

# Institution Serious Deficiency Process

The serious deficiency process of the Child and Adult Care Food Program (CACFP) was established to ensure compliance with U.S. Department of Agriculture (USDA) Food and Nutrition Services (FNS) regulations and guidance. It offers State agencies, sponsoring organizations, and FNS the right to terminate for cause centers or day care homes (DCH) that are not in compliance with Federal regulations.

CACFP regulations define seriously deficient as the status of an Institution or a day care home that has been determined to be non-compliant in one or more aspects in its operation of CACFP [7 CFR 226.2]. The serious deficiency process offers a systematic way for State agencies to take actions allowing Institutions to correct serious CACFP problems and ensures due process. If Institutions are unwilling or incapable of correcting serious problems, the serious deficiency process protects Program integrity by removing the Institution from the CACFP and preventing the Institution and responsible principals or individuals from returning to the CACFP until the approval to reapply for participation is granted by FNS.

The serious deficiency process has six steps that start when SDE identifies a serious deficiency. The resolution will be either the correction of the problem and the issuance of a temporary deferment of the serious deficiency, or the Institution's termination and disqualification from the CACFP. The six steps in the serious deficiency process are:

1. Identify the serious deficiencies;
2. Issue a notice of serious deficiency;
3. Receive and assess the institution's written corrective action plan (CAP) for adequacy;
4. Issue a notice of temporary deferral of the serious deficiency if the CAP is approved, or issue a notice of proposed termination and disqualification, including appeal procedures, if the CAP is not adequate (or if no CAP plan is received);
5. Provide an appeal review (appeal hearing, administrative review), if requested, of the proposed termination and disqualification; and
6. Issue a notice of final termination and disqualification if the appeal is upheld or if the timeframe for requesting an appeal has passed, or issue a notice of temporary deferral if the appeal is overturned.

This manual section provides the following guidance:

1. [Serious Deficiency Process for New Institutions](#)
2. [Serious Deficiency Process for Renewing Instructions](#)
3. [Serious Deficiency Process for Participating Institutions](#)
4. [Suspension of an Institution's Participation](#)
5. [FNS Determination of Serious Deficiency](#)
6. [National Disqualified List](#)
7. [Administrative Review \(Appeals\) for Institutions and Responsible Principals and Responsible Individuals](#)

For more information on sponsoring organization's serious deficiency process for day care homes and unaffiliated centers, termination for cause, termination for convenience, and administrative review procedures for day care homes and unaffiliated centers, please refer to the Sponsoring Organization of Centers and Sponsoring Organization of Day Care Homes sections in this manual.

The serious deficiency process for sponsored unaffiliated centers is not yet regulatory; however, the Integrity Rule encourages States to develop their own procedures following procedures for DCH providers since sponsored unaffiliated centers are also facilities.

The Idaho State Department of Education (SDE) developed and implemented a serious deficiency process for sponsored unaffiliated centers which follows the serious deficiency process for day care homes. One significant difference, since it is not currently regulatory, is that sponsored unaffiliated centers may not be placed on the NDL when disqualified. Therefore, SDE has established an Idaho Disqualified List for unaffiliated centers, executive directors, responsible principals, and responsible individuals that have been terminated and disqualified from participation in CACFP by the sponsoring organization. SDE will provide the serious deficiency and termination notices to USDA Western Region Office (WRO) as required for day care homes but the unaffiliated centers will not be placed on the NDL.

SDE and Sponsoring Organizations have the authority to determine when a violation rises to the level of serious deficiency. SDE makes their determination based on the severity of the finding(s), the degree to which the finding impacts CACFP integrity, if the finding(s) is (are) a repeat finding and/or escalation of the finding.

SDE follows the below serious deficiency processes for Institutions and uses USDA prototype Institution letters provided in the USDA Handbook "Serious Deficiency, Suspension, & Appeals for State Agencies & Sponsoring Organizations. The handbook is located on the

CNP website at <https://www.sde.idaho.gov/cnp/cacfp/>.

## Serious Deficiency Process for New Institutions

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If a new Institution's application does not meet all of the application requirements in 7 CFR 226.6, 226.15(b) and 226.16(b), SDE must deny the application. If, in reviewing a new Institution's application, SDE determines that the Institution has committed one or more of the serious deficiencies listed below, SDE must initiate action to:

1. Deny the new Institution's application; and
2. Disqualify the new Institution and the responsible principals and responsible individuals.

### LIST OF SERIOUS DEFICIENCIES FOR NEW INSTITUTIONS

The list of serious deficiencies is not identical for each category of Institution (new, renewing, or participating) because the type of information likely to be available to the State agency is different, depending on whether the State agency is reviewing a new or renewing institution's application or is conducting a review of a participating institution. Serious deficiencies for new institutions are:

1. Submission of false information on the Institution's application, including but not limited to a determination that the Institution has concealed a conviction for any activity that occurred during the past seven years and that indicates a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by SDE;
2. Any other action affecting the Institution's ability to administer CACFP in accordance with CACFP requirements.

### SERIOUS DEFICIENCY NOTIFICATION PROCEDURES FOR NEW INSTITUTIONS

If SDE determines that a new Institution has committed one or more of the serious deficiencies listed above, SDE must use the following procedures to provide the Institution and the responsible principals and responsible individuals with notice of the serious deficiency(ies) and an opportunity to take corrective action.

### NOTICE OF SERIOUS DEFICIENCY

SDE must notify the Institution's executive director and chairman of the board of directors, in writing and in a method of delivery that confirms receipt and/or delivery of notice, that the

Institution has been determined to be seriously deficient. For all notices in the process, a notice is considered received by the Institution or responsible principal or responsible individual five days after being sent to the addressee's last known mailing address, fax number, or email address. Any timeframes associated with a given notice start with the earliest form of transmission.

The notice must identify the responsible principals and responsible individuals and must be sent to those persons as well. SDE may specify in the notice different corrective action, and time periods for completing the corrective action, for the Institution and the responsible principals and responsible individuals. At the same time the notice is issued, SDE must add the Institution to SDE's list, along with the basis for the serious deficiency determination, and provide a copy of the notice to WRO. A Child Nutrition Coordinator or the Director of Child Nutrition has the authority to sign the serious deficiency notice. The notice must also specify:

1. The serious deficiency (ies);
2. The actions to be taken to correct the serious deficiency (ies);
3. The time allotted to correct the serious deficiency (ies). This must be as soon as possible, but not to exceed 30 days;
4. That the serious deficiency determination is not subject to administrative review (appeal);
5. That failure to fully and permanently correct the serious deficiency (ies) within the allotted time will result in denial of the Institution's application and the disqualification of the Institution and the responsible principals and responsible individuals;
6. That SDE will not pay any claims for reimbursement for eligible meals served or allowable administrative expenses incurred until SDE has approved the Institution's application and the Institution has signed a Program agreement; and
7. That the Institution's withdrawal of its application, after having been notified that it is seriously deficient, will still result in the Institution's formal termination by SDE and placement of the Institution and its responsible principals and individuals on the National Disqualified List; and
8. If SDE does not possess the date of birth for any individual named as a "responsible principal or responsible individual" in the serious deficiency notice, the submission of that person's date of birth is a condition of corrective action for the Institution and/or individual.

SDE will provide technical assistance as appropriate in the areas identified as seriously deficient. In response to the serious deficiency notice the Institution must submit a

Corrective Action Plan (CAP) that details the internal controls implemented to ensure that the serious deficiency (ies) is/are fully and permanently corrected. A successful CAP must include:

1. Name(s) of the Institution, executive director, chairman of the board of directors and other responsible principals and responsible individuals (RPIs) associated with the serious deficiencies;
2. Address of the institution;
3. Dates of birth of the executive director, chairman of the board of directors and other responsible principals and responsible individuals associated with the serious deficiency (ies); and
4. Details of the serious deficiencies.

