

Section 10000

Serious Deficiency

Log of Section Updates

This table will reflect updates to the handbook implemented during the current Program Year. All substantive updates made this Program Year will be highlighted in yellow within this section.

Date of Edit	Content/Purpose	Subsection
11-15-2024	Added regulatory language that defines what needs to be included in an official Notice and when a Notice is considered received if it is undeliverable. Also added clarity about TDA’s process for how SD notices are delivered to Contracting Entities.	10100, 10600
	Removed examples of serious deficiencies that were inapplicable to renewal applications.	10220
	Aligned the Serious Deficiency Process for unaffiliated child care centers, at-risk centers, and adult day care centers with the process for day care home providers. Sponsors of unaffiliated centers are responsible for managing the Serious Deficiency Process for their sites and for sending copies of SD-related notices to TDA throughout the process.	10600, 10610, 10620, 10630, 10640, 10650, 10660
	Updated the Serious Deficiency notification process for DCH providers and unaffiliated centers – instead of emailing a copy of each provider notice to TDA, sponsors of day care homes must submit notices via the CACFP Serious Deficiency Process Notification Form .	
	Removed reference to Section 11000, where Sponsor/Provider Serious Deficiency notification templates were previously located. The templates have been extracted in Word form and are posted on SquareMeals.	
	Updated Notification Template names to match names as documented in TDA’s templates suite posted on SquareMeals.	
	Updated criteria for analyzing non-compliance to determine if it is a serious deficiency. This is a non-substantive update to align with USDA’s guidance language.	10610
	Updated criteria for a successful day care home provider-developed corrective action plan to align with USDA’s guidance.	10630

	Added non-substantive clarifying language throughout to align with USDA guidance.	N/A
	Reformatted and renumbered section.	

Table of Contents

10100	Written Notice during the Serious Deficiency Process
10200	Organizations Applying to Participate in the CACFP
10210	New Organizations
10220	Renewing Organizations
10300	Participating Contracting Entities
10310	Serious Deficiency Determination
10320	Notice of Serious Deficiency
10330	Opportunity for Corrective Action
10340	Notice of Proposed Termination and Proposed Disqualification
10350	Notice of Termination and Disqualification
10400	Submission of False Claims and Documentation
10410	Suspension
10500	Imminent Threat to Health or Safety
10600	Serious Deficiency Process for Sponsored Sites/Providers
10610	Serious Deficiency Determination at the Site/Provider Level
10620	Notice of Serious Deficiency
10630	Opportunity for Corrective Action
10640	Notice of Proposed Termination and Proposed Disqualification
10650	Notice of Termination and Disqualification
10660	Suspension of Site/Provider Participation due to Imminent Threat to Health or Safety
10700	Removal from the National Disqualified List

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10000 **Serious Deficiency**

The serious deficiency process both ensures compliance with Program requirements while also allowing organizations, principals, and individuals an opportunity to correct serious deficiencies and continue participation in the Program. TDA maintains a State Agency List that documents every Contracting Entity (CE) that is placed in the Serious Deficiency process and will update the status of each CE throughout the process.

10100 Written Notice during the Serious Deficiency Process

Throughout the serious deficiency process, TDA will send written notice as applicable to inform Contracting Entities (CEs) of corrective action and serious deficiency status. Examples of notices may include:

- Notice of Serious Deficiency
- Notice of Accepted Corrective Action and Temporary Deferral of Serious Deficiency
- Notice of Proposed Termination and Proposed Disqualification
- Notice of Termination and Disqualification
- Notice of Intent to Suspend
- Notice of Serious Deficiency, Suspension, Proposed Termination, and Proposed Disqualification for Imminent Threat to Health and Safety
- Notice of Serious Deficiency Temporary Deferral, Following Successful Appeal of Proposed Termination and Proposed Disqualification
- Notice of Serious Deficiency Temporary Deferral and Suspension Rescission Following Successful Appeal of Suspension, Proposed Termination, and Proposed Disqualification

Each of the above notices is described in more detail later in this chapter.

All notices will be provided to the organization's Executive Director, Chairman of the Board, and all applicable responsible principals/individuals. The Executive Director, responsible for the organization's day-to-day operations, and the Chairman of the Board of Directors (or equivalent), responsible for the organization's overall operation, may not always be directly responsible for a specific serious deficiency; however, by virtue of their positions, they have overall responsibility and accountability for the organization and will therefore be named as responsible principals. In absence of positions matching those title names, notices are sent to the highest official within the organization (i.e., owner).

All notices must specify the action being proposed or taken and the basis for the action. TDA sends all notices to the email addresses contained in the Program application; it is important that every CE ensures that the email addresses for all responsible principals/individuals noted above are up to date. It is considered received once the email is sent.

If the notice is undeliverable via email, TDA will send the notice via certified mail to the addressee's last known address. It is considered received by the CE, responsible principal, or responsible individual five days after being sent.

