

# Section 10000

# Serious Deficiency

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## 10000 Serious Deficiency

The serious deficiency process was established to ensure compliance with Program requirements while at the same time allowing organizations, principals and individuals an opportunity to correct serious deficiencies and continue participation in the Program.

### **10100 Organizations Applying to Participate in the CACFP**

#### **10110 New Organizations**

An organization applying to participate in the CACFP as a new contracting entity (CE) must submit a complete and correct application in order to be considered for approval.

If, in reviewing the application, it is determined that the organization has committed a serious deficiency, TDA will initiate action to deny the application and disqualify the organization and any responsible principals and individuals who contributed to the serious deficiency.

The following items represent a serious deficiency in a new organization's application that could result in the denial of the application and placement of the organization and any responsible principals and individuals on the National Disqualified List (NDL):

- Submission of false information on the organization's application, including but not limited to a determination that the organization has concealed a conviction for any activity that occurred during the seven years preceding the organization's application and that indicates a lack of business integrity. A lack of business integrity includes, but is not limited to fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity.
- Any other action affecting the organization's ability to administer the Program in accordance with Program requirements.

Other examples of false information, actions or documentation affecting the organization's ability to administer the Program include but are not limited to:

- Submission of false documentation in an attempt to receive reimbursement; and
- Receipt of information, documentation or statements by TDA that establish the organization will not be able to operate the Program as represented in its application.

TDA will provide written notification to the organization and responsible principals and/or responsible individuals, that specifies:

- The serious deficiency(ies);
- The actions to be taken to correct the serious deficiency(ies);
- The time allotted to correct the serious deficiency(ies);
- That the serious deficiency determination is not subject to appeal;
- That failure to fully and permanently correct the serious deficiency(ies) within the allotted time will result in denial of the application and the disqualification of the organization and the responsible principals and responsible individuals;
- That the organization will not be paid for any claims for reimbursement for eligible meals served or allowable administrative expenses incurred until the organization has an approved application and fully executed permanent agreement; and
- That if the organization withdraws its application after receiving this notice, the organization's application will still be denied and the organization, responsible principal and/or responsible individual will be disqualified and placed on the National Disqualified List; and
- That, if TDA does not have the date of birth for any individual named as a "responsible principal or individual" in the serious deficiency notice, the submission of that person's date of birth is a condition of corrective action for the organization and/or individual.

**Corrective Action Accomplished:**

If the organization fully and permanently corrects the serious deficiency(ies) within the specified time frame, TDA will inform the organization and the responsible principals that TDA has temporarily deferred\* its serious deficiency determination. The organization may submit a new complete application.

**NOTE:** If the responsible principals or individuals have not corrected their contribution to the serious deficiency, TDA will continue its actions to disqualify those individuals.

**Disqualification:**

TDA will proceed with disqualifying the organization, responsible principals and individuals, and placing them on the NDL if:

- The organization voluntarily withdraws its application after receiving the *Notice of Serious Deficiency* (the CE will not receive appeal rights or further opportunity for corrective action if it voluntarily withdraws its application).

- The organization or responsible principals/individuals fail to fully and permanently correct the serious deficiency(ies) within the specified time frame.
- The organization or responsible principals/individuals fail to request an appeal within 15 days of receipt of the notice.
- The Administrative Review Official (ARO) upholds TDA's denial of the application and proposed actions.

If any of the above occurs, TDA will notify the organization, responsible principals and responsible individuals of their disqualification and placement on the NDL.

Each letter in the serious deficiency process will be sent to the CE, Executive Director, and Chairman of the Board, responsible principals and responsible individuals. A courtesy copy of the CEs letters will be sent all remaining board members not named as responsible.

\*Temporarily defer: means to postpone the serious deficiency process until or unless it is determined that the serious deficiency or serious deficiencies were not fully and permanently corrected.

### **10120 Renewing Organizations**

A CE that wants to continue its participation must submit a renewal application each year that meets all CACFP application requirements.

If it is determined the CE has committed a serious deficiency in the renewal application, TDA will place the organization, responsible principals and responsible individuals (if applicable) in the serious deficiency process.

Each of the following items represent a serious deficiency in a renewing application that could result in the denial of the application, termination of the Permanent Agreement and placement of the organization, responsible principals and responsible individuals on the NDL.

The items include, but are not limited to:

- Submission of false information on the organization's renewal application, including but not limited to a determination that the organization has concealed a conviction for any activity that occurred during the seven years preceding the organization's application and that indicates a lack of business integrity. A lack of business integrity includes, but is not limited to fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity.

- Failure to operate the CACFP in conformance with the performance standards (VCA);
  - Performance Standard 1 – Financial viability and financial management.
  - Performance Standard 2 – Administrative capability.
  - Performance Standard 3 – Accountability.
- Failure to comply with the bid procedures and contract requirements of the applicable Federal procurement regulations.
- Use of a Food Service Management Company/vendor that is in violation of health codes.
- Failure to properly classify day care homes as tier I or tier II.
- Failure to properly train or monitor day care homes.
- Failure to perform any other financial and administrative responsibilities required.
- Failure to properly implement or administer the day care home termination and administrative review (appeal) provisions.
- Submission of false claims.
- Any other action affecting the organization’s ability to administer the CACFP in accordance with program requirements as stated in this handbook and the Permanent Agreement.

