



United States Department of Agriculture

Consolidated Report of FNS and Selected State Agencies' Controls Over SFSP



Audit Report 27601-0005-41

September 2020

OFFICE OF INSPECTOR GENERAL

Consolidated Report of FNS and Selected State Agencies' Controls Over SFSP

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OIG consolidated the relevant results and common control issues of six SFSP audits at FNS and four States and determined whether any additional controls were needed to enhance SFSP efficiency and effectiveness.

OBJECTIVE

Our objective was to consolidate relevant results and common control issues identified by OIG based on six SFSP audits at FNS and four States. We also determined whether any additional controls were needed to enhance SFSP efficiency and effectiveness.

REVIEWED

We reviewed pertinent executive orders, laws and regulations governing SFSP, and the current policies and procedures FNS established as guidance for State agencies, sponsors, and sites; identified and consolidated control weaknesses and common issues identified in the FNS and State-level SFSP audits; and interviewed FNS national office officials.

RECOMMENDS

We recommend that FNS issue guidance that describes how SFSP applicants can demonstrate financial capabilities and how State agencies should assess them. FNS should also revise existing State agency monitoring requirements and evaluate whether the Code of Federal Regulations should include additional guidance. Further, FNS should revise guidance pertaining to calculating and monitoring unused reimbursements. Finally, we recommend that FNS improve its ME process.

WHAT OIG FOUND

The Summer Food Service Program (SFSP), run by the Food and Nutrition Service (FNS), provides free meals to children in needy areas when school is not in session. SFSP is a Federally funded, State agency-administered program, and FNS is responsible for State oversight. We consolidated the relevant results and common control issues identified by OIG based on six SFSP audits at FNS and four States.

We determined that additional controls were needed to enhance SFSP efficiency and effectiveness. First, we found that three of the four State agencies we reviewed needed to improve SFSP application processes to assess certain eligibility and program requirements prior to approving the sponsors' applications. Specifically, we found FNS could strengthen State instructions on how to assess the applicants' eligibility and program compliance in two areas: financial capability and approval of sites in near proximity. We also found that FNS' State SFSP monitoring requirements did not include sufficient guidance for State agencies to ensure the accuracy of sponsor program payments. Further, sponsors and State agencies we reviewed did not consistently identify SFSP unused reimbursements or ensure the funds were used for authorized purposes. Lastly, we found that FNS' management evaluation (ME) process for SFSP was not sufficient to ensure State agencies provided adequate oversight of the program.

FNS generally agreed with our recommendations and we accepted management decision for 12 of the 15 recommendations.



United States Department of Agriculture
Office of Inspector General
Washington, D.C. 20250



DATE: September 18, 2020

AUDIT
NUMBER: 27601-0005-41

TO: Pamilyn Miller
Administrator
Food and Nutrition Service

ATTN: David Burr
Chief Financial Officer
Food and Nutrition Service

FROM: Gil H. Harden
Assistant Inspector General for Audit

SUBJECT: Consolidated Report of FNS and Selected State Agencies' Controls Over SFSP

This report presents the results of the subject review. Your written response to the official draft is included in its entirety at the end of the report. We have incorporated excerpts from your response, and the Office of Inspector General's (OIG) position, into the relevant sections of the report. Based on your written response, we are accepting management decision for Recommendations 1-4 and 8-15. Please follow your internal agency procedures in forwarding final action correspondence to the Office of the Chief Financial Officer (OCFO).

Based on your written response, management decision has not been reached on Recommendations 5-7. The information needed to reach management decision on the recommendations is set forth in the OIG Position section following the recommendations. In accordance with Departmental Regulation 1720-1, please furnish a reply within 60 days describing the corrective action taken or planned, and the timeframe for implementing the recommendations for which management decision has not been reached. Please note that the regulation requires management decision to be reached on all recommendations within 6 months from report issuance, and final action to be taken within 1 year of each management decision to prevent being listed in the Department's annual Agency Financial Report. For agencies other than OCFO, please follow your internal agency procedures in forwarding final action correspondence to OCFO.

We appreciate the courtesies and cooperation extended to us by members of your staff during our audit fieldwork and subsequent discussions. This report contains publicly available information and will be posted in its entirety to our website (<http://www.usda.gov/oig>) in the near future.

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Background and Objectives

Background

The National School Lunch Act authorizes the Summer Food Service Program (SFSP) to provide free meals to children in needy areas when school is not in session.¹ In fiscal year (FY) 2016, SFSP provided \$472 million to serve more than 153 million meals and snacks to needy children at nearly 48,000 sites. Sponsors in California, Florida, New York, and Texas received more than \$147 million of SFSP reimbursements in 2016, or about 35 percent of all program funding.²

The Food and Nutrition Service (FNS) is the Federal funding agency responsible for SFSP. FNS awards SFSP funding to State agencies and provides State agencies with guidance to properly administer and monitor the program. FNS is also responsible for program oversight. To carry out this function, FNS conducts management evaluations (ME) in accordance with FNS national and program-specific guidance that monitor the State agencies' compliance with program requirements and ensure States use funds for intended purposes. The ME guidance includes an extensive questionnaire that contains more than 160 questions covering each of the program's functional areas, including questions about State agencies' application assessment and program monitoring procedures. State agencies provide responses to the ME review questions, and FNS ME reviewers evaluate the responses, interview State agency staff, and sample State application and monitoring files to assess the State agencies' oversight of sponsor compliance.

State agencies are responsible for administering SFSP. Specifically, State agencies review and approve sponsor applications and reimburse sponsors for meals served to children at approved sites. State agencies also conduct sponsor administrative reviews to monitor sponsor and site compliance with program requirements. The administrative reviews include interviewing sponsor staff, reviewing sponsor records, writing reports, and reviewing and approving sponsor corrective actions. Additionally, State agencies must monitor sponsors' SFSP unused reimbursements to ensure the funds are properly expended.

Locally, SFSP sponsors manage sites that provide the meals to children. Sponsors include public or private non-profit organizations such as school food authorities, faith-based organizations, or camps. Sponsors can manage multiple State-approved sites, including schools or community centers. Sponsors may prepare the meals themselves, either onsite or at a central kitchen, or purchase meals from a vendor, such as a food service management company. Sponsors are reimbursed for the number of eligible meals served multiplied by a predetermined per-meal rate

¹ In 1946, Congress signed into law the National School Lunch Act, now the Richard B. Russell National School Lunch Act (NSLA), which first established the National School Lunch Program. NSLA has been amended several times, most recently in 2019. In 1968, Section 13 of the NSLA (42 U.S.C. § 1761) was amended to pilot SFSP, which became a separate, permanent program in 1975.

² We used background data from FY 2016 since this report consolidated the results of our multi-phase SFSP audits. The work performed in the five SFSP audits included OIG review of FNS and State program operations from FYs 2014–2016, and 2016 program activities for the sixth Summer Food Service Program in Texas—Sponsor Costs audit.

set by a legislative formula.³ To be eligible, the meals must meet program requirements that include specific meal components.⁴

Objectives

We consolidated the relevant results and common control issues identified by OIG on six SFSP audits at FNS and four States.⁵ We also determined whether any additional controls were needed to enhance SFSP efficiency and effectiveness.

³ The designated rate is set each year in accordance with the Richard B. Russell National School Lunch Act, which incorporates the consumer price index. 42 U.S.C. § 1761(b)(1). The rates for rural and self-preparation sites are higher than for other types of sites. Additionally, the rates for sites in Alaska and Hawaii are higher than for sites in the continental United States.

⁴ The program regulations establish minimum food component requirements for meals served to children in SFSP. There are four categories of food components: (1) vegetables and fruits, (2) bread and bread alternates, (3) milk, and (4) meat and meat alternates. Not all components are required for all meal types. The regulations also include a few exceptions to and variations from the meal pattern. 7 CFR § 225.16 (d)-(f).

⁵ Audit Report 27601-0004-41, *FNS Controls Over Summer Food Service Program*, Mar. 2018; Audit Report 27004-0001-41, *California's Controls Over Summer Food Service Program*, Nov. 2018; Audit Report 27004-0001-31, *Florida's Controls Over Summer Food Service Program*, Aug. 2019; Audit Report 27004-0001-23, *New York's Controls Over Summer Food Service Program*, Sept. 2018; Audit Report 27004-0004-21, *Texas' Controls Over Summer Food Service Program*, Mar. 2019; and Audit Report 27004-0003-21, *Summer Food Service Program in Texas—Sponsor Costs*, Mar. 2019.

Finding 1: State SFSP Application Processes Need Improvement

We found that three of the four State agencies we reviewed needed to improve SFSP application processes to assess certain eligibility and program requirements prior to approving the sponsors' applications. This occurred because FNS' program guidance did not detail how State agencies should assess applicants' financial management capabilities nor ensure applicants' sites did not serve the same children the same meals as other sponsors' sites in the same area. As a result, 18 of the 23 sponsors we reviewed in these 3 States lacked financial management capabilities—which could impact their eligibility to participate in SFSP⁶—and 14 sponsors may have operated sites that served the same meals to the same children as other sponsors' sites.⁷

SFSP regulations and FNS guidance require State agencies to review and assess sponsors' SFSP applications. State agencies must approve only applicants that meet the program's eligibility and participation requirements. To be eligible for the program, applicants must demonstrate financial and administrative capabilities for program operations, including the ability to properly track program funds.⁸ In addition, State agencies must ensure applicants' proposed SFSP sites do not serve the same area as other SFSP sites “unless it can be demonstrated to the satisfaction of the State agency that each site will serve children not served by any other site in the same area for the same meal.”⁹

OIG conducted SFSP audits in California, Florida, New York, and Texas. We found that three of the State agencies did not adequately review and approve SFSP sponsor applications.¹⁰ While these issues were reported in each respective SFSP State audit report, the consolidated State findings in this report reflect common control weaknesses that need to be addressed by FNS. Specifically, we found FNS could strengthen instructions on how to assess the applicants' eligibility and program compliance in two areas: financial capability and approval of sites in near proximity. Our findings are detailed below.

⁶ We reported the 18 sponsors that lacked adequate financial management systems in the respective State SFSP audit reports; however, the State agencies are responsible for determining whether these sponsors are eligible to participate in SFSP.

⁷ These 14 sponsors include 9 sponsors that OIG non-statistically selected for review and 5 additional sponsors with duplicate sites that OIG identified by using Audit Command Language software to analyze the entire program year 2016 participant data provided by the State agency. We reported the 14 sponsors' site proximity issues in the respective State SFSP audit reports; however, the State agencies are responsible for determining whether these sites met the regulatory requirements.

⁸ 7 CFR § 225.14(c); FNS Instruction 796-4, *Financial Management—Summer Food Service Program for Children* (Apr. 1994).

⁹ 7 CFR § 225.6(d).

¹⁰ Audit Report 27004-0001-41, *California's Controls Over Summer Food Service Program*, Nov. 2018; Audit Report 27004-0001-31, *Florida's Controls Over Summer Food Service Program*, Aug. 2019; Audit Report 27004-0004-21, *Texas' Controls Over Summer Food Service Program*, Mar. 2019; Audit Report 27004-0003-21, *Summer Food Service Program in Texas—Sponsor Costs*, Mar. 2019.

