The United States Department of Agriculture (USDA) published federal regulations implementing the law established by the Agricultural Risk Protection Act of 2000 (Public Law 106-224). The regulations, entitled *Interim Rule, Child and Adult Care Food Program; Implementing Legislative Reforms to Strengthen Program Integrity*, establish a serious deficiency process for contractors and responsible principals participating in the Child and Adult Care Food Program (CACFP). The regulations also replace the National Listing of Seriously Deficient Institutions with the National Disqualified List (NDL).

The NDL is maintained by the USDA. It is a list of contractors, responsible principals, responsible individuals and day care home providers that have been disqualified from participation in the CACFP. While on the NDL, a contractor is not eligible to participate in the CACFP as an organization or facility. The responsible principal and responsible individual will not be able to serve as a principal in any organization or facility or as a day care home provider in the CACFP. Contractors and responsible principals/individuals will remain on the NDL until

- the Texas Department of Human Services (DHS) Special Nutrition Programs (SNP) determines that the serious deficiencies have been corrected, or
- 7 years have passed after being placed on the NDL.

Exception: A contractor or a responsible principal/individual on the NDL and who owes an outstanding debt in the CACFP must remain on the NDL until that debt has been paid in full.

**SERIOUS DEFICIENCY PROCESS FOR NEW CONTRACTOR APPLICATIONS**

A contractor applying to participate in the CACFP as a new contractor must submit a complete and correct application in order to be considered for approval. If a contractor’s application does not meet all of the program requirements contained in the application, SNP will deny the application.

If SNP determines that the contractor has committed a serious deficiency in the application, SNP will deny the application and disqualify the contractor and any responsible principals and individuals who contributed to the serious deficiency. The following items represent a serious deficiency in a new contractor’s application that would result in the denial of the application and placement of the contractor and any responsible principals and individuals on the NDL:

- submission of false information on the contractor’s application, including but not limited to a determination that the contractor has concealed a conviction for any activity that occurred during the 7 years preceding the contractor’s application and that indicates a lack of business integrity. A lack of business integrity includes, but is not limited to 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.

*continued*

This Policy Remains in Effect Until Further Notice
SNP will provide written notification to the contractor and responsible principals that SNP has determined that the contractor has committed a serious deficiency on its application to participate in the CACFP. SNP will inform the contractor of the specific serious deficiency and the required actions and time frame to correct it. The contractor cannot appeal the serious deficiency determination.

If the contractor cannot fully and permanently correct the serious deficiency(ies) within the allotted time, SNP will deny the application and propose to disqualify the contractor and any responsible principals and individuals. The contractor and the responsible principals and individuals can appeal the proposal for application denial and placement on the NDL.

Note: If the contractor voluntarily withdraws its application, SNP will not proceed with its proposal to disqualify the contractor and any responsible principals and individuals.

The contractor is not eligible to claim reimbursement for any meals served or administrative expenses incurred until SNP has approved the contractor’s application and the contractor has a signed and approved SNP Agreement.

Corrective Action Accomplished

If the contractor fully and permanently corrects the serious deficiency(ies) in the allotted time, SNP will inform the contractor and the responsible principals that SNP has rescinded its serious deficiency determination and is returning the rejected original application. The contractor may request and submit a new complete application.

NOTE: If the responsible principals or individuals have not corrected their contribution to the serious deficiency, SNP will continue its actions to disqualify those individuals.

Disqualification

SNP will proceed with disqualifying the contractor and responsible principals and individuals and placing them on the NDL if:

- the contractor or responsible principals/individuals fail to fully and permanently correct the serious deficiency in the time allotted;
- the contractor or responsible principals/individuals fail to request an appeal within the time frames provided; or,
- the official hearing the appeal upholds SNP’s denial of the application and proposed actions.

If any of the above occur, SNP will notify the contractor and responsible principals and responsible individuals of the denial of their disqualification and placement on the NDL.

SERIOUS DEFICIENCY PROCESS FOR RENEWING CONTRACTOR APPLICATIONS

A contractor completing its annual application must submit a complete application that meets all of the CACFP requirements contained in the application. If a contractor’s application does not meet all of the program requirements contained in the annual application, SNP will deny the application.
If SNP determines the contractor has committed a serious deficiency in the application, SNP will deny the application, propose termination of the SNP Agreement and disqualification of the contractor and any responsible principals and responsible individuals who contributed to the serious deficiency.