TDA will provide written notification to the organization and responsible principals and/or responsible individuals, that specifies:

- The serious deficiency(ies);
- The actions to be taken to correct the serious deficiency(ies);
- The time allotted to correct the serious deficiency(ies);
- That the serious deficiency determination is not subject to appeal;
- That failure to fully and permanently correct the serious deficiency(ies) within the allotted time will result in denial of the renewal application, termination of the Permanent Agreement and the disqualification of the organization and the responsible principals and responsible individuals;
- That if the organization voluntarily terminates its Permanent Agreement after receiving this notice, the organization’s Permanent Agreement will be formally terminated and the organization, responsible principal and/or responsible individual will be disqualified and placed on the National Disqualified List; and
- That, if TDA does not have the date of birth for any individual named as a “responsible principal or individual’ in the serious deficiency notice, the submission of that person’s date of birth is a condition of corrective action for the organization and/or individual.

**Corrective Action Accomplished:**

If the CE, responsible principals and responsible individuals fully and permanently corrects the serious deficiency(ies) within the specified time frame, they will receive notification that TDA has temporarily deferred\* its serious deficiency determination.

The CE may re-submit the renewal application. The CE may continue to submit valid claims for reimbursement during this process.

**NOTE:** If any responsible principal or individual has not corrected their contribution to the serious deficiency, TDA will continue its actions to disqualify those individuals.

\*Temporarily defer means to postpone the serious deficiency process until or unless it is determined that the serious deficiency or serious deficiencies were not fully and permanently corrected.

### **Application Denial and Proposed Disqualification/Termination:**

If the CE, responsible principals and/or responsible individuals do not fully and permanently correct the serious deficiency(ies) within the allotted timeframe, TDA will deny the renewal application, propose to terminate the Permanent Agreement and propose to disqualify the CE, responsible principals and/or responsible individuals from participation in the CACFP.

TDA will provide written notification to the organization and responsible principals and/or responsible individuals, that specifies:

- That the organization's renewal application has been denied and TDA is proposing to terminate the organization's Permanent Agreement and disqualify the organization, responsible principals and/or responsible individuals;
- The basis for the actions;
- That if the organization voluntarily terminates its Permanent Agreement after receiving this notice, the organization's Permanent Agreement will be formally terminated and the organization, responsible principal and/or responsible individual will be disqualified and placed on the National Disqualified List;
- The procedures for appealing the renewal application denial and the proposed actions; and
- That the organization may continue to participate in the Program and receive reimbursement for eligible meals served and allowable administrative costs incurred until its appeal is completed, if one is requested.

### **Disqualification/Termination:**

TDA will proceed with terminating the Permanent Agreement and disqualifying the CE, responsible principals and individuals, and placing them on the NDL if the:

- CE voluntarily terminates its Permanent Agreement after receiving the *Notice of Renewal Application Denial and Proposed Termination and Proposed Disqualification* (the CE will not receive appeal rights or further opportunity for corrective action as it voluntarily terminated its participation).
- CE fails to request an appeal within 15 days of receiving the *Notice of Renewal Application Denial and Proposed Termination and Proposed Disqualification*.
- The ARO upholds TDA's denial of the renewal application and proposed actions if the CE appeals the actions.

If the CE requests an appeal and the hearings official upholds TDA's determination, the termination of the Permanent Agreement will be effective the last day of the month of the ARO's decision.

If an appeal is not requested within 15 days of receipt of the Notice, the termination of the Permanent Agreement will be effective on the date provided in the notification.

Each letter in the serious deficiency process will be sent to the CE, Executive Director, and Chairman of the Board, responsible principals and responsible individuals. A courtesy copy of the CEs letters will be sent to all remaining board members not named as responsible.

### **10200 Participating Contracting Entities**

During an audit, administrative review, or any time during a CE's Program participation, it may be determined that serious Program non-compliances have occurred or are occurring. As a result the CE, responsible principals and responsible individuals may be placed in the serious deficiency process.

The steps in the serious deficiency process are as follows:

1. Serious Deficiency Determination
2. Notice of Serious Deficiency
3. Opportunity for Corrective Action



4. Notice of Proposed Termination and Proposed Disqualification (if an approvable corrective action plan is not submitted or does not fully and permanently correct the non-compliances)
5. Notice of Termination of the Permanent Agreement and Disqualification of the organization, responsible principals and responsible individuals

### **10210 Serious Deficiency Determination**

Serious deficiencies for a participating CE are:

- Submission of false information on the organization's application, including but not limited to a determination that the CE has concealed a conviction for any activity that occurred during the past seven years and that indicates a lack of business integrity.
- Permitting an individual who is on the National Disqualified List (NDL) to serve in a principal capacity with the organization. If a sponsoring organization, permitting such an individual to serve as a principal in a sponsored site or as a day care home.

