

Serious Deficiency Procedure

Purpose

The purpose of this document is to outline the steps of the serious deficiency process of institutions participating in the Child and Adult Care Food Program (CACFP). The State agency will determine an institution seriously deficient when they are non-compliant in one or more aspects in its operation of the Program [\[7 CFR 226.2\]](#). Institutions will be allowed to correct serious Program problems to continue participation in the Program. If institutions are unwilling or incapable of correcting serious problems, the institution and responsible principals will be removed from the Program and will not be able to return to the Program until the approval to reapply for participation is granted.

Serious Deficiency Determination

An institution may be declared seriously deficiency if serious Program violations or issues of noncompliance with CACFP requirements is found at any time during the institution's participation. Serious deficiency determination may include, but are not limited to, any of the following:

- Submission of false information on the institution's application
- Failure to operate the Program in conformance with the performance standards set forth in [7 CFR 226.6\(b\)\(1\)\(xviii\); \(b\)\(2\)\(vii\)](#)
- Use of a vendor who doesn't meet health code
- Failure by a sponsoring organization to properly train and monitor facilities in accordance with [7 CFR 226.16\(d\)](#)
- Failure to meet financial or administrative responsibilities
- Any other action affecting the institution's ability to administer the Program in accordance with Program requirements [\[7 CFR 226.6\(c\)\(2\)\]](#)
- Permitting an individual who is on National Disqualified List (NDL) to serve as a principal capacity with the institution
- Failure to maintain adequate records
- Failure to adjust meal orders to conform to variations in the number of participants
- Claiming reimbursement for meals not served to participants
- Claiming reimbursement for a significant number of meals that do not meet Program requirements [\[7 CFR 226.16\(g\)-\(h\)\]](#)



- Claiming reimbursement for meals served by a for-profit center during a calendar month in which less than 25 percent of the participants (enrolled or license capacity, whichever is less) were eligible for free or reduced-price meals or were Title XX or Title XIX beneficiaries
- 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
- Conviction of any of the institution's principals for any activity that occurred during the past seven years and that indicated a lack of business integrity.

The State agency has the authority to determine when a violation rises to the level of a serious deficiency. The follow criteria will be used in determining whether a Program violation is a serious deficiency.

1. *Severity of the problem:* Determine if the non-compliance is a minor or substantial scale. If the problem is an isolated event it might not constitute a serious deficiency. If the problem is a systematic error, it would constitute as a serious deficiency.
2. *The degree of responsibility attributable to the institution:* Determine whether the violations were inadvertent errors or if there is evidence of negligence or conscious indifference to regulatory requirements. Inadvertent errors would require technical assistance, while negligence or conscious indifference to regulatory requirements would constitute a serious deficiency.
3. *The institution's history of participation in the Program:* Determine the frequency of the institution experiencing problems. If this is the institution's first-time experiencing problems, it might not constitute a serious deficiency. If non-compliance has occurred frequently at the same institution, it would constitute a serious deficiency.
4. *The nature of the requirements that relate to the problem:* Determine is the institution's actions are a clear violation of Program requirements.
5. *The degree to which the problem impacts Program integrity:* Determine if the violations are undermining the intent or purpose of the CACFP or is it an administrative error. Administrative errors might not constitute a serious deficiency. Violations undermining the intent or purpose of the CACFP would constitute a serious deficiency.

Serious Deficiency Process

The serious deficiency process has six steps that start when the 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 as follows:

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 and include appeal procedures, if the CAP is not adequate (or if no CAP is received);
5. Provide an appeal review, if requested, of the propose 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.

Serious Deficiency Notice

Once the State agency has determined that a serious deficiency has occurred, a Notice of Serious Deficiency will be sent to the institution's Executive Director, Chairperson of the Board or Owner plus all the institution's responsible principals. The notice will be sent by certified mail and a return receipt will be requested. A copy of the notice naming the serious deficiencies and its basis will be sent to USDA FNS.