#### What

- List each serious deficiency and the detailed procedures that will be implemented to address each serious deficiency;

#### Who

- In the procedures that address each serious deficiency, list the personnel responsible for each task. Use the personnel title.

#### When

- The timeline for implementing each procedure to correct the issue and how often the procedure will occur: daily, weekly, monthly, or annually. Include when the implementation began and the date(s) when each procedure will be fully implemented.

#### Where

- The location where records and CAP documentation will be maintained.

#### How

- Additional supporting documentation used to correct the issue. This might include copies of enrollment forms, training documentation, menu records, income eligibility records, attendance records, meal count forms, etc.; and
- Describe how the Institution will inform other responsible principals and responsible individuals (staff) of the new policies and procedures (e.g., Handbook, training).

### **SUCCESSFUL CORRECTIVE ACTION PLAN (CAP)**

If corrective action has been taken to fully and permanently correct the serious deficiency(ies) within the allotted time and to the SDE's satisfaction, the SDE will accept the CAP and must:

1. Notify the Institution's executive director, chairman of the board of directors, and the

responsible principals and responsible individuals, in writing and in a method of delivery that confirms receipt and/or delivery of notice, that SDE has temporarily deferred its serious deficiency determination; and

2. Offer the new Institution the opportunity to resubmit its application. If the new Institution resubmits its application, SDE must complete its review of the application within 30 days after receiving a complete and correct application.

If the corrective action plan is complete and accepted for the Institution but not for all of the responsible principals and responsible individuals (or vice versa), SDE must:

1. Continue with the actions against the remaining parties;
2. At the same time the notice is issued, SDE must also update the SDE list to indicate that the serious deficiency(ies) has(ve) been corrected and provide a copy of the notice to WRO; and
3. If the new Institution has corrected the serious deficiency (ies), SDE must offer the Institution the opportunity to resubmit its application. If the new Institution resubmits its application, SDE must complete its review of the application within 30 days after receiving a complete and correct application.

If SDE initially determines that the Institution's corrective action plan is complete and acceptable, but later determines that the serious deficiency (ies) has/have recurred, SDE must move immediately to issue a notice proposing to terminate and disqualify the Institution, executive director, chairman of the board of directors and responsible principals and individuals.

### **APPLICATION DENIAL AND PROPOSED DISQUALIFICATION**

If timely corrective action is not taken to fully and permanently correct the serious deficiency(ies), SDE must notify the Institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, in writing and in a method of delivery that confirms receipt and/or delivery of notice, that the Institution's application has been denied. At the same time the notice is issued, SDE must also update the SDE list and provide a copy of the notice to WRO. The notice must also specify:

1. That the Institution's application has been denied and SDE is proposing to disqualify the Institution and the responsible principals and responsible individuals;
2. The basis for the actions; and
3. The procedures for seeking an administrative review (appeal) of the application denial and proposed disqualifications.

If an administrative review is requested by the Institution, SDE and the administrative

(appeal) official must follow SDE's Administrative Review Procedures. If the administrative review official overturns SDE's proposed actions to deny the Institution's application and disqualify the Institution, executive director, chairman of the board of directors, responsible principals, and responsible individuals, SDE must issue a notice in writing and in a method of delivery that confirms receipt and/or delivery of notice, that the denial of the Institution's application and disqualification of the Institution, executive director, chairman of the board of directors, responsible principals, and responsible individuals is temporarily deferred. SDE must also update the SDE list and provide a copy of the notice, the mailing address, and date of birth for each responsible principal and responsible individual to WRO.

### **PROGRAM PAYMENTS**

SDE is prohibited from paying any claims for reimbursement from a new Institution for eligible meals served or allowable administrative expenses incurred until SDE has approved its application and the Institution and SDE have signed a Program agreement.

### **DISQUALIFICATION**

When the time for requesting an administrative review (appeal) expires or when the administrative review official upholds SDE's denial and proposed disqualifications, SDE must notify the Institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, in writing and in a method of delivery that confirms receipt and/or delivery of notice, that the Institution and the responsible principal and responsible individuals have been disqualified. At the same time the notice is issued, SDE must also update the SDE list and provide a copy of the notice, the Institution's name, mailing address and date of birth for each responsible principal and responsible individual to WRO.

# Serious Deficiency Process for Renewing Institutions

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If a renewing Institution's application does not meet all of the requirements in 7 CFR 226.6(b), 226.15(b) and 226.16(b), SDE must deny the application. If, in reviewing a renewing Institution's application, SDE determines that the Institution has committed one or more of the serious deficiencies listed below, SDE must initiate action to deny the renewing Institution's application and initiate action to disqualify the renewing Institution and the responsible principals and responsible individuals.

## LIST OF SERIOUS DEFICIENCIES FOR RENEWING INSTITUTIONS

The list of serious deficiencies is not identical for each category of Institution (new, renewing, participating) because the type of information likely to be available to SDE is different, depending on whether SDE is reviewing a new or renewing Institution's application or is conducting a review of a participating Institution. Serious deficiencies for renewing Institutions are:

1. Submission of false information on the Institution's application, including but not limited to a determination that the Institution has concealed a conviction for any activity that occurred during the past seven years and that indicates a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity;
2. Failure to operate CACFP in conformance with the performance standards;
3. Failure to comply with the bid procedures and contract requirements of applicable Federal procurement regulations;
4. Use of a food service management company that is in violation of health codes;
5. Failure by a sponsoring organization of day care homes to properly classify day care homes as tier I or tier II in accordance with 7 CFR 226.15(f);
6. Failure by a sponsoring organization to properly train or monitor sponsored facilities in accordance with 7 CFR 226.16(d);
7. Failure to perform any of the other financial and administrative responsibilities;
8. Failure to properly implement and administer the day care home termination and administrative review (appeal) provisions; or
9. Any other action affecting the Institution's ability to administer CACFP in accordance with CACFP requirements.

## **SERIOUS DEFICIENCY NOTIFICATION PROCEDURES FOR RENEWING INSTITUTIONS**

If SDE determines that a renewing Institution has committed one or more of the serious deficiencies listed above, SDE must use the following procedures to provide the Institution and the responsible principals and responsible individuals notice of the serious deficiency (ies) and an opportunity to take corrective action.

### **NOTICE OF SERIOUS DEFICIENCY**

SDE must notify the Institution's executive director and chairman of the board of directors, in writing and in a method of delivery that confirms receipt and/or delivery of notice, that the Institution has been determined to be seriously deficient. The notice must identify the responsible principals and responsible individuals and must be sent to those persons as well. SDE may specify in the notice different corrective action, and time periods for completing the corrective action, for the Institution and the responsible principals and responsible individuals. At the same time the notice is issued, SDE must add the Institution to the SDE list, along with the basis for the serious deficiency determination, and provide a copy of the notice to WRO. A Child Nutrition Coordinator or the Director of Child Nutrition has the authority to sign the serious deficiency notice. The notice must also specify:

1. The serious deficiency (ies);
2. The actions to be taken to correct the serious deficiency (ies);
3. The time allotted to correct the serious deficiency (ies). This must be as soon as possible, but not to exceed 30 days;
4. That the serious deficiency determination is not subject to administrative review (appeal);
5. That failure to fully and permanently correct the serious deficiency(ies) within the allotted time will result in SDE's denial of the Institution's application, the proposed termination of the Institution's agreement (if SDE has temporarily extended the agreement) and the proposed disqualification of the Institution and the responsible principals and responsible individuals;
6. That the Institution's voluntary termination of its agreement with SDE after having been notified that it is seriously deficient will still result in the Institution's formal termination by SDE and placement of the Institution and its responsible principals and responsible individuals on the National Disqualified List; and
7. That if the SDE does not possess the date of birth for any individual named as a "responsible principal or responsible individual" in the serious deficiency notice, the submission of that person's date of birth is a condition of corrective action for the Institution and/or individual.