Refer to Section 9000, *Terms and Definitions*, for a definition of responsible principal and responsible individual.

10200 Organizations Applying to Participate in the CACFP

10210 New Organizations

An organization that applies to participate in the CACFP as a new CE must submit a complete and correct application to be considered for approval.

If it is determined that the organization has committed a serious deficiency in the application, TDA will take action to deny the application and disqualify the organization and any responsible principals and individuals who contributed to the serious deficiency.

The following items represent a serious deficiency in a new organization's application that could result in the denial of the application and placement of the organization and any responsible principals and individuals on the National Disqualified List (NDL):

- Submission of false information on the application such as concealment of a conviction within the past seven years 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 as determined by TDA.
- Any other action affecting the organization's ability to administer the CACFP in accordance with Program requirements.

Other examples of false information, actions, or documentation that affects the organization's ability to administer the Program include but are not limited to:

- Submission of false documentation in an attempt to receive reimbursement one month prior to participation; and
- Receipt of information, documentation, or statements that establish the organization will not be able to operate the Program as represented in its application.

TDA will provide written notification to the organization and responsible principals and/or responsible individuals, that specifies:

- The identified serious deficiency(ies);
- The actions necessary to correct the serious deficiency(ies);

- The time allotted to correct the serious deficiency(ies);
- That the serious deficiency determination is not subject to appeal;
- That failure to fully and permanently correct the serious deficiency(ies) within the allotted time will result in denial of the application and the disqualification of the organization and the responsible principals and responsible individuals;
- That the organization will not be paid for any claims for reimbursement for eligible meals served or allowable administrative expenses incurred until the organization has an approved application and fully executed permanent agreement;
- That if the organization withdraws its application after receiving this notice, the application will still be denied, and the organization, responsible principal and/or responsible individual will be disqualified and placed on the NDL; and
- That, if TDA does not have the date of birth for any individual named as a “responsible principal or individual” in the serious deficiency notice, the submission of that person’s date of birth is a condition of approvable corrective action.

Corrective Action Accomplished:

If the organization fully and permanently corrects the serious deficiency(ies) within the specified time frame, TDA will inform the organization and the responsible principals in writing that TDA has deferred its serious deficiency determination and will update the CE’s status on the State Agency List. The organization may then submit a new complete application.

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

Disqualification:

TDA will proceed with disqualification and placement on the NDL if:

- The organization voluntarily withdraws its application after receiving the Notice of Serious Deficiency.
 - The CE will not receive appeal rights or further opportunity for corrective action if it voluntarily withdraws its application.
- The organization or responsible principals/individuals fail to fully and permanently correct the serious deficiency(ies) within the specified time frame.
- The organization or responsible principals/individuals fail to request an appeal within 15 days of receipt of the notice.
- The Administrative Review Official (ARO) upholds TDA’s denial of the application and proposed actions.

If any of the above occurs, TDA will notify the organization, responsible principals, and responsible individuals of their disqualification and placement on the NDL

10220 Renewing Organizations

A CE that wants to continue participation must submit a renewal application each year that meets all CACFP application requirements.

If it is determined the CE has committed a serious deficiency in the renewal application, TDA will place the organization, responsible principals, and responsible individuals in the serious deficiency process.

Each of the following items represent a serious deficiency in a renewal application that could result in the denial of the application, termination of the Permanent Agreement, and placement of the organization, responsible principals, and responsible individuals on the NDL

The items include, but are not limited to:

- Submission of false information on the application such as concealment of a conviction within the past seven years that indicates a lack of business integrity (see section 10210 above for examples).
- Failure to conform with regulatory performance standards:
 - Performance Standard 1 – Financial viability and financial management.
 - Performance Standard 2 – Administrative capability.
 - Performance Standard 3 – Accountability.
- Failure to properly train or monitor sponsored sites or day care homes.
- Failure to perform any other required financial and administrative responsibilities.
- For day care home sponsors:
 - Failure to properly classify homes as tier I or tier II.
 - Failure to properly implement or administer the day care home termination and administration review (appeal) process.
- Any other action affecting the organization's ability to administer the CACFP in accordance with program requirements as stated in this handbook and the Permanent Agreement.

TDA will provide written notification to the organization and responsible principals and/or responsible individuals, that specifies:

- The serious deficiency(ies);
- The actions to be taken to correct the serious deficiency(ies);
- The time allotted to correct the serious deficiency(ies);
- That the serious deficiency determination is not subject to appeal;
- That failure to fully and permanently correct the serious deficiency(ies) within the allotted time will result in denial of the organization's application, the proposed termination of the Permanent Agreement, and the proposed disqualification of the organization and the responsible principals and responsible individuals;
- That if the organization voluntarily terminates its Permanent Agreement after receiving this notice, the organization's Permanent Agreement will be formally terminated and the

organization, responsible principal and/or responsible individual will be disqualified and placed on the NDL; and

- That, if TDA does not have the date of birth for any individual named as a “responsible principal or individual” in the serious deficiency notice, the submission of that person’s date of birth is a condition of corrective action for the organization and/or individual.