The State agency will include the following information in the Serious Deficiency Notice:

1. Provide a detailed description of each serious deficiency, including the appropriate citations from the CACFP regulations.
2. Provide a clear description of the actions required to fully and permanently correct the serious deficiencies.
3. Provide a definite and appropriate time limit for corrective action.
4. The serious deficiency is not subject to appeal.
5. Failure to fully and permanently correct the serious deficiencies within the allotted time will result in proposing to terminate the institution's CACFP agreement and to disqualify the institution and responsible principals from participating in the CACFP.
6. That the institution's voluntary termination of its agreement with the State agency after the receipt of the serious deficiency notice will still result in the

institution's termination from the Program and the placement of the institution and responsible individuals onto the NDL.

7. The State Director has the authority to sign all letters associated with the serious deficiency process.
8. If the institution has questions regarding the serious deficiency notice, the CACFP Coordinator can be contacted for further information.

Corrective Action Plan

The institution must submit a written corrective action plan (CAP) that fully and permanently corrects the serious deficiencies cited in the letter. The corrective action must be received by the State agency by the deadline established in the notice of serious deficiency. Institutions are encouraged to work with the State agency to ensure that an acceptable corrective action is in place by the deadline date. The State agency will review the corrective action plan submitted and evaluate whether the institution has fully and permanently corrected the serious deficiencies. The institution will be given three weeks from the date of the letter to submit adequate corrective action, unless egregious findings warrant a shorter timeframe.

Acceptable CAP's must include the following information:

- Names of the institution's executive director, chairperson of the board of directors, or other responsible principals associated with serious deficiencies
- Address of the institution
- Details of the serious deficiencies
 - What are the serious deficiencies and the procedures that were implemented to address the serious deficiencies?
 - Who will be responsible for correcting the serious deficiencies?
 - When was the procedure implemented and how often will it occur?
 - Where will the documentation for the serious deficiency corrections be maintained?
 - How were staff or facilities informed of the new procedures and policies?
- Additional supporting documentation to verify the corrective action has occurred.

Successful Corrective Action

If the institution submits a CAP that corrects the serious deficiencies to the State agency within the allotted timeframe, the serious deficiency determination will be temporarily deferred. A copy of the letter will be sent to USDA FNS.

The State agency will include the following information in the Temporarily Deferred Notice:

1. Notify the institution's executive director and chairperson of the board of directors and any other responsible principals, that the State agency has temporarily deferred its serious deficiency determination.
2. Remind all parties that the corrective action must be permanent, or the State agency must immediately issue a notice of proposed termination and disqualification without allowing another opportunity to correct the repeated issues of non-compliance.

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 responsible principals that the State agency is proposing to terminate the institution's agreement and to disqualify the institution and responsible principals from future participation in the CACFP. A copy of the letter will be sent to USDA FNS.

The State agency will include the following information in the Propose to Terminate and Disqualify Notice:

1. The State agency is proposing to terminate the institution's agreement and disqualify the institution and responsible principals.
2. An outline of the basis for actions (including regulation citations).
3. A declaration that if the institution voluntarily terminates its agreement after receiving the notice of proposed termination and disqualification, the institution and responsible principals will still be terminated and disqualified and placed on the NDL.
4. The procedures for seeking an administrative review (e.g. CACFP Appeal Procedure).
5. Notice that the institution may continue to participate and receive Program Reimbursement for eligible meals served and allowable administrative expenses incurred until the administrative review is completed.
6. The State Director's signature.
7. The CACFP Coordinator's contact information for any questions regarding the Propose to Terminate and Disqualify Notice.

Termination and Disqualification Notice

If the institution does not request an appeal or the appeal official upholds the State agency's proposed termination and disqualification, the institution and responsible

principals will be terminated and disqualified. A copy of the letter will be sent to USDA FNS.

The State agency will include the following information in the Termination and Disqualification Notice:

1. Notify the institution and its executive director and chairperson of the board of directors, and any other responsible principals, that the institution's agreement has been terminated and that the institution and responsible principals have been disqualified.
2. Identify the effective date of termination and disqualification.
3. Inform the institution and its responsible principals that they will remain on the NDL until seven years after disqualification and until debt owed is repaid.
4. Identify the amount of CACFP reimbursement owed by the institution and its responsible principals and state they will remain on the NDL for seven years and until the debt is repaid.
5. State termination of the agreement and placement on the NDL is not appealable.

