The Serious Deficiency Policy for Family Daycare Homes

The Serious Deficiency Process is the first step in successfully addressing a provider’s non-compliance with one or more aspects of its operation of the Program.

Federal Regulations [7 CFR Part 226.16(k)(2)] list the following actions as serious deficiencies: submission of false information on the application; submission of false claims for reimbursement; simultaneous participation under more than one Sponsoring Organization (SO); non-compliance with Program meal pattern; failure to keep required records; conduct or conditions that threaten the health or safety of a child(ren) in care, or the public health or safety; a determination that the day care home has been convicted of any activity that occurred during the past seven years and that indicated a lack of business integrity; failure to participate in training; or any other circumstance related to non-performance under the SO’s day care home agreement, as specified by the SO or the State Agency (SA).

The sponsor must determine whether a specific problem rises to the level of serious deficiency, based on:

- The type of problem
- The severity of the problem
- The frequency of the problem

Once the sponsor determines that the problem is a Serious Deficiency, then a written notice, signed by the Director or Program Coordinator of the Sponsoring Organization, must be sent to the provider within seven days. If the serious deficiency constitutes a threat to health or safety, the sponsor must contact the State agency for more information and further instructions. A copy of this notice must be sent to the State Agency at the same time that it is sent to the provider.

The notice must:

- Inform the provider, by certified mail, that he/she is seriously deficient;
- Describe the nature of the serious deficiency, with a specific regulatory citation to 7 CFR §226.16 (k)(2);
- Specify the deadline for corrective action, which must not exceed 30 days;
- State that the serious deficiency is not subject to appeal;
- State that failure to fully and permanently correct the serious deficiency by the deadline will result in a Notice of Proposed Termination and Disqualification; and
- State that the home’s voluntary termination of the agreement after having been declared seriously deficient will result in the Notice of Proposed Termination and Disqualification and placement on the National Disqualification List.

The name(s) of the provider must be placed on the State agency’s list noting the basis for the serious deficiency determination.

In response, the provider must submit a CAP that details the internal controls implemented to ensure that the serious deficiencies are fully and permanently corrected.

A successful CAP includes:
- The full name(s) of the provider, address, and date of birth;
- Each serious deficiency and the procedures to be implemented to correct the issue;
- The timeframe for implementation of the procedures to correct the issue;
- The locations where records will be kept associated with correcting the issue; and
- Policies and procedures or other official documentation which ensures the serious deficiencies have been fully and permanently corrected.

Additional supporting documentation must be submitted with the CAP. This might include copies of income eligibility forms, enrollment forms, enrollment rosters, staff training documentation, site monitoring reports, menus, Child Nutrition Labels or manufacturers’ product analysis sheets or recipes, attendance records, meal count forms, itemized food receipts, etc.

The provider may continue to participate in the CACFP during the corrective action period and the sponsoring organization will pay any valid claims submitted by the provider during this time period.

If the CAP is acceptable, the serious deficiency determination for the daycare home and provider is temporarily deferred.
If a timely CAP is not submitted, or no CAP is submitted, a Notice of Termination and Disqualification, with appeal rights, must be sent to the provider. If an appeal is filed, and the action taken by the sponsoring organization is upheld, the provider will be sent a Notice of Termination and Disqualification and placed on the NDL with the full amount of any determined debt associated with both the daycare home and/or the provider.

The notice must:

- Inform the provider that the sponsor is proposing to terminate his/her agreement to participate in CACFP, and to place him/her on the National Disqualified List;
- Inform the provider of the procedures and timeframes for seeking an appeal;
- Inform the provider that he/she will continue to receive payment for valid claims submitted until the expiration of the timeframe for filing an appeal, or until the resolution of the appeal.
- State that the home’s voluntary termination of the agreement after having received the notice of intent to terminate will result in the home’s termination and disqualification.

If the provider requests an appeal within the required timeframe, the sponsor must send the administrative review official all materials and documents necessary for the review official to make a determination.

- If the review official rules in favor of the provider, the sponsor must send the provider a letter deferring the serious deficiency and the proposed termination and disqualification. A copy of this letter is also sent to the State agency. See “Serious Deficiency Determination Temporarily Deferred” (Prototype Letter #2 Handout 4B)
- If the review official rules in favor of the sponsor, the sponsor must formally terminate the home’s agreement. (Prototype Letter 4F: Termination and Disqualification Upheld by Hearing Officer) The sponsor will also send a copy of the termination letter to the State agency, along with the provider’s name and other information needed for placing the provider on the National Disqualified List.
PROTOTYPE LETTERS—SERIOUS DEFICIENCY PROCESS FOR PROVIDERS

Prototype Letter #1; Handout Letter 4A: Notice of Serious Deficiency

Prototype Letter #2; Handout Letter 4B: Serious Deficiency Determination

Temporarily Deferred

Prototype Letter #3; Handout Letter 4C: Proposed Termination and Disqualification

Prototype Letter #4; Handout Letter 4D: Termination and Disqualification No Appeal Hearing

Prototype Letter #5; Handout Letter 4E: Serious Deficiency Determination

Temporarily Deferred by Hearing Officer

Prototype Letter #6; Handout Letter 4F: Termination and Disqualification

Upheld by Hearing Officer

# 7; Prototype Appeal Procedure for FDCH Providers
**Handout 4A**
Protoype:
Serious Deficiency
Notice for Providers

*Note:* You must send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by §226.2, definition of "notice".

