

May 21, 2024

Navneet Kaur Sandhu
Program Integrity and Innovation Division
USDA Food and Nutrition Service
1320 Braddock Place
Alexandria, VA 22314

Dear Ms. Sandu:

The USDA serious deficiency policy is important to the child care and Head Start communities. Ensuring equity in CACFP payment and accountability policies and practices is fundamental to robust and accessible food *and* care systems.

We applaud USDA for working to improve a central part of the monitoring and oversight approach known as the serious deficiency process. It is vitally important to improve this process. The current serious deficiency policy is not well designed. It is vaguely written allowing for inconsistent application and variability of outcomes across monitors.

The serious deficiency process should be designed to help protect children's access to nutritious meals in child care, not unnecessarily jeopardize it. Removing the threat of unfair termination and disqualification will make CACFP more attractive to sponsors and providers at a time when inflation and the loss of pandemic benefits is [driving down CACFP participation](#).

The early childhood workforce in child care centers, family child care programs, Head Start and Early Head Start programs, and the community-based staff of CACFP sponsors need a common-sense process that appreciates the human nature of this work. Accountability policies must be strong, effective, understandable, and applied consistently.

The undersigned 37 national organization leaders appreciate the opportunity to offer comments on the serious deficiency proposed rule. Together we represent early childhood educators in family child care, child care centers, Early Head Start and Head Start, school-based preK programs, school-age after-school caregivers, and others serving millions of children in care every day; advocates, unions, service providers, sponsoring organizations, and others working to secure the health, economic and food security investments needed to ensure infants, young children and school-age children and their families and caregivers can thrive.

Recommendations

The proposed rule includes steps to move to a system of technical assistance and oversight that would only deploy the "serious deficiency" process for the most severe problems. We support that shift and offer the following recommendations to ensure the proposal works as intended and brings the field to the expected outcome.

1. **A determination of a "serious management problem" triggering the serious deficiency process should only occur when technical assistance options have been exhausted (with the exception of fraud).** Technical assistance requirements and expectations for state agencies and sponsoring organizations should be fully integrated into the final regulations.

2. **Ensure fair and reasonable determinations regarding what rises to the level of a serious management problem by:**
 - Clearly defining the distinction between “inadvertent human error” and a serious systemic error;
 - Requiring all five of the newly proposed criteria be met to establish the determination of moving a compliance issue into the serious deficiency process, rather than one or more of the criteria;
 - Ensuring the range of compliance issues are calibrated to their real-life severity and clearly explained in the final regulation.
3. **Limit serious deficiency findings to USDA federal requirements only.** Integrate current USDA guidance that state level CACFP requirements should not be used as the basis for a serious deficiency into the final regulation.
4. **Ensure due process and a system of checks and balances for the proposed serious deficiency process** by allowing providers and sponsors the option to:
 - **contest** an initial determination of a “serious management problem” when the first notification is received; and
 - **appeal** the final serious deficiency determination to terminate a provider/sponsor participation in the program on the basis of the validity of the findings, not just procedural issues.
5. **Allow family child care providers adequate time to understand, respond, and address issues** by extending the time to correct compliance issues from “30 days” to “90 days,” the limit proposed for other program operators. Family child care providers are much more likely to face language, staff capacity, and income barriers to successfully navigating this complex and intimidating process. It is not reasonable to expect a family child care provider to respond successfully within the very limited proposed time frame.
6. **Reduce the time programs must spend on the National Disqualified List from seven years to four years.** The current policy of seven years is too high a cost for noncompliance with the resulting exclusion from CACFP *and* possible impacts to eligibility for other federally funded programs or future employment. We are deeply concerned about this restriction, especially in the context of current policy and practice, and the above noted concerns.
7. **Ensure effective and consistent implementation through clear guidance, training, and evaluation of enforcement at all levels of CACFP operations:**
 - Provide training for regional, state agency, and sponsoring organization staff and monitors in important areas, including the technical assistance requirements, correctly determining when compliance errors meet the stringent standards for the serious deficiency process – offering confidence and clarity on severe and systematic error, and fair implementation of the process;
 - Develop materials and training to fully inform program operators of their rights and responsibilities;
 - Ensure all materials, supports, and engagement opportunities for providers are available in multiple languages; and
 - Evaluate oversight and enforcement efforts, including engaging family child care, center, Head Start and sponsors in feedback.

CACFP sponsors, participating early childhood programs and families are barely surviving inequitable workforce wages, staff shortages, inflation, vendor loss, gas prices, and a myriad of other hardships. We can strengthen program integrity without exacerbating these stressors on a sector that is already strained to the breaking point.

Accountability policies should allow state agencies, CACFP sponsors, and providers to have confidence in implementing the program. We share USDA's commitment to improving the serious deficiency process as a crucial step to ensuring children can access healthy meals and snacks in child care from providers and CACFP sponsors who they trust and rely on.

If you have questions, please contact Home Grown: Geri Henchy, Home Grown consultant, at (202) 390-2513 or gerihenchy@gmail.com.

Sincerely,

1. Abriendo Puertas/Opening Doors
2. Alliance for the Advancement of Infant Mental Health
3. All Our Kin
4. American Federation of State, County and Municipal Employees (AFSCME)
5. CACFP Roundtable
6. Center for Law and Social Policy (CLASP)
7. Children's HealthWatch
8. Coalition on Human Needs
9. Council for Professional Recognition
10. Early Care and Education Consortium
11. Educare Network
12. Families USA
13. Family Values @ Work
14. First Children's Finance
15. First Five Years Fund
16. First Focus on Children
17. Food Research and Action Center (FRAC)
18. Home Grown
19. Institute for Policy Studies, Poverty Project
20. Jewish Women International
21. Kindercare Learning Companies
22. Learning Care Group, Inc.
23. National Association for Family Child Care
24. National Association of Social Workers
25. National Black Child Development Institute
26. National CACFP Forum
27. National Child Care Association
28. National Community Action Partnership
29. National Head Start Association
30. National Recreation and Parks Association
31. National Women's Law Center
32. ParentChild+
33. Save the Children
34. Service Employees International Union (SEIU)
35. School Nutrition Association
36. YMCA of the USA
37. ZERO TO THREE