Serious Deficiency, Suspension, & Appeals for State Agencies & Sponsoring Organizations

A Child and Adult Care Food Program Handbook

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Food and Nutrition Service
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Introduction

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 Service (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.

Historical Background of the CACFP Serious Deficiency Process

The serious deficiency process was first established in 1978. Below is a brief overview of the laws that Congress has passed that have expanded the process over the years.

1978: *The Child Nutrition Amendments of 1978 (Public Law 95-627)*

- Established the serious deficiency process.
- Established the termination process for institutions.

2000: *The Agricultural Risk Protection Act of 2000 (Public Law 106-224)*

- Required USDA to maintain a National Disqualified List (NDL) for institutions, DCHs, providers, and individuals that have been terminated or otherwise disqualified from participation in the CACFP.
- Established the termination, suspension, and appeals procedures for institutions and homes.
- Established fund recovery procedures.
- Established the termination of day DCH care homes.

2000: *The Grain Standards and Warehouse Improvement Act, 2000 (Public Law 106-472)*

- Established the suspension process for false and fraudulent claims.

2002: *Child and Adult Care Food Program: Improving Management and Program Integrity (1st Interim rule)*

- Established the abbreviated appeals process.

2004: *Child and Adult Care Food Program: Improving Management and Program Integrity (2nd Interim rule)*

- Established that State agencies must check the NDL before approving an application for participation.

2011: *Child and Adult Care Food Program: Improving Management and Program Integrity (Final Rule)*

- Established the temporary deferment of serious deficiency status.

2011: USDA, Office of Inspector General Audit Report #14-2012 Review of Management Controls (#27601-0012-SF).

- Develop submission forms for State agencies to use when requesting an institution, responsible principals or individuals (RP/I) or facility, requiring entries to be complete.
- Require that program application materials and NDL submittals include (1) full legal names and (2) any names formerly used.

Who Administers the Program?

The USDA's FNS administers CACFP at the national level. Within each State, the Program is administered by the State Department of Education or another agency designated by the State.

Locally, State agencies enter into agreements with independent centers and public or private nonprofit, or for-profit sponsoring organizations of centers or DCH providers. For-profit centers may participate in CACFP as independent centers or under a nonprofit sponsor, provided that 25 percent of the children in care (enrolled or licensed capacity, whichever is less) are either eligible for free or reduced price meals or receiving Title XX funds. For-profit sponsoring organizations may sponsor only their own affiliated centers and may not sponsor DCH providers

Independent centers and sponsoring organizations are responsible for overseeing the Program at their center or at the facilities that they sponsor. These institutions receive Federal reimbursement through the State agency to assist in the administrative and operating costs of preparing and serving meals to eligible children at their Program sites.

About this Guidance

This guidance provides detailed information on the implementation of the serious deficiency process by State agencies and sponsoring organizations, which helps ensure that the Program is operated properly and that centers and DCHs receive the support and technical assistance they need. In this guidance, you will find information about:

- The serious deficiency process for institutions and for DCHs;
- Suspension process for institutions and for facilities;
- Appeals process for institutions and for facilities; and
- State agency lists and the NDL.

State agencies and sponsoring organizations can also use the information in this guidance to develop internal policies and procedures for their oversight and implementation of the serious deficiency process.

Remember

Institutions (independent centers and sponsoring organizations) enter into agreements with the State agency.

Facilities (DCH providers or sponsored centers) enter into agreements with a sponsor.

Part 1 of this guidance provides information on the serious deficiency process to be used by State agencies to address issues identified in institutions including procedures, corrective

action, termination and disqualification, and Program payments during the serious deficiency process. The serious deficiency process for DCH providers is covered in Part 2 of this guidance.

While this guidance is in effect for adult day care centers as well as child care centers, it mentions only child care centers for ease of reference, other than reference to Title XIX benefits that are specific to adult day care.

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

DCH or Provider?

The terms “DCH” and “provider” are used interchangeably in CACFP regulations, FNS handbooks, policy and the CACFP Handbooks.

PART 1. Serious Deficiency Process for Institutions

A. Serious Deficiency Process

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 the Program [7 CFR 226.2]. The serious deficiency process offers a systematic way for State agencies to take actions allowing institutions to correct serious Program 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 Program and preventing the institution and RP/Is from returning to the Program until the approval to reapply for participation is granted by FNS.

The serious deficiency process has six steps that start when a State agency 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 Program.

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.

Each of these steps is described in detail in this guidance. For a graphic chart of the steps, reference Part 12, Attachment A.

B. Serious Deficiencies for New and Participating Institutions

An institution may be declared seriously deficient if the State agency finds serious Program violations or issues of noncompliance with CACFP requirements at any time during the institution's participation. Serious deficiencies that are not fully and permanently corrected will result in the proposed termination and disqualification of the institution and it's RP/Is.

However, if the serious deficiencies involve the submission of a false or fraudulent claim for reimbursement, or pose an imminent threat to the health or safety of Program participants or the

public, the State agency must follow the procedures outlined in Part 4 of this guidance. State agencies should become familiar with the serious deficiencies by type, as there are some differences between serious deficiencies for new and participating institutions. The following are examples of noncompliance issues that rise to the level of a serious deficiency as described in the CACFP regulations.

New institutions

1. Submission of false information on the institution's application, including but not limited to, a determination that the institution's RP/Is have 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 deception, 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 the State agency; or

2. Any other action affecting the institution's ability to administer the Program in accordance with Program requirements [7 Code of Regulations (CFR) 226.6(c)(1)].

Institutions at application renewal

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 deception, antitrust violations, embezzlement, theft, forgery, bribery, fraud 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 the State agency;

2. Failure to operate the Program in conformance with the performance standards set forth in 7 CFR 226.6(b)(1)(xviii); (b)(2)(vii);

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 to properly classify DCHs 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 with7 CFR 226.16(d);

7. Failure to perform any of the other required financial and administrative responsibilities;

8. Failure to properly implement and administer the DCH termination and administrative review provisions set forth in 7 CFR 226.16(l); or

9. Any other action affecting the institution's ability to administer the Program in accordance with Program requirements [7 CFR 226.6(c)(2)].

Participating institutions

1. Submission of false information on the institution's application, including but not limited to a determination that the institution's RP/Is have 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 deception, antitrust violations, embezzlement, theft, forgery, bribery, fraud 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 the State agency;

2. Permitting an individual who is on the NDL 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 DCH provider;

3. Failure to operate the Program in conformance with the performance standards set forth in paragraphs 7 CFR 226.6(b)(1)(xviii); (b)(2)(vii);

4. Failure to comply with the bid procedures and contract requirements of applicable Federal procurement regulations;

5. Failure to return to the State agency 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 Program 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)-(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 (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 is enrolled adult participants were Title XIX or Title XX beneficiaries;

14. Failure by a sponsoring organization to properly classify DCHs 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 DCHs in accordance with 7 CFR 226.16(d);

16. Use of DCH reimbursement by a sponsoring organization to pay for the sponsoring organization's administrative expenses;

17. Failure to perform any of the other required financial and administrative responsibilities;

18. Failure to properly implement and administer the DCH provider termination and administrative review provisions set forth at 7 CFR 226.16(l);

19. Ineligibility of the institution or any of the institution's principals 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 any of in institution's 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 as defined by the State agency; or

21. Any other action affecting the institution's ability to administer the Program in accordance with Program requirements [7 CFR 226.6(c)(3)].

These lists should not be considered to be all-inclusive.

Determining Serious Deficiencies

A State agency has the authority to determine when a violation rises to the level of a serious deficiency. In deciding whether a Program violation is a serious deficiency, State agencies should consider, but not limit themselves to the following criteria:

- ***The severity of the problem*.** Is the noncompliance on a minor or substantial scale? Are the violations indicative of a systemic problem at the institution, or is the problem truly an isolated event? Even minor problems may be serious if systemic. Some problems are serious even though they have occurred only once.

  > **EXAMPLE**: Missing menu items for one day out of a month would require technical assistance, while a second review with the same issue **or** numerous menu problems on an initial review could rise to the level of a serious deficiency.

- ***The degree of responsibility attributable to the institution*.** To the extent that evidence is available, can the State agency determine whether the violations were inadvertent errors of an otherwise responsible institution? Is there evidence of negligence or a conscious indifference to regulatory requirements? Or, even worse, is there evidence of deception?

- ***The institution's history of participation in the Program***. Is this the first time the institution is having problems or has noncompliance occurred frequently at the same institution?

- ***The nature of the requirements that relate to the problem*.** Are the institution's actions a clear violation of Program requirements? Has the institution incorporated the new policies correctly?

- ***The degree to which the problem impacts Program integrity*.** Are the violations undermining the intent or purpose of the CACFP such as misuse of funds for non-Program purposes, or simply an administrative error [7 CFR 226.6(b)(1)(xviii); (b)(2)(vii), and CACFP 30-2006, *Questions and Answers* #19 and #20, November 7, 2005]?

C. Serious Deficiency Notification and Corrective Action Procedures

Once a State agency has determined that a serious deficiency has occurred, it must begin the serious deficiency process.

A critical step in the serious deficiency process is when the State agency prepares and issues the formal notice of serious deficiency. After the State agency thoroughly investigates and documents any serious deficiencies, the State agency must issue a notice of serious deficiency.

It is vitally important that the serious deficiency notice is written in a way that will clearly explain the State agency's action to the institution staff and to the hearing official in the event that the institution later appeals. A well-written notice of serious deficiency will:

- Provide a detailed explanation of each serious deficiency;

- List appropriate regulatory citations to support the serious deficiency notice;

- Provide a clear description of the actions required in order to fully and permanently correct the serious deficiencies; and

- Provide a definite and appropriate time limit for the corrective action.

A State agency should be careful to include all findings identified during a review. Minor findings that do not rise to the level of a serious deficiency must still be documented and reported to the institution and the institution is required to correct the problems. This documentation of minor findings also assists the State agency, in future State agency monitoring efforts, in identifying frequency of a finding.

For-Profit Institutions

A for-profit institution will not generally have a board of directors so the notice is sent to the owner(s).

The State agency must notify the institution's executive director and chairman of the board of directors that the institution has been determined seriously deficient. When the institution is a school, the school administrator who signed the Program agreement and/or application materials is the executive. The notice must identify the RP/Is and must be sent to those persons as well.

For a **new** institution, the notice must also specify:

- The serious deficiencies, including appropriate citations from the CACFP regulations;

- The actions to be taken to correct the serious deficiencies;

- The time allotted to correct the serious deficiencies; (see F. Timeframes in this Part)

- That the serious deficiency determination is not subject to administrative review (appeal);

- That failure to fully and permanently correct the serious deficiencies within the allotted time will result in the denial of the institution's application and the proposed disqualification and termination of the institution and the RP/Is;

- That the State agency will not pay any claims for reimbursement for eligible meals served or allowable administrative expenses incurred until the State agency has approved the institution's application and the institution has signed a Program agreement;

- That the institution's voluntary withdrawal of its application after being notified of the serious deficiency determination will still result in the institution and RP/Is formal disqualification and placement on the NDL; and

- That, if the State agency does not possess the date of birth for any individual named as a RP/I 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 [7 CFR 26.6(c)(1)(iii)(A)].

For a **participating** institution, the notice must specify:

- The serious deficiencies, including appropriate citations from the CACFP regulations;

- The actions to be taken to correct the serious deficiencies;

- The time allotted to correct the serious deficiency; (see F. Timeframes, in this Part)

- That the serious deficiency determination is not subject to appeal;

- That failure to fully and permanently correct the serious deficiencies within the allotted time will result in the State agency's proposed termination of the institution's agreement, and the proposed disqualification of the institution and the RP/Is; and

- That the institution's voluntary termination of its agreement with the State agency after having been notified that it is seriously deficient will still result in the institution's formal termination by the State agency and placement of the institution and its RP/Is on the NDL [7 CFR 226.6(c)(3)(iii)(A)].

What Constitutes Notice?

Notice means a letter sent by certified mail, return receipt (or the equivalent private delivery service), by fax, or by email, that describes an action proposed or taken by the State agency with regard to an institution's, responsible principal's, or responsible individual's Program participation [7 CFR 226.2].

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.

*It is a **best practice** to get proof of the delivery of the notice.*

Note: Any reference in this Guidance to the "number of days" always means calendar days.

At the same time a notice is issued, the State agency must also add the institution and RP/Is to the State agency list (see Part 10 of this guidance for a description of the State agency list) and provide a copy of the notice to the appropriate FNS Regional Office.

Refer to Prototype Letter 1: Notice of Serious Deficiency for Institutions. *A copy of the letter sent to the institution must be sent to the FNS Regional Office at the same time it is sent to the institution. See Part 12. Attachment E for a sample Documentation List.*

D. Responsible Principals and Responsible Individuals

An institution can never be seriously deficient without some improper action by a person. The regulations require that, in every instance, both the chairperson of the institution's board of directors, as well as the executive director or owner, or other person responsible for the CACFP, be determined seriously deficient and receive the notice of serious deficiency, as well as any other principals or individuals named as responsible for the institution's serious deficiencies. In general, the State agency should name as "responsible principals" those institution officials who, by virtue of their management position, bear responsibility for the institution's serious deficiencies. These management officials also bear responsibility for the poor performance of non-supervisory employees who may have caused the serious deficiency.

A responsible individual is any non-principal associated with the institution's operation of the Program. Non-supervisory employees, including contractors and unpaid staff, should be named as responsible individuals only when they have been directly involved in Program violations, such as filing false reports or otherwise actively participating with institution principals to mismanage the Program.

> **EXAMPLE**: A cook who has been made responsible for menu planning and food service recordkeeping is a responsible individual. If he or she continually fails to maintain the required menu records, he or she would be declared seriously deficient.

An RP/I may be a current or former employee. Though no longer employed by the institution, an individual may still be responsible for the serious deficiencies by his or her actions prior to leaving the institution [7 CFR 226.2 and CACFP 14-2012, *Child and Adult Care Food Program Guidance on the Serious Deficiency Process and Acceptable Corrective Action Plans, National Disqualified List Procedures and Debt Collection,* May 1, 2012].

It is important for State agencies to carefully identify all RP/Is in the serious deficiency notice; the identification of all RP/Is is the only way to prevent such individuals from participating in the CACFP in another institution or State if successful corrective action is not achieved.

E. Corrective Action

In response to the serious deficiency notice, an institution must submit in writing, what corrective action it has taken. This correspondence details the internal controls implemented to ensure that the serious deficiencies are fully and permanently corrected. The State agency will evaluate the CAP and determine whether adequate internal controls have been put into place to fully and permanently correct the deficiencies. An acceptable CAP must include the following information:

- Names of the institution's executive director and chairman of the board of directors or other RP/Is associated with the serious deficiencies;

- Address of the institution;

- Dates of birth for all RP/Is associated with the serious deficiencies; and

- Details of the serious deficiencies.

    - **What** are the serious deficiencies and the procedures that were implemented to address the serious deficiencies?

    - **Who** addressed the serious deficiencies? List personnel responsible for this task.

    - **When** was the procedure for addressing the serious deficiencies implemented? Provide a timeline for implementing the procedure (i.e., will the procedure be done daily, weekly, monthly, or annually, and when did implementation of the plan begin)?

    - **Where** is the CAP documentation retained?

    - **How** were staff and if applicable, facilities or providers informed of the new policies and procedures (e.g., handbooks, training, website, emails, etc.,) [7 CFR 226.6(c)(1)(iii)(B); (c)(2)(iii)(B); (c)(3)(iii)(B), *and* CACFP 14-2012, *Child and Adult Care Food Program Guidance on the Serious Deficiency Process and Acceptable Corrective Action Plans, National Disqualified List Procedures and Debt Collection,* May 1, 2012, and examples in Part 12. Attachments C and D *Serious Deficiency Corrective Action Plan*].

Additional supporting documentation must be submitted with the CAP to document that corrective actions have occurred; this might include copies of income eligibility forms, enrollment rosters, staff training documentation, site monitoring reports, menus, Child Nutrition Labels or manufacturers' product analysis sheets or recipes, attendance records, meal count forms, itemized food receipts, etc.

> **EXAMPLE:** During an administrative review, a State agency discovers that ABC-DEF Daycare Center has severe recordkeeping violations. Complete and current enrollment records were not on file for 25 percent of the children, and half of the household applications for free and reduced-price meals were either incomplete or incorrectly categorized. The State agency issues a serious deficiency notice to the institution requesting a written CAP. The institution responds that they will 're-train staff and in the future they will comply with all CACFP recordkeeping requirements'. **This is not an acceptable CAP.**

As described below, an acceptable CAP for the serious deficiencies must answer the questions what, who, when, where, and how. The following corrective action would be acceptable.

May 20, 2013

Noah Bannister, Director

Helpful State Agency
7890 State Street
City, State, Zip

Re: ABC-DEF Daycare Center

Diane Smith, Owner, DOB: 11/6/59
Carl Jones, Center Director, DOB: 6/23/73

Dear Mr. Bannister:

This letter serves as our corrective action plan required by the Notice of Serious Deficiency we received on May 1, 2013.

Serious Deficiency: Incomplete Enrollment Records

ABC-DEF Daycare Center has changed its procedures in order to ensure that complete and current enrollment records are on file for each enrolled child. Within one week of a child's enrollment in the center, the parent must have returned a complete enrollment form to the center. Assistant Director Shana Franklin will review each new child's folder at the end of the first week to ensure that the form has been completed. If a complete and correct enrollment form is not on file, Ms. Franklin will issue the child's parent or guardian a notice stating that the form must be submitted or an administrative charge will be added to their account.

Ms. Franklin is responsible for ensuring that all required records are in the child's folder within three weeks of the child's enrollment in the center. Center Director Carl Jones will review the records of newly enrolled children monthly to ensure that all enrollment records are complete and current. Carl Jones trained Ms. Franklin on this new procedure on May 16, 2013. Additionally, on May 16, 2013, this procedure was added to the ABC-DEF Daycare Center Administrative Procedures Manual that is provided to all employees. On May 18, 2013, a notice was sent home with all parents notifying them that this procedure has been implemented and will also apply to renewals each September. On May 22, 2013, Mr. Carl Jones verified that all currently enrolled children have complete and current enrollment records on file.

Serious Deficiency: Household Eligibility Applications Incomplete or Incorrectly Categorized

ABC-DEF Daycare Center has implemented a new procedure regarding review and approval of applications for free and reduced price meals:

> *Within one week of a child's enrollment in the center, the parent must have returned a household eligibility application. Assistant Director Shana Franklin will review each new child's folder at the end of the first week to ensure that the form has been received. If the parent does not wish to complete a household application for free or reduced price meals, Ms. Franklin will make a note in the child's folder that the parent does not wish to complete the application and therefore this child will be classified as "paid." At the end of each week, Ms. Franklin will review the applications for completeness. If required information is missing from the form, Ms. Franklin will contact the parent to correct the form.*

Ms. Franklin will review all completed free and reduced price meal applications, and mark the appropriate category, free, reduced or paid. Ms. Franklin will then place the applications in the appropriate in box of Center Director Carl Jones for second party review. Mr. Jones will verify whether the application is complete and correctly classified, then will sign and date the application and update the master roster. Mr. Jones will conduct spot checks monthly of children's files to ensure that all documentation is complete and current.

On May 16, 2013, Mr. Jones trained Ms. Franklin on the new procedure. Additionally, on May 16, 2013, this procedure was added to the ABC-DEF Daycare Center Administrative Procedures Manual that is provided to all employees. On May 22, 2013, Center Director Carl Jones verified that all currently enrolled children are correctly categorized in the Master Roster as verified from the household applications.

The procedures described above and the amendments to the ABC-DEF Daycare Center Administrative Procedures Manual were presented to the Board of Directors for vote on June 1, 2013, and were approved by the Board.

Please find attached the following supporting documents:

a) *Copy of the training agenda held on May 16, 2013 between Mr. Jones and Ms. Franklin;*

b) *Copy of the updated ABC-DEF Daycare Center Administrative Procedures Manual containing the revised procedures for enrollment records and household applications; and*

c) *Copy of the ABC-DEF Daycare Center's Board of Director minutes from the June 1, 2013 meeting approving the procedures and updates to the ABC-DEF Daycare Center Administrative Procedures Manual.*

Sincerely,

Diane Smith, Owner
Carl Jones, Center Director

Attachments: ABC-DEF Daycare Center Administrative Procedures Manual
May 16, 2013 Training agenda

This CAP has enough detail explaining *what* will be done, *how* it will be done, *when* it will be done, and *by whom* it will be done, for the State agency to make an assessment regarding its effectiveness in fully and permanently correcting the serious deficiencies. The CAP also describes *where* the changes will be housed – maintained in the ABC-DEF Daycare Center Administrative Procedures Manual and in the minutes to the June 1, 2012 Board of Directors meeting.

F. Timeframes

Corrective action must be taken by the institution within reasonable timeframes. If the State agency determines that the institution has engaged in unlawful practices, has submitted false or fraudulent claims or other information to the State agency, or has been convicted of or concealed a criminal background, the State agency is prohibited from allowing more than 30 days for corrective action. State agencies are prohibited from allowing more than 90 days for corrective action from the date the institution receives the serious deficiency notice, except for long-term changes described below.

Although the regulations set these maximum timeframes, State agencies may establish shorter timeframes for corrective action. State agencies should tailor timeframes for corrective actions to the type of serious deficiencies found [7 CFR 226.6(c)(4)(i)].

> **EXAMPLE**: The State agency may set a one-day required corrective action timeframe for an independent center to correct its failure to include the appropriate milk choices during meal services and three days to correct the computerized menu, but a 30-day corrective action timeframe for the center to train its staff on meal pattern requirements and accurate time of service counting processes. The CAP submitted to the State agency by the independent center would include documentation to show that it had already corrected the milk service within one day of receiving the review report, updated computerized menus within three days to show milk on the menus, and documentation of training within 30 days.

G. Long-term Corrective Action Plans

Some serious deficiencies require long-term revision of management systems or processes, such as the purchase and implementation of new claims payment software, or a major reorganization of CACFP management duties that will require action by the board of directors. In this type of CAP, the State agency may permit more than 90 days to complete the corrective action as long as a CAP is submitted to and approved by the State agency within 90 days (or shorter deadline established by the State agency). The corrective action must include milestones and a definite completion date.

The State agency must monitor full implementation of the plan. The determination of serious deficiency will remain in effect until the State agency determines that the serious deficiencies have been fully and permanently corrected within the allotted time [7 CFR 226.6(c)(4)(iii)].

H. Successful Corrective Action

If the institution submits a CAP that corrects the serious deficiencies to the State agency's satisfaction within the allotted timeframe, the serious deficiency determination will be temporarily deferred. The State agency must:

- Notify the institution's executive director and chairman of the board of directors and any other RP/Is, that the State agency has temporarily deferred its serious deficiency determination; and

- Remind all parties that the corrective action must be permanent or the State agency must immediately issue a notice of proposed termination and disqualification.

- *Additionally*, if this was a serious deficiency for a new institution in which the State agency has denied the application, the State agency must offer the institution the opportunity to resubmit its application [7 CFR 226.6(c)(1)(iii)(B); (c)(2)(iii)(B)].

If corrective action is complete for some but not for all of the findings, the institution is still seriously deficient and the State agency must:

- Continue with the actions against the parties that have not completed corrective action; and

- Temporarily defer the serious deficiency for the parties that have completed corrective action.

  EXAMPLE: The person responsible for evaluating and approving income applications has attended training and has completed the evaluation process correctly as per the State's review of the submitted corrective action, but the cook, who had long-term responsibility for all food service duties, has not corrected the menus missing many components. This situation would require the State agency to continue the serious deficiency process for the finding regarding the menus and maintain the cook's name on the serious deficiency, but defer the serious deficiency for the RP/I who approves income applications. The institutions and responsible principals (by nature of their positions) would remain seriously deficient until all corrective action items have been submitted and approved.

At the same time the deferment notice is issued, the State agency must also update the State agency list to indicate which serious deficiencies have been corrected and provide a copy of the notice to the appropriate FNS Regional Office [7 CFR 226.6(c)(1)(iii)(B); (c)(2)(iii)(B); (c)(3)(iii)(B)]. See Part 10 of this guidance for information on the State Agency List.

Refer to Prototype Letter 2: Notice of Successful Corrective Action and Temporary Deferment of Serious Deficiency for Institutions. *A copy of the letter must be sent to the FNS Regional Office at the same time it is sent to the institution.*

I. Unsuccessful Corrective Action

If the institution fails to implement timely corrective action to fully and permanently correct the serious deficiencies cited, the State agency must notify the institution and RP/Is that the State agency is proposing to terminate the institution's agreement and to disqualify the institution and the RP/Is.

For a **newly-applying** institution, the notice must specify:

- That the institution's application has been denied;

- That the State agency is proposing to disqualify the institution and the RP/Is;

- The basis for the actions (including regulation citations); and

- The procedures for seeking an appeal of the application denial and proposed disqualifications [7 CFR 226.6(c)(1)(iii)(C)].

For a **participating institution renewing its application**, the notice must specify:

- That the institution's application has been denied;
- That the State agency is proposing to terminate the institution's agreement and to disqualify the institution and the RP/Is;
- The basis for the actions (including regulation citations);
- That, if the institution voluntarily terminates its agreement after receiving the notice of the proposed termination, the institution and the RP/Is will be disqualified and placed on the NDL;
- The procedures for seeking an appeal of the denial of the application renewal and proposed disqualifications; and
- That the institution may continue to participate in the Program and receive Program reimbursement for eligible meals served and allowable administrative costs incurred until its appeal/administrative review is completed.

If the application renewal process occurs before the time allotted for an institution to provide corrective action and/or the conclusion of any administrative review requested by the participating institution, the State agency must temporarily extend its agreement with that institution in accordance with paragraph 7 CFR 226.6(c)(3)(iii)(D).

For a **participating** institution, the notice must specify:

- That the State agency is proposing to terminate the institution's agreement and to disqualify the institution and the RP/I;
- The basis for the actions (including regulation citations);
- That if the institution voluntarily terminates its agreement after receiving the notice of proposed termination, the institution and the RP/Is will still be terminated and disqualified and placed on the NDL;
- The procedures for seeking an appeal; and
- That the institution may continue to participate and receive Program reimbursement for eligible meals served and allowable administrative expenses incurred until its appeal/administrative review is completed [7 CFR 226.6(c)(3)(iii)(C)(3)].

At the same time the notice is issued, the State agency must also update the State agency list and provide a copy of the notice to the appropriate FNS Regional Office.

Refer to Prototype Letter 3: Notice of Proposed Termination and Disqualification of Institutions. *A copy of the letter must be sent to the FNS Regional Office at the same time it is sent to the institution.*

If an appeal is requested, the State agency must follow its appeal procedures which must match FNS's requirements for appeal procedures in Part 7 of this guidance.

J. Agreement Termination and Disqualification

When the time for requesting an appeal expires or when the appeal official upholds the State agency's proposed termination and disqualifications, the State agency must immediately:

- Notify the institution and its executive director/owner and chairman of the board of directors, and any other RP/Is, that the institution's agreement has been terminated (or will be terminated on a specific date) and that the institution and the RP/Is have been disqualified (or will be disqualified on a specific date);

- Update the State agency list at the time such notice is issued; and

- Provide a copy of the notice, the mailing address, and date of birth for each RP/I, with the full amount of any determined debt associated with both the institution and/or RP/Is, to the appropriate FNS Regional Office for inclusion on the NDL. Note that the termination and disqualification is not appealable [7 CFR 226.6(c)(1)(iii)(E); (c)(2)(iii)(E); (c)(3)(iii)(E)].

The State agency may establish the termination date as the date that the determination letter is sent, the date the appeals determination is made, or the date the appeal timeframe expired when the organization did not appeal. The State's policy should be consistently applied.

Refer to Prototype Letter 4: Notice of Termination and Disqualification - Institution does not appeal. *A copy of the letter must be sent to the FNS Regional Office at the same time it is sent to the institution.*

Refer to Prototype Letter 5: Notice of Termination and Disqualification - State agency prevails in appeal. *A copy of the letter must be sent to the FNS Regional Office at the same time it is sent to the institution.*

Refer to Prototype Letter 6: Notice of Temporary Deferment of Serious Deficiency, Proposed Termination and Proposed Disqualification for Institutions - Institution prevails in appeal. *A copy of the letter must be sent to the FNS Regional Office at the same time it is sent to the institution.*

If the institution and its RP/Is fail to implement successful corrective action, both will be terminated and placed on the NDL. Once on the NDL, the institution is ineligible to participate in the CACFP in any State as an institution, or as a facility under a sponsoring organization, and RP/Is become ineligible to participate in the CACFP as part of a different institution, as institution or center facility principals, or as DCH providers. If the complete serious deficiency/termination process is not completed (resulting in inclusion in the NDL or for the serious deficiency to be corrected and deferred), the individuals responsible for the serious deficiency in one institution may, because they have not been disqualified, simply re-incorporate under a new name and be admitted to participate in the Program in another State.

If the institution corrects the serious deficiency by removing the RP/I from a position associated with the CACFP and pays off all institutional debts owed, the institution may be removed from the NDL.

K. Outcomes of the Serious Deficiency Process

CACFP regulations allow only two possible outcomes of the serious deficiency process: the correction of the serious deficiency to the State agency's satisfaction within stated timeframes, or the State agency's proposed termination of the agreement and disqualification of the institution and its RP/Is. Program regulations do not allow any other outcome, including "warnings", "probation periods", or the use of "settlement agreements or negotiated settlements" for institutions that have been declared seriously deficient, or that have been issued a notice of proposed termination and disqualification.

