

TEXAS POLICY

In Texas, organizations that contract directly with Texas Department of Agriculture's USDA federally funded Nutrition Programs are called Contracting Entities or CEs. The Summer Food Service Program's (SFSP) Sponsors are Contracting Entities or "CEs."

Serious Deficiency Process

The serious deficiency process is the procedure the Texas Department of Agriculture (TDA) uses to correct a contracting entity's (CEs) program noncompliance or, if necessary, terminate a CE's participation in the Summer Food Service Program (SFSP).

Once a serious deficiency determination has been made, there are only two possible outcomes for the CE:

1. The CE will fully and permanently correct the serious deficiency identified by TDA.
2. TDA will propose termination of the Food and Nutrition Division (FND) Agreement and propose placement of the CE, responsible principal(s) and individual(s) on the Texas Excluded SFSP List (TEXSL).

The TEXSL is a list of former CEs, responsible principals and responsible individuals who are excluded from participating in SFSP. CEs and principals/individuals remain on the list for seven years or if debt is involved, until the debt is paid.

There are five steps in the serious deficiency process to assist in determining the final outcome for the CE, responsible principal(s) and individual(s).

Definitions

Excluded – The status of a CE sponsoring the SFSP, responsible principal or responsible individual that was declared seriously deficient and placed on the Texas Excluded SFSP List (TEXSL).

National Disqualified List (NDL) – The list, maintained by USDA, of contracting organizations, responsible principals and responsible individuals disqualified from participation in the CACFP.

Principal – Any individual who holds a management position within, or is an officer of, a CE, including all members of the CE's board of directors.

Responsible Principal or Responsible Individual –

- A principal, whether compensated or uncompensated, who TDA or USDA determines to be responsible for a CE's serious deficiency;
- Any other individual employed by, or under contract with, a CE who TDA or USDA determines to be responsible for the serious deficiency; or
- An uncompensated individual who TDA or USDA determines to be responsible for a CE's serious deficiency.

Seriously Deficient – The status of a CE that has been determined by TDA to have serious management or integrity problems of its operation of the SFSP.

Texas Excluded SFSP List (TEXSL) – A list maintained by TDA that identifies organizations and persons who are ineligible to participate in SFSP as long as they are on the list. A CE, responsible principal or responsible individual will go through the serious deficiency process before being put on the list.

Termination for Cause – The termination of a CE's FND Agreement by TDA due to a determination of serious deficiency in the CE operation of the SFSP.

Step 1: Serious Deficiency Determination

TDA may declare a CE, responsible principals and responsible individuals seriously deficient for any serious management or integrity problems. TDA will use discretion in making these serious deficiency determinations by distinguishing between occasional and minor errors or systemic or major errors.

The following list constitutes serious deficiency in the SFSP. The list includes, but is not limited to:

1. Submission of false information to TDA;
2. Noncompliance with bid procedures and contract requirements applicable to procurement of federal child nutrition program regulations;
3. Failure to return to TDA any advance payments which exceeded the amount earned for serving eligible meals;
4. Failure to submit all claims for reimbursement in any prior year, provided that failure to return any advance payments for months for which claims for reimbursement are under dispute from any prior year shall not be grounds for disapproval;
5. Permitting an individual who is on the National Disqualified List (NDL) or TEXSL to perform SFSP duties for the CE.
6. Failure to perform financial and administrative responsibilities; or
7. Imminent threat to the health or safety of participating children.

If program violations are found at a significant proportion of the CE's sites, then those sites can contribute to a serious deficiency determination. Program violations include, but are not limited to, the following:

8. Continued use of a food service management company (FSMC) that is in violation of health codes;
9. Noncompliance with the meal service time restrictions;
10. Failure to maintain adequate records;
11. Failure to adjust meal orders to conform to variations in the number of participating children;
12. Simultaneous service of more than one meal to any child;
13. Claiming of program payments for meals not served to participating children;
14. Serving significant number of meals which did not contain all the meal components in the required amounts;
15. Excessive instance of off-site meal consumption.

Any other action affecting the CE's ability to administer the SFSP in accordance with program requirements.

Imminent threat to the health and safety of participating children at any site will result in immediate termination of that site and placement of the CE, responsible principals, and any responsible individuals in the serious deficiency process.

