United States Department of Agriculture

FNS Controls Over Summer Food Service Program

Audit Report 27601-0004-41

March 2018

OFFICE OF INSPECTOR GENERAL

FNS Controls Over Summer Food Service Program

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OIG reviewed FNS' controls over the Summer Food Service Program to determine whether it was complying with program regulations and other requirements.

OBJECTIVE

Our audit objective was to determine and assess whether FNS had adequate controls in place to reasonably ensure SFSP was complying with program regulations and other requirements. This audit is the first phase of a three-phase audit on controls over SFSP.

REVIEWED

We reviewed laws, regulations, policies, procedures, and documentation relevant to SFSP, including MEs; evaluated the information technology system; interviewed FNS national and regional officials; and visited four FNS regional offices.

RECOMMENDS

We recommend that FNS modify SFSP ME review guidance so MEs will contain adequate documentation, obtain a formal legal opinion from the Office of General Counsel as to whether the agency has the legal authority to create nationwide waivers, and complete a risk assessment for SFSP.

WHAT OIG FOUND

The Summer Food Service Program (SFSP), run by the Food and Nutrition Service (FNS) in the summer months when school is not in session, provides nutritious meals to low-income children. SFSP is a Federally-funded, State agency-administered program, and FNS is responsible for State oversight.

The Office of the Inspector General (OIG) reviewed FNS' controls over SFSP to determine whether its controls were sufficient and found several areas for improvement. First, we found that FNS monitoring and oversight procedures do not sufficiently substantiate that States are properly administering SFSP and complying with program requirements. Specifically, management evaluation (ME) reviews, FNS' primary monitoring control process for ensuring SFSP integrity, lacked the necessary documentation to confirm whether they were completed correctly and contained valid conclusions. OIG also found that FNS waived SFSP regulatory requirements on a nationwide basis through policy memoranda without following documentation requirements set by law. Lastly, we found that FNS has not adequately assessed SFSP's risk for improper payments because it based the program's risk assessments on "readily available" information instead of a comprehensive program review.

FNS generally concurred with our findings and recommendations, and we accepted management decision on all six recommendations.

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

DATE: March 27, 2018

AUDIT NUMBER: 27601-0004-41

TO: Brandon Lipps
Administrator
Food and Nutrition Service

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

FROM: Gil H. Harden
Assistant Inspector General for Audit

SUBJECT: FNS Controls Over Summer Food Service Program

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 all six audit recommendations in the report, and no further response to this office is necessary. Please follow your internal agency procedures in forwarding final action correspondence to the Office of the Chief Financial Officer (OCFO).

In accordance with Departmental Regulation 1720-1, final action needs 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 the Office of the Chief Financial Officer (OCFO), please follow your internal agency procedures in forwarding final action correspondence to OCFO.

Your written response to the official draft report expressed concerns with some aspects of our report, specifically, our statement regarding the documentation provided to support waivers (finding 2). Your memorandum states that throughout the course of the audit FNS provided extensive documentation to OIG, including a detailed history of program policies and events. You also stated this documentation demonstrated that the Agency exercised due diligence to collect feedback from State agencies, program operators, and other stakeholders on how SFSP can operate more efficiently and effectively to better serve the public interest. Although we

agree that the information provided demonstrated some diligence, the documentation did not demonstrate in a clear and sufficient manner how the waivers were necessary or how FNS would preserve program integrity. These are key considerations that affect controls in the program.

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 Summer Food Service Program (SFSP) provides free meals to children in needy areas when school is not in session.[1] SFSP is a Federally-funded, State-administered program. During July 2016 (the program's peak month), SFSP provided meals to 2.8 million children each day at about 48,000 sites. In fiscal year (FY) 2016, SFSP served more than 153 million meals and snacks nationwide at a cost to USDA of $472 million.

The Food and Nutrition Service (FNS), the Federal funding agency, is responsible for State oversight of the program. FNS awards SFSP funding to State agencies and provides guidance to help ensure they properly administer and monitor the program.[2] As the Federal awarding agency, FNS is also responsible for implementing internal controls so States use SFSP funds as intended in the regulation.[3] FNS provides guidance to participating sponsors in four publications: Administrative Guidance, Nutrition Guidance, Sponsor Monitor's Guide, and Site Supervisor's Guide. FNS has also established guidance for the development and maintenance of sponsor financial systems and accounting controls, through its issuance of FNS Instruction 796-4, Rev. 4, Financial Management Guidance.

State agencies are responsible for administering SFSP.[4] Besides disseminating FNS policy for the administration of SFSP, State agencies are responsible for reviewing and approving sponsor applications, reimbursing sponsors for meals served to children at approved sites, and monitoring to ensure sponsors and sites meet program requirements such as meal patterns and food safety. Sponsors are reimbursed for the number of eligible meals served multiplied by a predetermined per-meal rate set by a legislative formula.

Locally, SFSP sponsors manage sites that provide the meals to children. Sponsors include public or private nonprofit organizations such as school food authorities, faith-based organizations, or camps. Sponsors can manage multiple State-approved sites, which may be located at schools, community centers, apartment complexes, etc. SFSP sponsors must enter into written agreements with a State agency that outline their responsibilities, including monitoring sites to ensure they are compliant with program requirements. Sponsors may prepare the meals themselves, either on-site or at a central kitchen, or purchase meals from a vendor, such as a food service management company. All meals, including breakfast, lunch, supper, and snacks, must meet program requirements and be nutritious and well-balanced.

[1] SFSP regulations define "children" as (a) persons 18 years of age and under, and (b) persons over 18 years of age who are determined by a State educational agency or a local public educational agency of a State to be mentally or physically handicapped and who participate in a public or nonprofit private school program established for the mentally or physically handicapped. 7 C.F.R. § 225.2.
[2] 7 C.F.R. § 225.4.
[3] 7 C.F.R. pt. 225.
[4] 7 C.F.R. § 225.6.

Sites are located in low-income areas or serve specific groups of low-income children.[5] Most sites are categorized as "open" (meals are available to all children in the area), "restricted open" (attendance is limited for safety or control reasons), or "closed enrolled" (only specified groups of children are served). In addition, certain specialized sites may be approved, such as residential and non-residential camps, migrant sites, and National Youth Sports Program sites.

Objectives

Our audit objective was to determine and assess whether FNS had adequate controls in place to reasonably ensure SFSP was complying with program regulations and other requirements. This audit is the first of six in a series of audits related to SFSP.

We are currently conducting four separate audits in the States of California, Florida, New York, and Texas to determine whether the State agencies responsible for administering SFSP have adequate controls in place to reasonably ensure the program is being operated in compliance with requirements. Our objectives for those four audits are to (1) evaluate the adequacy of the State agency's controls over SFSP sponsors, and (2) determine if selected sponsors and sites are in compliance with program requirements.

Upon completion of the State audits, we will issue a report for each of the four States, then compile the results and provide an assessment of SFSP overall.

[5] "Low income" means that half of the children in the area or group are eligible for free or reduced-price school meals.

Finding 1: FNS Needs to Strengthen Its Monitoring and Oversight of SFSP

FNS monitoring and oversight procedures do not sufficiently substantiate that States are properly administering SFSP and complying with program requirements. Specifically, FNS' management evaluations (MEs) lacked the documentation needed to confirm reviewer conclusions were valid. This occurred because FNS' primary State agency monitoring control guidance—its ME review guides—did not require FNS reviewers to sufficiently document their reviews, especially in regards to affirmative conclusions.[6] As a result, FNS managers did not have the information needed to evaluate the program's effectiveness. Also, FNS managers were unable to confirm how reviewers tested and verified the adequacy of State processes, or the basis for the reviewer's conclusions that State procedures were compliant with SFSP requirements.

The proper stewardship of Federal resources is an essential responsibility of agency managers and staff. Programs must operate and resources must be used in compliance with laws and regulations, and with minimal potential for waste, fraud, and mismanagement.[7] The *Standards for Internal Control in the Federal Government* requires Federal managers to document the performance of internal controls and evaluate whether they are working effectively, to continuously monitor the effectiveness of internal controls associated with their programs, and to take timely action to correct internal control deficiencies identified by internal and external sources. It also requires agencies to document the operation of monitoring controls sufficiently to allow Federal managers and external parties to evaluate the monitoring tests performed, the analysis conducted, and the basis for and accuracy of the monitoring results. Correcting deficiencies in internal controls is an integral part of management accountability and must be considered a priority by the agency.[8]

FNS' primary monitoring control process to ensure SFSP integrity is SFSP ME reviews. FNS regional offices conduct State ME reviews at least once every 3 years to evaluate the adequacy of the State's administration of SFSP. The ME review is guided by a comprehensive questionnaire—the SFSP ME guide—that includes 163 questions covering the program's functional areas, such as States' SFSP operations, oversight, and financial management. FNS' ME reviewers interview States about their administrative processes, review documentation, and verify the correctness and compliance of the State processes. The ME process includes planning and preparing the review, conducting the review, writing the report, corrective action resolution, and closure.

