

CDE Note: The terms and conditions outlined in this document are relevant for two different audiences, the State Agency and SFA. CDE has highlighted terms and conditions relevant to SFAs in this document.

**THE UNITED STATES DEPARTMENT OF AGRICULTURE (USDA)  
FOOD AND NUTRITION SERVICE (FNS)  
TERMS AND CONDITIONS FOR THE  
FISCAL YEAR 2022 SUPPLY CHAIN ASSISTANCE FUNDING**

The USDA Food and Nutrition Service (hereinafter referred to as “FNS”) awards funding to the Colorado Department of Education, hereinafter referred to as “Recipient”. By acceptance of this funding, the Recipient agrees to comply with all terms and conditions of the award listed below.

**AUTHORITY**

To assist school districts with these supply chain disruptions, the Food and Nutrition Service (FNS) will allocate up to \$1 billion in relief funding to State agencies. This critical funding stream will provide an additional financial resource for school districts to use in response to these widespread supply chain disruptions, enhance efforts to strengthen local food supply chains, and help schools to overcome financial and operational barriers while maintaining children’s access to nutritious meals. These resources will be referred to as Supply Chain Assistance (SCA) funds. State agencies will distribute SCA funds to School Food Authorities (SFAs) to help defray the costs of challenges such as unanticipated cancellation of food and supply contracts, reduced availability of certain foods, unexpected substitution of certain products, unpredictable increases in food and supply prices, and other identified challenges. This investment will support direct purchasing of unprocessed or minimally processed domestic food products by school food authorities to address immediate supply chain disruption barriers. As these challenges are both extensive and widespread, these funds are targeted to provide a rapid and direct response via financial relief to affected school districts.

FNS is directing regional offices to extend new FY 2022 Supply Chain Assistance funding to their respective Child Nutrition State Agencies as quickly as possible. To receive funds, State agencies and SFAs must administer or operate the National School Lunch Program (NSLP) and/or the School Breakfast Program (SBP) (i.e. School Meal Programs)<sup>1</sup>.

**FUNDING ALLOCATION**

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<sup>1</sup> Including the NSLP Seamless Summer Option during SY 2021-2022, as authorized by the [Nationwide Waiver to Allow the Seamless Summer Option through School Year 2021-2022](https://www.fns.usda.gov/cn/covid-19-child-nutrition-response-85) (<https://www.fns.usda.gov/cn/covid-19-child-nutrition-response-85>).

SCA funds will be provided by FNS to Child Nutrition State agencies based on a formula allocation. Upon receipt of allocated SCA funds, State agencies will disburse formula-calculated payments to eligible SFAs. State agencies should work with their Regional Grants Management Administrative Services Office to begin the process of award to eligible SFAs as soon as possible. In order to expedite the process of making payments to SFAs, State agencies should claim their SCA funding by January 31, 2022 or risk forfeiture of their allocation.

#### *Local-level Funding Distribution*

State agencies will allocate payments to individual school districts based on a predetermined formula as described in policy memo SP 03-2022, *Allocation of Supply Chain Assistance (SCA) Funds to Alleviate Supply Chain Disruptions in the School Meal Programs* issued by the Child Nutrition Programs. This allocation must include all SFAs currently operating the NSLP and/or SBP<sup>2</sup> and includes two components: a base payment of \$5,000 to all eligible school districts, and a proportional funding amount based on each SFA's share of statewide student enrollment. The base payment is intended to ensure that the smallest districts receive a meaningful level of funding. The proportional amount is intended to provide resources that scale with the size of the student population served by an SFA. State agencies will use the most recent SFA-level enrollment data available (i.e. reflective of October 2021) to calculate the additional funding to provide to individual school districts, as these data are expected to be readily available in State enrollment systems in December 2021. SFAs are permitted to accept less than the full amount of their SCA funding allocation.