The issuance of the proposed termination and disqualification does not mean that the institution should stop working on corrective action. In fact, the State agency can accept corrective action at any point up until the hearing begins. If the institution submits documented evidence which convinces the State agency that the institution has fully and permanently corrected the serious deficiency, the State agency may accept the institution's corrective action and temporarily defer the proposed termination. This is **not** considered a "settlement agreement" because it would be acceptable corrective action. Note, again, that if the institution later fails to maintain this corrective action, the State must immediately re-issue its notice of proposed termination and disqualification. (See Q&A #9 in this Part for exceptions.)

However, corrective action may not be submitted to the hearing official once the hearing begins. In order to be considered, all parties, including the State agency, must submit any written documentation to the hearing official **not later than 30 days after receipt of the notice of action** [7 CFR 226.6(k)(5)(v)].

L. Program Payment during the Serious Deficiency Process

During the serious deficiency process, State agencies *must* continue to pay an institution's valid claims. The only time that an institution's Program payments may be suspended by the State agency is when the State agency initiates the suspension process for imminent threat to the health and safety of participants or the public, or for submission of false or fraudulent claims [7 CFR 226.6(c)(5)]. The suspension process for institutions is discussed in Part 4 of this guidance.

While a State agency must pay valid claims during the serious deficiency process, it is prohibited from paying invalid claims, or that portion of a claim that the State agency knows to be invalid. Under certain circumstances, a State agency may determine that an entire claim is invalid.

> **EXAMPLE:** If a State agency determined that an independent center had improperly claimed meals for an extended period of time by failing to take meal counts, the State agency would declare the center seriously deficient and provide an appropriate period of time for the completion of corrective action. If the State agency learned during a follow-up review that the center had failed to institute a valid meal counting system as required in the CAP, no part of the claim for that period (the period of corrective action) could be considered valid, and, therefore, no portion of the claim could be reimbursed.

Denial of all or part of a claim for reimbursement is subject to appeal [7 CFR 226.6(k)(2)(ix)]. The State agency must notify the institution in writing what portion of the claim is being denied and provide them appeal rights in accordance with the procedures outlined in Part 7 of this

guidance [7 CFR 226.6(k)(5)]. While this is a separate action from the determination of being seriously deficient, which is not appealable, the notices can be combined.

M. Questions & Answers

1. **What does it mean that, 'The determination of being seriously deficient is not subject to administrative review'?**

   The actual determination that an institution is seriously deficient is not subject to appeal. However, the State agency must provide appeal rights to institutions when they take actions subject to appeal, as required by 7 CFR 226.6(k)(2), such as: application denial, claim denial, overpayment demands, or other actions affecting an institution's participation or its claim for reimbursement. If a State agency sends a notice of serious deficiency to an institution that requires the payment of an overclaim due to disallowed meals, the determination of serious deficiency is not appealable, but the assessment of the overclaim is appealable. The State agency should discuss any questions or concerns it may have with its FNS Regional Office.

2. **If a State agency denies the application of a newly-applying institution because the institution does not demonstrate that it is capable of meeting the performance standards - that is, VCA, must the State agency also declare the institution seriously deficient?**

   If the State agency determines that a new institution is not capable of meeting the performance standards, the application must be denied, without making a serious deficiency determination. The institution would be granted the opportunity to correct. If the State agency determines that the institution still does not meet Viability Capability and Accountability (VCA), the application would be denied and appeal rights granted.

3. **How do the procedures described above differ from a State agency's determination that a renewing is not meeting the performance standards?**

   The result for a renewing institution is different from that of a new institution. Normally, a State agency would discover that a participating institution is not operating in conformance with the performance standards during a review. In that case, the State agency must take immediate action to initiate a process that could ultimately lead to the termination of the institution's agreement, including declaration of serious deficiency and the opportunity to take corrective action. However, on occasion a State agency might not detect such a failure until a renewing institution submits its application. Again, the State agency must initiate action to deny the renewal application, including declaration of serious deficiency and the opportunity to take corrective action.

4. **What is the difference between an institution making administrative errors and an institution that is seriously deficient?**

   To understand how and when a determination of serious deficiency is made, State agencies must establish procedures to distinguish between administrative errors and "serious deficiencies" because, once an institution is determined to be seriously deficient, the process can culminate in only one of two outcomes: the correction of the serious deficiency to the State agency's satisfaction within stated timeframes, or the State agency's proposed termination of the institution's agreement.

In monitoring institutions, State agencies routinely discover management problems that warrant various types of responses. If, for example, the State agency discovers that child care facilities are serving meals that meet the Program's meal pattern but lack variety, the State agency would suggest ways for the sponsor to help facilities have greater variety in their menus. Similarly, if a State agency discovered that the institution made occasional recordkeeping errors, it would require correction of the procedures giving rise to these errors, or additional training of the staff making the errors. Neither of these examples would warrant determining the institution seriously deficient. There is, however, a point at which institutions experiencing continued problems of this sort indicate serious mismanagement and therefore a serious deficiency. Problems that initially appear manageable may become serious deficiencies if not corrected within a reasonable period of time.

5. Is there any room for the exercise of discretion by the State agency in deciding whether an institution is seriously deficient?

Yes. A State agency should differentiate between occasional administrative errors and systemic management problems. A single instance of some of the actions listed as serious deficiencies in this rule (for example, the misclassification of several tier II homes when the sponsor administers 500 or 1,000 homes) would not be a basis for a determination of serious deficiency, whereas a single occurrence of other actions (for example, submission of a false claim) would be. A State agency must consider both the type and the magnitude of the problem when deciding whether it warrants determining the institution to be seriously deficient. Similarly, when reviewing an incomplete renewal application, a State agency would generally request the submission of more or better information to complete the application or to demonstrate that the institution was VCA. If the renewing institution proved unable to document its compliance with one or more aspect of the performance standards, then the State agency would make a determination that the institution is seriously deficient.

6. What is the role and requirements of administrative review (hearing) officials?

CACFP 02-2015, November 21, 2014, clarifies that the role of the administrative review (hearing) official is to: 1) assess the State agency's or sponsoring organization's action to propose termination; 2) determine whether the actions taken by the State agency, institution, RPIs, and providers followed Federal regulations, policies, and procedures governing the CACFP; and 3) base his/her decisions on the information presented by the State agency, the institution, RPIs, or providers and Federal and State laws regulations, policies, and procedures.

The memo further emphasizes that 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 RPIs fully and permanently corrects Program violations; or 4) establishing settlement of demands for overpayments.

7. When State agencies develop criteria for determining institutions seriously deficient, are those criteria considered 'additional State requirements' that must therefore gain FNS approval prior to implementing?

These criteria are not considered additional State agency requirements. However, FNS will review these criteria and their use by the State agency during Management Evaluations.

8. **What should a State agency do if it discovers a newly-applying institution, one of its principals, a facility or one of the facility's principals is on the NDL?**

   If the institution or one of its principals is on the NDL, the State agency must deny the institution's application and provide the opportunity for an abbreviated administrative review; i.e., the appellant would not have an opportunity for an in-person hearing [7 CFR 226(k)(9)(i)].

   If a facility or one of a facility's principals in on the NDL, the State agency must deny the facility's application, but would continue its review of the institution's application.

9. **If an independent center has a permanent agreement and fails to reapply, should the State agency initiate the serious deficiency process?**

   If an independent center that is in good standing (not seriously deficient) chooses not to reapply, the State agency would simply terminate its permanent agreement with the center, and no further action would be necessary. In essence, this would amount to a "termination for convenience" and the center would be eligible to reapply as a new institution at any time in the future. There would be no need to offer appeal rights.

10. **If an independent center reapplies, but is denied approval, *for example*, for failing to submit all renewal documents timely, what action must the State agency take?**

    If a participating center reapplies but its renewal application is denied, and the application denial is not due to a serious deficiency, the State agency would simply inform the center of the denial, provide an opportunity to appeal in accordance with 7 CFR 226.6(k)(2)(i), and if the institution failed to appeal or the State agency prevailed on appeal, terminate the Program agreement. If the denial of the participating center's renewal application was due to one or more serious deficiencies in its application, then procedures of 7 CFR 226.6(c)(2) must be followed.

11. **Should a DCH sponsoring organization that has been declared seriously deficient be allowed to continue to add DCHs?**

    It depends on the nature of the serious deficiency. In most cases, adding more DCHs would only intensify the sponsor's serious deficiency, and the potential misuse or loss of Program funds. In other cases, the nature of the serious deficiency might be such that adding DCHs would not exacerbate existing problems (e.g., the sponsor's serious deficiency involved a specific staff member's caseload).

    If the State agency chooses to restrict a sponsor's addition of DCHs, the sponsoring organization would be able to appeal the action.

12. **Is it a serious deficiency if a private nonprofit organization has its tax exempt status revoked by the Internal Revenue Service for failing to satisfy its filing requirements?**

    Tax exemption is a condition of eligibility for most CACFP institutions and required for participation. Therefore, revocation of tax exemption is considered a serious deficiency requiring corrective action or termination, because it affects the institution's eligibility to participate [CACFP 24-2011, *Automatic Revocation of Tax Exempt Status*, July 25, 2011].

13. Is there a maximum amount of time that a State agency has between identifying a serious deficiency and sending the notice of serious deficiency to an institution?

There is no established deadline for the State agency to issue a serious deficiency notice. By definition, a serious deficiency involves Program management problems. The State agency must take prompt action, including issuing the formal notice of serious deficiency, to ensure that the institution corrects the serious deficiency, or has its agreement terminated for cause, as expeditiously as possible. Therefore, State agencies are strongly encouraged to take steps to minimize the amount of time that elapses between a review and the issuance of a serious deficiency notice.

14. What is "permanent" corrective action?

Defining permanent corrective action depends on a number of factors, including the nature of the original problem, the amount of time that has elapsed between the accepted corrective action and the next review, changes in the institution's personnel, and the availability of records documenting the original noncompliance.

It is reasonable for the State agency to decide that too much time has elapsed to simply reinstate the proposed termination, in which case it would restart the process by issuing a new notice of serious deficiency [CACFP 03-2006, *Questions and Answers* #19 and #20, November 7, 2005].

However, this policy was not intended to allow State agencies to issue a new notice of serious deficiency simply because there has been a time lapse or because there has been staff turnover; the institution must have procedures in place that will train and support successful operations over time and regardless of staffing changes. Please consult your FNS Regional Office for advice on this issue.

15. Is a follow-up review required before the State agency issues the temporary deferral?

Federal regulations do not require this step prior to the State agency determining that a serious deficiency can be deferred. In fact, the regulations outline the serious deficiency procedures by using the institution's (appropriate) corrective action plan as justification for temporary deferral.

16. How can a State agency tell if an institution's corrective action will "fully and permanently" correct the serious deficiency?

The State agency must thoroughly review documentation (who, what, when, where, and how) submitted by the institution that demonstrates the serious deficiency has been corrected in such a manner that it is unlikely to recur. If the corrective action is acceptable, the State agency must temporarily defer the serious deficiency determination.

Some corrective actions "look good on paper" but do not permanently resolve the problem(s) which resulted in the serious deficiency. Therefore, often, the State agency will have to conduct an onsite visit to verify and evaluate an institution's implementation of the corrective action. If the State agency decided to conduct an onsite visit, the visit would be conducted after approval of the corrective action plan and temporary deferral of the serious deficiency determination.

17. An institution was declared seriously deficient for altering the expiration date on a license so that the license appeared current. What is acceptable corrective action for this institution?

By altering the expiration date of the license, the institution has submitted false information. Acceptable corrective action would require the institution to show evidence that the allegation is not true, or that the State agency has otherwise made an administrative error. An appeal of a proposed termination resulting from the submission of false information would be abbreviated; i.e., the appellant would not have an opportunity for an in-person hearing [7 CFR 226.6(k)(9)(i)].

18. What if the State agency determines that a renewing institution's corrective action is inadequate just before the institution's application expires? Couldn't the State agency simply allow the existing application to expire regardless of whether the institution chooses to pursue an appeal?

No. This would not be consistent with the requirement that an institution have the opportunity for an appeal prior to the termination of its agreement. Nor would it be consistent with the regulatory requirement that, once an institution is declared seriously deficient, it must either correct the deficiency or be terminated and placed on the National Disqualified list. The State agency must provide a short-term extension of the existing application, pending the outcome of the appeal. Allowing the existing application to simply "expire" means the institution and the responsible principals and individuals are never placed on the NDL.

19. Can the State agency accept an institution's corrective action and defer the serious deficiency after a notice of proposed termination has been issued? Should corrective action be accepted if it is received after the deadline in the notice of serious deficiency?

If the State agency has received documented evidence that the institution has fully and permanently corrected the serious deficiency, the State agency may (**but is not required to**) accept the institution's corrective action and defer the proposed termination at any point up until the institution's appeal is held or a decision is rendered by the hearing official.

20. If a State agency determines that a seriously deficient institution's corrective action is not complete and permanent, may the institution appeal the State agency's decision?

The State agency's determination that corrective action is not complete and permanent is not an appealable action. An institution may appeal the proposed termination and proposed disqualification but not the State agency's determination that the institution's corrective action was unsuccessful. Appeal of the notice of propose to terminate and disqualify is the one and only appeal allowed during the serious deficiency process, unless the institution has been suspended.

21. Is there a time limit between the expiration of the time allowed for corrective action and the issuance of a notice of proposed termination?

There is no set time limit. However, by this point in the process, the institution has already failed to take successful corrective action and its ability to manage the Program has been called into question. Although the regulations do not specify a deadline, the notice of intent to terminate should be issued very shortly after the expiration of the time allowed for corrective action.

22. What if a State agency finds more serious deficiencies for an institution after the institution has already been disqualified and placed on the NDL, such as, when an audit report obtained a year later includes serious deficiencies?

There may be instances when a State agency finds that additional serious deficiencies should have been included in the serious deficiency notification to the institution and RP/Is prior to their termination. In these situations, the State agency should update the State agency list to include the additional serious deficiencies so that they can ensure that the institution and/or RP/Is provide corrective action for the additional serious deficiencies prior to being removed from the NDL if early removal is requested.

23. Are all "principals" responsible?

Not all principals are considered to be "responsible principals". At a minimum, by virtue of their position, two principals are usually held responsible for the serious deficiency:

- The institution's Executive Director/Director, and
- The Chairman of the Board.

These are the two positions that represent the "institution" and to whom the serious deficiency notice is sent. One of these key principals will usually be the person who signs the application. For a public entity, it might also include that person's supervisor or Department head. For a for-profit organization this will include the owner.

24. Who is a "responsible" individual?

A responsible individual is any non-principal associated with the institution's operation of the Program who bears responsibility for a serious deficiency.

What is Their Role?

Responsible individuals are defined by their functions.

A responsible individual can be:

- An employee;
- A contractor who receives compensation; or
- Someone who is not compensated by the institution, such as a family member who "volunteers" his or her time to the institution.

These non-management staff must be declared seriously deficient when they have been "responsible individuals" and directly involved in causing Program noncompliance, such as a teacher who fails to maintain meal counts. If the meal counts are inaccurate to the extent of being determined a serious deficiency, the teacher would also be declared seriously deficient as a responsible individual.

25. May an individual who is no longer employed at the time of the serious deficiency determination or an individual who is fired after the serious deficiency determination be named as an RP/I?

Yes. Program regulations require that RP/Is be placed on the NDL. In each of the cases below, the individual is still responsible for the serious deficiency and must be named in the notice, placed on the State agency list, terminated and disqualified, and placed on the NDL. If only institution or facility names are placed on the list, those responsible for the serious

deficiency can just create a new corporation or become principals in another institution, sponsoring organization or DCH and continue mismanaging the Program.

A serious deficiency notice is sent by certified mail return receipt (or equivalent private delivery), by fax, or by email to the institution, all identified RP/Is or providers. State agencies must send the notices to all RP/Is to the last known address. In most cases, that will be the address of the institution or facility. The notice must include the deficiencies, noting the RP/I, and a request for a CAP.

For RP/Is who have been terminated or principals/individuals who are no longer employed at the time of serious deficiency determination, the notice being sent fulfills the State agency's obligation of providing an opportunity to take corrective action. An RP/I who quits after the serious deficiency determination is similar to an institution's voluntary termination – the State agency must send a Notice of Proposed Termination and Disqualification and proceed with the serious deficiency process.

26. May an institution be placed on the NDL without naming any RP/Is?

No. If only institutions are placed on the list, then those people responsible for the serious deficiency can just create a new corporation or become principals in another institution and continue to mismanage the Program. Placing individuals on the NDL prevents them from returning to participate in the Program as principals in another institution, principals in a sponsored center, or as day care providers.

27. If an institution or RP/I is placed on the NDL, how long will they remain on the list?

Institutions and RP/Is will remain on the list until seven years have elapsed since they were disqualified from participation **or** until the State agency, in consultation with FNS, determines that the serious deficiencies that led to their placement on the list have been corrected and all debts owed under the Program by the institution or RP/Is have been repaid.

28. When a specific RP/I is determined to be at fault for Program findings, and they are not fired but are removed from CACFP duties, how can the State agency include that RP/I on the NDL so they may not slip back into CACFP duties without record of their inappropriate actions being kept?

The State agency should continue the serious deficiency process on the RP/I, though the process will be temporarily deferred for the institution for its correction.

29. What if an Institution participating in more than one State is <u>disqualified</u> by FNS or another State agency?

If an institution participates in the Program in more than one State and is disqualified from the Program then any State agency holding an agreement with the institution must also terminate the institution's agreement. The second State agency must send a notice of termination to the institution within 45 days of the date of the first State agency's disqualification [7 CFR 226.6(c)(3)(i)].

> **Note:** Because the institution will have already had the opportunity for an appeal covering the failure to correct the serious deficiencies that led to the initial

disqualification, other State agencies are prohibited from offering the institution an appeal of the disqualification and termination in each State.

Note: State agencies which declare a multi-State institution seriously deficient will need to alert its FNS Regional Office promptly so that the other affected State agencies in which the institution operates can be apprised of the findings of noncompliance.

30. Can the State agency deny an application for participation if the institution or RP/I is on the NDL, or must the State agency go through the whole application approval process before denying the application?

Yes. If an institution or one of its principals is on the NDL and submits an application, the State agency may not approve the application. There is no requirement to complete the whole application approval process. However, the State must offer the institution an opportunity to appeal. Program regulations require that the institution be given an abbreviated administrative review which means that the review is limited to a review of the written submissions concerning the accuracy of the State agency's determination [7 CFR 226.6(k)(9)].

31. Can the State agency refuse to allow an institution to apply to the Program (presumably because there are concerns of serious deficiency)?

No. The institution must be allowed to submit an application for participation. The State agency may deny the application if it can be documented that the institution does not meet the performance standards, has submitted false information on its application, or does not comply with any other action affecting the institution's ability to administer the Program in accordance with Program requirements.

32. What about a sponsored center? How can a State agency disqualify a RPI of an unaffiliated center without the sponsor being seriously deficient?

Program regulations have not established procedures for terminating centers that participate under a sponsoring organization. However, in some instances the person responsible for a sponsoring organization's serious deficiency(ies) might be a person employed by or otherwise associated with a sponsored center, rather than with the sponsoring organization itself. This is why the definition of ''responsible principal or responsible individual'' includes a principal or individual associated with a sponsored center who is responsible for the sponsoring organization's serious deficiency(ies). This means that anyone responsible for serious deficiency(ies) is subject to a proposed disqualification, regardless of whether he or she is associated with the sponsoring organization of centers, or with a sponsored center.

Program regs prohibit a sponsoring organization from submitting an application on behalf of a sponsored facility (or a State agency from approving such an application) if the facility itself or one of its principals is on the NDL. This will prevent family day care homes or sponsored centers on the NDL from re-entering the Program. It will also prevent an individual on the list for actions committed while associated with a sponsor of centers from re-entering the Program as a sponsored center, or an individual on the list for actions committed while a principal in a sponsored center from re-entering the Program as a principal in another institution (an independent center or a sponsoring organization of homes and/or centers).

The sponsoring organization is ultimately responsible for any serious deficiency of a sponsored facility (i.e., day care home and affiliated or unaffiliated center). Whether the

sponsoring organization is declared seriously deficient based on the non-compliance of a facility would depend on the frequency and severity of the error. Whatever action is taken, it should be in compliance with the policies and procedures of the State agency.

PART 2. Serious Deficiency Process for Day Care Homes

This section provides information on the serious deficiency process for DCH providers including the procedures, corrective action, termination and disqualification, and Program payments during the serious deficiency process. If a provider is caring for children in a home other than his or her own house, the serious deficiency process will document the provider's name and address **and** the house address. If a DCH is using a business name, the provider's name and the business name will be documented as seriously deficient. The State agency and/or sponsoring organization must name *all pertinent* RP/I names and addresses in any actions and notices.

A. Serious Deficiency Process for DCHs

Again, remember that CACFP regulations define seriously deficient as the status of an institution or a day care hone that has been determined to be non-compliant in **one** or **more** aspects in its operation of the Program [7 CFR 226.2]. The serious deficiency process offers a systematic way for a sponsoring organization to take actions allowing DCHs to correct problems and give them the opportunity for due process. If DCHs are unwilling or incapable of correcting serious problems, the serious deficiency process protects Program integrity by terminating and disqualifying those in noncompliance of Program requirements.

The serious deficiency process has six steps that start when a sponsoring organization identifies a deficiency and ends when that deficiency has been resolved. The resolution will be either the correction of the problem and the issuance of a temporary deferment of the serious deficiency, or the DCH's termination and disqualification from the Program.

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 DCH's written CAP;
4. Issue a notice of temporary deferral of the serious deficiency if the CAP is adequate, or issue a notice of proposed termination and disqualification, including appeal procedures, if the CAP is not adequate (or if no CAP is received);
5. If requested, hold an appeal, of the proposed termination and disqualification; and
6. If termination is upheld, issue a notice of final termination and disqualification or if termination is overturned, issue a notice of temporary deferral.

Each of these steps is described in detail in this guidance. For a graphic chart of the steps, reference Attachment B.

B. Identifying Serious Deficiencies for DCHs

A DCH may be declared seriously deficient if the sponsoring organization finds Program violations or issues of non-compliance with CACFP requirements at any time during the DCH's

participation. Serious deficiencies that are not permanently corrected will result in the proposed termination and disqualification of the DCH.

If however, the serious deficiencies involve an imminent threat to the health and safety of participants, or the provider has engaged in activities that threaten the public health or safety, the sponsoring organization must follow the procedures outlined in Part 5 of this guidance.

Sponsoring organizations should become familiar with the serious deficiencies. The following are noncompliance issues that rise to the level of a serious deficiency [7 CFR 226.16(l)(2)]:

1. Submission of false information on the DCH's application;

2. Submission of false claims for reimbursement;

3. Simultaneous participation under more than one sponsor;

4. Non-compliance with the Program meal pattern;

5. Failure to keep required records;

6. Conduct or conditions that threaten the health or safety of a child(ren) in care, or the public health or safety;

7. A determination that the provider has been convicted of any activity that occurred during the past seven years and that indicated a lack of business integrity. A lack of business integrity includes deceit, 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 the State agency, or the concealment of such a conviction;

8. Failure to participate in training; and

9. Any other circumstance related to non-performance under the sponsoring organization's DCH agreement, as specified by the sponsoring organization or the State agency.

This list should not be considered to be all-inclusive.

Determining Serious Deficiencies

A sponsoring organization has the authority to determine when a violation rises to the level of a serious deficiency. In deciding whether a Program violation rises to the level of a serious deficiency, sponsoring organizations will consider, but not limit themselves to the following items.

- ***The severity of the problem*.** Is the noncompliance on a minor or substantial scale? Are the violations indicative of a recurring problem at the DCH, or is the problem an isolated event? Even minor problems may be serious if systemic. Some problems are serious even though they have occurred only once.

- ***The degree of responsibility attributable to the DCH*.** To the extent that evidence is available, can the sponsoring organization determine whether the violations were

inadvertent errors of an otherwise responsible DCH provider? Is there evidence of negligence or a conscious indifference to regulatory requirements? Or, even worse, is there evidence of deception, or intentional noncompliance?

- ***The provider's history of participation in the Program.*** Are problems of noncompliance frequently recurring at the same DCH?

- ***The nature of the requirements that relate to the problem***. Are the DCH's violations a clear violation of Program requirements? Has the provider failed to implement new CACFP policy appropriately?

- ***The degree to which the problem impacts Program integrity.*** Are the violations undermining the intent or purpose of the CACFP?

Once a sponsoring organization has determined that a serious deficiency has occurred, it **must** begin the serious deficiency process.

C. Serious Deficiency Notification and Corrective Action Procedures for DCHs

The most critical step in the serious deficiency process may be when the sponsoring organization prepares and issues the formal notice of serious deficiency. After the sponsoring organization thoroughly investigates and documents any serious deficiencies, it must issue a notice of serious deficiency.

What Constitutes Notice?

Notice means a letter sent by certified mail, return receipt (or the equivalent private delivery service), by fax, or by email, that describes an action proposed or taken by the State agency with regard to an institution's, responsible principal's, or responsible individual's Program participation [7 CFR 226.2].

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.

It is a **best practice** to get proof of the delivery of the notice.

Note: Any reference in this Guidance to the "number of days" always means calendar days.

It is vitally important that the serious deficiency notice is written in a way that clearly explains the sponsoring organization's action to the hearing official in the event that the provider later appeals.

A sponsoring organization should remember to include all findings identified during a review in some way. Findings that do not rise to the level of a serious deficiency must still be issued to a DCH. This can be done in the serious deficiency notice with clear language that the areas are not considered serious deficiencies but that they also must be corrected, or the other findings can be issued in a separate letter. The serious deficiency notice must include:

- The serious deficiencies, including appropriate citations from the CACFP regulations;
- The actions to be taken by the DCH to correct the serious deficiencies;
- The allotted time to correct the serious deficiencies, this must be as soon as possible, but not to exceed 30 days;
- That the serious deficiency determination is not subject to administrative review (appeal);
- That failure to fully and permanently correct the serious deficiencies within the allotted timeframe will result in the issuance of a Notice of Proposed Termination and Disqualification of the DCH's agreement and disqualification of the DCH; and
- That the DCH's voluntary termination of its agreement after being notified of the serious deficiency determination will still result in the DCH's formal termination by the sponsoring organization and placement of the DCH's and provider's names on the NDL [7 CFR 226.16(l)(3)].

At the same time a notice is issued, the sponsoring organization must also provide a copy of the notice to the appropriate State agency.

Refer to Prototype Letter 15: Notice of Serious Deficiency for Providers. *A copy of the letter must be sent to the State agency at the same time it is sent to the provider.*

D. Corrective Action Plans for DCHs

In response to the serious deficiency notice, a DCH must submit a CAP within 30 days (or less if required by the sponsoring organization) that details the processes implemented to ensure that the serious deficiencies have been fully and permanently corrected. The sponsoring organization will evaluate the CAP and determine whether adequate internal controls have been put into place to fully and permanently correct the deficiencies. An acceptable CAP must include the following information:

- Name of the provider(s) associated with the serious deficiencies;
- Address of the DCH;
- Date of birth for the provider(s) associated with the serious deficiencies; and
- Details of the serious deficiencies:
    - **What** are the serious deficiencies and the procedures that were implemented to address the serious deficiencies?
    - **Who** addressed the serious deficiencies? List DCH personnel responsible for this task.
    - **When** was the procedure for addressing the serious deficiencies implemented? Provide a timeline for implementing the procedure (i.e., will the procedure be

done daily, weekly, monthly, or annually, and when did implementation of the corrective action plan begin)?

- **Where** is the CAP documentation retained?
- **How** will the provider ensure that the CAP corrects the deficiency and continues to be implemented [7 CFR 226.16(l) *and* CACFP 14-2012, *Child and Adult Care Food Program Guidance on the Serious Deficiency Process and Acceptable Corrective Action Plans, National Disqualified List Procedures and Debt Collection,* May 1 2012]?

The CAP is a DCH's response to the sponsoring organization's requirement that Program serious deficiencies be corrected. The response will generally include details of and documentation that the corrections have already been made. This might include copies of income eligibility forms, enrollment rosters, menus, Child Nutrition Labels or manufacturers' product analysis sheets or recipes, attendance records, meal count forms, etc. If the CAP and supporting documentation is acceptable, the sponsoring organization can approve it.

> **Example:** During an administrative review, a sponsoring organization discovers that a DCH provider fails to maintain adequate Program records (i.e., enrollment forms, attendance records, meal counts, menus, etc.). The sponsoring organization sends a notice of serious deficiency to the provider. The provider responds to the serious deficiency and indicates that he or she 'will comply with CACFP requirements in relation to the maintenance of Program administrative records'. **This is not an acceptable CAP.**

An acceptable CAP for the serious deficiencies listed above must answer the questions *what, who, when, where*, and *how*. The following CAP would be acceptable:

May 13, 2013

Nola Grant, Director
Integrity Sponsorship
1234 First Street
Metropolis, Georgia 30365

Dear Ms. Grant:

This is my corrective action plan required by the Notice of Serious Deficiency I received on May 1, 2013.

Serious Deficiency: Incomplete Enrollment Records

I understand that I may not claim meals for children in care who are not currently and completely enrolled in my care and claimed for reimbursement. These records on file will be on file and available for review.

I have updated my procedures to ensure that complete and current enrollment records are on file for each enrolled child. As new children are brought to my day care home for care, the parents will be required to complete enrollment forms at that time.