Financial Capability

FNS' guidance for State agencies reiterated the regulatory requirement that applicants must demonstrate financial and administrative capability for program operations, but it did not include any instructions or examples that outlined how applicants could demonstrate their capabilities or how State agencies should assess this information.¹¹ We found that three of the four State agencies we reviewed did not require applicants to demonstrate their financial capability prior to approving the applications. This occurred because FNS' program guidance did not detail how State agencies should assess applicants' financial management capabilities. In the absence of clear guidance, State agencies approved 18 of the 23 sponsors we reviewed to participate in SFSP, even though these sponsors could not properly account for how they tracked and used program funds, as required for program eligibility. Therefore, these sponsors lacked financial management capabilities—which could impact their eligibility to participate in the program.

For example, one State agency reviewed applicant documentation to determine whether applicants were financially viable,¹² but did not require applicants to demonstrate how they would properly track program funds and use the funds for allowable purposes. Some State staff expressed confusion and questioned how applicants could demonstrate their capability prior to program operations or how the State agency could make this assessment before applicants participated in the program.

If the State agencies had required sponsors to demonstrate financial management capabilities, the deficiencies we found, such as comingling program funds with other funding sources and using SFSP funds for unallowable purposes, could have been minimized. While there may not be any one prescriptive method, FNS could provide State agencies with examples of possible alternatives for how these demonstrations could be made. For instance, State agencies could require applicants to provide written descriptions of their financial management systems as part of the applicants' demonstration of financial management capabilities and describe how they would track SFSP costs separately from the applicants' other program costs and ensure program funds are used for allowable costs as prescribed by FNS guidance.

Site Proximity

FNS' program guidance reiterated the regulatory requirement that applicants' SFSP sites will not serve the same meal service to the same children as other SFSP sites in the same area;¹³ however, it did not outline how or when State agencies should make this

¹¹ *FNS Administration Guide SFSP* (2016).

¹² "Financial viability" is the applicants' ability to cover program costs with their projected SFSP reimbursements and other sources of revenue.

¹³ FNS Policy Memo SFSP 05-2017, *Summer Food Service Program Questions and Answers* (Dec. 1, 2016); 7 CFR § 225.6(d).

determination.¹⁴ We analyzed 2016 program data and found that 3 of the 4 State agencies we reviewed approved 45 sites for 14 sponsors that were in the same areas, thus increasing the potential of sites serving meals to the same children.¹⁵ These sponsors operated 4 duplicative sites as well as 41 sites that were within 2 State agencies' quarter-mile proximity restrictions of other sponsors' SFSP sites.¹⁶ In accordance with FNS policy, there may be legitimate reasons for the 45 sites to be duplicative or in close proximity of other sites (such as physical barriers, different meal services, etc.).¹⁷ However, the State agencies did not have any process to make and document this determination and ensure the regulatory requirements were met (see Exhibit B for a summary of the sponsor issues we found). This occurred because FNS' program guidance did not describe how State agencies should implement this regulatory requirement during the application process. In the absence of clear guidance, State agencies approved sites that were in the same area without any assurance that these sites served different meals to different children.

State officials from one State explained that it would be inappropriate to deny applicants' potential sites based on the proximity restrictions since many sites may not ultimately become operational (e.g., if participation is low or sponsors have other reasons not to offer SFSP at the sites) and therefore would not serve the same children as other sites. State staff added that determining the applicants' sites that will ultimately become operational is a "moving target," so the State would not be able to determine whether the sites served the same children until the program was underway (roughly 8 weeks into the 12-week program). While it may be difficult to know which sites will ultimately become operational during the application process, FNS could provide State agencies with clearer guidance to ensure States meet the regulatory requirement. For example, FNS could have State agencies establish processes and timeframes to identify and review sites within close proximity of each other and ensure the sites serve different children than other sponsors' sites.¹⁸

We spoke with FNS officials, who generally agreed with our findings. FNS officials stated there was existing guidance regarding sponsor financial management capabilities, but acknowledged that State agencies would benefit from more guidance regarding how State agencies should assess those capabilities. FNS officials also agreed that State agencies needed a process to ensure applicants' sites served different children than other sponsors' sites, but were concerned about how State agencies could accomplish it, given the complexities involved with determining which sites will ultimately become operational.

¹⁴ FNS' guidance does provide examples of circumstances when sites in relatively close proximity would be appropriate; however, these examples do not address how or when State agencies should assess these circumstances or ensure applicants' sites meet the regulatory requirements.

¹⁵ In addition to the 23 sponsors we non-statistically selected for review, we also used Audit Command Language software for the *Summer Food Service Program in Texas—Sponsor Costs* audit to analyze the entire program year 2016 participant data provided by the Texas State agency to identify meals being served at duplicate sites. This analysis identified an additional five sponsors beyond our sample that had duplicative sites.

¹⁶ Duplicative sites were those approved to operate the same meal service at the same location as other SFSP sites.

¹⁷ FNS Policy Memo SFSP 05-2017, *Summer Food Service Program Questions and Answers* (Dec. 1, 2016).

¹⁸ The 14 sponsors with sites in close proximity to or duplicative of other sites operated 543 total sites in 2016.

To ensure State agencies comply with program requirements, FNS needs to issue additional SFSP guidance that describes how sponsors can demonstrate their financial capabilities and how State agencies should assess this information. FNS should also issue guidance that describes how State agencies should ensure applicants' proposed sites do not serve the same meal to the same children as other SFSP sites in the same area.

Recommendation 1

Revise guidance to describe how SFSP applicants can demonstrate their financial management capabilities.

FNS Response

In its June 29, 2020, response, FNS stated:

FNS concurs with the intent of the recommendation. The agency published a proposed rule titled *Streamlining Program Requirements and Improving Integrity in the SFSP*, 85 FR 4064, on January 23, 2020. The rule proposes adding performance standards for organizations applying to participate as SFSP sponsors and also describes how SFSP applicants can demonstrate their financial management capabilities.

FNS completed this action on January 23, 2020.

OIG Position

We accept management decision for this recommendation.

Recommendation 2

Revise guidance to describe how State agencies should assess the applicants' financial capabilities to properly account for program funds.

FNS Response

In its June 29, 2020, response, FNS stated:

FNS concurs with the intent of the recommendation. The agency published a proposed rule titled *Streamlining Program Requirements and Improving Integrity in the SFSP*, 85 FR 4064, on January 23, 2020. The rule proposes adding performance standards for organizations applying to participate as SFSP sponsors. Specifically, these detailed performance standards will assist State agencies in assessing an applicant's financial viability and financial management and determining when they can and cannot approve an application.

FNS completed this action on January 23, 2020.

OIG Position

We accept management decision for this recommendation.

Recommendation 3

Revise guidance to describe how and when State agencies should ensure applicants' sites do not serve the same meal to the same children as other SFSP sites in the same area.

FNS Response

In its June 29, 2020, response, FNS stated:

To meet the intent of this recommendation, FNS will issue a best practices/technical assistance memorandum to reinforce previously provided guidance on how and when State agencies should ensure applicants' sites do not serve the same meal to the same children as other SFSP sites in the same area.

FNS provided an estimated completion date of May 31, 2021, for this action.

OIG Position

We accept management decision for this recommendation.

Recommendation 4

Provide State agencies with training and establish monitoring procedures for FNS to ensure its newly issued guidance (in Recommendations 1-3) is implemented and functioning effectively.

FNS Response

In its June 29, 2020, response, FNS stated:

FNS concurs with the intent of the recommendation and will pursue the following:

- FNS will provide State agencies with training/technical assistance on the newly recommended processes described in our responses to recommendations 1–3;
- FNS will establish monitoring procedures in the SFSP Management Evaluation (ME) Guide, as appropriate, to ensure State agencies are properly implementing newly recommended processes.

FNS provided an estimated completion date of May 31, 2021, for this action.

OIG Position

We accept management decision for this recommendation.

Finding 2: State SFSP Monitoring Requirements Need to be Updated

We found that FNS' State SFSP monitoring requirements did not include sufficient guidance for State agencies to ensure the accuracy of sponsor program payments. This occurred because FNS did not adequately update these requirements to reflect the impact of a 2008 statutory program change in the reimbursement process, which required sponsors to be reimbursed based solely on the sponsors' meal claims. FNS wanted State agencies to continue to review the sponsors' costs and ensure sponsors used SFSP funds for allowable purposes. However, the statutory change made these cost review procedures ineffective since they did not verify whether sponsors' underlying meal counts supported their claims for reimbursement. As a result, State agencies did not have the adequate monitoring procedures needed to detect sponsors over-claiming meals, which enabled 23 of the 28 sponsors we reviewed in 4 States to receive more than \$1.2 million of questionable SFSP reimbursements in 2016.¹⁹

Both the Office of Management and Budget (OMB) guidance and USDA regulations require agency managers to establish, maintain, evaluate, and improve internal controls in compliance with the Government Accountability Office's (GAO) *Standards for Internal Control in the Federal Government*.²⁰ These internal control standards require agency managers to reasonably ensure the integrity of program payments and the proper use of Federal funds. Accordingly, Federal agencies should implement control activities through policies and periodically review the policies, procedures, and related control activities for continued effectiveness. If there is a significant change in an agency's process, agency managers should review this process in a timely manner to determine whether the control activities are designed and implemented appropriately.²¹

Historically, SFSP reimbursed sponsors based on the lesser of the sponsors' (1) actual program costs or (2) meal counts multiplied by a designated rate. In 2008, the SFSP authorizing statute was amended, authorizing simplified procedures to reimburse sponsors based solely on the meal count calculation, without comparison to the sponsors' actual costs.²² Consequently, sponsors received SFSP reimbursement payments based on their self-certified meal claims. FNS, however, did not want the quality of the program to be diminished as a result of these simplified procedures. Therefore, FNS required that sponsors be able to document that they used the program funds for allowable costs.²³

From fiscal years (FY) 2017–2019, OIG issued State SFSP audit reports for California, Florida, New York, and Texas, all of which found the State agencies' monitoring of sponsor compliance

¹⁹ We reported the \$1.2 million of questionable reimbursements in the respective State SFSP audit reports; however, the State agencies are responsible for determining how much of these questioned amounts are non-reimbursable and must be recovered from the sponsors. The questionable reimbursements represent more than 21 percent of the approximately \$5.6 million SFSP reimbursements these 23 sponsors received for the period reviewed.

²⁰ OMB Circular A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control* (July 15, 2016); USDA Departmental Regulation 1110-002, *Management's Responsibility for Internal Control* (June 17, 2013).

²¹ GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Sep. 10, 2014).

²² Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008, Pub. L. No. 110-161, div. A, tit. VII, § 738, 121 Stat. 1844, 1880.