SDE will provide technical assistance as appropriate in the areas identified as seriously deficient. In response to the serious deficiency notice the Institution must submit a Corrective Action Plan (CAP) that details the internal controls implemented to ensure that the serious deficiency(ies) are fully and permanently corrected. A successful CAP must include:

1. Name(s) of the Institution, executive director, chairman of the board of directors and other responsible principals and responsible individuals (RPIs) associated with the serious deficiencies;
2. Address of the institution;
3. Dates of birth of the executive director, chairman of the board of directors and other responsible principals and responsible individuals associated with the serious deficiency (ies); and
4. Details of the serious deficiencies.

#### What

- List each serious deficiency and the detailed procedures that will be implemented to address each serious deficiency;

#### Who

- In the procedures that address each serious deficiency, list the personnel responsible for each task. Use the personnel title.

#### When

- The timeline for implementing each procedure to correct the issue and how often the procedure will occur: daily, weekly, monthly, or annually. Include when the implementation began and the date(s) when each procedure will be fully implemented.

#### Where

- The location where records and CAP documentation will be maintained.

#### How

- Additional supporting documentation used to correct the issue. This might include copies of enrollment forms, training documentation, menu records, income eligibility records, attendance records, meal count forms, etc.; and
- Describe how the Institution will inform other responsible principals and responsible individuals (staff) of the new policies and procedures (e.g., Handbook, training).

### **SUCCESSFUL CORRECTIVE ACTION PLAN (CAP)**

If corrective action has been taken to fully and permanently correct the serious

deficiency(ies) within the allotted time and to the SDE's satisfaction, the SDE will accept the CAP and must:

1. Notify the Institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, in writing and in a method of delivery that confirms receipt and/or delivery of notice, that SDE has temporarily deferred its serious deficiency determination; and
2. Offer the renewing Institution the opportunity to resubmit its application. If the renewing Institution resubmits its application, SDE must complete its review of the application within 30 days after receiving a complete and correct application.

If corrective action plan is complete and accepted for the Institution but not for all of the responsible principals and responsible individuals (or vice versa), SDE must:

1. Continue with the actions against the remaining parties;
2. At the same time the notice is issued, SDE must also update the SDE list to indicate that the serious deficiency(ies) has(ve) been corrected and provide a copy of the notice to WRO; and
3. If the renewing Institution has corrected the serious deficiency (ies), SDE must offer the Institution the opportunity to resubmit its application. If the renewing Institution resubmits its application, SDE must complete its review of the application within 30 days after receiving a complete and correct application.

If SDE initially determines that the Institution's corrective action plan is complete and acceptable, but later determines that the serious deficiency(ies) have recurred, SDE must move immediately to issue a notice proposing to terminate and disqualify the Institution, executive director, chairman of the board of directors and responsible principals and responsible individuals.

### **APPLICATION DENIAL AND PROPOSED DISQUALIFICATION**

If timely corrective action is not taken to fully and permanently correct the serious deficiency(ies), SDE must notify the Institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, in writing and in a method of delivery that confirms receipt and/or delivery of notice, that the Institution's application has been denied. At the same time the notice is issued, SDE must update the SDE list and provide a copy of the notice to WRO. The notice must also specify:

1. That the Institution's application has been denied and SDE is proposing to terminate the Institution's agreement and to disqualify the Institution and the responsible principals and responsible individuals;
2. The basis for the actions;

3. That, if the Institution voluntarily terminates its agreement after receiving the notice of the proposed termination, the Institution and the responsible principals and responsible individuals will be disqualified;
4. The procedures for seeking an administrative review (appeal) of the application denial and proposed disqualifications; and
5. That the Institution may continue to participate in CACFP and receive CACFP reimbursement for eligible meals served and allowable administrative costs incurred until its administrative review is completed.

If an administrative review (appeal) is requested by the Institution, SDE and the administrative official must follow SDE's Administrative Review Procedures. If the administrative review official overturns SDE's proposed actions to terminate the Institution and disqualify the Institution, executive director, chairman of the board of directors, responsible principals, and responsible individuals, SDE must issue a notice in writing and in a method of delivery that confirms receipt and/or delivery of notice, that the proposed termination of the Institution and disqualification of the Institution, executive director, chairman of the board of directors, responsible principals, and responsible individuals is temporarily deferred. SDE must also update the SDE list and provide a copy of the notice and the mailing address and date of birth for each responsible principal and responsible individual to WRO.

### **AGREEMENT TERMINATION AND DISQUALIFICATION**

When the time for requesting an administrative review (appeal) expires or when the administrative review official upholds SDE's denial of the Institution's application packet, termination of the Institutions agreement, the proposed termination, and the proposed disqualifications, SDE must:

1. Notify the Institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, in writing and in a method of delivery that confirms receipt and/or delivery of notice, that the Institutions agreement has been terminated and that the Institution and the responsible principals and responsible individuals have been disqualified;
2. Update SDE list at the time such notice is issued; and
3. Provide a copy of the notice, the mailing address, and date of birth for each responsible principal and responsible individual to WRO.

# Serious Deficiency Process for Participating Institutions

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If SDE holds an agreement with an Institution operating in more than one State, the Institution has been disqualified from CACFP by another State agency and placed on the National Disqualified List, SDE must terminate the Institution's agreement effective no later than 45 days from the date of the Institution's disqualification by the other State agency. At the same time the notice of termination is issued, SDE must add the Institution to the SDE list and indicate that the Institution's agreement has been terminated and provide a copy of the notice to WRO and the other State agency's regional office if applicable.

If SDE determines that a participating Institution has committed one or more of the serious deficiencies below, SDE must initiate action to terminate the agreement of a participating Institution and initiate action to disqualify the Institution and any responsible principals and responsible individuals.

## LIST OF SERIOUS DEFICIENCIES FOR PARTICIPATING INSTITUTIONS

The list of serious deficiencies is not identical for each category of Institution (new, renewing, or participating) because the type of information likely to be available to SDE is different. Serious deficiencies for participating Institutions are:

1. Submission of false information on the Institution's application, including but not limited to a determination that the Institution has concealed a conviction for any activity that occurred during the past seven years and that indicates a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity;
2. Permitting an individual who is on the National Disqualified List to serve in a principal capacity with the Institution or, if a sponsoring organization, permitting such an individual to serve as a principal in a sponsored center or as a day care home;
3. Failure to operate CACFP in conformance with the performance standards;
4. Failure to comply with the bid procedures and contract requirements of applicable Federal procurement regulations;
5. Failure to return to SDE any advance payments that exceeded the amount earned for serving eligible meals, or failure to return disallowed start-up or expansion payments;
6. Failure to maintain adequate records;
7. Failure to adjust meal orders to conform to variations in the number of participants;
8. Claiming reimbursement for meals not served to participants;
9. Claiming reimbursement for a significant number of meals that do not meet CACFP

- requirements;
10. Use of a food service management company that is in violation of health codes;
  11. Failure of a sponsoring organization to disburse payments to its facilities in accordance with the regulations at 7 CFR 226.16(g) and (h) or in accordance with its management plan;
  12. Claiming reimbursement for meals served by a for-profit child care center or a for-profit outside school hours care center during a calendar month in which less than 25 percent of the children in care (enrolled or licensed capacity, whichever is less) were eligible for free or reduced-price meals or were title XX beneficiaries;
  13. Claiming reimbursement for meals served by a for-profit adult day care center during a calendar month in which less than 25 percent of its enrolled adult participants were title XIX or title XX beneficiaries;
  14. Failure by a sponsoring organization of day care homes to properly classify day care homes as tier I or tier II in accordance with 7 CFR 226.15(f);
  15. Failure by a sponsoring organization to properly train or monitor sponsored facilities in accordance with 7 CFR 226.16(d);
  16. Use of day care home funds by a sponsoring organization to pay for the sponsoring organization's administrative expenses;
  17. Failure to perform any of the other financial and administrative responsibilities;
  18. Failure to properly implement and administer the day care home termination and administrative review (appeal) provisions provided at the end of this section and in 7 CFR 226.16(l);
  19. The Institution or any of the Institution's principals have been declared ineligible for any other publicly funded program by reason of violating that program's requirements. However, this prohibition does not apply if the Institution or the principal has been fully reinstated in, or is now eligible to participate in that program, including the payment of any debts owed;
  20. Conviction of the Institution or any of its principals for any activity that occurred during the past seven years and that indicates a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity; or
  21. Any other action affecting the Institution's ability to administer CACFP in accordance with CACFP requirements.