**NOTE:** Prior to hiring new staff or submitting new day care home providers check the NDL.

- Permitting an individual who is on the NDL to perform CACFP functions for the organization. If a sponsoring organization, permitting such an individual to perform CACFP functions in a sponsored site or day care home.

**NOTE:** Prior to hiring new staff or submitting new day care home providers check the NDL.

- Failure to operate the CACFP in conformance with the performance standards (VCA);
  - Performance Standard 1 – Financial viability and financial management.
  - Performance Standard 2 – Administrative capability.
  - Performance Standard 3 – Accountability.

**EXAMPLES (not all inclusive):** continued submission of late claims; failure to account for CACFP funds; failure to use funds for allowable costs; failure to submit adjusted budgets as necessary; failure to train staff prior to beginning CACFP functions.

- Failure to comply with the bid procedures and contract requirements applicable to procurement.

**EXAMPLES (not all inclusive):** failure to advertise the Invitation for Bid and Contract for Purchased Meals (IFB) as required; obtaining bid specifications from a potential bidder; failure to disclose less-than-arms-length transactions.

- Failure to return to TDA any advance payments exceeding the amount earned for serving eligible meals.
- Failure to maintain adequate records.

**EXAMPLES (not all inclusive):** incomplete or incorrect tier documentation; incomplete or incorrect enrollment documentation; lack of documentation to support a claim, such as meal count and attendance records; financial documentation.

- Failure to adjust meal orders to conform to variations in the number of participants (for those who vend meals).
- Claiming reimbursement for meals not served to participants.
- Claiming reimbursement for a significant number of meals that do not meet CACFP requirements.
- Use of a Food Service Management Company (FSMC) that is in violation of health codes.
- Failure of a sponsoring organization to disburse payments to its day care homes in accordance with the Program requirements and/or the CE's management plan.
- Claiming reimbursement for meals served by a for-profit adult day care center during a calendar month in which less than 25 percent of its enrolled adult participants were Title XIX or Title XX beneficiaries;
- Failure to properly classify day care homes as tier I or tier II.
- Failure to properly train or monitor day care homes.
- Use of day care home funds to pay for the sponsor's administrative expenses.
- Failure to properly implement or administer the day care home termination and administrative review (appeal) provisions.
- Failure to perform any of the other financial and administrative responsibilities in accordance with Program requirements.

**EXAMPLES (not all inclusive):** failure to submit a required audit; failure to return information required for corrective action; failure to complete the annual renewal process; failure to return unearned reimbursement including advances.

- The fact that the CE or any of the CE's principals have been declared ineligible for any other publicly funded program by reason of violating that program's requirements. However, this prohibition does not apply if the CE or principal(s) have been fully reinstated in, or is now eligible to participate in, that program, including the payment of any debts owed.

- Conviction of the CE or any of its principals for any activity that occurred during the past seven years that indicated a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice.
- Submission of false claims.
- Any other action affecting the CE's ability to administer the CACFP in accordance with CACFP requirements.

TDA may declare a CE, responsible principals and responsible individuals seriously deficient for any serious management or integrity issues.

TDA will use discretion in making these serious deficiency determinations by distinguishing between:

- Occasional and systemic errors. Is the error an indication of a systemic problem in the organizations internal processes and procedures, or is it truly an isolated event?
- Minor and major errors. Does the error undermine the intent and integrity of the CACFP or is it simply an administrative error?

**NOTE:** Submission of false or fraudulent claims or documentation, or Imminent Threat to Health or Safety will result in a determination that the organization is seriously deficient regardless of the frequency of occurrence or the impact on the organization's claim.

If a CE is determined seriously deficient, TDA will always:

- Detail the non-compliances (known as "findings") that led to the declaration of serious deficiency.
- Refer to and apply state and federal laws, guidelines and regulations to maintain consistency in making serious deficiency determinations.

Once a *Notice of Serious Deficiency* is issued, it can result in only two possible outcomes:

- The serious deficiency(ies) are fully and permanently corrected to TDA's satisfaction within the time allotted for corrective action; or
- The serious deficiency(ies) are not fully and permanently corrected to TDA's satisfaction within the time allotted, and TDA proposes termination of the CE's Permanent Agreement and disqualification and placement of the CE, responsible principals and responsible individuals on the NDL.

When a CE is determined seriously deficient, TDA must also:

- Determine who is responsible for the serious deficiency;
- Include the names of those individuals in the *Notice of Serious Deficiency*; and
- Send a copy of the notice to the CE, responsible principals and responsible individuals.

**NOTE:** Indications of fraud or misuse of funds may be referred to USDA for investigation, and referred for prosecution under applicable Federal and State law.