²³ FNS Policy Memo SFSP 05-2017, *Summer Food Service Program Questions and Answers* (Dec. 1, 2016).

needed improvement.²⁴ Subsequent to these State audits, in FY 2019, we determined FNS' 2018 State monitoring regulations and 2017 supplemental guidance did not adequately address the impact of the simplified procedures. For example, FNS did not require that State agencies independently verify the sponsors' underlying meal counts, which became the sole basis for the sponsors' program payments after the statutory change. Instead of verifying the sponsors' underlying meal counts, FNS' State monitoring guidance required that State agencies verify the sponsors' meal count consolidations.²⁵ Specifically, State agencies compared the sponsors' meal count forms, which indicated—via tallies—the number of meals served each day at each of the sponsors' sites to the total number of meals sponsors' claimed for reimbursement. While reviewing these forms may identify consolidation errors (i.e., mathematical errors made while totaling the site meal counts), State agencies could not use the forms to verify whether the sponsors' underlying meal counts were accurate.

FNS' State monitoring regulations and supplemental guidance also required State reviewers to assess sponsors' costs;²⁶ however, this assessment similarly did not verify the sponsors' claims for reimbursement. Specifically, State agencies reviewed all of the sponsors' costs for the month under review instead of focusing on those costs needed to confirm the claims.²⁷ FNS did not require State reviewers to analyze specific costs needed to support the sponsors' meal claims, such as milk and food receipts, and to ensure sponsors purchased enough of these items to support the number of meals they claimed for reimbursement.

Further, under the simplified procedures, it was difficult to hold sponsors accountable for their SFSP costs. Sponsors are reimbursed based on their meal counts multiplied by a fixed rate without comparison to their actual costs. Consequently, the State agencies could not ensure sponsors included all of their costs for review since the costs were no longer used to determine the sponsors' claims for reimbursement.²⁸ Also, State agencies could not recover unallowable costs from sponsors when those costs were identified.²⁹ Ultimately, State agencies performed these comprehensive sponsor cost reviews rather than using limited time and resources to verify the accuracy of meal claims and program payments.

²⁴ Audit Report 27004-0001-41, *California's Controls Over Summer Food Service Program*, Nov. 2018; Audit Report 27004-0001-31, *Florida's Controls Over Summer Food Service Program*, Aug. 2019; Audit Report 27004-0001-23, *New York's Controls Over Summer Food Service Program*, Sept. 2018; Audit Report 27004-0004-21, *Texas' Controls Over Summer Food Service Program*, Mar. 2019; and Audit Report 27004-0003-21, *Summer Food Service Program in Texas—Sponsor Costs*, Mar. 2019.

²⁵ USDA FNS, *FNS State Agency Monitor Guide, Summer Food Service Program* (2017).

²⁶ 7 CFR § 225.7(d)(2)(iii)(A); USDA FNS, *FNS State Agency Monitor Guide, Summer Food Service Program* (2017).

²⁷ All of the sponsors' costs could include items such as labor, transportation, and utility expenses.

²⁸ Sponsors could use SFSP reimbursements for unallowable purposes and not report those expenses to the State agency for review. Ultimately, the State agency would have no way to determine whether sponsors excluded unallowable costs since the amount of these excluded costs would appear to be "unused reimbursements" (which are discussed in Finding 3).

²⁹ FNS national office staff explained that State agencies could not recover funds properly paid (based on the number of meals served), even if the sponsors subsequently used these funds for unallowable costs. In lieu of recovery, FNS guidance suggested sponsors "replenish" unallowable costs to their non-profit food service accounts with non-USDA funds, but this policy was also problematic because the replenishment would be difficult for State agencies to verify.

FNS' State monitoring regulations and supplemental guidance also did not enable State agencies to independently verify the accuracy of meal claims for sponsors with self-prep sites since FNS did not require these sponsors to maintain the same level of documentation as sponsors with vended sites.^{30, 31} Unlike sponsors with vended sites, FNS did not require these sponsors to maintain delivery receipts, so there was no record of the number or type of meals or meal components delivered to the sites, nor the date and time of delivery. FNS also did not require sponsors with self-prep sites to maintain production records that documented the quantity of food prepared for each menu item served. It would be difficult for State agencies to determine (based on sponsors' cost records alone) whether those sponsors purchased an adequate amount of food to support their meal claims or whether the meals were eligible for reimbursement. Of the sponsors we reviewed, approximately 60 percent of their 918 sites were classified as self-prep.

We also identified other common State monitoring weaknesses during our State SFSP audits. While these issues were reported in the respective SFSP State audit reports, the consolidated State findings reflect common control weaknesses that FNS needs to address to further strengthen the overall review process. Table 1 below illustrates the common State monitoring issues reported in the OIG State-level SFSP audits.

Table 1. The Common State Monitoring Issues Reported in OIG State-Level Audits.

State Monitoring Issues	Number of States with Issue	Recommendation Example
Did not expand review scope beyond 1-month review period to identify noncompliance issues.	3	Recommended FNS advise the State agency of the best practice to expand the review under certain circumstances in which the State believes it is necessary to obtain sufficient information to ensure sponsor compliance with program requirements. ³²
Did not ensure sponsors' corrective actions were effective.	4	Recommended FNS direct the State agency to strengthen procedures to ensure corrective actions adequately address the sponsors' noncompliance. ³³
Did not maintain adequate documentation to support sponsor reviews.	4	Recommended FNS request the State agency to strengthen its guidance on how agency staff are to support conclusions made during administrative reviews. ³⁴

Given these State control weaknesses were identified at the majority of the States we reviewed, FNS needs to revise its requirements to ensure all State agencies perform adequate sponsor review procedures.

³⁰ Sponsors with self-prep sites prepare the meals that will be served at their sites and do not contract with a food service management company, and sponsors with vended sites purchase meals that will be served at their sites from a food service management company. *FNS Administration Guide SFSP* (2016).

³¹ USDA FNS, *FNS State Agency Monitor Guide, Summer Food Service Program* (2017); *FNS Administration Guide SFSP* (2016).

³² Audit Report 27004-0001-41, *California's Controls Over Summer Food Service Program*, Recommendation 11, Nov. 2018.

³³ Audit Report 27004-0001-23, *New York's Controls Over Summer Food Service Program*, Recommendation 3, Sept. 2018.

³⁴ Audit Report 27004-0001-31, *Florida's Controls Over Summer Food Service Program*, Recommendation 8, Aug. 2019.

We spoke with FNS officials, who agreed it may be more efficient and effective for State reviewers to focus their review on those costs needed to verify the accuracy of the sponsors' meal claims during the State monitoring process. FNS emphasized that it wanted to ensure sponsors maintained a non-profit food service and used program funds for allowable costs; however, officials recognized the need to improve the State monitoring process and verify sponsors' program payments under the permanent, simplified procedures authorized by statute. FNS also generally agreed with our other conclusions, though officials stated FNS could not revise its guidance and require State agencies to perform actions not specifically required by the regulations. Consequently, FNS officials stated FNS can suggest "best practices," but it cannot enforce these actions without a regulatory change.

However, SFSP regulations state that State agencies must enter into written agreements with FNS for the administration of the program.³⁵ These written agreements require that State agencies "comply with any FNS instructions, policy memoranda, guidance, and other written directives interpreting the program statutes and program regulations."³⁶ Therefore, FNS should be able to require State agencies to perform actions under the terms of the agreement until FNS determines whether it needs to update the regulations.

To ensure sponsor meal claims are properly payable, FNS should require State agencies to verify sponsor claims for reimbursement and revise other sponsor review procedures. Further, FNS should require sponsors with self-prep sites to maintain additional documentation to facilitate the State agency review. FNS should also analyze its SFSP State monitoring regulations and determine whether a regulatory change is needed to improve the efficiency and oversight of sponsor payments. Lastly, FNS should provide State agencies with training and establish monitoring procedures for FNS to ensure the new requirements are implemented and functioning effectively.

Recommendation 5

Require State agencies to verify that sponsor claims for reimbursement are properly payable by reviewing sponsor cost records needed to support the meal claim accuracy (i.e., milk and food receipts).

FNS Response

In its June 29, 2020, response, FNS stated:

FNS concurs with the intent of the recommendation. FNS will incorporate into existing handbook guidance recommended procedures and best practices for State agencies to review receipts, records, and other documentation that might support the accuracy of sponsor meal claims. Also, the handbook is required to include the following statement: "The contents of this guidance document do not have the force and effect of law and are not meant to bind the public

³⁵ 7 CFR § 225.3(b).

³⁶ Form FNS-74, *Federal-State Agreement Child Nutrition and Food Distribution Programs*.

in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.”

FNS provided an estimated completion date of May 31, 2021, for this action.

OIG Position

We do not accept management decision for this recommendation. Since FNS’ 2018 regulations did not adequately address the impact of the simplified procedures on the State monitoring requirements, the proposed “recommended procedures and best practices” would provide an appropriate interim solution but not permanently correct the identified deficiency. To reach management decision, FNS needs to require State agencies to verify that sponsor claims for reimbursement are properly payable by reviewing sponsor cost records needed to support the meal claim accuracy (i.e., milk and food receipts).

Recommendation 6

Require State agencies to: expand the sponsor review when reviewers identify meal claim deficiencies, ensure sponsor corrective actions address the underlying causes of the noncompliance issues, and maintain documentation related to the sponsors’ meal claims so State agencies can periodically verify the reviewers’ determinations.

FNS Response

In its June 29, 2020, response, FNS stated:

FNS concurs with the intent of the recommendation. The agency published a proposed rule titled *Streamlining Program Requirements and Improving Integrity in the SFSP*, 85 FR 4064, on January 23, 2020. The rule proposes adding in 7 CFR §225.7(e)(6) a new method for conducting meal claim validations as a part of the sponsor review. The proposed changes would include a multi-step approach to site-based meal claim validation. State agencies would initially validate a small sample of claims and would be required to expand the sponsor review to validate additional claims if sufficient error is detected. State agencies would be expected to maintain documentation of any claim adjustments and to also ensure that any corrective actions fully correct noncompliance.

FNS completed this action on January 23, 2020.

OIG Position

We do not accept management decision for this recommendation. While the proposed rule includes guidance to expand sponsor reviews if site meal claim validation errors are detected, the guidance is limited to meal counting or consolidation errors and does not address the other meal claim deficiencies we identified (such as insufficient support to verify whether sponsors purchased enough food to support their meal claims). In addition, FNS' response does not include actions regarding how FNS will ensure that sponsor corrective actions address the underlying causes of the noncompliance issues, or State agencies periodically verify the reviewers' determinations. To reach management decision, FNS needs to require State agencies to: expand the sponsor review when reviewers identify any meal claim deficiencies, ensure sponsor corrective actions address the underlying causes of the noncompliance issues, and maintain documentation related to the sponsors' meal claims so State agencies can periodically verify the reviewers' determinations.

Recommendation 7

Require that sponsors with self-prep sites maintain documentation to facilitate State agency meal claim verification, including production records and delivery receipts.

