

UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

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AUDIT**

Submitted to

The Subcommittee on Early Childhood,  
Elementary, and Secondary Education

Committee on Education and the Workforce

U.S. House of Representatives

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Good morning, Chairman Rokita, Ranking Member Polis, and Members of the Subcommittee. Thank you for the opportunity to testify on the Office of Inspector General's (OIG) efforts to help ensure the integrity of the Food and Nutrition Service's (FNS) Summer Food Service Program (SFSP), an area OIG has focused on for the past 2 years. My statement will address a series of OIG audits intended to improve the integrity of SFSP, as well as related OIG investigative results.

### *SFSP's Structure*

The purpose of SFSP is to provide free, nutritious meals to children in low-income areas when school is not in session. In fiscal year (FY) 2017, SFSP sponsors reported serving more than 152 million meals and snacks nationwide at a cost to USDA of \$485 million. In July 2017, the program's peak month, SFSP reportedly provided meals to 2.6 million children each day through about 50,000 sites.

With such a large scope that benefits millions of children in need, SFSP has the challenge of ensuring proper controls and administrative functions at three levels:

- Nationwide, FNS provides SFSP oversight by distributing program funding to State agencies, establishing guidance for both State agencies and SFSP sponsors, and implementing internal controls. These efforts help ensure both State agencies and sponsors properly administer and monitor the program.
- At the State level, State agencies administer SFSP by disseminating FNS policy, reviewing and approving sponsor applications, and reimbursing sponsors for meals served to children at approved sites. State agencies also monitor sponsors and sites to ensure they meet program requirements such as food safety and the provision of well-balanced meals.
- At the local level, SFSP sponsors—public or private nonprofit organizations such as school food authorities, faith-based organizations, or camps—enter into agreements with State agencies to serve nutritious meals to children in low-income areas in

exchange for FNS-funded reimbursements. As part of this agreement, SFSP sponsors must monitor their sites to ensure they comply with all program requirements.

The program's success depends upon strong governing guidance; robust processes to mitigate the risk of food contamination, unallowable meals, or improper payments; and effective coordination between involved parties. Accordingly, OIG has begun a comprehensive, multi-phased review to determine potential program improvements that will strengthen controls at the Federal, State, and local levels. We are partway through this comprehensive review, which consists of:

1. an overall audit of FNS' internal controls, which was published in March 2018;<sup>1</sup>
2. focused audits of four States (California, Florida, New York, and Texas), which are underway, with several interim reports already published;<sup>2</sup>
3. an audit to help FNS identify potential noncompliant or fraudulent sponsors, using Texas sponsors as a case study, which is currently in progress;<sup>3</sup> and
4. a future roll-up report to assess SFSP's overall operations.

#### *Past Challenges with SFSP Improper Payments*

SFSP's program structure has presented challenges that leave the program susceptible to potential improper payments. Past monitoring—reviews conducted by FNS and State agencies, or OIG investigations and audits—has identified systemic vulnerabilities and their consequences. These vulnerabilities can result in sponsors claiming program payments for sites that do not exist, deliberately or inadvertently overstating the number of children's meals served in order to receive excessive payments, and using SFSP payment funds for unallowable purposes. Reviews identifying improper payment issues include:

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<sup>1</sup> Audit Report 27601-0004-41, *FNS Controls Over Summer Food Service Program*, Mar. 2018.

<sup>2</sup> Interim reports include: Audit Report 27004-0001-41(1), *California's Controls Over Summer Food Service—Interim Report*, Sept. 2017; Audit Report 27004-0001-31(1), *Florida's Controls Over Summer Food Service Program—Interim Report*, Sept. 2017; Audit Report 27004-0001-23(1), *New York's Controls Over Summer Food Service Program—Interim Report*, Nov. 2017; and Audit Report 27004-0004-21(1), *Texas' Controls Over Summer Food Service—Interim Report*, Sept. 2017.

<sup>3</sup> An interim report has been published for this audit: Audit Report 27004-0003-21(1), *Summer Food Service Program—Texas Sponsor Cost—Interim Report*, Sept. 2017.