Although FNS created a process intended to fully assess the adequacy of State agencies' administration of SFSP, we determined that the MEs lacked the documentation needed by FNS managers and external parties to confirm that the completed reviews were correct and reviewer conclusions were valid. OIG interviewed FNS staff at the national office and ME reviewers at four FNS regional offices and determined that the bulk of FNS' ME review process—FNS'

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[6] We use the phrase "affirmative conclusion" to describe a reviewer's conclusion that a State agency was in compliance with a specific regulation or policy.
[7] Act of Jan. 12, 1983, Pub. L. 97-452, § 1(12), 96 Stat. 2467, 2468-69 (codified at 31 U.S.C. § 3512(c)-(d)) (previously enacted as the Federal Managers' Financial Integrity Act of 1982, Pub. L. No. 97-255, § 2, 96 Stat. 814).
[8] Government Accountability Office (GAO), *Standards for Internal Control in the Federal Government*, GAO-14-704G (Sep. 10, 2014).

primary tool to oversee State agency activities—was undocumented and unsupported because ME reviewers only documented a small portion of their State agency monitoring activities.[9] Specifically, ME reviewers documented their work when they identified State non-compliance with a particular requirement, but they lacked adequate documentation to support the rest of the work performed. For example, if ME reviewers discussed 163 processes with State agency staff and identified 5 instances of non-compliance, the ME reviewers only documented the 5 instances. However, reviewers had little, if any, documentation to support the affirmative conclusions for the other 158 processes. ME reviewers did not document how they tested and verified the adequacy of State processes, or the basis for the reviewers' conclusions that State procedures were compliant with SFSP requirements.

During a 2015 assessment, the FNS ME quality assurance (QA) team noted the MEs' lack of documentation as a concern, but limited its recommendation to suggesting that ME reviewers maintain documentation to support "key steps in the review," which the QA team defined as ME planning, sampling methodologies, and the findings and observations cited in ME reports.[10] Although this is one aspect of the issue, we concluded the recommendation is not sufficient. FNS reviewers need to expand their documentation to the entire ME process, justifying both compliance and non-compliance conclusions, so a manager or external stakeholder can verify and ensure the reviews were performed correctly and the conclusions reached were valid.

Other concerns further support the need for ME reviewers to document the basis for their conclusions. During our review, we found that although there is work performed before and after the onsite visit, ME review teams typically only had 1 week to complete the onsite portion of the review (i.e., cover the extensive SFSP ME guidance, interview State agency staff, sample and test transactions, and validate State agency procedures). Also, the QA team identified that sometimes FNS staff with less experience were assigned to ME review teams. Such time constraints coupled with the additional time needed to cross-train new staff could negatively impact the quality and thoroughness of ME reviewers' work. Without a way to verify the work performed, FNS managers cannot confirm that all 163 functional processes were tested or that such tests were adequate and sufficient.

We discussed the lack of ME documentation with FNS national office staff, who explained that the SFSP ME review was "exception based." FNS believed its "exception based" ME documentation process was sufficient. Furthermore, an FNS official stated that ME reviewers were not auditors and could not be held to audit documentation standards. However, OIG disagrees with FNS because, as stated earlier, the *Standards for Internal Control in the Federal Government* requires agencies to design monitoring controls that are documented sufficiently to allow Federal managers and external parties to evaluate the monitoring tests performed, the analysis conducted, and the basis for and accuracy of the monitoring results.[11]

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[9] Section VIII (F) of FNS' National ME Review Guide requires reviewers to maintain documentation that supports ME report findings, observations, required corrective actions, and suggestions. FNS, *National Management Evaluation/Financial Management (ME/FMR) Review Guidance* (Aug. 2016). It does not require reviewers to maintain documentation to support all conclusions.

[10] FNS, *Report on Quality Assurance Reviews of SWRO Management Evaluations and Financial Management Reviews, Fiscal Year 2015*.

[11] Government Accountability Office (GAO), *Standards for Internal Control in the Federal Government*, GAO-14-704G, 3.10 and app. I (Sept. 2014).

By only requiring reviewers to maintain documentation to support the official findings and observations included in ME reports FNS issued to State agencies—"exceptions" representing a small fraction of the work done during ME reviews—FNS created a monitoring control that was largely undocumented. FNS should strengthen the design of its ME review process to ensure the results are an accurate representation of the completeness and correctness of work performed. SFSP MEs should have sufficient documentation to support reviewers' assessments of State agency compliance with program requirements and the adequacy of State agencies' SFSP administration and oversight. The level of the ME documentation should contain sufficient information to allow FNS managers not associated with the review and external parties to evaluate that the ME review was properly conducted and that its results are valid. Additionally, FNS should develop procedures for FNS management to evaluate the ME review tests performed, the analysis conducted, and the basis for and accuracy of the ME reviewer conclusions and results using the ME reviewer documentation.

Recommendation 1

Modify the Summer Food Service Program (SFSP) management evaluations (ME) review guidance to ensure MEs contain documentation to support reviewers' assessments that the State agency did or did not comply with SFSP administration and oversight requirements. The ME documentation should be presented in sufficient detail to allow the Food and Nutrition Service (FNS) managers not associated with the review and external parties, such as the Office of Inspector General (OIG), to verify that the ME review was properly conducted and that its results are valid.

Agency Response

In its March 14, 2018, response FNS stated:

> FNS concurs with the intent of this recommendation and has already taken action. This recommendation aligns with the existing National ME/FMR Guidance and FNS' Quality Assurance effort begun in FY 2015. It is important to point out that improvements in this area were initiated in FY 2017 and were already underway when OIG began this audit work… In an effort to expand ME documentation to include compliance conclusions, FNS will develop instructions requiring ME reviewers to document occurrences of no findings or observations within the ME Tool Workbook.
>
> FNS is building on innovations already made at the Regional level by standardizing processes into a single, centralized ME documentation protocol. As a part of the annual Program Integrity and Accountability Workgroup, which was organized to develop strategies and implement initiatives based on program integrity objectives in the FNS Priority Plan objectives, FNS had already begun creating procedures for a work paper management protocol for use during all SFSP ME Reviews.
>
> Additionally, FNS will ensure that the current requirement is emphasized through training and Quality Assurance Reviews.

FNS provided an estimated completion date of February 28, 2019, for this action.

OIG Position

We accept FNS' management decision on this recommendation.

Recommendation 2

Develop procedures for FNS management to evaluate the ME review tests performed, the analysis conducted, and the basis for and accuracy of the ME reviewer conclusions and results using the ME reviewer documentation required as a result of Recommendation 1.

Agency Response

In its March 14, 2018, response FNS stated:

> FNS concurs with this recommendation. Currently FNS management communicates with the ME Review teams and discusses the resulting conclusions that are contained in the ME Report. As stipulated in the National ME/FMR Review Guidance, within the Body of the Report (Section VIII, G), the scope of review and the methodology indicating the methods and procedures used to conduct the review are required, such as the analysis of documents, interview process, the sampling methodology used, and on-site observation (p. 18). Upon strengthening the processes outlined in response to OIG recommendation 1, FNS will require the ME Review teams to document their assessments more thoroughly. This may include the interview process, the number and type of files reviewed, and the methodology used when selecting files for review. This strengthened documentation process will allow FNS management to better evaluate ME findings, analysis, and conclusions to ensure ME consistency and accuracy.

FNS provided an estimated completion date of February 28, 2019, for this action.

OIG Position

We accept FNS' management decision on this recommendation.

Finding 2: FNS Needs to Strengthen Its Waiver Process

FNS waived SFSP regulations on a nationwide basis via policy memoranda.[12] This occurred because FNS interpreted statutory provisions as granting the agency the implied authority to waive SFSP regulations nationwide even though the statute only addressed State agency or sponsor-level waivers on a case-by-case basis. FNS issued these nationwide waivers, but the agency could not provide documentation supporting how they were necessary, nor how they preserved program integrity in the same manner a waiver issued per the requirements of the statute would.

The Richard B. Russell National School Lunch Act (NSLA)[13] authorizes the operation of FNS' child nutrition programs, including SFSP.[14] Section 12(l) of NSLA authorizes the Secretary of Agriculture to waive statutory and regulatory requirements of SFSP for a State or sponsor that requests a waiver if certain requirements are met.[15] These requirements include a written request from the State agency or sponsor seeking the regulatory waiver, notice and information provided to the public regarding the proposed waiver, and a review and approval of the waiver by FNS officials with the delegated authority to grant such requests.

OIG discussed the regulatory waivers with FNS national office staff, who stated they had conferred with the Office of the General Counsel and determined that the agency had the implied authority to issue them based on "the Secretary's waiver authority in Section 12(l) of the NSLA." In support of the waivers granted, FNS provided us with documentation stating that that the agency waived each of the SFSP regulations after consulting with State agencies and stakeholders, and that the waivers were intended to reduce administrative burdens or increase program access while maintaining program integrity. However, FNS could not provide support that the nationwide regulatory waivers met the specific documentation requirements of Section 12(l) of NSLA, as illustrated by the following examples.

During our review, we found FNS waived SFSP regulations on a nationwide basis without following the requirements listed in Section 12(l) of NSLA, and that the action may have weakened internal controls from SFSP that were established to help ensure the financial and operational integrity of sponsor and site operations. For example, SFSP regulations require all sponsors to visit each of their sites at least once during the first week of SFSP feeding operations

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[12] OIG identified nine instances in which FNS waived or altered SFSP regulatory requirements through policy memoranda issued from May 2000 to April 2015. These waivers covered a variety of SFSP functional areas, including sponsor monitoring, meal service activities, program reimbursements, and the treatment of improper payments.

[13] 42 U.S.C. §§ 1751-1769j.

[14] NSLA contains the statutory provisions for five FNS child nutrition programs: the National School Lunch Program (42 U.S.C. § 1751), SFSP (42 U.S.C. § 1761), the Commodity Distribution Program (42 U.S.C. § 1762a), the Child and Adult Care Food Program (42 U.S.C. § 1766), and the Fresh Fruit and Vegetable Program (42 U.S.C. § 1769a).