## **SERIOUS DEFICIENCY NOTIFICATION PROCEDURES FOR PARTICIPATING INSTITUTIONS**

If SDE determines that a participating Institution has committed one or more of the serious

deficiencies listed above, SDE must use the following procedures to provide the Institution and the responsible principals and responsible individuals notice of the serious deficiency (ies) and an opportunity to take corrective action.

However, if the serious deficiency(ies) constitutes an imminent threat to the health or safety of participants, or the Institution has engaged in activities that threaten the public health or safety, SDE must follow the procedures for “Suspension of an Institution’s participation” provided later in this section instead of the procedures below. Further, if the serious deficiency is the submission of a false or fraudulent claim, in addition to the procedures below, SDE may suspend the Institution’s participation in accordance with the suspension procedures provided later in this section.

### **NOTICE OF SERIOUS DEFICIENCY**

SDE must notify the Institution’s executive director and chairman of the board of directors in writing and in a method of delivery that confirms receipt and/or delivery of notice, that the Institution has been determined seriously deficient. The notice must identify the responsible principals and responsible individuals and must be sent to those persons as well. SDE may specify in the notice different corrective action and time periods for completing the corrective action for the Institution and the responsible principals and responsible individuals. At the same time the notice is issued, SDE must add the Institution to the SDE list, along with the basis for the serious deficiency determination, and provide a copy of the notice to WRO. A Child Nutrition Coordinator or the Director of Child Nutrition has the authority to sign the serious deficiency notice. The notice must also specify:

1. The serious deficiency (ies);
2. The actions to be taken to correct the serious deficiency (ies);
3. The time allotted to correct the serious deficiency (ies); this must be as soon as possible, but not to exceed 30 days;
4. That the serious deficiency determination is not subject to administrative (appeal) review;
5. That failure to fully and permanently correct the serious deficiency(ies) within the allotted time will result in SDE’s proposed termination of the Institution’s agreement and the proposed disqualification of the Institution and the responsible principals and responsible individuals;
6. That the Institution’s voluntary termination of its agreement with SDE after having been notified that it is seriously deficient will still result in the Institution’s formal termination by SDE and placement of the Institution and its responsible principals and responsible individuals on the National Disqualified List; and
7. That, if SDE does not possess the date of birth for any individual named as a

“responsible principal or responsible individual” in the serious deficiency notice, the submission of that person’s date of birth is a condition of corrective action for the Institution and/or individual.

SDE will provide technical assistance as appropriate in the areas identified as seriously deficient. In response to the serious deficiency notice the Institution must submit a Corrective Action Plan (CAP) that details the internal controls implemented to ensure that the serious deficiency (ies) is/are fully and permanently corrected. A successful CAP must include:

1. Name(s) of the Institution, executive director, chairman of the board of directors and other responsible principals and responsible individuals (RPIs) associated with the serious deficiencies;
2. Address of the institution;
3. Dates of birth of the executive director, chairman of the board of directors and other responsible principals and responsible individuals associated with the serious deficiency (ies); and
4. Details of the serious deficiencies.

#### What

- List each serious deficiency and the detailed procedures that will be implemented to address each serious deficiency;

#### Who

- In the procedures that address each serious deficiency, list the personnel responsible for each task. Use the personnel title.

#### When

- The timeline for implementing each procedure to correct the issue and how often the procedure will occur: daily, weekly, monthly, or annually. Include when the implementation began and the date(s) when each procedure will be fully implemented.

#### Where

- The location where records and CAP documentation will be maintained.

#### How

- Additional supporting documentation used to correct the issue. This might include copies of enrollment forms, training documentation, menu records, income eligibility records, attendance records, meal count forms, etc.; and
- Describe how the Institution will inform other responsible principals and responsible individuals (staff) of the new policies and procedures (e.g., Handbook, training).

## **SUCCESSFUL CORRECTIVE ACTION PLAN (CAP)**

If corrective action has been taken to fully and permanently correct the serious deficiency(ies) within the allotted time and to the SDE's satisfaction, the SDE will accept the CAP and must:

1. Notify the Institution's executive director, chairman of the board of directors, and the responsible principals and responsible individuals, in writing and in a method of delivery that confirms receipt and/or delivery of notice, that SDE has temporarily deferred its serious deficiency determination; and
2. If applicable, offer the participating Institution the opportunity to resubmit its application packet in MyIdahoCNP. If the participating Institution resubmits its application, SDE must complete its review of the application within 30 days after receiving a complete and correct application.

If corrective action plan is complete and accepted for the Institution but not for all of the responsible principals and responsible individuals (or vice versa), SDE must:

1. Continue with the actions against the remaining parties;
2. At the same time the notice is issued, SDE must also update the SDE list to indicate that the serious deficiency(ies) has(ve) been corrected and provide a copy of the notice to WRO; and
3. If the Institution has corrected the serious deficiency (ies), if applicable, offer it the opportunity to resubmit its application. If the participating Institution resubmits its application, SDE must complete its review of the application within 30 days after receiving a complete and correct application.

If SDE initially determines that the Institution's Corrective Action Plan is complete and acceptable, but later determines that the serious deficiency (ies) has/have recurred, SDE must move immediately to issue a notice proposing to terminate and disqualify the Institution, executive director, chairman of the board of directors, and the responsible principals and responsible individuals.

## **PROPOSED TERMINATION AND PROPOSED DISQUALIFICATION**

If the Institution fails to submit a timely CAP or no CAP is submitted to fully and permanently correct the serious deficiency(ies) cited by the CAP due date, SDE must notify the Institution's executive director, chairman of the board of directors, and the responsible principals and responsible individuals, in writing and in a method of delivery that confirms receipt and/or delivery of notice, that SDE is proposing to terminate the Institution's agreement for cause and to disqualify the Institution, executive director, chairman of the

board of directors and the responsible principals and responsible individuals. At the same time the notice is issued, SDE must also update SDE list and provide a copy of the notice to WRO. The notice must also specify:

1. That SDE is proposing to terminate the Institution's agreement and to disqualify the Institution and the responsible principals and responsible individuals;
2. The basis for the actions;
3. That if the Institution voluntarily terminates its agreement after receiving the notice of proposed termination, the Institution and the responsible principals and responsible individuals will be disqualified and placed on the National Disqualification List;
4. The procedures for seeking an administrative review (appeal) of the proposed termination and proposed disqualifications; and
5. That unless participation has been suspended, the Institution may continue to participate and receive CACFP reimbursement for eligible meals served and allowable administrative costs incurred until its administrative review is completed.

