

STATE OF ALABAMA

Policy

Steps in the Serious Deficiency Process for Homes

1. First, 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

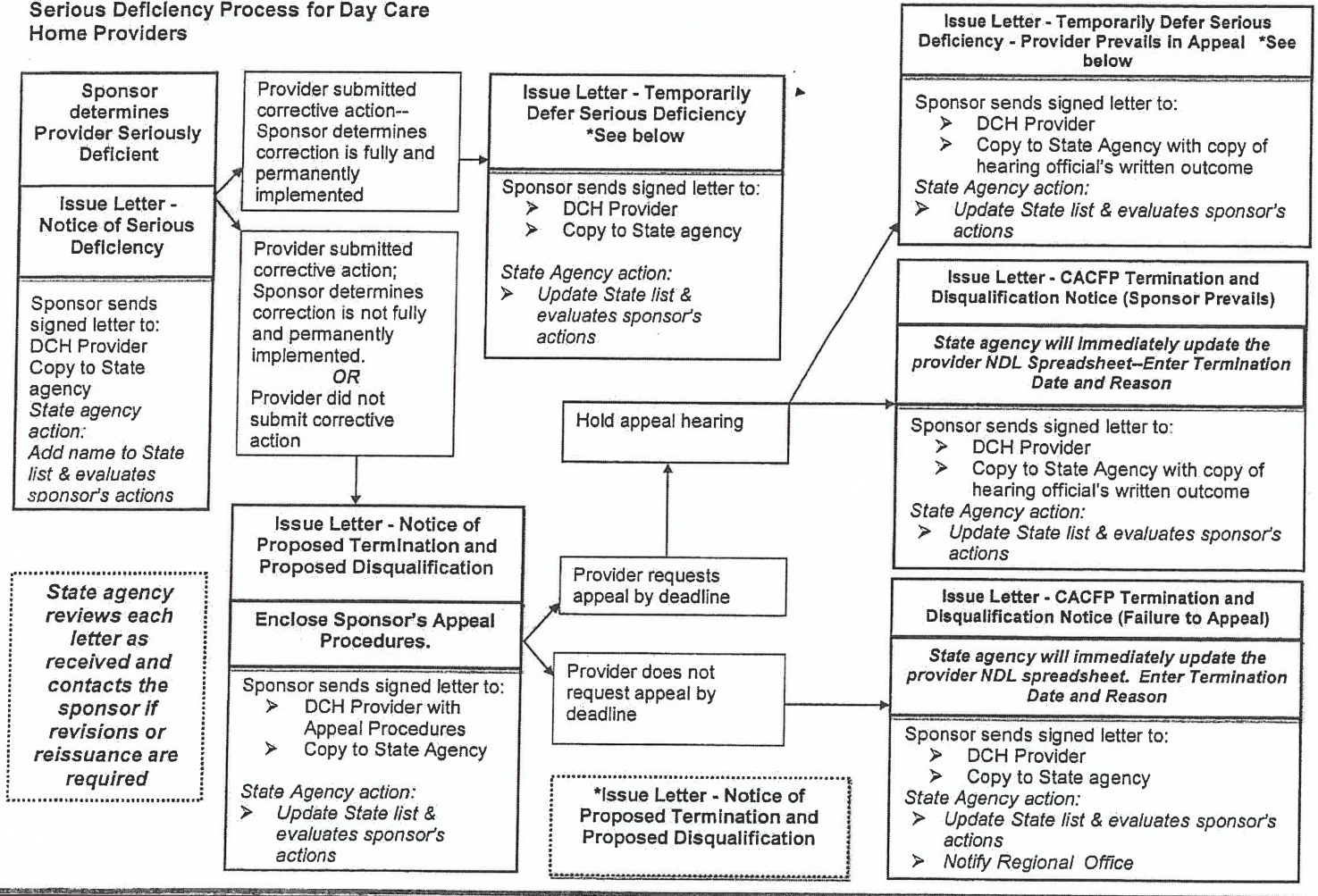
Federal Regulations [7 CFR Part 226.16(1) (2) list the following actions as serious deficiencies: submission of false information on the application; submission of false claims for reimbursement; simultaneous participation under more than one Sponsoring Organization (SO); non-compliance with the Program 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).