Parents will be required to update enrollment forms on an annual basis. I will alert parents of this requirement and give them one week to supply the updated information. I will issue the child's parent or guardian a notice stating that the form must be submitted or an administrative charge will be added to their account. I am responsible for ensuring that all required records are in the child's folder prior to claiming them for CACFP reimbursement. I have taken the sponsoring organization's on-line training 'Collecting and Processing Enrollment Forms' on this new procedure on May 16, 2012. I have placed a copy of these procedures in my CACFP binder. I notified all parents of these new procedures on May, 25, 2012 and will do so with each renewal. I verified on May 20, 2012 that all currently enrolled children have complete and current enrollment records on file.

Serious Deficiency: Missing Menu Item or Incomplete meals

I have updated my procedures for establishing menus. I will write out a month's worth of menus in the last week of the preceding month. I will then purchase the items for a week's worth of meals at a time. If an item is not available, I will make a like substitution and make that change on my menu. I have placed a copy of these procedures in my CACFP binder. A menu will be posted next to the parent sign-in sheet. I have attached the menus I will be using in June.

Sincerely,

Zena Smith, Provider

This CAP has enough detail explaining *what* was done, *how* it was done, *when* it was done, and *by whom* it was it done, for the sponsoring organization to make an assessment regarding its effectiveness in fully and permanently correcting the serious deficiencies. The CAP also describes *where* the documentation of changes will be housed.

E. Successful Corrective Action of a DCH

If the provider submits corrective action that corrects the serious deficiencies to the sponsoring organization's satisfaction within the allotted timeframe, the serious deficiency determination will be temporarily deferred. As required by 7 CFR 226.16(l)(3)(i)(C), the DCH has 30 days to **correct** the issues, not simply to provide a plan for correcting. If the corrections are made to the sponsoring organization's satisfaction, the sponsoring organization must:

- Notify the DCH that the sponsoring organization has temporarily deferred its serious deficiency determination; and
- Remind all parties that the corrective action must be permanent or the serious deficiency process will be reinstated starting with the Notice of Proposed Termination and Disqualification.

At the same time this notice is issued, the sponsoring organization must provide a copy of the notice to the appropriate State agency.

Refer to Prototype Letter 16: Notice of Successful Corrective Action and Temporary Deferral of Serious Deficiency. *A copy of the letter must be sent to the State agency at the same time it is sent to the provider*.

F. Unsuccessful Corrective Action of a DCH

If the DCH fails to implement timely corrective action to fully and permanently correct the serious deficiencies cited, the sponsoring organization must issue a notice proposing to terminate and disqualify the DCH and to include its name on the NDL.

The notice must specify:

- That the sponsoring organization is proposing to terminate the DCH's agreement and to disqualify the DCH from the Program;
- That the DCH may appeal this decision;
- That the DCH may continue to participate and receive Program reimbursement for eligible meals served until a requested appeal has concluded;
- That the termination of DCH's agreement will result in the DCH's termination for cause and the DCH and provider's disqualification; and
- That if the DCH voluntarily terminates its agreement with the sponsoring organization after receiving the Notice of Proposed Termination and Disqualification**,** it will still be placed on the NDL [7 CFR 226.16(l)(3)(iii)].

At the same time this notice is issued, the sponsoring organization must provide a copy of the notice to the appropriate State agency.

Refer to Prototype Letter 17: Notice Proposed Termination and Proposed Disqualification of Providers – No Corrective Action. *A copy of the letter must be sent to the State agency at the same time it is sent to the provider.*

Refer to Prototype Letter 18: Notice of Proposed Termination and Disqualification for Providers – Required Corrective Action Not Acceptable. *A copy of the letter must be sent to the State agency at the same time it is sent to the provider.*

If an appeal is requested, the sponsoring organization must follow the appeal procedures for DCHs in Part 8 of this guidance.

G. Agreement Termination and Disqualification of a DCH

When the time for requesting an appeal expires or when the appeal official upholds the sponsoring organization's proposed termination and disqualification, the sponsoring organization must immediately:

- Notify the DCH that its agreement has been terminated and that the DCH has been disqualified; and

- Provide a copy of the notice and the mailing address and date of birth for provider, with the full amount of any determined debt associated with both the DCH provider; to the appropriate State agency within 10 days of the notification for inclusion on the NDL [7 CFR 266.16(l)(3)(v)].

Refer to Prototype Letter 19: Notice of Termination and Disqualification - Provider does not appeal. *A copy of the letter must be sent to the State agency at the same time it is sent to the provider.*

Refer to Prototype Letter 20: Notice of Termination and Disqualification - Sponsoring Organization prevails in appeal). *A copy of the letter must be sent to the State agency at the same time it is sent to the provider.*

If the DCH fails to implement successful corrective action, it will be terminated and placed on the NDL. Once on the NDL, the DCH is not eligible to participate in the CACFP in any State as an RP/I at an institution or as DCH provider. Completing the entire process is important. If the sponsoring organization does not complete the serious deficiency process, the provider may, because he or she has not been disqualified, simply move, reapply and be admitted to participate in the Program in another State.

If the DCH corrects the serious deficiencies and pays all the DCH debts owed, the DCH may be removed from the NDL. See Part 10 of this guidance for more information about requests for early removal from the NDL.

H. Outcomes of the Serious Deficiency Process for DCHs

CACFP regulations allow only two possible outcomes of the serious deficiency process: the correction of the serious deficiency to the sponsor's satisfaction within stated timeframes, or the sponsoring organization's proposed termination and disqualification of the DCH and its agreement. Once a sponsoring organization's conditions for successful corrective action, including repayment of a debt, are established in a notice of serious deficiency, those conditions may not be altered by any form of "negotiated settlement."

However, the issuance of the notice of intent to terminate does not mean that the DCH should stop working on corrective action. In fact, the sponsoring organization can accept corrective action at any point up until the appeal deadline has passed or the DCH's agreement is terminated. If the DCH submits documented evidence which convinces the sponsoring organization that the DCH has fully and permanently corrected the serious deficiency, the sponsoring organization may accept the DCH's corrective action and temporarily defer the proposed termination. This is not considered a "settlement agreement" because it would be acceptable corrective action. Note again that if the DCH later fails to maintain this corrective action, the sponsoring organization **must** immediately re-issue a notice of proposed termination and disqualification [7 CFR 226.16(l)(3)].

I. Program Payments during Serious Deficiency Process for DCHs

During the serious deficiency process, a sponsoring organization *must* continue to pay a DCH's valid claims. The sponsoring organization must continue to pay any valid claims for

reimbursement for eligible meals served until the serious deficiency is corrected or the DCH's agreement is terminated, including the period of any appeal [7 CFR 226.16(l)(3)].

J. Questions & Answers

1. If a DCH loses its license from failing to reapply on time, must the sponsoring organization declare the DCH seriously deficient?

If a DCH loses its license (not because of a Program serious deficiency), it is ineligible to participate. As long as the DCH notifies the sponsoring organization that it has lost its license and is not claiming meals, there is no need for the sponsoring organization to declare the DCH seriously deficient. Since the DCH is no longer eligible to participate, the sponsoring organization must terminate the agreement and offer appeal rights. It may allow the DCH to reapply if/when it becomes eligible.

2. During a review, the sponsoring organization issues a finding that is <u>not</u> a serious deficiency, but that requires the DCH to take corrective action. Can the provider voluntarily terminate at this point, without any action by the sponsor?

Yes, the DCH can terminate its agreement with the sponsoring organization "for convenience" at any time, provided that the sponsoring organization has not declared the provider seriously deficient.

> **EXAMPLE:** A sponsoring organization finds on its first review of a new provider that three meals for the review month were missing a component. The sponsoring organization provides technical assistance on menu planning and, takes the overclaim for meals that are unallowable, and requires that procedures be updated. The provider may at this time decide to voluntarily terminate without consequence. Keep in mind that if they did not voluntarily terminate and similar findings were found on the next review, the serious deficiency process would need to start.

3. During a review, the sponsoring organization finds an area of non-compliance at a DCH that does not rise to the level of a serious deficiency. Can the sponsor require the provider to submit a written corrective plan?

CACFP regulations only require DCHs to submit written corrective action when the area of non-compliance rises to the level of serious deficiency [7 CFR 226.16(k)(3)]. However, any area of non-compliance must be corrected. For non-serious deficiency findings, the sponsor has the discretion as the method used to document correction of the deficiency. FNS *suggests* that a sponsor require the provider to submit written corrective action. Written responses provide documentation that the provider stated what will be done to correct the deficiency. Requiring a written response may be a part of the sponsor's policies and procedures.

4. Is there a requirement to report whether disqualified providers owe debts to the Program?

Yes, DCHs and the RP/Is stay on the NDL until they have repaid all debts to the Program, even if that takes longer than seven years.

5. **If/when a disqualified DCH repays its debt, where must the funds be sent?**

   The funds are sent to the sponsoring organization, which then returns the funds to the State agency with a record of the fiscal year(s) to which it pertains. The State agency should contact its FNS Regional Office - Financial management for details on how to remit funds for the fiscal year(s) involved.

PART 3. Serious Deficiency Process for Unaffiliated Centers

This Section was Intentionally Left Blank. Information regarding the serious deficiency process for unaffiliated centers will be added when the Final Rule implementing these provisions is published.

PART 4. Suspension Process for Institutions

This section provides information on the suspension process for institutions, including the procedures, termination and disqualifications, and withholding of Program payments during the suspension process. A suspension is the only time a State agency can combine a notice of serious deficiency with a notice of proposed termination and proposed disqualification.

A. Suspension Process for Institutions

Suspension refers to a period of time (prior to the termination of an institution's Program agreement) when an institution's Program participation, including Program payments, is suspended. The regulations outline two circumstances under which State agencies must or may suspend an institution [7 CFR 226.6(c)(5)(i)-(ii)]:

- An institution's participation **must** be suspended if it poses an imminent threat to the health or safety of Program participants or the public; and
    - The State agency must withhold Program reimbursement as of the beginning of the serious deficiency process and to release payment for valid claims during the suspension period if the institution requests a suspension review and is upheld.
- An institution's participation **may** be suspended if it submits a false or fraudulent claim for reimbursement;
    - If the State agency determines that an institution has knowingly submitted a false or fraudulent claim, the State agency **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.

B. Notice of Serious Deficiency, Suspension, and Proposed Termination Procedures

When the State agency suspends an institution because its operation poses an imminent threat to the health and safety of Program participants or the public or due to the filing of a false or fraudulent claim, the institution and all RP/Is will be notified in writing of the suspension and the basis for it. In both circumstances, the institution and RP/Is must also be issued the notice of serious deficiency.

- A suspension related to an imminent threat to health and safety is immediate and may not be appealed prior to the suspension.

- The suspension of an institution's participation related to filing a false or fraudulent claim must be done as a proposed suspension which is appealable prior to the suspension starting [7 CFR 226.6(c)(5)(i)].

See each section below for the different procedures that must be followed.

1) Imminent Threat to Health and Safety

When an institution's conduct poses an imminent threat to the health or safety of children or the public, the State agency must suspend the institution's participation in CACFP. Some examples of imminent threat to health and safety include but are not limited to:

- Failure of a facility's fire detection or prevention system;
- Inadequate or incompetent supervision;
- Providing care for more children than the licensed capacity allows;
- Unsanitary conditions for food service or unsanitary water;
- Inadequate light, ventilation, sanitation, or heating;
- Lost or missing child;
- Suspected maltreatment of a child;
- Suspected sexual, physical, or emotional abuse of staff, volunteers, or family members occurring while they are on the premises of the child care facility;
- Injuries to children requiring medical or dental care;
- Illness or injuries requiring hospitalization or emergency treatment;
- Mental health emergencies;
- Health and safety emergencies involving parents or guardians and visitors to the child care facility;
- Death of a child or staff member (including a death that occurred outside of child care hours that had resulted from serious illness or injury at the child care facility); or
- The presence of a threatening individual who attempts or succeeds in gaining entrance to the facility.

If the institution is cited by State or local health or licensing officials for an offense that constitutes serious health and safety violations, the State agency must immediately declare the institution seriously deficient in addition to suspending its participation in CACFP. The State agency will also notify the institution that it is proposing to terminate the institution's agreement and to disqualify the institution and the RP/Is [CACFP 13-2013, *Health and Safety in the Child and Adult Care Food Program*, July 26, 2013].

If the State agency, rather than the health or licensing officials, discovers conditions that might constitute an imminent threat to public health or safety, the State agency is required to notify the appropriate State or local licensing or health authorities and to take action based on those recommendations.

Suspension

Once it has been determined that an imminent health or safety violation has occurred, the State agency must notify the institution and all RP/Is that the institution's participation, including Program payments has been suspended [7 CFR 226.6(c)(5)(i)].The notice must state:

- The serious deficiencies found;

- That the institution can appeal the suspension and the proposed termination and disqualification;

- That the institution's Program participation including all Program payments are suspended with a specific start date until an appeal is concluded;

- That the State agency is prohibited from offering a review (appeal) of the suspension prior to the suspension being effective;

- That, unless overturned by a review official, the suspension will remain in effective throughout the serious deficiency process;

- That if the hearing official overturns the suspension, the institution may claim reimbursement for eligible meals served during the suspension;

- That termination from the Program will result in placement of the institution and RP/Is on the NDL; and

- That the institution's voluntary termination of its agreement with the State agency after having been notified that it is seriously deficient and suspended from the Program will still result in the institution and RP/Is formal termination by the State agency and placement on the NDL.

The notice must include the State agency's appeals procedures.

Refer to Prototype Letter 7: Notice of Serious Deficiency, Suspension and Proposed Termination and Disqualification for Institutions - Combined Notice for Imminent Threat to Health and Safety. *A copy of the letter must be sent to the FNS Regional office at the same time it is sent to the institution.*

If an institution wants to appeal this action, it must follow the appeal procedures listed in Part 7 of this guidance.

Depending on the whether the institution files an appeal and the decision of the hearing official, refer to these Prototype Letters:

Prototype Letter 8: Notice of Termination and Disqualification for Institutions: Imminent Threat to Health and Safety - Institution Does Not Appeal. *A copy of the letter must be sent to the FNS Regional office at the same time it is sent to the institution.*

Prototype Letter 9: Notice of Termination and Disqualification for Institutions - Imminent Threat to Health and Safety after State agency prevails in appeal. *A copy of the letter must be sent to the FNS Regional office at the same time it is sent to the institution.*

Prototype Letter 10: Notice of Reinstatement - Imminent Threat to Health and Safety after institution prevails in appeal. *A copy of the letter must be sent to the FNS Regional office at the same time it is sent to the institution.*

2) Submission of False or Fraudulent Claims

The submission of a false or fraudulent claim constitutes a serious deficiency for participating institutions. If an institution knowingly files a false or fraudulent claim for reimbursement, the State agency must declare the institution and RP/Is seriously deficient; for example, an institution filing a claim for meals that it did not serve, an institution that claims more than two meals and a snack per child, or reporting children as eligible for free meals on the claim without supporting income eligibility applications.

FRAUD

Not all false statements are fraudulent. Elements defining fraud contain distinct differences that may be difficult to realize but are important and **not** easy to prove.

Fraud is defined as *a willful act commenced with the* **Specific Intent** *to deceive or cheat, in order to cause some financial detriment to another and to engender personal financial gain.*

A misrepresentation is fraudulent if the maker

(a) knows or believes that the matter is not as he represents it to be,
(b) does not have the confidence in the accuracy of his representation that he states or implies, or
(c) knows that he does not have the basis for his representation that he states or implies.

If the State agency or sponsoring organization cannot prove these conditions without any doubt, FNS advises that a charge of knowingly filing a fraudulent claim not be used.

As part of the adverse action, the State agency has the option to suspend the institution and RP/Is from Program participation, including Program payments, until the serious deficiency has been resolved [7 CFR 226.6(c)(5)(ii)].

Proposed Suspension

When the State agency proposes to suspend an institution's participation, including Program payments for the submission of a false or fraudulent claim, the State agency must issue a combined notice of serious deficiency and proposed suspension. The institution and RP/Is must be notified in writing that the State agency intends to suspend the institution's participation (including all Program payments) unless the institution requests a review of the proposed suspension. The notice must state:

- The serious deficiencies found;
- That the State agency is proposing to suspend the institution's and RP/Is' Program participation, including the payment of claims;
- The effective date of the suspension (this cannot be earlier than 10 days after the institution receives the notice);
- That the institution can appeal the proposed suspension;

- The contact information for the suspension review official;
- That a suspension review must be requested within 10 days of receipt of the notice;
- That if the hearing official overturns the proposed suspension, the institution may claim reimbursement for eligible meals served during the proposed suspension; and
- That the institution's voluntary termination of its agreement with the State agency after having received the notice will still result in the institution and RP/Is formal termination by the State agency and placement on the NDL.

Include the State agency's appeal procedures for suspensions and terminations.

The notice should also state that, if the suspension review official overturns the proposed suspension, the institution is still required to submit corrective action to fully and permanently correct the serious deficiency(ies).

If the State agency chooses not to suspend an institution's participation for submitting a false or fraudulent claim, it **must** immediately initiate action to terminate and disqualify the institution and the RPIs following the procedures outlined in Part 1 of this guidance and 7 CFR 226.6(c)(3).

Refer to Prototype Letter 11: Notice of Serious Deficiency and Proposed Suspension of an Institution - Combined Notice for False or Fraudulent claim. *A copy of the letter must be sent to the FNS Regional Office at the same time it is sent to the institution.*

Initiating Action to Terminate and Disqualify

Initiating action to terminate and disqualify an institution begins with the Notice of Serious Deficiency…**NOT** the Notice of Proposed Termination and Disqualification.

C. Suspension Review – Suspension Appeal

What is the difference between a "suspension review" and an "abbreviated appeal"?

A suspension review is an abbreviated appeal that is available to institutions before a suspension for submission of false or fraudulent claims takes effect. It consists of a review of written documents, instead of an in-person hearing, to determine whether Program payments will continue. It does not resolve any appeal option that the institution may request of the State agency's proposed termination and disqualification of the institution; the institution may request a regular appeal if they are dissatisfied with the result of the suspension appeal.

An abbreviated appeal also involves a review of documentation instead of an in-person hearing (see Part 7 of this guidance for details on the in-person hearing) and the decision of this review is final. This is held when one of the following occurs:

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 NDL;

3. The institution, one of its sponsored facilities, or one of the RP/Is of the institution or its facilities is ineligible to participate in any other publicly funded Program by reason of violation of the requirements of the Program; or

4. The institution, one of its sponsored facilities, or one of the RP/Is of the institution or its facilities has been convicted for any activity that indicates a lack of business integrity [7 CFR 226.6(k)(9)].

Suspension Review

If an institution wants a suspension review, it must send a request to the suspension review official within 10 days of receipt of the notice of proposed suspension. The appeal request should include the reasons the institution disagrees with the suspension. The institution may submit documentation to support its appeal.

The suspension review official must be an individual who is independent and impartial. The State agency must be notified immediately of the institution's request. The State agency must provide the suspension review official with the original proposed suspension and any other supporting documentation. The suspension review official must render a decision within 10 days of the deadline for receiving the institution's documentation opposing the suspension [7 CFR 226.6(c)(5)(ii)(C)].

Suspension Appeal

The institution also has the right to appeal the suspension through the regular appeal process as described in Part 7 of this guidance (regardless of whether it requests a suspension review). The maximum time for suspension of participation is 120 days following the suspension review decision. Within the 120 days, the institution's appeal should be heard and a decision rendered either overturning the serious deficiency, suspension and proposed termination and disqualification or the institution and RP/Is should be terminated. If a suspension appeal lasts more than 120 days, the State agency must pay any valid claims received by the institution starting on day 121 [7 CFR 226.6(c)(5)(ii)(F)].

Refer to Prototype Letter 12: Notice of Suspension - False or Fraudulent claims: Institution does not request a suspension review. *A copy of the letter must be sent o the Regional Office at the same time it is sent to the institution.*

Refer to Prototype Letter 13: Notice of Suspension for Institutions: False or Fraudulent Claims after State agency prevails in suspension. *A copy of the letter must be sent to the FNS Regional Office at the same time it is sent to the institution.*

Suspension Overturned - Must Propose Termination

If the hearing official overturns the State agency's proposed suspension, the State agency cannot suspend the institution's participation or withhold reimbursement payments for the suspension period. The State agency must still proceed with the proposed termination and proposed disqualification as outlined in Part 1 of this guidance [7 CFR 226.6(c)(5)(ii)(A)].

Refer to Prototype Letter 14: Notice of Withdrawal of Proposed Suspension for Institutions - False or fraudulent claims after institution prevails in suspension review. *A*

copy of the letter must be sent to the FNS Regional Office at the same time it is sent to the institution.

Corrective Action

Whether or not the institution is successful in its suspension appeal, the institution has the opportunity to submit corrective action to address the serious deficiency determination, such as submitting revised claiming procedures. If the institution's corrective action is accepted by the State agency, the serious deficiency is temporarily deferred, the suspension is removed, and the institution is able to continue participation in CACFP.

If the corrective action is not accepted, the State agency must continue with the proposed termination and disqualification of the institution and the RP/Is and begin the regular appeal process as outlined in Part 7 of this guidance.

D. Agreement Termination and Disqualification

When the time for requesting an appeal expires or the hearing official upholds the proposed termination or disqualification, the State agency must:

- Notify the institution's executive director and chairman of the board of directors, and the RP/Is that the institution's agreement has been terminated and that the institution and RP/Is have been disqualified;
- Update the State agency list at the time such notice is issued; and
- Provide a copy of the notice and the mailing address and date of birth for each RP/I with the full amount of any determined debt associated with the institution and/or the RP/I to the appropriate FNS Regional Office for inclusion on the NDL [7 CFR 226.6(c)(3)(iii)(E)].

If the institution and RP/Is request an appeal and the hearing official overturns the State agency's suspension, the State agency must temporarily defer the serious deficiency and withdraw the suspension [7 CFR 226.6(c)(3)(iii)(B)(1)(i)].

The State agency will report the name of the terminated and disqualified institution and RP/Is to the FNS Regional Office at the same time the institution and RP/Is are notified. In reporting the name of the institution and RP/Is to the FNS Regional Office, the State agency will follow the instructions outlined in Part 10 of this guidance. The FNS Regional Office will request that the FNS National Office add the names of the institution and the RP/Is to the NDL.

Refer to Prototype Letter 3: Notice of Proposed Termination and Disqualification of Institutions. *A copy of the letter must be sent to the FNS Regional Office at the same time it is sent to the institution.*

E. Program Payments during a Suspension

The State agency is not allowed to pay claims to a suspended institution. Payments for valid claims may only be paid if a suspension review official or hearing official overturns the suspension.

When a sponsoring organization is suspended for the submission of a false or fraudulent claim, the State agency is required to make sure that payments to the sponsored DCHs for eligible meals served are still made. The State agency may work with another sponsoring organization to process the claims during the suspension process or the State agency may temporarily make meal payments directly to the sponsored facilities during the period of the sponsoring organization's suspension. The State agency should contact the FNS Regional Office for additional guidance with this emergency and temporary procedure.

If there is no other way to provide the sponsored facilities with earned meal reimbursements other than by passing payments through the suspended sponsoring organization, then the law requires these payments to continue. The sponsoring organization would be liable for continuing to pay all valid claims and any claims not paid would be added to the debt owed by the institution.

If the suspended sponsoring organization appeals the proposed termination and disqualification and is upheld, it could submit claims for allowable Program administrative costs incurred during the period of suspension that are properly documented.

F. Questions & Answers

1. What does it mean to "take action consistent with licensing recommendations" when a State agency's monitor finds conditions of imminent threat to health and safety when reviewing an institution or a facility?

If a State agency monitor discovers imminent threat to the health and safety of a participant at an institution or facility, the monitor must call the proper authorities and stay at the site until authorities have arrived. [CACFP 13-2013]

> **EXAMPLE**: A crocodile is legally kept as a pet and the children are separated from the crocodile by a couch. The State agency monitor found this concerning and reported it to licensing for health and safety concerns, but the licensing agency indicated it would not make a visit that day and in fact, failed to take any action at all. Since the State agency identified this as an imminent threat, what action should the State agency take?
>
> In this instance, since licensing has indicated that it would not make a visit that day, the State agency monitor should contact another authority – e.g., police, animal control, etc. – and remain at the site until authorities have arrived. Because there have been these types of instances in most States, FNS has recommended that the CACFP State agency develop criteria to identify imminent threat and written procedures it will use to take action to suspend the institution's/facility's participation. FNS recommends including the licensing agency in these discussions and determinations.

2. What is an institution's "Program status" during the period of time between when it is suspended and when it is either reinstated or terminated from the Program?

The institution's agreement is still current and active during the CACFP suspension period, but payments are suspended. If the institution is still providing care for children (because its license has not been suspended or revoked) it should continue to maintain required Program records so that it may claim reimbursement if it is reinstated.

3. The suspension notice is dated January 9, 2014, and the valid part of the December claim is paid. Are the January 1-8, 2014, meals eligible for reimbursement if the records are valid?

Yes, all meals served prior to the suspension notice are eligible for reimbursement if the records are valid.

4. Why do the regulations permit the institution to appeal the suspension for imminent threat to health and safety or proposed suspension (false/fraudulent claim), as well as the State agency's proposed termination and disqualification of the institution?

For imminent threat to health and safety, the State agency must notify the institution's executive director and chairman of the board that the institution's participation (including Program payments) has been suspended, that the institution has been determined to be seriously deficient, and that State agency proposes to terminate and disqualify the institution and its RPIs. In the notice, the State agency must include the procedures for seeking an appeal of the suspension and proposed termination and disqualification. **There is no**

separate appeal for suspension. If the suspended institution prevails in the hearing, the State agency must pay any claims for eligible meals served during the period of suspension.

For false or fraudulent claims, suspension and termination and disqualification are two distinct actions that entitle the institution to separate appeals. The purpose of the suspension review is to allow the State agency and the institution the opportunity to present written documentation relating to the State agency's suspension of Program payments.

The suspension review official does not determine whether the filed a false or fraudulent claim. Rather, the review official determines whether "the preponderance of the evidence" supports the State agency's decision to suspend payments until the institution's appeal of a notice of proposed termination and disqualification is resolved, i.e., the institution moves through the SD process which results in completion of approvable corrective action or termination and disqualification. If the review official overturns the proposed suspension, the State agency must continue to reimburse the institution for all eligible meals served during the SD process. If the State agency prevails, the institution's payments will be suspended effective the date of the suspension review. However, if the suspended institution prevails in the appeal of the proposed termination and disqualification, the State agency must pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

5. **When an institution's license is revoked by the licensing agency for a health or safety threat, does this action release a State agency from having to suspend the institution in that they can no longer participate in the Program?**

   The CACFP regulations at 7 CFR 226.6(c)(5)(i) require the State agency to suspend the institution's Program participation, initiate action to terminate the institution's agreement, and initiate action to disqualify the institution and the RP/Is even if it is prior to the licensing agency's formal action to revoke the institution's license or approval. Suspension only allows the State agency to stop paying an institution until the serious deficiency process is complete. It does not take the place of the serious deficiency process.

6. **A State agency starts the CACFP suspension process following notification that the licensing agency has cited an institution for serious infractions. After the CACFP suspension process has begun, the licensing agency re-instates the license. Should the CACFP State agency drop or continue the CACFP suspension process?**

   The State agency **MUST** continue the CACFP suspension process and initiate the process to terminate and disqualify the institution, providing the institution with the procedures for appealing the termination and disqualification. The reinstatement of the license does not alter regulatory procedures. If State or local health or licensing officials have cited an institution for serious health or safety violations, the State agency must immediately suspend the institution's Program 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 [7 CFR 226.6(c)(5)(i)](A).

   The State agency is prohibited from paying any claims for reimbursement from a suspended institution. However, if the suspended institution prevails in the administrative review of the proposed termination, the State agency must pay any claims for reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period [7 CFR 226.6(c)(5)(i)(D).

If the institution's license is reinstated, the institution may submit an application to again participate in the Program.

7. **If a State agency is suspending an institution because of a false claim, can the State agency stop payment of any of that institution's claims?**

   The CACFP does not allow for stop payment procedures. Unlike suspension for imminent threat to health and safety which is immediate, for a false or fraudulent claim, the State agency **proposes** to suspend. The suspension in not implemented unless the institution does not appeal the action or, if an appeal is filed, the review official upholds the action proposed by the State agency.

   The State agency must determine the valid part of all claims and make payments within 45 days of submission of that claim [7 CFR 226.7(k)].

8. **Doesn't the prohibition of paying "invalid claims" to an institution amount to suspension of payments?**

   Suspension involves a total end of Program payments until a suspension review or hearing official has ruled on an institution's suspension appeal, or until an institution fails to request an appeal prior to the regulatory deadline. The prohibition of paying invalid claims means that a State agency must not reimburse an institution for that portion of a claim that the State agency knows to be invalid.

9. **Are there any circumstances under which an entire claim could be deemed invalid?**

   If a State agency determines that an independent center has improperly claimed meals for an extended period of time by failing to take meal counts, the State agency would declare the center seriously deficient and provide an appropriate period of time for the completion of the corrective action.

   If the State agency learned on a follow-up review that the center has failed to institute meal counting as required in the CAP, no part of the claim for that period (the period of corrective action) could be considered valid and, therefore, no portion of the claim could be reimbursed.

10. **What is the definition of a false claim?**

    A false claim is any claim that cannot be verified with required documentation, i.e., enrollment statements, attendance records, meal counts, menus that comply with meal pattern requirements, costs records, etc.

11. **What is an appropriate corrective action for the intentional submission of a false claim?**

    First, "intent" must be proven, not simply based on appearance, i.e. the State agency documenting intent. Secondly, the corrective is not to request that the institution prove that the allegation is not true. An institution cannot correct documents that have already been reviewed and determined to be inaccurate by the State agency. If the institution can provide documentation that refutes the State agency's finding(s), that may be accepted by the State agency.