#### *Discretionary Allocation Options for State Agencies*

- Targeting funds to SFAs with the highest need: State agencies have the option to limit the distribution of funds to SFAs in which at least 25 percent of the student population is certified for free or reduced price meals, unless an SFA falling outside of this category can provide evidence of need.
- Supporting local procurement: To support procurement of local foods and strengthening local food supply chains, State agencies have the option to utilize up to 10 percent of their total allocation for State centralized procurement and distribution of unprocessed and minimally processed local foods ('local' as defined by the State) for use by SFAs in the school meal programs. These local foods may be distributed to SFAs at the State agencies' discretion.

#### *Reallocation of Funds*

In the event that any SCA funds remain undistributed to SFAs following the initial formula-based allocation, State agencies may reallocate those funds via a second (or subsequent) distribution(s). The attestation conditions as described below continue to apply for any SFAs receiving funding in subsequent rounds. However, the timing and manner of reallocation is at the State agency's discretion, provided that said

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<sup>2</sup> Including charter schools, private nonprofit schools, tribal schools (such as those administered through the Bureau of Indian Education), and Residential Child Care Institutions that participate in NSLP and/or SBP.

reallocation(s) are completed (i.e., States fully obligate funds) no later than September 30, 2023.

## **NOTIFICATION**

State agencies must notify all SFAs of the availability of SCA funds. The notification may be in any format the State agency chooses, though it is recommended that the State agency uses typical or previously established methods for communicating with their SFAs. The notification must include the SFA's calculated payment amount, information on the proper use of funds, and instructions for completing the required attestation of need/eligibility as a prerequisite for accepting funds. Though not required, State agencies are encouraged to provide at least one follow-up communication and/or reminder, particularly for SFAs that may not have immediately responded to the first notification. State agencies are required to include all SFAs that fall below the 25% free and reduced price enrollment threshold within their distribution calculation and allocate SCA funds for each of those SFAs if they request an exemption. A State agency choosing to target funds to SFAs with at least 25% free and reduced price enrollment must offer a process for considering exemption requests from SFAs which do not meet that enrollment target. State agencies may provide exemptions to SFAs that identify a need for SCA funds to mitigate supply chain disruptions.

Exemptions may also be provided to SFAs who identify their community has suffered economic impacts during the public health emergency but for which the F&RP application data does not yet reflect that economic circumstance.

State agencies are strongly encouraged to complete the process of receiving and approving exemption requests timely so as to make any unclaimed funds available for reallocation as soon as possible.

State agencies are still required to include (i.e. calculate payments for) all SFAs that fall below the 25% free and reduced price enrollment threshold within their distribution calculation and allocate SCA funds for each of those SFAs to ensure that adequate resources are available should they request an exemption.

After the exemption process, if any of these funds are not requested by SFAs below the 25% F&RP enrollment threshold, then those SCA funds become available for reallocation at the State's discretion. See the "Reallocation" section of this Q&A for more details. If any of these funds are not accepted by SFAs below the 25% F&RP enrollment threshold, then those SCA funds become available for reallocation at the State's discretion.

## **PERIOD OF PERFORMANCE**

The period of performance associated with these funds shall be from the January 1, 2022 through September 30, 2023.

The Recipient must complete all activities under this Agreement by September 30, 2023. The closeout of the agreement must occur within 120 days of the expiration date, and all obligations incurred under the agreement must be liquidated by this date. Any unobligated and unexpended funds at the State level must be returned to FNS.

## **ALLOWABLE COSTS**

SCA funds must be used exclusively for the purchase of domestic food products (also known as commodities) that are unprocessed or minimally processed. Expenditure of funds provided under this award in addition to the criteria above must be necessary, allowable, and reasonable costs and *incurred* during the performance period. Examples of some allowable food products include fluid milk and other dairy foods such as cheese and yogurt; fruits and vegetables (including 100% juices); grain products such as pastas and rice; meats (whole, pieces, or food items such as ground meats); and meat alternates such as beans or legumes. Foods in a wide variety of minimal processing states (e.g., whole, cut, pureed, etc.) and/or forms (e.g., fresh, frozen, canned, dried, etc.) are allowable. Additionally, incidental costs (such as those related to shipping and handling or packaging) that are a part of the normal or customary purchase price charged by a vendor for any given food product are an allowable use of SCA funds.