If the CE is using a FSMC, TDA will notify the FSMC of the site's program termination within 48 hours.

Step 2: Notice of Serious Deficiency

Once TDA has determined a CE is seriously deficient, the sponsor will be sent a written *Notice of Serious Deficiency*. This notice:

- Fully describes the serious deficiency or cross references documents that discuss the serious deficiency, such as an administrative review findings letter or audit;
- Specifies the corrective action required to resolve the serious deficiency, and the deadline by which corrective action must be taken;
- Identifies the responsible principals and/or responsible individuals;
- Informs the CE that the serious deficiency determination **is not** subject to appeal;
- States that failure to fully and permanently correct the serious deficiency by the deadline will result in:
 - Proposed termination of the CE's FND Agreement for cause;
 - Denial of the CE's renewal application, if applicable; and
 - Proposed exclusion of the CE, responsible principals and/or responsible individuals from participation in the SFSP as long as they are on the TEXSL.
- Informs the CE whether or not they will receive SFSP payments during the period of corrective action.
- States that if the CE voluntarily terminates its FND Agreement after they receive the *Notice of Serious Deficiency*, TDA will still proceed with the proposed exclusions and denial of renewal of application, if applicable.

This notice will be sent to the CE, executive director, chair of the board, and any other responsible principal(s) and responsible individual(s).

Step 3: Corrective Action

The *Notice of Serious Deficiency* provides the opportunity for the CE to fully and permanently correct the serious deficiency by creating and implementing a corrective action plan.

A CE will be allowed a specific amount of time to fully and permanently correct the serious deficiencies before TDA proposes to terminate their FND Agreement and exclude the CE, responsible principals and/or individuals from participating in the program.

The amount of time allowed to correct a serious deficiency will be determined by the Community Operations office and may, in part, be based on the CE's number of operating days left in the program year. This time will not be extended.

FND will determine if the CE has "fully and permanently" corrected the serious deficiency by:

- Reviewing the documentation submitted showing the corrective action taken; and/or
- Conducting an onsite review to verify that corrective action was taken.

If the serious deficiency is fully and permanently corrected within the time allowed, TDA will send the CE a notice rescinding the serious deficiency determination and will end the process of serious deficiency.

Step 4: Notice of Proposed Termination and Proposed Exclusion

If the serious deficiency is not fully and permanently corrected within the time allowed, TDA will issue a written *Notice of Proposed Termination and Proposed Exclusion* from the SFSP. This notice will be sent to the CE, executive director, chair of the board, and any other responsible principal(s) and responsible individual(s) named in the *Notice of Serious Deficiency*.

This notice will:

- State that TDA is proposing to terminate the CE's FND Agreement;
- State that TDA is proposing to exclude the CE, responsible principal(s) and responsible individual(s) by placing them on the TEXSL;
- Specify the basis for the proposed termination and exclusion;
- Specify the effective date for the proposed termination and exclusion;
- State the procedures for appealing the proposed termination and proposed exclusion; and
- State that if the CE voluntarily terminates their FND Agreement after receipt of the *Notice of Proposed Termination and Proposed Exclusion*, TDA will still proceed with the proposed exclusion(s).
- State that the CE must notify feeding sites that TDA has proposed to terminate the CE's FND Agreement and the effective date of that proposed termination.

The responsible principal(s) and responsible individual(s) may appeal the *Notice of Proposed Termination and Proposed Exclusion*. Each person wishing to appeal their proposed placement on the TEXSL 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 CE on the TEXSL. One hearing will be conducted combining all requests received from the responsible principals and responsible individuals.

If the responsible principals and/or responsible individuals do not appeal the proposed actions within 10 days of receipt of the *Notice of Proposed Termination and Proposed Exclusion*, or if FND's actions are upheld, TDA will immediately issue a written *Notice of Termination and Exclusion*.

If the CE is using a FSMC, TDA will also notify the FSMC of the CE's SFSP program termination within 48 hours.

If the CE appeals the *Notice of Proposed Termination and Proposed Exclusion* within 10 days of receipt of the Notice, and the Administrative Review Official (ARO) overturns TDA's action, TDA will issue a *Notice of Rescission of Serious Deficiency, Proposed Termination and Proposed Exclusion*. The effective date of the rescission will be the date of the ARO's decision.