If an administrative review (appeal) is requested by the Institution, SDE and the administrative official must follow SDE's Administrative Review Procedures. If the administrative review official overturns SDE's proposed actions to terminate the Institution and disqualification of the executive director, chairman of the board of directors, responsible principals, and responsible individuals, SDE must issue a notice in writing and in a method of delivery that confirms receipt and/or delivery of notice, that the proposed termination of the Institution and disqualification of the Institution, executive director, chairman of the board of directors, responsible principals, and responsible individuals is temporarily deferred. SDE must also update the SDE list and provide a copy of the notice and the mailing address and date of birth for each responsible principal and responsible individual to WRO.

## **PROGRAM PAYMENTS AND EXTENDED APPLICATION**

If the participating Institution must renew its application packet, or its application packet expires, before the end of the time allotted for corrective action and/or the conclusion of any administrative review (appeal) requested by the participating Institution:

1. SDE must temporarily extend its current application packet with the participating Institution and continue to pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative expenses incurred; and
2. During this period, SDE may base administrative payments to the Institution on the Institution's previous approved budget, or may base administrative payments to the Institution on the budget submitted by the Institution as part of its renewal

application; and

3. The actions set forth above must be taken either until the serious deficiency (ies) is/are corrected or until the Institution's agreement is terminated, including the period of any administrative review.

### **AGREEMENT TERMINATION AND DISQUALIFICATION**

When the time for requesting an administrative review (appeal) expires or when the administrative review official upholds SDE's proposed termination and disqualifications, SDE must immediately:

1. Notify the Institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, in writing and in a method of delivery that confirms receipt and/or delivery of notice, that the Institution's agreement has been terminated and that the Institution and the responsible principals and responsible individuals have been disqualified;
2. Update the SDE list at the time such notice is issued; and
3. Provide a copy of the notice, mailing address and date of birth for each responsible principal and responsible individual to WRO.

### **CORRECTIVE ACTION PLAN TIMEFRAMES**

SDE requires Institutions to submit their CAP within 30 days or less (depending on severity) of receipt of the notice. The State agency is prohibited from allowing more than 90 days for corrective action from the date the Institution receives the serious deficiency notice. However, for serious deficiencies requiring the long-term revision of management systems or processes, SDE may permit more than 90 days to complete the corrective action as long as a corrective action plan is submitted to and approved by SDE within 90 days (or such shorter deadline as SDE may establish). The corrective action plan must include milestones and a definite completion date that SDE will monitor. The determination of serious deficiency will remain in effect until SDE determines that the serious deficiency (ies) has/have been fully and permanently corrected within the allotted time.

### **UNLAWFUL PRACTICES**

If SDE determines that the Institution has engaged in unlawful practices, submitted false or fraudulent claims or other information to SDE, or been convicted of or concealed a criminal background, SDE is prohibited from allowing more than 30 days for corrective action.

# Suspension of an Institution's Participation

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SDE is prohibited from suspending an Institution's participation (including all CACFP payments) except for the reasons set forth below.

## **PUBLIC HEALTH OR SAFETY**

If State or local health or licensing officials have cited an Institution for serious health or safety violations, SDE must immediately suspend the Institution's CACFP participation, initiate action to terminate the Institution's agreement, and initiate action to disqualify the Institution and the responsible principals and responsible individuals prior to any formal action to revoke the Institution's licensure or approval.

If SDE determines that there is an imminent threat to the health or safety of participants at an Institution, or that the Institution has engaged in activities that threaten the public health or safety, SDE must immediately notify the appropriate State or local licensing and health authorities and take action that is consistent with the recommendations and requirements of those authorities. An imminent threat to the health or safety of participants and engaging in activities that threaten the public health or safety constitute serious deficiencies; however, SDE must use the procedures below to provide the Institution notice of the suspension of participation, serious deficiency, proposed termination of the Institution's agreement, and proposed disqualification of the Institution, responsible principals and responsible individuals.

## **NOTICE OF SUSPENSION, SERIOUS DEFICIENCY, PROPOSED TERMINATION, AND PROPOSED DISQUALIFICATION**

SDE must notify the Institution's executive director and chairman of the board of directors, in writing and in a method of delivery that confirms receipt and/or delivery of notice, that the Institution's participation (including CACFP payments) has been suspended, that the Institution has been determined to be seriously deficient, and that SDE proposes to terminate the Institution's agreement and to disqualify the Institution and the responsible principals and responsible individuals. The notice must also identify the responsible principals and responsible individuals and must be sent to those persons as well. At the same time this notice is sent, SDE must add the Institution and the responsible principals and responsible individuals to the SDE list, along with the basis for the serious deficiency determination and provide a copy of the notice to WRO. A Child Nutrition Coordinator or the Director of Child Nutrition has the authority to sign the serious deficiency notice. The notice

must also specify:

1. That SDE is suspending the Institution's participation (including CACFP payments), proposing to terminate the Institution's agreement, and proposing to disqualify the Institution and the responsible principals and responsible individuals;
2. The serious deficiency (ies);
3. That, if the Institution voluntarily terminates its agreement with SDE after having been notified of the proposed termination, the Institution and the responsible principals and responsible individuals will be disqualified and placed on the National Disqualified List;
4. That the serious deficiency determination is not subject to administrative review (appeal);
5. The procedures for seeking an administrative review of the suspension, proposed termination, and proposed disqualifications; and
6. That, if the administrative review official overturns the suspension, the Institution may claim reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

If an administrative review (appeal) is requested by the Institution, SDE and the administrative official must follow SDE's Administrative Review Procedures. If the administrative review official overturns SDE proposed actions to terminate the Institution's agreement and disqualification of the Institution and responsible principals and responsible individuals, SDE must issue a notice in writing and in a method of delivery that confirms receipt and/or delivery of notice, that the serious deficiency, suspension, proposed termination of the Institution agreement and disqualification of the Institution and responsible principals and responsible individuals is temporarily deferred. SDE must also update the SDE list and provide a copy of the notice and the mailing address and date of birth for each responsible principal and responsible individual to WRO.

## **AGREEMENT TERMINATION AND DISQUALIFICATION**

When the time for requesting an administrative review (appeal) expires or when the administrative review official upholds SDE's proposed termination and disqualifications, SDE must immediately:

1. Notify the Institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, in writing and in a method of delivery that confirms receipt and/or delivery of notice, that the Institution's agreement has been terminated and that the Institution and the responsible principals and responsible individuals have been disqualified;
2. Update the SDE list at the time such notice is issued; and

3. Provide a copy of the notice, the mailing address, and date of birth for each responsible principal and responsible individual to WRO.

### **PROGRAM PAYMENTS**

SDE is prohibited from paying any claims for reimbursement from a suspended Institution. However, if the suspended Institution prevails in the administrative review (appeal) of the proposed termination, SDE must pay any claims for reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

### **FALSE OR FRAUDULENT CLAIMS**

If SDE determines that an Institution has knowingly submitted a false or fraudulent claim, SDE may initiate action to suspend the Institution's participation and must initiate action to terminate the Institution's agreement and initiate action to disqualify the Institution and the responsible principals and responsible individuals. The submission of a false or fraudulent claim constitutes a serious deficiency, as noted in this section under the list of serious deficiencies for participating Institutions. If SDE wishes to suspend the Institution's participation, it must use the following procedures to issue the notice of proposed suspension of participation at the same time it issues the serious deficiency notice, which must include the information described below.