Corrective Action Accomplished:

If the CE, responsible principals, and responsible individuals fully and permanently correct the serious deficiency(ies) within the specified time frame, they will receive notification that TDA has deferred its serious deficiency determination, and TDA will update the CE’s status on the State Agency List. The CE may then re-submit the renewal application. The CE may continue to submit valid claims for reimbursement during this process.

NOTE: If any responsible principal or individual has not corrected their contribution to the serious deficiency, TDA will continue its actions to disqualify those individuals.

Application Denial and Proposed Disqualification/Termination:

If the CE, responsible principals, and/or responsible individuals do not fully and permanently correct the serious deficiency(ies) within the allotted timeframe, TDA will deny the renewal application, propose to terminate the Permanent Agreement, and propose to disqualify the CE, responsible principals, and/or responsible individuals from participation in the CACFP.

TDA will provide written notification to the organization and responsible principals and/or responsible individuals, that specifies:

- That the organization’s renewal application has been denied and TDA is proposing to terminate the organization’s Permanent Agreement and disqualify the organization, responsible principals, and/or responsible individuals;
- The basis for the actions;
- That if the organization voluntarily terminates its Permanent Agreement after receiving this notice, the organization’s Permanent Agreement will be formally terminated and the organization, responsible principal and/or responsible individual will be disqualified and placed on the NDL;
- The procedures for appealing the renewal application denial and the proposed actions; and
- That the organization may continue to participate in the Program and receive eligible reimbursement incurred until its appeal is completed, if applicable.

Disqualification/Termination:

TDA will proceed with terminating the Permanent Agreement and disqualifying the CE, responsible principals, and individuals, and placing them on the NDL if the:

- CE voluntarily terminates its Permanent Agreement after receiving the *Notice of Renewal Application Denial and Proposed Termination and Proposed Disqualification*

- The CE will not receive appeal rights or further opportunity for corrective action as it voluntarily terminated its participation.
- CE fails to fully and permanently correct the serious deficiency(ies) within the specified time frame.
- CE fails to request an appeal within 15 days of receiving the *Notice of Renewal Application Denial and Proposed Termination and Proposed Disqualification*.
- The ARO upholds TDA’s denial of the renewal application and proposed actions if the CE appeals the actions.

If the CE requests an appeal and the ARO upholds TDA’s determination, the termination of the Permanent Agreement will be effective the day of the ARO’s decision.

If an appeal is not requested within 15 days of receipt of the Notice, the termination of the Permanent Agreement will be effective on the date provided in the notification.

10300 Participating Contracting Entities

During an audit, administrative review, or any time during a CE’s program participation, it may be determined that serious non-compliances have occurred or are occurring. As a result, the CE, responsible principals, and responsible individuals may be placed in the serious deficiency process and added to the State Agency List.

The steps in the serious deficiency process are as follows:

1. Serious Deficiency determination
2. Notice of Serious Deficiency
3. Opportunity for corrective action
4. Notice of Proposed Termination and Proposed Disqualification (if an approvable corrective action plan is not submitted or does not fully and permanently correct the non-compliances)
5. Notice of Termination of the Permanent Agreement and Disqualification of the organization, responsible principals, and responsible individuals.

10310 Serious Deficiency Determination

Serious deficiencies for a participating CE are:

- Submission of false information on the application such as concealment of a conviction within the past seven years that indicates a lack of business integrity.
- Permitting an individual who is on the NDL to serve in a principal capacity or perform CACFP functions with the organization, or permitting such an individual to serve as a principal in a sponsored site or as a day care home.

NOTE: CEs must check the NDL prior to hiring new staff, submitting new sites, or hiring new staff.

- Failure to operate the CACFP in accordance with regulatory performance standards:
 - Performance Standard 1 – Financial viability and financial management.
 - Performance Standard 2 – Administrative capability.
 - Performance Standard 3 – Accountability.

EXAMPLES: continued submission of late claims; failure to account for CACFP funds; failure to use funds for allowable costs; failure to submit adjusted budgets as necessary; failure to train staff prior to beginning operations.

- Failure to comply with the procurement bid procedures and contract requirements.

EXAMPLES: failure to advertise the Invitation for Bid and Contract for Purchased Meals (IFB) as required; obtaining bid specifications from a potential bidder; failure to disclose less-than-arms-length transactions.

- Failure to return to TDA any advance payments exceeding the amount earned for serving eligible meals.
- Failure to maintain adequate records.

EXAMPLES: incomplete or incorrect eligibility or enrollment documentation; lack of documentation to support a claim, such as meal count and attendance records; financial documentation.