## **10220 Notice of Serious Deficiency**

The *Notice of Serious Deficiency* will specify:

- The serious deficiency(ies) with references to the documents that discuss the serious deficiency(ies), such as an administrative review findings letter, information or documentation in TX-UNPS, or audit;
- The corrective action(s) required to be taken to fully and permanently correct the serious deficiency(ies), and the deadline(s) by which corrective action must be taken and a corrective action plan submitted;
- The person(s) determined to be the responsible principals and responsible individuals (responsible for the serious deficiencies);
- That the serious deficiency determination **is not** subject to appeal;
- That failure to fully and permanently correct the serious deficiency(ies) by the deadline will result in the proposed:
  - Termination of the CE's Permanent Agreement for cause; and
  - Disqualification of the CE, responsible principals and responsible individuals.
- That voluntary termination of the CE's Permanent Agreement after the CE receives the *Notice of Serious Deficiency* will still result in the organization's formal termination and placement of the organization, responsible principals and responsible individuals on the NDL without further opportunity for corrective action or appeal.
- That, if TDA does not have the date of birth for any individual named as a "responsible principal or individual" in the serious deficiency notice, the submission of that person's date of birth is a condition of corrective action for the organization and/or individual.

This notice will be sent to the CE, Executive Director, Chairman of the Board, and any other responsible principal(s) and responsible individual(s). A courtesy copy will be sent to all remaining board members not named as responsible.

The Executive Director is responsible for the organization's day-to-day operations. The Chairman of the Board of Directors, or equivalent, is responsible for the organization's overall operation. They may not always be directly responsible for a specific serious deficiency; however, by virtue of their positions, they have overall responsibility and accountability for the organization and will therefore be named as responsible principals.

The notices will otherwise always be sent to the highest official within the organization (i.e., owner), and each responsible principal and individual named as responsible for the serious deficiencies.

### **10230 Opportunity for Corrective Action**

The CE and responsible principal(s)/responsible individual(s) will be allowed a specific amount of time to fully and permanently correct the serious deficiency(ies) before TDA proposes to terminate the Permanent Agreement\*. This time will not be extended.

**\*EXCEPTION:** If the serious deficiency is due to an imminent threat to the health or safety of participants, TDA will immediately suspend the CE's participation, propose to terminate the Permanent Agreement and propose to disqualify the CE, responsible principal(s) and responsible individual(s) without opportunity for corrective action.

Refer to Item 10400, *Imminent Threat to Health or Safety*, for more information.

TDA will determine if the serious deficiency(ies) have been "fully and permanently" corrected by:

- Reviewing the documentation submitted detailing the corrective action taken; and
- Conducting an onsite review to verify that corrective action was taken, if needed.

If the serious deficiency(ies) is fully and permanently corrected within the time allowed, all parties will receive written notification that the serious deficiency process has been temporarily deferred. This means that TDA will not proceed with Steps 4 and 5 in the process. However, if at any time it is discovered that the serious deficiency(ies) have not in fact been fully and permanently corrected TDA will proceed immediately to Step 4 without further opportunity for corrective action.

**NOTE:** If TDA does not have the date of birth for any responsible party, submission of that information will be part of the required corrective action. Failure to provide the required date(s) of birth will result in denial of a CE's corrective action.

## 10240 Notice of Proposed Termination and Proposed Disqualification

The *Notice of Proposed Termination and Proposed Disqualification* will specify:

- That TDA is proposing to terminate the CE's Permanent Agreement;
- That TDA is proposing to disqualify the CE, responsible principal(s) and responsible individual(s);
- The basis for the proposed actions;
- The effective date for the proposed actions;
- The procedures for appealing the proposed actions;
- That the CE will receive CACFP payments for eligible meals and operation/administrative costs during the period of appeal (unless its participation has been suspended); and
- That voluntary termination of the CE's Permanent Agreement after the CE receives the *Notice of Proposed Termination and Proposed Disqualification* will still result in the organization's formal termination and placement of the organization, responsible principals and responsible individuals on the NDL and State Agency List without further opportunity for corrective action or appeal.

This notice will be sent to the CE, Executive Director, Chairman of the Board, and any other responsible principal(s) and responsible individual(s). A courtesy copy will be sent to all remaining board members not named as responsible.

The responsible principal(s) and responsible individual(s) may appeal the Notice of Proposed Termination and Proposed Disqualification. Each person wishing to appeal their proposed disqualification from the Program and placement on the NDL must submit a request either collectively, naming each person, or separately. Only a responsible principal may appeal the proposed termination and proposed placement of the organization on the NDL. At the discretion of the ARO, one hearing will be conducted combining all requests received from the responsible principals and responsible individuals.

If a request for an appeal is not received within 15 days of receipt of the Notice, TDA will immediately proceed to Step 5 and issue a *Notice of Termination and Disqualification*.

If a request for an appeal is received within 15 days of receipt of the Notice, and the ARO overturns TDA's action, TDA will issue a *Notice of Temporary Deferral of Serious Deficiency, Proposed Termination and Proposed Disqualification*. The effective date of the temporary deferral will be the date of the ARO's decision.

## **10250 Notice of Termination and Disqualification**

The *Notice of Termination and Disqualification* will inform all parties that the:

- Permanent Agreement has been terminated; and
- Organization, responsible principal(s) and responsible individual(s) have been disqualified and placed on the NDL and State Agency List.

The effective date of the termination and disqualification is the date in the *Notice of Proposed Termination and Proposed Disqualification* letter if a request for an appeal was not received or was not received timely. If a request for an appeal was received and TDA's actions were upheld, the effective date will be the last day of the month of the ARO's decision.