While funds may only be used to purchase domestic food products, SFAs are not required to purchase locally grown, raised, or caught foods with SCA funds. SFAs are encouraged to procure local<sup>3</sup> foods whenever feasible, and SCA funds may help make purchasing from local producers an excellent option for addressing unexpected supply chain disruptions.

The steps SFAs must take to ensure the domesticity of food products purchased with SCA funds is consistent with the measures taken for all other purchases in the school meal programs (per existing NSLP Buy American provision requirements). The difference is that the limited exceptions provided under the NSLP Buy American provision may not be used since all products purchased with SCA funds must be domestic. In addition, as with all Federal funds, SFAs are required to follow Federal procurement regulations found in 2 CFR 200, which includes the option to utilize emergency noncompetitive procurements.

## **UNALLOWABLE COSTS**

SCA funds may only be used for purchases of domestic unprocessed or minimally processed foods for use in school meal programs. However, State Administrative Expense (SAE) funds may be used to cover any associated costs of administering and distributing SCA funds.

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<sup>3</sup> “Domestic foods” are those grown and produced in the United States of America. “Local foods” are domestic foods, but specifically refer to foods that are grown within a certain proximity - as defined by the State or SFA - of the location where they will be consumed.

In general, unallowable costs are those expenses that are not necessary, reasonable, or allocable. Specific to these funds, foods that are generally understood to be significantly processed or prepared may not be purchased using SCA funds. For example, crushed tomatoes, shredded cheese, whole-wheat flour, and sliced vegetables are all food items that are individually allowable, but a pre-made pizza comprised of those ingredients would *not* be allowable. Other examples of unallowable products include baked goods such as breads, muffins, or crackers; pre-packaged sandwiches or meals; or other prepared and/or pre-cooked items such as chicken nuggets, that come ready-to-eat or that require no further preparation beyond heating. Non-domestic food products cannot be purchased with SCA funds.

Also, SCA funds may not be used to cover the cost of past expenditures and may only be used for current/future expenses. This may include new obligations, or bills on prior unpaid obligations that come due following the SFA's receipt of SCA funds. An example of the latter would be an SFA that signed a purchasing contract for milk before the start of the school year that is paid for on a monthly basis. If SCA funds are received by the SFA on March 1, 2022, the SFA could use those funds to pay invoices for milk that are due on or after that date.

## **SPECIFIC REQUIREMENTS**

### Funding Requirements/Provisions

Required Forms and other Documentation: The State agency must sign and return the Grant/Cooperative Agreement Form (FNS-529) to the FNS Regional Office. These funds will have a period of performance with a start date of January 1, 2022 through September 30, 2023. The recommended date for this agreement form to be returned to FNS is no later than January 31, 2022, 5:00 p.m. Eastern Time, Monday, (TBD).

Grantees may sign and submit their FNS-529 earlier than this date but should not submit their signed FNS-529 later than January 31, 2022. The FNS-529 form must be returned electronically in a .pdf format (a scanned document is acceptable) and contain a wet signature. FNS cannot accept electronic signatures at this time as we cannot validate them.

Regardless of how a State agency disburses funds to their SFAs, the SCA funds may only be deposited into the nonprofit school food service account of the SFA for which the funds were intended.

### Attestation Requirements

State agencies must develop and distribute to all SFAs that will receive SCA funds and/or domestic, unprocessed or minimally processed local foods an attestation document by which those SFAs will attest that they:

- Are experiencing supply chain disruptions and related financial difficulties/need<sup>4</sup>;
- Will only use funds to purchase domestic unprocessed or minimally processed foods;
- Will not use funds for any labor, indirect, or other administrative expenses;
- Will comply with all recordkeeping and review requirements per 7 CFR 210.9(b)(17) and 7 CFR 210.18, which would include maintaining documentation demonstrating appropriate use of SCA funds; and
- Will comply with all applicable Federal procurement and financial management requirements per 2 CFR 200.