[15] 42 U.S.C. § 1760(l). The provisions in this section are applicable to the FNS child nutrition programs authorized by NSLA and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), which includes SFSP. The statute describes the waiver authority of the Secretary of Agriculture; the Secretary delegates that waiver authority to Federal officials who administer FNS programs on the Secretary's behalf.

and to promptly correct identified deficiencies.[16] FNS issued a policy memorandum that waived this SFSP site visit requirement. Per FNS' internal policy memorandum, issued to all State agencies in April 2011, "This memorandum waives the first week site visit requirement for returning sites that operated successfully during the previous summer (or other most recent period of operation) and had no serious deficiency findings." FNS did not provide documentation to show how eliminating these visits for sites that had "operated successfully" would impact the sponsors' ability to identify sites with potential food safety issues or other compliance issues, such as overclaiming meals. Further, FNS could not provide us with documentation to demonstrate how officials determined that the removal of these visits would not be detrimental to the program.

As another example, SFSP regulations allow only school food authorities (which historically have stronger program integrity and financial controls)[17] to use the "offer versus serve" meal service option.[18] They state, "The school food authority must apply this 'offer versus serve' option under the rules followed for the National School Lunch Program, as described in part 210 of this chapter."[19] FNS waived SFSP's regulatory limitation on the use of "offer versus serve" via an April 2011 policy memorandum that authorized all sponsor types nationwide, including non-school sponsors that did not participate in the National School Lunch Program, to use the "offer versus serve" option.

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[16] As of October 2017, SFSP regulations still require all SFSP sponsors to visit each of their sites at least once during the first week of operation. 7 C.F.R. § 225.15(d) (2). FNS eliminated the regulatory requirement via policy memorandum in April 2011. FNS, *Waiver of Site Monitoring Requirements in the Summer Food Service Program*, Policy Memo No. SFSP 12-2011 (Apr. 5, 2011).

[17] SFSP private nonprofit sponsors have historically been associated with fraud and program integrity issues. In past years, GAO reported problems, such as bribery and inflated claims for meal reimbursements involving large private nonprofit SFSP sponsors. GAO, *The Summer Feeding Program – How To Feed The Children And Stop Program Abuses*, CED-77-59 (Apr. 15, 1977); GAO, *The Summer Feeding Program For Children: Reforms Begun—Many More Urgently Needed*, CED-78-90 (Mar. 31, 1978); GAO, *Efforts To Control Fraud, Abuse, And Mismanagement In Domestic Food Assistance Programs: Progress Made—More Needed*, CED-80-33 (May 6, 1980). Public laws enacted in 1977 and 1979 addressed program abuses and integrity issues, and each of these further limited the participation of private nonprofit organizations. National School Lunch Act and Child Nutrition Amendments of 1977, Pub. L. No. 95-166, § 2, 91 Stat. 1325, 1325-2-7; Act of Nov. 9, 1979, Pub. L. No. 96-108, tit. III, 93 Stat. 821, 838 (Fiscal Year 1980 appropriations for USDA and related agencies). In 1981, the Omnibus Budget Reconciliation Act of 1981 (Pub. L. No. 97-35, 95 Stat. 357) prohibited most private organizations from sponsoring SFSP in order to eliminate abuses. The Child Nutrition and [Women, Infants, and Children] WIC Reauthorization Act of 1989 (Pub. L. No. 101-147, 103 Stat. 877) readmitted private sponsors beginning with the 1990 Summer Food Service Program.

[18] "Offer versus serve" is an FNS approach to menu planning and meal service intended to help SFSP sponsors reduce food waste and costs while maintaining the nutritional value of SFSP meals. "Offer versus serve" allows children to decline some of the foods offered in a reimbursable breakfast, lunch, or supper at SFSP sites. Under "offer versus serve," at lunch, for example, a student must take at least three of the five food components (fruits, vegetables, grains, meats/meat alternatives, and fluid milk) in the required quantities. One selection must be at least a half-cup (total) from either the fruits or vegetables component.

[19] As of October 2017, SFSP regulations still limit the "offer versus serve" option to only school food authorities. 7 C.F.R. § 225.16(f) (1) (ii). FNS authorized all SFSP sponsor types, including private nonprofit sponsors, to use the "offer versus serve" option via policy memorandum in April 2011. FNS, *Waiver of Meal Time Restrictions and Unitized Meal Requirements in the Summer Food Service Program*, Policy Memo No. SFSP 11-2011 (Apr. 5, 2011).

FNS did not provide documentation of how it determined the necessity to extend the "offer versus serve" approach to non-school sponsor types specifically excluded from using this option by program regulations, describe or quantify the program benefits FNS expected to occur by waiving the regulatory limitations on the "offer versus serve" option, or demonstrate that the waiver would not increase the overall cost of the program to the Federal government. Allowing all sponsor types, such as private nonprofits that historically had issues with inaccurate and overstated meal counts, to use a more complex meal service option may lead to sponsors claiming program reimbursements for unallowable meals—meals that do not comply with SFSP meal pattern requirements.

As a final example, SFSP regulations require State agencies to set limits on the number of meals sponsors may serve to children at each of their approved vended sites.[20] The approved meal service limits (known as site caps) are required to be based on historical attendance at the site and can only be upwardly adjusted at the sponsor's request if the State agency first conducts a site review and confirms the need for the upward adjustment, or if the sponsor provides evidence that children's attendance at the site exceeds its approved site cap levels. SFSP regulations further state that sponsors cannot claim or receive SFSP reimbursements for meals that exceed a sponsor's approved site cap.

In April 2015, FNS waived the site cap regulations for sponsors nationwide via a policy memorandum. The memorandum allowed States to increase a sponsor's site cap retroactively (after the sponsor said the extra meals had already been served) and eliminated both the requirement that States visit the site to verify the need for the cap's upward adjustment and prior evidence from the sponsor that actual attendance exceeded original site cap limitations. FNS waived the site cap requirements without documenting how the elimination of this control affected program integrity and the accuracy of program payments. For example, without the site cap restrictions specified in SFSP regulations, sponsors can claim higher meal counts and receive greater reimbursements with no management control in place to verify these increases are legitimate.[21]

As previously stated, while FNS staff explained that they had conferred with legal counsel and believed waivers were in the best interest of SFSP, we are concerned about the process FNS used to waive the regulatory requirements.[22] FNS national office staff told OIG that the SFSP waivers were issued in response to FNS and State partners' experience in SFSP administration, but no formal requests or related documentation existed.

OIG concluded that Section 12(l) of NSLA did not expressly authorize FNS to issue unilateral, nationwide waivers of SFSP regulations, in particular through policy memoranda instead of the rule-making process. First, Section 12(l) does not explicitly authorize or imply that FNS can

[20] A "vended sponsor" means a sponsor that purchases from a food service management company the meals the sponsor will serve at its site(s). The meal service site caps in SFSP regulations apply to vended sponsor sites serving meals prepared and delivered by food service management companies. 7 C.F.R. § 225.6(d) (2).
[21] SFSP regulations as of October 2017 still state the site cap restrictions. 7 C.F.R. §§ 225.6(d) (2), 225.9(f). FNS waived these requirements via policy memorandum in April 2015. FNS, *Site Caps in the Summer Food Service Program: Revised*, Policy Memo No. SFSP 16-2015 (Apr. 21, 2015).
[22] FNS officials told us that they conferred with counsel prior to issuing waivers; however, documentation to verify this was not available.

waive program regulations on a nationwide basis at the agency's discretion. The language of the statute requires that a State or sponsor request a waiver before one is granted by FNS. Specifically, the statute states that FNS may waive statutory or regulatory requirements "for a State or eligible service provider that requests a waiver."[23] Second, NSLA provides specific requirements that a State or sponsor must meet in order to request a regulatory waiver.[24] In our opinion, the statute authorizes FNS to waive SFSP requirements for a specific State or sponsor if FNS receives a request from a State or sponsor submitted in accordance with the requirements of Section 12(l) of NSLA.

SFSP regulations went through extensive analysis, public comment, and agency review and approval. In contrast, FNS' waivers of these regulations through internal policy memoranda were not subject to public notification, review, and comment or documented analyses of the impacts the regulatory waivers would have on program operations and integrity. Therefore, we concluded that FNS should waive such regulations in an accountable, documented, and transparent manner to provide assurance to decision makers and the public that the regulatory waivers are necessary, appropriate, and preserve program integrity. While OIG recognizes that FNS does have discretion in how it interprets the authorizing statute and implements SFSP, we do not believe the statute authorizes FNS to issue unilateral, nationwide waivers of regulatory requirements. Further, in the absence of any specific statutory or regulatory provisions authorizing FNS to create nationwide regulatory waivers or other formal agency documentation that explains FNS' waiver authority and how the agency uses it, we believe FNS' nationwide waivers could be subject to legal challenge.

FNS needs to obtain a formal written legal opinion from the Office of the General Counsel on FNS' legal authority to create nationwide waivers of SFSP regulations in the absence of a State agency or sponsor written request, and without complying with the waiver application and documentation requirements set forth in Section 12(l) of NSLA. This written legal opinion should clarify the authority FNS has to waive regulations and the documentation that the agency should maintain to support waivers made.