FNS Response

In its June 29, 2020, response, FNS stated:

FNS concurs with the intent of the recommendation. The agency published a proposed rule titled *Streamlining Program Requirements and Improving Integrity in the SFSP*, 85 FR 4064, on January 23, 2020. The rule proposes adding in 7 CFR §225. 7(e)(6) "*Meal claim validation. As part of every sponsor review, the State agency must validate the sponsor's meal claim utilizing a record review process developed by the State agency that must include, at a minimum, reconciling delivery receipts, daily meal counts from sites, and the sponsor's claim consolidation spreadsheet against the meals claimed for reimbursement by the sponsor for the period under review.*"

FNS will incorporate into existing handbook guidance the recommendation that sponsors with self-prep sites maintain documentation to facilitate State agency meal claim verification, including production records and delivery receipts. It should be noted that the handbook will include the following statement: "The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies."

FNS provided an estimated completion date of May 31, 2021, for this action.

OIG Position

We do not accept management decision for this recommendation. The proposed rule includes requirements for the State review of certain sponsor documentation (such as delievery receipts, daily meal count forms, etc.); however, it does not require sponsors with self-prep sites to specifically maintain production records. Further, while FNS' proposed revisions to the handbook are an appropriate interim solution, the recommended guidance does not permanently correct the identified deficiency by establishing a requirement for sponsors with self-prep sites maintain production records and delivriery receipts. To reach management decision, FNS needs to require that sponsors with self-prep sites maintain documentation to facilitate State agency meal claim verification, including production records and delivery receipts.

Recommendation 8

Evaluate SFSP State monitoring regulations to determine whether regulatory changes are needed for State agencies to verify sponsors' claims for reimbursement and ensure program payment accuracy.

FNS Response

In its June 29, 2020, response, FNS stated:

FNS concurs with the intent of the recommendation. The agency published a proposed rule titled *Streamlining Program Requirements and Improving Integrity in the SFSP*, 85 FR 4064, on January 23, 2020. The rule proposes adding in 7 CFR §225.7(e)(6) a new method for conducting meal claim validations as a part of the sponsor review. The proposed changes includes a multi-step approach to site-based meal claim validation.

FNS completed this action on January 23, 2020.

OIG Position

We accept management decision for this recommendation. We recognize that FNS evaluated the State monitoring regulations and determined changes were needed in the meal validation process; however, we also identified other State monitoring areas that need to be strengthened as explained in Recommendations 5-7.

Recommendation 9

Provide State agencies with training and establish monitoring procedures for FNS to ensure the new requirements (in Recommendations 5-7) are implemented and functioning effectively.

FNS Response

In its June 29, 2020, response, FNS stated:

FNS concurs with the intent of the recommendation and will pursue the following:

- FNS will provide State agencies with training/technical assistance on the newly recommended processes described in our responses to recommendations 5–8;
- FNS will establish monitoring procedures in the SFSP ME Guide, as appropriate, to ensure State agencies are properly implementing new recommended processes.

FNS provided an estimated completion date of May 31, 2021, for this action.

OIG Position

We accept management decision for this recommendation.

Finding 3: State Agencies and Sponsors Need Guidance to Calculate and Monitor Unused Reimbursements

We found that sponsors and State agencies we reviewed did not consistently identify SFSP unused reimbursements or ensure the funds were used for allowable purposes. This occurred because FNS' guidance did not describe how to calculate the unused reimbursement amounts and monitor these funds. As a result, sponsors could accumulate unused reimbursements and use the funds for unallowable purposes—such as purchasing cars or other assets—without the State agencies' knowledge. Based on OIG's calculations and sponsor self-reported amounts, we found that 82 sponsors in the 4 States we reviewed may have had about \$6 million of unused reimbursements in 2016.³⁷ Absent sufficient oversight, children may not benefit from the funds through SFSP meal service and quality improvements, SFSP expansion, or other child nutrition programs (CNP).

As required by the Consolidated Appropriations Act, 2008, State agencies reimburse sponsors based on simplified procedures that multiply meal counts by a designated rate “without regard to [the sponsors'] actual SFSP costs.”³⁸ Under these simplified procedures, sponsors may have “unused reimbursements” if their SFSP reimbursements exceed their actual program expenditures.³⁹ In 2018, FNS issued regulations that stated sponsors should use SFSP unused reimbursements to improve program meal service or management.⁴⁰ The regulations further stated, “[u]nused reimbursements remaining at the end of the Program year must be used to pay for allowable costs of sponsors' other Child Nutrition Programs or for their SFSP operations the

³⁷ For 2016, 39 sponsors in Florida and 39 in New York self-reported more than \$5.6 million of unused reimbursements. Additionally, for 2016, OIG identified that two of the five sponsors we reviewed in California had upwards of \$443,000 of unused reimbursements, and two of the five sponsors we reviewed in Texas also self-reported more than \$27,000 of unused reimbursements. We cannot attest to the accuracy of sponsors' self-reported amounts, as we did not know records or formulas used. Also, we cannot determine the total number of sponsors with unused reimbursements due to the lack of clear guidance for calculating and monitoring unused reimbursement funds. Consequently, it was not possible to determine how many of the 1,099 sponsors operating in the four States we reviewed actually had unused reimbursements in 2016.

³⁸ FNS Policy Memo SFSP 01-2008, *Nationwide Expansion of Summer Food Service Program Simplified Cost Accounting Procedures* (Jan. 2, 2008), which implemented requirements of the Consolidated Appropriations Act of 2008, Pub. L. No. 110-161, 121 Stat. 1844.

³⁹ FNS' formal written guidance from 2008 through May 2018 used the term “excess funds” to describe sponsor SFSP reimbursements that exceed SFSP costs. FNS Policy Memo SFSP 05-2017, *Summer Food Service Program Questions and Answers* (Dec. 1, 2016); FNS Policy Memo SFSP 08-2016, *Summer Food Service Program Questions and Answers* (Nov. 12, 2015); FNS Policy Memo SFSP 10-2015, *Summer Food Service Program Questions and Answers 2014* (Dec. 12, 2014); FNS Policy Memo SFSP 09-2014, *Summer Food Service Program Questions and Answers 2014* (Nov. 12, 2013); FNS Policy Memo SFSP 05-2013, *Summer Food Service Program Questions and Answers* (Nov. 23, 2012); FNS Policy Memo SFSP 01-2008, *Nationwide Expansion of Summer Food Service Program Simplified Cost Accounting Procedures* (Jan. 2, 2008).

⁴⁰ Simplified Cost Accounting and Other Actions to Reduce Paperwork in the Summer Food Service Program, 83 Fed. Reg. 25349 (June 1, 2018). These regulations codified the nondiscretionary simplified cost accounting and reporting procedures established in the Consolidated Appropriations Act, 2008 (Pub. L. 110-161) and some aspects of previously issued guidance.

following Program year.”⁴¹ FNS also required sponsors and State agencies to monitor SFSP unused reimbursements to ensure the funds were used for “authorized purposes.”⁴²

We conducted SFSP audits for California, Florida, New York, and Texas, and non-statistically selected five sponsors in each State for review. We found that guidance was needed to identify, calculate, and monitor sponsors’ unused reimbursements. We also found that the State agencies did not consistently require corrective action by sponsors when State reviewers identified unused reimbursements. These weaknesses are described below.

Guidance Needed to Properly Identify Unused Reimbursement Amounts and Monitor Sponsors’ Use of These Funds

Sponsors and State agencies used inconsistent methodologies to identify unused reimbursement amounts, and State agencies did not sufficiently monitor whether sponsors used these funds for allowable purposes. This occurred because FNS’ guidance did not provide instructions on how SFSP unused reimbursement amounts should be calculated or address the complexities involved with monitoring these funds. As a result, sponsors’ reported unused reimbursements amounts were unreliable, and sponsors were able to use these funds for unallowable purposes.

The identified unused reimbursement amounts were unreliable because some State agencies and sponsors used different time periods and accounting methods to calculate the unused reimbursement amounts, and identified income and expenses differently. For example, some sponsors used a calendar year (January through December) to calculate income and expenses, while others used their own fiscal year (July through June). Others used different accounting methods to calculate unused reimbursement amounts. For instance, some sponsors used an accrual basis of accounting, while others used a cash basis of accounting.⁴³ Further, we found inconsistencies in sponsors’ and State agencies’ identification of income and expenses used in the unused reimbursement calculation. In

⁴¹ 7 CFR § 225.9(g). FNS’ policy in effect from 2012 through May 2018 directed sponsors to use unused reimbursements remaining at the end of the program year to pay for the allowable costs of the sponsors’ other CNPs or for their SFSP operations the following program year. However, unlike the current regulations that allow sponsors to keep unused reimbursements if they have no other CNPs and do not participate in SFSP the following year, the policy directed States to collect these funds. FNS Policy Memo SFSP 05-2017, *Summer Food Service Program Questions and Answers* (Dec. 1, 2016); FNS Policy Memo SFSP 08-2016, *Summer Food Service Program Questions and Answers* (Nov. 12, 2015); FNS Policy Memo SFSP 10-2015, *Summer Food Service Program Questions and Answers 2014* (Dec. 12, 2014); FNS Policy Memo SFSP 09-2014, *Summer Food Service Program Questions and Answers 2014* (Nov. 12, 2013); FNS Policy Memo SFSP 05-2013, *Summer Food Service Program Questions and Answers* (Nov. 23, 2012).

⁴² USDA FNS Instruction 796-4, Rev. 4, *Financial Management—Summer Food Service Program for Children*, (April 1994). To be allowable under SFSP, costs must be necessary and reasonable for proper and efficient administration of the program and conform to applicable Federal regulations and FNS limitations, and meet other requirements set forth in FNS Instruction 796-4.

⁴³ “Accrual basis” is a method of recording accounting transactions for revenue when earned and expenses when incurred, while “cash basis” is a method of recording accounting transactions for revenue when received and expenses when paid. These accounting methods capture different amounts of income and expenses and result in different amounts of unused reimbursements.

the absence of clear guidance, the calculation of unused reimbursements resulted in different unused reimbursement amounts.⁴⁴

State agencies also did not adequately monitor sponsors' use of the SFSP unused reimbursements. While sponsors can use unused reimbursements to pay for allowable costs of their other CNPs,⁴⁵ FNS did not provide State agencies with sufficient instructions on how to verify whether sponsors met this requirement. FNS suggested that State agencies "may need to do a cross-program fiscal review/desk audit," but it did not require States to perform these reviews or outline how the reviews should be completed.⁴⁶ Sponsors can also use SFSP unused reimbursements for allowable costs of their SFSP operations the following year; however, FNS similarly did not provide State agencies with instructions to verify whether sponsors met this requirement. While FNS required State agencies to conduct sponsor administrative reviews, these reviews were not sufficient to verify the sponsors' unused reimbursements: State agencies generally conducted administrative reviews on a 3-year cycle;⁴⁷ State agencies reviewed only a single month of the sponsors' SFSP costs during the sponsor review;⁴⁸ and State reviewers were unable to determine whether sponsors paid the costs with the prior year's unused reimbursements or with other, current-year income.