This notice will be sent to the CE, Executive Director, Chairman of the Board, and any other responsible principal(s) and responsible individual(s). A courtesy copy will be sent to all remaining board members not named as responsible.

Refer to Section 9000, *Terms and Definitions*, for a definition of Responsible Principal or Responsible Individual.

## **10300 Submission of False Claims and Documentation**

Submitting false information on the claim for reimbursement and submitting false documentation in support of that claim in order to receive reimbursement to which a CE is not entitled is a serious deficiency.

If it is determined that a CE knowingly submitted false information or documentation in order to receive reimbursement the CE will be placed in the serious deficiency process as described above for participating Contracting Entities and its Program participation, including Program payments, may be suspended.

## **10310 Suspension**

Suspension for the submission of false claims is an action that is taken simultaneously with the serious deficiency process.

Once the determination is made, the CE will receive a *Notice of Intent to Suspend*.

The notice will:

- Inform the CE that TDA is proposing to suspend its participation, including all payments;
- Specify that the proposed suspension is due to the CE's submission of a false claim or false information/documentation in order to receive reimbursement as specified in the *Notice of Serious Deficiency*;
- State that the effective date of the proposed suspension will be 10 days from the date the CE receives the *Notice of Intent to Suspend*, unless the CE requests a review (appeal) of the proposed suspension;
- Include the name, address and telephone number of the suspension review official; and
- Specify that if the CE wants to request a review of the proposed suspension it must submit the request to the address provided and include written documentation opposing the proposed suspension within 10 days of its receipt of the *Notice of Intent to Suspend*.

This notice will not be combined with the *Notice of Serious Deficiency*, however both notices will be sent to the CE at the same time.

#### **10400 Imminent Threat to Health or Safety**

If state or local health or licensing officials have cited a CE for serious health or safety violations that constitute an imminent health or safety threat, TDA will immediately send the CE a *Notice of Suspension, Proposed Termination and Proposed Disqualification for Imminent Threat*.

This notice will specify:

- That TDA is suspending the CE's participation (including Program payments), proposing to terminate the CE's Permanent Agreement, and proposing to disqualify the CE and the responsible principals and responsible individuals;
- The serious deficiency(ies);
- That voluntarily termination of the CE's Permanent Agreement after the CE receives the Notice will still result in the organization's formal termination and placement of the organization, responsible principals and responsible individuals on the NDL without further opportunity for corrective action or appeal;
- That the serious deficiency determination is not subject to appeal;
- The procedures for appealing the suspension, proposed termination, and proposed disqualifications; and
- That, if the ARO overturns the suspension, the CE may claim reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.



The notice will be sent to the:

- Executive Director;
- Chairman of the Board of Directors; and
- Responsible principal(s) and responsible individual(s).

The Executive Director is responsible for the organization's day-to-day operations. The Board Chair, or equivalent, is responsible for the organization's overall operation. They may not always be directly responsible for a specific serious deficiency; however, by virtue of their positions, they have overall responsibility and accountability for the organization.

A courtesy copy will be sent to all remaining board members not named as responsible.

In an appeal based on *Imminent Threat*, the CE, responsible principal(s) and/or responsible individual(s) may appeal any or all of the three adverse actions:

- Suspension.
- Proposed termination.
- Proposed disqualification.

**NOTE:** If the CE, responsible principal(s) or responsible individual(s) do not request an appeal within the time allotted in the written notice, TDA will proceed with termination of the Permanent Agreement and disqualification of the CE, responsible principals and responsible individuals.

If an appeal is requested and the ARO upholds TDA's decision, TDA will send a *Notice of Termination and Disqualification* to the CE, responsible principal(s) and responsible individual(s). The notice informs all parties that the:

- Permanent Agreement is terminated for cause; and
- CE, responsible principal(s) and responsible individual(s) are disqualified and placed on the NDL.

If the ARO overturns TDA's actions, TDA will send a *Notice of Temporary Deferral*. This notice:

- Removes the suspension effective the date of the ARO's decision.
- Informs the CE that the Permanent Agreement will not be terminated.
- Informs all parties that they will not be disqualified.
- Informs the CE that they can claim for eligible meals served during the suspension period.

**NOTE:** If TDA determines there is an imminent threat to health or safety, TDA will immediately inform the health or licensing authority and take action that is consistent with the authority's recommendation, up to and including suspension of participation and placement in the serious deficiency process as detailed above.

## **10500 Day Care Home Providers**

CEs must initiate the serious deficiency process if it is determined the Provider has committed one or more serious deficiency.

There are five steps in the serious deficiency process.

Step 1. Serious deficiency determination, the point at which the sponsor determines the Provider's noncompliance(s) rise to the level of serious deficiency.

Step 2. Notice of serious deficiency, the first notification sent to the Provider informing them they have been determined seriously deficient.

Step 3. Opportunity for corrective action, the time given to the Provider allowing them to fully and permanently correct the serious deficiencies.

