United States Department of Agriculture

Food and Nutrition Service

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SUBJECT: Child and Adult Care Food Program Guidance on the Serious Deficiency Process and Acceptable Corrective Action Plans, National Disqualified List Procedures and Debt Collection

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

The purpose of this memorandum is to provide guidance on the regulatory serious deficiency, termination, and disqualification processes for the Child and Adult Care Food Program (CACFP). By providing this guidance, our objective is to assist Food and Nutrition Service (FNS) staff, State agencies, and sponsoring organizations in ensuring uniformity and Program integrity throughout the CACFP. To achieve this objective, we will:

- Review the serious deficiency process;
- Clarify FNS expectations for acceptable corrective action plans (CAP);
- Review the termination and disqualification process;
- Provide guidance on what is required for submissions to the National Disqualified
- List (NDL);
- Provide guidance on what is needed to request removal from the NDL; and
- Provide clarification on the collection of debts, including interest.

It is incumbent on FNS to assist State agencies and sponsoring organizations to come into compliance with CACFP requirements by stressing that the initiation of the serious deficiency process is the first step in successfully addressing an institution's non-compliance with one or more aspects of its operation of the Program. Proper implementation of the serious deficiency process includes development of a CAP. This allows the institution or provider to continue Program participation and to receive technical assistance from the State agency or sponsoring organization. It is critical to the integrity of the Program and the effectiveness of the serious deficiency process and the NDL that these procedures are consistently applied.

The Serious Deficiency Process

During fiscal years (FY) 2010 and 2011, the CACFP Targeted Management Evaluation (TME) process, as well as investigations associated with Office of Inspector General (OIG) hotline complaints, disclosed a pattern of regulatory non-compliance with the serious deficiency process. It has been revealed that, often when areas of non-compliance rise to the level of serious deficiency, many State agencies and sponsoring organizations are working with institutions and providers to achieve compliance outside of the regulatory serious deficiency process. Once an institution or provider is declared seriously deficient, the following procedures must be followed:

- For institutions, the State agency sends a notice of serious deficiency by certified mail return receipt (or equivalent private delivery), by facsimile, or by email to the institution and any identified responsible principal and/or individual (RPI). In the case of providers, the sponsoring organization must notify the day care home that it has been determined to be seriously deficient. For institutions, the notice must identify the name of the Chairman of the Board, Executive Director/Director, and any additional individuals determined to be RPIs. The serious deficiency notice must identify all serious deficiencies (as defined in 7 CFR §226.6(c) for institutions and 7 CFR §226.16(l)(2) for providers). The notice must also specify:

    - Actions to be taken to correct the serious deficiencies;
    - The time allotted to correct the serious deficiencies;
    - That the serious deficiency determination is not appealable;
    - That failure to fully and permanently correct the serious deficiencies within the allotted time will result in issuance of a Notice of Proposed Termination and Disqualification and;
    - That voluntary termination of the agreement after being determined seriously deficient will result in issuance of a Notice of Termination and Disqualification and placement on the National Disqualified List.

- The name(s) of the RPIs must be placed on the State agency's list (noting the basis for the serious deficiency determination);

- In response, the institution or provider must submit a CAP that details the internal controls implemented to ensure that the serious deficiencies are fully and permanently corrected. A successful CAP includes:

    - Name(s) of the institution or provider and other RPIs associated with the serious deficiencies;
    - Location of the institution or provider;
    - Dates of birth for all RPIs or the provider associated with the serious deficiencies;

- Policies and procedures or other official documentation which ensures the serious deficiencies have been fully and permanently corrected. (See more details on CAP guidance in the next section.)

- At the same time notice is issued, State agencies must provide the serious deficiency notice and supporting documentation to their respective FNS Regional Office for the purpose of determining compliance with CACFP requirements (7 CFR §226.6(c)(1-3)(iii)(A)). Family day care home sponsoring organizations must provide the serious deficiency notice and supporting documentation to the State agency (7 CFR §226.16(l)(3)(i)).

If the CAP is acceptable, the serious deficiency determination for the institution and RPIs or provider is temporarily deferred.

If a timely CAP is not submitted, or no CAP is submitted, a Notice of Proposed Termination and Disqualification, with appeal rights, must be sent to the institution or provider and RPIs. If an appeal is filed, and the action taken by the State agency or sponsoring organization is upheld, the institution or provider and all RPIs will be sent a Notice of Termination and Disqualification and placed on the NDL with the full amount of any determined debt associated with both the institution and/or RPIs.