2. If the sponsor determines that the problem is a "Serious Deficiency", the second step is to send the provider a written notice (within 7 days of identifying the seriously deficiency) signed by the Director or Program Coordinator of the Sponsoring Organization. **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 State Agency. The notice must:
 - Inform the provider that they are seriously deficient;
 - Describe the nature of the serious deficiency, with a specific regulatory citation to §226.16 (1) (2);
 - Describe the corrective action the home must take;
 - 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 the proposed termination of the home's agreement and the proposed disqualification of the home and its principles; and
 - State that the home's voluntary termination of the agreement after having been declared seriously deficient will result in the home's termination and disqualification.

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.

3. When the deadline for completion of corrective action arrives, the sponsor must evaluate the home's efforts to determine whether they will completely and permanently correct the serious deficiency.
 - If efforts are successful, the sponsor will formally withdraw the notice of serious deficiency in a letter to the provider, with a copy to the State agency.
 - If corrective action has not been taken, the sponsor will proceed to step four.
4. Send the provider a written notice of proposed termination and disqualification, with a copy to the State agency. The notice must:
 - Inform the provider that the sponsor is proposing to terminate her agreement to participate in CACFP for cause, and to place 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, if the provider does not appeal the proposed termination, the sponsor will terminate the home's agreement for cause and send the provider's name and other information to the State agency, for placement on the National Disqualified List; and
 - 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.
5. Fifth, 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 notice withdrawing the original finding of serious deficiency and the proposed termination and disqualification, with a copy of the letter to the State agency. See "Serious Deficiency Determination Temporarily Deferred"
 - If the review official rules in favor of the sponsor, the sponsor must formally terminate the home's agreement for cause and 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.

**Attachment B Flow Chart –
Serious Deficiency Process for Day Care
Home Providers**



Serious Deficiency for Homes

1. Submission of False Claims—7 CFR 226.16(1)(2)(ii); Failure to Keep Required Records—7 CFR 226.16(1)(2)(v); Noncompliance with Meal Pattern—7CFR 226.16(1)(2)(iv); Any Other Circumstance Related to Nonperformance—7CFR 226.16(1)(2)(viii)		
Finding	Sponsor Action	Provider Action
<ul style="list-style-type: none"> • Foods observed at a visit did not match the foods on the claim. • Children observed at visit did not match those on the claim and/or attendance record. • Meals claimed for children were not observed during visit. • Dinner not served on visit day, but is served every other day. • Weekend meal not served on visit day, but it is on all other weekends. • The in/out times on the attendance do not match what was observed or usually claimed. • Some children gone so unable to observe a shift that is always claimed and/or shifting not able to be observed. • Claims school hours on Saturdays or holidays. • Fewer or no kids present when visit attempted for a meal that is usually claimed. 	<p>First Occurrence: Start Corrective Action</p> <ol style="list-style-type: none"> 1. Deduct meals. 2. Within one month of finding, conduct an unannounced follow-up visit for explanation and technical assistance. 3. Conduct parent verifications, if appropriate. 4. Require parent sign-in/out forms, if appropriate. 5. Send Sample Letter #1. <p>Reoccurrence After Technical Assistance</p> <ol style="list-style-type: none"> 1. Revoke shift, dinner, and/or weekend claiming privilege, if appropriate. 2. Begin Serious Deficiency Process by sending Sample Letter #2. 	<p>First Occurrence: Corrective Action Started.</p> <ol style="list-style-type: none"> 1. Provide explanation of cause and a plan to prevent the same problem in the future, written if requested, by specified date. 2. Always record menu and/or attendance at point of service. <p>Reoccurrence After Technical Assistance</p> <ol style="list-style-type: none"> 1. As above with any additional instructions in the serious deficiency notice. 2. Sponsors may request providers who serve dinner/evening snacks/weekends sporadically to submit schedules.
<ul style="list-style-type: none"> • Claim is block-same numbers claimed consistently and not verified by visits. 	<ol style="list-style-type: none"> 1. Conduct parent verifications. 2. Require parent sign-in/out if parent verifications are inconclusive. 3. If any discrepancies are discovered, begin Serious Deficiency Process by sending Sample Letter #2 and recovering meal money. 	