Step 4. Notice of proposed termination and disqualification, the second notification sent to the Provider if they fail to fully and permanently correct the serious deficiencies. This notice allows the Provider to appeal the proposed actions.

Step 5. Notice of termination and disqualification, the third notification sent to the Provider if they fail to appeal the notice of proposed termination and disqualification, or they appeal and the hearings official upholds the sponsors proposed actions.

A copy of each Notice must be sent to TDA at the same time it is sent to the Provider. Email the copy to [community.ops@Texasagriculture.gov](mailto:community.ops@Texasagriculture.gov). In the subject line indicate the type of notice (for example, *Notice of Serious Deficiency*), the CE name and the CE ID. CEs may not wait until the process is completed and send a copy of all letters to TDA at one time. Failure to copy TDA during each step of the process could result in the CE being placed in the Serious Deficiency Process.

## 10510 Serious Deficiency Determination

Serious deficiencies that could lead to day care home's termination and disqualification include:

- Submission of false information on the application.
- Submission of false claims for reimbursement.
- Simultaneous participation under more than one CE.
- Noncompliance with CACFP meal patterns.
- Failure to keep required records.
- Failure to participate in training.
- Conduct or conditions that threaten the health or safety of a child or children in care, or the public health or safety.
- A determination that the Provider has been convicted of an activity that indicated a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice.
- Any other circumstance related to non-performance under the *Permanent Agreement Between Sponsoring Organization and Day Care Home Provider(s)* (H1542), as specified by the CE or TDA.

CEs must use discretion in making a serious deficiency determination.

To appropriately use discretion, CEs must be able to distinguish between:

- Occasional (happened once or infrequently) versus systemic (is ongoing and is a problem that is due to a procedural inadequacy) errors.
- Minor (no or few disallowances) versus major (many disallowances or falsified claims) errors.

CEs should take into account several factors in deciding whether a problem rises to the level of a serious deficiency:

- The frequency of the error.
- The severity of the error.
- Length of the Provider's CACFP experience.
- Was the error intentional or due to the Provider's misunderstanding of CACFP requirements.

Once a notice of serious deficiency is issued it can result in only two possible outcomes:

- The Provider fully and permanently corrects the serious deficiency within the period allotted for corrective action.
- The Provider does not fully and permanently correct the serious deficiency and the CE proceeds to proposed termination of the agreement and proposed disqualification of the Provider.

Once a serious deficiency has been determined the CE must immediately prepare the *Notice of Serious Deficiency*.

**NOTE:** Sample letters for each step in the serious deficiency process can be found in Section 11000, *Resources*.

### **10520 Notice of Serious Deficiency**

The notice of serious deficiency must specify:

- That the Provider has been found to be seriously deficient.
- The serious deficiency(ies).
- The corrective action required to resolve the serious deficiency(ies) and the deadline (not to exceed 30 days) by which the action must be taken.
- That the serious deficiency determination is not subject to appeal.
- That failure to fully and permanently correct the serious deficiency by this deadline will result in:
  - Proposed termination of the Provider's agreement.
  - Proposed disqualification of the Provider and placement on the National Disqualified List (NDL).
- That if the Provider voluntarily terminates the agreement after he/she receives the serious deficiency notice, the CE will terminate the Provider's agreement, disqualify the Provider and place the Provider's name on the NDL.

A copy of this notice must be sent to TDA at the same time it is sent to the Provider. Email the copy to [community.ops@Texasagriculture.gov](mailto:community.ops@Texasagriculture.gov). In the subject line indicate the type of notice (for example, *Notice of Serious Deficiency*), the CE name and the CE ID. CEs may not wait until the process is completed and send a copy of all letters to TDA at one time. Failure to copy TDA during each step of the process could result in the CE being placed in the Serious Deficiency Process.

## 10530 Opportunity for Corrective Action

Providers are allowed up to 30 days to correct a serious deficiency. CEs may not allow a Provider additional time.

**EXCEPTION:** Providers are not given an opportunity for corrective action in the case of imminent threat to the health or safety of participants or the public. Refer to Item 10560 below for additional information.

Corrective action must include the

- Provider's full name, address and date of birth (if the sponsor does not already have the current information for the Provider),
- Procedures the Provider will implement to correct each noncompliance,
- Date the noncompliance(s) were corrected or implementation date for correction if applicable,
- Location of the corrective action documentation (records associated with correcting the noncompliance(s)), and
- Supporting documentation (such as copies of enrollment records, menus, etc.), if applicable.

### Evaluating the acceptability of Corrective Action

Upon receipt of a Provider's corrective action the CE must review it to determine it contains all required information **and**, if implemented as written, has or would correct all noncompliance(s) and prevent them from occurring in the future (full and permanent corrective action).

**NOTE:** An assurance from a Provider that he/she will comply with all requirements from now on would not be acceptable corrective action.

Whenever feasible, CEs should make onsite visits to verify and evaluate the implementation and effectiveness of the Provider's corrective action.

If the Provider fully and permanently corrects the serious deficiency within the time allowed for corrective action, send a notice to the Provider, with a copy to TDA, stating that the serious deficiency determination has been temporarily deferred due to the Provider's successful corrective action.