- Failure to adjust meal orders to conform to variations in the number of participants (for those who vend meals).
- Claiming reimbursement for meals not served to participants.
- Claiming reimbursement for a significant number of meals that do not meet CACFP requirements.
- Use of a Food Service Management Company that is in violation of health codes.
- Failure of a sponsoring organization to disburse payments to its sites/providers in accordance with the Program requirements and/or the CE's management plan.
- Claiming reimbursement for meals served by a for-profit adult day care center, if less than 25% of its enrolled adult participants were Title XIX or Title XX beneficiaries during the calendar month in which the meals were served;
- Failure of a sponsoring organization to properly train or monitor sites/providers;
- Failure to perform any of the other financial and administrative responsibilities in accordance with Program requirements.

EXAMPLES: failure to submit a required audit; failure to return information required for corrective action; failure to complete the annual renewal process; failure to return unearned reimbursement including advances.

- The CE or any of the CE's principals have been declared ineligible for any other publicly funded program by reason of violating that program's requirements.
 - This prohibition does not apply if the CE or principal(s) have been fully reinstated or made eligible to participate in that program, including the payment of any debts owed.
- Conviction of the CE or any of its principals for any activity that occurred during the past seven years that indicated a lack of business integrity (see Section 10210 for examples).
- Submission of false claims.

- For day care home sponsors:
 - Failure to properly classify day care homes as tier I or tier II.
 - Use of day care home funds to pay for the sponsor’s administrative expenses.
 - Failure to properly implement or administer the day care home termination and administrative review (appeal) provisions.
- Any other action affecting the CE’s ability to administer the Program in accordance with CACFP requirements.

TDA may declare a CE, responsible principals, and responsible individuals seriously deficient for any serious management or integrity issues.

TDA will use discretion in making these serious deficiency determinations by distinguishing between:

- Occasional and systemic errors - Is the error an indication of a systemic problem in the organization’s internal processes and procedures, or is it truly an isolated event?
- Minor and major errors - Does the error undermine the intent and integrity of the CACFP or is it simply an administrative error?

NOTE: Submission of false or fraudulent claims or documentation, or evidence of imminent threat to health or safety, will result in a determination that the organization is seriously deficient regardless of the frequency of occurrence or the impact on the organization’s claim.

If a CE is deemed seriously deficient, TDA will always:

- Detail the non-compliances (known as “findings”) that led to the declaration of serious deficiency.
- Refer to and apply state and federal laws, guidelines, and regulations to maintain consistency in making serious deficiency determinations.

Once a *Notice of Serious Deficiency* is issued, it can result in only two outcomes:

- The serious deficiency(ies) is fully and permanently corrected to comply with state and federal requirements; or
- The serious deficiency(ies) is not fully and permanently corrected within the time allotted, and TDA proposes termination of the CE’s Permanent Agreement and disqualification and placement of the CE, responsible principals, and responsible individuals on the NDL.

When a CE is deemed seriously deficient, TDA must also:

- Determine who is responsible for the serious deficiency;
- Include the names of those individuals in the *Notice of Serious Deficiency*; and
- Send a copy of the notice to the CE, responsible principals, and responsible individuals.

NOTE: Indications of fraud or misuse of funds may be referred to USDA for investigation and referred for prosecution under applicable federal and state law.

10320 Notice of Serious Deficiency

The *Notice of Serious Deficiency* will specify:

- The serious deficiency(ies) with references to the documents that discuss the serious deficiency(ies), such as an administrative review findings letter, information or documentation in TX-UNPS, or audit;
- The corrective action(s) required to be taken to fully and permanently correct the serious deficiency(ies), and the deadline(s) by which corrective action must be taken and a corrective action plan submitted;
- The person(s) determined to be the responsible principals and responsible individuals (responsible for the serious deficiencies);
- The serious deficiency determination **is not** subject to appeal;
- Failure to fully and permanently correct the serious deficiency(ies) by the deadline will result in the proposed:
 - Termination of the CE's Permanent Agreement for cause; and
 - Disqualification of the CE, responsible principals and responsible individuals.
- Voluntary termination of the CE's Permanent Agreement after the CE receives the *Notice of Serious Deficiency* will result in the organization's formal termination and placement of the organization, responsible principals, and responsible individuals on the NDL without further opportunity for corrective action or appeal.
- If TDA does not have the date of birth for any individual named as a "responsible principal or individual" in the serious deficiency notice, the submission of that person's date of birth is a condition of approvable corrective action.

10330 Opportunity for Corrective Action

The CE and responsible principal(s)/responsible individual(s) will be allowed a specific amount of time to fully and permanently correct the serious deficiency(ies) before TDA proposes to terminate the Permanent Agreement.* The deadline is final and will not be extended.

***EXCEPTION:** If the serious deficiency is due to an imminent threat to the health or safety of participants, TDA will immediately suspend the CE's participation, propose to terminate the Permanent Agreement, and propose to disqualify the CE, responsible principal(s), and responsible individual(s) without opportunity for corrective action.