Administrative Review (Appeal) Procedures

The institution has the ability to appeal the proposed termination and disqualification. An appeal must be requested in writing by an institution and/or its responsible principals 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. The institution and responsible principals may represent themselves, retain legal counsel, or may be represented by another person.

The institution and responsible principals may refute any findings contained in the notice of action in person or by submitting written documentation to the hearing official. All written documentation from the State agency and the institution and responsible principals must be provided to the hearing official no later than 30 days after receipt of the notice of action. All documentation must be submitted prior to the hearing.

The institution and responsible principals may request that the appeal consist of only a review of written materials, an in-person hearing, or a combination of both. The hearing official must hold a hearing if one is requested by the institution and responsible principals in a written request. If the institution's representative, the responsible principals, 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 will attend the hearing to respond to the testimony of the institution and the responsible principals and to answer questions posed by the hearing official. If a hearing is requested, the institution, the responsible

principals, and the State agency must be provided at least 10 days advance notice of the time and place of the hearing. If a hearing is rescheduled, it must be held in time to render a decision within 60 days of the original request for an appeal.

Administrative Review (Hearing) Official

The hearing official must be independent and impartial. This means the hearing official may be an employee of the State agency, but they have not been involved in the action that is subject to appeal or have direct personal or financial interest in the outcome of the appeal. The institution will be permitted to contact the hearing official directly if needed. The hearing official must make a determination based solely on the information provided by the State agency, the institution and responsible principals, and in Federal and State laws, regulations, policies, and procedures. The hearing official must inform the State agency, institution and responsible principals of the appeal outcome within 60 days of the State agency's receipt of the request for an appeal.

Imminent Threat to Health and Safety Violations

If an institution's conduct poses an imminent threat to the health or safety of children, the State agency must suspend the institution's participation in CACFP. The State agency will notify State or local licensing when conditions that might constitute an imminent threat to health and safety are discovered. Circumstances that can pose an imminent threat to health or 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)

- 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, suspending participation in CACFP, and proposing to terminate the institution's agreement and to disqualify the institution and the responsible principals.

Placement on the National Disqualified List (NDL)

Terminated and disqualified institutions and responsible principals must be placed on the NDL. The State agency will send USDA FNS copies of all letters sent to the institution and responsible principals throughout the serious deficiency process. The State agency will place the institution and responsible principals on the NDL immediately initiating the Termination and Disqualification letter. Once the institution and responsible principal is placed on the NDL, the State agency's Serious Deficiency List will be updated.

Removal from the National Disqualified List (NDL)

Terminated and disqualified institutions and responsible principals will remain on the NDL for seven years if there is no outstanding debt associated with the institution and responsible principals. If institution and responsible principals have outstanding debt, they will remain on the NDL until this debt has been re-paid. When both the seven years have elapsed and the debt has been repaid, the institution and responsible principals will be removed from the NDL.

Institutions and responsible principals may submit corrective action, pay off any debts owed (interest included), and submit a request to the State agency for early removal from the NDL. The review of the request will not be expedited and will be completed in the normal course of business.

The corrective action must include the following information in order for it to be deemed acceptable:

- A detailed explanation of the actions taken by the institution and/or responsible principals to fully and permanently correct the serious deficiencies including the resolution of any debt owed.
- Documentation to support the actions taken to fully and permanently correct the serious deficiencies.

If the State agency approves the corrective action submitted, the information will be submitted to the FNS Regional Office for approval. If the FNS Regional Office approves the corrective action, the information will be submitted to the FNS National Office for approval. The FNS National Office will notify the FNS Regional Office of its decision.

The FNS Regional Office will notify the State agency of the FNS National Office's decision. If the FNS National Office approves the corrective action, the institution and/or responsible principals will be removed from the NDL. If at any time the corrective action is not approved, it will be returned to the institution and responsible principals.

Non-Discrimination Statement:

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

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To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

1. mail: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410;
2. fax: (202) 690-7442; or
3. email: program.intake@usda.gov.

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