### **PROPOSED SUSPENSION OF PARTICIPATION**

If SDE decides to propose to suspend an Institution's participation due to the Institution's submission of a false or fraudulent claim, it must notify the Institution's executive director and chairman of the board of directors, in writing and in a method of delivery that confirms receipt and/or delivery of notice, that SDE intends to suspend the Institution's participation (including all CACFP payments) unless the Institution requests a review of the proposed suspension. At the same time the notice is issued, SDE must also update the SDE list and provide a copy of the notice to WRO. The notice must identify the responsible principals and responsible individuals and must be sent to those persons as well. The notice must also specify:

1. That SDE is proposing to suspend the Institution's participation;
2. That the proposed suspension is based on the Institution's submission of a false or fraudulent claim, as described in the serious deficiency notice;
3. The effective date of the suspension (which may be no earlier than 10 days after the Institution receives the suspension notice);
4. The name, address and telephone number of the suspension review official who will conduct the suspension review; and

5. That if the Institution wishes to have a suspension review, it must request a review and submit to the suspension review official written documentation opposing the proposed suspension within 10 days of the Institution's receipt of the notice.

## **SUSPENSION REVIEW**

If the Institution requests a review of SDE's proposed suspension of participation, the suspension review must be heard by a suspension review official who must:

1. Be an independent and impartial person other than, and not accountable to, any person involved in the decision to initiate suspension proceedings;
2. Immediately notify SDE that the Institution has contested the proposed suspension and must obtain from SDE its notice of proposed suspension of participation, along with all supporting documentation; and
3. Render a decision on suspension of participation within 10 days of the deadline for receiving the Institution's documentation opposing the proposed suspension.

## **SUSPENSION REVIEW DECISION**

If the suspension review official determines that SDE's proposed suspension is not appropriate, SDE is prohibited from suspending participation. If the suspension review official determines, based on a preponderance of the evidence, that SDE's action was appropriate, SDE must suspend the Institution's participation (including all CACFP payments), effective on the date of the suspension review decision. SDE must notify the Institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, in writing and in a method of delivery that confirms receipt and/or delivery of notice, that the Institution's participation has been suspended. At the same time the notice is issued, SDE must also update the SDE list and provide a copy of the notice to WRO. The notice must also specify:

1. That SDE is suspending the Institution's participation (including CACFP payments);
2. The effective date of the suspension (the date of the suspension review decision);
3. The procedures for seeking an administrative review (appeal) of the suspension; and
4. That if the administrative review official overturns the suspension, the Institution may claim reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

## **PROGRAM PAYMENTS**

SDE is prohibited from paying any claims for reimbursement submitted by a suspended Institution. However, if the Institution suspended for the submission of false or fraudulent claims is a sponsoring organization, SDE must ensure that sponsored facilities continue to

receive reimbursement for eligible meals served during the suspension period. If the suspended Institution prevails in the administrative review (appeal) of the proposed termination, SDE must pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

#### **MAXIMUM TIME FOR SUSPENSION**

Under no circumstances may the suspension of participation remain in effect for more than 120 days following the suspension review decision.

# FNS Determination of Serious Deficiency

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FNS may determine independently that a participating Institution has committed one or more serious deficiency listed in the above section for participating Institutions.

## **SERIOUS DEFICIENCY NOTIFICATION PROCEDURES**

If FNS determines that an Institution has committed one or more serious deficiency (the list of serious deficiencies for participating Institutions), FNS will use the following procedures to provide the Institution and the responsible principals and responsible individuals with notice of the serious deficiency(ies) and an opportunity to take corrective action.

## **NOTICE OF SERIOUS DEFICIENCY**

FNS will notify the Institution's executive director and chairman of the board of directors, in writing and in a method of delivery that confirms receipt and/or delivery of notice, which the Institution has been found to be seriously deficient. The notice will identify the responsible principals and responsible individuals and will be sent to them as well. FNS may specify in the notice different corrective action and time periods for completing the corrective action, for the Institution and the responsible principals and responsible individuals. The notice will also specify:

1. The serious deficiency (ies);
2. The actions to be taken to correct the serious deficiency (ies);
3. The time allotted to correct the serious deficiency (ies); this must be as soon as possible, but not to exceed 30 days.
4. That failure to fully and permanently correct the serious deficiency(ies) within the allotted time, or the Institution's voluntary termination of its agreement(s) with any State agency after having been notified that it is seriously deficient, will result in the proposed disqualification of the Institution and the responsible principals and responsible individuals and the termination of its agreement(s) with all State agencies; and
5. That the serious deficiency determination is not subject to administrative review (appeal).

## **SUSPENSION OF PARTICIPATION**

If FNS determines that there is an imminent threat to the health or safety of participants at an Institution, or that the Institution has engaged in activities that threaten the public health or safety, any State agency that holds an agreement with the Institution must suspend the participation of the Institution. If FNS determines that the Institution has submitted a false

or fraudulent claim, it may require any State agency that holds an agreement with the Institution to initiate action to suspend the Institution's participation for false or fraudulent claims in accordance 7 CFR226.6 (c)(5)(ii) (which deals with an Institution's suspension by a State agency for submission of false or fraudulent claims). In both cases, FNS will provide SDE the information necessary to support these actions and, in the case of a false and fraudulent claim, will provide an individual to serve as the suspension review official if requested by SDE.

### **SUCCESSFUL CORRECTIVE ACTION PLAN (CAP)**

If the Corrective Action Plan fully and permanently corrects the serious deficiency (ies) within the allotted time and to FNS's satisfaction, FNS will accept the CAP and notify the Institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, in writing and in a method of delivery that confirms receipt and/or delivery of notice, that it has temporarily deferred its serious deficiency determination.

If the Corrective Action Plan is complete and accepted for the Institution but not for all of the responsible principals and responsible individuals (or vice versa), FNS will continue with the actions against the remaining parties.

If FNS initially determines that the Institution's corrective action plan is complete and acceptable, but later determines that the serious deficiency (ies) has/have reoccurred, FNS will move immediately to issue a notice of intent to terminate and disqualify the Institution.

### **PROPOSED DISQUALIFICATION**

If timely corrective action is not taken to fully and permanently correct the serious deficiency (ies), FNS will notify the Institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, in writing and in a method of delivery that confirms receipt and/or delivery of notice, that FNS is proposing to disqualify them. The notice will also specify:

1. That FNS is proposing to disqualify the Institution and the responsible principals and responsible individuals;
2. The basis for the actions;
3. That, if the Institution seeks to voluntarily terminate its agreement after receiving the notice of proposed disqualification, the Institution and the responsible principals and responsible individuals will be disqualified and placed on the National Disqualified List;

4. The procedures for seeking an administrative review of the proposed disqualifications;
5. That unless participation has been suspended, the Institution may continue to participate and receive CACFP reimbursement for eligible meals served and allowable administrative costs incurred until its administrative review is completed; and
6. That if the Institution does not prevail in the administrative review, any State agency holding an agreement with the Institution will be required to terminate that agreement and the Institution is prohibited from seeking an administrative review of the termination of the agreement by State agency(ies).

If an administrative review (appeal) is requested by the Institution, FNS and the administrative (appeal) official must follow the FNS Administrative Review (Appeal) Procedures. If the administrative review (appeal) official overturns FNS proposed actions to terminate the Institution's agreement and disqualification of the Institution and responsible principals and responsible individuals, FNS must issue a notice in writing and in a method of delivery that confirms receipt and/or delivery of notice, that the serious deficiency, suspension, proposed termination of the Institution's agreement and disqualification of the Institution and responsible principals and responsible individuals is temporarily deferred. SDE must update SDE's list and provide a copy of the notice and the mailing address and date of birth for each responsible principal and responsible individual to WRO.

## **DISQUALIFICATION**

When the time for requesting an administrative review expires or when the administrative review official upholds FNS's proposed disqualifications, FNS will notify the Institution's executive director, chairman of the board of directors, the responsible principals and responsible individuals, in writing and in a method of delivery that confirms receipt and/or delivery of notice, that the Institution and the responsible principal or responsible individual has/have been disqualified.