Serious Deficiency for Homes

2. Failure to Maintain Required Records—7 CFR 226.18(e) and 226.16(l)(2)(v)		
Finding	Sponsor Action	Provider Action
<ul style="list-style-type: none"> Paperwork behind one to two days. 	Deduct meals and provide technical assistance.	
<ul style="list-style-type: none"> Attendance recorded in advance. Meal count recorded in advance. Paperwork behind three or more days. 	<p>First Occurrence: Start Corrective Action</p> <ol style="list-style-type: none"> Deduct meals and provide technical assistance. Immediate unannounced follow-up visit. Two additional unannounced visits with no repeat of problems. Send Sample Letter #1. <p>Reoccurrence After Technical Assistance Begin Serious Deficiency Process by sending Sample Letter #2.</p>	<ol style="list-style-type: none"> Always keep all paperwork current through previous day. Never record attendance or meal counts in advance. Any additional instructions in the serious deficiency notice.
3. Claiming Meals not Served to Participants—7 CFR 226.16(1)(2)(ii) and 226.18(e) and 226.18(b)(4); Submission of False Claims—7 CFR 226.16(l)(2)(ii); Failure to Keep Records—7 CFR 226.16(l)(2)(v); Any Other Circumstance Related to Nonperformance—7 CFR 226.16(l)(2)(viii)		
Finding	Sponsor Action	Provider Action
<ul style="list-style-type: none"> Children claimed when no longer in care. Nonexistent children claimed. 	<p>First Occurrence: Start Corrective Action (do all five)</p> <ol style="list-style-type: none"> Deduct meals. Immediate unannounced follow-up visit. Two additional unannounced visits (spaced at random) with no repeat of problems. Conduct parent verifications if attendance issues are significant. Require parent sign in/out if parent verifications are inconclusive. <p>If Discrepancy Confirmed Begin Serious Deficiency Process by sending Sample Letter #2.</p>	<p>First Occurrence: Corrective Action Started</p> <ol style="list-style-type: none"> Provide written explanation. Tell about all children to be claimed, including children who are napping, already ate and left, or will be arriving late. <p>If Discrepancy Confirmed As above with any additional instructions in the serious deficiency notice.</p>

Serious Deficiency for Homes

Meals claimed for children for times/days parents say they were not in care.	Same as above (3) with a second parent verification conducted after 4-6 months.	Record accurate in/out times Never claim child who is gone, even temporarily
4. Claiming Meals Served Over Capacity/Failure to Comply with Licensing Standards—CFR 226.18(a); Failure to Keep Records—7 CFR 226.16(l)(2)(v); Any Other Circumstance Related to Nonperformance—7 CFR 226.16(l)(2)(viii)		
Finding	Sponsor Action	Provider Action
<ul style="list-style-type: none"> Attendance in/out times show number of children present is over capacity. Number of children observed at visit was over capacity. Assistant not present when number of children present is over capacity. Too many children under two years old. Shifts of children not done correctly – overlap causes overcapacity at times. 	Every Occurrence <ol style="list-style-type: none"> Deduct meals and provide technical assistance. Report over capacity by letter to child care licenser or licensing supervisor. 	<ol style="list-style-type: none"> Be aware of license capacity. Take whatever measures necessary to stay within capacity or get a license exception from licenser. No overlap is allowed without a waiver. Always have assistant present when capacity requires it. Record all children in care, including your own children, on attendance form, whether claimed or not. This includes infants, drop-ins, children not present at meal time, etc.
<ul style="list-style-type: none"> Not all children in care are recorded on the attendance roster. 	First Occurrence: Start Corrective Action Provide technical assistance. Second Occurrence <ol style="list-style-type: none"> Immediate unannounced follow-up visit. Two additional unannounced visits (spaced at random) with no repeat of problems. Verify capacity and conduct parent verifications. Send Sample Letter #1. Reoccurrence After Technical Assistance Begin Serious Deficiency Process by sending Sample Letter #2.	Record all children in care, including your own children, on attendance form, whether claimed or not. This includes infants, drop-ins; children not present at meal time, etc.