The attestation must include a clear and affirmative acknowledgement of all terms and conditions described above (such as a check box, initial line, etc.) and must be signed and dated (either physically or digitally) by the SFA director or other authorized local official.”

SFAs need only complete one attestation for the receipt of SCA funds or local foods procured by the State agencies; a second attestation is not required in order to receive assistance during the reallocation process.

### FNS Requirements and Provisions

FNS Regional Offices will be responsible for all project monitoring including reviewing and approving the quarterly FNS-908, Progress Performance Reporting Form and the quarterly FNS-425, *CN- CCC Supply Chain Assistance Funding*, Federal Financial Reports, and the final close-out report due January 31, 2024. All reports must be submitted to the following Regional Contact *Jose Ruiz (303) 844-0308*

[Jose.Ruiz@usda.gov](mailto:Jose.Ruiz@usda.gov) or *Ronaldo Hernandez (303)-571-6191*

[Ronaldo.Hernandez@usda.gov](mailto:Ronaldo.Hernandez@usda.gov).

FNS staff will provide technical advice, guidance, and assistance on all aspects of the award to enhance the Grantee’s understanding of the award process and delivery.

FNS staff will participate in conference calls as determined necessary by either party to the agreement.

## **STANDARD TERMS OF THE AWARD**

### General

**Project Funding:** FNS will provide funds to the Kansas Department of Education in the amount stated on the Grant/Cooperative Agreement Form FNS-529, Box 11, and as

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<sup>4</sup> Including unanticipated cancellation of food and supply contracts, lack of availability of certain foods, unexpected substitution of food products, unpredictable increases in food and supply prices, and other obstacles recognized by the State agency

specified in the funding letter, for use in accordance with this agreement. Funds will be provided at FNS discretion through the Letter-of-Credit upon receipt of a properly executed Grant/Agreement Form FNS-529.

State Agency Matching Requirement: This grant provides 100 percent funding and does not have a matching requirement.

## REPORTING

FNS Regional Offices will be responsible for monitoring quarterly performance and financial reports, and other administrative aspects of the award such as closing out the Grant. All reports must be submitted to the following Regional Contact *Jose Ruiz (303) 844-0308* [Jose.Ruiz@usda.gov](mailto:Jose.Ruiz@usda.gov) or *Ronaldo Hernandez (303)-571-6191* [Ronaldo.Hernandez@usda.gov](mailto:Ronaldo.Hernandez@usda.gov).

- ***FNS-908, Performance Reporting Form, narrative:*** Each Child Nutrition State Agency is required to submit a quarterly FNS-908, Performance Progress Report (found in Pdf format in Attachment C) with the program summary information completed on Page 1. States should exclude the program and tag information in Box 2 of Page 1. All other pages contained within the form are not required to be completed. However, narrative and excel response as outlined below must be provided as attachments to the FNS-908. While the FNS-908 contains a button to allow for direct email submission, this function will be unavailable as a number of required fields will remain unpopulated. The FNS-908 must be saved as a Pdf, with attached narrative and excel attachments as outlined below. The FNS-908 must be returned to the regional office contact identified in the terms and conditions.
- **A table documenting the following data elements, by SFA (Submit as Microsoft Excel attachment):**
  - County (i.e. county in which SFA is located)
  - Dollar Amount Paid (initial funding round)
  - Date of Payment (MM/DD/YY)
  - Dollar Value of Local Foods Donated (initial funding round and any reallocation(s))<sup>5</sup>
  - Date of Donation<sup>6</sup> (MM/DD/YY)
  - Exemption Granted (only mark if yes)<sup>7</sup>
  - Dollar Amount of Reallocated Funds Paid (all reallocations)