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.], we have 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 the due date, we will:

- Propose to terminate your agreement to participate in the CACFP for cause, and
- Propose to 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, you will be placed on the National Disqualified List. 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 such time as 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 § 226.16(1) of the CACFP regulations (7 CFR 226.16(1)).

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 cite to the relevant serious deficiency in the regulations at §226.16(1)(2). If the serious deficiency is not specifically listed, cite: § 226.16(1)(2)(vii), 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. You must provide us documentation that shows you have taken the required corrective action for each of the serious deficiencies cited in this letter. 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 the due 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 will propose to disqualify you.

You may not appeal the serious deficiency determination. However, if we propose to terminate your agreement for cause or propose to disqualify you, you will be able to appeal those actions and you will be advised of your appeal rights and 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.

Insert if applicable: 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, then we will conduct an unannounced follow-up review to verify the adequacy of the corrective action.

If we find in [insert if applicable: the follow-up review or] any subsequent review that any of these serious deficiencies have not been fully and permanently corrected, we will immediately propose to terminate your agreement for cause and propose to disqualify you without any further opportunity for corrective action.

Sincerely,

Sponsor Employee Name and Title

cc: State Agency
Handout 4B
Protype: Notice of Successful Corrective Action and
Temporarily Deferred of Serious Deficiency for Providers

Note: You must send this letter by certified mail/return receipt, an equivalent private delivery
service (such as FedEx), fax, or e-mail as required by §226.2, definition of "notice".

Date

Provider Name
Provider Street Address
Provider City, State, Zip Code

Dear [Provider]:

This letter concerns the determination in our [date] Serious Deficiency Notice that you are
seriously deficient in your operation of the Child and Adult Care Food Program (CACFP).

We received the documentation you sent us detailing the actions you have taken to correct
these serious deficiencies on [date], before the corrective action deadline. [Insert if
applicable: We conducted a follow-up review on [date] to verify the adequacy of the
corrective actions].

SERIOUS DEFICIENCY DETERMINATION TEMPORARILY DEFERRED

[Insert if applicable: Based on our review of the documentation and the [date] follow-up
review], we have determined that you have fully and permanently corrected the serious
deficiencies that were cited in the Serious Deficiency Notice. As a result, we have temporarily
defferred our serious deficiency determination as of the date of this letter. This also means that
we will not propose to terminate your agreement for cause based on this serious deficiency
finding or propose to disqualify you on that basis.

ADEQUACY OF CORRECTIVE ACTIONS

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 cite to the relevant serious deficiency in the
regs at §226.16(1)(2). If the serious deficiency is not specifically listed, cite:
§226.16(1)(92)(vii), 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. However, if we find in any
subsequent review that any of these serious deficiencies have not been fully and permanently
corrected, we will immediately propose to terminate your agreement for cause and propose to
disqualify you without any further opportunity for corrective action.

Sincerely,

Sponsor Employee Name and Title

cc: State Agency

Revised 3/2012
(Note: You must send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by §226.2, definition of “notice.”)

Provider Name
Provider Street Address
Provider City, State 00000

Dear [Provider]:

This letter concerns the determination in our [date] Serious Deficiency Notice that you are seriously deficient in your operation of the Child and Adult Care Food Program (CACFP).

We received the documentation you sent us detailing the actions you have taken to correct these serious deficiencies on [date], before the corrective action deadline. [Insert if applicable: We conducted a follow-up review on [date] to verify the adequacy of the corrective actions.]

Based on our review of the documentation [Insert if applicable: and the follow-up review], we have determined that you have not fully and permanently corrected the serious deficiencies that were cited in the Serious Deficiency Notice.

PROPOSED TERMINATION AND PROPOSED DISQUALIFICATION

As a result, we propose to:

- Terminate your agreement to participate in the CACFP for cause effective [date], 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. In addition, 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.

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. 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 such time as 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 § 226.16(l) of the CACFP
regulations (7 CFR 226.16(l)).

STATUS OF SERIOUS DEFICIENCIES

The following paragraphs detail each serious deficiency and its status based
on our review of the corrective action documentation [Insert if applicable: and
the [date] follow-up review].

