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## BILLING CODE 3410-30-P

### DEPARTMENT OF AGRICULTURE

#### Food and Nutrition Service

#### **Request for Information: The Serious Deficiency Process in the Child and Adult Care Food Program**

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Notice.

**SUMMARY:** This is a request for information to gather detailed comments from stakeholders about the serious deficiency process in the Child and Adult Care Food Program (CACFP). The serious deficiency process provides a systematic way to correct serious management problems and, when that effort fails, protect the program through due process.

**DATES:** Written comments must be received on or before **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** USDA invites the submission of the requested information through one of the following methods:

- Federal eRulemaking Portal (preferred method): Go to <http://www.regulations.gov>.

Follow the online instructions for submitting comments.

- Mail: Send written comments to Autumn McCain, Program Monitoring Branch, Program Monitoring and Operational Support Division, Child Nutrition Programs, USDA Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302.

All comments submitted in response to this request for information will be included in the record and will be made available to the public. Please be advised that the substance of the comments

and the identity of the individuals or entities submitting the comments will be subject to public disclosure. USDA will make the comments publicly available via <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Autumn McCain, Program Monitoring Branch, Program Monitoring and Operational Support Division, Child Nutrition Programs, USDA Food and Nutrition Service, 703-605-3223.

**SUPPLEMENTARY INFORMATION:** Integrity is essential to achieving the mission of all FNS nutrition assistance programs. FNS works in close collaboration with State and local partners to facilitate the promotion, practice, and improvement of integrity-focused efforts while ensuring the delivery of excellent customer service. To that end, State agencies are responsible for monitoring CACFP institutions—Independent child and adult care centers and sponsoring organizations of family day care homes and centers—to ensure compliance with program requirements.

Serious deficiencies, as provided for in Sec. 17 of the Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1766), and the serious deficiency process, as codified in 7 CFR Part 226, offer a means to address severe and pervasive issues of program non-compliance, with a structured set of steps that provide all institutions and day care home providers the opportunity for corrective action and due process. The intent of the serious deficiency process is to correct non-compliance issues in a timely fashion. As such, the process incorporates critical deadlines for the completion of corrective actions, and milestones for monitoring progress towards meeting those deadlines.

The serious deficiency process starts when the State agency or sponsoring organization identifies one or more serious non-compliance issues and concludes when all such issues are resolved, through either corrective action or termination and disqualification of the institution or day care

home. The process includes required procedures that are designed to help the State agency and sponsoring organization document actions taken to correct serious deficiencies or to terminate and remove from CACFP those non-performing institutions or day care homes that are unwilling to, or incapable of, resolving their serious deficiencies.

On March 29, 2016, FNS published a proposed rule, *Child Nutrition Program Integrity*, 81 FR 17563, available at <https://www.federalregister.gov/documents/2016/03/29/2016-06801/child-nutrition-program-integrity>, concerning several provisions of the Healthy, Hunger-Free Kids Act of 2010, Public Law 111-296, affecting integrity in CACFP and in the National School Lunch Program, Special Milk Program for Children, School Breakfast Program, Summer Food Service Program (SFSP), and State Administrative Expense Funds. Among other things, the rule proposed serious deficiency and termination procedures in SFSP, serious deficiency and termination procedures for unaffiliated sponsored centers in CACFP, and procedures to prohibit the participation of entities or individuals terminated from any of the Child Nutrition Programs. Comments on the proposed rule suggested that prior to making the operations of any other Child Nutrition Program subject to the serious deficiency process, FNS should further investigate and attempt to address potential inconsistencies in the implementation of that process across States. Consequently, this notice requests information to help FNS understand firsthand the experiences stakeholders have had with the serious deficiency process in CACFP. We are asking for public comments to gather feedback about the successes, challenges, potential benefits, and negative impacts associated with the application of the serious deficiency process. Your responses to this request for information will assist FNS in its efforts to ensure consistent and effective application of the serious deficiency process, in line with current statutory and regulatory requirements. FNS is committed to the rulemaking process and reciprocity between its programs.

This request for information reflects the commitment of FNS to work with all of our stakeholders, including State administrators, sponsoring organizations, center operators, food service professionals, and other advocates, to ensure that program requirements are practicable and effectively disseminated.

Please respond to any/all of the questions listed below. In your response, we request that you include the following information, to the extent applicable: your name, title, the name of your organization, and your role in the serious deficiency process.

1. Are determinations of serious deficiency and resulting corrective actions:
  - a. Reasonable and commensurate with the severity of the non-compliance issues they are intended to address?
  - b. Effective in achieving positive outcomes, including timely and permanent correction of non-compliance issues?
2. Is the serious deficiency process consistently implemented? Explain.
  - a. Among States?
  - b. Within your State?
  - c. By sponsoring organizations within your State?
3. Describe your decision-making process as it relates to determinations of serious deficiency.
  - a. How do you decide that a given non-compliance issue or combination of non-compliance issues rise to the level of a serious deficiency?
  - b. What factors weigh most heavily?

- c. Who is involved in the decision-making process?
4. What could be done to bring further clarity and consistency to the administrative review (appeal) process?
5. What would improve your understanding of the serious deficiency process and your ability to apply the process effectively?
  - a. Which definitions or operational provisions related to the serious deficiency process in 7 CFR 226 need additional clarification?
  - b. What areas of training would be most beneficial?
  - c. What types of technical assistance resources would be most useful?

FNS appreciates your thoughtful and responsive replies to these questions. Your feedback is essential to helping FNS to ensure that our nutrition programs are administered as effectively and efficiently as possible. Together, we can strive to improve operations and outcomes to best serve our participants and all American taxpayers.

Dated: May 13, 2019.

**Brandon Lipps,**

*Administrator,*

*Food and Nutrition Service.*

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