Serious Deficiency for Homes

5. Any Other Circumstance Related to Nonperformance—CFR 226.16(l)(2)(viii)		
Deficiency	Sponsor Action	Provider Action
<ul style="list-style-type: none"> Did not notify sponsor of changes in license (revocations, suspension, reduction, moved). 	<ol style="list-style-type: none"> Deduct meals retroactive to discrepancy and provide technical assistance. Begin Serious Deficiency Process by sending Sample Letter #2. If finding is for health and safety, SUSPEND IMMEDIATELY and confer with licensing agency. Report to Child Protective Services (CPS): 	<ol style="list-style-type: none"> Submit valid license immediately. Notify sponsor of changes in license capacity, address, name, etc. If suspended, may appeal.
<ul style="list-style-type: none"> Children's health or safety is at risk. 	<p>SUSPEND IMMEDIATELY and confer with licensing agency. Report to Child Protective Services</p>	<p>If suspended, may appeal.</p>
6. Claiming Meals Served to Provider's Children Who Are Not Eligible—7 CFR 226.18(e); Failure to Keep Records—7 CFR 226.16(l)(2)(v); Any Other Circumstance Related to Nonperformance—7 CFR 226.16(l)(2)(viii)		
Finding	Sponsor Action	Provider Action
<ul style="list-style-type: none"> Provider's own children claimed—not income eligible. Provider's own child 12 years old and still claimed. 	<p>First Occurrence: Start Corrective Action</p> <p>Deduct meals and provide technical assistance.</p>	<ol style="list-style-type: none"> Record own children on attendance only. Do not record any meals or fill in their numbers on Minute Menu forms. Take children off forms on twelfth birthday.
7. Serving Meals That Do Not Meet the Meal Pattern—7 CFR 226.20 and 226.16(l)(2)(iv)		
Finding	Sponsor Action	Provider Action
<ul style="list-style-type: none"> Incomplete meal observed at a visit. Portions served are obviously not sufficient. Family style service foods or full portions not accepted are not offered a second time. 	<p>First Occurrence: Start Corrective Action</p> <ol style="list-style-type: none"> Deduct meals and provide technical assistance. Unannounced follow-up visit as needed. Send Sample Letter #1. 	<ol style="list-style-type: none"> Follow meal pattern requirements exactly. Request assistance when needed. Measure portions until familiar with appropriate amounts. Read manual and/or Creditable Foods Guide.
	<p>Reoccurrence With Similar Food After Technical Assistance</p>	<ol style="list-style-type: none"> Offer food to children at least twice if not accepted or if portion taken the first time is

Serious Deficiency for Homes

	Begin Serious Deficiency Process by sending Sample Letter #2.	too small. 5. Complete paperwork accurately and carefully. Request help if you have any questions.
<p>8. Failure to Comply with Monitoring Requirements—7 CFR 226.18(b)(8); Failure to Keep Records—7 CFR 226.16(l)(2)(v); Submission of False Claims for Reimbursement—7 CFR 226.16(l)(2)(II); Any Other Circumstance Related to Nonperformance—7 CFR 226.16(l)(2)(viii)</p>		
Finding	Sponsor Action	Provider Action
<ul style="list-style-type: none"> Not home for attempted visit, but children claimed. Meal observation missed by monitor because it was served earlier or later than on agreement. 	<p>First Occurrence: Start Corrective Action Request explanation and provide technical assistance.</p> <p>Second Occurrence</p> <ol style="list-style-type: none"> Deduct meals if applicable. Immediate unannounced follow-up visit. Additional unannounced visits with no repeat of problems (spaced at random). Conduct parent verifications if attendance issues are significant. Lose shift/dinner/weekend privilege. Send Sample Letter #1. <p>Reoccurrence After Technical Assistance Begin Serious Deficiency Process by sending Sample Letter #2.</p>	<p>First/Second Occurrence: Corrective Action Started</p> <ol style="list-style-type: none"> Provide explanation, written if requested, by specified date. Notify sponsor whenever meals will be served away from child care home. Notify sponsor immediately if meal times change. <p>Reoccurrence After Technical Assistance As above with any additional instructions in the serious deficiency notice.</p>
<ul style="list-style-type: none"> Assistant in charge did not have access to paperwork. Did not allow monitor in to do visit. 	<p>First Occurrence: Start Corrective Action</p> <ol style="list-style-type: none"> Deduct meals. Immediate unannounced follow-up visit. Send Sample Letter #1. <p>Reoccurrence After Technical Assistance Begin Serious Deficiency Process by sending Sample Letter #2.</p>	<ol style="list-style-type: none"> Always notify sponsor if you must cancel an appointment as soon as possible. Allow monitor to complete visit even if no children are present unless there are special circumstances. A written explanation must be submitted immediately. Assistants must have access to all records.