It is important for the institution and the State agency to determine the root cause of the false claim; are systems upgrades needed, or perhaps second party oversight increased? If the institution is not able to provide documentation to refute the State agency's findings, the required corrective action is to have the institution to establish procedures to ensure that the deficiency does not recur.

PART 5. Suspension Process for Day Care Homes

This section provides information on the suspension process for DCHs including the procedures, termination and disqualifications, and Program payments during the suspension process [7 CFR 226.16(l)(4)(iv)]. A suspension is the only time a sponsoring organization can combine a notice of serious deficiency with a notice of proposed termination and proposed disqualification. A suspension in the only time a sponsoring organization can stop paying DCHs before giving them the opportunity to correct the problems and appeal the termination.

A. Suspension Process for DCHs

If State or local health or licensing officials cite a DCH for serious health or safety violations, the sponsoring organization must take action when it learns of the concerns, even though the licensing agency has not yet taken formal action to revoke the DCH's licensure or approval. In some States, the CACFP State receives citation or revocation alerts from the licensing agency; in these cases, it must provide the information to the sponsoring organization.

Even if the proper authorities indicate that it is safe for the monitor to leave a DCH while they conduct further investigation or inquiry, the monitor and sponsoring organization should still initiate a suspension and the serious deficiency process. FNS expects sponsoring organizations to take immediate action to stop payments and suspend the DCH's CACFP participation and declare the DCH seriously deficient, regardless of any formal procedures pending or underway by the licensing authorities to revoke the DCH's license or approval [CACFP 13-2013, *Health and Safety in the Child and Adult Care Food Program,* July 26, 2013].

If the sponsoring organization determines that there is an imminent threat to the health or safety of participants at a DCH, or that the DCH has engaged in activities that threaten public health or safety, the sponsoring organization must immediately notify the appropriate State or local licensing and health authorities. If the licensing agency cannot make an immediate onsite visit, the sponsoring organization will take action that is consistent with the recommendations and requirements of the licensing agency.

B. Notice of Serious Deficiency, Suspension and Proposed Termination Procedures for DCHs

Once a health or safety threat has been established, the sponsoring organization must notify the DCH, in writing, that he or she has been suspended from Program participation, that he or she has been determined seriously deficient and that the sponsoring organization is proposing to terminate the DCH's agreement for cause.

The notice must state:

- The serious deficiencies found;
- That the DCH may only appeal the proposed termination;
- That participation, including all Program payments, is suspended until the appeal is concluded;

- That if the hearing official overturns the proposed termination and disqualification, the DCH may claim reimbursement for eligible meals served during the suspension;

- That termination from the Program will result in the DCH being placed on the NDL;

> The appeal is of the proposed termination and disqualification. A suspension for imminent threat to health and safety **cannot** be appealed.

- That the DCH's voluntary termination of its agreement with the sponsoring organization after receiving the notification will still result in the DCH's formal termination by the sponsoring organization and placement on the NDL; and

- The sponsoring organization's appeals procedures [7 CFR 226.16(l)(4)(ii)(A)–(E)].

Refer to Prototype Letter 22: Notice of Serious Deficiency, Suspension, and Proposed Termination and Disqualification for Providers - Combined Notice for imminent Threat to Health and Safety. *A copy of the letter must be sent to the State agency at the same time it is sent to the provider.*

C. Agreement Termination and Disqualification of a DCH

The sponsoring organization will immediately terminate the DCH's agreement and disqualify the DCH when the hearing official upholds the sponsoring organization's suspension, proposed termination, and proposed disqualification. At the same time, the notice of termination and disqualification is issued to the DCH [7 CFR 226.16(l)(4)(iii)].

The notice must state:

- That the DCH has been terminated from the Program; and

- That the DCH will be added to the NDL.

If the DCH provider does not request an appeal, the sponsoring organization will immediately terminate the DCH provider's agreement and disqualify the DCH provider when the opportunity to request the appeal expires. At the same time, the notice of termination and disqualification is issued to the DCH provider.

Refer to Prototype Letter 23: Notice of Termination and Disqualification – Suspension, and Proposed Termination and Disqualification - Provider does not appeal. *A copy of the letter must be sent to the State agency at the same time it is sent to the provider.*

If the DCH provider requests an appeal and subsequently loses that appeal, the sponsoring organization will immediately terminate the DCH provider's agreement and disqualify the DCH provider when the decision of the appeal official is issued. At that time, the notice of termination and disqualification is issued to the DCH provider.

Refer to Prototype Letter 24: Notice of Termination and Disqualification - Imminent threat to health or safety after sponsoring organization prevails in appeal. *A copy of the letter must be sent to the State agency at the same time it is sent to the provider.*

The State agency will report the name of the terminated and disqualified DCH provider to the FNS Regional Office within 10 days of receipt from the sponsoring organization after the DCH provider has been terminated for cause, placing his or her name on the NDL. In reporting the name of the DCH provider to the FNS Regional Office, the State agency will follow the instructions outlined in Part 10 of this guidance.

If the DCH requests an appeal and the hearing official overturns the sponsoring organization's action to suspend the DCH, the sponsoring organization must temporarily defer the serious deficiency and withdraw the suspension.

Refer to Prototype Letter 25: Notice of Temporary Deferment of Serious Deficiency, Suspension, Proposed Termination and Proposed Disqualification after provider prevails in appeal). *A copy of the letter must be sent to the State agency at the same time it is sent to the provider.*

D. Program Payments during the Suspension of a DCH

A sponsoring organization is prohibited from making any Program payments to a DCH that has been suspended until any appeal of the proposed termination is completed. If the suspended DCH prevails in the appeal of the proposed termination, the sponsoring organization must reimburse the DCH for all eligible meals served during the suspension period that are properly documented [7 CFR 226.16(l)(4)(iv)]. If the provider loses the appeal, payments are not to be made to the provider.

E. Questions & Answers

1. May a sponsoring organization suspend payment to a provider that submits false or fraudulent claims?

Program regulations only provide for the suspension of payments to providers when a provider has engaged in conduct that poses an imminent threat to the health or safety of participants or the public. However, neither a State agency nor a sponsoring organization may pay any portion of an invalid claim.

2. Doesn't the prohibition on paying "invalid claims" to an institution or provider amount to a suspension of payments?

Suspension involves a total end of Program payments until a hearing official has ruled on a DCH's appeal, or until the DCH fails to request an appeal prior to the regulatory deadline. The prohibition on paying invalid claims means that a State agency or sponsoring organization must not reimburse the DCH for that portion of a claim that the State agency or sponsoring organization knows to be invalid.

3. What is the process for suspending a DCH whose license has been revoked? The DCH no longer meets eligibility requirements, so why would the sponsoring organization follow the serious deficiency process? What happens if the DCH license is reinstated?

The CACFP regulation at 7 CFR 226.16(l)(4) requires the sponsoring organization to suspend the DCH's participation and payments, and propose to terminate its participation if

the license is revoked for imminent threat or safety reasons. There is no opportunity to correct a serious deficiency based on imminent threat or safety reasons.

A sponsoring organization may not make payments to a day care has been suspended until an administrative review of the proposed termination is completed. If the suspended day care home prevails in the administrative review of the proposed termination, the sponsoring organization must reimburse the day care home for eligible meals served during the suspension period.

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EXAMPLE: A provider is remodeling the entryway of the DCH and there are exposed wires in areas where the children play. The area is not sufficiently blocked off from the children for the days the area is being remodeled. The licensing official reviews the DCH during this time and notices that the children are playing with the builder's tools near the exposed wires while relatively unsupervised since the provider is preparing lunch. The licensing official immediately revokes the license pending correction, citing imminent threat to the health and safety of the children.

Upon learning of the license being revoked, the sponsoring organization would immediately suspend the DCH's participation, declare it seriously deficient and (imminent threat to the health and safety) propose termination and disqualification.

If the provider either completes the remodeling of that area or establishes a non-movable barrier that children cannot get through and licensing activates the provider's license, the sponsoring organization must continue with the proposed termination and disqualification. The provider may appeal and present documentation that the problem has been resolved and the license has been reinstated. If the provider prevails, the proposed termination and disqualification would be vacated and the provider would be allowed to resume participation in the Program. However, the provider will be reimbursed for any meals served during the time of the suspension [226.26(k)(4)(iv)].

The sponsoring organization shall require the provider to state how he/she will prevent this from recurring.

PART 6. Suspension Process for Unaffiliated Centers

This Section was intentionally left blank. Information regarding the suspension process for unaffiliated centers will be added when the Final Rule implementing these requirements is published.

PART 7. Administrative Review (Appeal) Procedures for Institutions in the Serious Deficiency Process

This section provides information on the administrative review procedures for institutions. State agencies must develop procedures consistent with CACFP regulations for providing administrative reviews, more commonly referred to as "appeals," to institutions and RP/Is. Appeal procedures for DCHs are covered in Part 8 of this guidance.

A. Administrative Review (Appeal) Procedures

Program regulations provide specific guidance regarding those actions a State agency may take that are subject to appeal, and those that are not, as well as the procedures that must be followed in providing institutions and RP/Is notice of their appeal rights [7 CFR 226.6(k)]. These actions are listed in Section B of this Part.

Except for circumstances under which an abbreviated appeal is held, the State agency must develop an appeals process that adheres to the following procedures when an institution or RP/I requests a review of any action subject to appeal. It is important that the hearing official fully understands the nature of the appeal procedures specific to the CACFP.

It is not the purpose of the hearing to determine whether to uphold duly promulgated Federal and State Program requirements. The purpose of the hearing is limited to a determination as to whether the State agency acted in accordance with Program requirements in taking the actions being appealed. The hearing official's decisions should be limited to that purpose.

Best Practice

State agencies are encouraged to invite hearing officials to the State's annual training for institutions. This allows hearing officials to better understand Program requirements and the specific information being provided to Program participants.

While it is possible to provide some guidance in the context of a hearing (for example in the State's opening remarks), it is advisable that the State agency provide information and Program orientation to the hearing official, annually or more frequently, to ensure they understand the purpose, scope, and limitations of the appeal procedures.

Below are the procedures that each State agency must follow for all appeals received from institutions or RP/Is.

Notice of Action

The institution, its executive director, chairman of the board of directors and the RP/Is must be given notice of:

- The action being taken or proposed (see appealable actions in Part B of this Section);

What Constitutes Notice?

Notice means a letter sent by certified mail, return receipt (or the equivalent private delivery service), by fax, or by email, that describes an action proposed or taken by the State agency with regard to an institution's, responsible principal's, or responsible individual's Program participation [7 CFR 226.2].

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.

It is a **best practice** to get proof of the delivery of the notice.

- The basis for the action; and
- The procedures under which the institution and the RP/Is may request an appeal of the action [7 CFR 226.6(k)(5)(i)].

Note: Any reference in this Guidance to the "number of days" always means calendar days.

The institution, its executive director, chairman of the board, and any additional RP/Is identified as responsible for the serious deficiencies may appeal the State agency's actions together or individually. In addition to the notice of action provided to the executive director and chairman of the board of directors on behalf of the institution, each principal and individual identified as responsible for the serious deficiencies must be notified independently. When the institution and RP/Is choose to appeal independently, the State agency may request that the hearings be consolidated; however, that decision rests with the hearing official.

Time to Request an Administrative Review

An appeal must be requested in writing by an institution and/or its RP/Is no later than 15 days after the date the State agency's notice of action is received. Upon receipt of a request for a hearing, the State agency must acknowledge receipt of the request within 10 days [7 CFR 226.6(k)(5)(ii)]. If the State Agency's appeal procedures direct the appellant to send the request to the hearing official, then the procedures must identify which office will be responsible for acknowledging the appellant's request.

Representation

The institution and the RP/Is may represent themselves, retain legal counsel, or may be represented by another person [7 CFR 226.6(k)(5)(iii)].

Review of Record

Any information upon which the State agency based its action must be available to the institution and the RP/Is for inspection from the date of receipt of the request for an appeal [7 CFR 226.6(k)(5)(iv)]. The Notice of Proposed Termination and Disqualification should provide, in detail with applicable attachments, all information upon which the State agency based its action. However, the State may provide this information again to the institution and the RP/Is.

Opposition

The institution and the RP/Is may refute the findings contained in the notice of action in person or by submitting written documentation to the hearing official. Remember that, in order to be considered, all parties, including the State agency, must submit any written documentation to the hearing official not later than 30 days after receipt of the notice of action. This means that all documentation must be submitted **PRIOR** to the beginning of the hearing. This documentation is the official written basis for the proposed action and the hearing official should respond to any requests for copies, not the State agency. Once the hearing begins, no further documentation may be submitted by either party.

Hearing

The institution and/or RP/I may request that the appeal consist of only a review of written materials, an in person hearing, or a combination of both. A hearing must be held by the hearing official if one is requested by the institution and/or RP/I in a written request.

If the institution's representative, the RP/Is, or their representative, fail to appear at a scheduled hearing, they waive the right to an in-person hearing, unless the hearing official agrees to reschedule the hearing. A representative of the State agency must be allowed to attend the hearing to respond to the testimony of the institution and the RP/Is and to answer questions posed by the hearing official. If a hearing is requested, the institution, the RP/Is, and the State agency must be provided at least 10 days advance notice of the time and place of the hearing. A rescheduled hearing must still be held in time to render a decision within 60 days of the original request for an appeal [7 CFR 226.6(k)(5)].

Administrative Review (Hearing) Official

The hearing official must be independent and impartial. This means that, although the hearing official may be an employee of the State agency, he or she must not have been involved in the action that is the subject of the appeal, or have a direct personal or financial interest in the outcome of the appeal.

If the hearing official is an employee of the State agency, he or she may not occupy a position in which he or she is potentially subject to undue influence from the individual responsible for the State agency's action. Nor should the official occupy a position in which he or she may exercise undue influence on the individual responsible for the action.

The institution and the RP/Is must be permitted to contact the hearing official directly if they so desire [7 CFR 226.6(k)(5)(vi)].

Basis for Decision

The hearing official must make a determination based solely on the information provided by the State agency, the institution and the RP/Is, and in Federal and State laws, regulations, policies, and procedures governing the Program [7 CFR 226.6(k)(5)(viii)].

Time for Issuing a Decision

Within 60 days of the State agency's receipt of the request for an appeal, the hearing official must inform the State agency, the institution's executive director and chairman of the board of directors, and the RP/Is, of the appeal's outcome.

This timeframe is a Program requirement for the State agency and cannot be used as a basis for overturning the State agency's action if a decision is not made within the specified timeframe.

As noted above, an institution and/or its RP/Is failure to appear at a scheduled hearing constitutes a waiver of their right to a personal appearance, unless the hearing official agrees to reschedule the hearing. However, the 60-day deadline for informing parties to the appeal of the outcome remains in place. Therefore, should the hearing official agree to reschedule the hearing, the timing of the rescheduled hearing must allow sufficient time to report the outcome of the hearing within 60 days of the State agency's receipt of the request for an appeal [7 CFR 226.6(k)(5)(ix)].

Final Decision

The determination made by the hearing official is the final administrative determination to be afforded the institution and the RP/Is [7 CFR 226.6(k)(5)(x)].

B. Actions Subject to Administrative Review (Appeal)

The State agency must offer institutions and RP/Is the opportunity to appeal the following actions:

- *Denial of a new institution's application for participation, or a participating institution at renewal.*

  If a new institution's application or an application renewal does not meet all of the requirements for the approval of applications and the execution of agreements, the State agency must deny the application and provide appeal procedures in accordance with Program regulations.

- *Denial of an application submitted by a sponsoring organization on behalf of a facility*.

  If the State agency determines that a facility does not meet Program eligibility requirements, the State must notify the institution that the application is denied and provide the institution an opportunity to appeal the State agency's determination.

- *Proposed termination of an institution's agreement.*

  If an institution that has been declared seriously deficient in its administration of the CACFP demonstrates that it is unwilling or unable to take appropriate corrective actions,

the State agency must notify the institution that it proposes to terminate and disqualify the institution. Although a State agency's determination that an institution is seriously deficient is not subject to appeal, the notice of proposed termination and disqualification is subject to appeal, and the State agency appeal procedures must be provided with the notice.

- *Notice of Proposed disqualification of an RP/I.*

  In addition to notifying an institution of its proposed termination and disqualification, the State agency must notify the institution's executive director, chairman of the board of directors, and any RP/Is that the State agency proposes to disqualify them from future participation in the Program. The State's determination that specific principals and individuals are responsible for the institution's serious deficiency is not subject to appeal; however, the State's proposed disqualification of RP/Is is subject to appeal.

- *Suspension of an institution's participation*.

  If the State agency has determined that the institution has engaged in unlawful acts with regard to the administration of the Program, such as the submission of false information, or is operating in such a manner as to pose an imminent threat to the health and/or safety of Program participants or the public, the State agency must propose to suspend the institution's participation, including Program payments, and propose to terminate and disqualify the institution and RP/Is. The State agency's decision to suspend an institution's participation is subject to an appeal separate and apart from any appeal to which the institution is entitled in response to the proposed termination and disqualification. The suspension process for institutions is covered in Part 4 of this guidance.

- *Denial of an institution's application for start-up or expansion payments.*

  If the State agency determines that an institution is not eligible to receive start-up or expansion payments or that the institution's request has not demonstrated that the proposed costs are reasonable and necessary, the State agency must deny the institution's application. This denial is subject to appeal.

- *Denial by the State agency of an institution's request for an advance payment.*

  If the State agency offers advance payments, institutions may appeal a determination by the State agency that is ineligible to receive advance payments, or that the amount of advance payments requested is excessive.

- *Recovery of all or part of an advance payment in excess of the claim for the applicable period through a demand for full repayment or an adjustment of subsequent payments.*

  If a State agency offers advance payments, institutions may also appeal a decision by the State agency to recover all or part of an advance if the claim covering the applicable period does not cover the advance amount, regardless of the manner by which the demand for recovery is made, e.g. through a demand for full repayment or an adjustment of subsequent payments.

Advances

The State agency has the authority to determine whether or not advances will be offered.

- *Denial of all or a part of an institution's claim for reimbursement.*

  The State agency may deny all or part of an institution's claim if the State agency has reason to believe that an institution, one of its facilities, or its food service management company has engaged in unlawful acts with respect to Program operations, evidence found in audits, investigations, or other reviews provide the basis for non-payment of all or part of an institution's claim for reimbursement.

- *A decision by the State agency 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*.

  The denial of a claim based on a late submission is not subject to appeal. A decision by

> **Late Claims**
>
> In an institution's reason for submitting a claim after the deadline is not, in the State's determination, justifiable, it is appropriate for the State agency to deny the claim and choose not to forward the claim to FNS. Only those instances that the institution appropriately justifies and that State agency can support paying late should be forwarded to the FNS Regional Office

  the State agency not to forward an exception request to FNS for a late claim payment, or for an upward adjustment of a claim, is subject to appeal. Conversely, a denial by FNS to pay a late claim is not subject to appeal.

- *A demand by the State agency for the remittance of an overpayment*.

  If the State agency determines that an institution has received more money in reimbursements than what they can account for, the State agency must recover the unearned funds. The demand for repayment is subject to appeal. If an institution believes that the repayment demand has not been calculated correctly, they must provide documentation of this to the hearing official for review.

- *Any other action of the State agency affecting an institution's participation or its claim for reimbursement, except as noted in Program regulations.*

  The State agency may take other actions affecting an institution's participation or its claim for reimbursement which are subject to appeal. For example, limitations imposed on the number of facilities an institution may sponsor; or determinations regarding whether specific costs included in the institutions budget represent allowable Program expenses [7 CFR 226.6(k)(2)(i)–(xii)].

> **Practice Tip**
>
> State agencies or sponsoring organizations may choose to offer DCH providers the opportunity to appeal additional adverse actions, such as disallowed meals. However, if they do so, these appeals must follow the same appeal procedures as the required appeal and FNS Regional Office approval must be obtained first [CACFP 05-2007 *Additional State Agency Requirements*, May 9, 2007].

When these appealable actions are taken against an institution on the basis of a Federal review or audit, the State agency may choose to offer Federal appeal procedures for a Federal hearing rather than a State hearing.

C. Actions Not Subject to Administrative Reviews (Appeal)

The State agency is prohibited from offering appeals for any of the following actions.

- *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 is not subject to appeal.*

  A decision by the State agency not to forward the request to FNS is subject to appeal.

- *A determination that an institution is seriously deficient.*

  A State agency's proposal to terminate an institution's agreement and to disqualify its RP/Is is subject to appeal; however, the State agency's determination that an institution and its RP/Is are seriously deficient in the administration of the Program is not subject to appeal.

- *Disqualification and placement on State agency list and NDL.*

  While institution and RP/Is must be given the opportunity to appeal the State agency's proposal to disqualify them, the resulting disqualification and placement on the State agency list and the NDL is not subject to appeal.

- *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*.

  The termination of an institution's agreement is not subject to appeal because the institution is afforded the opportunity to appeal to a different State agency's proposal to terminate the institution's agreement.

- *A determination, by either the State agency or by FNS, that the corrective action taken by an institution or a RP/I is not adequate to warrant the removal of the institution or the RP/I from the NDL is not subject to appeal.*

  An institution and/or its RP/Is may request removal from the NDL based upon a CAP intended to address the organization's serious deficiencies. While the State agency must consider the request, a determination that a previously disqualified institution or its RP/Is has failed to provide sufficient documentation to support a recommendation to remove them from the NDL is not subject to appeal. Should the State agency agree to submit the request to the FNS Regional Office for consideration, (based on a justification that the State agency determines is supportable) a decision by FNS that removal from the NDL is not warranted is also not subject to appeal [7 CFR 226.6(k)(3)(i)–(vi)].

Exception: Actions Not Subject to Administrative Review (Appeal), but Subject to an Abbreviated Hearing

- *The State agency's refusal to consider an institution's application when either the institution or one of its RP/Is is on the NDL, or the State agency's refusal to consider an*

institution's submission of an application on behalf of a facility when either the facility or one of its RP/Is is on the NDL are subject to an abbreviated hearing.

The State agency must provide an applicant institution and/or its RP/Is the opportunity for an abbreviated hearing to demonstrate that they are not the institution or individuals included on the NDL. Once it has been determined that the named institution or RP/I is on the NDL, the State agency is prohibited from providing them a full appeal [7 CFR 226.6(k)(3)(vii)].

D. Providing the Administrative Review (Appeal) Procedures to Institutions

The State agency's appeal procedures must be provided:

- Annually to all institutions - if a State agency's own handbook and or operational manual contains its appeal procedures, the State agency must still initiate an annual announcement which could be an email alerting institutions where to locate the procedures;

- To an institution and to each RP/I when the State agency takes any action subject to an appeal as described in section B of this Part; and

- Any other time upon request [7 CFR 226.6(k)(4)(i)–(iii)].

E. Abbreviated Administrative Review

An abbreviated review is limited to a review of *written* submissions by the appellant and may not include an in-person hearing. There are two State agency actions that if appealed, result in an abbreviated review:

1. The State agency's proposal to terminate an institution's agreement because of the submission of specific false or disqualifying information on its application; or

2. The accuracy of the State agency's determination to deny an application based on an institution and/or an individual being disqualified

If a State agency finds that the following has been submitted by a new institution or a participating institution upon renewal of its application, it must deny the application and offer the institution and RP/Is an abbreviated review:

- The information submitted on the application is false;

- The institution, one of its sponsored facilities, or one of its principals is on the NDL;

- The institution, one of its sponsored facilities, or one of its principals has been declared to be ineligible for another publicly funded Program during the prior seven years; or

- The institution, one of its sponsored facilities, or one of its principals has been convicted of an activity in the past seven years that indicated a lack of business integrity [7 CFR 226.6(k)(9)].

  In each of these cases, the institution or the principals will have already had an opportunity to refute the charge (i.e., the action that led to the placement on the NDL, the ineligibility determination for the other public Program, or the criminal conviction). Since these issues will have been fully reviewed by the appropriate authority, the institution and RP/Is are not entitled to a second appeal. There is no benefit to be derived from requiring a ''full'' appeal in cases in which the only issue will be whether or not the affected party is really the same party that appears on the NDL, was declared ineligible for another publicly funded Program, or was convicted.

F. Program Payments during the Administrative Review (Appeal) Process

If an appeal is requested, the State agency must continue to pay any valid claims for reimbursement for eligible meals served and allowable administrative expenses incurred until a decision has been rendered for participating institutions, unless the institution has been suspended from participation based on health or safety violations or false or fraudulent claims [7 CFR 226.6(c)(1)(iii)(D); (c)(2)(iii)(D); (c)(3)(iii)(D); (c)(5)(i); (c)(5)(ii) respectively; and CACFP Policy *Termination of Program Payment Procedures,* October 17, 2000].

G. Question and Answer

1. What is the definition of "submission date" for determining whether the institution's request for an appeal has been submitted in time?

The regulations indicate 'the first day after receipt' by the institution. The State agency may further define its process based on the regulatory requirement that it be "submitted within 15 days." FNS has recommended sending all notices via certified mail or other process that defines the day/time the notice is delivered and accepted.

If the notice has been determined 'undeliverable,' then the State agency should resume its termination process 5 days after the date of the notice.

2. Once a serious deficiency notice is issued, the only way for the process to end is through successful corrective action or a termination and disqualification of the institution. What if the State agency decides on its own to withdraw the serious deficiency notice while the appeal is pending?

If a State agency discovers that it has erred in part of the process; e.g., key information was accidentally omitted from the serious deficiency notice, a corrected notice may be issued.

If, after a notice of proposal to terminate and disqualify has been issued, the institution presents documented evidence that it has fully and permanently corrected the serious deficiency, the State agency may [but is not required to] accept the corrective action and temporarily defer the serious deficiency, through proper notice.

Once the hearing has been held, neither party may withdraw, but must accept the official's decision.

3. May an institution appeal a finding that requires fiscal action or an overclaim?

Yes. If the State agency disallows partial or full payment of a claim, it shall notify the institution of its right to appeal. State agencies may permit disallowances to be appealed separately from claims for reimbursement [7 CFR 226.7(k)].

4. When an institution's debt goes to the State's collections office, will the collection action be appealable?

No. The appeal opportunity will already have been given with the CACFP State agency's fiscal action and overclaim notice. Program regulations state that if, after 60 calendar days, the institution fails to remit the full payment or agree to a satisfactory repayment schedule,

the State agency shall refer the claim against the institution to appropriate State or Federal authorities for pursuit of legal remedies [7 CFR 226.14(a)(1)].

5. Can the hearing official require the State agency to first send its documentation to the institution before sending it to the hearing official?

No. This additional step is not included in the regulatory procedures and would therefore, be unallowable. All parties, including the State agency, must submit any written documentation to the hearing official not later than 30 days after receipt of the notice of action.

6. Are there opportunities after the appeal hearing for an institution to have its case heard?

No. The decision of the hearing official is the final administrative recourse offered by the Program. There are no further appeal options offered by the Program. The institution would have to file a court case in order to appeal further.

PART 8. Administrative Review (Appeal) Procedures for Day Care Home Providers

This section provides information on the appeal procedures for DCHs. When a sponsoring organization proposes to terminate its Program agreement with a DCH for cause, the DCH must be provided an opportunity for an appeal of the proposed termination. The State agency may do this either by choosing to offer a State-level appeal, or by requiring sponsoring organizations to offer appeals. The State agency's choice with regard to who offers the appeal must apply to all DCHs in that State.

After the State agency has made its choice to offer State-level appeals or to require sponsoring organizations to offer them, the State agency must notify the appropriate FNS Regional Office within 30 days of any subsequent change under this option. The State agency or the sponsoring organization (subject to State agency approval) must develop procedures for offering and providing DCH appeals according to the procedures described below.

A. Administrative Review (Appeal) Procedures for DCHs

The State agency or sponsoring organization, as applicable, must follow the procedures described below when a DCH requests an appeal.

- *Uniformity.* The same procedures must apply to all DCHs.

- *Representation.* The DCH may represent him or herself, retain legal counsel, or may be represented by another person.

- *Review of record and opposition.* The DCH may review the record on which the sponsoring organization's decision was based and refute the action in writing. The hearing official is not required to hold an in-person hearing.

- *Administrative review official.* The hearing official must be independent and impartial. This means that, although the hearing official may be an employee of the State agency or an employee or board member of the sponsoring organization, he or she must not have been involved in the action that is the subject of the appeal or have a direct personal or financial interest in the outcome of the appeal.

  If the hearing official is an employee of the sponsor, he or she may not occupy a position in which he or she is potentially subject to undue influence from the individual responsible for the sponsoring organization's action, nor may he or she occupy a position in which he or she may exercise undue influence on the individual responsible for the action.

  The provider must be permitted to contact the hearing official directly if he or she so desires.

- *Basis for decision.* The hearing official must make a determination based solely on the information provided by the sponsoring organization and the DCH, and on Federal and State laws, regulations, polices, and procedures governing the Program.

- *Time for issuing a decision.* The hearing official must inform the sponsoring organization and the DCH of the appeal's outcome within the period of time specified in the State agency's or sponsoring organization's appeals procedures. This timeframe is an administrative requirement for the State agency or sponsoring organization, and may not be used as a basis for overturning a termination if a decision is not made within the specified timeframe.

- *Final decision.* The determination made by the hearing official is the final administrative determination to be afforded the DCH [7 CFR 226.6(l)].

B. Actions Subject to Administrative Review (Appeal) - DCH

The State agency or sponsoring organization is required to offer an appeal to a DCH for only a notice of proposed termination or suspension [7 CFR 226.6(l)(2)].