Further, because FNS lacks documentation to support its authority and decisions to waive SFSP regulations on a nationwide basis via policy memoranda, FNS should review policy memoranda that waived SFSP regulatory requirements to ensure the SFSP policy memoranda align with and reflect current SFSP regulations. Finally, if FNS believes its nationwide waivers of SFSP regulations are necessary to improve SFSP effectiveness and efficiency, FNS should modify its SFSP regulations through the formal rule-making process to reflect those changes.

Recommendation 3

Obtain a formal written legal opinion from the Office of the General Counsel as to whether FNS has the legal authority to create nationwide waivers of SFSP regulations through policy memoranda in the absence of a State agency or sponsor written request, and without complying

[23] 42 U.S.C. § 1760(l) (1) (A).
[24] *Id.* § 1760(l) (2).

with the waiver application and documentation requirements set forth in Section 12(l) of the Richard B. Russell National School Lunch Act (NSLA). This formal written legal opinion should clarify the authority FNS has and the process it must follow to waive regulations, and the documentation that the agency should maintain to support waivers made.

Agency Response

In its March 14, 2018, response FNS stated:

> Office of the General Counsel (OGC) will brief FNS about the parameters of the Secretary's authority to waive statutory and regulatory provisions of the SFSP in accordance with Section 12(l) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1760(l), in lieu of seeking a formal legal opinion. Subsequently, FNS will assess on a case by case basis any proposed use of the statutory waiver authority consistent with statutory requirements and with additional guidance by OGC.

FNS provided an estimated completion date of February 28, 2019, for this action.

In addition, the March 14, 2018, response stated:

> OIG has identified concerns with the FNS use of the statutory waiver process. FNS acknowledges that it has not always followed the specific requirements under Section 12(l) of the NSLA that allows for waivers of program regulations on a case by case basis using specific procedures. With that, we recognize the need to review the use of Section 12(l) in consultation with OGC and revise accordingly. In addition, we acknowledge that statutory authority is distinct from the authority available to FNS in issuing SFSP guidance, policy memoranda, questions and answers, and other clarifications necessary for Program implementation.

OIG Position

We accept management decision on this recommendation.

Recommendation 4

Review all policy memoranda that waived SFSP regulatory requirements nationwide to ensure SFSP policy direction aligns with and reflects current SFSP regulations.

Agency Response

In its March 14, 2018, response FNS stated:

> FNS concurs with this recommendation as part of its commitment to reviewing the process for establishing SFSP policy. FNS will consult with OGC as part of its review process.

FNS provided an estimated completion date of December 31, 2018, for this action.

OIG Position

We accept FNS' management decision on this recommendation.

Recommendation 5

After reviewing all SFSP waivers, identify those that should be formally incorporated into the SFSP regulations and establish timeframes to propose revisions to current program regulations. The timeframes should require publication of the proposed rule(s) within 1 year of management decision.

Agency Response

In its March 14, 2018, response FNS stated:

> FNS concurs with reviewing the policy memoranda that waived SFSP regulations nationwide. However, FNS does not agree to publish a rulemaking within a one year timeframe. FNS agrees to evaluate its processes and consider whether any issued guidance should be codified in regulations.

FNS provided an estimated completion date of February 28, 2019, for this action.

OIG Position

We accept FNS' management decision on this recommendation.

Finding 3: FNS Needs to Improve Its Assessment of SFSP's Risk for Improper Payments

FNS needs to improve its process to assess SFSP's risk for improper payments. This occurred because FNS' risk assessment was based on limited information it considered "readily available" instead of a comprehensive review of program vulnerabilities. As a result, FNS designated SFSP as a low-risk program; therefore, it is not subject to increased controls and oversight. However, risk factors indicate that SFSP could be at risk for significant improper payments.

The Improper Payments Elimination and Recovery Improvement Act of 2012 requires agencies to review all programs and activities every 3 years and identify those that may be susceptible to significant improper payments.[25] OMB's Appendix C to Circular A-123 implements the various legislative and administrative improper payment requirements and provides guidance to Federal agencies for effectively measuring, reporting, and reducing their improper payment rates.[26]

OMB requires Federal agencies to use a systematic method to identify programs susceptible to significant improper payments.[27] At a minimum, Federal agencies must consider nine specific risk factors likely to contribute to improper payments. These include whether payments or payment eligibility decisions are made outside of the agency and whether there are inherent risks of improper payments due to the nature of agency programs or operations. If the Federal agency determines, through its assessment, that a program is susceptible to significant improper payments, then the agency must (1) develop a process to annually estimate and report the program's improper payments, (2) identify the root causes of the program's improper payments, and (3) implement corrective actions to reduce the programs' improper payments.

FNS conducted SFSP risk assessments in April 2014 and May 2017, and it concluded that SFSP was at low risk for significant improper payments in both reviews. Specifically, in both 2014 and 2017 SFSP risk assessments, FNS stated that there was no indication SFSP did not have effective controls and that there was "no evidence, either in audits, investigations, studies or monitoring results" that SFSP was susceptible to a significant level of improper payments.

OIG asked FNS to provide the documentation and analysis the agency had used to reach its 2017 risk assessment conclusions. In response, FNS provided a written summary of its 2017 SFSP risk assessment process. In this summary, FNS stated that the agency relied on information that was "readily available" to the agency to reach its risk assessment conclusions, which consisted primarily of its internal MEs and financial management reviews (FMRs). MEs and FMRs were designed to assess State agency compliance with program requirements; neither

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[25] Improper Payments Elimination and Recovery Improvement Act of 2012, Pub. L. No. 112-248, 126 Stat. 2390.
[26] OMB, *Requirements for Effective Estimation and Remediation of Improper Payments*, Circular A-123, app. C (Oct. 20, 2014). This guidance defines "improper payment" as any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements. Improper payments also include any payment made to an ineligible recipient or for an ineligible good or service, or payments for goods or services not received.
[27] *Id.* at 10. OMB defines "significant improper payments" as gross annual improper payments in the program exceeding (1) 1.5 percent of program outlays and $10,000,000 of program payments in a reported fiscal year, or (2) $100,000,000, regardless of the improper payment percentage of total program outlays.

of these FNS internal review functions directly tested the accuracy of sponsor meal claims underlying SFSP payments.

We determined that FNS' FY 2017 assessment was insufficient because it did not consider multiple risk factors regarding program vulnerabilities and improper payments that OMB requires be taken into account when FNS reached the conclusion that SFSP was at low risk for improper payments. We reviewed the SFSP payment structure, FNS and State agency monitoring results, and investigations and media cases regarding fraud, and identified a number of risk factors listed in OMB's Appendix C to Circular A-123 that suggest SFSP is vulnerable to significant improper payments (see details below). FNS did not specifically address these risk factors in the 2014 and 2017 SFSP risk assessments.

SFSP Payment Accuracy Is Questionable

The SFSP payment structure indicates that the program is at risk for significant improper payments. Appendix C outlines several risk factors related to program payment structures that agencies are required to consider: (1) whether payments or payment eligibility decisions are made outside of the agency (i.e., a State government); (2) the complexity of determining correct payment amounts; (3) the level, experience, and quality of training for personnel responsible for making program eligibility determinations or certifying that payments are accurate; and (4) inherent risks of improper payments due to the nature of agency programs or operations. We concluded that these risk factors are applicable to SFSP.

First, SFSP is at risk for improper payments because payments and payment eligibility decisions are made outside of FNS. FNS provides program funds to State agencies. The State agencies are responsible for administering SFSP and reimbursing participating sponsors. Sponsors receive program payments (reimbursements) based on the meal count information they provide to State agencies.[28] Sponsors report to State agencies the number of meals they have served to children and the State agencies then multiply

[28] Historically, FNS reimbursed SFSP sponsors based on the lesser of the sponsors' actual operating costs or meal counts multiplied by a designated rate. In 2000, Congress amended the SFSP provisions in NSLA, and authorized a simplified procedures pilot program that allowed sponsors in 14 States to be reimbursed based solely on the meal count calculation, without comparison to the sponsors' actual costs. Consolidated Appropriations Act, 2001, Pub. L. No. 106-554, app. D, div. B, tit. I, § 102, 114 Stat. 2763, 2763A-215. FNS did not promulgate any regulations relating to this pilot program. In December 2007, Congress canceled the pilot program and revised NSLA so the simplified procedures applied to all States. Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, div. A, tit. VII, § 738, 121 Stat. 1844, 1880. FNS did not promulgate regulations to implement this authority but instead implemented it through SFSP policy memorandum. FNS, *Nationwide Expansion of Summer Food Service Program Simplified Cost Accounting Procedures*, Policy Memo No. SFSP 01-2008 (Jan. 2, 2008). SFSP regulations, as of October 2017, state that sponsors will be reimbursed the lesser of actual operating costs incurred by the sponsor; or the sum of the amounts derived by multiplying the number of meals, by type, actually served under the sponsor's program to eligible children by the current rates for each meal. 7 C.F.R. § 225.9(d) (7). FNS published a proposed rule in 2013 regarding simplified cost accounting. Simplified Cost Accounting and Other Actions to Reduce Paperwork in the Summer Food Service Program and National School Lunch Notice Procedures, 78 Fed. Reg. 41,857 (July 12, 2013). However, as of June 2017, a final rule was still being drafted and OIG was not given an expected publication date.

sponsors' reported meal claims by SFSP reimbursement rates and issue reimbursements to the sponsors. Since this risk factor is applicable to SFSP, FNS should have specifically addressed and documented its consideration of the effect on potential improper payments in the agency's risk assessments for the program.