Refer to Item 10500, *Imminent Threat to Health or Safety*, for more information.

TDA will determine if the serious deficiency(ies) have been fully and permanently corrected by:

- Reviewing the documentation submitted detailing the corrective action taken; and
- Conducting an onsite review to verify that corrective action was taken, if needed.

If the serious deficiency(ies) is fully and permanently corrected within the time allowed, all parties will receive written notification that the serious deficiency process has been temporarily

deferred. If at any time it is discovered that the serious deficiency(ies) has not in fact been fully and permanently corrected, TDA will immediately propose disqualification and termination without further opportunity for corrective action.

NOTE: If TDA does not have the date of birth for any responsible party, submission of that information will be part of the required corrective action. Failure to provide the required date(s) of birth will result in denial of a CE's corrective action.

10340 Notice of Proposed Termination and Proposed Disqualification

The *Notice of Proposed Termination and Proposed Disqualification* will specify:

- That TDA is proposing to terminate the CE's Permanent Agreement;
- That TDA is proposing to disqualify the CE, responsible principal(s) and responsible individual(s);
- The basis for the proposed actions;
- The effective date for the proposed actions;
- The procedures for appealing the proposed actions;
- That the CE will receive CACFP payments for eligible meals and operation/administrative costs during the period of appeal (unless its participation has been suspended); and
- That voluntary termination of the CE's Permanent Agreement after the CE receives the *Notice of Proposed Termination and Proposed Disqualification* will still result in the organization's formal termination and placement of the organization, responsible principals and responsible individuals on the NDL without further opportunity for corrective action or appeal.

This notice will be sent to the CE, Executive Director, Chairman of the Board, and any other responsible principal(s) and responsible individual(s), and TDA will update the CE's status on the State Agency List

Any identified parties in the *Notice of Proposed Termination and Proposed Disqualification* may file for appeal. Each person wishing to appeal their proposed disqualification from the Program and placement on the NDL must submit a request either collectively, naming each person, or separately. Only a responsible principal may appeal the proposed termination and proposed placement of the organization on the NDL. At the discretion of the ARO, one hearing will be conducted combining all requests received from the responsible principals and responsible individuals.

If a request for an appeal is not received within 15 days of receipt of the notice, TDA will immediately issue a *Notice of Termination and Disqualification*.

If a request for an appeal is received within 15 days of receipt of the Notice, and the ARO overturns TDA's action, TDA will issue a *Notice of Temporary Deferral of Serious Deficiency*. The effective date of the temporary deferral will be the same date of the ARO's decision.

10350 Notice of Termination and Disqualification

The *Notice of Termination and Disqualification* will inform all parties that the:

- Permanent Agreement has been terminated; and
- Organization, responsible principal(s), and responsible individual(s) have been disqualified and placed on the NDL.

The effective date of the termination and disqualification is the date in the *Notice of Proposed Termination and Proposed Disqualification* letter if a request for an appeal was not received or was not received timely. If a request for an appeal was received and TDA's actions were upheld, the effective date will be the date of the ARO's decision.

10400 Submission of False Claims and Documentation

Submitting false information on a claim for reimbursement and submitting false documentation in support of that claim to receive reimbursement is a serious deficiency.

If it is determined that a CE knowingly submitted false information or documentation to receive reimbursement, the CE will be placed in the serious deficiency process, and its Program participation, including Program payments, may be suspended.

10410 Suspension

Suspension for the submission of false claims is an action taken simultaneously with the serious deficiency process.

Once the determination is made, the CE will receive a *Notice of Intent to Suspend*. This notice will not be combined with the *Notice of Serious Deficiency*; however, both notices will be sent to the CE and its responsible principal(s) and responsible individual(s) at the same time.

The notice will:

- Inform the CE that TDA is proposing to suspend its participation, including all payments;
- Specify that the proposed suspension is due to the CE's submission of a false claim or false information/documentation to receive reimbursement as specified in the *Notice of Serious Deficiency*;
- State that the effective date of the proposed suspension will be 10 days from the date the CE receives the *Notice of Intent to Suspend*, unless the CE requests a review (appeal) of the proposed suspension;
- Include the name, address, and telephone number of the suspension review official (SRO); and
- Specify that if the CE wants to request a review of the proposed suspension, it must submit the request to the address provided and include written documentation opposing the proposed suspension within 10 days of its receipt of the *Notice of Intent to Suspend*.

10500 Imminent Threat to Health or Safety

If state or local health or licensing officials have cited a CE for serious health or safety violations that constitute an imminent health or safety threat, TDA will immediately send the CE a *Notice of Suspension, Proposed Termination and Proposed Disqualification for Imminent Threat to Health and Safety*.