C. Actions Not Subject to Administrative Review (Appeal) - DCH

Neither the State agency nor the sponsoring organization is required to offer an appeal for reasons other than the proposed termination of a DCH [7 CFR 226.6(l)(3)].

D. Providing Administrative Review (Appeal) Procedures to DCHs

The appeal procedures must be provided to DCHs as follows:

- Annually to all DCHs (if these are in a sponsor's handbook for providers or operational manual, the sponsoring organization will still need to, annually, provide a written notice of where to find the procedures);

- Whenever the State agency or sponsoring organization takes any action subject to appeal; and

- At any other time upon request [7 CFR 226.6(l)(4)].

E. Program Payments during the Administrative Review Process for DCHs

If an appeal is requested, the sponsoring organization must continue to pay any valid claims for reimbursement for eligible meals served until a decision has been rendered, unless the DCH provider has been suspended from participation based on health or safety violations [7 CFR 226.16(l)(3)(iv), and CACFP Policy *Termination of Program Payment Procedures,* October 17, 2000].

F. Questions & Answers

1. **In my State, different types of facilities are designated as DCH providers; such as, group, registered, or licensed. Can the State agency or sponsoring organization establish different requirements according to the type of facility?**

   Appeal procedures developed or approved by the State agency must apply to all DCHs within the sponsorship.

2. **If a DCH provider loses an appeal conducted by the sponsoring organization, can the DCH provider then request that the State agency review or reconsider the decision?**

   The determination made by the hearing official is the final administrative decision. No additional appeal hearing may be requested or provided [7 CFR 266.6(l)(5)(vi)].

3. **If a DCH provider requests an opportunity to present its appeal in person at a hearing, must the State agency or sponsoring organization permit it?**

   Sponsoring organizations must offer DCH providers the opportunity to have their appeals determined on the basis of the written record. However, if an in-person hearing is offered to one provider, it must be available to all DCH providers. This can be accomplished in a variety of ways, such as holding the hearing via teleconference, to expedite the process and reduce the burden on all parties.

4. **May a sponsoring organization suspend the payments to a DCH until a determination has been made on the DCH's appeal?**

   The only reason a sponsoring organization may suspend the participation of, and payments to, a DCH provider is if there is an imminent threat to the health and/or safety of a child in care or the public.

5. **May a DCH appeal a decision by a sponsoring organization to not sponsor its participation in the CACFP?**

   Although the proposed termination of a *participating* DCH provider's agreement to participate in the CACFP for cause is subject to appeal, denial of an applicant's request to be sponsored is not.

6. **If a DCH decides to withdraw from the Program before its appeal is heard, may the State agency or sponsoring organization just cancel the appeal?**

   Once a determination has been made that a DCH provider has been declared seriously deficient, State agencies or sponsoring organizations must continue with the serious deficiency process, including with the appeal, if requested. If the DCH provider chooses not to participate in the appeal, the hearing official must make his or her decision based on all evidence provided and render a decision.

PART 9. Administrative Review (Appeals) Procedures for Unaffiliated Centers

This Section was intentionally left blank. Information regarding administrative review procedures for unaffiliated centers will be added after the Final Rule implementing these provisions is published.

PART 10. State Agency List and National Disqualified List

A. Maintenance of the State Agency List

The State agency list means an actual paper or electronic list, or the retrievable paper records, maintained by the State agency, that includes a synopsis of information concerning seriously deficient institutions and providers terminated for cause in that State [7 CFR 226.2].

B. The Purpose of the State Agency List

The purpose of the State agency list is twofold. **First**, a State-level list is useful for analytic purposes. Although the NDL provides a complete picture of all institutions, individuals, and DCH providers that have been disqualified and are ineligible for Program participation, the NDL does not capture a great deal of additional information that is necessary for State agencies and FNS to assess the effectiveness of the serious deficiency process.

> **EXAMPLE:** Many institutions, DCH providers and RP/Is will be declared seriously deficient but will never appear on the NDL. This is because either they successfully completed corrective action or a hearing official overturned the State agency's or sponsoring organization's proposed termination of the Program agreement.

In order to properly assess Program management and integrity, it is critical for the State agency and FNS to have information about the number of institutions declared seriously deficient which are never placed on the NDL, as well as the ways in which serious deficiencies were ultimately resolved short of termination. Information on DCHs may also be maintained. The State agency list will capture information about the ultimate disposition of each case in which an institution was declared seriously deficient. The list will provide State agencies with an effective internal management device that shows State staff, at a glance, the relevant deadlines for issuing notices throughout the serious deficiency process, for tracking an institution's progress in correcting each serious deficiency, and for tracking sponsoring organizations in their management of the serious deficiency process.

The State agency list should provide State agency staff working with a particular institution on its serious deficiencies with a readily available chart of the institution's progress towards resolving each serious deficiency, if the deadline for corrective action had passed, and the deadlines for and/or status of its appeal.

Second, FNS must be able to quantify the results of State agency and sponsoring organization's actions in order to assess the frequency with which certain actions are being

taken, as well as determining National and/or State-specific trends. The NDL only captures information about institutions, individuals, and DCHs that have been terminated and/or disqualified. Information about other institutions, individuals, and DCHs that are in the midst of the serious deficiency process, but not yet disqualified, is available on the State agency list. State agencies must also be able to have data that will allow them to assess their own implementation of the serious deficiency process, identify any changes needed in its processes and procedures and identify trends and training needs for State agency or institution staff.

C. Required Information for the State Agency List

The list must be made available to FNS upon request, and must include the following information:

- Institutions determined to be seriously deficient by the State agency, including the names and mailing addresses of the institutions, the basis for each serious deficiency determination, and the status of the institutions as they move through the subsequent stages of corrective action, proposed termination, suspension, agreement termination, and/or disqualification, as applicable;

- RP/Is who have been disqualified from participation by the State agency, including their names, mailing addresses, and dates of birth; and

- DCH providers whose agreements have been terminated for cause by a sponsoring organization in the State, including their names, mailing addresses, and dates of birth [7CFR 226.6(c)(8)(i)(A)–(C)].

D. Placement on the National Disqualified List

Program regulations require that disqualified and terminated institutions, RP/Is, and DCH providers be placed on the NDL. Whenever a State agency determines that an institution is seriously deficient, the State agency must also determine who is responsible for the serious deficiency. These individuals may be principals of the institution or they may have some other relationship to the institution.

RP/Is

An institution can never be seriously deficient without some improper action by RP/Is. An individual or individuals are always responsible for the institution or facility failing to comply with regulatory requirements.

Program regulations define a “principal” as anyone in the institution who is: A manager, officer, or board member. Principals could also include the owner of a for-profit organization or the supervisor of the director of an institution operated by a public entity. Not all principals are considered to be “responsible principals”. A responsible individual is any non-principal associated with the institution’s operation of the Program who bears responsibility for a serious deficiency [7 CFR 226.6(c)(7) and CACFP 14-2012 *Child and Adult Care Food Program Guidance on the Serious Deficiency Process and Acceptable Corrective Action Plans, National Disqualified List Procedures and Debt Collection,* May 1 2012].

NDL submission requests sent from an FNS Regional Office to the FNS National Office must contain all required information as indicated in the “Institutions/RP/Is” and “Day Care Home Providers” section below. If a State agency does not submit all of the required information with

its notification of a disqualification, the FNS Regional Office will contact the State agency to obtain the missing information before forwarding the submission to the FNS National Office. If a required piece of information is not available, the State agency should include an explanation of why the missing information is unobtainable. Incomplete information that does not have an explanation for the missing data will be returned to the State agency for completion. The following information is required when submitting information to FNS for inclusion on the NDL.

For Institutions and RP/Is

- Name and address of the institution (including city, State, and zip code);
- Any known aliases;
- Termination date;
- Amount of debt owed, if any, noting the RP/I;
- Reason(s) for the disqualification (if other is checked, an explanation must be included);
- RP/I's full name;
- Any know aliases;
- RP/I's address (with city, State, and zip code);
- RP/I's date of birth; and
- RP/I's position in the institution.

For DCH Providers

- Name(s) of the provider;
- Any known aliases;
- Address (including city, State and zip code);
- Date of birth;
- Termination date;
- Amount of debt owed, if any;
- Name and address of the individual's sponsor; and
- Reason(s) for the disqualification (if other is checked, an explanation must be included).

E. Removal from the National Disqualified List

CACFP regulations require that a disqualified institution, RP/I, or provider remain on the NDL unless it is determined that the serious deficiencies have been corrected, for seven years or

until any outstanding debt is repaid, whichever is longer. When both the seven years have elapsed and the debt repaid, the institution, RP/I, or provider will be removed from the NDL.

F. Early Removal from the National Disqualified List – Documented Corrective Action and Debt Payment

Institutions and RP/Is may submit corrective action, pay off any debts owed (including any interest), and submit a request to the State agency for early removal from the NDL. The burden for documenting that the corrective action has been accomplished lies with the institution or the individual. If the State agency approves the removal, the information must then be submitted to the FNS Regional Office for approval.

An individual who wishes to assume a position related to the CACFP and learns that his or her name is on the NDL always has the right to request removal from the list which would necessitate submission of an acceptable CAP.

DCHs may submit corrective action, pay off any debts owed (including any interest), and submit a request to the State agency for early removal from the NDL. If the State agency approves the removal, the information must then be submitted to the FNS Regional Office for removal. If the FNS Regional Office and the State agency approve the submitted information, the information will be sent to FNS for early removal from the NDL [7 CFR 226.6(c)(7)(v) for institutions, (vi) for DCHs].

Program Debts

Institutions, RP/Is, and providers that fail to repay debts owed under the Program will remain on the NDL unless it is determined that the serious deficiencies have been corrected, until the debt has been paid in full, including interest.

While the State agency must determine whether an institution, RP/I, or provider has successfully completed corrective action, the burden for documenting that it is fully capable of operating the Program and comply with all requirements lies with the institution, RP/I, or the provider. The State agency or sponsoring organization may wish to make an onsite visit soon after the institution, RP/I, or provider has been reinstated to verify that corrective action has actually been implemented.

Being on the NDL means that the institution, RP/I, or DCH failed to take successful corrective action at least once and has already been given due process. Since there is no statutory or regulatory requirement for a State agency to expedite the processing of these requests, the State agency may handle these requests in their normal course of business. The State agency's procedures for removal from the NDL must be written and consistently applied. See the headings below for the procedures that institutions, RP/Is, and DCH providers must follow to be removed from the NDL.

The effective date of NDL removals will be the date on which the FNS National Office processes the removal request. The FNS Regional Office will be notified once the removal has been completed by the FNS National Office and will inform the State agency.

Institutions and Their Associated RP/Is

To ensure consistency in the process for removing institutions or RP/Is from the NDL, all requests for removals must be reviewed by the FNS National Office. For FNS National Office to

make an informed decision regarding requests to remove an institution and/or its associated RP/Is from the NDL, it is necessary to have a complete history of the institution's or RP/I's serious deficiencies, including how the serious deficiencies were fully and permanently corrected.

The State agency's request for removal of the institution or RP/I must include;

- The original serious deficiency notification;
- The Notice of Proposed Termination and Disqualification;
- The Notice of Final Termination and Disqualification;
- All additional correspondence relating to the serious deficiency process for a particular institution or RP/I such as:
  - A prior notice of successful corrective action and temporary deferment of the serious deficiency (if applicable),
  - Information relating to the institution's debt, or
  - Information concerning the RP/Is' dates of birth.
- A detailed explanation of the actions taken by the institution or RP/I to fully and permanently correct the serious deficiencies including, but not limited to, the resolution of any associated debt;
- The documentation the State agency relied on to come to this conclusion; and
- A Statement which clearly identifies whether the request is for the removal of the
  - Institution; or
  - Institution and all associated RP/Is; or
  - Specific or all of the RP/Is, but not the institution.

Requests not Subject to Appeal

The State Agency's or FNS' decision to deny a request for removal from the National Disqualified List is not subject to appeal.

Final Step in Removal

The FNS National Office is the final approval authority for removing a name from the NDL.

The FNS Regional Office must review the documentation submitted with a request for removal of an institution or RP/I to verify that it is complete and provides sufficient information. Based on the submitted documentation, the FNS National Office will approve or deny the request for removal.

Upon receipt of a request to remove an institution or RP/I from the NDL, the FNS National Office will determine whether it concurs with the FNS Regional Office approval of the State agency's recommendation and notify the FNS Regional Office of its decision. The FNS Regional Office will notify the State agency of the FNS National Office's decision.

DCH Providers

The State agency must review and approve a DCH provider's request for removal from the NDL. If the State agency approves the request, and ensures that any debt associated has been paid, it may submit the information to the FNS Regional Office, where it will be reviewed for completeness. The FNS Regional Office will also ensure that the State agency's request is within Program requirements and that the documentation supports the early removal. Once reviewed, the FNS Regional Office will submit the request to the FNS National Office for removal. The effective date of NDL removal will be the date on which the FNS National Office processes the removal request. The FNS Regional Office will be notified once the removal has been completed and inform the State agency [7 CFR 226.6(c)(7)(vi)].

Once an institution, facility or other names are removed from the NDL whether based on early or normal seven-year timeframe, they may reapply for participation in the Program. Their application will be evaluated by the State agency as they do for any applicant institution or facility.

G. Debt Collection

CACFP regulations are very specific in terms of the State agency's responsibility to collect debts (overpayments), including any assessment of interest. After the State agency has sent the necessary demand letter for debt collection, State agency staff must refer the claim to the appropriate State authority for pursuit of the debt payment. FNS defers to the State's own laws and procedures when establishing a repayment plan, though it is a best practice to recover funds as quickly as possible and not allow payment plans to cover several years. The details of any repayment plan should be worked out between the State agency and the institution [7 CFR 226.14(a)].

Participation after Removal

Removal from the NDL does not equate to approval to participate.

Institutions, facilities, or RP/Is can be removed from the NDL and still subsequently not be approved to participate in the Program.

Interest must be assessed on institutions' debts established on or after July 29, 2002. Interest will continue to accrue on debts not paid in full within 30 days of the initial demand for remittance up to the date of payment, including during an extended payment plan and if placed on the NDL, each month while on the NDL. It is the responsibility of the State agency to notify the institution that interest will be charged. State agencies are required to assess interest using one uniform rate. The appropriate rate to use is the Current Value of Funds Rate, which is published annually by Treasury in the Federal Register and is available from the FNS Regional Office, Financial Management.

> **EXAMPLE:** The State agency bills an institution for an overclaim of $100 on September 1, 2011. (The initial demand letter must advise the institution that interest will be assessed on debts not paid in full within 30 days.) On October 1, 2011, the State agency has received no payment or contact from the institution. The State agency would send a second demand letter stating that the debt is now delinquent and interest for the month of September has been added to the bill.

DCH providers are not charged interest on debts. Repayment of debt is made to the sponsoring organization and returned to the State agency by its routine funds recovery system.

H. Questions & Answers

1. May an institution, provider, or RP/I be removed from the State agency list?

The State agency list is perpetual. It is a record of institutions declared seriously deficient and the ways in which serious deficiencies were ultimately resolved; i.e., serious deficiency determination temporarily deferred or institution terminated and disqualified. The State agency list provides a historical record that should be reviewed each time an institution is declared seriously deficient and may provide a basis to assess the institution's ability to administer the Program.

2. What must be done when the State agency is required to ''update'' the State agency list?

For each institution declared seriously deficient, and for each institution filing a request for an administrative review, the State agency will ''update'' the State agency list whenever the next stage of action occurs.

> **EXAMPLE:** When an institution is declared seriously deficient, the State agency must add the institution and the basis for the determination of serious deficiency to the list. If the institution fully and permanently corrects the serious deficiency within the allotted time, the State agency updates the list to document that corrective action is complete.

3. May an institution be removed from the NDL when most of its debt has been paid?

If the institution does not pay the debt in full, including accrued interest, it will remain on the NDL. There is no provision for erasing uncollectible debts or for the State agency to "forgive" the debt simply because it is uncollectible at the time the institution or individual requests to be removed from the NDL.

4. What if a State agency determines that a debt is uncollectible?

The State agency must consult with the FNS Regional Office if it is determined that a debt is uncollectible. Please note that the institution and RP/Is or provider will remain on the NDL until the debt, with all incurred interest, is repaid. Interest continues to accrue throughout the entire period the institution, RP/Is, or providers remain on the NDL. See FNS Instruction 420-1, Managing Agency Debits for reference.

5. Is it ever optional for the State agency to not collect interest on a CACFP debt?

Interest must accrue and be collected for all debts incurred by institutions. DCH providers are not charged interest.

6. May a State agency set an interest "waiver" threshold; i.e., may a State agency have a policy that, if interest on a debt falls below a pre-determined collection threshold, interest will not be collect?

CACFP regulations at 7 CFR 226.8(f) allow a State agency to waive repayment of an overclaim; however, the State agency does not have the authority to waive repayment of interest once a debt is established.

7. **What is the record retention requirement by the State agency for an institution and/or individual on the NDL?**

   Records must be retained for as long as an institution, principal, or individual remains on the NDL plus three years following removal. If the institution or individuals remain on the list for more than seven years because a debt is owed, the records must be retained longer. It is important to remember that, since the State initiated the action, it is responsible for maintaining the records relating to that action.

   This means that records related to the NDL are to be "saved" for longer periods of time than the normal three-year period for records retention. In any event, "up to seven years or even longer" is the record retention standard for institutions, principals or individuals on the NDL [CACFP 01-2007, *Retention of Records Relating to Institutions, Responsible Principals or Responsible Individuals, and DCHs on the National Disqualified List; Retention of Records Relating to Serious Deficiencies,* January 26, 2007].

8. **May a State agency require or allow a "trial period" as a prerequisite for removal from the NDL?**

   Trial periods may not be required by State agencies or sponsoring organizations when considering a removal from the NDL. The State agency has no legal agreement with an institution that is on the NDL; therefore, the State agency cannot require maintenance of records before approving participation in the Program. Similarly, a disqualified DCH is not under agreement with a sponsoring organization, so there is no means for their participation.

9. **May a State agency add or include additional restrictions for an institution/RPI being removed from the NDL other than the regulatory seven years and debt repayment?**

   State agencies may not place additional restrictions on removal from the NDL. The State agency's procedures for evaluating applications should treat it as an application from a new institution and, as with a new institution, the State should include a prudent review of the application and required materials.

10. **What is the role of FNS in approving removal of a DCH provider from the NDL?**

    According to 7 CFR 226.6(c)(7)(vi), once included on the NDL, a provider will remain on the list until the State agency determines that the serious deficiencies that led to its placement on the list have been corrected, or until seven years have elapsed since its agreement was terminated for cause. However, if the provider has failed to repay debt owed under the Program, it will remain on the list until the debt has been repaid.

    Even though the CACFP regulations give the States authority to remove providers from the NDL, this does not relinquish FNS' responsibility to provide oversight of State agencies' actions to remove providers from the NDL. The FNS Regional Office will review the documentation to ensure State agencies are operating in accordance with CACFP requirements and that documentation supports removal of the provider from the list. The effective date of the removal will be the date the request is processed by FNS.

11. **How long will FNS take to approve a removal request for a provider from the NDL?**

    There is no set time frame for this process and FNS may request additional information before adding or removing names from the NDL.

PART 11. Acronyms

CAP - Corrective Action Plan
CACFP - Child and Adult Care Food Program
CFR - Code of Federal Regulations
DCH - Day Care Home
FNS - Food and Nutrition Service
NDL - National Disqualified List
RP/I - Responsible Principal or Responsible Individual(s)
USDA - United States Department of Agriculture

Definitions of terms used in the CACFP can be found in the CACFP regulations at 7 CFR 226.2.

PART 12. Resource Materials

A. Memoranda Issued by FNS Relating to the CACFP Serious Deficiency Process

November 21, 2014	CACFP 02-2015 Child and Adult Care Food Program – Role and Responsibilities of Administrative Review Officials http://www.fns.usda.gov/sites/default/files/CACFP02-2015os.pdf
July 26, 2013	CACFP 13-2013 *Health and Safety in the Child and Adult Care Food Program* http://www.fns.usda.gov/sites/default/files/CACFP13-2013.pdf
May 1, 2012	CACFP 14-2012 *Child and Adult Care Food Program Guidance on the Serious Deficiency Process and Acceptable Corrective Action Plans, National Disqualified List Procedures and Debt Collection* http://www.fns.usda.gov/sites/default/files/CACFP14-2012.pdf
July 25, 2011	CACFP 24-2011 *Automatic Revocation of Tax Exempt Status* http://www.fns.usda.gov/sites/default/files/CACFP-24-2011.pdf
May 9, 2007	CACFP 05-2007 *Additional State Agency Requirements* http://www.fns.usda.gov/sites/default/files/CACFP_05-2007.pdf
January 26, 2007	CACFP 01-2007 *Retention of Records Relating to Institutions, Responsible Principals or Responsible Individuals, and DCHs on the National Disqualified List; Retention of Records Relating to Serious Deficiencies* http://www.fns.usda.gov/sites/default/files/CACFP_01-2007.pdf
November 7, 2005	CACFP 03-2006 *Questions and Answers* http://www.fns.usda.gov/sites/default/files/CACFP_03-2006.pdf
October 17, 2000	*Termination of Program Payment Procedures* http://www.fns.usda.gov/sites/default/files/2000-10-17.pdf

B. References

CACFP Regulations
http://www.fns.usda.gov/cacfp/regulations

CACFP Policy
http://www.fns.usda.gov/cacfp/policy

FNS Instruction 420-1 Managing State Agency Debt
Obtain a copy from the FNS Regional Office

C. CACFP Handbooks

State agencies and institutions may find additional CACFP requirements relating to specific types of institutions in CACFP Handbooks.

- Adult Day Care
- At-Risk Afterschool
- Family Day Care Homes Monitor
- Guidance for Management Plans and Budgets
- Independent Child Care Centers
- Monitoring Handbook for State Agencies

D. Attachments

Attachment A. Serious Deficiency Chart – Flow Chart for Institutions

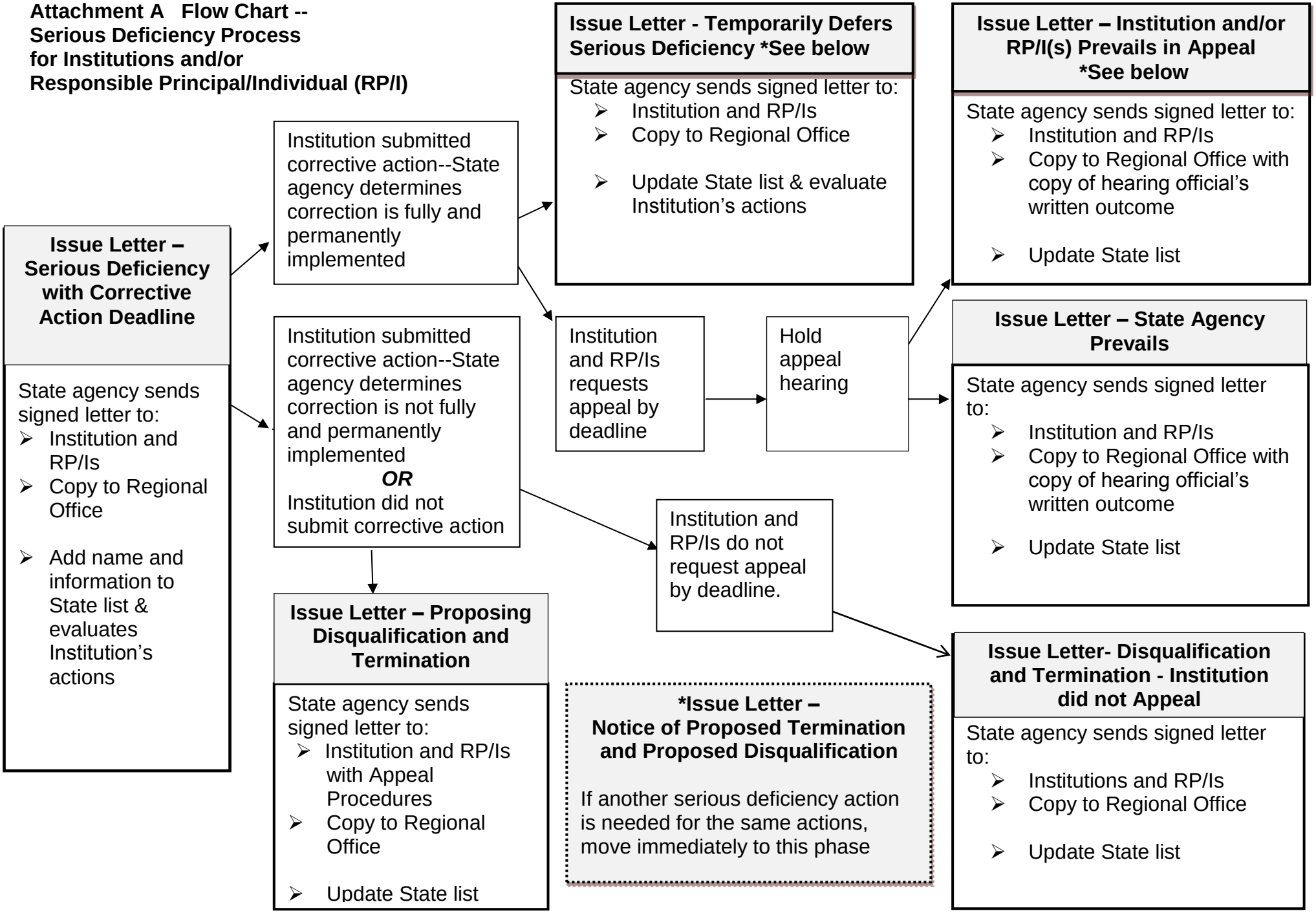
Attachment B. Serious Deficiency Chart – Flow Chart for Day Care Homes

Attachment C. Serious Deficiency Corrective Action Plan - South Carolina Example

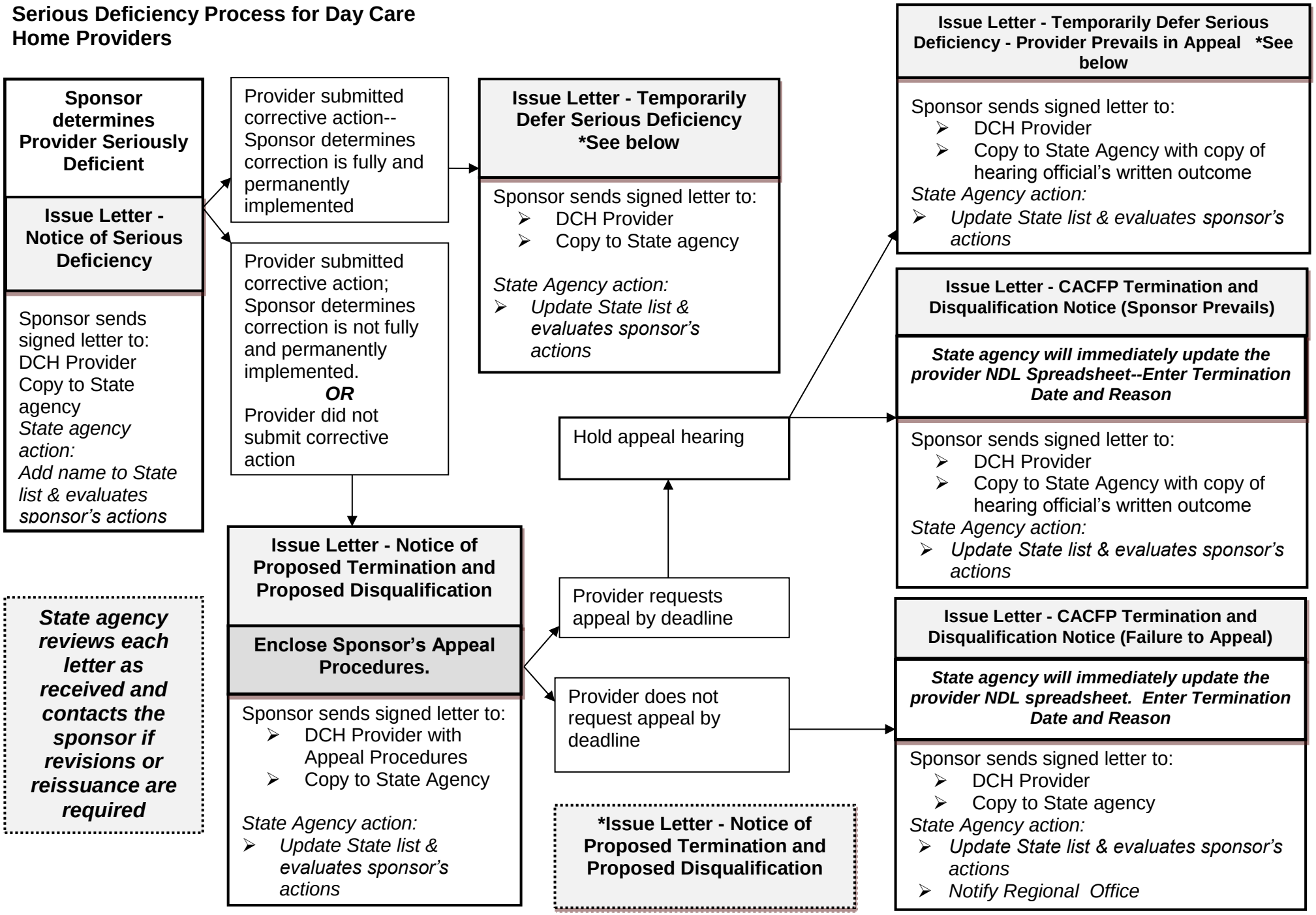
Attachment D. Serious Deficiency Corrective Action Plan - Florida Example

Attachment E. Notice of Serious Deficiency Documentation - Checklist Florida Example

Attachment A Flow Chart -- Serious Deficiency Process for Institutions and/or Responsible Principal/Individual (RP/I)



Attachment B Flow Chart – Serious Deficiency Process for Day Care Home Providers



Attachment C

South Carolina Department of Social Services
Serious Deficiency Corrective Action Plan for

Institution: _____ **Agreement Number:**_____

A. Name of Principals and Responsible Individuals:

Name	Title	Date of Birth

B. Serious Deficiency (state the serious deficiency as indicated in the serious deficiency notice)**:**

C. Corrective Actions, Documentation and Timetable for Implementation (The corrective action plan must be detailed and must include information on **who** will perform tasks/duties**, what** tasks will be performed**, when** the tasks will be performed (frequency and implementation timeframe), **where** (the location of CAP documentation) and **how** (method of implementation—handbook, training, etc.).

a. Name and title of individuals that will address the serious deficiency

b. Procedures already implemented or to be implemented to correct the serious deficiency

c. Timeframe for implementing the procedures to correct the issue:

When will the procedure for addressing the serious deficiency begin?