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 cite to the relevant serious deficiency in the regulations at
§226.16(0)(2). [If the serious deficiency is not specifically listed, cite: § 226.16(l)(2)(vii),
any other circumstance related to non-performance under the sponsoring
organization-day care home agreement.]

APPEAL OF PROPOSED TERMINATION AND PROPOSED
DISQUALIFICATIONS

You may appeal the proposed termination of your agreement for cause and
your proposed disqualification. A copy of the appeal procedures is enclosed.
If you decide to appeal the proposed actions, make sure you follow the
appeal procedures exactly because the failure to do so could 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, we are proposing to terminate your CACFP agreement for cause and proposing to disqualify you.

If you appeal the proposed termination and the proposed disqualification, the proposed actions will not take effect until the hearing official issues a decision on the appeals. If you do not make a timely request for an appeal, your agreement will be terminated for cause on [date]. If you do not appeal your proposed disqualification, you will be disqualified from future CACFP participation effective [date] and placed on the National Disqualified List.

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,

Sponsor Employee Name and Title

Enclosure: Appeal Procedures

cc: State Agency
(Note: You must send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by §226.2, definition of “notice”.

Provider Name
Provider Street Address
Provider City, State 00000

Date

Dear [Provider]:

This letter concerns the determination in our [date] Notice of Proposed Termination and Proposed Disqualification, 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] Serious Deficiency Notice that you are seriously deficient in your operation of the CACFP.

You received the Notice of Proposed Termination and Proposed Disqualification on [date received]. You had until [insert deadline for requesting appeal] to submit any requests for appeals of the proposed actions. No requests for appeals were submitted by that deadline.

TERMINATION AND DISQUALIFICATION

Because the time to request an appeal has now expired, we are:

- Terminating your agreement to participate in the CACFP for cause effective [date], 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.
If you voluntarily terminate your agreement after receiving this letter, we will propose to disqualify you from future CACFP participation. Upon disqualification, you will be placed on the National Disqualified List. 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 such time as 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 § 226:16(I) of the CACFP regulations (7 CFR 226.16(I)).

SUMMARY

We are terminating your CACFP agreement for cause and disqualifying you. You may not appeal the termination of its agreement 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,

Sponsor Employee Name and Title

cc: State Agency
Handout 4E  
Prototype: Proposed Temporarily Deferred of Termination & Disqualification  
Following Providers’ Win Appeal

Note: You must send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by §226.2, definition of “notice”.

Date

Provider Name  
Provider Street Address  
Provider City, State, Zip Code

Dear [Provider]:

This letter concerns our [date] Notice of Proposed Termination and Proposed Disqualification, 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] Serious Deficiency Notice that you are seriously deficient in your operation of the CACFP.

You filed a timely appeal of the proposed termination and proposed disqualification. On [date of hearing official’s decision], the hearing official issued a decision on the appeal. In that decision, the hearing official overturned both of our proposed actions.

SERIOUS DEFICIENCY DETERMINATION TEMPORARILY DEFERRED

As a result, we have temporarily deferred our serious deficiency determination as of [date of hearing official’s decision]. We are also temporarily deferring the proposed termination of your agreement for cause and your proposed disqualification as of the same date.

Sincerely,

Sponsor Employee Name and Title

cc: State Agency

Revised 3/2012
(Note: You must send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by §226.2, definition of "notice".

Date

Provider Name
Provider Street Address
Provider City, State 00000

Dear [Provider]:

This letter concerns our [date] Notice of Proposed Termination and Proposed Disqualification, 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 disqualified you from further CACFP participation. These actions were based on the determination in our [date] Serious Deficiency Notice that you are seriously deficiency in your operation of the CACFP.

You filed a timely appeal of the proposed termination and proposed disqualification. On [date of hearing official's decision], the hearing official issued a decision on the appeal. In that decision, the hearing official upheld both of our proposed actions.

TERMINATION AND DISQUALIFICATION

As a result, we are:

- Terminating your agreement to participate in the CACFP for cause effective [date], 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.
If you voluntarily terminate your agreement after receiving this letter, we will immediately disqualify you from future CACFP participation. Upon disqualification, you will be placed on the National Disqualified List. 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 such time as 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 § 226.16(l) of the CACFP regulations (7 CFR 226.16(l)).

SUMMARY

We are 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,

Sponsor Employee Name and Title

cc: State Agency
In accordance with the 7 CFR Part 226.6 (L)(5)(i).

(Name and Address of Sponsor)

has established the following procedures which should be used by an appellant (Family Day Care Home provider) requesting a review of administrative action taken by

(Name of sponsor) and the same

appeal procedures apply uniformly to all day care home providers. These procedures are to be provided annually to all day care home providers, by the day care home sponsor or when the sponsor takes action subject to an administrative review, or anytime upon request by the Day Care Home provider.