This notice will specify:

- That TDA is suspending the CE's participation (including Program payments), proposing to terminate the CE's Permanent Agreement, and proposing to disqualify the CE and the responsible principals and responsible individuals;
- The serious deficiency(ies);
- That voluntary termination of the CE's Permanent Agreement after the CE receives the Notice will still result in the organization's formal termination and placement of the organization, responsible principals, and responsible individuals on the NDL without further opportunity for corrective action or appeal;
- That the serious deficiency determination is not subject to appeal;
- The procedures for appealing the suspension, proposed termination, and proposed disqualifications; and
- That, if the ARO overturns the suspension, the CE may claim reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

The notice will be sent to the:

- Executive Director;
- Chairman of the Board of Directors; and
- Responsible principal(s) and responsible individual(s).

In an appeal based on *Imminent Threat*, the CE, responsible principal(s), and/or responsible individual(s) may appeal any or all three adverse actions:

- Suspension.
- Proposed termination.
- Proposed disqualification.

NOTE: If the CE, responsible principal(s), or responsible individual(s) do not request an appeal within the time allotted in the written notice, TDA will proceed with termination of the Permanent Agreement and disqualification of the CE, responsible principals, and responsible individuals.

If an appeal is requested and the ARO upholds TDA's decision, TDA will send a *Notice of Termination and Disqualification* to the CE, responsible principal(s), and responsible individual(s). The notice informs all parties that the:

- Permanent Agreement is terminated for cause; and

- CE, responsible principal(s), and responsible individual(s) are disqualified and placed on the NDL.

If the ARO overturns TDA's actions, TDA will send a *Notice of Temporary Deferral*. This notice:

- Removes the suspension effective the date of the ARO's decision.
- Informs the CE that the Permanent Agreement will not be terminated.
- Informs all parties that they will not be disqualified.
- Informs the CE that they can claim for eligible meals served and if a day care home sponsor, administrative expenses incurred, during the suspension period.

NOTE: If TDA determines there is an imminent threat to health or safety, TDA will immediately inform the health or licensing authority and take action that is consistent with the authority's recommendation, up to and including suspension of participation and placement in the serious deficiency process as detailed above.

10600 Serious Deficiency Process for Sponsored Sites/Providers

Sponsors of day care home providers, unaffiliated child care centers, At-Risk centers, or Adult Day Care centers must initiate the Serious Deficiency process if they discover that one of their sponsored sites/providers consistently violates Program requirements and/or the violations are severe enough to demonstrate systemic management problems preventing successful operation of the Program.

There are five steps in the serious deficiency process.

Step 1. Serious deficiency determination, the point at which the sponsor determines the site/provider's noncompliance(s) rise to the level of serious deficiency.

Step 2. Notice of serious deficiency, the first notification sent to the site/provider informing them they have been determined seriously deficient.*

Step 3. Opportunity for corrective action, the time given to the site/provider allowing them to fully and permanently correct the serious deficiencies.

Step 4. Notice of proposed termination and disqualification, the second notification sent to the site/provider if they fail to fully and permanently correct the serious deficiencies.* This notice allows the site/provider to appeal the proposed actions.

Step 5. Notice of termination and disqualification, the third notification sent to the site/provider if they fail to appeal the notice of proposed termination and disqualification, or they appeal and the hearing official upholds the sponsor's proposed actions.*

***IMPORTANT:** A copy of each Notice must be sent to TDA at the same time it is sent to the site/provider. For each notice submitted to a site/provider, CEs must complete the [CACFP Serious Deficiency Process Notification Form](#)¹ located on the [CACFP Administration/Forms](#)²

¹ <https://app.smartsheet.com/b/form/103aa98098ed46dd99cf62377501905b>

² <https://squaremeals.org/Programs/Child-and-Adult-Care-Food-Program/Administration-Forms>

page of SquareMeals.org. Notification templates for each of the scenarios presented in this section are also located on the CACFP Administration/Forms page.

All notices must specify the action being proposed or taken and the basis for the action. If the CE fails to send notices to TDA at any point in the process, or if the notice received does not comply with the instructions in this section, TDA will contact the CE and provide technical assistance. TDA may initiate a review of the CE's Serious Deficiency process if there are repeat or egregious non-compliances with the notification process, which could lead to the CE being placed in the SD process.

A notice is considered to be received by the site/provider when it is delivered, sent by facsimile, or sent by email. If the notice is undeliverable, it is considered to be received by the provider, responsible principal, or responsible individual five days after being sent to the addressee's last known mailing address, facsimile number, or email address.

10610 Serious Deficiency Determination at the Site/Provider Level

Serious deficiencies that could lead to a site/provider's termination and disqualification include:

- Submission of false information on the application.
- Submission of false claims for reimbursement.
- Simultaneous participation under more than one CE.
- Noncompliance with CACFP meal patterns.
- Failure to keep required records.
- Failure to participate in training.
- Conduct or conditions that threaten the health or safety of a child or children in care, or the public health or safety.
- A determination that the site/provider has been convicted of an activity that occurred during the past seven years and that indicated 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, any other activity indicating a lack of business integrity as determined by TDA, or the concealment of such a conviction.
- Any other circumstance related to non-performance under the Permanent Agreement between the sponsor and the site or provider.