What is the timeline for implementing the procedure (i.e., will the procedure be done daily, weekly, monthly, or annually)?

d. Where will the CAP documentation be retained associated with correcting this issue:

e. Have written policies and procedures been modified or prepared? _____ Yes _____ No
If yes, provide a copy of the policies and procedures as an attachment to this CAP.
Policy/procedure attached? _____ Yes _____ No
If yes, what is the title of the policy/procedure?

f. Identify the supporting documentation included with this CAP which verifies corrections were made or will be implemented. (This might include copies of training documentation, site monitoring reports, attendance records, meal count forms, etc.)

g. Was a revised claim submitted for this serious deficiency? _____ Yes _____ No
If yes, attach the signed revised claim to your response.
Revised claim attached? _____ Yes _____ No

The individual signing the corrective action plan must have the authority to sign on behalf of the institution.

Signature: _____ **Date:** _____

Print Name: _____ **Title:** _____

Attachment D

Due Date: _____

Fax #: _____

Page _____ of _____

Authorization #: _____

Organization Name/Address: _____

_____

_____

Florida HEALTH

Child Care Food Program

SERIOUS DEFICIENCY CORRECTIVE ACTION PLAN

(DOH Use)

WHAT		WHO	WHEN	WHERE	HOW
Serious Deficiency Item # [Ex. 1(a)(6)]	Corrective Action	Individual Responsible	Frequency & Implementation Timeframe	Location of CAP Documentation	Method of Implementation [Ex. Handbook, Training, Website, etc.]

Note – Institutions should reference the Instructions for this form; see the next page.

For DOE use

DOE Approval:_____(initials)

Date: _____

Notes:_____

_____

_____

SERIOUS DEFICIENCY - CORRECTIVE ACTION PLAN (CAP) GUIDELINES

1) Why Are CAPs Needed?

A. To ensure that staff understands what they are doing wrong and what they need to do to make improvements.
B. To document the institution's plan for improvement and to provide an opportunity for the plan to be accepted by the Department or for the Department to request additional information or clarification.
C. To provide sufficient detail so that during future reviews a determination can be made about whether the institution staff made and maintained the corrective action(s).

2) When Are CAPs Required?

Any time issues of noncompliance are found.

3) What Information Must Be Included?

A. The plan must *specifically* address *each* issue of noncompliance noted on the review form or the Notice of Serious Deficiency.
B. The plan must clearly state:
   - **What** are the serious deficiency(ies) and the procedures that will be implemented to address the serious deficiency(ies)?
   - **Who** will address the serious deficiency? List personnel responsible for this task.
   - **When** will the procedures for addressing the serious deficiency be implemented? Provide a timeline for implementing the procedures (i.e., will the procedure be done daily, weekly, monthly, or annually, and when will it begin?)
   - **Where** will the CAP documentation be retained?
   - **How** will the staff and facilities or providers be informed of the new policies and procedures (e.g., Handbook, training, website, etc.)? **Note:** The plan should not merely restate the issue(s) with vague assurances, e.g., "we will correctly complete the meal count worksheet" or "management will take greater care to…." It is best to number the items on the CAP with the corresponding finding on the review form or Notice of Serious Deficiency.

4) What Will Happen Once I Have Submitted the CAP?

A. Your response will be reviewed, issue by issue, to ensure that you have provided a clear statement of <u>What</u>, <u>Who</u>, <u>When,</u> <u>Where,</u> <u>and</u> <u>How</u> the issue of noncompliance will be corrected.
B. If the CAP is denied, you will be notified and if time remains before the CAP due date you may resubmit the CAP. If no time remains, you will receive a Propose to Terminate and Disqualify letter.
C. If the CAP is <u>approved</u>, the Department staff will conduct a follow-up review to verify that the CAP has been implemented.
D. If the follow-up review reveals that the correction was not fully and permanently corrected, then a Propose to Terminate and Disqualify letter will be issued which could result in the institution and responsible principals and individuals being terminated and disqualified from the Child Care Food Program.

Attachment E

HEALTH

Child Care Food Program

Notice of Serious Deficiency
Documentation Checklist

Date: _____ Auth. #: _____

Program Specialist: _____ Contractor Name: _____

1. **Records Related to Financial Viability**

- ☐ Expenditure Worksheets (Operational and Administrative)
- ☐ Receipts and Invoices
- ☐ PAR Forms
- ☐ Payroll documents
- ☐ Bank statements
- ☐ Cancelled checks
- ☐ Catering delivery tickets
- ☐ Outstanding lien(s) and/or judgment(s)
- ☐ Any other statements or written records supporting the allegations raised
- ☐ Other: _____

2. **Records Related to Program Operations**

- ☐ Enrollment Roster and Error Worksheet
- ☐ Free/Reduced Applications and Error Worksheet
- ☐ Enrollment Forms
- ☐ Child Participation Forms
- ☐ Attendance records
- ☐ Sign-in/sign-out sheets
- ☐ Subsidy attendance records
- ☐ Expenditure Worksheets (Operating and Administrative)
- ☐ PARs
- ☐ Receipts/Invoices
- ☐ Payroll Documentation
- ☐ Meal Count Records
- ☐ Menus
- ☐ Any other statements or written records supporting the allegations raised
- ☐ Other: _____

PART 13. Prototype Letters

Prototype letters have been developed for use in the steps of the CACFP serious deficiency process. The letters in the section A. are for use by State agencies with institutions, and the letters in section B. for use by sponsoring organization with its DCHs. The letters contain all required regulatory language. Bracketed information is to be updated with appropriate names, dates, and information.

A. List of Prototypes - Institutions

Prototype Letter 1:	Notice of Serious Deficiency for Institutions
Prototype Letter 2:	Notice of Successful Corrective Action and Temporary Deferment of Serious Deficiency for Institutions
Prototype Letter 3:	Notice of Proposed Termination and Disqualification of Institutions
Prototype Letter 4:	Notice of Termination and Disqualification for Institutions - Institution does not appeal
Prototype Letter 5:	Notice of Termination and Disqualification for Institutions - State agency prevails in appeal
Prototype Letter 6:	Notice of Temporary Deferment of Serious Deficiency, Proposed Termination and Proposed Disqualification for Institutions - Institution prevails in appeal
Prototype Letter 7:	Notice of Serious Deficiency, Suspension and Proposed Termination and Disqualification for Institutions - Combined Notice for Imminent Threat to Health and Safety
Prototype Letter 8:	Notice of Termination and Disqualification for Institutions: Imminent Threat to Health and Safety - Institution Does Not Appeal
Prototype Letter 9:	Notice of Termination and Disqualification for Institutions - Imminent Threat to Health and Safety after State agency prevails in appeal
Prototype Letter 10:	Notice of Reinstatement - Imminent Threat to Health and Safety after institution prevails in appeal
Prototype Letter 11:	Notice of Serious Deficiency and Proposed Suspension of an Institution - Combined Notice for False or Fraudulent claim)
Prototype Letter 12:	Notice of Suspension - False or Fraudulent claims: Institution does not request a suspension review

Prototype Letter 13: Notice of Suspension for Institutions: False or Fraudulent Claims after State agency wins suspension review

Prototype Letter 14: Notice of Withdrawal of Proposed Suspension for Institutions - False or fraudulent claims after institution prevails in suspension review

B. List of Prototypes - Day Care Homes

Prototype Letter 15: Notice of Serious Deficiency for Day Care Home Providers

Prototype Letter 16: Notice of Successful Corrective Action and Temporary Deferment of Serious Deficiency for Providers

Prototype Letter 17: Notice of Proposed Termination and Disqualification for Providers – No Corrective Action Submitted

Prototype Letter 18: Notice of Proposed Termination and Disqualification for Providers – Required Corrective Action Not Acceptable

Prototype Letter 19: Notice of Termination and Disqualification for Providers - Provider does not appeal

Prototype Letter 20: Notice Termination and Disqualification for Provider - Sponsoring Organization prevails in appeal

Prototype Letter 21: Notice of Temporary Deferment of Serious Deficiency and Termination and Disqualification – Provider prevails in appeal

Prototype Letter 22: Notice of Serious Deficiency, Suspension, and Proposed Termination and Disqualification for Providers - Combined Notice for imminent Threat to Health and Safety

Prototype Letter 23: Notice of Termination and Disqualification – Suspension, and Proposed Termination and Disqualification - Provider does not appeal

Prototype Letter 24: Notice of Termination and Disqualification - Imminent threat to health or safety after sponsoring organization prevails in appeal

Prototype Letter 25: Notice of Temporary Deferment of Serious Deficiency, Suspension, and Proposed Termination and Disqualification for Imminent threat to health or safety after provider prevails in appeal

C. List of Prototypes - Unaffiliated Centers

This Section was intentionally left blank. We will provide prototype letters related to unaffiliated centers when the Final Rule implementing these requirements is published.

D. Prototype Letters - Institutions

Prototype Letter 1: Notice of Serious Deficiency for Institutions

[*Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.*]

Date

Institution Director Name and Title
Institution Name
Institution Street Address
Institution City, State 00000

Name of Chairman of Board of Directors and Title
Institution Name
Institution Street Address
Institution City, State 00000

Re: Agreement Number _____

Dear [Director] and [Board Chair]:

This letter concerns the [brief description of the basis for the serious deficiency determination – review, audit, etc., and date] of [*institution's*] operation of the Child and Adult Care Food Program (CACFP).

SERIOUS DEFICIENCY DETERMINATION

Based on the [*review/audit/etc*.] on [*date*], the [*State agency*] has determined that [institution] is seriously deficient in its operation of the CACFP. In addition, the [*State agency*] has identified [*Director*] and [*Board Chair*] as responsible for the serious deficiencies in light of their responsibility for the overall management of [*institution's*] operations.

If there are other RP/Is, you must list them here and state why they are responsible for the serious deficiencies. If [*institution*] does not fully and permanently correct all of the serious deficiencies and submit documentation of the corrective action by [*due date*], the State agency will:

- Propose to terminate [*institution's*] agreement to participate in the CACFP,
- Propose to disqualify [*institution*] from future CACFP participation, and

- Propose to disqualify [*Director*] and [*Board Chair and any other RP/Is*] from future CACFP participation.

In addition, if [institution] voluntarily terminates its agreement after receiving this letter, the State agency will propose to disqualify [*institution*], [*Director*], and [*Board Chair and any other RP/Is*] from future CACFP participation. If disqualified, [*institution*], [*Director*], and [*Board Chair and any other RP/Is*] will be placed on the National Disqualified List (NDL). While on the list, [*institution*] will not be able to participate in the CACFP as an institution or facility. [*Director*] and [*Board Chair and any other RP/Is*] will not be able to serve as a principal in any institution or facility or as a day care home provider in the CACFP.

Institutions and individuals remain on the NDL until USDA's Food and Nutrition Service, in consultation with the [*State agency*], determines that the serious deficiencies have been corrected, or until seven years after their disqualification. However, if any debt relating to the serious deficiencies has not been repaid, they will remain on the list until the debt has been repaid.

These actions are being taken pursuant to 7 CFR 226.6(c)(3) of the CACFP regulations.

SERIOUS DEFICIENCIES AND REQUIRED CORRECTIVE ACTION

[*The following paragraphs detail each serious deficiency and the corrective action required. Insert discussion of serious deficiencies and required corrective action. Each serious deficiency discussed must include a citation of the relevant serious deficiency in the regulations at 7 CFR 226.6(c)(3)(ii). If the serious deficiency is not specifically listed, cite:* 7 CFR 226.6(c)(3)(ii)(U), *any other action affecting the institution's ability to administer the CACFP.*]

[*If there is an overclaim, repayment of the overclaim must be a condition of corrective action. In addition, for an overclaim, you must include the following language:*] The institution may appeal the determination of the overclaim. A copy of the appeal procedures is enclosed. If the institution chooses to appeal the overclaim, follow the enclosed appeal procedures as failure to do so may result in the denial of the request for an appeal.

SUMMARY

The State agency has determined that [institution] is seriously deficient in its operation of the CACFP and that [*Director*] and [*Board Chair and any other RP/Is*] are responsible for the serious deficiencies.

The institution must provide documentation that shows it has taken the required corrective action for each of the serious deficiencies cited in this letter. The documentation must be <u>received</u> (not just postmarked) by [*corrective action deadline*]. *You may establish different deadlines for different serious deficiencies, as long as they are consistent with the regulations at 7 CFR 226.6(c)(4).*

If the State agency does not receive the documentation of the corrective action by the due date, or if we determine that the actions taken do not fully and permanently correct all of the serious deficiencies, we will propose to terminate [*institution's*] CACFP agreement and will disqualify [*institution*], [*Director*], and [*Board Chair and any other RP/Is*] from further participation in the CACFP.

The institution may not appeal the serious deficiency determination. However, if the [*State agency*] proposes to terminate [*institution's*] agreement and disqualify [*institution*], [*Director*], or [Board Chair or any other RP/Is], the institution will be able to appeal those actions. The institution will be advised of appeal rights and the appeal procedures at that time.

[Institution] may continue to participate in the CACFP during the corrective action period. [*If suspension is also being proposed based on the submission of a false or falsified claim, insert* unless [*institution's*] CACFP participation is suspended.] Valid claims for reimbursement submitted by [institution] for this period will be paid. As always, the institution must submit claims within 60 calendar days of the last day of the month covered by the claim. In addition, the State agency will deny any portion of a claim determined invalid. If payment of any portion of a claim is denied, that action may be appealed.

Insert if applicable: If the [*State agency*] receives the documentation of the institution's corrective action by [*due date*] and determines that the corrective action plan fully and permanently corrects all of the serious deficiencies, the [*State agency*] will temporarily defer the determination of serious deficiency. (***NOTE: Conducting a follow-up review is not required to accept a corrective action and should NOT delay the temporary deferral of a serious deficiency determination.)*** The [*State agency*] may conduct an unannounced follow-up review to verify the adequacy of the corrective action. If the [*State agency*] finds in a follow-up review or any subsequent review that any of these serious deficiencies have not been fully and permanently corrected, the [*State agency*] will immediately propose to terminate [institution's] agreement and propose to disqualify [*institution*], [*Director*], and [*Board Chair and any other RP/Is*] without any further opportunity for corrective action.

Sincerely,

State Agency Employee Name and Title

Include appeal procedures as an enclosure if an overclaim is involved.

cc: FNS Regional Office

[*If there are additional people identified as RP/Is, they must also be noted as "cc's" and sent their copy of the letter in accordance with the requirements in 7 CFR 226.2 (definition of "notice").*]

Prototype Letter 2: Notice of Successful Corrective Action and Temporary Deferment of Serious Deficiency for Institutions

[*Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.*]

Date

Institution Director Name and Title
Institution Name
Institution Street Address
Institution City, State 00000

Name of Chairman of Board of Directors and Title
Institution Name
Institution Street Address
Institution City, State 00000

Re: Agreement Number _____

Dear [Director] and [Board Chair]:

This letter concerns the determination in the Serious Deficiency Notice dated [*insert date*] that [*institution*] is seriously deficient in its operation of the Child and Adult Care Food Program (CACFP), and that [*Director*] and [*Board Chair and any other responsible principals or responsible individuals (RP/Is*)] are responsible for the serious deficiencies.

The [*State agency*] received the documentation sent detailing the actions the institution has taken to correct these serious deficiencies. This documentation was received on [date], before the corrective action deadline date of [*insert date*]. [*Insert if applicable:* The [*State agency*] conducted a follow-up review on [*date*] to verify the adequacy of the corrective actions.] (***NOTE: Conducting a follow-up review is not required to accept a corrective action and should NOT delay the temporary deferral of a serious deficiency determination.)***

SERIOUS DEFICIENCY DETERMINATION TEMPORARILY DEFERRED

Based on the review of the documentation [*insert if applicable: '"and the* [*date*] *follow-up review*"], the State agency has determined that [*institution*] has fully and permanently corrected the serious deficiencies that were cited in the Serious Deficiency Notice. As a result, the serious deficiency determination has been temporarily deferred as of the date of this letter. This also means that the State agency will not propose to terminate [*institution's*] agreement based on this serious deficiency finding and disqualify [*institution*], [*Director*], or [*Board Chair or any other RP/Is*] on that basis.

ADEQUACY OF CORRECTIVE ACTIONS

The following paragraphs describe the results of a review of the corrective action. [*Insert discussion of each serious deficiency and why the corrective action is adequate. Each serious deficiency discussed must include a citation for the relevant serious deficiency in the regulations at 7 CFR 226.6(c)(3)(ii). If the serious deficiency is not specifically listed, cite 7 CFR 226.6(c)(3)(ii)(U), any other action affecting the institution's ability to administer the CACFP).*]

[*Insert if appropriate: The* [*State agency's*] *report on the* [*date*] *follow-up review will be provided in a separate letter.*]

SUMMARY

The [*State agency*] has temporarily deferred the serious deficiency determination. However, if, in any subsequent review, any of these serious deficiencies have not been fully and permanently corrected, the [*State agency*] will immediately propose to terminate [*institution's*] agreement and propose to disqualify [*institution*], [Director], and [*Board Chair and any other RP/Is*] without any further opportunity for corrective action.

Sincerely,

State Agency Employee Name and Title

cc: FNS Regional Office

[*If there are additional people identified as RP/Is, they must also be noted as "cc's" and sent their copy of the letter in accordance with the requirements in 7 CFR 226.2 (definition of "notice").*]

Prototype Letter 3: Notice of Proposed Termination and Disqualification of Institutions

[*Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.*]

Date

Institution Director Name and Title
Institution Name
Institution Street Address
Institution City, State 00000

Name of Chairman of Board of Directors and Title
Institution Name
Institution Street Address
Institution City, State 00000

Re: Agreement Number _____

Dear [Director] and [Board Chair]:

This letter concerns the Serious Deficiency Notice dated [insert date] which determined that [*institution*] is seriously deficient in its operation of the Child and Adult Care Food Program (CACFP) and that [*Director*] and [*Board Chair and any other responsible principals or responsible individuals (RP/Is*)] are responsible for the serious deficiencies.

The [*State agency*] received the documentation sent detailing the actions the institution has taken to correct these serious deficiencies on [*date*], before the corrective action deadline date of [*insert date*]. [*Insert if applicable: The* [*State agency*] *conducted a follow-up review on* [*date*] *to verify the adequacy of the corrective actions.*] (***NOTE: Conducting a follow-up review is not required to accept a corrective action and should NOT delay the temporary deferral of a serious deficiency determination.***)

Based on the [*State agency*'s] review of the documentation **[***insert if applicable**:** and the follow-up review*], the [*State agency*] has determined that [institution] has not fully and permanently corrected the serious deficiencies cited in the Serious Deficiency Notice.

PROPOSED TERMINATION AND PROPOSED DISQUALIFICATION

As a result, effective [*date*], the [*State agency*] proposes to:

- Terminate [*institution*'s] agreement to participate in the CACFP;
- Disqualify [*institution*] from future CACFP participation; and

- Disqualify [*Director*] and [*Board Chair*] [*and any other RP/Is*] from future CACFP participation.

Note regarding effective date of action: The institution has 15 days after receiving this notice to submit its request for an appeal. Therefore, the effective date for these actions must be at least 15 days after the date of this letter, plus the time necessary for the institution to receive this notice and the time necessary for the State agency to receive the request for an appeal. In addition, the effective date for the disqualifications should generally be the same as the agreement termination date, and not earlier; otherwise, the institution, Director, Board Chair and any other RP/Is will be disqualified and ineligible to participate before the institution's agreement is terminated.

In addition, if [*institution*] voluntarily terminates its agreement after receiving this letter, the [*State agency*] will propose to disqualify [*institution*], [*Director*], and [*Board Chair and any other RP/Is*] from future CACFP participation. If disqualified, [*institution*], [*Director*], and [*Board Chair*] [*and any other RP/Is*] will be placed on the National Disqualified List (NDL). While on the NDL, [institution] will not be able to participate in the CACFP as an institution or facility. [*Director*] and [*Board Chair*] [*and any other RP/Is*] will not be able to serve as a principal in any institution or facility or as a day care home provider in the CACFP.

Institutions and individuals remain on the NDL until USDA's Food and Nutrition Service, in consultation with the [*State agency*], determines that the serious deficiencies have been corrected, or until seven years after their disqualification. However, if any debt relating to the serious deficiencies has not been repaid, they will remain on the NDL until the debt is repaid.

These actions are being taken pursuant to 7 CFR 226.6(c)(3).

STATUS OF SERIOUS DEFICIENCIES

The following paragraphs detail each serious deficiency and its status based on the review of the corrective action documentation [*insert if applicable*: and the [*date*] follow-up review.] [*Insert discussion of each serious deficiency and the reasons why corrective action was inadequate (the corrective action may be adequate for some items and not for others; make sure you specify the status of the corrective action for each serious deficiency). Each serious deficiency discussed must include a citation for the relevant serious deficiency in the regulations at 7 CFR 226.6(c)(3)(ii). If the serious deficiency is not specifically listed, cite: 7 CFR* 226.6(c)(3)(ii)(U) "any other action affecting the institution's ability to administer the CACFP".]

APPEAL OF PROPOSED TERMINATION AND DISQUALIFICATION

[*Institution*] may appeal the proposed termination of its agreement. In addition, [*institution*], [*Director*], and [*Board Chair and any other RP/Is*] may appeal their proposed disqualifications. A copy of the appeal procedures is enclosed. If any of you

decide to appeal the proposed actions, all appeal procedures must be followed as failure to do so may result in the denial of your request for an appeal.

SUMMARY

[Institution] has not fully and permanently corrected the serious deficiencies identified in the Serious Deficiency Notice. For this reason, the [*State agency*] is proposing to terminate [institution's] CACFP agreement and disqualify [*institution*], [*Director*], and [*Board Chair and any other RP/Is*].

The proposed termination and the disqualifications may be appealed. If appealed, the proposed actions will not take effect until the hearing official issues a decision. If [*institution*] does not make a timely request for an appeal, [*institution's*] agreement will be terminated on [*date*]. If [*institution*], [*Director*], and [*Board Chair and any other RP/Is*] do not appeal their proposed disqualification, they will be disqualified from future CACFP participation effective [*date*] and placed on the NDL.

Insert the following unless the institution has been suspended (if there was a proposed suspension, any suspension review should be complete by this point): [*Institution*] may continue to participate in the CACFP until [*termination/ disqualification effective date*] or, if [*institution*] appeals the proposed actions, until the hearing official issues a decision on the appeals. We will pay all valid claims for reimbursement submitted by [*institution*] for this period. As always, you must submit claims within 60 calendar days of the last day of the month covered by the claim. In addition, we will deny any portion of a claim we determine is invalid. If we deny payment of any portion of a claim, that action may be appealed.

Sincerely,

State Agency Employee Name and Title

Enclosure: Appeal Procedures

cc: FNS Regional Office

[*If there are additional people identified as RP/Is, they must also be noted as "cc's" and sent their copy of the letter in accordance with the requirements in 7 CFR 226.2 (definition of "notice").*]

Prototype Letter 4: Notice of Termination and Disqualification for Institutions - Institution does not appeal

[*Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.*]

Date

Institution Director Name and Title
Institution Name
Institution Street Address
Institution City, State 00000

Name of Chairman of Board of Directors and Title
Institution Name
Institution Street Address
Institution City, State 00000

Re: Agreement Number _____

Dear [Director] and [Board Chair]:

This letter concerns the [*date*] Notice of Proposed Termination & Disqualification, which proposed to terminate [institution's] agreement to participate in the Child and Adult Care Food Program (CACFP). In that letter, the [*State agency*] also proposed to disqualify [*institution*], [*Director*] and [*Board Chair and any other responsible principals or responsible individuals (RP/Is)*] from further CACFP participation. These actions were based on the determination in the [*date*] Serious Deficiency Notice that [*institution*] is seriously deficiency in its operation of the CACFP and that [*Director*] and [*Board Chair and any RP/Is*] are responsible for the serious deficiencies.

[*Institution*] received the Notice of Proposed Termination & Disqualification on [*date received*]. The institution had 15 days from that date (i.e., [date 15 days after date of receipt of Notice of Proposed Termination and Proposed Disqualification]) to submit any requests for appeals of the proposed actions. No requests for appeals were submitted by that deadline.

TERMINATION AND DISQUALIFICATION

Because the time to request an appeal has now expired, effective [*date*], the [*State agency*] is:

- Terminating [institution's] agreement to participate in the CACFP;
- Disqualifying [*institution*] from future CACFP participation; and

- Disqualifying [*Director*] and [Board Chair and any other RP/Is] from future CACFP participation.

The effective date for the disqualifications should generally be the same as the agreement termination date, and not earlier; otherwise, the institution, Director, Board Chair and any other RP/Is will be disqualified and ineligible to participate before the institution's agreement is terminated.

Upon disqualification, [*institution*], [*Director*], and [*Board Chair and any other RP/Is*] will be placed on the National Disqualified List (NDL). While on the NDL, [*institution*] will not be able to participate in the CACFP as an institution or facility. [*Director*] and [*Board Chair and any other RP/Is*] will not be able to serve as a principal in any institution or facility or as a day care home provider in the CACFP.

Institutions and Individuals remain on the NDL until USDA's Food and Nutrition Service, in consultation with the [*State agency*], determines that the serious deficiencies have been corrected, or until seven years after their disqualification. However, if any debt relating to the serious deficiencies has not been repaid, they will remain on the NDL until the debt is repaid.

These actions are being taken pursuant to7 CFR 226.6(c)(3).

SUMMARY

The [*State agency*] is terminating [*institution*'s CACFP agreement and disqualifying [*Director*] and [*Board Chair and any other RP/Is*]. [*Institution*] <u>may not appeal</u> the termination of its agreement. In addition, [*institution*], [*Director*] and [*Board Chair and any other RP/Is*] <u>may not appeal</u> the disqualifications.

Insert the following unless the institution has been suspended (If there was a proposed suspension, any suspension review should be complete by this point.):

"[*Institution*] may continue to participate in the CACFP until [*termination/disqualification effective date*]. The [*State Agency*] will pay any valid claims for reimbursement submitted by [institution] for this period. As always, claims must be submitted within 60 calendar days of the last day of the month covered by the claim. In addition, the [*State agency*] will deny any portion of a claim determined is invalid. If the [*State agency*] denies payment of any portion of a claim, that action would be appealable.

Sincerely,

State Agency Employee Name and Title

cc: FNS Regional Office

[*If there are additional people identified as RP/Is, they must also be noted as "cc's" and sent their copy of the letter in accordance with the requirements in 7 CFR 226.2 (definition of "notice")*.]

Prototype Letter 5: Notice of Termination and Disqualification for Institutions - State agency prevails in appeal

[*Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.*]

Date

Institution Director Name & Title
Institution Name
Institution Street Address
Institution City, State 00000

Name of Chairman of Board of Directors & Title
Institution Name
Institution Street Address
Institution City, State 00000

Re: Agreement Number _____

Dear [Director] and [Board Chair]:

This letter concerns the [*State agency*'s] [*date of Notice of Proposed Termination & Disqualification*] Notice of Proposed Termination & Disqualification, which proposed to terminate [*institution*'s] agreement to participate in the Child and Adult Care Food Program (CACFP). In that letter, we also proposed to disqualify [*institution*], [*Director*] and [*Board Chair*] [*and any other responsible principals or responsible individuals (RP/Is*)] from further CACFP participation. These actions were based on the determination in the [*date of Serious Deficiency Notice*] Serious Deficiency Notice that [institution] is seriously deficient in its operation of the CACFP and that and that [*Director*] and [*Board Chair*] [*and any RP/Is*] are responsible for the serious deficiencies.

[*Institution*] filed a timely appeal of the proposed termination and disqualification. In addition, [*Director*], and [*Board Chair*] [*and any other RP/Is*] filed timely appeals of their proposed disqualifications. On [*date of hearing official's decision*], the hearing official issued a decision on all of the appeals. In that decision, the hearing official upheld all of the proposed actions.

TERMINATION AND DISQUALIFICATION

As a result, effective [*date*], the State agency is:

- Terminating [*institution*'s] agreement to participate in the CACFP;
- Disqualifying [*institution*] from future CACFP participation; and

- Disqualifying [*Director*] and [*Board Chair*] [*and any other RP/Is*] from future CACFP participation.

[*The effective date may be no earlier than the date of the hearing official's decision. The effective date for the disqualifications should generally be the same as the agreement termination date, and not earlier; otherwise, the institution, Director, Board Chair and any other RP/Is will be disqualified and ineligible to participate before the institution's agreement is terminated*.]