When a State agency declares an institution seriously deficient and identifies former and current employees as the RPIs for the serious deficiencies, the State agency must hold the institution and RPIs (former and current employees) accountable for the serious deficiencies and continue the serious deficiency process through its completion. The intent of the CACFP regulations is that an institution, as well as RPIs who were involved in causing or failing to correct the serious deficiencies, will be disqualified and placed on the NDL.

An institution can never be seriously deficient without some improper action by RPIs. An individual or individuals are always responsible for the institution failing to comply with regulatory requirements. If the institution and its RPIs fail to complete corrective action, both will be terminated and placed on the NDL, thus notifying other State agencies that these RPIs are currently ineligible to participate in CACFP as part of a different institution, as institution principals, or as day care home providers. If this does not occur, the individuals responsible for the serious deficiencies 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 deficiencies by removing the RPI from a position associated with the CACFP, the institution may be removed from the NDL but the RPI would remain for 7 years or longer if there is an unpaid debt, or an acceptable CAP is approved and the State agency requests early removal.

Corrective Action Plans Guidance

According to 7 CFR §226.6(c), sufficient documentation of corrective actions taken to fully and permanently correct each serious deficiency must be submitted to the State agency by the institution. Providers are required to submit corrective actions taken to fully and permanently correct each serious deficiency to the sponsoring organization (7 CFR §226.16(l)(3)(F)(ii)). If the State agency or sponsoring organization determines that the corrective actions fully and permanently correct each serious deficiency, then the State agency or sponsoring organization will temporarily defer its serious deficiency determination.

The submission of the CAP must include the institution or provider's official documentation demonstrating that the serious deficiencies have been fully and permanently corrected. The State agency or sponsoring organization will rely on the submission of this information to determine whether the organization has internal controls in place to ensure accountability. Therefore, the CAP must include the following information:

- **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 procedure for addressing the serious deficiency be implemented? Provide a timeline for implementing the procedure (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.)?

Additional **supporting** documentation must be submitted with the CAP. This might include copies of income eligibility forms, enrollment 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.

Sample Corrective Action Plan for an Institution and RPIs

A State agency declares an institution seriously deficient because the meals being served did not meet Program requirements during the entire review period (e.g., October through December 2011). In response, the Program Director states that the employee responsible for food service management is no longer employed with the institution. In addition, the State agency states that it will monitor the institution closely to ensure meals served meet the Program meal pattern requirements. **This is not an acceptable CAP**.

In this situation, the institution must submit a CAP to the State agency which includes at a minimum the following information:

- Name(s) of institution/RPIs associated with serious deficiencies along with address of institution and dates of birth for RPIs;
- Each serious deficiency and procedures to be implemented to correct the issue;
- Personnel who will be addressing the serious deficiency(ies);
- The timeframe for implementation of the procedures to correct the issue;
- The location where CAP documentation will be retained associated with correcting the issue;
- The policies and procedures that have been modified to include the procedures for maintaining compliance with meal pattern requirements (written policies and procedures are recommended); and
- Supporting documentation as described in the CAP Guidance section of this memo.

Sample Corrective Action Plan for a Provider

During an administrative review, a sponsoring organization discovers that a day care home 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 notice and indicates that she will comply with CACFP requirements in relation to the maintenance of Program administrative records. The sponsoring organization accepts the letter and temporarily defers the serious deficiency. **This is not an acceptable CAP.**

In this situation, the provider must submit a CAP to the sponsoring organization which includes at a minimum the following information:

- The provider's full name, address, and date of birth;
- Each serious deficiency and the procedures to be implemented to correct the issue;
- The timeframe for implementation of the procedures to correct the issue;
- The location where records will be kept associated with correcting the issue; and
- Supporting documentation as described in the CAP Guidance section.

Submitting Terminated and Disqualified Institutions/Providers and Individuals to the NDL

NDL submission requests sent to the FNS National Office must contain all required information as indicated in the "Institutions/RPIs" and "Providers" section below. If a State agency does not submit all 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 which does not have an explanation for the missing data element will be returned to the State agency for completion. The following information is required when submitting information to the NDL:

For Institutions/RPIs:

- Name and address of the institution (including city, state, and zip code);
- Termination date;
- Amount of debt owed, if any, noting the RPI;
- Reason/s for the disqualification (if other is checked, an explanation must be included);
- RPI's name (**No institution can be added to the NDL without an RPI)**;
- RPI's address (with city, State, and zip code);
- RPI's date of birth; and
- RPI's position in the institution.