Serious Deficiency for Homes

		including computer programs.
9. Failure to Comply with Civil Rights Laws—266.6(b)(18)(III)(E)(4); Any Other Circumstance Related to Nonperformance—7 CFR 226.16(l)(2)(viii)		
Finding	Sponsor Action	Provider Action
<ul style="list-style-type: none"> Refuse care for specific child due to age, special needs, etc. 	Provide resources, technical assistance.	Cannot discriminate.
10. Failure to Attend Annual CACFP Training—7 CFR 226.18(b)(2); Any Other Circumstance Related to Nonperformance—7 CFR 226.16(l)(2)(viii)		
Finding	Sponsor Action	Provider Action
<ul style="list-style-type: none"> Did not complete training. 	<ol style="list-style-type: none"> Provide in-home training opportunity. If training is refused, begin Serious Deficiency Process by sending Sample Letter #2. 	Complete in-home or group training.
11. Any Other Circumstance Related to Nonperformance—7 CFR 226.16(l)(2)(viii)		
Finding	Sponsor Action	Provider Action
<ul style="list-style-type: none"> Tiering - did not notify us of changes that affect tier level (income, family size, etc.) 	<p>Do all four:</p> <ol style="list-style-type: none"> Reclassify and/or deduct meals and provide technical assistance. Reevaluate provider and tier. File revised claims. Begin Serious Deficiency Process by sending Sample Letter #2. 	<ol style="list-style-type: none"> Always report to sponsor immediately any changes in family size or income (more than \$50 per month or \$600 per year). Provider submits written plan to prevent future invalid tiering. Repay all excess money received based on incorrect tiering.
<ul style="list-style-type: none"> Parent signatures on enrollments, parent verifications, etc. are not valid. 	<ol style="list-style-type: none"> Deduct all meals for children involved. Conduct parent verifications for all children. Begin Serious Deficiency Process by sending Sample Letter #2. 	<ol style="list-style-type: none"> Submit written explanation. Repay all money for meals claimed for children not enrolled and/or for unverifiable meals. <p>Reenroll all children with enrollments direct to sponsor from parents.</p>

**PROTOTYPE LETTERS
SERIOUS DEFICIENCY PROCESS
FOR
PROVIDERS**

- Prototype Letter 15: Notice of Serious Deficiency for Day Care Home Providers
- Prototype Letter 16: Notice of Successful Corrective Action and Temporary Deferment of Serious Deficiency for Providers
- Prototype Letter 17: Notice of Proposed Termination and Disqualification for Providers – No Corrective Action Submitted
- Prototype Letter 18: Notice of Proposed Termination and Disqualification for Providers – Required Corrective Action Not Acceptable
- Prototype Letter 19: Notice of Termination and Disqualification for Providers - Provider does not appeal
- Prototype Letter 20: Notice Termination and Disqualification for Provider - Sponsoring Organization prevails in appeal
- Prototype Letter 21: Notice of Temporary Deferment of Serious Deficiency and Termination and Disqualification – Provider prevails in appeal

Prototype Letters – Day Care Homes

Prototype 15: Notice of Serious Deficiency Notice for Providers

[Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.]

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.]*, the *[sponsoring organization]* has 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 *[date]*, we will propose to:

- Terminate your agreement to participate in the CACFP for cause, and
- 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, the *[provider]* will be placed on the National Disqualified List (NDL). While on the NDL, 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 NDL until USDA's Food and Nutrition Service, in consultation with 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 7 CFR 226.16(l).

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 citation for the relevant serious deficiency in the regulations at 7 CFR 226.16(l)(2). If the serious deficiency is not specifically listed, cite: 7 CFR 226.16(l)(2)(ix), 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. Documentation showing the corrective action for each of the serious deficiencies cited in this letter is required. 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 *[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 disqualify you.

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

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, we will temporarily defer the serious deficiency determination. We may conduct an unannounced follow-up review to verify the adequacy of the corrective action. If we find in the follow-up review, or any subsequent review, that the serious deficiency(ies) has/have not been fully and permanently corrected, we will immediately propose to terminate your agreement for cause and disqualify you without any further opportunity for corrective action.

Sincerely,

Sponsoring Organization Employee Name and Title
cc: State Agency

Prototype Letter 16: Notice of Successful Corrective Action and Temporary Deferment of Serious Deficiency for Providers

[Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.]