[*Institution*], [*Director*], and [*Board Chair*] [*and any other RP/Is*] will be placed on the National Disqualified List (NDL). While on the NDL, [*institution*] will not be able to participate in the CACFP as an institution or facility. [*Director*] and [*Board Chair*] [*and any other RP/Is*] will not be able to serve as a principal in any institution or facility or as a day care home provider in the CACFP.

Institutions and individuals remain on the NDL until USDA's Food and Nutrition Service, in consultation with the [*State agency*], determines that the serious deficiencies have been corrected, or until seven years after their disqualification. However, if any debt relating to the serious deficiencies has not been repaid, they will remain on the NDL until the debt is repaid.

These actions are being taken pursuant to 7 CFR 226.6(c)(3).

SUMMARY

The State agency is terminating [*institution*'s] CACFP agreement and disqualifying [*Director*] and [*Board Chair*] [*and any other RP/Is*]. [Institution] <u>may not appeal</u> the termination of its agreement. In addition, [*institution*], [*Director*] and [*Board Chair*] [*and any other RP/Is*] <u>may not appeal</u> the disqualifications.

[*Insert the following unless the institution has been suspended (if there was a proposed suspension, any suspension review should be complete by this point*):

"[*Institution*] may continue to participate in the CACFP until [*termination/disqualification effective date*]. The [*State Agency*] will pay any valid claims for reimbursement submitted by [institution] for this period. As always, claims must be submitted within 60 calendar days of the last day of the month covered by the claim. In addition, the [*State agency*] will deny any portion of a claim determined is invalid. If the [*State agency*] denies payment of any portion of a claim, that action would be appealable.

Sincerely,

State agency Employee Name & Title

cc: FNS Regional Office

[*If there are additional people identified as RP/Is, they must also be noted as "cc's" and sent their copy of the letter in accordance with the requirements in 7 CFR 226.2 (definition of "notice").*]

Prototype Letter 6: Notice of Temporary Deferment of Serious Deficiency, Proposed Termination and Proposed Disqualification for Institutions - Institution prevails in appeal

[*Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.*]

Date

Institution Director Name & Title
Institution Name
Institution Street Address
Institution City, State 00000

Name of Chairman of Board of Directors & Title
Institution Name
Institution Street Address
Institution City, State 00000

Re: Agreement Number _____

Dear [Director] and [Board Chair]:

This letter concerns the [*State agency*'s] [*date of Notice of Proposed Termination & Disqualification*] Notice of Proposed Termination & Disqualification. In that letter, the [State agency] also proposed to terminate [*institution's*] agreement and disqualify [*institution*], [*Director*] and [*Board Chair*] [*and any other responsible principals or responsible individuals (RP/Is)*] from further CACFP participation. These actions were based on the determination in the [*date of Serious Deficiency Notice*] Serious Deficiency Notice that [i*nstitution*] is seriously deficient in its operation of the CACFP and that [*Director*] and [*Board Chair*] [*and any RP/Is*] are responsible for the serious deficiencies.

[*Institution*] filed a timely appeal of the proposed termination and disqualification. In addition, [*Director*], and [*Board Chair*] [*and any other RP/Is*] filed timely appeals of their proposed disqualifications. On [*date of appeal decision*], the hearing official issued a decision. In that decision, the hearing official overturned all of the proposed actions.

SERIOUS DEFICIENCY DETERMINATION

As a result, the State Agency's proposed termination and disqualification of [*Institution*] and its responsible principals and individuals [*Director*], and [*Board Chair*] [*and any other RP/Is*] has been vacated.

However, the institution and RP/Is must still implement procedures and policies to permanently correct the serious deficiencies. Upon approval of a corrective action, the [*State agency*] will temporarily defer the serious deficiency determination. If the [*State agency*] initially determine that the corrective action has fully and permanently corrected the serious deficiency(ies),, but later determine that the serious deficiency(ies) has/have recurred, the [*State agency*] **must** move to immediately to issue a notice of proposed termination and disqualification the institution and RP/Is.

Sincerely,

State Agency Employee Name & Title

cc: FNS Regional Office

[*If there are additional people identified as RP/Is, they must also be noted as "cc's" and sent their copy of the letter in accordance with the requirements in 7 CFR 226.2 (definition of "notice")*.]

Prototype Letter 7: Notice of Serious Deficiency, Suspension and Proposed Termination and Disqualification for Institutions - Combined Notice for Imminent Threat to Health and Safety

REMEMBER: For imminent threat to health and safety, there is no opportunity to correct.

Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.

Date

Institution Director Name and Title
Institution Name
Institution Street Address
Institution City, State 00000

Name of Chairman of Board of Directors and Title
Institution Name
Institution Street Address
Institution City, State 00000

Re: Agreement Number _____

Dear [Director] and [Board Chair]:

This letter concerns the [*brief description of the basis for the serious deficiency determination – review, audit, etc. and date*] of [*institution's*] operation of the Child and Adult Care Food Program (CACFP).

SERIOUS DEFICIENCY DETERMINATION

An imminent threat to health or safety of participants and engaging in activities that threaten the public health or safety constitute serious deficiencies. [Describe details here.] Based on the [*review/audit/etc*.], on [d*ate*], the [*State agency*] has determined that [*institution*] is seriously deficient in its operation of the CACFP. In addition, we have identified [*Director*] and [*Board Chair*] as responsible for the serious deficiencies in light of their responsibility for the overall management of [*institution's*] operations.

[*If there are other responsible principals or responsible individuals (RP/Is), you must list them here and state why they are responsible for the serious deficiencies.*]

SUSPENSION

If State or local health or licensing officials have cited n institution for serious health or safety violations, or if the State Agency has determined that there is 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, the State agency must immediately suspend the institution's Program participation, initiate action to terminate the institution's agreement and initiate action to disqualify the institution and responsible principals and responsible individuals **prior** to any action to revoke the institution's licensure or approval. Because of this imminent risk, the [*State agency*] is suspending [*institution's*] CACFP participation (including all Program payments). The suspension of CACFP participation (including all Program payments) will take effect on the date of this letter. This action is being taken pursuant to 7 CFR 226.6(c)(5)(i) of the CACFP regulations.

The suspension of CACFP participation (including all Program payments) will take effect on the date of this letter. This action is being taken pursuant to 7 CFR 226.6(c)(5)(ii)(D) of the CACFP regulations**.)**

PROPOSED TERMINATION AND DISQUALIFICATION

Effective [*date*], the [*State agency*] also proposes to:

- Terminate [*institution*'s] agreement to participate in the CACFP for cause and

- Disqualify [*institution/Director/Board or other RP/Is*] from future CACFP participation.

[*The effective date for the termination/disqualification must be after the deadline for requesting an appeal. In addition, the effective date for the disqualification should generally be the same as the agreement termination date, and not earlier; otherwise, the provider could be disqualified and ineligible to participate before the agreement is terminated.*]

If [institution] voluntarily terminates its agreement after receiving this letter, the State agency will propose to disqualify [*institution*], [*Director*], and [*Board Chair and any other RP/Is*] from future CACFP participation. If disqualified, [*institution*], [*Director*], and [*Board Chair and any other RP/Is*] will be placed on the National Disqualified List (NDL). While on the NDL, [*institution*] will not be able to participate in the CACFP as an institution or facility. [*Director*] and [*Board Chair and any other RP/Is*] will not be able to serve as a principal in any institution or facility or as a day care home provider in the CACFP.

Institutions and individuals remain on the NDL until USDA's Food and Nutrition Service, in consultation with the [*State agency*], determines that the serious deficiencies have

been corrected, or until seven years after their disqualification. However, if any debt relating to the serious deficiencies has not been repaid, they will remain on the list until the debt has been repaid.

These actions are being taken pursuant to 7 CFR 226.6(c)(3).

APPEAL OF SUSPENSION AND PROPOSED TERMINATION AND DISQUALIFICATION

[*Institution*] may appeal the suspension and its proposed termination and disqualification for cause. In addition, [*institution*], [*Director*], and [*Board Chair and any other RP/Is*] may appeal their proposed disqualifications. If a decision is made to appeal the proposed actions, follow the appeal procedures exactly as failure to do so may result in the denial of your request for an appeal. Enclosed are procedures for appeal of the suspension and appeal of the proposed termination and disqualification].

SUMMARY

The [*State agency*] is suspending [*institution*'s] CACFP participation (including all Program payments) effective (date of this letter). In addition, the [State agency] is proposing to terminate [*institution*'s] CACFP agreement and disqualify [*institution*], [*Director*], and [*Board Chair and any other RP/Is*].

The suspension will remain in effect during the period of any appeal. However, if the institution requests an appeal and the hearing official overturns the suspension, all valid claims for reimbursement submitted by [*institution*] for the period of the suspension will be paid. As always, the [*State agency*] will deny any portion of a claim that is determined to be invalid.

The proposed termination and disqualification may also be appealed. If appealed, the proposed actions will not take effect until the hearing official issues a decision. If [institution] does not make a timely request for an appeal, [*institution*'s] agreement will be terminated on [*date*]. If [*institution*], [*Director*], and [*Board Chair and any other RP/Is*] do not appeal their proposed disqualification, they will be disqualified from future CACFP participation effective [*date*] and placed on the NDL.

Sincerely,

State Agency Employee Name and Title

Enclosure: Appeal Procedures

cc: FNS Regional Office

[*If there are additional people identified as RP/Is, they must also be noted as "cc's" and sent their copy of the letter in accordance with the requirements in 7 CFR 226.2 (definition of "notice")*.]

Prototype Letter 8: Notice of Termination and Disqualification for Institutions: Imminent Threat to Health and Safety - Institution Does Not Appeal

[*Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.*]

Date

Institution Director Name and Title
Institution Name
Institution Street Address
Institution City, State 00000

Name of Chairman of Board of Directors and Title
Institution Name
Institution Street Address
Institution City, State 00000

Re: Agreement Number _____

Dear [Director] and [Board Chair]:

This letter concerns the [*date*] Combined Notice which suspended [*institution*'s] participation in the Child and Adult Care Food Program (CACFP) In that letter, we also proposed to terminate [*institution*'s] CACFP participation and disqualify [institution], [*Director*] and [*Board Chair and any other responsible principals or responsible individuals (RP/Is)*] from further CACFP participation. These actions were based on the determination in the [*date*] letter that [*institution*] is seriously deficient in its operation of the CACFP and posed an imminent threat to the health or safety of CACFP participants or the public and that [*Director*] and [*Board Chair and any RP/Is*] are responsible for the serious deficiencies.

[*Institution*] had 15 days from [date] to submit a request for appeal of the suspension and the proposed termination and disqualification. No request for appeal was submitted by that deadline.

TERMINATION AND DISQUALIFICATIONS

Because the time to request an appeal has now expired, effective [*date*], the [*State agency*] is:

- Terminating [*institution's*] agreement to participate in the CACFP;
- Disqualifying [*institution*] from future CACFP participation; and

- Disqualifying [*Director*] and [*Board Chair and any other RP/Is*] from future CACFP participation.

The [*State agency*] is placing [*institution*], [*Director*] and [*Board Chair and any other RP/Is*] on the National Disqualified List (NDL). While on the NDL, [*institution*] will not be able to participate in the CACFP as an institution or facility. [*Director*] and [*Board Chair and any other RP/Is*] will not be able to serve as a principal in any institution or facility or as a day care home provider in the CACFP.

Institutions and individuals remain on the NDL until USDA's Food and Nutrition Service, in consultation with the [*State agency*], determines that the serious deficiencies have been corrected, or until seven years after their disqualification. However, if any debt relating to the serious deficiencies has not been repaid, they will remain on the list until the debt is repaid.

These actions are being taken pursuant to 7 CFR 226.6(c)(5)(i).

SUMMARY

The [*State agency*] is terminating [*institution's*] CACFP agreement and disqualifying [*Director*] and [*Board Chair and any other RP/Is*]. [*Institution*] <u>may not appeal</u> the termination of its agreement. In addition, [*institution*], [*Director*] and [*Board Chair and any other RP/Is*] <u>may not appeal</u> the disqualifications. Since your participation was suspended, [*Institution*] may only claim reimbursement for valid meal served up until (insert date of suspension). The institution must submit a claim for these meals by [*insert a date that will give the provider an appropriate length of time to submit these claims*].

Sincerely,

State Agency Employee Name and Title

cc: FNS Regional Office

[*If there are additional people identified as RP/Is, they must also be noted as "cc's" and sent their copy of the letter in accordance with the requirements in 7 CFR 226.2 (definition of "notice").*]

Prototype Letter 9: Notice of Termination and Disqualification for Institutions - Imminent Threat to Health and Safety after State agency prevails in appeal

[*Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.*]

Date

Institution Director Name and Title
Institution Name
Institution Street Address
Institution City, State 00000

Name of Chairman of Board of Directors and Title
Institution Name
Institution Street Address
Institution City, State 00000

Re: Agreement Number _____

Dear [Director] and [Board Chair]:

This letter concerns the [*date*] Combined Notice which suspended [*institution's*] participation in the Child and Adult Care Food Program (CACFP). In that letter, we also proposed to terminate [*institution's*] CACFP participation and disqualify [*institution*], [*Director*] and [*Board Chair and any other responsible principals or responsible individuals (RP/Is*)] from further CACFP participation. These actions were based on the determination in the [*State agency's*] [*date*] letter that [*institution*] is seriously deficient in its operation of the CACFP and posed an imminent threat to the health or safety of CACFP participants or the public and that [*Director*] and [*Board Chair and any RP/Is*] are responsible for the serious deficiencies.

[*Institution*] filed a timely appeal of the suspension and proposed termination and disqualification. In addition, [*Director*], and [*Board Chair*] [*and any other RP/Is*] filed timely appeals of their proposed disqualifications. On [*date of hearing official's decision*], the hearing official issued a decision. In that decision, the hearing official upheld all of the proposed actions.

TERMINATION AND DISQUALIFICATION

As a result, effective [date], the State agency is:

- Terminating [*institution's*] agreement to participate in the CACFP;
- Disqualifying [*institution*] from future CACFP participation; and

- Disqualifying [*Director*] and [*Board Chair and any other RP/Is*] from future CACFP participation.

[*The effective date will be the date of or after the date of hearing official's decision*.]

The [*State agency*] is placing [*institution*], [*Director*] and [*Board Chair and any other RP/Is*] on the National Disqualified List (NDL). While on the NDL, [*institution*] will not be able to participate in the CACFP as an institution or facility. [*Director*] and [*Board Chair and any other RP/Is*] will not be able to serve as a principal in any institution or facility or as a day care home provider in the CACFP.

Institutions and individuals remain on the NDL until USDA's Food and Nutrition Service, in consultation with the [State agency], determines that the serious deficiencies have been corrected, or until seven years after their disqualification. However, if any debt relating to the serious deficiencies has not been repaid, they will remain on the list until the debt is repaid.

These actions are being taken pursuant to7 CFR 226.6(c)(3) and (5)(i).

SUMMARY

The [*State agency*] is terminating [*institution's*] CACFP agreement and disqualifying [institution's name], [*Director*] and [*Board Chair and any other RP/Is*]. [Institution] <u>may not appeal</u> the termination of its agreement. In addition, [*institution*], [*Director*] and [*Board Chair and any other RP/Is*] <u>may not appeal</u> the disqualifications. Since the institution's participation was suspended, [*Institution*] may only claim reimbursement for valid meal served up until (insert date of suspension). The [*institution*] must submit a claim for these meals by [*insert a date that will give the provider an appropriate length of time to submit these claims*].

Sincerely,

State Agency Employee Name and Title

cc: FNS Regional Office

[*If there are additional people identified as RP/Is, they must also be noted as "cc's" and sent their copy of the letter in accordance with the requirements in 7 CFR 226.2 (definition of "notice")*.]

Prototype Letter 10: Notice of Reinstatement - Imminent Threat to Health and Safety after institution prevails in appeal

[*Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.*]

Date

Institution Director Name and Title
Institution Name
Institution Street Address
Institution City, State 00000

Name of Chairman of Board of Directors and Title
Institution Name
Institution Street Address
Institution City, State 00000

Re: Agreement Number _____

Dear [Director] and [Board Chair]:

This letter concerns the [*date*] Combined Notice which suspended [*institution's*] participation in the Child and Adult Care Food Program (CACFP). In that letter, we also proposed to terminate [*institution's*] CACFP participation and disqualify [*institution*], [*Director*] and [*Board Chair and any other responsible principals or responsible individuals (RP/Is)*] from further CACFP participation. These actions were based on the determination in the [*date*] letter that [*institution*] is seriously deficient in its operation of the CACFP and posed an imminent threat to the health or safety of CACFP participants or the public and that [*Director*] and [*Board Chair and any RP/Is*] are responsible for the serious deficiencies.

[*Institution*] filed a timely appeal of the suspension and proposed termination and disqualification. In addition, [*Director*], and [*Board Chair*] [*and any other RP/Is*] filed timely appeals of their proposed disqualifications. On [date of hearing official's decision], the hearing official issued a decision. In that decision, the hearing official overturned all of the proposed actions.

SERIOUS DEFICIENCY DETERMINATION, SUSPENSION, AND PROPOSED TERMINATION AND DISQUALIFICATION

Based on the hearing official's decision, the [*State agency*] is prohibited from terminating and disqualifying [*institution*] and [*institution's*] [*Director*], or [*Board Chair*] [*and any other RP/Is*].

However, the [*institution and RP/Is*] must still implement procedures and policies to permanently correct the serious deficiencies. Upon approval of an acceptable corrective plan, the [*State agency*] will temporarily defer the determination that [*institution*] and its RPIs are seriously deficient. If the [*State agency*] initially determines that the corrective action is complete, but later determines that the serious deficiency(ies) has recurred, the [*State agency*] **must** move to immediately to issue a notice of intent to terminate and disqualify the institution and RP/Is.

All valid claims for reimbursement submitted by [*institution*] for the period of the suspension will be paid. These must be submitted by [i*nsert a date that will give the institution an appropriate length of time to submit these claims*].

These actions are being taken pursuant to 7 CFR 226.6(c)(5)(i)(D).

Sincerely,

State Agency Employee Name & Title

cc: FNS Regional Office

[*If there are additional people identified as RP/Is, they must also be noted as "cc's" and sent their copy of the letter in accordance with the requirements in 7 CFR 226.2 (definition of "notice")*.]

Prototype Letter 11: Notice of Serious Deficiency and Proposed Suspension of an Institution - Combined Notice for False or Fraudulent claim

REMEMBER: For false or fraudulent claim, the SA ***may*** suspend but **must** initiate action to terminate the institution's agreement and disqualify the institution and its RPIs. The first step in initiating the termination and disqualification process is the declaration of serious deficiency.)

[*Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.*]

Date

Institution Director Name and Title
Institution Name
Institution Street Address
Institution City, State 00000

Name of Chairman of Board of Directors and Title
Institution Name
Institution Street Address
Institution City, State 00000

Re: Agreement Number _____

Dear [Director] and [Board Chair]:

This letter concerns the [*brief description of the basis for the serious deficiency determination of false or fraudulent claim – review, audit, etc. and date and any other applicable serious deficiency(ies)*] of [*institution's*] operation of the Child and Adult Care Food Program (CACFP).

SERIOUS DEFICIENCY DETERMINATION

Based on the [*review/audit/claim etc*.] on [*date*], the State agency has determined that [institution] is seriously deficient in its operation of the CACFP. In addition, the [*State agency*] has identified [*Director*] and [*Board Chair*] as responsible for the serious deficiencies in light of their responsibility for the overall management of [*institution's*] operations.

[If there are other responsible principals or responsible individuals (RP/Is), you must list them here and state why they are responsible for the serious deficiencies.]

SERIOUS DEFICIENCIES AND REQUIRED CORRECTIVE ACTION

[*The following paragraphs detail each serious deficiency and the corrective action required. Insert discussion of serious deficiencies and required corrective action. Each serious deficiency discussed must include a citation of the relevant serious deficiency in the regulations at 7 CFR 226.6(c)(3)(ii). If the serious deficiency is not specifically listed, cite:* 7 CFR 226.6(c)(3)(ii)(U), *any other action affecting the institution's ability to administer the CACFP.*]

[*If there is an overclaim, repayment of the overclaim must be a condition of corrective action. In addition, for an overclaim, you must include the following language:*] The institution may appeal the determination of the overclaim. A copy of the appeal procedures is enclosed. If the institution chooses to appeal the overclaim, follow the enclosed appeal procedures as failure to do so may result in the denial of the request for an appeal.

If [*institution*] does not fully and permanently correct all of the serious deficiencies and submit documentation of the corrective action by the due date, the [*State agency*] will:

- Propose to terminate [*institution's*] agreement to participate in the CACFP;
- Propose to disqualify [*institution*] from future CACFP participation; and
- Propose to disqualify [*Director*] and [*Board Chair and any other RP/Is*] from future CACFP participation.

In addition, if [*institution*] voluntarily terminates its agreement after receiving this letter, we will propose to disqualify [*institution*], [*Director*], and [*Board Chair and any other RP/Is*] from future CACFP participation. If disqualified, [*institution*], [*Director*], and [*Board Chair and any other RP/Is*] will be placed on the National Disqualified List (NDL). While on the NDL, [*institution*] will not be able to participate in the CACFP as an institution or facility. [*Director*] and [*Board Chair and any other RP/Is*] will not be able to serve as a principal in any institution or facility or as a day care home provider in the CACFP.

Institutions and individuals remain on the NDL until USDA's Food and Nutrition Service, in consultation with the [*State agency*], determines that the serious deficiencies have been corrected, or until seven years after their disqualification. However, if any debt relating to the serious deficiencies has not been repaid, they will remain on the list until the debt is repaid.

These actions are being taken pursuant to 7 CFR 226.6(c)(3).

You may not appeal the serious deficiency determination.

[*Institution*] may continue to participate in the CACFP until [*proposed suspension date*] or, if [*institution*] request a suspension review, until the suspension official issues a decision. The [*State agency*] will pay any valid claims for reimbursement submitted by [institution] for this period. As always, claims must be submitted within 60 calendar days of the last day of the month covered by the claim. In addition, the [*State agency*] will deny any portion of a claim determined is invalid. If the [*State agency*] denies payment of any portion of a claim, that action would be appealable.

PROPOSED SUSPENSION

One of the serious deficiencies identified is the filing of a false or fraudulent claim. As per Program regulations, if the State agency determines that an institution has knowingly submitted a false or fraudulent claim, the State agency may initiate action to suspend the institution's participation. Because of this false or fraudulent claim, the [*State agency*] is proposing to suspend [*institution's*] CACFP participation effective [*cannot be earlier than 10 days after the institution receives this letter*].

This action is being taken pursuant to 7 CFR 226.6(c)(5)(ii)(A) and (B).

SUSPENSION REVIEW (APPEAL) OF PROPOSED SUSPENSION

[*Institution*] may appeal the proposed suspension of its CACFP participation. A copy of the suspension review procedures is enclosed. If [*Institution*] requests a review of the proposed action, the procedures must be followed as failure to do so could result in the denial of your request.

If the institution appeals the proposed suspension, the proposed action will not take effect until the suspension official issues a decision on the suspension review. If [*institution*] does not make a timely request for a suspension review, [*institution's*] CACFP participation will be suspended on [*date*].

[*Institution*] may continue to participate in the CACFP until [*proposed suspension date*] or, if [*institution*] request a suspension review, until the suspension official issues a decision. The [*State agency*] will pay any valid claims for reimbursement submitted by [institution] for this period. As always, claims must be submitted within 60 calendar days of the last day of the month covered by the claim. In addition, the [*State agency*] will deny any portion of a claim determined is invalid. If the [*State agency*] denies payment of any portion of a claim, that action would be appealable.

SUMMARY

The [*State agency*] has determined that [*institution*] is seriously deficient in its operation of the CACFP and that [*Director*] and [*Board Chair and any other RP/Is*] are responsible for the serious deficiencies.

[*Institution*] must provide documentation that shows it has taken the required corrective action for each of the serious deficiencies cited in this letter. The documentation must be received (not just postmarked) by [*corrective action deadline*]. *You may establish different deadlines for different serious deficiencies, as long as they are consistent with the regulations at 7 CFR 226.6(c)(4).*

If the [*State agency*] does not receive the documentation of your corrective action by the due date, or if we determine that the actions taken do not fully and permanently correct all of the serious deficiencies, the [*State agency*] will propose to terminate [*institution's*] CACFP agreement and will propose to disqualify [*institution*], [*Director*], and [*Board Chair and any other RP/Is*].

Sincerely,

State Agency Employee Name & Title

Enclosures: Suspension Review Procedures

cc: FNS Regional Office

[*If there are additional people identified as RP/Is, they must also be noted as "cc's" and sent their copy of the letter in accordance with the requirements in 7 CFR 226.2 (definition of "notice").*]

NOTE: If the institution fails to submit an acceptable corrective action plan, Prototype Letter 3 should be used.

Prototype Letter 12: Notice of Suspension - False or Fraudulent claims: Institution does not request a suspension review

[*Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.*]

Date

Institution Director Name and Title
Institution Name
Institution Street Address
Institution City, State 00000

Name of Chairman of Board of Directors and Title
Institution Name
Institution Street Address
Institution City, State 00000

Re: Agreement Number _____

Dear [Director] and [Board Chair]:

This letter concerns the determination in the [*State agency's*] [*date*] Combined Notice of Serious Deficiency and Proposed Suspension that [*institution*] was seriously deficient in its operation of the CACFP and that [*Director*] and [*Board Chair and any other responsible principals or responsible individuals (RP/Is*)] are responsible for the serious deficiencies. In that letter, the [*State agency*] proposed to suspend [*institution's*] CACFP participation for filing false or fraudulent claims.

The institution had 10 days from [*date*] to submit a request for an appeal of the proposed suspension. No request for an appeal was submitted by that deadline.

SUSPENSION

Because the time to request an appeal has now expired, the [*State agency*] is suspending [*institution's*] participation in the CACFP effective [*date of this letter*].

SUMMARY

The State agency is suspending [*institution's*] CACFP participation (including all Program payments) effective (*date of this letter*).

These actions are being taken pursuant to 7 CFR 226.6(c)(5)(ii)(D).

Sincerely,

State Agency Employee Name & Title

Enclosures: Appeal Procedures

cc: FNS Regional Office

[*If there are additional people identified as RP/Is, they must also be noted as "cc's" and sent their copy of the letter in accordance with the requirements in 7 CFR 226.2 (definition of "notice")*.]

Prototype Letter 13: Notice of Suspension for Institutions: False or Fraudulent Claims after State agency prevails in suspension review

[*Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.*]

Date

Institution Director Name and Title
Institution Name
Institution Street Address
Institution City, State 00000

Name of Chairman of Board of Directors and Title
Institution Name
Institution Street Address
Institution City, State 00000

Re: Agreement Number _____

Dear [Director] and [Board Chair]:

This letter concerns the determination in the [*State agency's*] [*date*] Combined Notice of Serious Deficiency and Suspension that [*institution's*] was seriously deficient in its operation of the CACFP and that [*Director*] and [*Board Chair and any other responsible principals or responsible individuals (RP/Is*)] are responsible for the serious deficiencies. In that letter, the State agency also proposed to suspend [*institution's*] CACFP participation for filing false or fraudulent claims.

[*Institution*] filed a timely appeal of the proposed suspension. On [*date of hearing official's decision*], the hearing official issued a decision on the appeal. In that decision, the hearing official upheld the proposed suspension.

SUSPENSION

As a result, the State agency is suspending [*institution's*] participation in the CACFP effective [*date of this letter*].

SUMMARY

The State agency is suspending [*institution's*] CACFP participation (including all Program payments) effective (date of this letter).

[*Institution*] must still provide a corrective action plan to address the serious deficiency(ies) in the [*insert serious deficiency and proposed suspension letter date*] letter by [*corrective action due date*]

If [*institution*] does not fully and permanently correct all of the serious deficiencies and submit documentation of the corrective action by [*due date*], the State agency will:

- Propose to terminate [*institution's*] agreement to participate in the CACFP,
- Propose to disqualify [*institution*] from future CACFP participation, and
- Propose to disqualify [*Director*] and [*Board Chair and any other RP/Is*] from future CACFP participation.

In addition, if [institution] voluntarily terminates its agreement after receiving this letter, the State agency will propose to disqualify [*institution*], [*Director*], and [*Board Chair and any other RP/Is*] from future CACFP participation. If disqualified, [*institution*], [*Director*], and [*Board Chair and any other RP/Is*] will be placed on the National Disqualified List (NDL). While on the list, [*institution*] will not be able to participate in the CACFP as an institution or facility. [*Director*] and [*Board Chair and any other RP/Is*] will not be able to serve as a principal in any institution or facility or as a day care home provider in the CACFP.

Institutions and individuals remain on the NDL until USDA's Food and Nutrition Service, in consultation with the [*State agency*], determines that the serious deficiencies have been corrected, or until seven years after their disqualification. However, if any debt relating to the serious deficiencies has not been repaid, they will remain on the list until the debt has been repaid.

These actions are being taken pursuant to 7 CFR 226.6(c)(5)(ii)(D).

Sincerely,

State Agency Employee Name & Title

cc: FNS Regional Office

[*If there are additional people identified as RP/Is, they must also be noted as "cc's" and sent their copy of the letter in accordance with the requirements in 7 CFR 226.2 (definition of "notice").*]

Prototype Letter 14: Notice of Withdrawal of Proposed Suspension for Institutions - False or Fraudulent claims after institution prevails in suspension review

[*Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.*]

Date

Institution Director Name and Title
Institution Name
Institution Street Address
Institution City, State 00000

Name of Chairman of Board of Directors and Title
Institution Name
Institution Street Address
Institution City, State 00000

Re: Agreement Number _____

Dear [Director] and [Board Chair]:

This letter concerns the determination in the [*State agency's*] [*date*] Combined Notice of Serious Deficiency and proposed Suspension that [institution's] was seriously deficient in its operation of the CACFP and that [*Director*] and [*Board Chair and any other responsible principals or responsible individuals (RP/Is*)] are responsible for the serious deficiencies. In that letter, the State agency also proposed to suspend [*institution's*] CACFP participation for filing false or fraudulent claims.