A copy of this notice must be sent to TDA at the same time it is sent to the Provider. Email the copy to [community.ops@Texasagriculture.gov](mailto:community.ops@Texasagriculture.gov). In the subject line indicate the type of notice (for example, *Notice of Successful Corrective Action*, *Temporary Deferral of Serious Deficiency*), the CE name and the CE ID. CEs may not wait until the process is completed and send a copy of all letters to TDA at one time. Failure to copy TDA during each step of the process could result in the CE being placed in the Serious Deficiency Process.

If the Provider fails to take corrective action, or the corrective action does not fully and permanently correct the noncompliance, the Provider must be sent a *Notice of Proposed Termination and Proposed Disqualification*, with a copy to TDA. Do not send the *Notice of Proposed Termination and Proposed Disqualification* until after the period allowed for corrective action has expired.

CEs may not suspend the participation of a Provider based on a determination that the Provider submitted false or fraudulent claims. The corrective action period allows the Provider time to demonstrate that:

- An administrative error was made.
- The CE confused two Providers with similar or identical names.
- The information submitted by the Provider was not, in fact, false.
- Any other corrective action as deemed acceptable.

In addition to declaring the Provider seriously deficient and offering a brief period for corrective action, CEs must deny the portion of the claim which is false or fraudulent. CEs must never reimburse Providers for invalid claims.

If disallowances are taken, repayment of the funds must be part of the corrective action. The serious deficiency determination is not subject to appeal, however the Provider may appeal the disallowances and the CE must include appeal rights in the *Notice of Serious Deficiency* in those cases.

#### **10540 Notice of Proposed Termination and Proposed Disqualification**

If the Provider does not submit corrective action or if the CE determines that the corrective action submitted does not fully and permanently correct the noncompliance(s), the CE must immediately send the notice of proposed termination and proposed disqualification.

This notice must:

- State that the CE is proposing to terminate the Provider's agreement for cause and proposing to disqualify the Provider and place the Provider on the NDL.
- State that these actions are being taken due to the Provider's failure to correct the serious deficiency.
- Inform the Provider that he/she may appeal the proposed termination and proposed disqualification, and provide the appeal procedures.
- Inform the Provider that he/she can continue to participate and receive Program reimbursement during the period of appeal (normally the Provider will continue to receive payments unless suspended for imminent threat).
- Inform the Provider that if he/she voluntarily terminates the agreement after receiving the notice the Provider will be disqualified and placed on the NDL.

The effective date of the proposed termination and proposed disqualification must be no earlier than 30 days from the date of the letter.

If the Provider appeals the *Notice of Proposed Termination and Proposed Disqualification* and the action is overturned, the Provider must be sent a *Temporary Deferral of Serious Deficiency, Proposed Termination and Proposed Disqualification*, with a copy to TDA. The effective date of the temporary deferral is the date of the hearing official's decision.

A copy of this notice must be sent to TDA at the same time it is sent to the Provider. Email the copy to [community.ops@Texasagriculture.gov](mailto:community.ops@Texasagriculture.gov). In the subject line indicate the type of notice (for example, *Notice of Proposed Termination and Proposed Disqualification*), the CE name and the CE ID. CEs may not wait until the process is completed and send a copy of all letters to TDA at one time. Failure to copy TDA during each step of the process could result in the CE being placed in the Serious Deficiency Process.

### **10550 Notice of Termination and Disqualification**

If the Provider fails to appeal the *Notice of Proposed Termination and Proposed Disqualification*, or if the hearing official rules in the CEs favor, the Provider must be sent a *Notice of Termination and Disqualification*, with a copy to TDA. Do not give appeal rights.

If the Provider does not appeal, the effective date of the termination and disqualification is the date in the *Notice of Proposed Termination and Proposed Disqualification* letter. If the Provider appealed and the action is upheld, the effective date is the date of the hearing official's decision.

A copy of this notice must be sent to TDA at the same time it is sent to the Provider. Email the copy to [community.ops@Texasagriculture.gov](mailto:community.ops@Texasagriculture.gov). In the subject line indicate the type of notice (for example, *Notice of Termination and Disqualification*), the CE name and the CE ID. CEs may not wait until the process is completed and send a copy of all letters to TDA at one time. Failure to copy TDA during each step of the process could result in the CE being placed in the Serious Deficiency Process.

At this step of the serious deficiency process, the CE must “close” the Provider’s participation in the CACFP via TX-UNPS.

### **10560 Suspension of Provider Participation**

If state or local health or licensing officials have cited a Provider for serious health or safety violations that constitute an imminent health or safety threat, the sponsor must immediately send the Provider a *Notice of Suspension, Proposed Termination and Proposed Disqualification for Imminent Threat*.