Step 5: Notice of Termination and Exclusion

If there is no response from the CE, executive director, chair of the board and other responsible principals and individuals, within the specified time frame, or the ARO upholds TDA's action, TDA will send a written *Notice of Termination and Exclusion*.

The *Notice of Termination and Exclusion* will inform the CE, responsible principal(s) and responsible individual(s) that:

- CEs must notify feeding sites regarding the effective date of termination and exclusion.
- The CE's FND Agreement is being terminated and effective date of termination.
- The CE, responsible principal(s) and/or responsible individual(s) have been excluded from participating in SFSP and placed on the TEXSL.
- These actions are being taken because a request for an appeal was not filed within the time specified, or the ARO upheld FND's proposed actions.

The effective date of the termination and exclusion is the date in the *Notice of Proposed Termination and Proposed Exclusion* letter if the CE responsible principal(s) and responsible individual(s) did not appeal in a timely manner. If the CE, responsible principal(s) and/or responsible individual(s) appealed and TDA's actions were upheld, the effective date will be the date the ARO issues a decision.

NOTE: The notices in the serious deficiency process will always be sent to the CE's:

- Executive Director.
- Chair of the Board of Directors.

The executive director is responsible for the organization's day-to-day operations. The chair of the board of directors or equivalent is responsible for the CE'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 CE, and will always be named as responsible principals.

FND may also identify other individuals who are responsible for the serious deficiency. Only the CE and those individuals cited as responsible for the serious deficiency will be named in the *Notice of Serious Deficiency* and potentially excluded from participating in the SFSP. Those non-principal individuals in the organization who are associated with the CE's operation of the SFSP and who have responsibility for a serious deficiency will also receive the *Notice of Serious Deficiency*.

A responsible individual can be:

- An employee.
- A subcontractor who receives compensation.
- Individuals who are not compensated by the CE, such as volunteers.

Removal of CEs, Principals and Individuals from the Texas Excluded SFSP List (TEXSL)

Once included on the TEXSL, a CE, responsible principal(s) and/or responsible individual(s) will remain on the list until TDA determines that the serious deficiency that led to their placement on the list has been corrected, or until seven years have elapsed since they were excluded from participation, whichever comes first.

However, if the CE, responsible principals and/or responsible individuals have failed to repay debts owed under the SFSP, they will remain on the list until the debt has been repaid.

To be considered for removal from the TEXSL, a CE, responsible principal or responsible individual must submit the following to their Food and Nutrition Community Operations office:

- A letter requesting that their organization, principal(s) or individual(s) be removed from the TEXSL.
- Corrective action that includes:
 - **An acceptable Corrective Action Plan (CAP):** The CE, responsible principal(s) or responsible individual(s) must submit an acceptable CAP outlining the actions that will be taken or have been taken to correct the serious deficiency that caused placement on the TEXSL. If TDA rejects the CE's CAP they cannot appeal this decision.
 - **Any outstanding audits:** If the serious deficiency includes failure to submit an acceptable audit, the CE, responsible principal(s) or responsible individual(s) must submit an audit that complies with Single 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 CE has an outstanding debt to TDA due to a previous SFSP claim, amended claim, advance overpayment, or audit finding, the debt must be repaid.
 - **One of the following:**
 - An explanation of why the principal(s) or individual(s) identified as being responsible for the serious deficiency should now be eligible to participate in the SFSP, if the person or persons are requesting removal from the TEXSL.
 - A statement that the principal(s) or individual(s) identified as being responsible for the serious deficiency will not be involved in the operation or administration of the SFSP, if the person or persons are still part of the organization, and they are not requesting removal from the TEXSL.
 - A statement that the principal(s) or individual(s) identified as being responsible for the serious deficiency are no longer employed by the organization, if they are not included in the request for removal from the TEXSL.

If TDA determines that the CE, responsible principals(s) or responsible individual(s) have taken acceptable corrective action, TDA will remove the CE, responsible principal(s) and/or responsible individuals from the TEXSL. TDA will notify the CE, principal(s) and/or individual(s) of the decision.

If TDA decides to retain the CE, responsible principal(s) or responsible individual(s) on the TEXSL, TDA will notify the CE, principal(s) and/or individual(s) of the decision. The decision may not be appealed.