Guidance Needed for Unused Reimbursement Corrective Actions

State agencies did not consistently require sponsor corrective actions for sponsor unused reimbursements. This occurred because FNS' guidance did not clearly define when State agencies should require corrective action. As a result, some sponsors could accumulate unused reimbursements without State agencies requiring any corrective action to ensure the funds were used properly.

FNS' guidance directed State agencies to require corrective action if the State reviewers identified an "excessive gap" between a sponsor's reimbursements and expenditures; however, it did not define what amount constituted an "excessive gap."⁴⁹ Consequently, State agencies did not consistently require sponsor corrective actions for unused reimbursements. For example, one sponsor reported more than \$30,000 of unused reimbursements, but the State agency did not require any corrective action. Another

⁴⁴ For example, one sponsor did not identify any unused reimbursements based on its fiscal year, yet the State agency reviewer determined that the sponsor had nearly \$30,000 of unused reimbursements by calculating the sponsor's program income and expenses for the summer months.

⁴⁵ 7 CFR § 225.9(g).

⁴⁶ USDA FNS, *FNS State Agency Monitor Guide, Summer Food Service Program* (2017).

⁴⁷ 7 CFR § 225.7(d)(2). FNS regulations require States to conduct sponsor administrative reviews at least once every 3 years, and annually review a number of sponsors whose program reimbursements, in the aggregate, accounted for at least one-half of the total program meal reimbursements in the State in the prior year.

⁴⁸ USDA FNS, *FNS State Agency Monitor Guide, Summer Food Service Program* (2017). State agencies verify sponsor costs for the month of review, which are based on the sponsors' most recent claim for reimbursement.

⁴⁹ This direction is not a regulatory requirement. USDA FNS, *FNS State Agency Monitor Guide, Summer Food Service Program* (2017); FNS Policy Memo SFSP 05-2017, *Summer Food Service Program Questions and Answers* (Dec. 1, 2016).

State reviewer identified \$29,000 of unused reimbursements and required the sponsor to provide a written explanation of how and when the funds would be used.⁵⁰

While FNS revised its program regulations in June 2018,⁵¹ it did not provide specific guidance on how sponsors and State agencies should identify and calculate unused reimbursement amounts or how State agencies should monitor and verify sponsors' use of these funds. We spoke with FNS officials, who generally agreed further guidance was needed for unused reimbursements. However, they were concerned that State agencies would not be able to completely verify sponsors' use of the funds, especially from prior years when operating multiple programs. According to FNS national office staff, large sums of unused reimbursements would be a "red flag" that sponsors may have overstated their meal claims. However, as long as the State agencies verified that sponsors' meal claims were accurate (see Finding 2), it should reduce the likelihood that sponsors accumulate unused reimbursements and the need for State agencies to fully verify sponsors' use of these funds. Nevertheless, in the absence of additional guidance, the sponsors' and State agencies' identification and oversight of unused reimbursements is likely to continue to be inconsistent and unreliable.

In addition, we found FNS' 2018 regulations implemented a new requirement that limited the sponsors' "net cash resources."⁵² However, these new requirements could result in the same challenges identified for unused reimbursements above. FNS did not define this term and the requirement similarly lacked guidance on how sponsors and State agencies should calculate "net cash resources" amounts or how State agencies should monitor and verify sponsors' compliance. Consequently, although FNS added additional regulatory requirements to monitor sponsors' program funds, it did not address the unused reimbursement issues we found.

To improve oversight of unused reimbursements, FNS should issue guidance that outlines how sponsors and State agencies should identify and calculate unused reimbursement amounts and how State agencies should monitor these funds. Further, FNS should define "excessive gaps" and "net cash resources," and issue guidance that outlines how sponsors and State agencies should identify and calculate net cash resources amounts. Lastly, FNS should monitor sponsor and State agency compliance with newly issued guidance to ensure it is implemented and functioning effectively.

Recommendation 10

Revise guidance to provide clarification to sponsors and State agencies on how to identify and calculate unused reimbursement amounts, such as outlining timeframes and accounting methods that should be used and the income and costs that should be included.

⁵⁰ The unused reimbursements for these two sponsors represented more than 13 percent of the nearly \$452,000 SFSP reimbursements they received for the period reviewed.

⁵¹ 83 Fed. Reg. 25349.

⁵² 7 CFR § 225.7(d)(2)(iii)(C).

FNS Response

In its June 29, 2020, response, FNS stated:

FNS concurs with the intent of the recommendation. Current regulations at 7 CFR Part 225.9(g) state that “If a sponsor receives more reimbursement than expended on allowable costs, the sponsor should use this unused reimbursement to improve the meal service or management of the Program. Unused reimbursement remaining at the end of the Program year must be used to pay allowable costs of other Child Nutrition Programs or for SFSP.” Consistent with regulatory authority, FNS will update the information on unused reimbursement in two previously issued memos to clarify when a sponsor receives more reimbursement than expended on allowable costs, the sponsor should use this unused reimbursement to improve the meal service or management of the Program. As noted in regulations, all unused reimbursement remaining at the end of the Program year must be used to pay allowable costs of other Child Nutrition Programs or for SFSP, for sponsors that continue to operate the Program. FNS will also develop a best practice memorandum addressing how to identify and calculate unused reimbursement amounts.

FNS provided an estimated completion date of May 31, 2021, for this action.

OIG Position

We accept management decision for this recommendation.

Recommendation 11

Revise guidance to provide instructions to State agencies on how to monitor and verify the sponsors’ use of unused reimbursements, including directions for cross-program reviews and sufficient followup, and to define what constitutes an “excessive gap” for unused reimbursement corrective action requirements.

FNS Response

In its June 29, 2020, response, FNS stated:

FNS concurs with the intent of the recommendation. Consistent with regulatory authority, FNS will update memos with language from the final rule, “*Simplified Cost Accounting and Other Actions to Reduce Paperwork in the SFSP*”, 83 FR 25349, published June 1, 2018:

- SFSP 01-2008, *Nationwide Expansion of Summer Food Service Program Simplified Cost Accounting Procedures*, published January 2, 2008, by replacing the words “excess funds” with “unused reimbursement.”
- SFSP 05-2017, *Summer Food Service Program Questions and Answers*, published December 1, 2016 by replacing the words “excess funds” with “unused reimbursement,” and revising “excessive gap” (which is not a defined term).

FNS will also develop a best practice memorandum addressing how to monitor and verify the sponsors' use of unused reimbursements. It should be noted that the memorandum will include the following statement: "The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies."

FNS provided an estimated completion date of May 31, 2021, for this action.

OIG Position

We accept management decision for this recommendation.

Recommendation 12

Revise guidance to define the SFSP regulatory term "net cash resources" and provide instructions to sponsors and State agencies on how to identify and calculate the amounts.

FNS Response

In its June 29, 2020, response, FNS stated:

FNS concurs with the intent of the recommendation. The agency published a proposed rule titled *Streamlining Program Requirements and Improving Integrity in the SFSP*, 85 FR 4064, on January 23, 2020. The rule proposes defining "net cash resources" to align with the term already defined under the National School Lunch Program (NSLP) and to assist State agencies with identifying and calculating the amounts.

FNS completed this action on January 23, 2020.

OIG Position

We accept management decision for this recommendation.

Recommendation 13

Provide State agencies with training and establish monitoring procedures for FNS to ensure its newly issued guidance (in Recommendations 10-12) is implemented and functioning effectively.

FNS Response

In its June 29, 2020, response, FNS stated:

FNS concurs with the intent of the recommendation and will pursue the following:

- FNS will provide State agencies with training/technical assistance on the newly recommended processes described in our responses to recommendations 10–12;
- FNS will establish monitoring procedures in the SFSP ME Guide, as appropriate, to ensure State agencies are properly implementing new recommended processes.

FNS provided an estimated completion date of May 31, 2021, for this action.

OIG Position

We accept management decision for this recommendation.

Finding 4: FNS Needs to Strengthen Its Oversight of State Agencies

FNS conducts MEs to ensure State agencies comply with SFSP requirements; however, we found that FNS' most recent ME reviews did not identify 16 of the 17 instances of State noncompliance we included in our State SFSP reports.⁵³ This occurred because FNS assessed State oversight, with limited staff resources, by relying on State-provided information without further verification. As a result, FNS missed opportunities to correct the State weaknesses and improve program integrity. This enabled sponsor noncompliance with program eligibility, financial management, and outreach requirements, as we reported to the States.^{54, 55}

USDA regulations require agency managers to establish internal controls to ensure effective, efficient operations and compliance with applicable laws and regulations.⁵⁶ Accordingly, one of FNS' key responsibilities is its oversight of SFSP, which is administered through State agencies. FNS regional offices conduct ME reviews to assess the State agencies' administration of SFSP and oversight of sponsor compliance with program requirements. The ME review process is FNS' primary tool for monitoring the State agencies' management of the program and ensuring that program funds are implemented effectively and consistently with applicable laws and regulations.⁵⁷

While FNS' ME review process appears to be comprehensive, it was not sufficient to ensure State agencies were providing adequate oversight of the program. We non-statistically selected four State agencies for review and identified SFSP application and monitoring weaknesses that FNS did not detect during its most recent ME reviews of these State agencies.⁵⁸

As reported in Finding 1, three of the four State agencies we reviewed had SFSP application weaknesses that FNS did not identify during its ME reviews. For example, a 2015 ME question asked whether a State agency conducted pre-approval visits to assess the applicants' potential for successful program operations, such as the ability to properly account for program funds. The ability to properly account for program funds is an eligibility requirement to ensure sponsors have procedures to properly track their program funds separately from other funds and use the funds for allowable purposes.⁵⁹ The State responded that it conducted preapproval visits and

⁵³ See Findings 1 and 2 for more information on the State SFSP application and monitoring weaknesses we found. Also, see Exhibit C for a summary of the State noncompliance issues we reported.

⁵⁴ Audit Report 27004-0001-41, *California's Controls Over Summer Food Service Program*, Nov. 2018; Audit Report 27004-0001-31, *Florida's Controls Over Summer Food Service Program*, Aug. 2019; Audit Report 27004-0001-23, *New York's Controls Over Summer Food Service Program*, Sept. 2018; and Audit Report 27004-0004-21, *Texas' Controls Over Summer Food Service Program*, Mar. 2019.

⁵⁵ See Exhibit B for the noncompliant issues (program eligibility, financial management, questioned costs, and outreach) identified during the multi-phase audits.

⁵⁶ USDA Departmental Regulation 1110-002, *Management's Responsibility for Internal Control* (June 17, 2013).

⁵⁷ FNS, *National Management Evaluation/Financial Management (ME/FMR) Review Guidance* (Feb. 2017).

⁵⁸ For more information on the State SFSP application weaknesses we identified, see Audit Report 27004-0001-41, *California's Controls Over Summer Food Service Program*, Nov. 2018; Audit Report 27004-0001-31, *Florida's Controls Over Summer Food Service Program*, Aug. 2019; and Audit Report 27004-0004-21, *Texas' Controls Over Summer Food Service Program*, Mar. 2019.