- In 2015, FNS visited 126 sponsor sites and identified 4 (3 percent) with significant improper payments. In response, the relevant State agency is in the process of disallowing approximately \$1.67 million in SFSP payments.
- FNS' management evaluation reports also identified improper payments in recent years. From FYs 2014 through 2016, 47 percent of management evaluations of State agencies either found improper payments or vulnerabilities that could lead to improper payments.
- Similarly, in 2016, three of the four States we are currently auditing—California, New York, and Texas—identified widespread improper payment issues such as inaccurate meal counts, unallowable expenses, and meals served outside of approved times.

Although OIG investigations are outside of the Office of Audit's purview, OIG's investigations have also identified issues that echo FNS' and States' findings. In October 2017, an OIG investigation resulted in the conviction of five people in Illinois who participated in a scheme to defraud SFSP. Their sentences ranged from 50 months of probation to 37 months of imprisonment and restitution of \$440,964.<sup>4</sup> Additionally, an ongoing OIG investigation in Arkansas determined that 11 sponsors made bribe payments to 3 State employees to approve their SFSP applications and helped the sponsors to avoid scrutiny when they later sought meal reimbursement for inflated claims. To date, the 16 subjects of this investigation have been sentenced to serve a cumulative 69 years in prison and pay over \$13.2 million in restitution. Prior investigative work has identified potential payment integrity issues in four of FNS' seven regions, indicating widespread systemic vulnerabilities.

Our own audit determined that FNS' most recent improper payment risk assessment did not consider vulnerabilities in SFSP's payment structure, such as risk factors established by the Office of Management and Budget (OMB) or identified by activities such as FNS and State reviews or OIG's investigations.<sup>5</sup> Instead, FNS classified SFSP's risk of improper payments as low. As a result, FNS may not be appropriately prepared to address the inherent challenges in the program's structure or prevent improper payments and violations in the future.

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<sup>4</sup> A U.S. Department of Justice press release of this investigation can be found at <https://www.justice.gov/usao-cdil/pr/chicago-new-birth-christian-center-pastor-sentenced-summer-food-program-fraud>.

<sup>5</sup> Audit Report 27601-0004-41, *FNS Controls Over Summer Food Service Program*, Mar. 2018.

As discussed earlier, SFSP's payment structure and administrative responsibilities are decentralized and broadly distributed between FNS, the State agencies, and individual sponsors. According to OMB, this decentralization of administrative responsibilities can pose several risks.<sup>6</sup> First, individual State agencies make payments and payment eligibility decisions, not FNS. Next, FNS and State agencies rely on sponsors' self-reported meal counts, which FNS cannot directly verify. Finally, the accuracy of reimbursement forms depends largely on sponsor staff's knowledge of SFSP requirements.

So that FNS can better prepare for and anticipate these risks, we recommended that FNS complete an SFSP risk assessment for improper payments that will take into account OMB's risk factors—which FNS has agreed to perform by February 28, 2019.

#### *Upcoming Improper Payments Work*

We also have upcoming audit reports in SFSP's four highest participating States—California, Florida, New York, and Texas—that will determine if selected sponsors and sites comply with SFSP requirements or if improper payments occurred. Additionally, OIG has initiated another audit to identify potentially noncompliant or fraudulent sponsors. The audit team has already discovered that two Texas SFSP sponsors did not substantiate more than \$110,000 paid to them in program year 2016.<sup>7</sup> We hope that FNS and State agencies can use OIG's criteria to identify and review high risk sponsors in the future.

#### *FNS Waivers*

Despite these inherent risks in the program, our March 2018 audit report found that FNS may have weakened internal controls by issuing policy memoranda that waived SFSP regulatory

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<sup>6</sup> OMB, *Requirements for Effective Estimation and Remediation of Improper Payments*, Circular A-123, app. C (Oct. 20, 2014).

<sup>7</sup> Audit Report 27004-0003-21(1), *Summer Food Service Program—Texas Sponsor Cost—Interim Report*, Sept. 2017.

requirements nationwide.<sup>8</sup> These requirements were intended to reduce risk within the program.

