011 on “CACFP Applications,” issued 4/8/11) included in a proposed regulation. The proposed regulation will also specify that submission of a false statement will be considered a serious deficiency subject to approved corrective action or termination from participation in the program.

Estimated Completion Date: January 31, 2012

Recommendation 8

Develop standardized procedures for conducting reconciliation reviews, which (1) clearly define the records to be reconciled, (2) describe follow-up action to be taken when discrepancies are noted, and (3) describe appropriate corrective actions to be taken for deficiencies that cannot be reconciled or explained.

FNS Response

FNS concurs with this recommendation. FNS will issue additional guidance to include standard procedures for reconciliation reviews, specific effective corrective actions to identify and resolve reconciliation issues, and policy clarification on the disallowance of ineligible meals. This guidance will be issued following the analysis of the results of in-depth reviews conducted of State agency CACFP operations conducted in FY2010 and FY2011, which assessed the degree to which State agencies have effective policies and procedures in place for the proper implementation of the five-day reconciliation requirement.

Estimated Completion Date: December 31, 2012

Recommendation 9

Develop submission forms for State agencies with edit checks requiring entries to be complete.

FNS Response

A policy memo containing required National Disqualified List (NDL) submission forms was issued in December 2007 to specifically address information required for placement on, or removal from, the NDL. Although electronic edit checks are not able to be added to the current form, they will be added when the system is revised to incorporate electronic data entry by State agencies. FNS plans to release a web-based NDL database to State agencies by the end of FY 2012. In addition, FNS will issue a policy memo clarifying information required for placement on or removal from the NDL in FY 2012.

Estimated Completion Date: March 31, 2012

Recommendation 10

Obtain an opinion from the Office of General Counsel (OGC) about whether birth dates can be distributed to State agencies as part of the NDL. If OGC determines they can, distribute the list with birth dates.

FNS Response

FNS concurs with this recommendation. FNS will pursue obtaining an opinion from OGC about whether or not birth dates (which are considered to be personally identifiable information) can be distributed to State agencies as part of the NDL. If OGC determines it to be allowable, FNS will enable State agency staff to access the list with birth dates included.

Estimated Completion Date: March 31, 2012

Recommendation 11

Distribute specific and standardized requirements to State agencies about how to use the national disqualified list (what data elements should be compared, when to consider a match to have occurred, etc.).

FNS Response

FNS concurs with this recommendation. FNS will distribute additional guidance on how to use the NDL to ensure that disqualified institutions and individuals are precluded from CACFP participation. FNS is currently updating a previous policy memo that will further clarify information required for placement on or removal from the NDL to be issued in FY 2012.

Estimated Completion Date: March 31, 2012

Recommendation 12

Require that program application materials and NDL submittals include (1) full legal names and (2) any names formerly used.

FNS Response

FNS concurs with this recommendation. FNS will include in the NDL guidance the requirement that specifies NDL submittals include the full legal names and any names formerly used of all involved principals.

Estimated Completion Date: December 31, 2011

Recommendation 13

Develop and implement an automated system that includes the following features: (1) availability to both State agency and sponsor personnel having a legitimate need for access to the system, (2) timely availability of data in the system, (3) immediate feedback on results to users, (4) controls to ensure the completeness and accuracy of data, and (5) the proper safeguarding of personally identifiable information, in accordance with the Privacy Act and other applicable requirements.

FNS Response

FNS concurs with this recommendation. As a long standing objective of FNS, the process to redesign and web-enable the NDL database and allow for system edits is underway. This will allow State agencies to access and enter data in a timely manner and the system edits will aid in ensuring more complete and accurate data. State agencies will be able to directly submit data for immediate verification of potential matches. Access will be made available to sponsoring organizations as required. In addition, FNS will develop standard operating procedures to manage the NDL at the federal level upon implementation of the web-based NDL system. The web-based NDL system is scheduled to be released during the fourth quarter of 2012.

Estimated Completion Date: September 30, 2012

Recommendation 14

Instruct the New York State agency to use the NDL to identify disqualified participants.

FNS Response

FNS concurs with this recommendation. FNS will instruct the New York State agency to use the NDL to identify disqualified participants noting that such identification is required of each state agency in current regulation.

Estimated Completion Date: December 31, 2011

Recommendation 15

Instruct the Texas State agency to cease distributing the national disqualified list to sponsors.

FNS Response

CACFP regulations require sponsors to have access to the NDL. FNS will issue guidance to Texas and all state agencies on proper procedures for sponsors to access the NDL.

Estimated Completion Date: March 31, 2012

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