



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

## A Child and Adult Care Food Program Handbook



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## **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 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 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

#### 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.

organization thoroughly investigates and documents any serious deficiencies, it must issue a notice of serious deficiency.

**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:

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*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*

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This CAP has enough detail explaining *what* was done, *how* it was done, *when* it was done, and *by whom* it was 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 not 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 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 is 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;
- 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)].

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

**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.

**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 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, policies, 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.

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

## 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 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 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 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 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