For example, for sponsors who “operated successfully” the previous summer, FNS waived the requirement to visit each of their sites at least once during the first week of SFSP operations and promptly correct identified deficiencies. FNS also waived controls over meal count limits (called “site caps”) that would prevent sponsors from illegitimately claiming higher meal counts and receiving greater reimbursements.

Finally, FNS issued a waiver allowing all sponsors to use a complex meal service option, “offer versus serve,” which requires an in-depth knowledge of SFSP nutrition requirements and exceptions in order to implement effectively.<sup>9</sup> Because of the meal option’s complexity, it was previously available only to school food authorities with strong program integrity and financial controls. Allowing all sponsors, including those with a history of inaccurate and overstated meal counts, to use a more complex meal service option may lead to sponsors claiming program reimbursements for meals that do not comply with SFSP meal requirements.

FNS waived these requirements to minimize administrative burdens and stated it conferred with USDA’s Office of General Counsel (OGC). However, we believe that FNS needs to sufficiently demonstrate that removing these requirements will not compromise SFSP’s integrity. While SFSP’s requirements were subject to extensive analysis, public comment, and agency review prior to approval, the memoranda unilaterally waiving these requirements were not.

We therefore recommended that FNS review the waivers to ensure they align with and reflect current SFSP regulations. We also recommended that FNS obtain a formal written legal opinion from OGC to clarify FNS’ authority, the process FNS must follow to waive regulations, and the documentation it should maintain to support such waivers.

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<sup>8</sup> Audit Report 27601-0004-41, *FNS Controls Over Summer Food Service Program*, Mar. 2018.

<sup>9</sup> “Offer versus serve” allows children to decline some foods while still requiring them to meet core nutrition requirements.

In response to our recommendations, FNS agreed to consult with OGC and assess future waivers on a case-by-case basis. In lieu of providing a formal legal opinion, OGC agreed to brief FNS about the parameters of the Secretary's authority to waive SFSP's statutory and regulatory provisions. Additionally, FNS agreed to review all policy memoranda that waived SFSP regulatory requirements nationwide to ensure SFSP policy direction aligns with and reflects current SFSP regulations. As of May 2018, FNS has rescinded two policy waivers.<sup>10</sup> We have reached management decision on these recommendations. If the agreed-upon corrective actions are implemented, the concerns we identified should be addressed.

### *SFSP Monitoring and Oversight*

Our March 2018 audit report noted that FNS' monitoring and oversight procedures did not sufficiently substantiate that States were properly administering SFSP and complying with program requirements.<sup>11</sup> Specifically, management evaluation reviews lacked the necessary documentation to confirm that they contained valid conclusions.

To further test State compliance and controls, we are currently analyzing SFSP in California, Florida, New York, and Texas. Our work will determine whether selected sponsors and sites comply with SFSP requirements or if improper payments occurred. We have already identified food safety issues in all four States.<sup>12</sup> These food safety issues required interim reports for immediate action and correction. Our work evaluating overall State and sponsor controls is ongoing, and we will issue additional reports later this year.

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<sup>10</sup> FNS, *Summer Food Service Program Memoranda Rescission: SFSP 01-2007 and SFSP 06-2015*, Memorandum SFSP 06-2018 (May 24, 2018).

<sup>11</sup> Audit Report 27601-0004-41, *FNS Controls Over Summer Food Service Program*, Mar. 2018.

<sup>12</sup> Audit Report 27004-0001-41(1), *California's Controls Over Summer Food Service—Interim Report*, Sept. 2017; Audit Report 27004-0001-31(1), *Florida's Controls Over Summer Food Service Program—Interim Report*, Sept. 2017; Audit Report 27004-0001-23(1), *New York's Controls Over Summer Food Service Program—Interim Report*, Nov. 2017; and Audit Report 27004-0004-21(1), *Texas' Controls Over Summer Food Service—Interim Report*, Sept. 2017.

At the conclusion of our State and sponsor-level audits, we will roll up the results of our overall assessment of State and nationwide controls to identify potential program improvements with the goal of creating a more robust internal control structure for SFSP.

*Conclusion*

This concludes my statement. I would be pleased to answer any questions you may have.