NOTE: This list should not be considered all inclusive.

CEs must use discretion in making a serious deficiency determination.

To appropriately use discretion, CEs must be able to distinguish between:

- Occasional (happened once or infrequently) versus systemic (is ongoing and is a problem that is due to a procedural inadequacy) errors.
- Minor (no or few disallowances) versus major (many disallowances or falsified claims) errors.

CEs should take into account several factors in deciding whether a problem rises to the level of a serious deficiency:

- The severity of the problem
- The degree of responsibility attributable to the provider.
- The provider's history of participation in the Program.
- The nature of the requirements that relate to the problem.
- The degree to which the problem impacts program integrity.

Once a notice of serious deficiency is issued, it can result in only two possible outcomes:

- The site/provider fully and permanently corrects the serious deficiency within the period allotted for corrective action.
- The site/provider does not fully and permanently correct the serious deficiency, and the CE proceeds to proposed termination of the agreement and proposed disqualification of the site/provider.

Once a serious deficiency has been determined, the CE must immediately prepare the *Notice of Serious Deficiency*, which will be distributed to the site/provider **and** TDA [via the Serious Deficiency Process Notification Form](#).

NOTE: Sample letters for each step in the serious deficiency process can be found on the [CACFP Administration/Forms page](#) on SquareMeals.org (*CACFP Day Care Home/Unaffiliated Center Serious Deficiency Process Notification Template Letters*). CEs choosing not to use TDA's templates must ensure that all elements within TDA's templates are included in their notices.

10620 Notice of Serious Deficiency

The notice of serious deficiency must specify:

- That the site/provider has been found to be seriously deficient.
- The nature of the serious deficiency(ies).
- The corrective action required to resolve the serious deficiency(ies) and the deadline (not to exceed 30 days) by which the action must be taken.
- That the serious deficiency determination is not subject to appeal.
- That failure to fully and permanently correct the serious deficiency by this deadline will result in:
 - Proposed termination of the site/provider's agreement.
 - Proposed disqualification of the site/provider **and its responsible principals/individuals**, and placement on the NDL.
- If the site/provider voluntarily terminates the agreement after it receives the serious deficiency notice, the CE will terminate the site/provider's agreement, disqualify the site/provider **and its responsible principals/individuals**, and place the site/provider **and its**

responsible principals/individuals on the NDL.

Remember that a copy of this notice must be sent to TDA at the same time it is sent to the provider via the [CACFP Serious Deficiency Process Notification Form](#).

10630 Opportunity for Corrective Action

Sites/Providers are allowed up to 30 days to correct a serious deficiency. CEs may not allow a site/provider additional time.

EXCEPTION: Sites/Providers are not given an opportunity for corrective action in the case of imminent threat to the health or safety of participants or the public. Refer to Item 10660 below for additional information.

Corrective action must include the following:

- Site/Provider's full name, address, and date of birth (if the CE does not already have the current information for the provider),
- A detailed description of how each serious deficiency was fully and permanently corrected, including:
 - Who addressed the serious deficiencies? List personnel responsible for this task.
 - What procedures were implemented to address each serious deficiency listed? Please provide those procedures with your plan.
 - When were the procedures for addressing the serious deficiencies implemented (must be prior to prescribed due date listed in the notification letter)?
 - How often will these procedures be used to ensure that the management problem does not reoccur (for example, daily, weekly, monthly, or annually)?
 - Where will this corrective action plan, associated procedures, and associated supporting documentation be stored?
- Any supporting documentation in addition to procedures that support full correction of the issue.

Evaluating the acceptability of corrective action

Upon receipt of a site/provider's corrective action, the CE must review it to determine if it contains all required information **and**, if implemented as written, has or would correct all noncompliance(s) and prevent them from occurring in the future (full and permanent corrective action).

NOTE: An assurance from a site/provider that it will comply with all requirements from now on would not be acceptable corrective action.

Whenever feasible, CEs should make onsite visits to verify and evaluate the implementation and effectiveness of the site/provider's corrective action.

If the site/provider fully and permanently corrects the serious deficiency within the time allowed for corrective action, send a *Notice of Accepted Corrective Action and Serious Deficiency Temporary Deferral* to the site/provider, with a copy to TDA, stating that the serious deficiency determination has been temporarily deferred due to the site/provider's successful corrective action.

Remember that a copy of this notice must be sent to TDA at the same time it is sent to the provider *via the CACFP Serious Deficiency Process Notification Form*.