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<sup>5</sup> Only applicable if State procurement of local foods option is elected

<sup>6</sup> Only applicable if State procurement of local foods option is elected

<sup>7</sup> Only applicable if targeting option is elected

- Did Not Receive Funds (i.e. did not accept/ineligible due to targeting + no exemption granted; only mark if yes)
- **Brief narratives that capture the following information:**
  - **Narrative A:** Election status of the discretionary implementation options (i.e. did the State agency choose to withhold up to 10% of funds for centralized purchases of local foods, and/or target funds to SFAs with at least 25% free and reduced-price eligible enrollment).
    - If local purchasing option is elected, narrative must include: 1) percentage and dollar amount of funds withheld; 2) total # of SFAs receiving donated local foods; and 3) a description of how the State procured local foods and determined how to allocate donations to SFAs.
    - If targeting option is elected, narrative must include: 1) Total number of SFAs that requested an exemption; 2) # of SFAs approved for an exemption (if different from # requested); and 3) general reasons for why exemptions were requested by SFAs and approved.
  - **Narrative B:** Total number of SFAs that declined to accept their allocation of SCA funds (i.e. did not sign their attestation) and general reasons why funds were not accepted, to the extent this information is available.
  - **Narrative C:** A description of how the State agency will conduct and/or conducted the reallocation process, including projected timelines for reallocation activities. When available, the narrative must include the total amount of funds available for reallocation, and number of reallocation attempts/rounds needed, if applicable.

The State agency is also required to submit a quarterly Federal Financial Report (SF-425) via the Food Programs Reporting System (FPRS). Grantees should report the SF-425 for this grant under the name “**CN-CCC-CN Supply Chain Assistance Funding**”.

Both reports must be submitted within 30 days after the close of each quarter (see due dates below). The Final Report must be submitted within 120 days of the expiration of the funding agreement. The report due dates are as follows:

Quarter 2 (Jan-Mar): Due April 30, 2022  
 Quarter 3 (Apr-Jun): Due July 31, 2022  
 Quarter 4 (Jul-Sep): Due October 31, 2022

Quarter 1 (Oct-Dec): Due January 31, 2023  
 Quarter 2 (Jan-Mar): Due April 30, 2023  
 Quarter 3 (Apr-Jun): Due July 31, 2023



Quarter 4 (Jul-Sep): Due October 31, 2023

Final: January 31, 2024

Please note that the first report dates may vary if they fall on a weekend or holiday. FPRS automatically accounts for those instances. Please refer to due dates posted in FPRS to ensure timely submission by contacting the FNS Regional Office.

## **REGULATORY AND STATUTORY REQUIREMENTS**

Office of Management and Budget (OMB) Guidance: This Federal financial assistance award is subject to rules and regulations related to the Grantee's organizational entity type as noted below.

### **Government-wide Regulations**

2 CFR Part 25: "Universal Identifier and System for Award Management"  
2 CFR Part 170: "Reporting Sub-award and Executive Compensation Information"  
2 CFR Part 175: "Award Term for Trafficking in Persons"  
2 CFR Part 180: "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non-Procurement)"  
2 CFR Part 200: "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"  
2 CFR Part 400: "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"  
2 CFR Part 415: USDA "General Program Administrative Regulations"  
2 CFR Part 416: USDA "General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments"  
2 CFR Part 417: USDA "Non-Procurement Debarment and Suspension"  
2 CFR Part 418 USDA "New Restrictions on Lobbying"  
2 CFR Part 421: USDA "Requirements for Drug-Free Workplace (Financial Assistance)"  
7 CFR Part 3: "Debt Management"  
7 CFR Part 16: "Equal Opportunity for Religious Organizations"  
41 U.S.C. Section 22 "Interest of Member of Congress"  
Privacy Act. The Cooperator/Grantee shall follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. 552a, and implementing regulations and policies, with respect to systems of records determined to be subject to the Privacy Act. Freedom of Information Act (FOIA). Public access to Federal Financial Assistance records shall not be limited, except when such records must be kept confidential and would have been excepted from disclosure pursuant to the "Freedom of Information" regulation (5 U.S.C. 552)

