SUMMER FOOD SERVICE PROGRAM
Serious Deficiency Policy

I. PURPOSE

The purpose of this policy is to explain the process by which sponsors participating in the Summer Food Service Program (SFSP) for children correct findings and serious deficiencies, as well as to discuss termination of sponsors from the SFSP.

This policy applies to all sponsors applying to or participating in the SFSP.

II. DEFINITIONS

“Sponsor” means a public or private nonprofit school food authority, a public or private nonprofit residential summer camp, a unit of local, municipal, county or State government, a public or private nonprofit college or university currently participating in the National Youth Sports Program (NYSP), or a private nonprofit organization which develops a special summer or other school vacation program providing food service similar to that made available to children during the school year under the National School Lunch and School Breakfast Programs and which is approved to participate in the Program. Sponsors are also referred to as “service institutions”.

“Serious Deficiency” includes, but is not limited to, the following criteria provided under 7 CFR 225.11(c).

1. Noncompliance with the applicable bid procedures and contract requirements of Federal child nutrition program regulations

   • Failure to competitively procure goods and services
   • Anti-competitive practices, such as collusion, kickbacks, conflicts of interest
   • Inclusion of non-competitive provisions in a bid, e.g., “successful bidder for a contract to provide meals must establish a scholarship fund.”

2. The submission of false information to the State Agency (SA), including but not limited to a determination that the sponsor has concealed a conviction for any activity that occurred during the past seven years and that indicates 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, or any other activity indicating a lack of business integrity as defined by the SA.

Other examples include, but are not limited to:

- Misappropriation of funds
- Failure to disclose ineligible officers, directors, key employees
- Permitting an individual who is on the National Disqualified List and/or State Disqualified List to serve in a principal capacity with the sponsor and/or permitting such an individual to serve as a principal at a sponsored site
- Permitting an individual that has been declared ineligible for any other publicly funded program by reason of violating that Program’s requirements to serve in a principal capacity at the sponsor or site level
- Listing fictitious employees/officers/board members on an application
- Claiming tax exempt status when denied, rescinded, etc
- Submitting the IRS tax exempt determination letter of a different or defunct organization
- Claiming non-existing/non participating sites and/or children
- Inflating meal counts
- Claiming nonexistent costs
- Claiming costs disallowed or not included in the approved budget
- Claiming costs for fictitious employees
- Any information submitted to the SA that does not accurately reflect the sponsor’s operations
- Falsification of any documentation
- Claiming legitimate costs, but failing to pay for services

3. Failure to return the SA any advance payments which exceeded the amount earned for serving meals in accordance with federal regulations, or 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 in accordance with federal regulations;

4. A failure to repay outstanding debts owed in the SFSP and/or any other federal nutrition program and failure to adhere to payment plan arrangements.
5. Program violations at a significant proportion of the sponsor's sites. Such violations include, but are not limited to the following:
   i. Noncompliance with approved meal service time;
   ii. Failure to maintain adequate records;
       • Consistently missing records during different reviews, technical assistance visits, complaint investigations, agreed-upon-procedures or audits
       • Missing/incomplete/different amounts or payees for invoices, receipts, cancelled checks, inventories resulting in false/inflated/unsubstantiated claimed costs
       • Cost records not maintained according to generally accepted accounting principles resulting in false/inflated/unsubstantiated claimed costs
       • Missing/incomplete menu records
       • Missing/incomplete meal count records
       • Missing/incomplete payroll documentation
   iii. Failure to adjust meal orders to conform to variations in the number of participating children;
       • Inflated meal counts, the meals claimed always equals the number of meals ordered/planned
   iv. The simultaneous service of more than one meal to any child;
   v. Claiming of Program payments for meals not served to participating children;
       • Claiming meals delivered/planned for as meals served to participants
       • Inflating site meal counts
       • Claiming nonexistent and nonparticipating sites
       • Claiming meals for ineligible sites
       • Knowingly claiming dual participation sites
   vi. Service of a significant number of meals which did not include required quantities of all meal components;
   vii. Excessive instances of off site meal consumption;
   viii. Continued use of food service management companies that are in violation of health codes;

6. Failure to operate the Program in conformance with the Performance Standards (Financial Viability, Administrative Capability and Program Accountability); 7 CFR 225.14 (c)
7. Failure by sponsor to properly train or monitor sponsored sites in accordance with federal regulations;

8. Failure to perform any of the other financial and administrative responsibilities required by federal regulations; and

9. Any other action affecting the sponsor's ability to administer the Program in accordance with Program requirements as defined in 7 CFR 225.14(d).

III. POLICY

The SA works to ensure that the SFSP is operated with integrity. The SA ensures Program integrity, in large part, by monitoring sponsored sites. Findings or violations of program requirements may result from any of the following types of monitoring visits:

❖ Administrative reviews by the Alabama State Department of Education
❖ Reviews conducted by USDA
❖ Annual audits
❖ Complaint investigations

Based on the finding(s) and other information received, the SA will determine whether to classify the infraction as an isolated error, a repeat error of a serious nature, or a serious deficiency. A sponsor may be declared seriously deficient at any time any of the criteria outlined in this policy is met. Noncompliance with SFSP regulations can be in the form of a serious deficiency or an administrative/clerical error. Serious deficiencies are determined depending upon the frequency and severity of the noncompliance or error. If the SA determines that a sponsor has committed one or more serious deficiencies, the SA will provide the sponsor and responsible principals and individuals notice of the serious deficiency(ies) and an opportunity to take corrective action.