## **PROGRAM PAYMENTS**

If SDE holds an agreement with an Institution that FNS has determined to be seriously deficient, SDE must continue to pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative expenses incurred until the serious deficiency (ies) is corrected or SDE terminates the Institution's agreement, including the period of any administrative review, unless participation has been suspended.

## **DISQUALIFIED INSTITUTIONS**

If SDE holds an agreement with an Institution that FNS determines to be seriously deficient and subsequently disqualifies, SDE must terminate the Institution's agreement effective no later than 45 days after the date of the Institution's disqualification by FNS. The termination is not subject to administrative review. At the same time the notice of termination is issued, SDE must add the Institution to the SDE list and provide a copy of the notice to WRO.

### **DISQUALIFIED PRINCIPALS**

If SDE holds an agreement with an Institution whose principal FNS determines to be seriously deficient and subsequently disqualifies, SDE must determine the Institution to be seriously deficient and initiate action to terminate and disqualify the Institution. SDE must initiate these actions no later than 45 days after the date of the principal's disqualification by FNS.

# National Disqualified List

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FNS will maintain the National Disqualified List and make it available to State agencies and sponsoring organizations.

Sponsoring Organizations may use the NDL web system to verify potential new centers, homes, providers and employees with responsibilities in the Child and Adult Care Food Program (CACFP) are not on the National Disqualified List. Checking the list before hiring a new employee or pre-approving a new center, home or provider, will confirm they have not been disqualified from the Child and Adult Care Food Program and avoid application delays in MyIdahoCNP.

Idaho State Department of Education (SDE) is required to verify that all new centers, homes, providers and CACFP employees in Institutions and facilities are not on the NDL before approving a site/provider application in MyIdahoCNP.

Sponsoring Organizations can access the NDL by entering the following URL to their web browser: <https://snp.fns.usda.gov/ndlweb/Welcome.action>

The link above will lead to the USDA eAuthentication Login page. On this page under User ID & Password click on the REGISTER button and set up your account. Sponsoring Organizations register with Level 1 access. Once registered sponsoring organizations can access the Institution and Individual disqualified lists.

## EFFECT ON INSTITUTIONS

No organization on the National Disqualified List may participate in CACFP as an Institution. SDE cannot approve the application of a new or renewing Institution if the Institution is on the National Disqualified List per regulation 7 CFR 226.6 (b)(1)(xii) and (b)(2)(ii). In addition, SDE must terminate the agreement of any participating Institution that is disqualified by another State agency or by FNS per regulation 7 CFR 226.6 (c)(3)(i) and (c)(6)(ii)(G)(1).

## EFFECT ON SPONSORED CENTERS

No organization on the National Disqualified List may participate in CACFP as a sponsored center. A sponsoring organization is prohibited from submitting an application on behalf of a sponsored facility (and a State agency is prohibited from approving such an application) if the facility is on the National Disqualified List per regulation 7 CFR 226.16(b) and 226.6 (b)(1)(xii) and (b)(2)(ii).

## **EFFECT ON INDIVIDUALS**

No individual on the National Disqualified List may serve as a principal in any Institution or facility or as a day care home provider.

## **PRINCIPAL FOR AN INSTITUTION OR A SPONSORED FACILITY**

SDE cannot approve the application of a new or renewing Institution if any of the Institution's principals are on the National Disqualified List. SDE must declare an Institution seriously deficient and initiate action to terminate the Institution's agreement and disqualify the Institution if the Institution permits an individual who is on the National Disqualified List to serve in a principal capacity for the Institution or one of its facilities per regulations 7 CFR 226.6 (c)(3)(ii)(B) and (c)(6)(ii)(G)(2).

## **PRINCIPAL FOR A SPONSORED FACILITY**

A sponsoring organization is prohibited from submitting an application on behalf of a sponsored facility (or a State agency from approving such an application) if any of the facility's principals are on the National Disqualified List.

## **A DAY CARE HOME**

A sponsoring organization is prohibited from submitting an application on behalf of a sponsored facility (and a State agency is prohibited from approving such an application) if the facility is on the National Disqualified List.

## **REMOVAL OF INSTITUTIONS, PRINCIPALS, AND INDIVIDUALS FROM THE NATIONAL DISQUALIFIED LIST**

Once included on the National Disqualified List, an Institution, responsible principals and responsible individuals remain on the list until such time as FNS, in consultation with the appropriate State agency, determines that the serious deficiency(ies) that led to their placement on the list has(ve) been corrected, or until seven years have elapsed since they were disqualified from participation. However, if the Institution, principal or individual has failed to repay debts owed under CACFP, they will remain on the list until the debt has been repaid.

## **REMOVAL OF DAY CARE HOMES FROM THE NATIONAL DISQUALIFIED LIST**

Once included on the National Disqualified List, a day care home will remain on the list until such time as SDE determines that the serious deficiency(ies) that led to its placement on the list has(ve) been corrected, or until seven years have elapsed since its agreement was terminated for cause. However, if the day care home has failed to repay debts owed under

CACFP, it will remain on the list until the debt has been repaid.

### **STATE AGENCY LIST**

SDE must maintain a State agency list (in the form of an actual paper or electronic list or retrievable paper records). The Idaho SDE list is maintained electronically. The list is made available to FNS upon request, and includes the following information:

1. Institutions determined to be seriously deficient by SDE, including the names and mailing addresses of the Institutions and the status of the Institutions as they move through the possible subsequent stages of corrective action, proposed termination, suspension, agreement termination, and/or disqualification, as applicable;
2. Responsible principals and responsible individuals who have been disqualified from participation by SDE, including their names, mailing addresses, and dates of birth; and
3. Day care home providers or unaffiliated centers whose agreements have been terminated for cause by a sponsoring organization in Idaho, including their names, mailing addresses, and dates of birth. Unaffiliated centers sponsored by sponsoring organizations are placed on Idaho's Disqualified List.

### **REFERRAL OF DISQUALIFIED DAY CARE HOMES TO FNS**

Within 10 days of receiving a notice of termination and disqualification from a sponsoring organization, SDE must provide WRO the provider name, mailing address, and date of birth of each day care home provider, date of termination, amount of debt owed (if any), and reason for disqualification whose agreement is terminated for cause.

If on July 29, 2002 SDE maintained a list of day care homes that have been disqualified from participation, SDE may continue to prohibit participation by those day care homes if the day care home has failed to repay its debt, SDE may keep the day care home on its prior list until the debt has been repaid.

# Administrative Reviews(Appeals) for Institutions and Responsible Principals and Responsible Individuals

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SDE developed procedures for offering administrative reviews to Institutions and responsible principals and responsible individuals. The administrative review (appeal) procedures are located on the CNP website at <https://www.sde.idaho.gov/cnp/cacfp/> for unlimited access. The procedures include:

## **ACTIONS SUBJECT TO ADMINISTRATIVE REVIEW**

Except as provided in 7 CFR 226.8(g), SDE must offer an administrative review for the following actions:

1. Denial of a new or renewing Institution's application for participation in CACFP;
2. Denial of sponsored facility application. Denial of an application submitted by a sponsoring organization on behalf of a facility;
3. Proposed termination of an Institution's agreement;
4. Proposed disqualification of a responsible principal or responsible individual;
5. Suspension of an Institution's participation;
6. Denial of an Institution's application for start-up or expansion payments;
7. Denial of a request for an advance payment, if available in the State agency;
8. Recovery of all or part of an advance in excess of the claim for the applicable period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments (see 7 CFR 226.10(b) (3));
9. Denial of all or a part of an Institution's claim for reimbursement (except for a denial based on a late submission under 7 CFR 226.10(e)) (see 7 CFR 226.10(f) and 226.14(a));
10. Decision by the SDE not to forward to FNS an exception request by an Institution for payment of a late claim, or a request for an upward adjustment to a claim (see 7 CFR 226.10(e));
11. Demand for the remittance of an overpayment (see 7 CFR 226.14(a)); and
12. Any other action of the SDE affecting an Institution's participation or its claim for reimbursement.

