Explanation of Changes in the CACFP and SFSP Serious Deficiency Proposed Rule

On Feb. 21, 2024, we published a proposed rule *Serious Deficiency Process in the Child and Adult Care Food Program and Summer Food Service Program*. The table below provides an explanation of the major proposed changes as they relate to CACFP and SFSP.

Establishing a Serious Deficiency Process for SFSP and Extending the Process to CACFP Unaffiliated Sponsored Centers

Existing Process	Proposed Change
No serious deficiency process in regulations for SFSP sponsors and CACFP unaffiliated sponsored centers.	• Establishes a serious deficiency process for SFSP sponsors. (7 CFR 225.18) • Extends the serious deficiency process to CACFP unaffiliated sponsored centers. (7 CFR 226.25)

Serious Deficiency Determination in CACFP & SFSP

Existing Process	Proposed Change

• A CACFP institution or day care home is reviewed by the administering agency. The administering agency identifies findings that rise to the level of serious deficiencies. (7 CFR 226.6(c)(1)(ii), (2)(ii), & (3)(ii)) • Once serious deficiencies are identified, the administering agency issues a notice of serious deficiency and an opportunity to submit a corrective action plan (CAP). The administering agency must approve the CAP and the CAP must be implemented for the serious deficiency to be temporarily deferred. (7 CFR 226.6(c)(1)(iii)(A), (2)(iii)(A), & (3)(iii)(A)) • If the CAP is not submitted, approved, and implemented, the administering agency must move to termination and disqualification procedures. (7 CFR 226.6(c)(1)(iii)(C), (2)(iii)(C), & (3)(iii)(C)) • Findings that trigger the serious deficiency process in CACFP are known as serious deficiencies. (7 CFR 226.2, 226.6(c)(1)(ii), (2)(ii), & (3)(ii)) • Findings characterized as administrative weaknesses are known as 'significant operational problems' in SFSP. (7 CFR 225.6(c)(2))	• A CACFP institution, CACFP day care home or SFSP sponsor is declared seriously deficient at the point of termination from the program. This creates consistency between regulations and statutory language. (7 CFR 225.18(a)(2)(vi) & 226.25(a)(2)(vi)) • Findings that trigger the serious deficiency process in CACFP and SFSP are defined as serious management problems. This further creates consistency between regulations and statutory language. (7 CFR 225.2 & 226.2) • Serious management problems are characterized as the type of administrative weakness that affects an institution's ability to meet CACFP performance standards or affects quality of meals or integrity of claims at a day care home or center. This standard extends to SFSP. (7 CFR 225.2 & 226.2) • Replace the term "significant operational problems" in SFSP regulations with the term "serious management problems" to ensure consistency. (7 CFR 225.2)

Identifying "Serious Management Problems" in CACFP & SFSP

Existing Process	Proposed Change

• Current SFSP and CACFP regulations list out types of serious deficiencies. However, the Serious Deficiency Handbook outlines an analysis process to identify when findings rise to the level of serious deficiencies. This process is not in regulations. (7 CFR 226.6(c)(1)(ii), (2)(ii), & (3)(ii))
• The 5 steps outlined in the Handbook include:
  ○ Nature of the requirements that relate to the problem
  ○ Severity of the problem
  ○ Degree of responsibility
  ○ Impact on program integrity
  ○ Institution's history of participation
	• Findings that trigger the serious deficiency process in CACFP and SFSP are defined as serious management problems. (7 CFR 225.2 & 226.2)
	• The analysis process outlined in the Serious Deficiency Handbook is codified and requires administering agencies to conduct an analysis to identifying serious management problems. (7 CFR 225.18(a)(3) & 226.25(a)(3)) This includes:
	  ○ Nature of the requirements that relate to the problem
	  ○ Severity of the problem
	  ○ Degree of responsibility
	  ○ Impact on program integrity
	  ○ Institution's history of participation
	• Remove the list of serious deficiencies in CACFP and SFSP regulations.

Path to Full Correction for CACFP Institutions

Existing Process	Proposed Change

- If a CAP is approved and implemented, the CACFP institution's serious deficiencies are considered fully and permanently corrected and the serious deficiency status is temporarily deferred. (7 CFR 226.6(c)(1)(iii)(B)(1), (2)(iii)(B)(1), & (3)(iii)(B)(1)
- If a repeat serious deficiency occurs, the state agency moves to termination and disqualification. (7 CFR 226.6(c)(1)(iii)(B)(3), (2)(iii)(B)(3), & (3)(iii)(B)(3))
- There are no parameters set out in regulations around when a serious deficiency is considered repeat. (7 CFR 226.6(c)(1)(iii)(B)(3), (2)(iii)(B)(3), & (3)(iii)(B)(3))
- Fully and permanently corrected is not defined in regulations.
- CACFP institutions with less 100 facilities are reviewed once every 3 years. (7 CFR 226.6(m)(6)(i))
- CACFP institutions with 100 facilities or more are reviewed once every 2 years. (7 CFR 226.6(m)(6)(ii))

- Establishes parameters for achieving full correction of serious management problems. (7 CFR 226.25(c)(3)(i))
- If a CAP is approved and implemented, the CACFP institution is reviewed more frequently and at least once every 2 years. The institution remains on this 2-year cycle until it can demonstrate that it has achieved full correction. (this applies to all CACFP institutions) (7 CFR 226.25(c)(3)(i))
- Full correction is achieved when all of the following is met: (7 CFR 226.25(c)(3)(i))

1. CAP is submitted to the state agency, CAP is accepted and CAP is fully implemented;
2. At least 2 full reviews, occurring at least once every 2 years, reveal no new or repeat serious management problems;
3. All reviews between the first and last full review reveal no new or repeat serious management problems, including targeted or follow up reviews; and
4. The first and last full review occur at least 24 months apart.