SFSP is also at risk for improper payments because the reimbursement process makes it difficult, if not impossible, for FNS or State agencies to independently verify payment accuracy. The accuracy and legitimacy of sponsors' meal count submissions, which serve as the sole basis for sponsors' reimbursements, are mostly unverified by the State agencies because program regulations require only a limited number of sponsor reviews each year.[29] Therefore, State agencies may only review sponsor meal count submissions and records on a 2 to 3 year rotational basis, with only a single month's worth of meal submissions evaluated for accuracy and completeness. These sparse reviews mean that, for the most part, the amount of SFSP payments made to sponsors depends on unverified meal count information provided by the sponsors themselves. If erroneous payments were occurring due to sponsors' incorrect meal count submissions, neither the State nor FNS would be aware.

The level, experience, and quality of sponsor personnel responsible for making SFSP eligibility determinations and for certifying that payments are accurate is another factor that puts SFSP at risk for improper payments. Sponsors are required to hold SFSP training sessions for their administrative and site personnel, and they must ensure that their administrative personnel attend State agency training.[30] However, FNS has not established minimum experience requirements for sponsor staff. Additionally, while SFSP regulations list the topics on which sponsors are required to train their staff, FNS does not require that its own staff or State agencies assess whether the content of sponsors' training is adequate. Further, FNS' MEs indicated that State agencies do not always ensure sponsor staff receive training.[31] If sponsors' staff are not properly trained, there is an increased risk of improper SFSP eligibility determinations and certification of inaccurate reimbursement requests.

Finally, there is an inherent risk of improper SFSP payments due to the structure of SFSP's payment operations. Sponsors quantify and self-report SFSP meal counts that serve as the basis for program payments.[32] In addition, as discussed earlier, State agencies review sponsors' meal count information and financial documentation on a limited, infrequent basis, with sponsors likely knowing beforehand which year States will

[29] SFSP regulations state that State agencies shall (A) conduct a review of every new sponsor at least once during the first year of operation; (B) 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; (C) annually review every sponsor which experienced significant operational problems in the prior year; (D) review each sponsor at least once every three years; and (E) as part of each sponsor review, conduct reviews of at least 10 percent of each sponsor's sites, or one site, whichever number is greater. 7 C.F.R. § 225.7(d) (2) (ii).
[30] 7 C.F.R. § 225.15(d).
[31] OIG reviewed 53 MEs performed by FNS regional offices during FY 2014 through FY 2016 and found that 13 percent (7 reviews) reported that State agencies either did not ensure or did not provide documentation that each sponsor's supervisory personnel received training.
[32] 7 C.F.R. § 225.9(d) (5).

review their records. Although sponsors must keep all records of meal counts taken daily at each site, a sponsor could misstate the consolidated number of SFSP meals served on the reimbursement claim form and receive payments it was not entitled to, with little or no consequences, since supporting documentation is not reviewed prior to payment. This reliance on sponsors to self-report program deliverables, with minimal State agency verification, makes the accuracy of SFSP payments inherently vulnerable to improper payments. Neither FNS' official 2017 SFSP risk assessment nor the 2017 risk assessment process summary FNS provided to OIG discussed or addressed the inherent risk of improper payments due to the structure of SFSP payment operations.

Significant Payment Deficiencies Have Been Identified in Internal Reports

Although FNS' FY 2017 risk assessment stated, "State agencies' ongoing reviews of SFSP sponsor program operations and Federal review activity do not suggest that SFSP has payment problems," we found that SFSP reviews performed by State agencies and FNS indicated payment problems in the program. Federal managers must consider agency and external review findings related to inaccurate program payments when evaluating a program's risk for significant improper payments.[33] Appendix C to Circular A-123 cites, as an improper payment risk factor, significant deficiencies or other relevant management findings that might hinder accurate payment certification.

State Agency Reviews: State agencies that administer SFSP are required to conduct reviews of SFSP sponsor and site activities.[34] OIG obtained 2016 SFSP review information from four State agencies with the largest SFSP participation levels and found that, in three of the States, reviews identified widespread improper payment issues, such as inaccurate meal counts, unallowable expenses, and meals served outside of approved times.[35] For example, the Texas Department of Agriculture's public website indicated that its most frequent review findings were related to meal counting and reimbursement claiming errors, including inaccurate and incomplete meal count records at SFSP sites. Of the 238 SFSP sponsors the Texas Department of Agriculture reviewed in 2016, 72 (30 percent) had findings related to improper payments. SFSP reviews conducted by the New York State Education Department in 2016 had similar results: 39 of the 111 sponsors with sites reviewed (35 percent) had findings related to improper payments. SFSP reviews performed by the California Department of Education identified significant instances of meal counting and reimbursement claiming errors. Of the 72 SFSP sponsor reviews conducted by the California Department of Education in 2016, 15 reviews (21 percent) identified issues with sponsor consolidation of meal counts; incorrect meal count consolidations result in incorrect reimbursement claims.

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[33] OMB, *Requirements for Effective Estimation and Remediation of Improper Payments*, Circular A-123, app. C (Oct. 20, 2014).
[34] 7 C.F.R. § 225.7(d) (2).
[35] These were the State agencies administering SFSP in California, Florida, New York, and Texas. The Florida review information provided to us included 101 findings for 65 sponsors and related sites reviewed in 2016. However, only 52 (51 percent) of those findings provided a description. Of those described findings, 31 (60 percent) appeared to be related to improper payments, but more detail would be needed to confirm.

State reviews of SFSP sponsors are the most direct indicators of noncompliance and improper payments. Given that FNS' 2017 SFSP risk assessment stated that "State agencies' ongoing reviews of SFSP sponsor program operations . . . do not suggest SFSP has payment problems,"[36] OIG requested that FNS provide copies of the State agency reviews FNS evaluated for its 2017 SFSP risk assessment and FNS' analysis of State agencies' SFSP improper payment data. FNS provided a written summary of its risk assessment process that did not mention the use of State agency data and emphasized that FNS relied on information that was "readily available" when concluding SFSP was not at risk for significant improper payments.

FNS Regional Office MEs: We reviewed 53 FNS-issued ME reports for State agencies administering SFSP for FYs 2014 through 2016.[37] Of these, 25 MEs (47 percent) included findings or observations indicating the existence of improper payments and/or internal control weaknesses that could lead to improper payments. Examples of these findings and observations include State agencies that did not require sponsors to take corrective action when personnel observed violations during site reviews; State agencies that did not take appropriate action regarding overpayments when personnel found sponsors to be non-compliant with program requirements; and sponsors that were inaccurately classifying, or were unable to classify, SFSP sites as rural or non-rural, which would create incorrect payment amounts.[38] Further, 9 of the 53 MEs reported that the State agency either had no meal disallowance policy or had an incomplete meal disallowance policy. While not required, written and comprehensive meal disallowance policies would help ensure consistency in the effort to prevent improper payments.

Neither FNS' official 2017 SFSP risk assessment nor the 2017 risk assessment process summary it provided to OIG contained information as to how FNS concluded that its SFSP MEs did not indicate SFSP was at risk for significant improper payments. FNS' 2017 risk assessment simply stated "Federal review activity do[es] not suggest that SFSP has payment problems."[39] The SFSP risk assessment summary FNS provided to OIG acknowledged that FNS relied on the ME reviews discussed by OIG above during its 2017 risk assessment process, but did not explain how the agency reached its conclusion that SFSP was not at risk for improper payments.

Other FNS Reviews: During the summers of 2015 and 2016, FNS' national office personnel coordinated a limited series of non-statistical, unannounced SFSP site visits in each of FNS' seven regions.[40] The purpose for these visits was to capture information regarding the integrity of program operations, confirm that SFSP sites actually existed, and determine if these sites were counting meals and claiming

[36] FNS, *FY 2017 USDA Risk Assessment* (May 17, 2017).
[37] SFSP regulations define "State" as any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands. 7 C.F.R. § 225.2.
[38] SFSP sponsors receive larger SFSP reimbursements for rural sites than non-rural sites.
[39] FNS, *FY 2017 USDA Risk Assessment* (May 17, 2017).
[40] These regions are Mid-Atlantic, Midwest, Mountain Plains, Northeast, Southeast, Southwest, and Western.

reimbursements correctly. FNS found that 34 percent of the sites it selected in 2015, and 32 percent of the sites it selected in 2016, were incorrectly counting meals and claiming improper reimbursements.[41]

FNS' official 2017 SFSP risk assessment did not mention or discuss the results of its 2015 and 2016 SFSP sponsor and site reviews other than to state, as mentioned above, "Federal review activity do[es] not suggest that SFSP has payment problems." In the 2017 risk assessment process summary FNS provided to OIG, FNS stated that the most current FNS SFSP sponsor and site review data available to the agency would be the national office reviews FNS conducted in 2015 and 2016. FNS did not provide further explanation as to the meaning of this statement, or why it concluded the compliance issues identified in its 2015 and 2016 reviews did not indicate SFSP was at risk for significant improper payments.

SFSP Is Susceptible to Fraudulent Activities

OMB requires Federal managers to consider any improper payments identified in prior years when performing improper payment risk assessments. On numerous occasions since 2015, investigation and media reports have identified SFSP as subject to fraudulent sponsor activities. These fraudulent activities include claiming program payments for sites that do not exist, deliberately overstating the number of children's meals served in order to receive inaccurate and excessive payments, and using SFSP payment funds for prohibited purposes. All of these activities suggest the possibility of improper payments.