**Sub-recipient compliance: The Grantee will ensure that sub-recipients are in compliance with applicable Federal administrative requirements and cost principles**

## **PROCUREMENT STANDARDS**

The Grantee will adhere to all procurement standards, including those listed below, if applicable, as found in 2 CFR 200.318 through 2 CFR 200.326. When procuring property and services under a Federal award, a State must follow the same policies and procedures used for procurements from its non-Federal funds. State recipients will comply with 2 CFR 200.322.

**General procurement standards:** The Non-Federal entity must use its own documented procurement procedures, which reflect applicable State and local laws and regulations provided that procurements conform to applicable Federal law and the standards identified in this section. The Grantee must maintain oversight over contractors to ensure performance in accordance with the terms, conditions and specifications of their contracts or purchase orders, including written performance standards of its employees engaged in the selection, award, and administration of contracts. The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. In accordance with 2 CFR 200.318(j), the non-Federal entity may only use time and material type contracts after a determination that no other contract is suitable and if the contract includes a ceiling that the contractor exceeds at its own risk.

**Competition:** All procurement transactions must be conducted in a manner providing full and open competition consistent with 2 CFR 200.319.

**Suspension/Debarment:** The Grantee agrees to ensure that all sub-recipients are neither excluded nor disqualified under the Suspension and Debarment rules found at 2 CFR Parts 180 and 417 by doing any one of the following:

Checking the System for Awards Management (SAM) to determine if the applicant or Grantee has been debarred or suspended. This information can be found at [www.sam.gov](http://www.sam.gov).

Collecting a certification that the entity is neither excluded nor disqualified. Because a Federal certification form is no longer available, the Grantee or sub-awardee electing this must devise its own.

Including a clause to this effect in the sub-recipient agreement and in any procurement contract expected to equal or exceed \$25,000, awarded by the Recipient or a sub-recipient within any agreements.

**Nondiscrimination:** The Grantee will comply with the following nondiscrimination statutes and regulations, other related regulations, and any USDA nondiscrimination directives:

Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d- et seq.) and USDA regulations at 7 CFR Part 15, Nondiscrimination, a Department of Justice regulations at 28 CFR Part 42, Nondiscrimination; Equal Employment Opportunity: Policies and Procedures;

Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and USDA regulations at 7 CFR Part 15a, Education Programs or Activities Receiving or Benefiting from Federal Financial Assistance;

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 1681 et seq.) and USDA regulations at 7 CFR Part 15a, Education Programs or Activities Receiving or Benefiting from Federal Financial Assistance, and Department of Justice regulations at 28 CFR Part 41, Implementation of Executive Order 12250, Nondiscrimination On the Basis of Handicap In Federally Assisted Programs; and

Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) The Grantee assures that it will immediately take any measures necessary to effectuate the requirements in these laws, regulations, and directives. The Grantee gives this assurance in consideration of and for the purpose of obtaining the funds provided under this agreement.

The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination on the basis of disability in employment (Title I), state and local government services (Title II), places of public accommodation and commercial facilities (Title III). (42 U.S.C. 12101-12213).

The following nondiscrimination statement shall be included, in full, on all materials that are produced by the Grantee for public information, public education, or public distribution.

“In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color national origin, sex, age, or disability.

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), or at any USDA office, or call (866) 632-9992 to request the form. USDA is an equal opportunity provider and employer.

## **RECORD RETENTION AND ACCESS**

Evaluation and Access to Records: The Grantee will cooperate with any evaluation of the program by providing the FNS requested data and access to records. The Recipient will cooperate with any, as needed, on-site financial and/or technical reviews and audits at any time during the term of the agreement. In addition, the Grantee shall make all records pertaining to activities under the grant available for audit purposes.