However, if timely corrective action is not taken to fully and permanently correct the serious deficiency(ies), the SA will deny the sponsor’s application for participation and/or terminate the sponsor’s agreement and disqualify the responsible principals and individuals. The sponsor may seek to appeal the application denial, termination and disqualification. (See Appeal Procedures)

Serious deficiency determination by the SA is not subject to appeal.

IV. PROCEDURES

A. APPLICATION FINDINGS

If the SA determines that a sponsor applying for participation has committed one or more serious deficiency(ies), the SA will notify the sponsor’s executive director and chairman of the board of directors, university president, mayor, or
superintendent that the sponsor has been determined to be seriously deficient. The notice will be sent to the responsible principals and individuals. The notice will specify:

1. The serious deficiency(ies)
2. The actions to be taken and the outcome needed to correct the serious deficiency;
3. The time allotted to correct the serious deficiency;
4. That the serious deficiency is not subject to appeal;
5. That failure to fully and permanently correct the serious deficiency(ies) within the allotted time will result in the SA’s denial of the sponsor’s application and the disqualification of the sponsor and the responsible principals and individuals from future participation in the Program; and
6. That the sponsor’s voluntary withdrawal of its application with the SA after having been notified that it is seriously deficient will still result in the sponsor’s formal termination by the SA and placement of the sponsor and its responsible principals and individuals on the State Disqualified List.

CORRECTIVE ACTION

If corrective action is taken to fully and permanently correct the serious deficiency(ies) within the allotted time to the SA’s satisfaction, the SA will notify the sponsor’s responsible principals and individuals that the SA has temporarily deferred its serious deficiency determination. The sponsor will then have an opportunity to resubmit its application. If corrective action is complete for the sponsor, but not for all of the responsible principals and individuals (or vice versa), the SA will continue with the application denial and disqualification of the remaining parties.

DENIAL OF APPLICATION

If timely corrective action is not taken to fully and permanently correct the serious deficiency(ies), the SA will notify the sponsor’s responsible principals and individuals, that the sponsor’s application has been denied. The serious deficiency notice will notify the sponsor:

1. That the sponsor’s application has been denied, and the SA has disqualified the sponsor and the responsible principals and individuals;
2. The basis for the actions;
3. That if, the sponsor voluntarily withdraws its application after receiving the termination/disqualification notice, the sponsor and the responsible principals and individuals will be disqualified from future participation in the Program; and
4. The procedures for seeking an administrative hearing of the application denial and disqualifications.

If the time for requesting an administrative hearing expires or if the hearing officer upholds the SA’s denial of the sponsor’s application, the SA will notify the
sponsor’s responsible principals and individuals that the sponsor and the responsible principals and individuals have been disqualified. At the time this notice is issued, the SA will add the sponsor, including the responsible principals and individuals to the State Disqualified List. The determination by the hearing officer will be the final administrative determination to be afforded the appellant.

If the hearing officer overturns the SA’s application denial and disqualification, the SA will notify the sponsor’s responsible principals and individuals that the application denial and disqualification have been temporarily deferred. At the time this notice is issued, the SA will also update its list of seriously deficient sponsors.

B. REVIEW CITATIONS

When findings are cited, the SA will determine whether the findings are isolated errors (non systemic), repeat errors of a serious nature (systemic), or if the sponsor should be immediately declared seriously deficient.

If the SA determines that the sponsor has committed an isolated error, the SA will provide technical assistance, and an opportunity for corrective action.

If the SA determines that a participating sponsor has committed one or more serious deficiency(ies), the SA will notify the sponsor’s responsible principals and individuals that the sponsor has been determined to be seriously deficient. The notice will specify:

1. The serious deficiency(ies);
2. The action(s) to be taken to correct the serious deficiency(ies);
3. The time allotted to correct the serious deficiency(ies)
4. That the serious deficiency determination is not subject to appeal
5. That failure to fully and permanently correct the serious deficiency within the allotted time will result in the SA’s termination of the sponsor’s agreement and the disqualification of the sponsor’s responsible principals and individuals from future participation in the Program; and
6. That the sponsor’s voluntary termination of its agreement with the SA after having been notified that it is seriously deficient will still result in the sponsor’s formal termination by the SA and placement of the sponsor and its responsible principals and individuals on the State Disqualified List.

CORRECTIVE ACTION

If corrective actions are taken to fully and permanently correct the serious deficiency(ies) within the allotted time and no new findings are cited, the compliance review is closed and the serious deficiency determination will be
temporarily deferred. The SA will notify the sponsor’s responsible principals and individuals, that the SA has temporarily deferred its serious deficiency determination. The SA will remove the sponsor from its list of seriously deficient sponsors. If corrective action is complete for the sponsor, but not for all of the responsible principals and individuals, the SA will continue with termination and disqualification of the remaining parties and sponsoring organization.

**TERMINATION/DISQUALIFICATION**

If, however, timely corrective action is not taken to fully and permanently correct the serious deficiency(ies), and/or additional findings are cited, the SA will notify the sponsor’s responsible principals and individuals, of the SA’s termination and disqualification of the sponsor. At the same time the notice is issued, the SA will update its list of seriously deficient sponsors.

Termination and disqualification are classified as adverse actions; therefore, the sponsor will be notified in writing of its right to appeal the termination. (See Appeal Procedures)

Sponsors may continue to operate the program and maintain adequate documentation during an appeal of termination. If the appeal results in overturning the SA’s action, reimbursement will be paid for meals served during the appeal process. The SA will notify the sponsor’s responsible principals and individuals that the SA has temporarily deferred its serious deficiency determination. However, if the actions of the SA are upheld, reimbursement will not be paid for meals served during the appeal process. The determination by the hearing official will be the final administrative determination to be afforded the appellant.

Continued program operation will not be allowed if the SA’s action is based on imminent dangers to the health or safety of children.