⁵⁹ USDA FNS Instruction 796-4, Rev.4, *Financial Management—Summer Food Service Program for Children* (April 1994).

documented its assessment of the applicant on preoperational visit forms. The FNS regional office then reviewed a sample of State SFSP application files (including the State agency-completed preoperational visit forms) and did not identify any weakness in the State's assessment of SFSP applications. However, our review determined that the State agency's assessment of applicants was not sufficient, but FNS did not identify this issue because it limited its ME reviews to the State-prepared forms and did not trace the information back to supporting documentation or sources.

Each of the State agencies we reviewed also had SFSP monitoring weaknesses that FNS did not identify in its ME reviews.⁶⁰ For example, a 2014 ME question asked a State agency to describe how it reviewed sponsor financial records, including the assessment of allowable costs. The State responded by describing its process for State reviewers to assess sponsor documentation and provide sponsors with technical assistance or required corrective action if program violations were found. The FNS regional office then reviewed a sample of State SFSP monitoring files (including the State agency-completed sponsor review forms), and it did not identify any weakness in the State agency's monitoring of sponsor costs. However, we determined that the State agency did not sufficiently monitor sponsors, but FNS did not identify this issue because it did not review other independent sources of documentation, such as sponsor cost records, to ensure the State reviewers' determinations were correct.

We spoke with FNS officials who generally agreed FNS should independently verify State responses. While officials were concerned about the regional offices' ability to do additional verification (due to limited staff resources), they agreed FNS could improve its system to monitor the State agencies' oversight. For example, FNS regional offices could review sponsor records for a sample of sponsors during the ME reviews, or ask State agencies to obtain and provide sponsor records for FNS' review.

While we recognize that FNS cannot verify all of the State agencies' conclusions, FNS could periodically expand its ME review process to occasionally sample sponsor-level documentation. Expanding the ME review could help FNS determine whether its guidance to State agencies is clear and sufficient. Moreover, the expanded review would allow FNS to identify opportunities to provide State agencies with technical assistance or additional training and ensure the State agencies properly administer the program. Therefore, FNS should develop procedures for FNS ME reviewers to independently verify the State agencies' responses to ME oversight questions.

Recommendation 14

Develop procedures for FNS ME reviewers to expand their review to independently verify key State agencies' responses to ME oversight questions, such as periodically sampling and reviewing sponsor-level documentation.

⁶⁰ For more information on the State SFSP monitoring weaknesses we identified, see Audit Report 27004-0001-41, *California's Controls Over Summer Food Service Program*, Nov. 2018; Audit Report 27004-0001-31, *Florida's Controls Over Summer Food Service Program*, Aug. 2019; Audit Report 27004-0001-23, *New York's Controls Over Summer Food Service Program*, Sept. 2018; and Audit Report 27004-0004-21, *Texas' Controls Over Summer Food Service Program*, Mar. 2019.

FNS Response

In its June 29, 2020, response, FNS stated:

FNS concurs with the intent of the recommendation. FNS ME reviewers are required to verify State agency responses to ME oversight questions. FNS will update the reviewer's tips section of the SFSP ME Guide to reiterate that ME reviewers must verify State agency responses and can expand their verification of responses as necessary to assess compliance with Program requirements.

FNS provided an estimated completion date of May 31, 2021, for this action.

OIG Position

We accept management decision for this recommendation.

Recommendation 15

Provide ME reviewers with training to ensure its newly issued procedures (in Recommendation 14) are correctly implemented.

FNS Response

In its June 29, 2020, response, FNS stated:

FNS concurs with the intent of the recommendation and will conduct internal training for ME reviewers on updates made to the SFSP ME Guide.

FNS provided an estimated completion date of May 31, 2021, for this action.

OIG Position

We accept management decision for this recommendation.

Scope and Methodology

We consolidated relevant results and common control issues from five multi-phase SFSP audits (one at the FNS agency level and four at the State agency level), and a sixth audit of sponsor costs in the State of Texas.⁶¹ The FNS agency-level audit, issued in 2018, evaluated FNS program controls at the national and regional levels and was conducted at FNS' national office in Alexandria, Virginia, and four regional offices.⁶² The State agency-level audits and the *Summer Food Service Program in Texas—Sponsor Costs* audit, issued in 2018 and 2019, evaluated program controls at the State level and sponsor compliance with program requirements. These State-level audits were conducted at four State agencies in California, Florida, New York, and Texas.⁶³ In total, the work performed in the five SFSP audits and the sixth *Summer Food Service Program in Texas—Sponsor Costs* audit included OIG review of FNS and State program operations from FYs 2014–2016 and OIG's non-statistical selection of 30 sponsors in 4 States.

In each of the State agency-level audits listed above, OIG non-statistically selected a sponsor that was one of the following:

- a school food authority,
- a non-profit organization sponsor that had rural open sites,
- a non-profit organization that had urban open sites,
- a non-profit organization that had vended open sites, or
- a non-profit organization that had self-prep open sites.

In the *Summer Food Service Program in Texas—Sponsor Costs* audit, OIG identified and selected the sponsors based on four risk factors that indicated the sponsors were at high risk for receiving improper payments. The risk factors included: (1) sponsors with site addresses that were duplicate and/or similar, (2) entity or site linkage between previously terminated sponsors and the participating sponsor, (3) entity linkage between food service, milk, and juice vendors and other participating sponsors, and (4) meal service end times that were 15 minutes or less before the start of a second meal service. In addition, that audit used Audit Command Language software to analyze the entire program year 2016 participant data provided by the State agency to identify meals being served at duplicate sites.

OIG also performed auditor observations at 96 sites from June through August 2017. See Table 2 below.

⁶¹ Audit Report 27601-0004-41, *FNS Controls Over Summer Food Service Program*, Mar. 2018; Audit Report 27004-0001-41, *California's Controls Over Summer Food Service Program*, Nov. 2018; Audit Report 27004-0001-31, *Florida's Controls Over Summer Food Service Program*, Aug. 2019; Audit Report 27004-0001-23, *New York's Controls Over Summer Food Service Program*, Sept. 2018; Audit Report 27004-0004-21, *Texas' Controls Over Summer Food Service Program*, Mar. 2019; and Audit Report 27004-0003-21, *Summer Food Service Program in Texas—Sponsor Costs*, Mar. 2019.

⁶² The four FNS regional offices were the Northeast Regional Office in Boston, Massachusetts; the Southeast Regional Office in Atlanta, Georgia; the Southwest Regional Office in Dallas, Texas; and the Western Regional Office in San Francisco, California.

⁶³ The four State agencies were: California Department of Education, Florida Department of Agriculture and Consumer Services, New York State Education Department, and Texas Department of Agriculture.

Table 2: SFSP Sites Reviewed from June through August 2017

OIG Audit	Sponsors Reviewed	Sites Reviewed
California	5	16
Florida	5	25
New York	5	25
Texas	5	23
Texas (Sponsor Costs)*	10	7
Total	30	96
<p>* <i>The Summer Food Service Program in Texas—Sponsor Costs</i> audit originally non-statistically selected 10 sponsors for review; however, 2 of these sponsors did not respond to OIG’s or the State agency’s preliminary request for documentation. OIG reported these sponsors’ noncompliance in Interim Report 27004-0003-21(1). <i>The Summer Food Service Program in Texas—Sponsor Costs</i> audit reviewed and analyzed the eight remaining sponsors.</p>		

In this final phase of OIG’s SFSP audit work, we also interviewed FNS staff at the national office level and performed supplemental analyses from August 2018 through July 2019 to determine whether any additional controls were needed to enhance SFSP efficiency and effectiveness.

In developing findings for this report, we:

- Reviewed the pertinent executive orders, laws and regulations governing SFSP, and the current policies and procedures FNS established as guidance for State agencies, sponsors, and sites.
- Identified and consolidated control weaknesses and common issues related to program administration and sponsor oversight identified in the FNS agency-level and State agency-level audits and summarized any additional potential issues identified during the SFSP consolidation audit work.
- Interviewed FNS national officials to discuss the control weaknesses/common issues identified and to determine what controls could be implemented to ensure State agencies, sponsors, and sites complied with Federal program regulations and policies.

During the course of our audit, we did not solely rely on or verify information in any agency information systems and we make no representation regarding the adequacy of any agency computer systems, or the information generated from them, because the fundamental processes related to the engagement objective did not rely on information systems or information technology.

We conducted this performance 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Abbreviations

CFR.....	Code of Federal Regulations
CNP.....	Child Nutrition Programs
FNS.....	Food and Nutrition Service
Fed. Reg.	Federal Register
FY.....	fiscal year
GAO.....	Government Accountability Office
ME.....	management evaluation
NSLA.....	Richard B. Russell National School Lunch Act
OIG.....	Office of Inspector General
SFSP.....	Summer Food Service Program
U.S.C.	United States Code
USDA.....	United States Department of Agriculture

Exhibit A: Summary of Monetary Results

Exhibit A summarizes the monetary results for our audit report by finding and recommendation number.

Finding	Recommendation	Description	Category	Amount
3	11	Potentially Misreported/Misused Unused Reimbursements	Funds To Be Put To Better Use	\$6,089,279
Total				\$6,089,279

Exhibit B: Consolidated Sponsor Noncompliance and Site Proximity Issues

Exhibit B summarizes the sponsor noncompliance and site proximity issues identified in the five State agency-level SFSP reports.

State	No. of Sponsor Inadequate Financial Management System/Inaccurate Financial Reporting Issues	No. of Sponsor Duplicate Sites or Sites In Close Proximity	No. of Sponsor Questionable SFSP Reimbursements/Costs	No. of Sponsor Outreach Issues
California	2	4	4	3
Florida	5	3	5	5
New York			5	1
Texas	5		5	
Texas (Sponsor Costs)	6	2	8	
Total	18	9*	27	9
<p>* Audit Report 27004-0003-21, <i>Summer Food Service Program in Texas—Sponsor Costs</i> (Mar. 2019), analyzed the entire 2016 program year participant data to identify duplicate sites. The audit identified an additional 5 sponsors that operated 4 duplicate sites, so the State SFSP audit reports identified 14 sponsors with site proximity issues.</p>				

Exhibit C: Consolidated State Noncompliance Issues

Exhibit C summarizes the instances of State noncompliance issues reported in the five State agency-level SFSP audit reports and FNS' most recent ME review results. These noncompliance issues are limited to issues that were included as part of FNS' ME review process.