For example, an OIG investigation in Arkansas has determined that sponsors made bribe payments to State employees to ensure their applications to participate in the program were approved and avoided scrutiny when the sponsors later sought meal reimbursement for inflated claims. Court ordered restitution totals over $12 million. The investigation is ongoing and additional individuals are awaiting sentencing.[42] In Illinois, a group of five people was charged with fraudulently taking over $400,000 from the program during 2010.[43] In Virginia, a sponsor submitted fraudulent claims during 2012 and 2013 and received almost $250,000 in improper SFSP overpayments.[44] In Tennessee, a comptroller investigation found a sponsor misappropriated over $160,000 in SFSP funds from June 2014 through July 2014.[45] These examples from prior investigative work

[41] In 2015, 40 of the 119 SFSP sites FNS selected (34 percent) were incorrectly counting meals and claiming improper reimbursements. In 2016, FNS identified these same issues at 22 of 68 sites (32 percent) it selected.
[42] U.S. Department of Justice, *Former Arkansas DHS Employee Pleads Guilty to Accepting Bribes and Conspiracy in Scheme to Steal USDA Funds Intended to Feed Hungry Children* (2016), https://www.justice.gov/usao-edar/pr/former-arkansas-dhs-employee-pleads-guilty-accepting-bribes-and-conspiracy-scheme-steal.
[43] Schering, Steve, "Oak Park pastor, wife accused of defrauding summer food program," *Chicago Tribune* (Sept. 30, 2015).
[44] U.S. Department of Justice, *Mother and Daughter Sentenced to Prison for Defrauding USDA's Summer Food Service Program* (2016), https://www.justice.gov/usao-edva/pr/mother-and-daughter-sentenced-prison-defrauding-usda-s-summer-food-service-program.
[45] Tennessee Comptroller of the Treasury, *Special Investigation: Kingdom Dominion Worldwide Industries, Inc.* (May 2, 2016), http://www.comptroller.tn.gov/repository/ia/kingdomdominionworldwideministries.pdf.

indicate the existence of potential payment integrity issues that are not isolated to a specific geographic area, as they occurred in four of the seven FNS regions.[46]

FNS also identified potentially fraudulent SFSP sponsor activity during SFSP site reviews performed in 2015. FNS national office staff non-statistically selected and visited 126 sites, and they found significant improper payments at 4 sites operated by 2 sponsors. Thus far, the relevant State agency is in the process of disallowing SFSP payments totaling about $1.67 million. The results of FNS' site reviews are significant: 3 percent of the sites they non-statistically chose to visit had potentially fraudulent activities occurring.

Despite the conclusions cited in FNS' official 2014 and 2017 SFSP risk assessments, FNS national office staff generally agreed that SFSP might be susceptible to significant improper payments. FNS staff acknowledged that SFSP continues to have recurring problems, such as erroneous sponsor meal claims and unsupported sponsor expenditures, and expressed the opinion that OIG will likely find program integrity issues when OIG reviews SFSP sponsor activities.[47] FNS national office staff also told OIG that the agency's 2017 risk assessment conclusion was based, in part, on the fact that there were no OIG, GAO, or A-133 reports[48] issued during FYs 2014 through 2016 that indicated SFSP was at risk for significant improper payments. While Federal managers may evaluate and incorporate recommendations by external auditors and OIG, neither is considered part of a Federal agency's internal control system. The absence of OIG reports does not alleviate FNS' responsibility for conducting a comprehensive assessment of SFSP's risk for significant improper payments.[49]

Based on our analysis of the OMB risk factors, SFSP payment information readily available to FNS strongly suggests significant improper payments may be occurring in the program. FNS needs to complete a new SFSP risk assessment, taking into account the improper payment indicators presented above, and other additional payment data available to the agency, to reach a conclusion as to SFSP's level of improper payment risk.

Recommendation 6

Complete an SFSP risk assessment for improper payments taking into account the risk factors identified by the Office of Management and Budget (OMB) as likely to contribute to improper payments, such as the results of State, FNS, and OIG reviews; evidence of fraudulent activity; and inherent payment weaknesses discussed in this finding.

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[46] Arkansas is in FNS' Southwest region, Illinois is in FNS' Midwest region, Virginia is in FNS' Mid-Atlantic Region, and Tennessee is in FNS' Southeast region.

[47] In March and April 2017, OIG initiated audits of SFSP sponsor activities in the States of California, Florida, New York, and Texas. OIG has issued four interim reports as of September 2017. Audit Report 27004-0003-21(1), *Summer Food Service Program-Texas Sponsor Cost-Interim Report*, Sept. 2017; Audit Report 27004-0001-31(1), *Florida's Controls Over Summer Food Service Program-Interim Report*, Sept. 2017; Audit Report 27004-0001-41(1), *California's Controls Over Summer Food Service Program Interim Report*, Sept. 2017; Audit Report 27004-0004-21(1), *Texas' Controls Over Summer Food Service – Interim Report*, Sept. 2017.

[48] OMB, *Audits of States, Local Governments and Non-Profit Organizations*, Circular A-133 (June 1997).

[49] GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Sept. 2014).

Agency Response

In its March 14, 2018, response FNS stated:

> FNS concurs with this recommendation and will prepare a risk assessment that addresses the specific concerns raised in this report.

FNS provided an estimated completion date of February 28, 2019, for this action.

OIG Position

We accept FNS' management decision on this recommendation.

Scope and Methodology

We conducted a nationwide audit of FNS' controls over SFSP. We performed fieldwork at the FNS national office in Alexandria, Virginia and four of its regional offices (Atlanta, Georgia; Boston, Massachusetts; Dallas, Texas; and San Francisco, California). Our audit covered FNS' administration and oversight of SFSP from FYs 2014 through 2016. We performed audit fieldwork from October 2016 to June 2017.

To accomplish our audit objective, we:

- Reviewed the pertinent laws and regulations governing SFSP and the current policies and procedures FNS established as guidance for State agencies, sponsors, and sites;
- Interviewed both FNS national and regional officials to gain an understanding of their roles in monitoring the program and to determine what controls were implemented to ensure State agencies, sponsors, and sites complied with Federal program regulations and policies;
- Non-statistically selected four regional offices based on the amount of SFSP benefits distributed to the States (i.e., the regional offices responsible for the four highest SFSP-funded States);
- Visited the selected four regional offices to determine whether they were complying with SFSP requirements and specifically had discussions with FNS regional office staff on the State program management and administration plans submitted by State agencies and whether the regional office has an internal audit function that provides assurance that SFSP controls are in place and effectively operating;
- Assessed how FNS regional offices ensure States' sponsor monitoring processes are sufficient and adequate (e.g., whether States (1) review a sufficient number of sponsors, (2) communicate the results of the reviews to the sponsors, and (3) establish corrective actions for sponsors with any identified deficiencies and follow-up on deficiencies);
- Reviewed all ME reports completed by FNS regional offices during our scope period to determine their effectiveness as an SFSP internal control;
- Reviewed FNS' processes to identify any deficiencies found, the proposed corrective actions, and whether follow-up reviews were completed to determine if deficiencies were corrected; and
- Reviewed FNS' information systems to gain an understanding of the existence, relationship, impact, and pervasiveness of the systems and related internal controls within the context of the engagement objective.

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 (e.g., the fundamental processes of MEs, waiver memoranda, and the improper payment risk assessment are performed outside of information technology systems).

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

C.F.R. ..... Code of Federal Regulations
FMR ..... financial management review
FNS ..... Food and Nutrition Service
FY ..... fiscal year
GAO ..... Government Accountability Office
ME ..... management evaluation
NSLA ..... Richard B. Russell National School Lunch Act
OIG ..... Office of Inspector General
OMB ..... Office of Management and Budget
QA ..... quality assurance
SFSP ..... Summer Food Service Program
U.S.C. ..... United States Code
USDA ..... United States Department of Agriculture

FNS'
RESPONSE TO AUDIT REPORT

United States Department of Agriculture

Food and Nutrition Service

3101 Park Center Drive

Alexandria, VA 22302-1500

DATE: March 14, 2018

AUDIT NUMBER: 27601-0004-41

TO: Gil H. Harden
Assistant Inspector General for Audit

FROM: Brandon Lipps /s/
Administrator
Food and Nutrition Service

SUBJECT: FNS Controls Over the Summer Food Service Program

This letter responds to the official draft report for audit number 27601-0004-41, FNS Controls Over the Summer Food Service Program. Specifically, the Food and Nutrition Service (FNS) is responding to the six recommendations in the report.

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

FNS supports OIG's objectives to assess the controls FNS has in place to ensure that State agencies are complying with Summer Food Service Program (SFSP) regulations and other requirements in order to protect the integrity of the Program. FNS believes strongly that the integrity of Program operations must be preserved in order to provide the 15.3 million children living in food insecure households in America with access to nutritious meals when school is not in session.

Since the SFSP was authorized by Congress in 1975, the mission of the Program has been to serve meals to children in areas where poor economic conditions exist when school is not in session. SFSP has been a vital safety net for children and families during the summer months when the costs to feed a family can rise by hundreds of dollars a month, an increase that many families simply cannot afford. In the first year of the Program, SFSP served more than 1.75 million children. Since then, the Program has grown and now operates in many communities all across the country, serving on average over 2.7 million children a day during the summer months. Over the last decade, more than one billion meals have been served to children when school is not in session through the SFSP. In 2016, the most recent year for which FNS has available data, over 153 million meals were served to children at over 50,000 sites operated by over 6,000 sponsors. SFSP sponsors range from Federal agencies, to local government, school districts, private non-profit, and other community organizations, representing the wide diversity of Americans that the Program serves.