## **ACTIONS NOT SUBJECT TO ADMINISTRATIVE REVIEW**

SDE is prohibited from offering administrative reviews (appeal) of the following actions:

1. A decision by FNS to deny an exception request by an Institution for payment of a late claim, or for an upward adjustment to a claim (see 7 CFR 226.10(e));
2. A determination that an Institution is seriously deficient;

3. A determination by SDE that the corrective action taken by an Institution or by a responsible principal or responsible individual does not completely and permanently correct a serious deficiency;
4. Disqualification of an Institution or a responsible principal or responsible individual, and the subsequent placement on SDE list and the National Disqualified List;
5. Termination of a participating Institution's agreement, including termination of a participating Institution's agreement based on the disqualification of the Institution by another State agency or FNS;
6. A determination, by either SDE or by FNS, that the corrective action taken by an Institution or a responsible principal or responsible individual is not adequate to warrant the removal of the Institution or the responsible principal or responsible individual from the National Disqualified List; or
7. SDE's refusal to consider an Institution's application when either the Institution or one of its principals is on the National Disqualified List, or SDE's refusal to consider an Institution's submission of an application on behalf of a facility when either the facility or one of its principals is on the National Disqualified List.

## **PROVISION OF ADMINISTRATIVE REVIEW (APPEAL) PROCEDURES TO INSTITUTIONS AND RESPONSIBLE PRINCIPALS AND RESPONSIBLE INDIVIDUALS**

SDE's administrative review procedures must be provided:

1. Annually to all Institutions, SDE Administrative (Appeal) Review Procedures are located on CNP website at <https://www.sde.idaho.gov/cnp/cacfp/> for unlimited access;
2. To an Institution and to each responsible principal and responsible individual when SDE takes any action subject to an administrative review; and
3. Any other time upon request.

## **ADMINISTRATIVE REVIEW (APPEAL) PROCEDURES**

SDE must follow the procedures below when an Institution or a responsible principal or responsible individual appeals any action subject to administrative review.

### **Notice of Action**

The Institution's executive director, chairman of the board of directors, and the responsible principals and responsible individuals, must be given written notice by certified mail, return receipt requested, of the action being taken or proposed, the basis for the action, and the procedures under which the Institution and the responsible principals or responsible individuals may request an administrative review of the action.

### Time to Request Administrative Review (Appeal)

The request for administrative review must be submitted in writing not later than 15 calendar days after the date the notice of action is received, and SDE must acknowledge the receipt of the request for an administrative review within 10 calendar days of its receipt of the request.

### Representation

The Institution and the responsible principals and responsible individuals may retain legal counsel, or may be represented by another person.

### Review of Record

Any information on which SDE's action was based must be available to the Institution and the responsible principals and responsible individuals for inspection from the date of receipt of the request for an administrative review.

### Opposition

The Institution and the responsible principals and responsible individuals may refute the findings contained in the notice of action in person or by submitting written documentation to the administrative review official. In order to be considered, written documentation must be submitted to the administrative review official not later than 30 days after receipt of the notice of action.

### Hearing

A hearing must be held by the administrative review (appeal) official in addition to, or in lieu of, a review of written information only if the Institution or the responsible principals and responsible individuals request a hearing in writing for an administrative review. If the Institution's representative, or the responsible principals or responsible individuals or their representative, fail to appear at a scheduled hearing, they waive the right to a personal appearance before the administrative review official, unless the administrative review official agrees to reschedule the hearing. A representative of SDE must be allowed to attend the hearing to respond to the testimony of the Institution and the responsible principals and responsible individuals and to answer questions posed by the administrative review official.

If a hearing is requested, the Institution, the responsible principals and responsible individuals, and SDE must be provided with at least 10 days advance notice of the time and place of the hearing.

### Administrative Review (Appeal) Official

In accordance with CACFP regulations 7 CFR 226.6(k) (5) (vii) and 226.6(l) (5) (IV), the administrative review official must be independent and impartial. This means that, although the administrative review official may be an employee of SDE, he/she must not have been involved in the action that is the subject of the administrative review, or have a direct personal or financial interest in the outcome of the administrative review. The Institution and the responsible principals and responsible individuals must be permitted to contact the administrative review official directly if they so desire.

### Basis for Decision

The administrative review (appeal) official must make a determination based solely on the information provided by SDE, the Institution, and the responsible principals and responsible individuals, and based on Federal and State laws, regulations, policies, and procedures governing CACFP, 7 CFR 226.6(k)(5)(viii).

The authority of the administrative review official does not include:

1. Interpreting the intent or expanding the meaning of Federal regulations;
2. Validating the serious deficiency determination;
3. Verifying whether corrective actions submitted by the RPI's fully and permanently corrects CACFP violations; or
4. Establishing settlement of demands for overpayments.

### Time for Issuing a Decision

Within 60 days of SDE's receipt of the request for an administrative review (appeal), the administrative review official must inform SDE, the Institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, of the administrative review's outcome. This timeframe is an administrative requirement for SDE and may not be used as a basis for overturning SDE's action if a decision is not made within the specified timeframe.

### Final Decision

The determination made by the administrative review official is the final administrative determination to be afforded the Institution and the responsible principals and responsible individuals per 7 CFR 226.6(k) (5) (x) and 226.6(l) (5) (vii).

### Federal Audit Findings

FNS may assert a claim against SDE when an administrative review results in the dismissal of a claim against an Institution asserted by SDE based upon Federal audit findings.

## Record of Result of Administrative Reviews

SDE must maintain searchable records of all administrative reviews and their disposition.

## COMBINED ADMINISTRATIVE REVIEWS (APPEALS) FOR RESPONSIBLE PRINCIPALS AND RESPONSIBLE INDIVIDUALS

SDE must conduct the administrative review of the proposed disqualification of the responsible principals and responsible individuals as part of the administrative review of the application denial, proposed termination, and/or proposed disqualification of the Institution with which the responsible principals or responsible individuals are associated. However, at the administrative review and at the official's discretion, separate administrative reviews may be held if the Institution does not request an administrative review or if either the Institution or the responsible principal or responsible individual demonstrates that their interests conflict.

## ABBREVIATED ADMINISTRATIVE REVIEW (APPEAL)

SDE must limit the administrative review to a review of written submissions concerning the accuracy of SDE's determination if the application was denied or SDE proposes to terminate the Institution's agreement because:

1. The information submitted on the application was false;
2. The Institution, one of its sponsored facilities, or one of the principals of the Institution or its facilities is on the National Disqualified List;
3. The Institution, one of its sponsored facilities, or one of the principals of the Institution or its facilities is ineligible to participate in any other publicly funded program by reason of violation of the requirements of CACFP; or
4. The Institution, one of its sponsored facilities, or one of the principals of the Institution or its facilities has been convicted for any activity that indicates a lack of business integrity.

## EFFECT OF SDE ACTION

SDE's action must remain in effect during the administrative review (appeal). The effect of this requirement on particular State agency actions is as follows.

### Overpayment Demand

During the period of the administrative review, SDE is prohibited from taking action to collect or offset the overpayment. However, SDE must assess interest beginning with the initial demand for remittance of the overpayment and continuing through the period of administrative review unless the administrative review official overturns SDE's action.

## Program Payments

The availability of CACFP payments during an administrative review of the denial of a new Institution's application, denial of a renewing Institution's application, proposed termination of a participating Institution's agreement, and suspension of an Institution are addressed in each serious deficiency section above.

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