All SFAs are required to maintain purchasing and other records for review and audit purposes. This documentation must reflect that purchases made by SFAs are consistent with the purpose of the SCA funding, i.e., for domestic unprocessed or minimally processed food products, in amounts that are at least equal to funds received. SFAs must retain regular records pertaining to its school food service as required by 7 CFR 210.9(b)(17). This may include invoices, receipts, and other documents provided when the SFA executes purchases with these funds. They must evidence that SCA funds were used for allowable purposes. SFAs are not required to proactively provide documentation to State agencies regarding those food purchases.

In addition to a record of payments made to SFAs and/or State-level procurements of domestic, unprocessed, or minimally processed local foods, State agencies must retain attestation statements completed by SFAs prior to execution of funds. In addition, if electing the option to withhold up to 10% of funds for centralized purchases of local foods, all appropriate records must be maintained regarding associated purchase agreements, including documentation supporting how funds were used to procure unprocessed and minimally processed local foods.

The Recipient will require any sub-recipient or contractors to comply with the requirements of this agreement and ensure that FNS has access to any sub-recipient or contractors for purposes of evaluating, monitoring or reviewing other operations or records as they relate to this grant. When entering into a sub-award, the Recipient shall ensure that the sub-recipient agreement contains any clause required by Federal Statute or Executive Order and their implementing regulations.

Records pertaining to this grant shall be retained by the Grantee for a period of three years from the date of the submission of the annual financial status report, as required under 7 CFR 253.5(h).

## **NONCOMPLIANCE AND TERMINATION**

Noncompliance: As provided in 2 CFR 200.338, FNS may unilaterally terminate this grant agreement or recover, withhold, or disallow costs of up to 100 percent of the funds made available under the agreement if the Recipient fails to comply with any term of the agreement. FNS will consider failure to comply with the reporting requirements of this agreement to be a material failure to comply with the agreement and a basis for termination. If FNS decides to take action against the Grantee for noncompliance under this agreement, FNS will provide the recipient written notice of the basis for its determination.

In the event that an award is suspended, and corrective action is not taken within 90 days of the suspension effective date, FNS may issue a notice of termination. No costs that are incurred during the suspension period or after the effective date of termination will be

allowable, except those that are specifically authorized by the suspension or termination notice or those that, in the opinion of FNS, could not have been reasonably avoided. Within 30 days of the termination date, the Grantee shall furnish to FNS a summary of progress achieved under the award, an itemized accounting of charges incurred against award funds and cost sharing prior to the effective date of the suspension or termination, and a separate accounting and justification for any costs that may have been incurred after this date.

## **OTHER REQUIREMENTS**

**Liabilities:** The Grantee may not seek any financial recourse from FNS as a result of any liabilities the Recipient may incur for bodily injury or personal property damage resulting from negligent acts, errors, or omissions of the Recipient, their officers, agents or employees, or if applicable its sub-Recipients or their officers, agents, or employees, in performing this agreement. Liabilities of the United States are governed by the Federal Tort Claims Act, 28 U.S.C. 2671 et seq.

## **POST CLOSEOUT ADJUSTMENTS AND COLLECTIONS**

**Post-closeout adjustments:** The closeout of a Federal award does not affect:

- a. The right of FNS to disallow costs and recover funds on the basis of an audit or later review;
- b. The obligation of a non-Federal entity to return funds as a result of later cost adjustments;
- c. Audits requirements;
- d. Property management and disposition requirements; and
- e. Record retention requirements.

**Collections:** Any funds paid in excess of the amount in which the non-Federal entity is finally determined to be entitled will constitute a debt to the Federal Government. If these funds are not repaid within 90 days, FNS may: make an administrative offset; withhold advance payments or take other necessary actions. In addition, interest will accrue on this overdue debt in accordance with the Federal Claims Collections Standards (31 CFR Parts 900 through 999).