It is important to note that the SFSP operates differently than other Child Nutrition Programs. These differences help to serve the needs of various communities but also contribute to the need for flexibility in the Program. Summer meals can be served in many different settings and are not always attached to a structured activity program. There is no requirement for children to participate on a daily basis, causing fluctuations in attendance, especially for open sites, making it difficult to forecast how many meals are needed to serve the community. In order to run efficient and effective programs, sponsors need the flexibility to adapt to these changes. Furthermore, local programs generally run for a very limited time (one to twelve weeks), meaning that sponsors need options for running cost effective programs that do not create unintended monitoring burdens or contribute to excessive food waste.

Recognizing the challenges associated with operating a successful SFSP, FNS has made every effort to ensure that the Program is run efficiently, limits burden on State agencies, diminishes barriers to participation, and provides children access to nutritious meals during the summer, while ensuring that operators are correctly administering the Program and being good stewards of taxpayer dollars. FNS appreciates that OIG identified important areas where administration of the Program can be improved.

OIG has identified concerns with the FNS use of the statutory waiver process. FNS acknowledges that it has not always followed the specific requirements under Section 12 (l) of the Richard B. Russell National School Lunch Act (NSLA) that allow for waivers of program regulations on a case by case basis using specific procedures. With that, we recognize the need to review the use of Section 12(l) waiver authority in consultation with the Office of the General Counsel and revise accordingly. In addition, we acknowledge that statutory authority is distinct from the authority available to FNS in issuing SFSP guidance, policy memoranda, questions and answers, and other clarifications necessary for Program implementation.

OIG further asserted that FNS "could not provide documentation supporting how they [the policy memoranda] were necessary, nor how they preserved program integrity." Throughout the course of Phase I of the OIG audit, FNS provided extensive documentation to OIG, including a detailed history of Program policy and events. This documentation demonstrated that the Agency exercised due diligence to collect feedback from State agencies, Program operators, and other stakeholders on how the SFSP can operate more efficiently and effectively to better serve the public interest. FNS takes customer service very seriously and has a long history of working closely with its stakeholders in the Regions, at the State and local level, and in the advocacy community to learn from their experiences administering and operating the SFSP. FNS has used this stakeholder feedback to implement policies that accommodate variation across operators, facilitate participation, and decrease administrative burden, while protecting the integrity of the program.

In pursuit of that goal, over the last two decades, FNS held nation-wide conferences to gain feedback from stakeholders, published memoranda clarifying concerns, developed tip sheets for improving Program operations, and proposed statutory changes to Congress to improve Program operations. Most recently, FNS led a five year campaign to collect strategies from State agencies, sponsors, communities, and other leaders to improve the delivery of nutrition assistance to low-income children in the summer months. This campaign resulted in improved communication and processes in the implementation of the SFSP at the State and local levels.

Across FNS Regional Offices and the National Office, FNS has participated in over 1,000 planning meetings, debriefs, conference calls, kick-off events, and information sessions with State agencies, sponsors, partners, and other National and local organizations. The information collected through these activities provided important insights into the need for increased access to the SFSP as well as the challenges in operating the Program. FNS has used the information extensively to inform decision making.

Further, FNS has utilized more formal channels of communication with stakeholders. FNS provided OIG with documentation from a Notice published in the Federal Register in 2004 requesting comments on methods for improving access in the SFSP by children in needy areas. FNS received a total of twenty comments from State agencies (4), SFSP sponsor/site staff (7), and Program advocates (9). These responses provided forty-nine distinct suggestions for improving the SFSP.

Many of the policies questioned by OIG throughout the Phase I audit stem from information gathered through the multiple activities FNS has initiated to ensure that any policy guidance issued on a National basis is necessary for the efficient implementation of the Program while maintaining program integrity. Similarly, many of the policies in question were fully supported by the comments submitted through the formal notice and comment process.

In this report, OIG cited three specific memoranda of concern:

- SFSP 12-2011: *Waiver of Site Monitoring Requirements in the Summer Food Service Program* [April 5, 2011]. This memorandum provided State agencies with the flexibility to waive the requirement that sponsors conduct a site visit to all sites during the first week of operation and instead allows sponsors the option not to conduct SFSP site visits during the first week of site operations for sites that operated successfully in the previous year. This action helps sponsors target their monitoring resources to sites that need additional oversight and reduces duplication of efforts.
- SFSP 11-2011: *Waiver of Meal Time Restrictions and Unitized Meal Requirements in the Summer Food Service Program*, [April 5, 2011]. This memorandum extended the flexibility FNS offered to utilize the

"offer versus serve" meal service option (OVS) to all sponsors. Extending OVS to non-school sponsors helps minimize food waste and contain costs. Providing this flexibility allows sponsors to be more responsive to preferences of the children they serve and helps ensure children consume the meals being offered and benefit from the nutrients provided.

- SFSP 16-2015: *Site Caps in the Summer Food Service Program: Revised*, [April 21, 2015]. This guidance allowed State agencies the flexibility to increase a sponsor's site cap (maximum number of meals served at a site) retroactively in order to ensure that sponsors receive proper reimbursement for all valid meals served.

All three memoranda were informed by the interactions with stakeholders, program operators, and the public comment process described above. For more detailed information on the documentation FNS provided to OIG during the fieldwork phase, which illustrates the carefully and thoroughly considered decisions concerning these policy memoranda, please see Attachment 1.

OIG Recommendation 1:

Modify the Summer Food Service Program (SFSP) management evaluations (ME) review guidance to ensure MEs contain documentation to support reviewers' assessments that the State agency did or did not comply with SFSP administration and oversight requirements. The ME documentation should be presented in sufficient detail to allow the Food and Nutrition Service (FNS) managers not associated with the review and external parties, such as the Office of Inspector General (OIG), to verify that the ME review was properly conducted and that its results are valid.

FNS Response:

FNS concurs with the intent of this recommendation and has already taken action. This recommendation aligns with the existing National ME/FMR Guidance and FNS' Quality Assurance effort begun in FY 2015. It is important to point out that improvements in this area were initiated in FY 2017 and were already underway when OIG began this audit work. The Quality Assurance team currently conducts reviews as an external party to verify that the ME review process is properly conducted and results are valid. FNS has longstanding procedures in place to document deficiencies and noncompliance areas in the ME report and work papers. This is evidenced in the ME automated Tool, where in State noncompliance is documented by citing specific regulations that are not followed. In an effort to expand ME documentation to include compliance conclusions, FNS will develop instructions requiring ME reviewers to document occurrences of no findings or

observations within the ME Tool Workbook. FNS will ensure these instructions align with the National ME/FMR guidance which states “ME/FMR reports that contain no findings and/or observations must support this conclusion and be included in the work papers” (Section IX A, pg. 19).

While the requirement to document instances of compliance was a new addition to the National ME/FMR Review Guidance as of February 2017, some FNS Regional Offices had already implemented and utilized more stringent processes that allow for centralized ME documentation. For example, one Regional Office utilizes Microsoft OneNote for all ME Review team members to compile notes from file reviews and State Agency interviews, along with supporting documentation into one central document. Other Regional Offices use the On-Site Workbook feature within the ME Tool to document affirmative conclusions of compliance.

FNS is building on innovations already made at the Regional level by standardizing processes into a single, centralized ME documentation protocol. As a part of the annual Program Integrity and Accountability Workgroup, which was organized to develop strategies and implement initiatives based on program integrity objectives in the FNS Priority Plan objectives, FNS had already begun creating procedures for a work paper management protocol for use during all SFSP ME Reviews.

Additionally, FNS will ensure that the current requirement is emphasized through training and Quality Assurance Reviews.

Estimated Completion Date:

The following items will be fully implemented and disseminated to all necessary FNS staff by June 30, 2019:

- By February 28, 2019: A centralized ME documentation and work paper management protocol for use during all SFSP ME reviews;
- By February 28, 2019: Instructions detailing requirements of the aforementioned protocol and requiring ME reviewers to document affirmative findings within the ME Tool Workbook;
- By June 30, 2019: Training materials for FNS staff to familiarize and emphasize improved ME documentation protocols.

OIG Recommendation 2:

Develop procedures for FNS management to evaluate the ME review tests performed, the analysis conducted, and the basis for and accuracy of the ME reviewer conclusions and results using the ME reviewer documentation required as a result of Recommendation 1.

FNS Response:

FNS concurs with this recommendation. Currently FNS management communicates with the ME Review teams and discusses the resulting conclusions that are contained in the ME Report. As stipulated in the National ME/FMR Review Guidance, within the Body of the Report (Section VIII, G), the scope of review and the methodology indicating the methods and procedures used to conduct the review are required, such as the analysis of documents, interview process, the sampling methodology used, and on-site observation (p. 18). Upon strengthening the processes outlined in response to OIG recommendation 1, FNS will require the ME Review teams to document their assessments more thoroughly. This may include the interview process, the number and type of files reviewed, and the methodology used when selecting files for review. This strengthened documentation process will allow FNS management to better evaluate ME findings, analysis, and conclusions to ensure ME consistency and accuracy.

Estimated Completion Date:

Upon implementation of strengthened ME documentation processes outlined in response to OIG recommendation 1, FNS management will be able to evaluate ME reviews performed, as necessary, beginning on February 28, 2019.

OIG Recommendation 3:

Obtain a formal written legal opinion from the Office of the General Counsel as to whether FNS has the legal authority to create nationwide waivers of SFSP program regulations through policy memoranda in the absence of a State agency or sponsor written request, and without complying with the waiver application and documentation requirements set forth in Section 12 (l) of the Richard B. Russell National School Lunch Act (NSLA). This formal written legal opinion should clarify the authority FNS has and the process it must follow to waive regulations, and the documentation that the agency should maintain to support waivers made.

