



March 27, 2013

United States  
Department of  
Agriculture

Food and  
Nutrition  
Service

3101 Park  
Center Drive  
Alexandria, VA  
22302-1500

TO: Office of the State Attorney General

ATTN:

FROM: Kevin Concannon, Under Secretary for Food, Nutrition and Consumer Services

SUBJECT: State Agency Oversight and Monitoring of School Food Authority Contracts with Food Service Management Companies

The Food and Nutrition Service (FNS) of the U.S. Department of Agriculture (USDA) administers the National School Lunch Program (NSLP) and other child and adult nutrition programs. FNS provides funding to State agencies to reimburse school districts for the NSLP meals they serve to more than thirty-one million children every day. In an effort to strengthen program integrity, FNS is requesting the assistance of State Attorneys General to ensure these Federal funds are used responsibly and for their intended purpose.

The USDA Office of the Inspector General recently conducted an audit entitled, "National School Lunch Program - Food Service Management Company Contracts" at the request of U.S. Senate Committee on Homeland Security and Governmental Affairs Subcommittee on Contracting Oversight. Specifically, the audit assessed the effectiveness of Federal and state oversight and monitoring of school districts' school food authority (SFA) contracts with food service management companies (FSMC) and whether SFAs are receiving the full benefits of purchase discounts and rebates received by FSMCs on their behalf. In short, the audit found that Federal funds may be at risk due to difficulty experienced by SFAs in enforcing contractual terms and regulatory requirements in this area. As you may know, in 2010, a major FSMC entered into a significant settlement agreement with the State of New York as the result of an investigation by the State Attorney General into the FSMC's contracting relationships with schools districts.

State agencies are responsible for ensuring that SFAs with FSMC contracts structure and manage such contracts, as required by Federal law. As underscored by the recent audit findings, it is critical to make certain that these contracts include the provision, required by 7 CFR Part 210.21(f)(1)(i), that all purchase discounts and rebates be returned to the SFAs' nonprofit school food service account and the appropriate records necessary to ensure compliance are maintained.

Monitoring and oversight of SFA contracts throughout the school year is also essential to ensure SFAs receive the full value of purchase discounts and rebates and are in compliance with Federal law. Failure by a State agency and SFA to undertake necessary oversight and monitoring measures puts Federal funds at risk for both affected SFAs and the State agency. SFAs potentially would not receive the full value of purchase discounts

AN EQUAL OPPORTUNITY

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.

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and rebates and FNS could withhold funds from State agencies for failing to enforce these requirements.

As part of its continuing efforts to ensure effective oversight, we are requesting that the offices of State Attorneys General work with our State agency partners to determine what role their office can play in State investigations. We believe such cooperation at the state level would ensure that SFAs which contract with FSMCs adhere to contractual requirements and receive the full benefit of the Federal funds provided for operating school meals programs. In addition, FNS will soon begin a process of consultation with key program partners and stakeholders to identify challenges and opportunities for oversight improvement.

We greatly appreciate your support. Please have your staff contact the Child Nutrition Division, FNS at 703-305-2590, if you have any questions about this request.

Sincerely,

**Original Signed**

Kevin Concannon  
Under Secretary for Food, Nutrition and Consumer Services  
United States Department of Agriculture