Each of the following items represent a serious deficiency in a renewing contractor’s annual application that would result in the denial of the application, termination of the SNP Agreement and placement of the contractor and any responsible principals and individuals on the NDL. The items include, but are not limited to

- submission of false information on the contractor’s annual application, including but not limited to a determination that the contractor has concealed a conviction for any activity that occurred during the 7 years preceding the contractor’s annual application and that indicates a lack of business integrity. A lack of business integrity includes, but is not limited to 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;
- failure to operate the CACFP in conformance with the program requirements specified in the application, including fiscal accountability demonstrated through compliance with financial management standards contained in FNS Instruction 796-2;
- failure to comply with the bid procedures and contract requirements of applicable Federal procurement regulations;
- use of a food service management company that is in violation of health codes;
- failure by a sponsoring organization of day care homes to properly classify day care homes as tier I or tier II;
- failure of a sponsoring organization to properly train or monitor sponsored facilities;
- failure to perform financial and administrative responsibilities;
- failure to properly implement and administer the day care home termination and administrative review provisions set forth in Policy Alert CACFP-DCH 2003-8, regarding Serious Deficiency Process for Providers; or
- any other action affecting the contractor’s ability to administer the CACFP in accordance with program requirements as stated in the CACFP DCH Handbook and the SNP Agreement.

Committing a serious deficiency on an annual application is not the same type of error that would generate a Notice of Incomplete letter. A contractor’s failure to fully and permanently correct a serious deficiency determination in any one of the above items will result in SNP denying the application and proposing to disqualify the contractor and any responsible principals and individuals and terminate the SNP Agreement.

SNP will provide written notification to a contractor and responsible principals if SNP determines that the contractor has committed a serious deficiency on its annual application to participate in the CACFP. SNP will inform the contractor of the specific serious deficiency and the required actions and time frame to correct it. The contractor cannot appeal the serious deficiency determination.

If the contractor cannot fully and permanently correct the serious deficiency(ies) within the allotted time, SNP will deny the application and propose to disqualify the contractor and any responsible principals and
individuals and terminate the SNP Agreement. The contractor and the responsible principals and individuals can appeal the application denial and proposal for disqualification and termination.

If the contractor requests an appeal within the stated time frames, the contractor may continue to submit valid claims for reimbursement of meals served.

NOTE: If a contractor decides to voluntarily withdraw its application or terminate its SNP Agreement after having been notified that it is seriously deficient, SNP will continue to proceed with disqualifying the contractor and responsible principals and individuals and placing them on the NDL.

Corrective Action Accomplished

If the contractor fully and permanently corrects the serious deficiency(ies) in the allotted time, SNP will inform the contractor and the responsible principals that SNP has rescinded its serious deficiency determination and is returning the rejected original application. The contractor may request and submit a new complete application. The contractor may continue to submit valid claims for reimbursement during this process.

NOTE: If the responsible principals or individuals have not corrected their contribution to the serious deficiency, SNP will continue its actions to disqualify those individuals.

Disqualification / Termination

SNP will proceed with terminating the SNP Agreement and disqualifying the contractor and responsible principals and individuals and placing them on the NDL if:

- the contractor or responsible principals/individuals fail to fully and permanently correct the serious deficiency in the time allotted;
- the contractor or responsible principals/individuals fail to request an appeal within the time frames provided; or,
- the official hearing the appeal upholds SNP’s denial of the application and proposed actions.

If any of the above occur, SNP will notify the contractor and responsible principals and responsible individuals of the denial of the contractor’s application to participate in the CACFP, termination of the contractor’s SNP Agreement and placement of the contractor and any responsible principals and individuals on the NDL. If the contractor requests an appeal and the hearing official upholds SNP’s determination, the termination of the SNP Agreement will be effective the last day of the month of the hearing official’s decision. If the contractor does not request an appeal within the allotted timeframe, the termination of the SNP agreement will be effective with the date provided in the notification.

Please contact your Area Program Office if you have questions regarding the serious deficiency process as applied in the CACFP contract application approval process.