Date

Provider Name
Provider Street Address
Provider City, State 00000

Dear [Provider]:

This letter concerns the [date] Notice that you are seriously deficient in your operation of the Child and Adult Care Food Program (CACFP). On [date], [insert if applicable: *before the corrective action deadline*], we received the documentation you sent us detailing the actions you have taken to correct these serious deficiency(ies).

SERIOUS DEFICIENCY DETERMINATION TEMPORARILY DEFERRED

Based on our review of the documentation, we have determined that you have fully and permanently corrected the serious deficiency(ies). As a result, we have temporarily deferred our serious deficiency determination as of the date of this letter. ***(NOTE: Conducting a follow-up review is not required to accept a corrective action and should NOT delay the temporary deferral of a serious deficiency determination.)*** This also means that we will not propose to terminate your agreement for cause based on this serious deficiency finding or disqualify you.

ADEQUACY OF CORRECTIVE ACTIONS (optional)

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 citation for the relevant serious deficiency in the regulations at 7 CFR 226.16(l)(2). If the serious deficiency is not specifically listed, cite: 7 CFR 226.16(l)(2)(ix), 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. We may conduct an unannounced review to determine the adequacy of your corrective action(s). If we find

on the follow-up review or, in any subsequent review, that the serious deficiency(ies) has/have not been fully and permanently corrected, we will immediately propose to terminate your agreement for cause and to disqualify you without any further opportunity for corrective action.

Sincerely,

Sponsoring Organization Employee Name and Title

cc: State Agency

Prototype Letter 17: Notice of Proposed Termination and Disqualification for Providers - No Corrective Action Submitted

[Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.]

Date

Provider Name
Provider Street Address
Provider City, State 00000

Dear [Provider]:

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

On or before [date], you were required to the documentation detailing the actions taken to correct the serious deficiency(ies). As of this date, you have not submitted the required correction(s).

PROPOSED TERMINATION AND DISQUALIFICATION

As a result, effective [date], we propose to:

- Terminate your agreement to participate in the CACFP for cause and
- Disqualify you from future CACFP participation.

[The effective date for the termination/disqualification must be after the deadline for requesting an appeal.]

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 (NDL). While on the NDL, 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 NDL until USDA's Food and Nutrition Service, in consultation with 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 is repaid.

These actions are being taken pursuant to 7 CFR 226.16(l).

STATUS OF SERIOUS DEFICIENCY(IES) (optional)

The following paragraphs detail each serious deficiency and its status based your failure to submit the corrective action(s) documentation.

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 citation for the relevant serious deficiency in the regulations at 7 CFR 226.16(l)(2). [If the serious deficiency is not specifically listed, cite: 7 CFR 226.16(l)(2)(ix), any other circumstance related to non-performance under the sponsoring organization-day care home agreement.]

APPEAL OF PROPOSED TERMINATION AND PROPOSED DISQUALIFICATION

The proposed termination of your agreement for cause and your disqualification may be appealed. A copy of the appeal procedures is enclosed. If you choose to appeal the proposed actions, follow the appeal procedures exactly as failure to do so may 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, the [sponsoring organization] is proposing to terminate your CACFP agreement for cause and to disqualify you from future Program participation.

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

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,

Sponsoring Organization Employee Name and Title

Enclosure: Appeal Procedures

cc: State Agency

Prototype Letter 18: Notice of Proposed Termination and Disqualification for Providers - Required Corrective Action Not Acceptable

[Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.]

Date

Provider Name
Provider Street Address
Provider City, State 00000

Dear [Provider]:

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

On [date], we received the documentation detailing the actions taken to correct the serious deficiency(ies). Based on our review of the documentation, we have determined that you have not fully and permanently corrected the serious deficiency(ies) stated in the Notice.

PROPOSED TERMINATION AND DISQUALIFICATION

As a result, we propose to:

- Terminate your agreement to participate in the CACFP for cause 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.]

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 (NDL). While on the NDL, 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 NDL until USDA's Food and Nutrition Service, in consultation with 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 is repaid.

These actions are being taken pursuant to 7 CFR 226.16(l).

STATUS OF SERIOUS DEFICIENCY(IES)

The following paragraphs detail each serious deficiency and its status based on our review of the corrective action documentation.