- Once serious management problems are fully corrected, the serious management problems would be considered vacated, not deferred. Therefore, temporary deferment is no longer applicable. (7 CFR 226.25(a)(6)(iii))
- If new serious management problems are identified before the institution demonstrates full correction of the initial serious management problem, the institution will remain on a more frequent review cycle and it must demonstrate full correction of all serious management problems. (7 CFR 226.25(c)(3)(i)(D))
- If a serious management problem is repeated before the institution demonstrated full correction, the state agency must move to terminate and disqualify the institution. (7 CFR 226.25(c)(3)(iv))
- Serious management problems that occur after the institution has demonstrated full

Path to Full Correction in SFSP Sponsors

Existing Process	Proposed Change
No serious deficiency process set out in regulations.	• Establishes parameters for achieving full correction of serious management problems. (7 CFR 225.18(c)(3)) • The path to full correction for SFSP sponsors follows the same framework as CACFP institutions with the exception of frequency of reviews and timeframe for achieving full correction. (7 CFR 225.18(c)(3)) • If a CAP is approved and implemented, the SFSP sponsor is reviewed more frequently and at least once every year. The sponsor remains on this yearly cycle until it can demonstrate that it has achieved full correction. (7 CFR 225.18(c)(3)) • Full correction is achieved when all of the following is met (7 CFR 225.18(c)(3)): 1. CAP is submitted to the state agency, CAP is accepted and CAP is fully implemented; 2. At least 2 full reviews, occurring at least once every year, reveal no new or repeat serious management problems; 3. All reviews between the first and last full review reveal no new or repeat serious management problems, including targeted or follow up reviews; and 4. The first and last full review occur at least 12 months apart.

Path to Full Correction in CACFP Family Day Care Homes & Unaffiliated Sponsored Centers

Existing Process	Proposed Change

• If a CAP is approved and implemented, the CACFP day care home's serious deficiencies are considered fully and permanently corrected and the serious deficiency status is temporarily deferred. (7 CFR 226.16(l)(3)(ii)) • If a repeat serious deficiency occurs, the sponsoring organization moves to termination and disqualification. (7 CFR 226.16(l)(3)(iii)) • There are no parameters set out in regulations around when a serious deficiency is considered repeat. • Fully and permanently corrected is not defined in regulations. • There is no serious deficiency process for CACFP unaffiliated sponsored centers set out in regulations.	• Establishes parameters for achieving full correction of serious management problems. (7 CFR 226.25(c)(3)(ii)) • The path to full correction for day care homes and unaffiliated centers follows the same framework for CACFP institutions and SFSP sponsors, with the exception of frequency of reviews and timeframe for achieving full correction. (7 CFR 226.25(a)(7)) • If a CAP is approved and implemented, the day care home or unaffiliated center is reviewed at the same frequency as existing regulations. (7 CFR 226.25(c)(3)(ii)) • Unlike the process for CACFP institutions and SFSP sponsors, unaffiliated centers and day care homes are not reviewed more frequently once a serious management problem is identified. (7 CFR 226.25(c)(3)(ii)) • Day care homes and unaffiliated centers are currently reviewed at least 3 times a year, which gives the sponsoring organization the ability to provide close oversight of program operations. (7 CFR 226.16(d)(4)) • Full correction is achieved when all of the following is met (7 CFR 226.25(c)(3)(ii)): 1. CAP is submitted to the sponsoring organization, CAP is accepted and CAP is fully implemented; 2. At least three consecutive full reviews reveal no new or repeat serious management problems; and 3. All reviews between the first and last full review reveal no new or repeat serious management problems, including targeted reviews.

Reciprocal Disqualification in All Child Nutrition Programs

Existing Process	Proposed Change
No reciprocal disqualification process set out in regulations.	• Establishes a reciprocal disqualification process that prohibits state agencies from approving an application for any program operator that is terminated for cause from a Child Nutrition Program (CNP) and placed on a National Disqualified List (NDL). (7 CFR 210.9(d), 215.7(g), 220.7(i), 225.6(b)(12), & 226.6(b)(1)(xiii)) • The state agency must deny application for any Child Nutrition Program if the applicant has been terminated for cause and the applicant is on the NDL for CACFP or SFSP. (7 CFR 225.18(e)(1) & 226.25(e)(1)) • For any program operator with an existing program agreement, the administering agency must terminate and disqualify the program operator when it is determined that the program operator participating in a different CNP was terminated for cause. (7 CFR 225.18(e)(1) & 226.25(e)(1)) • This process applies to all CNPs, however, two options are proposed for reciprocal disqualification procedures for school food authorities (SFAs) operating CACFP and SFSP, 1. Option A: Termination and disqualification and subsequent reciprocal disqualification procedures apply SFAs, including the entity itself and responsible principals and individuals. 2. Options B: Termination and disqualification and subsequent reciprocal disqualification procedures apply to responsible principals and individuals only. The SFA itself is not subject to reciprocal disqualification.