State Noncompliance Issue	No. of States with Issue Identified by OIG Audit	No. of States with Issue Identified by FNS ME Review
State did not ensure SFSP applicants met financial management requirements.	3	0
State did not incorporate prior sponsor reviews in its application process and did not ensure applicant resolved prior operational problems and was eligible to participate in the program.	1	0
State did not verify applicant-provided information.	1	0
State did not properly approve sites.	3	0
State reimbursed sponsors for meals served at sites prior to the State's approval of site operations.	1	0
State did not ensure sponsor corrective actions were effective.	4	1
State did not adequately train staff to review sponsors' financial capabilities.	2	0
State reimbursed sponsor for meals served on unapproved days.	1	0
State did not disallow vended meals served in excess of meal caps.	1	0
Total	17	1

**AGENCY'S
RESPONSE TO AUDIT REPORT**



Food and
Nutrition
Service

DATE: June 29, 2020

1320
Braddock
Place
Alexandria,
VA
22314

AUDIT
NUMBER: 27601-0005-41

TO: Gil H. Harden
Assistant Inspector General for Audit

FROM: Pamilyn Miller /s/
Administrator
Food and Nutrition Service

SUBJECT: Consolidated Report of the Food and Nutrition Service (FNS) and Selected State Agencies' Controls Over the Summer Food Service Program (SFSP)

This letter responds to the official draft report for audit number 27601-0005-41, Consolidated Report of FNS and Selected State Agencies' Controls Over SFSP. Specifically, FNS is responding to the fifteen recommendations in the report.

FNS Response to the Introduction Section of the Audit Report, "What OIG Found":

FNS supports OIG's objectives to consolidate relevant results and common control issues identified by OIG based on six SFSP audits at FNS and four States and to also determine whether any additional controls are needed to enhance SFSP efficiency and effectiveness. FNS believes strongly that the integrity of Program operations must be preserved in order to provide the 11.2 million children living in food insecure households in America with access to nutritious meals when school is not in session.¹

Since OIG began its series of SFSP audits in the fall of 2016, which resulted in this consolidated report, much has changed with respect to FNS programs including the SFSP. On October 9, 2019, the President signed Executive Order (EO) 13891, *Promoting the Rule of Law through Improved Agency Guidance Documents*, providing official changes to how the United States Department of Agriculture (USDA) issues guidance documents. On June 3, 2020, USDA published an implementing regulation, *Review and Issuance of Guidance Documents*, 85 Fed. Reg. 34085, codified at 7 CFR 1.9 et seq. In addition, the economic impact of the novel coronavirus (COVID-19) pandemic and the issuance of waivers for the SFSP to ease operations at the state and local levels and minimize the potential exposure to COVID-19 allow SFSP sites to operate under conditions that are fundamentally different from usual operations.

Following OIG's fieldwork concluding in late summer of 2019, FNS expressed concerns in the agency closeout meeting regarding the receipt of recommendations that requested FNS to impose additional requirements on State agencies via supplemental guidance. FNS advised the audit

¹ *Household Food Security in the United States in 2018*, p. 10. USDA Economic Research Service, September 2019. <https://www.ers.usda.gov/webdocs/publications/94849/err-270.pdf?v=7515.8>

team that guidance generally does not carry the force of law because it is not compatible with the Administrative Procedure Act (APA), 5 USC 553, et seq., EO 13891, or the Office of Management and Budget's (OMB) EO 13891 implementation guidance released on October 31, 2019.

OIG proceeded with the release of their discussion draft in late December 2019. Based on the wording of the recommendations and further conversation that took place during the formal audit exit conference in February 2020, it appeared OIG and FNS did not have a mutual understanding of the interpretation and application of EO 13891 and the OMB implementing guidance. FNS senior management reached out to OIG senior management following the exit conference and requested that both parties and their respective counsels continue to engage on the matter. There were several conversations on this subject between late February 2020 and early June 2020 which resulted in a mutual understanding that FNS must respond to several of the recommendations made in this report in a manner that is consistent with APA requirements, EO 13891, and the newly issued USDA implementing regulations. Pursuant to those authorities and protocols, guidance documents referenced in the FNS responses to the OIG recommendations, which are anticipated to be in the form of a memorandum or handbook, must be reviewed and cleared through the OMB Office of Information and Regulatory Affairs (OIRA). Each document is required to include the following statement, "The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies."

FNS appreciates OIG's identification of important areas where administration of the Program can be improved. We also appreciate the constructive dialogue which enabled FNS to respond to this audit in a manner that meets the intent of the OIG recommendations, while complying with the APA, EO 13891, and USDA implementing regulations.

OIG Recommendation 1:

Revise guidance to describe how SFSP applicants can demonstrate their financial management capabilities.

FNS Response:

FNS concurs with the intent of the recommendation. The agency published a proposed rule titled *Streamlining Program Requirements and Improving Integrity in the SFSP*, 85 FR 4064, on January 23, 2020. The rule proposes adding performance standards for organizations applying to participate as SFSP sponsors and also describes how SFSP applicants can demonstrate their financial management capabilities (pgs. 4067-4068, 4086-4087, 4090-4091).

Rulemaking often takes a considerable amount of time, and the comment period for the above proposed rule was extended from the original due date of March 23, 2020 to April 22, 2020, given the COVID-19 pandemic. To move forward with publication of a final rule, public

comments received must be examined, assessed, and then policy decisions carefully considered before finalizing. Therefore, based on precedent established in prior OIG audits regarding the use of proposed rules (such as OIG 27601-0001-31 *FNS Controls for Authorizing Supplemental Nutrition Assistance Program (SNAP) Retailers* and OIG Audit 27601-0004-41 *FNS Controls Over the Summer Food Service Program*), FNS respectfully requests that final action on this recommendation be granted concurrently with management decision based on publication of 85 FR 4064.

Attached to this response is a copy of the proposed rule and please refer to the page numbers noted above.

Estimated Completion Date:

Complete as of January 23, 2020

OIG Recommendation 2:

Revise guidance to describe how State agencies should assess the applicants' financial capabilities to properly account for program funds.

FNS Response:

FNS concurs with the intent of the recommendation. The agency published a proposed rule titled *Streamlining Program Requirements and Improving Integrity in the SFSP*, 85 FR 4064, on January 23, 2020. The rule proposes adding performance standards for organizations applying to participate as SFSP sponsors. Specifically, these detailed performance standards will assist State agencies in assessing an applicant's financial viability and financial management and determining when they can and cannot approve an application (pgs. 4067-4068, 4086-4087, 4090-4091).

Rulemaking often takes a considerable amount of time, and the comment period for the above proposed rule was extended from the original due date of March 23, 2020 to April 22, 2020, given the COVID-19 pandemic. To move forward with publication of a final rule, public comments received must be examined, assessed, and then policy decisions carefully considered before finalizing. Therefore, based on precedent established in prior OIG audits regarding the use of proposed rules (such as OIG 27601-0001-31 *FNS Controls for Authorizing Supplemental Nutrition Assistance Program (SNAP) Retailers* and OIG Audit 27601-0004-41 *FNS Controls Over the Summer Food Service Program*), FNS respectfully requests that final action on this recommendation be granted concurrently with management decision based on publication of 85 FR 4064.

Attached to this response is a copy of the proposed rule and please refer to the page numbers noted above.

Estimated Completion Date:

Complete as of January 23, 2020

OIG Recommendation 3:

Revise guidance to describe how and when State agencies should ensure applicants' sites do not serve the same meal to the same children as other SFSP sites in the same area.

FNS Response:

Current regulations at 7 CFR 225.6(d)(1)(ii) require that "[t]he area which the site proposes to serve is not or will not be served in whole or in part by another site, unless it can be demonstrated to the satisfaction of the State agency that each site will serve children not served by any other site in the same area for the same meal...."

It should be noted that in order to support access to summer meals, it may be appropriate for State agencies to allow sites in relatively close physical proximity to operate in the community, each serving its own participants. FNS memorandum SFSP 03-2009, *Transmittal of Guidance on the Summer Food Service Program*, published June 5, 2009, provides examples of when it may be appropriate for the State agency to approve sites close in proximity.

To meet the intent of this recommendation, FNS will issue a best practices/technical assistance memorandum to reinforce previously provided guidance on how and when State agencies should ensure applicants' sites do not serve the same meal to the same children as other SFSP sites in the same area. When submitting this memo to achieve final action, it should be noted that the memo will include a disclaimer on the enforceability of the document as described in the introductory section of this FNS response.

Estimated Completion Date:

May 31, 2021

OIG Recommendation 4:

Provide State agencies with training and establish monitoring procedures for FNS to ensure its newly issued guidance (in Recommendations 1-3) is implemented and functioning effectively.

FNS Response:

FNS concurs with the intent of the recommendation and will pursue the following:

- FNS will provide State agencies with training/technical assistance on the newly recommended processes described in our responses to recommendations 1 – 3;

- FNS will establish monitoring procedures in the SFSP Management Evaluation (ME) Guide, as appropriate, to ensure State agencies are properly implementing newly recommended processes. Per the APA and the newly finalized 7 CFR Part 1, *Review and Issuance of Agency Guidance Documents*, guidance is non-enforceable. While FNS can note an observation and provide technical assistance during a ME if a State agency does not follow recommended practices from guidance, it cannot assess a finding when this occurs. Should the State agency not follow requirements in regulation, FNS must assess a finding against the State agency.

Estimated Completion Date:

May 31, 2021

OIG Recommendation 5:

Require State agencies to verify that sponsor claims for reimbursement are properly payable by reviewing sponsor cost records needed to support the meal claim accuracy (i.e., milk and food receipts).

FNS Response:

FNS concurs with the intent of the recommendation. FNS will incorporate into existing handbook guidance recommended procedures and best practices for State agencies to review receipts, records, and other documentation that might support the accuracy of sponsor meal claims. When submitting the updated handbook guidance for final action, it should be noted that the handbook will include a disclaimer on the enforceability of the document as described in the introductory section of this FNS response.

Additionally, as numerous forms of FNS guidance may now require additional clearance outside of the agency (i.e. through OMB OIRA), FNS respectfully requests that the agency be able to obtain final action by providing USDA's Office of the Chief Financial Officer (OCFO) with an official draft copy of the handbook guidance that has been cleared through the Food, Nutrition, and Consumer Services (FNCS) Administrator and the Deputy Undersecretary. The approach will enable FNS to achieve final action while acknowledging the potential for the clearance process for FNS guidance documents to be lengthy.

Estimated Completion Date:

May 31, 2021

OIG Recommendation 6:

Require State agencies to: expand the sponsor review when reviewers identify meal claim deficiencies, ensure sponsor corrective actions address the underlying causes of the

noncompliance issues, and maintain documentation related to the sponsors' meal claims so State agencies can periodically verify the reviewers' determinations.

FNS Response:

FNS concurs with the intent of the recommendation. The agency published a proposed rule titled *Streamlining Program Requirements and Improving Integrity in the SFSP*, 85 FR 4064, on January 23, 2020. The rule proposes adding in 7 CFR §225.7(e)(6) a new method for conducting meal claim validations as a part of the sponsor review (pgs. 4069-4070, 4089). The proposed changes would include a multi-step approach to site-based meal claim validation. State agencies would initially validate a small sample of claims and would be required to expand the sponsor review to validate additional claims if sufficient error is detected. State agencies would be expected to maintain documentation of any claim adjustments and to also ensure that any corrective actions fully correct noncompliance.