FNS Response:

Office of the General Counsel (OGC) will brief FNS about the parameters of the Secretary's authority to waive statutory and regulatory provisions of the SFSP in accordance with Section 12(l) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1760(l), in lieu of seeking a formal legal opinion. Subsequently, FNS will assess on a case by case basis any proposed use of the statutory waiver authority consistent with statutory requirements and with additional guidance by OGC.

Estimated Completion Date:

By February 28, 2019, FNS will establish updated procedures for reviewing proposed waivers and consulting with OGC prior to waiver of any SFSP regulations.

OIG Recommendation 4:

Review all policy memoranda that waived SFSP regulatory requirements nationwide to ensure SFSP policy direction aligns with and reflects current SFSP regulations.

FNS Response:

FNS concurs with this recommendation as part of its commitment to reviewing the process for establishing SFSP policy. FNS will consult with OGC as part of its review process.

Estimated Completion Date:

FNS will complete the review of all SFSP policy memoranda that waived regulatory requirements nationwide by December 31, 2018.

OIG Recommendation 5:

After reviewing all SFSP waivers, identify those that should be formally incorporated into the SFSP regulations and establish timeframes to propose revisions to current program regulations. The timeframes should require publication of the proposed rule(s) within 1 year of management decision.

FNS Response:

FNS concurs with reviewing the policy memoranda that waived SFSP regulations nationwide. However, FNS does not agree to publish a rulemaking within a one year timeframe.

FNS agrees to evaluate its processes and consider whether any issued guidance should be codified in regulations.

We would note that should FNS determine that any aspect of SFSP published guidance should be incorporated into regulations, the one year timeframe proposed in the recommendation is unrealistic. Rulemaking requires public notice and comment, as well as a determination of the significance of the rule. Public comments must be recorded, examined, and assessed. Policy decisions subsequently must be carefully and thoughtfully considered, reviewed, and finalized by policy officials. Rulemaking

decisions and the time frame thereof are an Agency decision and not within the purview of OIG.

Estimated Completion Date:

By February 28, 2019, and after reviewing the policy memoranda that waived SFSP regulations nationwide, FNS will determine if a rulemaking is necessary. If so, FNS will develop an appropriate timeframe for promulgation of the rule.

Recommendation 6

Complete an SFSP risk assessment for improper payments taking into account the risk factors identified by the Office of Management and Budget (OMB) as likely to contribute to improper payments, such as the results of State, FNS, and OIG reviews; evidence of fraudulent activity; and inherent payment weaknesses discussed in this finding.

FNS Response

FNS concurs with this recommendation and will prepare a risk assessment that addresses the specific concerns raised in this report.

FNS takes seriously its oversight responsibility of the SFSP, and is committed to ensuring that existing internal controls are effective at preventing improper program payments.

FNS detailed SFSP internal controls in its 2017 risk assessment. These include State agency monitoring reviews of program sponsors, sponsor reviews of sites, and, when warranted, the imposition of corrective action and the disallowance and recovery of improper program payments. As outlined in our response to Recommendations 1 and 2, the agency is in the midst of a multi-year effort to strengthen these controls through steps that include agency-led site reviews and enhancements to the Management Evaluation process.

FNS recognizes that the size and decentralized structure of the Summer Food Service Program are among the factors that make it "susceptible to significant improper payments."[1] Taking into account the additional evidence presented by OIG's reviews and the agency's own oversight activity, FNS agrees that it is appropriate to re-evaluate program risk at this time. FNS will undertake this assessment as it moves forward with its existing efforts to improve program performance.

[1] Appendix C to OMB Circular A-123

Estimated Completion Date:

By February 28, 2019, FNS will prepare a risk assessment that addresses the specific concerns raised in this report.

Attachment 1

In this report, OIG cited three specific memoranda of concern, all of which were informed by legislative changes, interactions with stakeholders, and the public comment process, as follows.

The first example cited by OIG concerns FNS policy memo SFSP 12-2011: *Waiver of Site Monitoring Requirements in the Summer Food Service Program* [April 5, 2011]. This memorandum provides State agencies with the flexibility to waive the requirement that sponsors conduct a site visit to all sites during the first week of operation and instead allows sponsors the option to not conduct SFSP site visits during the first week of site operations for sites that operated successfully in the previous year. This action helps sponsors target their monitoring resources to sites that need additional oversight and removes duplication of efforts. Additionally, this simplified the administration of the SFSP and decreased burden and paperwork for sponsoring organizations, which was specifically requested by stakeholders in addition to being a Congressional directive. During the fieldwork phase of this audit, FNS provided OIG with documentation that demonstrated:

- Congressional intent: Congress has repeatedly expressed intent that FNS "streamline program and reduce paperwork burdens on local providers" (P.L. 103-448, section 3 (sense of Congress). Congress reiterated this intent in the 1998 Child Nutrition Reauthorization committee reports (page 15) and in the William F. Golding Child Nutrition Reauthorization Act of 1998.

- Feedback from stakeholders: FNS coordinated national conferences in January 1998, November 2002, and November 2008, and hosted a series of listening sessions across the Nation in April and May 2002, to encourage an exchange of ideas among policy officials and stakeholders, develop strategies for increasing Program sponsorship and overall participation, and solicit feedback on the usefulness of a variety of policy reforms.

- Notice for Comment in Federal Register: In order to receive feedback on recently published policy memos, on January 27, 2004, FNS solicited comments from the public related to methods for improving access to the Summer Food Service Program. The request was published in the Federal Register. This Notice for Comment received twenty responses from State agencies (4), SFSP sponsor/site staff (7), and Program advocates (9). Below are summaries of responses received by FNS.

  The Oregon Food Bank and Oregon Hunger Relief Task Force shared their support for reducing site monitoring requirements for experienced sponsors and Seamless Summer sponsors as demonstrated in their March 22, 2004 letter. In their letter, they recommended that FNS simplify paperwork requirements for community-based organizations. The Alameda County also supported more flexibility for community-based organizations. In their March 29, 2004 letter, they recommended that FNS establish a process that would allow community-based institutions who received USDA funding to automatically qualify as SFSP sites.

  Similarly, the Montana Food Policy Council (MFPC) requested flexibility for community-based organizations who were interested in becoming an SFSP sponsor. In

their March 22, 2004 letter, MFPC noted that the paperwork requirements may be a barrier.

In their March 10, 2014 letter in response to FNS's request for comments, the Nutrition Consortium of New York State (currently Hunger Solutions NY) shared concerns about paperwork requirements and thought they were barriers for sponsors who were interested in participating in SFSP.

The second example cited by OIG in their report concerns the flexibility FNS offered to all sponsors to utilize the "offer versus serve" meal service option (OVS) through policy memorandum SFSP 11-2011: *Waiver of Meal Time Restrictions and Unitized Meal Requirements in the Summer Food Service Program*, [April 5, 2011]. Extending OVS to non-school sponsors facilitated the minimization of food waste in addition to helping sponsors contain costs. Providing this flexibility allowed sponsors to be more responsive to preferences of the children that they were serving and ensure that meals being offered were actually consumed and that children benefited from the nutrients provided. Again, during the fieldwork phase of this audit, FNS provided extensive documentation to OIG demonstrating this longstanding guidance supported by public comments:

- Congressional intent: Consistent with congressional intent, as recently as the 2010 Child Nutrition Reauthorization Act (P.L. 111-296), and suggestions expressed by SFSP operators and stakeholders, FNS examined regulations to find meaningful ways to improve the delivery of nutrition assistance to low-income children.
- Policy guidance: Summer Food Service Program (SFSP) Policy Memorandum #7-99: Meals Prepared in Schools and Permissible Use of Offer Versus Serve, December 4, 1998.
- Notice for Comment in Federal Register: On January 27, 2004, FNS solicited comments from the public related to methods for improving access to the Summer Food Service Program. The request was published in the Federal Registrar. In response, the New York State Department of Education was supportive of OVS as demonstrated in their March 2014 letter to FNS.

Finally, OIG cited policy guidance that allows State agencies the flexibility to increase a sponsor's site cap (maximum number of meals served at a site) retroactively through policy memorandum SFSP 16-2015: *Site Caps in the Summer Food Service Program: Revised*, [April 21, 2015]. . Site caps are used in the Program as a maximum number of meals that a site can reasonably serve given the space and resources available at that site. Site caps are not required to reflect the average attendance at a site, and in specific circumstances, revisions to site caps are appropriate, as detailed in the cited memo FNS issued this memo to clarify the appropriate use of site caps and provide State agencies with appropriate flexibility to ensure that site caps do not serve as a barrier to the service of legitimate reimbursable meals. FNS provided documentation to OIG supporting this flexibility:

- Legislation: The 2010 Child Nutrition Reauthorization Act (P.L. 111-296) removed the only reference to caps on the number of children that could be served at a summer meals site.

- Previous Policy Guidance: SFSP 08-2013, Site Caps in the Summer Food Service Program, January 24, 2013; SFSP 16-2015 Site Caps in the Summer Food Service Program: Revised, April 21, 2015.
- Letters from Stakeholders: Food Research and Action Center (FRAC) letter dated October 3, 2014
- Waiver Request: *Summer Food Service Program: Idaho Request for an Exception to Site Cap and Meal Service Period Requirements – Approval*, December 10, 2014

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