ADMINISTRATIVE ACTIONS WHICH MAY BE APPEALED

1. Notice of intent to terminate agreement for cause.
2. Suspension for (health) safety issue.

NOTICE OF ADMINISTRATIVE ACTION

1. The day care home provider will be advised in writing of the grounds upon which the sponsor based the action.
2. The notice of action, which should be sent by certified mail, return receipt requested, will include a full description of the basis for the action, and the procedures under which the sponsor and the responsible principals or individuals may request an administrative review of the action.
3. The day care home provider will be advised in writing that the request for the review must be made no later than ____________________ days (not to exceed 30 days) from the date of receipt of the notice of action.

PROCEDURE FOR FILING REQUEST FOR APPEAL

1. Request for an appeal by a day care home provider must be submitted in writing and received no later than ____________________ days (not to exceed 30 days) from the date of receipt of action. A request for an appeal shall be mailed or filed in person with hearing officer listed below:

   Name and Address of Hearing Officer
   ______________________________________________________
   ______________________________________________________
   ______________________________________________________
   ______________________________________________________

2. Contents of Written Request for an Appeal: The day care home provider must submit a written request for an appeal that clearly identifies the administrative action or actions that are being appealed, the basis for filing an appeal, and the specific reasons why an appeal is being filed. The day care home provider must submit in writing to the Hearing Officer all documentation to support the basis for the appeal and documentation that supports the home provider's position for requesting and filing an appeal. The day care home provider may refute the findings contained in the notice of action in person at a hearing, or by submitting written documentation to the Hearing Officer, or both. If the home provider wishes to submit information and documentation that supports the request for an appeal by showing grounds on which the appeal is being sought from the administrative action, this information and documentation must be submitted to the Hearing Officer no later than ____________________ days from receipt of the notice of action. Therefore, the day care home provider may not simply request a hearing and appear for the hearing with no documentation to support the basis for their appeal. The day care home provider MUST submit documentation and information in support of the
appeal to be considered by the Hearing Officer. The documentation must be attached to the original request for a hearing or the day care home provider must state in the request that the documentation will be submitted at a later date, but not to exceed the above deadline.

3. The sponsoring organization will acknowledge the receipt of the request for an appeal within ten (10) days of its receipt of the request.

4. Any information on which the sponsor’s administrative action was based is available to the day care home provider for inspection from the date of receipt of the request for an appeal.

5. The Hearing Officer will review any documentation submitted and make a determination if any relief may be granted without a hearing.

6. A hearing will be held by the Hearing Officer in addition to, or in lieu of, a review of written information only if the day care home provider requests a hearing in the written request for an appeal.

7. If the day care home provider or their representative, fails to appear at a scheduled hearing, they waive the right to a personal appearance before the Hearing Officer unless the Hearing Officer agrees to reschedule the hearing.

8. A representative of the sponsoring organization will be allowed to attend the hearing to respond to the testimony of the day care home provider and to answer questions posed by the Hearing Officer.

9. If a hearing is scheduled, the day care home provider will be provided with at least ten (10) days advance notice of the time and place of the hearing.

10. The day care home provider may retain legal counsel, or may be represented by another person at the hearing. If so, the day care home provider must notify the Hearing Officer prior to hearing so that the Hearing Officer will know who has permission to represent the day care home provider.

11. If the day care home provider fails to submit the written request for an appeal within the time frames or fails to submit the written documentation within the time frame, the day care home provider’s appeal rights will expire.

REVIEW OFFICIAL DETERMINATION

1. The Hearing Officer shall be independent and impartial and not 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.

2. The sponsor and the day care home provider is permitted to contact the Hearing Officer directly, if they so desire.

3. The Hearing Officer shall make a determination based on:
   a) Federal and state laws, regulations, policies, and procedures governing the Program;
   b) Information submitted by the sponsoring organization;
   c) Information submitted by the day care home provider in support of their position.

4. Within __________ days of the sponsor’s receipt of the request for an appeal, the Hearing Officer must inform the sponsor’s executive director, chairman of the board, and the day care home provider of the decision.

5. The determination made by the Hearing Officer is the final administrative determination to be afforded the day care home provider.

6. The Hearing Officer will notify the sponsor and the day care home provider of the outcome of the hearing in writing within the time frames identified above. Depending upon the outcome of the hearing and the instructions provided by the Hearing Officer, the sponsor will proceed to resolve the action(s) cited against the day care home provider and/or close the file as necessary.

7. Day care home providers may continue to operate under the program during an appeal process and receive reimbursements unless the day care home provider has been suspended by due process as a result of imminent threat or danger to the health or welfare of participants or due to the submission of a false or fraudulent claim for reimbursement.

8. Documentation must support findings and must be submitted to the State Department of Education.