[*Institution*] filed a timely appeal of the proposed suspension. On [*date of hearing official's decision*], the hearing official issued a decision. In that decision, the hearing official overturned the proposed action. Therefore, [name of institution] may continue to claim reimbursement for eligible meals and, if applicable, administrative costs until the serious deficiency process is completed.

WITHDRAWAL OF PROPOSED SUSPENSION

As a result, the State agency is withdrawing the proposed suspension of [*institution's*] CACFP participation as of [*date of hearing official's decision*].

[*Institution and RP/Is*] must still provide corrective action for the serious deficiency(ies) listed in the [*insert serious deficiency letter date*]. [*List the serious deficiency*(ies)]. Corrective action is due [*insert due date*]. These actions are being taken pursuant to 7 CFR 226.6(c)(3); (c)(5)(ii)(D) of the CACFP regulations.

If [*institution*] does not fully and permanently correct all of the serious deficiency(ies) and submit documentation of the corrective action by [*due date*], the State agency will:

- Propose to terminate [*institution's*] agreement to participate in the CACFP,
- Propose to disqualify [*institution*] from future CACFP participation, and
- Propose to disqualify [*Director*] and [*Board Chair and any other RP/Is*] from future CACFP participation.

In addition, if [institution] voluntarily terminates its agreement after receiving this letter, the State agency will propose to disqualify [*institution*], [*Director*], and [*Board Chair and any other RP/Is*] from future CACFP participation. If disqualified, [*institution*], [*Director*], and [*Board Chair and any other RP/Is*] will be placed on the National Disqualified List (NDL). While on the list, [*institution*] will not be able to participate in the CACFP as an institution or facility. [*Director*] and [*Board Chair and any other RP/Is*] will not be able to serve as a principal in any institution or facility or as a day care home provider in the CACFP.

Institutions and individuals remain on the NDL until USDA's Food and Nutrition Service, in consultation with the [*State agency*], determines that the serious deficiencies have been corrected, or until seven years after their disqualification. However, if any debt relating to the serious deficiencies has not been repaid, they will remain on the list until the debt has been repaid.

These actions are being taken pursuant to 7 CFR 226.6(c)(5)(ii)(D).

Sincerely,

State Agency Employee Name & Title

cc: FNS Regional Office

[*If there are additional people identified as RP/Is, they must also be noted as "cc's" and sent their copy of the letter in accordance with the requirements in 7 CFR 226.2 (definition of "notice").*]

E. Prototype Letters – Day Care Homes

Prototype 15: Notice of Serious Deficiency Notice for Providers

[*Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.*]

Date

Provider Name
Provider Street Address
Provider City, State 00000

Dear [Provider]:

This letter concerns the [*brief description of the basis for the serious deficiency determination – review, audit, etc. and date*] of your operation of the Child and Adult Care Food Program (CACFP).

SERIOUS DEFICIENCY DETERMINATION

Based on the [*review/audit/etc*.], the [*sponsoring organization*] has determined that you are seriously deficient in your operation of the CACFP. If you do not fully and permanently correct all of the serious deficiencies and submit documentation of the corrective action by [*date*], we will propose to:

- Terminate your agreement to participate in the CACFP for cause, and
- Disqualify you from future CACFP participation.

If you voluntarily terminate your agreement after receiving this letter, we will propose to disqualify you from future CACFP participation. If disqualified, the [*provider*] will be placed on the National Disqualified List (NDL). While on the NDL, you will not be able to participate in the CACFP as a day care home provider. In addition, you will not be able to serve as a principal in any CACFP institution or facility.

You will remain on the NDL until USDA's Food and Nutrition Service, in consultation with the [*State agency*], determines that the serious deficiencies have been corrected, or until seven years after your disqualification. However, if any debt relating to the serious deficiencies has not been repaid, you will remain on the list until the debt has been repaid.

These actions are being taken pursuant to 7 CFR 226.16(l).

SERIOUS DEFICIENCIES AND REQUIRED CORRECTIVE ACTION

The following paragraphs detail each serious deficiency and the corrective action required. [*Insert discussion of serious deficiencies and required corrective action. Each serious deficiency discussed must include a citation for the relevant serious deficiency in the regulations at 7 CFR 226.16(l)(2). If the serious deficiency is not specifically listed, cite*: 7 CFR *226.16(l)(2)(ix), any other circumstance related to non-performance under the sponsoring organization-day care home agreement.*]

SUMMARY

We have determined that you are seriously deficient in your operation of the CACFP. Documentation showing the corrective action for each of the serious deficiencies cited in this letter is required. The documentation must be received (not just postmarked) by [*corrective action deadline*]. *Different deadlines for different serious deficiencies may be established.*

If we do not receive the documentation of your corrective action by [*date*], or if we determine that the actions taken do not fully and permanently correct all of the serious deficiencies, we will propose to terminate your CACFP agreement for cause and disqualify you.

You may not appeal the serious deficiency determination. However, if we propose to terminate your agreement for cause and disqualify you, you will be able to appeal those actions and you will be advised the appeal procedures at that time.

You may continue to participate in the CACFP during the corrective action period. We will pay any valid claims for reimbursement submitted by you for this period. You must submit the claims by the normal deadline.

If we receive the documentation of your corrective action by the due date and determine that it fully and permanently corrects all of the serious deficiencies, we will temporarily defer the serious deficiency determination. We may conduct an unannounced follow-up review to verify the adequacy of the corrective action. If we find in the follow-up review, or any subsequent review, that the serious deficiency(ies) has/have not been fully and permanently corrected, we will immediately propose to terminate your agreement for cause and disqualify you without any further opportunity for corrective action.

Sincerely,

Sponsoring Organization Employee Name and Title
cc: State Agency

Prototype Letter 16: Notice of Successful Corrective Action and Temporary Deferment of Serious Deficiency for Providers

[*Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.*]

Date

Provider Name
Provider Street Address
Provider City, State 00000

Dear [Provider]:

This letter concerns the [*date*] Notice that you are seriously deficient in your operation of the Child and Adult Care Food Program (CACFP). On [*date*], [insert if applicable: *before the corrective action deadline*], we received the documentation you sent us detailing the actions you have taken to correct these serious deficiency(ies).

SERIOUS DEFICIENCY DETERMINATION TEMPORARILY DEFERRED

Based on our review of the documentation, we have determined that you have fully and permanently corrected the serious deficiency(ies). As a result, we have temporarily deferred our serious deficiency determination as of the date of this letter. (***NOTE: Conducting a follow-up review is not required to accept a corrective action and should NOT delay the temporary deferral of a serious deficiency determination.***) This also means that we will not propose to terminate your agreement for cause based on this serious deficiency finding or disqualify you.

ADEQUACY OF CORRECTIVE ACTIONS (optional)

The following paragraphs describe the results of our review of the corrective action. [*Insert discussion of each serious deficiency and why the corrective action is adequate. Each serious deficiency discussed must include a citation for the relevant serious deficiency in the regulations at 7 CFR 226.16(l)(2). If the serious deficiency is not specifically listed, cite: 7 CFR 226.16(l)(2)(ix), any other circumstance related to non-performance under the sponsoring organization-day care home agreement. Insert if appropriate: Our report on the* [*date*] *follow-up review will be provided to you in a separate letter*.]

SUMMARY

We have temporarily deferred our serious deficiency determination. We may conduct an unannounced review to determine the adequacy of your corrective action(s). If we find

on the follow-up review or, in any subsequent review, that the serious deficiency(ies) has/have not been fully and permanently corrected, we will immediately propose to terminate your agreement for cause and to disqualify you without any further opportunity for corrective action.

Sincerely,

Sponsoring Organization Employee Name and Title

cc: State Agency

Prototype Letter 17: Notice of Proposed Termination and Disqualification for Providers - No Corrective Action Submitted

[*Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.*]

Date

Provider Name
Provider Street Address
Provider City, State 00000

Dear [Provider]:

This letter concerns the [*date*] Notice that you are seriously deficient in your operation of the Child and Adult Care Food Program (CACFP).

On or before [*date*], you were required to the documentation detailing the actions taken to correct the serious deficiency(ies). As of this date, you have not submitted the required correction(s).

PROPOSED TERMINATION AND DISQUALIFICATION

As a result, effective [date], we propose to:

- Terminate your agreement to participate in the CACFP for cause and
- Disqualify you from future CACFP participation.

[The effective date for the termination/disqualification must be after the deadline for requesting an appeal.]

If you voluntarily terminate your agreement after receiving this letter, we will propose to disqualify you from future CACFP participation. If disqualified, you will be placed on the National Disqualified List (NDL). While on the NDL, you will not be able to participate in the CACFP as a day care home provider. In addition, you will not be able to serve as a principal in any CACFP institution or facility.

You will remain on the NDL until USDA's Food and Nutrition Service, in consultation with the [*State agency*], determines that the serious deficiencies have been corrected, or until seven years after your disqualification. However, if any debt relating to the serious deficiencies has not been repaid, you will remain on the list until the debt is repaid.

These actions are being taken pursuant to 7 CFR 226.16(l).

STATUS OF SERIOUS DEFICIENCY(IES) (optional)

The following paragraphs detail each serious deficiency and its status based your failure to submit the corrective action(s) documentation.

Insert discussion of each serious deficiency and the reasons why corrective action was inadequate (the corrective action may be adequate for some items and not for others; make sure you specify the status of the corrective action for each serious deficiency). Each serious deficiency discussed must include a citation for the relevant serious deficiency in the regulations at 7 CFR 226.16(l)(2). [*If the serious deficiency is not specifically listed, cite: 7 CFR 226.16(l)(2)(ix), any other circumstance related to non-performance under the sponsoring organization-day care home agreement.*]

APPEAL OF PROPOSED TERMINATION AND PROPOSED DISQUALIFICATION

The proposed termination of your agreement for cause and your disqualification may be appealed. A copy of the appeal procedures is enclosed. If you choose to appeal the proposed actions, follow the appeal procedures exactly as failure to do so may result in the denial of your request for an appeal.

SUMMARY

You have not fully and permanently corrected the serious deficiencies identified in the Serious Deficiency Notice. For this reason, the [*sponsoring organization*] is proposing to terminate your CACFP agreement for cause and to disqualify you from future Program participation.

If you appeal the proposed termination and disqualification, the actions will not take effect until the hearing official issues a decision. If you do not make a timely request for an appeal, your agreement will be terminated for cause. You will be disqualified from future CACFP participation effective [*date*] and placed on the NDL.

You may continue to participate in the CACFP until [*termination/disqualification effective date*] or, if you appeal the proposed actions, until the hearing official issues a decision on the appeal. We will pay any valid claims for reimbursement submitted by you for this period. You must submit the claims by the normal deadline.

Sincerely,

Sponsoring Organization Employee Name and Title

Enclosure: Appeal Procedures

cc: State Agency

Prototype Letter 18: Notice of Proposed Termination and Disqualification for Providers - Required Corrective Action Not Acceptable

[*Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.*]

Date

Provider Name
Provider Street Address
Provider City, State 00000

Dear [Provider]:

This letter concerns the [*date*] Notice that you are seriously deficient in your operation of the Child and Adult Care Food Program (CACFP).

On [*date*], we received the documentation detailing the actions taken to correct the serious deficiency(ies). Based on our review of the documentation, we have determined that you have not fully and permanently corrected the serious deficiency(ies) stated in the Notice.

PROPOSED TERMINATION AND DISQUALIFICATION

As a result, we propose to:

- Terminate your agreement to participate in the CACFP for cause and
- Disqualify you from future CACFP participation, effective [*date*].

[*The effective date for the termination/disqualification must be after the deadline for requesting an appeal.*]

If you voluntarily terminate your agreement after receiving this letter, we will propose to disqualify you from future CACFP participation. If disqualified, you will be placed on the National Disqualified List (NDL). While on the NDL, you will not be able to participate in the CACFP as a day care home provider. In addition, you will not be able to serve as a principal in any CACFP institution or facility.

You will remain on the NDL until USDA's Food and Nutrition Service, in consultation with the [*State agency*], determines that the serious deficiencies have been corrected, or until seven years after your disqualification. However, if any debt relating to the serious deficiencies has not been repaid, you will remain on the list until the debt is repaid.

These actions are being taken pursuant to 7 CFR 226.16(l).

STATUS OF SERIOUS DEFICIENCY(IES)

The following paragraphs detail each serious deficiency and its status based on our review of the corrective action documentation.

Insert discussion of each serious deficiency and the reasons why corrective action was inadequate (the corrective action may be adequate for some items and not for others; make sure you specify the status of the corrective action for each serious deficiency). Each serious deficiency discussed must include a citation for the relevant serious deficiency in the regulations at 7 CFR 226.16(l)(2). [*If the serious deficiency is not specifically listed, cite: 7 CFR 226.16(l)(2)(ix), any other circumstance related to non-performance under the sponsoring organization-day care home agreement.*]

APPEAL OF PROPOSED TERMINATION AND DISQUALIFICATION

The proposed termination of your agreement for cause and your disqualification may be appealed. A copy of the appeal procedures is enclosed. If you choose to appeal the proposed actions, follow the appeal procedures exactly as failure to do so may result in the denial of your request for an appeal.

SUMMARY

You have not fully and permanently corrected the serious deficiencies identified in the Serious Deficiency Notice. For this reason, the [*sponsoring organization*] is proposing to terminate your CACFP agreement for cause and to disqualify you from future Program participation.

If you appeal the proposed termination and disqualification, the actions will not take effect until the hearing official issues a decision. If you do not make a timely request for an appeal, your agreement will be terminated for cause. You will be disqualified from future CACFP participation effective [*date*] and placed on the NDL.

You may continue to participate in the CACFP until [*termination/disqualification effective date*] or, if you appeal the proposed actions, until the hearing official issues a decision on the appeal. We will pay any valid claims for reimbursement submitted by you for this period. You must submit the claims by the normal deadline.

Sincerely,

Sponsoring Organization Employee Name and Title

Enclosure: Appeal Procedures

cc: State Agency

Prototype Letter 19: Notice of Termination and Disqualification for Providers - Provider does not appeal

[*Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.*]

Date

Provider Name
Provider Street Address
Provider City, State 00000

Dear [Provider]:

This letter concerns the determination in [*sponsoring organization's*] Notice which proposed to terminate your agreement to participate in the Child and Adult Care Food Program (CACFP) for cause. In that letter, we also proposed to disqualify you from further CACFP participation. These actions were based on your failure to submit acceptable corrective action(s) for the serious deficiency(ies) noted in our [date] Notice of Serious Deficiency.

You received the Notice of Proposed Termination and Disqualification on [*date received*]. You had until [insert deadline for requesting appeal] to submit a request for an appeal of the proposed actions. No request for an appeal was submitted by that deadline.

TERMINATION AND DISQUALIFICATION

Because the time to request an appeal has now expired, the [*sponsoring organization*] is:

- Terminating your agreement to participate in the CACFP for cause and
- Disqualifying you from future CACFP participation, effective [*date*].

The effective date for the disqualification should generally be the same as the agreement termination date, and not earlier; otherwise, the provider could be disqualified and ineligible to participate before the agreement is terminated.

As a result of your disqualification, your name will be placed on the National Disqualified List (NDL). While on the NDL, you will not be able to participate in the CACFP as a day care home provider. In addition, you will not be able to serve as a principal in any CACFP institution or facility.

You will remain on the NDL, unless USDA's Food and Nutrition Service, in consultation with [*insert name of State agency*] determines that the serious deficiency(ies) has/ have been corrected, or until seven years after your disqualification. However, if any debt relating to the serious deficiencies has not been repaid, you will remain on the list until the debt is repaid.

These actions are being taken pursuant to7 CFR 226.16(l) of the CACFP regulations.

SUMMARY

The [*sponsoring organization*] is terminating your CACFP agreement for cause and disqualifying you. You may not appeal the termination for cause or the disqualification. You may continue to participate in the CACFP until [*termination/disqualification effective date*]. We will pay any valid claims for reimbursement submitted by you for this period. You must submit the claims by the normal deadline.

Sincerely,

Sponsoring Organization Employee Name and Title

cc: State Agency

Prototype Letter 20: Notice Termination and Disqualification for Provider - Sponsoring Organization prevails in appeal

[*Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.*]

Date

Provider Name
Provider Street Address
Provider City, State 00000

Dear [Provider]:

This letter concerns our [*date*] Notice which proposed to terminate your agreement to participate in the Child and Adult Care Food Program (CACFP) for cause. In that letter, we also proposed to disqualify you from further CACFP participation. These actions were based on the determination in our [*date*] Notice that you are seriously deficiency in your operation of the CACFP.

You filed a timely appeal of the proposed termination and disqualification. On [*date of hearing official's decision*], the hearing official issued a decision on the appeal. In that decision, the hearing official upheld our proposed actions.

TERMINATION AND DISQUALIFICATION

As a result, the [*sponsoring organization*] is:

- Terminating your agreement to participate in the CACFP for cause and
- Disqualifying you from future CACFP participation, effective [*date*].

The effective date for the disqualifications should generally be the same as the agreement termination date, and not earlier; otherwise, the provider could be disqualified and ineligible to participate before the agreement is terminated.

As a result of your disqualification, your name will be placed on the National Disqualified List (NDL). While on the NDL, you will not be able to participate in the CACFP as a day care home provider. In addition, you will not be able to serve as a principal in any CACFP institution or facility.

You will remain on the NDL unless USDA's Food and Nutrition Service, in consultation with [*insert name of State agency*] determines that the serious deficiency(cies) has/have been corrected, until seven years after your disqualification. However, if any debt relating to the serious deficiencies has not been repaid, you will remain on the list until the debt is repaid.
These actions are being taken pursuant to 7 CFR 226.16(l) of the CACFP regulations.

SUMMARY

The [*sponsoring organization*] is terminating your CACFP agreement for cause and disqualifying you. You may not appeal the termination for cause or the disqualification. You may continue to participate in the CACFP until [termination/disqualification effective date]. We will pay any valid claims for reimbursement submitted by you for this period. You must submit the claims by the normal deadline.

Sincerely,

Sponsoring Organization Employee Name and Title

cc: State Agency

Prototype Letter 21: Notice of Temporary Deferment of Serious Deficiency and Termination and Disqualification – Provider prevails in appeal

[*Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.*]

Date

Provider Name
Provider Street Address
Provider City, State 00000

Dear [Provider]:

This letter concerns our [*date*] Notice which proposed to terminate your agreement to participate in the Child and Adult Care Food Program (CACFP) for cause. In that letter, we also proposed to disqualify you from further CACFP participation. These actions were based on the determination in our [*date*] Notice that you are seriously deficient in your operation of the CACFP.

You filed a timely appeal of the proposed termination and disqualification. On [*date of hearing official's decision*], the hearing official issued a decision on the appeal. In that decision, the hearing official overturned our proposed actions. Therefore, [*name of sponsoring organization*] is prohibited from terminating your agreement and disqualifying your future participation in the Program.

SERIOUS DEFICIENCY DETERMINATION TEMPORARILY DEFERRED

You must still implement procedures and policies to permanently correct the serious deficiency(ies). Upon approval of an acceptable corrective plan, [*sponsoring organization*] will temporarily defer the determination that [*institution*] and its RPIs are seriously deficient. If [*sponsoring organization*] initially determines that the corrective action is complete, but later determines that the serious deficiency(ies) has recurred, [*sponsoring organization*] **must** move to immediately to issue a notice of intent to terminate and disqualify the institution and RP/Is.

Sincerely,

Sponsoring Organization Employee Name and Title

cc: State Agency

Prototype Letter 22: Notice of Serious Deficiency, Suspension, and Proposed Termination and Disqualification for Providers - Combined Notice for Imminent Threat to Health and Safety

[*Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.*]
Date

Provider Name
Provider Street Address
Provider City, State 00000

Dear [Provider]:

This letter concerns the [brief description of the basis for the serious deficiency determination – review, audit, etc. and date] of your operation of the Child and Adult Care Food Program (CACFP).

SERIOUS DEFICIENCY DETERMINATION

Based on the [*review/audit/etc*.], [*sponsoring organization*] have determined that you are seriously deficient in your operation of the CACFP.

SUSPENSION

The serious deficiency identified is the imminent threat to the health or safety of CACFP participants or the public (for details, see the description of the serious deficiencies later in this letter). Because of this imminent risk, the sponsoring organization is suspending your CACFP participation (including all Program payments).

The suspension of CACFP participation (including all Program payments) will take effect on the date of this letter. This action is being taken pursuant to 7 CFR 226.16(l)(4).

PROPOSED TERMINATION AND PROPOSED DISQUALIFICATION

As a result, effective [*date*], we propose to:

- Terminate your agreement to participate in the CACFP for cause and
- Disqualify you from future CACFP participation effective [*date*].

(*The effective date for the termination and disqualification must be after the deadline for requesting an appeal.*)

If you voluntarily terminate your agreement after receiving this letter, we will propose to disqualify you from future CACFP participation. If disqualified, you will be placed on the National Disqualified List (NDL). While on the list, you will not be able to participate in the CACFP as a day care home provider. In addition, you will not be able to serve as a principal in any CACFP institution or facility.

You will remain on the list until the USDA's Food and Nutrition Service, in consultation with [*name of State agency*], determines that the serious deficiencies have been corrected or until seven years after your disqualification. However, if any debt relating to the serious deficiencies has not been repaid, you will remain on the list until the debt is repaid.

These actions are being taken pursuant to 7 CFR 226.16(l).

SERIOUS DEFICIENCIES

The following paragraphs detail each serious deficiency. [*Insert discussion of serious deficiencies. Each serious deficiency discussed must include a citation for the relevant serious deficiency in the regulations at 7 CFR 226.16(l)(2). If the serious deficiency is not specifically listed, cite*: 7 CFR 226.16(l)(2)(ix), any other circumstance related to non-performance under the sponsoring organization-day care home agreement.]

APPEAL OF SUSPENSION, PROPOSED TERMINATION AND DISQUALIFICATION

You may appeal the suspension, the proposed termination of your Program agreement for cause, and your proposed disqualification. A copy of the appeal procedures is enclosed. If you choose to appeal the proposed actions, follow the appeal procedures exactly as failure to do so may result in the denial of your request for an appeal.

SUMMARY

[*Name of sponsoring organization*] is suspending your CACFP participation (including all Program payments). In addition, [*name of sponsoring organization*] is proposing to terminate your agreement for cause and to disqualify you.

The suspension will remain in effect during the period of any appeal. However, if you request an appeal and the hearing official overturns the suspension all valid claims for reimbursement submitted by you for the period of the suspension will be paid. As always, the sponsoring organization will deny any portion of a claim that is determined to be invalid.

If you appeal the proposed termination and disqualification, these actions will not take effect until the hearing official issues a decision. If you do not make a timely request for an appeal, your agreement will be terminated for cause on [*date*]. You will be disqualified from future CACFP participation and your name placed on the NDL.

Sincerely,

Sponsoring Organization Employee Name and Title

Enclosure: Appeal Procedures

cc: State Agency

Prototype Letter 23: Notice of Termination and Disqualification - Suspension, and Proposed Termination and Disqualification - Provider does not appeal

[*Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.*]

Date

Provider Name
Provider Street Address
Provider City, State 00000

Dear [Provider]:

On [*date received*], you received a combined Notice of Serious Deficiency, Suspension, Proposed Termination and Disqualification. This letter concerns that Notice which suspended your participation in the Child and Adult Care Food Program (CACFP). In that Notice, [*name of sponsoring organization*] also proposed to terminate your CACFP agreement for cause and to disqualify you from further CACFP participation. These actions were based on the determination that you were operating under conditions that posed an imminent threat to the health and safety of Program participants [***if applicable****, or the day care home had engaged in activities that threaten the public health or safety*].

You had until [*insert deadline for requesting appeal*] to submit a request for an appeal. No request for an appeal was submitted by that deadline.

TERMINATION AND DISQUALIFICATION

As a result of this decision, effective [*date*], the [*name of sponsoring organization*] is:

- Terminating your agreement to participate in the CACFP for and
- Disqualifying you from future CACFP participation effective on [date].

As a result of the disqualification, your name will be placed on the National Disqualified List (NDL). While on the NDL, you will not be able to participate in the CACFP as a day care home provider. In addition, you will not be able to serve as a principal in any CACFP institution or facility.

You will remain on the NDL unless USDA's Food and Nutrition Service], in consultation with [*name of State agency*] determines that the serious deficiencies have been corrected or until seven years after your disqualification. However, if any debt relating to the serious deficiency has not been repaid, you will remain on the list until the debt has been repaid.

These actions are being taken pursuant to 7 CFR 226.16(l)(4).

SUMMARY

[*Name of sponsoring organization*] is terminating your CACFP agreement for cause and disqualifying you. You may not appeal the termination for cause or the disqualification. Since your participation was suspended, you may only claim reimbursement for valid meals served up until [*insert date of suspension*]. You must submit a claim for these meals by [*insert a date that will give the provider an appropriate length of time to submit these claims*].

Sincerely,

Sponsoring Organization Employee Name & Title

cc: State Agency

Prototype Letter 24: Notice of Termination and Disqualification - Imminent Threat to Health or Safety after sponsoring organization prevails in appeal

[*Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.*]

Date

Provider Name
Provider Street Address
Provider City, State 00000

Dear [Provider]:

On [*date received*], you received a combined Notice of Serious Deficiency, Suspension, Proposed Termination and Disqualification. This letter concerns that Notice which suspended your participation in the Child and Adult Care Food Program (CACFP). In that Notice, [*name of sponsoring organization*] also proposed to terminate your CACFP agreement for cause and to disqualify you from further CACFP participation. These actions were based on the determination that you were operating under conditions that posed an imminent threat to the health and safety of Program participants [***if applicable****, or the day care home had engaged in activities that threaten the public health or safety*].

You filed a timely appeal of the suspension and proposed termination and disqualification. On [date of appeal official's decision], the Administrative Review Official issued a decision on all of the appeals. In that decision, the suspension and proposed actions were upheld.

TERMINATION AND DISQUALIFICATION

As a result of this decision, effective [*date*] the sponsoring organization is:

- Terminating your agreement to participate in the CACFP for cause and
- Disqualifying you from future CACFP participation.

As a result of your disqualification, your name will be placed on the National Disqualified List (NDL). While on the NDL, you will not be able to participate in the CACFP as a day care home provider. In addition, you will not be able to serve as a principal in any CACFP institution or facility.

You will remain on the NDL unless USDA's Food and Nutrition Service], in consultation with [*name of State agency*] determines that the serious deficiencies have been corrected or until seven years after your disqualification. However, if any debt relating to the serious deficiency has not been repaid, you will remain on the list until the debt has been repaid.

These actions are being taken pursuant to 7 CFR 226.16(l).

SUMMARY

[*Name of sponsoring organization*] is terminating your CACFP agreement for cause and disqualifying you. You may not appeal the termination for cause or the disqualification. Since your participation was suspended, you may only claim reimbursement for valid meals served up until [*insert date of suspension*]. You must submit a claim for these meals by [*insert a date that will give the provider an appropriate length of time to submit these claims*].

Sincerely,

Sponsoring Organization Employee Name & Title

cc: State Agency

Prototype Letter 25: Notice of Recission of Suspension, Proposed Termination and Disqualification - Imminent Threat to Health or Safety after provider prevails in appeal

[*Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.*]

Date

Provider Name
Provider Street Address
Provider City, State 00000

Dear [Provider]:

On [*date received*], you received a combined Notice of Serious Deficiency, Suspension, Proposed Termination and Disqualification. This letter concerns that Notice which suspended your participation in the Child and Adult Care Food Program (CACFP). In that Notice, [*name of sponsoring organization*] also proposed to terminate your CACFP agreement for cause and to disqualify you from further CACFP participation. These actions were based on the determination that you were operating under conditions that posed an imminent threat to the health and safety of Program participants [***if applicable****, or the day care home had engaged in activities that threaten the public health or safety*]

You filed a timely appeal of the suspension and the proposed termination and disqualification. On [*date of appeal official's decision*], the Administrative Review Official issued a decision. In that decision, the suspension and proposed actions were overturned.

SERIOUS DEFICIENCY DETERMINATION, SUSPENSION, PROPOSED TERMINATION AND PROPOSED DISQUALIFICATION

As a result, [*name of sponsoring organization*] is prohibited from suspending your participation, terminating your agreement for cause, and your proposed disqualifying you from future participating in the Program.

Any valid claims for reimbursement submitted by you for the period of the suspension will be paid. You must submit these claims by [*insert a date that will give the provider an appropriate length of time to submit these claims*].

You must still submit a corrective action plan to implement procedures and policies to permanently correct the serious deficiency(ies). Upon approval of an acceptable corrective plan, [*sponsoring organization*] will temporarily defer the determination that you are seriously deficient. If [*sponsoring organization*] initially determines that the

corrective action is complete, but later determines that the serious deficiency(ies) has recurred, [*sponsoring organization*] **must** move to immediately to issue a notice of intent to terminate and disqualify you.

Sincerely,

Sponsoring Organization Employee Name & Title

cc: State Agency

F. Prototype Letters – Unaffiliated Centers

This section was intentionally left blank. We will provide prototype letters related to unaffiliated centers when the final regulation implementing these requirements is published.