For Day Care Home Providers:

- Name(s) of the provider;
- Address (including city, State and zip code);
- Date of birth;
- Termination date;
- Amount of debt owed, if any;
- Name of the individual's sponsoring organization; and
- Reason/s for the disqualification (if other is checked, an explanation should be included).

Removal from the NDL

Please note that institutions and RPIs that fail to repay debts owed under the Program will remain on the NDL until the debt has been paid in full. Once it has been determined by the State that the institution has paid the debt in full (including any interest, if applicable) and documentation is on file, the State may request removal of the institution or individual from the NDL. In addition, 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 that the removal has been completed.

Institutions and their Associated RPIs

CACFP regulations require that a disqualified institution or RPI remain on the NDL for 7 years or until any outstanding debt is repaid, whichever is longer, unless "FNS, in consultation with the appropriate State agency, determines that the serious deficiency(ies) that led to their placement on the list has(ve) been corrected." To ensure consistency in the process for removing an institution or RPI from the NDL, all requests for such removals must be reviewed by the FNS National Office,

which will make the final decision on whether to approve the request. In order for the FNS National Office to make an informed decision regarding requests to remove an institution and/or its associated RPIs from the NDL, it is necessary to have a complete history of the institution or RPIs serious deficiency(ies), including how the serious deficiency(ies) were fully and permanently corrected.

Therefore, when an FNS Regional Office forwards a State agency's request to remove a disqualified institution or an RPI from the NDL, the FNS Regional Office must also submit copies of the three notices associated with the disqualification:

- Serious deficiency;
- Proposed termination and disqualification; and
- Final termination and disqualification.

Any additional correspondence relating to the serious deficiency process for a particular institution or RPI (such as a prior notice of successful corrective action/temporary deferment of the serious deficiency, information relating to the institution's debt, or information concerning the RPIs' dates of birth), must also be submitted with the request for removal.

The State agency's request for removal of the institution or RPI must include;

- A detailed explanation of the actions taken by the institution or RPI to fully and permanently correct the serious deficiency 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 stipulates whether the request is for removal of the
  - institution;
  - institution and all associated RPIs; and
  - some or all of the RPIs, but not the institution.

The FNS Regional Offices must review the documentation submitted with a request for removal of an institution or RPI to verify that it is complete and provides sufficient information for the FNS National Office to complete its review of the request, and indicate why it supports or opposes the request.

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

<u>Day Care Home Providers</u>

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 deficiency(ies) that led to its placement on the list

has(ve) been corrected, or until 7 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 hold the States accountable for their decisions in terms of removing 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.

Debt Collection Associated with Terminated and Disqualified Institutions/RPIs/Providers

The CACFP regulations at 7 CFR §226.14 are very specific in terms of the State agencies responsibility to collect debts, including an assessment of interest (7 CFR §226.14(a)). 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. The details of any repayment plan should be worked out between the State agency and the institution. As a general rule, FNS expects that State agencies will pursue institution debts and make all reasonable efforts to collect them in full. That would include the State agency billing the institution for the entire amount, charging interest on the outstanding balance, and accepting payments made by the institution.

The State agency must consult with the Regional Office if it is determined that the debt is uncollectible. Please note that the institutions and RPIs will remain on the NDL until the debt, with all incurred interest, is repaid. Interest continues to accrue throughout the entire period the institutions and RPIs remain on the NDL. Day care home providers will also remain on the NDL until the debt is repaid, however interest is not applied to debts associated with providers.

As mandated by the final rule, Child and Adult Care Food Program; Implementing Legislative Reforms to Strengthen Program Integrity, dated June 27, 2002, interest must be assessed on debts established on or after July 29, 2002. Also, 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. It is the responsibility of the State agency to notify the institution that interest will be charged.

For 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.

The 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 on the Financial Management Service website homepage at http://www.fns.treas.gov

FNS recognizes that there are many specific issues regarding the serious deficiency process, NDL, and debt collection procedures that were not addressed in this memorandum. Therefore, FNS encourages State agencies to contact their respective FNS Regional Offices as questions or concerns arise.

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