



DOH-CACFP: Number 231 (09/26)

TO: All CACFP Sponsoring Organizations

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SUBJECT: Serious Deficiency Process for Sponsoring Organizations

I. Purpose and Scope

This memorandum provides guidance on the process of serious deficiency, corrective action plans, termination, and the National Disqualification List (NDL) for CACFP sponsoring organizations. Guidance is also provided on how organizations can request removal from the NDL.

II. Background

The serious deficiency process was established to ensure compliance with federal Child and Adult Care Food Program (CACFP) regulations found at 7 CFR 226.6. Sponsoring organizations that are determined to be non-compliant in one or more areas of Program operations may be considered seriously deficient.

III. Serious Deficiency Process

A. Notification

Initiation of the serious deficiency process is the first step in successfully addressing a sponsoring organization's non-compliance with one or more aspects of the Program. Sponsoring organizations and any responsible principal(s) and/or individual(s) (RP/I) declared seriously deficient will receive notice from the New York State Department of Health (NYSDOH). The notice specifies the serious deficiencies and required corrective action to show the issues are fully and permanently corrected.

B. Corrective Action

The sponsoring organization must submit a corrective action plan (CAP) by the deadline date provided in the notification letter. The CAP must detail the internal controls implemented to ensure that the serious deficiencies are fully and permanently corrected and be accompanied by supporting documentation if requested by the NYSDOH. Sponsors are encouraged to work with CACFP staff to ensure that an acceptable corrective action is in place by the deadline date.

C. Temporarily Deferred

If the NYSDOH determines that the CAP is acceptable, the serious deficiency determination for the sponsoring organization and RP/Is is temporarily deferred. If any subsequent review shows the serious deficiencies were not fully and permanently corrected, the NYSDOH must propose to terminate and disqualify the sponsor and responsible principals.

D. Notice of Proposal to Terminate and Disqualify

Sponsors and responsible principals that fail to submit a timely acceptable CAP or do not submit any CAP are sent a Notice of Proposed Termination and Disqualification letter which includes the effective date of the termination.

Sponsors who voluntarily terminate their CACFP agreement with the NYSDOH after the receipt of the serious deficiency notice will still result in termination from the Program and the sponsor and RP/Is will be placed on the NDL.

If the NYSDOH determines that a sponsoring organization has submitted a false or fraudulent claim, it will initiate action to terminate the sponsoring organization's agreement and disqualify the organization and the responsible individuals.

E. Appeal Procedures

Sponsoring organizations may appeal the proposed termination and disqualification. If the sponsor appeals, an impartial hearing officer will review the case either through an in-person hearing or review of written documents to determine if the NYSDOH's proposed termination and disqualification may proceed.

F. Notice of Termination and Disqualification

If the sponsoring organization does not appeal or the hearing officer upholds the NYSDOH's proposed termination and disqualification, the NYSDOH will terminate the sponsor's participation in the CACFP and place the sponsor and RP/Is on the NDL.

IV. National Disqualification List

Organizations and RP/Is that are disqualified from participation in the CACFP are placed on the NDL and will remain on the list for a minimum of seven years from the date of disqualification, or longer if a debt is owed. In such instances, placement on the NDL will remain until the debt has been repaid. While on the NDL, the organization and identified responsible principals may not participate in the CACFP or other child nutrition programs.

V. Early Removal from the National Disqualification List

Organizations and/or responsible principals may submit a request to the NYSDOH for early removal from the NDL with documented corrective action applicable to the serious deficiency findings.

The request must include a complete list of the serious deficiencies that were identified and led to the termination, a detailed description of the permanent documented corrective

actions taken, and any corresponding documentation that confirms the corrective actions. The request also must identify the organization and/or person(s) requesting removal from the NDL. The NYSDOH will verify that all program debt has been paid. Sponsoring organizations and/or responsible principals cannot be considered for early removal from the NDL if outstanding program debt is owed to the NYSDOH.

The sponsoring organization and/or responsible principals are responsible for documenting that the corrective action has been accomplished. The NYSDOH is not required to provide technical assistance related to a request for removal from the NDL. If the NYSDOH determines the corrective action to be sufficient and approves the removal, the information will be submitted to the United States Department of Agriculture's Regional Office for approval. If the United States Department of Agriculture's Regional Office approves the NYSDOH's recommendation, the request for removal will be sent to the United States Department of Agriculture's National Office for approval. If the NYSDOH, the United States Department of Agriculture's Regional Office and the United States Department of Agriculture's National Office all agree to the recommendation for removal, the sponsor and/or responsible principal(s) will be taken off the NDL.

Requests to be removed from the NDL must be sent by email to cacfp@health.ny.gov or postal mail to the following address:

State Director, CACFP
NYSDOH-DON
Riverview Center
150 Broadway, Suite 600
Albany, NY 12204-2719

There is neither a statutory nor regulatory timeframe in which the NYSDOH must respond to requests for early removal from the National Disqualified List. The NYSDOH will review requests in its normal course of business operations when time allows for an extensive review of supporting documentation.

Requests for early removal from the National Disqualified List will not be considered in the following circumstances:

- Unpaid debts
- Uncorrected deficiencies
- Organizations and RP/Is who were disqualified for falsification of records, making false representations, making false claims, engaging in unlawful practices, or any other activity indicating a lack of business integrity as determined by the NYSDOH.

If either the NYSDOH or the United States Department of Agriculture does not accept the corrective action, the organization, responsible principal(s)/individual(s) will remain on the NDL and the decision may not be appealed.

In addition, approval of an early removal request does not constitute approval to participate in CACFP.