

*Additional Information:*

United States Department of Agriculture Uniform Federal Assistance Regulations, 7 CFR Parts 3016, 3019, and 3052.

[www.gpo.gov/nara/cfr/index.html](http://www.gpo.gov/nara/cfr/index.html)

United States Department of Agriculture, Child and Adult Care Food Program Regulation, 7 CFR Part 226.

[www.usda.gov/cnd](http://www.usda.gov/cnd)

United States Department of Agriculture, Food and Nutrition Service, Instruction 796-2, Rev. 3, Financial Management -Child and Adult Care Food Program.

Office of Management and Budget Circulars: A-87, August 29, 1997; A-102, March 11, 1988; A-110, November 29, 1993; A-122, June 1, 1998; and A-133, June 24, 1997.

[www.whitehouse.gov](http://www.whitehouse.gov)

United States General Services Administration, Federal Acquisition Regulations, 48 CFR Part 31.

[www.gsa.gov](http://www.gsa.gov)

Contact State administering agencies or United States Department of Agriculture, Food and Nutrition Service Regional Offices for a copy of FNS Instruction, 796-2, Rev. 3, Financial Management -Child and Adult Care Food Program.



**U.S. Department of Agriculture  
Food and Nutrition Service  
Child Nutrition Division  
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**CACFP**  
*Building for  
the Future*

**CHILD and ADULT  
CARE FOOD  
PROGRAM**

**FNS INSTRUCTION  
796-2, Rev. 3**

**# 8  
LEGAL SERVICES  
COSTS**

*This is the eighth in a series of brochures on  
FNS Instruction 796-2, Revision 3.*

Special situations and general day-to-day operations can result in an institution incurring legal expenses. In some cases, these legal costs are allowable, while in others, the costs are unallowable.

### **What types of legal costs are allowable?**

With specific prior written approval of the State agency, costs of the following legal services, when performed by persons who not officers or employees of the institution, are usually allowable:

- The sponsoring organization's cost to pursue recovery of funds from sponsored facilities; and
- The costs of services required in the administration of the Child and Adult Care Food Program (CACFP).

### **Are CACFP administrative review costs allowable?**

Yes. The institution's costs for administrative reviews pursued pursuant to the CACFP regulations are generally allowable.

### **What are some examples of allowable administrative review costs?**

- Costs for in-house or properly procured private counsel;
- Costs for professional services, such as an accountant or consultant, administrative and clerical services; and
- Costs of directly related services provided by the institution's employees, officers and trustees as long as these costs are not also claimed as labor or other costs.

### **Is the institution's costs of seeking a judicial review of a State hearing official's decision allowable?**

No, unless the institution prevails. In that case, recovery is usually limited to 80% of the institution's necessary and reasonable expenses.

### **Are the institution's costs for defending itself against claims and lawsuits initiated by employees, ex-employees or facilities allowable?**

Generally, the costs are allowable when the institution's actions result from complying with CACFP requirements. However, the costs are not allowable when the institution has violated statutory or regulatory requirements.

### **What are some examples of unallowable legal costs?**

- The costs of prosecuting claims against the Federal government, however represented;
- The cost of maintaining a legal staff to discharge general responsibilities;
- The costs of legal services for organization and reorganization;
- Fines, penalties, restitution, back pay awards and damage awards; and
- All costs before, during and after commencement of judicial or administrative proceedings, excluding administrative reviews provided by the CACFP regulations, when the proceeding is initiated by a government agency and relates to a violation of, or failure of the institution, its agents or employees to comply with a statute or regulation.

### **What are "all costs?"**

All costs includes administrative and clerical costs, costs of legal services, professional services other costs of the institution, its employees, officers, directors and trustees.

### **Can the institution claim legal costs if it prevails in a proceeding commenced by a government agency?**

Yes, but allowable costs are generally limited to 80% of the institution's necessary and reasonable expenses.

### **When can a State agency allow an institution to claim legal costs for proceedings commenced by a government agency?**

Payment of these costs must generally be withheld until after resolution of the proceedings. However, the costs may be claimed and conditional payment made with specific written approval of FNS.

### **Is specific prior written approval always required to claim any legal costs?**

Yes.

***NOTE: Additional requirements may apply. Consult 796-2, Rev. 3 and the appropriate administering agency for more information.***