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 citation for the relevant serious deficiency in the regulations at 7 CFR 226.16(l)(2). [If the serious deficiency is not specifically listed, cite: 7 CFR 226.16(l)(2)(ix), any other circumstance related to non-performance under the sponsoring organization-day care home agreement.]

APPEAL OF PROPOSED TERMINATION AND DISQUALIFICATION

The proposed termination of your agreement for cause and your disqualification may be appealed. A copy of the appeal procedures is enclosed. If you choose to appeal the proposed actions, follow the appeal procedures exactly as failure to do so may 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, the [sponsoring organization] is proposing to terminate your CACFP agreement for cause and to disqualify you from future Program participation.

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

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,

Sponsoring Organization Employee Name and Title

Enclosure: Appeal Procedures

cc: State Agency

**Prototype Letter 19: Notice of Termination and Disqualification for Providers -
Provider does not appeal**

[Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.]

Date

Provider Name
Provider Street Address
Provider City, State 00000

Dear [Provider]:

This letter concerns the determination in [*sponsoring organization's*] Notice 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 your failure to submit acceptable corrective action(s) for the serious deficiency(ies) noted in our [date] Notice of Serious Deficiency.

You received the Notice of Proposed Termination and Disqualification on [*date received*]. You had until [*insert deadline for requesting appeal*] to submit a request for an appeal of the proposed actions. No request for an appeal was submitted by that deadline.

TERMINATION AND DISQUALIFICATION

Because the time to request an appeal has now expired, the [*sponsoring organization*] is:

- Terminating your agreement to participate in the CACFP for cause 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.

As a result of your disqualification, your name will be placed on the National Disqualified List (NDL). While on the NDL, 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 NDL, unless USDA's Food and Nutrition Service, in consultation with *[insert name of State agency]* determines that the serious deficiency(ies) has/ 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 is repaid.

These actions are being taken pursuant to 7 CFR 226.16(l) of the CACFP regulations.

SUMMARY

The *[sponsoring organization]* is 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,

Sponsoring Organization Employee Name and Title

cc: State Agency

**Prototype Letter 20: Notice Termination and Disqualification for Provider -
Sponsoring Organization prevails in appeal**

[Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.]

Date

Provider Name
Provider Street Address
Provider City, State 00000

Dear [Provider]:

This letter concerns our [date] Notice 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] Notice that you are seriously deficient in your operation of the CACFP.

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

TERMINATION AND DISQUALIFICATION

As a result, the [sponsoring organization] is:

- Terminating your agreement to participate in the CACFP for cause 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.

As a result of your disqualification, your name will be placed on the National Disqualified List (NDL). While on the NDL, 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 NDL unless USDA's Food and Nutrition Service, in consultation with *[insert name of State agency]* determines that the serious deficiency(cies) has/have been corrected, 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 is repaid.

These actions are being taken pursuant to 7 CFR 226.16(l) of the CACFP regulations.

SUMMARY

The *[sponsoring organization]* is 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,

Sponsoring Organization Employee Name and Title

cc: State Agency

Prototype Letter 21: Notice of Temporary Deferment of Serious Deficiency and Termination and Disqualification – Provider prevails in appeal

[Note: Send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax, or e-mail as required by 7 CFR 226.2, definition of "notice" in the regulations.]

Date

Provider Name
Provider Street Address
Provider City, State 00000

Dear [Provider]:

This letter concerns our [date] Notice 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] Notice that you are seriously deficient in your operation of the CACFP.

You filed a timely appeal of the proposed termination and disqualification. On [date of hearing official's decision], the hearing official issued a decision on the appeal. In that decision, the hearing official overturned our proposed actions. Therefore, [name of sponsoring organization] is prohibited from terminating your agreement and disqualifying your future participation in the Program.

SERIOUS DEFICIENCY DETERMINATION TEMPORARILY DEFERRED

You must still implement procedures and policies to permanently correct the serious deficiency(ies). Upon approval of an acceptable corrective plan, [sponsoring organization] will temporarily defer the determination that [institution] and its RPIs are seriously deficient. If [sponsoring organization] initially determines that the corrective action is complete, but later determines that the serious deficiency(ies) has recurred, [sponsoring organization] must move to immediately to issue a notice of intent to terminate and disqualify the institution and RPIs.

Sincerely,

Sponsoring Organization Employee Name and Title

cc: State Agency