Rulemaking often takes a considerable amount of time, and the comment period for the above proposed rule was extended from the original due date of March 23, 2020 to April 22, 2020, given the COVID-19 pandemic. To move forward with publication of a final rule, public comments received must be examined, assessed, and then policy decisions carefully considered before finalizing. Therefore, based on precedent established in prior OIG audits regarding the use of proposed rules (such as OIG 27601-0001-31 *FNS Controls for Authorizing Supplemental Nutrition Assistance Program (SNAP) Retailers* and OIG Audit 27601-0004-41 *FNS Controls Over the Summer Food Service Program*), FNS respectfully requests that final action on this recommendation be granted concurrently with management decision based on publication of 85 FR 4064.

Attached to this response is a copy of the proposed rule and please refer to the page numbers noted above.

Estimated Completion Date:

Complete as of January 23, 2020

OIG Recommendation 7:

Require that sponsors with self-prep sites maintain documentation to facilitate State agency meal claim verification, including production records and delivery receipts.

FNS Response:

FNS concurs with the intent of the recommendation. The agency published a proposed rule titled *Streamlining Program Requirements and Improving Integrity in the SFSP*, 85 FR 4064, on January 23, 2020. The rule proposes adding in 7 CFR §225. 7(e)(6) "*Meal claim validation*. As

part of every sponsor review, the State agency must validate the sponsor's meal claim utilizing a record review process developed by the State agency that must include, at a minimum, reconciling delivery receipts, daily meal counts from sites, and the sponsor's claim consolidation spreadsheet against the meals claimed for reimbursement by the sponsor for the period under review" (pg. 4089).

Rulemaking often takes a considerable amount of time, and the comment period for the above proposed rule was extended from the original due date of March 23, 2020 to April 22, 2020, given the COVID-19 pandemic. To move forward with publication of a final rule, public comments received must be examined, assessed, and then policy decisions carefully considered before finalizing.

Attached to this response is a copy of the proposed rule and please refer to the page number noted above.

FNS will incorporate into existing handbook guidance the recommendation that sponsors with self-prep sites maintain documentation to facilitate State agency meal claim verification, including production records and delivery receipts. When submitting the updated handbook guidance for final action, it should be noted that the handbook will include a disclaimer on the enforceability of the document as described in the introductory section of this FNS response.

Additionally, as numerous forms of FNS guidance now require additional clearance outside of the agency (i.e. through OMB OIRA), FNS respectfully requests that the agency be able to obtain final action by providing USDA's OCFO with an official draft copy of the handbook guidance that has been cleared through the FNCS Administrator and Deputy Undersecretary. The approach will enable FNS to achieve final action while acknowledging the potential for the clearance process for FNS guidance documents to be lengthy.

Estimated Completion Date:

May 31, 2021

OIG Recommendation 8:

Evaluate SFSP State monitoring regulations to determine whether regulatory changes are needed for State agencies to verify sponsors' claims for reimbursement and ensure program payment accuracy.

FNS Response:

FNS concurs with the intent of the recommendation. The agency published a proposed rule titled *Streamlining Program Requirements and Improving Integrity in the SFSP*, 85 FR 4064, on January 23, 2020. The rule proposes adding in 7 CFR §225.7(e)(6) a new method for conducting meal claim validations as a part of the sponsor review (pgs. 4069-4070, 4089). The proposed

changes includes a multi-step approach to site-based meal claim validation.

Rulemaking often takes a considerable amount of time, and the comment period for the above proposed rule was extended from the original due date of March 23, 2020 to April 22, 2020, given the COVID-19 pandemic. To move forward with publication of a final rule, public comments received must be examined, assessed, and then policy decisions carefully considered before finalizing. Therefore, based on precedent established in prior OIG audits regarding the use of proposed rules (such as OIG 27601-0001-31 *FNS Controls for Authorizing Supplemental Nutrition Assistance Program (SNAP) Retailers* and OIG Audit 27601-0004-41 *FNS Controls Over the Summer Food Service Program*), FNS respectfully requests that final action on this recommendation be granted concurrently with management decision based on publication of 85 FR 4064.

Attached to this response is a copy of the proposed rule and please refer to the page numbers noted above.

Estimated Completion Date:

Complete as of January 23, 2020

OIG Recommendation 9:

Provide State agencies with training and establish monitoring procedures for FNS to ensure the new requirements (in Recommendations 5-7) are implemented and functioning effectively.

FNS Response:

FNS concurs with the intent of the recommendation and will pursue the following:

- FNS will provide State agencies with training/technical assistance on the newly recommended processes described in our responses to recommendations 5 – 8;
- FNS will establish monitoring procedures in the SFSP ME Guide, as appropriate, to ensure State agencies are properly implementing new recommended processes. Per the APA and the newly finalized 7 CFR Part 1, *Review and Issuance of Agency Guidance Documents*, guidance is non-enforceable. While FNS can note an observation and provide technical assistance during a ME if a State agency does not follow recommended practices from guidance, it cannot assess a finding when this occurs. Should the State agency not follow requirements in regulation, FNS must assess a finding against the State agency.

Estimated Completion Date:

May 31, 2021

OIG Recommendation 10:

Revise guidance to provide clarification to sponsors and State agencies on how to identify and calculate unused reimbursement amounts, such as outlining timeframes and accounting methods that should be used and the income and costs that should be included.

FNS Response:

FNS concurs with the intent of the recommendation. Current regulations at 7 CFR Part 225.9(g) state that “If a sponsor receives more reimbursement than expended on allowable costs, the sponsor should use this unused reimbursement to improve the meal service or management of the Program. Unused reimbursement remaining at the end of the Program year must be used to pay allowable costs of other Child Nutrition Programs or for SFSP.” Consistent with regulatory authority, FNS will update the information on unused reimbursement in two previously issued memos to clarify when a sponsor receives more reimbursement than expended on allowable costs, the sponsor should use this unused reimbursement to improve the meal service or management of the Program. As noted in regulations, all unused reimbursement remaining at the end of the Program year must be used to pay allowable costs of other Child Nutrition Programs or for SFSP, for sponsors that continue to operate the Program.

FNS is prohibited from introducing new, enforceable requirements through supplemental guidance by the APA, Executive Orders 13891, and the newly finalized 7 CFR Part 1, *Review and Issuance of Agency Guidance Documents*. Therefore, FNS will also develop a best practice memorandum addressing how to identify and calculate unused reimbursement amounts. When submitting the two updated memoranda and the new best practice memorandum to achieve final action, it should be noted that the memoranda will include a disclaimer on the enforceability of the document as described in the introductory section of this FNS response.

Estimated Completion Date:

May 31, 2021

OIG Recommendation 11:

Revise guidance to provide instructions to State agencies on how to monitor and verify the sponsors’ use of unused reimbursements, including directions for cross-program reviews and sufficient followup, and to define what constitutes an “excessive gap” for unused reimbursement corrective action requirements.

FNS Response:

FNS concurs with the intent of the recommendation. Consistent with regulatory authority, FNS will update memos with language from the final rule, “*Simplified Cost Accounting and Other Actions to Reduce Paperwork in the SFSP*”, 83 FR 25349, published June 1, 2018:

- SFSP 01-2008, *Nationwide Expansion of Summer Food Service Program Simplified Cost Accounting Procedures*, published January 2, 2008, by replacing the words “excess funds” with “unused reimbursement”
- SFSP 05-2017, *Summer Food Service Program Questions and Answers*, published December 1, 2016 by replacing the words “excess funds” with “unused reimbursement,” and revising “excessive gap” (which is not a defined term)

FNS is prohibited from introducing new, enforceable requirements through supplemental guidance by the APA, Executive Orders 13891, and the newly finalized 7 CFR 1.9 et seq., *Review and Issuance of Agency Guidance Documents*. Therefore, FNS will also develop a best practice memorandum addressing how to monitor and verify the sponsors’ use of unused reimbursements. When submitting the updated memoranda and the new best practices memorandum to achieve final action, it should be noted that the memorandum will include a disclaimer on the enforceability of the document as described in the introductory section of this FNS response.

Estimated Completion Date:

May 31, 2021

OIG Recommendation 12:

Revise guidance to define the SFSP regulatory term “net cash resources” and provide instructions to sponsors and State agencies on how to identify and calculate the amounts.

FNS Response:

FNS concurs with the intent of the recommendation. The agency published a proposed rule titled *Streamlining Program Requirements and Improving Integrity in the SFSP*, 85 FR 4064, on January 23, 2020. The rule proposes defining “net cash resources” to align with the term already defined under the National School Lunch Program (NSLP) and to assist State agencies with identifying and calculating the amounts (pgs. 4075-4076, 4084-4085, 4089).

Rulemaking often takes a considerable amount of time, and the comment period for the above proposed rule was extended from the original due date of March 23, 2020 to April 22, 2020, given the COVID-19 pandemic. To move forward with publication of a final rule, public comments received must be examined, assessed, and then policy decisions carefully considered before finalizing. Therefore, based on precedent established in prior OIG audits regarding the use of proposed rules (such as OIG 27601-0001-31 *FNS Controls for Authorizing Supplemental Nutrition Assistance Program (SNAP) Retailers* and OIG Audit 27601-0004-41 *FNS Controls Over the Summer Food Service Program*), FNS respectfully requests that final action on this recommendation be granted concurrently with management decision based on publication of 85 FR 4064.

Attached to this response is a copy of the proposed rule and please refer to the page numbers noted above.

Estimated Completion Date:

Complete as of January 23, 2020

OIG Recommendation 13:

Provide State agencies with training and establish monitoring procedures for FNS to ensure its newly issued guidance (in Recommendations 10-12) is implemented and functioning effectively.

FNS Response:

FNS concurs with the intent of the recommendation and will pursue the following:

- FNS will provide State agencies with training/technical assistance on the newly recommended processes described in our responses to recommendations 10 – 12;
- FNS will establish monitoring procedures in the SFSP ME Guide, as appropriate, to ensure State agencies are properly implementing new recommended processes. Per the APA and the newly finalized 7 CFR Part 1, *Review and Issuance of Agency Guidance Documents*, guidance is non-enforceable. While FNS can note an observation and provide technical assistance during a ME if a State agency does not follow recommended practices from guidance, it cannot assess a finding when this occurs. Should the State agency not follow requirements in regulation, FNS must assess a finding against the State agency.

Estimated Completion Date:

May 31, 2021

OIG Recommendation 14:

Develop procedures for FNS ME reviewers to expand their review to independently verify key State agencies' responses to ME oversight questions, such as periodically sampling and reviewing sponsor-level documentation.

FNS Response:

FNS concurs with the intent of the recommendation. FNS ME reviewers are required to verify State agency responses to ME oversight questions. FNS will update the reviewer's tips section of the SFSP ME Guide to reiterate that ME reviewers must verify State agency responses and can expand their verification of responses as necessary to assess compliance with Program requirements.

Estimated Completion Date:

May 31, 2021

OIG Recommendation 15:

Provide ME reviewers with training to ensure its newly issued procedures (in Recommendation 14) are correctly implemented.

FNS Response:

FNS concurs with the intent of the recommendation and will conduct internal training for ME reviewers on updates made to the SFSP ME Guide.

Estimated Completion Date:

May 31, 2021

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