Suspension in CACFP & SFSP

Existing Process	Proposed Change
• There is no suspension process in SFSP. • In CACFP, state agencies have discretion to implement the suspension process for false or fraudulent claims. (7 CFR 226.6(c)(5)(ii)(A)) • Per regulations, state agencies “may” suspend an institution for false or fraudulent claims. (7 CFR 226.6(c)(5)(ii)(A))	• State agencies MUST suspend a CACFP institution’s participation if the institution has submitted false or fraudulent claims. (7 CFR 226.25(f)(2)) • Two options are proposed for consideration on suspension in SFSP. 1. The state agency applies the serious deficiency process when it determines that a sponsor has submitted false or fraudulent claims, with no suspension of participation. The sponsor is eligible to continue to participate in the program and receive payments for all valid claims. 2. The state agency must apply suspension procedures, at the same time it issues a notice of proposed termination, when it determines that a sponsor submitted false or fraudulent claims

Good Standing in All Child Nutrition Programs

Existing Process	Proposed Change

• There is no definition of ‘good standing’ in regulations. • ‘Good standing’ is a standard that is used across Child Nutrition Programs and is defined through guidance.	• Defines good standing. Good standing means the status of a program operator that meets its Program responsibilities, is current with its financial obligations, and if applicable, has fully implemented all corrective actions with the required period of time. (7 CFR 210.2, 215.2, 220.2, 225.2, & 226.2) • A program operator is not in ‘good standing’ if serious management problems are identified. A program operator can return to ‘good standing’ if all of the following criteria are met (7 CFR 225.18(a)(4) & 226.25(a)(4): 1. Any outstanding debts are paid, and 2. All corrective actions are implemented. • Full correction does not need to be achieved to return to ‘good standing,’ but all corrective actions must be fully implemented. (7 CFR 225.18(a)(4) & 226.25(a)(4))

National Disqualified List for CACFP & SFSP

Existing Process	Proposed Change
State agencies and sponsoring organizations may access the National Disqualified List (NDL). Sponsoring organizations obtain eAuthentication level one clearance and can view the NDL with all personally identifiable information (PII) removed. They cannot manipulate any data in the system. If the sponsoring organization finds a match, they may need to confirm with the state agency. (7 CFR 226.6(c)(7))	• Extends NDL Access to SFSP Sponsors. This option would allow sponsor access for SFSP with eAuthentication level one access (the same process that currently exists for CACFP sponsoring organizations). (7 CFR 225.18(e)(2) & 226.25(e)(2) • Codifies responsibilities of administering agencies in implementing systems of records, which includes the NDL, as described in the Computer Matching and Privacy Protection Act. (225.18(e)(3) & 226.25(e)(3))

Multi-State Sponsoring Organizations (MSSOs) in CACFP & SFSP

Existing Process	Proposed Change
• State agencies and Regional Offices apply existing, but outdated, guidance when working with MSSOs. • FNA has issued the following guidance on MSSO operations: FNS Instruction 788-5, Approval of Administrative Budgets for Multi-State Sponsoring Organizations of Family Day Care Homes – Child Care Food Program, October 25, 1982; FNS Instruction 788-16, Administrative Procedures for Multi-State Sponsoring Organization – Child Care Food Program, October 19, 1983; FNS Instruction 788-6, Revision 2, Availability of Institutions' Records to Administering Agencies, November 1, 1991; FNS Instruction 796-2, Revision 4, Financial Management – Child and Adult Care Food Program, December 11, 2013; and the memorandum, Applicability of FNS Instruction 788-16 to Multi-State Proprietary CACFP Sponsors, June 25, 2003. • The existence of multiple outdated guidance documents on managing MSSOs result in inconsistent application of procedures.	• Defines MSSOs in both CACFP and SFSP regulations. MSSO means a sponsor or sponsoring organization that operators more than one site or facility in more than one state. (7 CFR 225.2 & 226.2) • Requires state agencies to ask all applicants if they are operating or intend to operate in another state. (7 CFR 225.6(c)(5), 226.6(b)(1)(xviv), & 226.6(b)(2)(iii)(L)) • Addresses responsibilities of the cognizant state agency, which is the agency responsible for oversight of SFSP and CACFP in the state where the MSSO's headquarters are located. (7 CFR 225.2, 225.6(n)(ii), 226.2, & 226.6(o)(ii)) • Clarifies monitoring and program oversight for all state agencies that have sites or facilities participating under the auspices of an MSSO. (7 CFR 225.6(n)(i) & 226.6(o)(i))

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