This notice must:

- Notify the Provider that his/her participation in the CACFP has been suspended, including all payments.
- State that the Provider has been determined to be seriously deficient, and that the CE is proposing to terminate the Provider’s agreement for cause and disqualify the Provider, including the effective date.
- Specify the serious deficiencies that constitute the imminent threat.
- Include the procedures for the Provider to appeal the suspension and the proposed actions.
- State that the suspension, including all CACFP payments, will remain in effect during the period of appeal, if the Provider appeals.
- Inform the Provider that if the hearing official overturns the suspension, the Provider may claim reimbursement for eligible meals served during the period of suspension.
- Inform the Provider that termination will result in the disqualification of the Provider.
- State that if the Provider voluntarily terminates his/her agreement after receiving this notice, the Provider will be disqualified and his/her name will be placed on the NDL.

A copy of this notice must be sent to TDA at the same time it is sent to the Provider. Email the copy to [community.ops@Texasagriculture.gov](mailto:community.ops@Texasagriculture.gov). In the subject line indicate the type of notice (for example, *Notice of Serious Deficiency, Suspension, Proposed Termination, and Proposed Disqualification*), the CE name and the CE ID. CEs may not wait until the process is completed and send a copy of all letters to TDA at one time. Failure to copy TDA during each step of the process could result in the CE being placed in the Serious Deficiency Process.



An imminent threat to health or safety requires the immediate suspension of a day care home without the opportunity for corrective action.

If the Provider appeals and loses, send the Provider a *Notice of Termination and Disqualification* informing the Provider that:

- The home's agreement is terminated for cause.
- The Provider is disqualified and placed on the NDL.

If the Provider appeals and the CE's actions are overturned send the Provider a *Notice of Temporary Deferral* informing the Provider that:

- The home's suspension ended on the date of the hearing official's decision.
- The home's agreement will not be terminated.
- The Provider will not be disqualified and may claim for eligible meals served during the suspension period.

Send a copy of the *Notice of Termination and Disqualification* or *Notice of Temporary Deferral* to TDA as described above.

**NOTE:** If a CE determines there is an imminent threat to health or safety in a day care home, it must immediately inform the health or licensing authority and then take action that is consistent with the authority's recommendation. Follow the procedures outlined above as applicable.

### **10600 Removal from the National Disqualified List**

Organizations, responsible principal(s) and responsible individual(s) that are disqualified from participation in the CACFP are placed on the National Disqualified List (NDL) and will remain on the list for a minimum of seven years from the date of disqualification from participation unless a debt is owed under the CACFP, in which case they will remain on the list until the debt has been repaid. **NOTE:** A day care home provider is considered a responsible individual.

A request to be removed from the NDL before the seven years has elapsed can be submitted, however it must be noted that:

- Submission of a request does not guarantee it will be approved, and denial is not subject to appeal;
- Approval of a request for removal does not equal approval to participate in the CACFP; and

- Due to the egregious nature of the submission of false claims or documentation, and submission of false information on the application, TDA will not consider requests for removal from an organization or individual that was disqualified for those reasons.

For a request to be considered, the organization, responsible principal or responsible individual must submit the following to TDA:

- A letter requesting the organization, principal(s) or individual(s) be removed from the NDL.
- Corrective action that includes:
  - **An acceptable Corrective Action Plan (CAP):** The organization, principal(s) or individual(s) must submit an acceptable CAP outlining the actions that will be taken or have been taken to correct the serious deficiencies that caused placement on the NDL. If TDA rejects the CAP, this action cannot be appealed.
  - **Any outstanding audits:** If the serious deficiency(ies) include failure to submit an acceptable audit, the organization must submit an audit that complies with Single Audit requirements or for-profit audit requirements that were in effect at the time the audit was originally due. Corrective action must also include a plan to address any deficiencies identified in the audit.
  - **All outstanding funds owed:** If the organization has an outstanding debt due to a previous CACFP claim, adjusted claim, advance overpayment, or audit finding, the debt must be repaid.
  - **One of the following:**
    - An explanation, setting forth detailed, objective, verifiable facts, indicating why the principal(s) or individual(s) identified as being responsible for the serious deficiency(ies) should now be eligible to participate in the CACFP, if the person or persons are requesting removal.
    - A statement that the principal(s) identified as being responsible for the serious deficiency(ies) are no longer principals in the organization, if they are not included in the request for removal.
    - A statement that the individual(s) identified as being responsible for the serious deficiencies do not perform any tasks related to the CACFP, or are no longer employed by the organization, if they are not included in the request for removal.

Requests for removal, including required documentation, should be mailed to:

Texas Department of Agriculture  
 Food and Nutrition  
 Attn: Community Operations  
 P.O. Box 12847  
 Austin, Texas 78711

Or via overnight delivery to:

Texas Department of Agriculture  
Food and Nutrition  
Attn: Community Operations, 10<sup>th</sup> Floor  
1700 N Congress Avenue  
Austin, Texas 78701

If TDA determines that the organization, principal(s), and/or individuals have taken corrective action to fully and permanently correct the serious deficiencies, an assessment will be forwarded to USDA.

USDA will determine, in consultation with TDA, if the organization, principal(s) and/or individuals will be removed from the NDL. TDA will notify the organization and responsible principals and individuals of USDA's decision.

If either TDA or USDA does not accept the corrective action and decides to retain the organization, responsible principal(s) or responsible individual(s) on the NDL, the decision may not be appealed.