If the site/provider fails to take corrective action, or the corrective action does not fully and permanently correct the serious deficiency(ies), the site/provider must be sent a *Notice of Proposed Termination and Proposed Disqualification*, with a copy to TDA. Do not send the *Notice of Proposed Termination and Proposed Disqualification* until after the period allowed for corrective action has expired.

False or fraudulent claims

CEs may not suspend the participation of a site/provider based on a determination that the provider submitted false or fraudulent claims. The corrective action period allows the site/provider time to demonstrate that:

- An administrative error was made.
- The CE confused two sites/providers with similar or identical names.
- The information submitted by the site/provider was not, in fact, false.
- Any other corrective action deemed acceptable.

In addition to declaring the site/provider seriously deficient and offering a brief period for corrective action, CEs must deny the portion of the claim which is false or fraudulent. CEs must never reimburse sites/providers for invalid claims.

If disallowances are taken, repayment of the funds to the sponsor³ must be part of the corrective action. The serious deficiency determination is not subject to appeal. However, the site/provider may appeal the disallowances, and the CE must include appeal rights in any notice requiring the repayment of funds.

10640 Notice of Proposed Termination and Proposed Disqualification

If the site/provider does not submit corrective action, or if the CE determines that the corrective action submitted does not fully and permanently correct the noncompliance(s) *(either in the site/provider's proposed plan or after a follow-up review of plan implementation)*, the CE must immediately send the notice of proposed termination and proposed disqualification, with a copy to TDA *via the CACFP Serious Deficiency Process Notification Form*.

³ Any funds repaid to a sponsor for invalid claims must subsequently be returned to TDA.

This notice must:

- State that the CE is proposing to terminate the site/provider’s agreement for cause and proposing to disqualify the site/provider for placement on the NDL.
- State that these actions are being taken due to the site/provider’s failure to correct the serious deficiency.
- Inform the site/provider that it may appeal the proposed termination and proposed disqualification, and provide the appeal procedures.
- Inform the site/provider that it can continue to participate and receive Program reimbursement for eligible meals served until the appeal process is concluded.⁴
- Inform the site/provider that if it voluntarily terminates the agreement after receiving the notice, it will be disqualified and placed on the NDL.

The effective date of the proposed termination and proposed disqualification must be no earlier than 30 days from the date of the letter.

If the site/provider appeals the *Notice of Proposed Termination and Proposed Disqualification* and the action is overturned, the site/provider must be sent a *Notice of Serious Deficiency Temporary Deferral, Following Successful Appeal of Proposed Termination and Proposed Disqualification*, with a copy to TDA via the [CACFP Serious Deficiency Process Notification Form](#). The effective date of the temporary deferral is the date of the hearing official’s decision.

10650 Notice of Termination and Disqualification

If the site/provider fails to appeal the *Notice of Proposed Termination and Proposed Disqualification*, or if the hearing official rules in the CE’s favor, the site/provider must be sent a *Notice of Termination and Disqualification*, with a copy to TDA via the [CACFP Serious Deficiency Process Notification Form](#). Do not give appeal rights.

If the site/provider does not appeal, the effective date of the termination and disqualification is the date in the *Notice of Proposed Termination and Proposed Disqualification* letter. If the site/provider appealed and the action is upheld, the effective date is the date of the hearing official’s decision.

At this step of the serious deficiency process, the CE must “close” the site/provider’s participation in the CACFP via TX-UNPS.

10660 Suspension of Site/Provider Participation due to Imminent Threat to Health or Safety

If state or local health or licensing officials have cited a site/provider for serious health or safety violations that constitute an imminent health or safety threat, the sponsor must immediately

⁴ Note that if the site/provider is being placed in the serious deficiency process for imminent threat to health or safety of a participant, all payments must be suspended to the site. In that instance, a combined Notice of Serious Deficiency, Suspension, Proposed Termination, and Proposed Disqualification is sent to the site/provider. See Section 10660 for more information.

send the site/provider a *Notice of Serious Deficiency, Suspension, Proposed Termination and Proposed Disqualification for Imminent Threat to Health and Safety*, with a copy to TDA via the [CACFP Serious Deficiency Process Notification Form](#).

This notice must:

- Notify the site/provider that its participation in the CACFP has been suspended, including all payments.
- State that the site/provider has been determined to be seriously deficient, and that the CE is proposing to terminate the Provider's agreement for cause and disqualify the site/provider, including the effective date.
- Specify the serious deficiencies that constitute the imminent threat.
- Include the procedures for the site/provider to appeal the suspension and the proposed actions.
- State that the suspension, including all CACFP payments, will remain suspended until the appeal process is concluded, if the site/provider appeals.
- Inform the site/provider that if the hearing official overturns the suspension, the site/provider may claim reimbursement for eligible meals served during the period of suspension.
- Inform the site/provider that termination will result in disqualification.
- State that if the site/provider voluntarily terminates its agreement after receiving this notice, the site/provider will be disqualified and its name and all responsible principals and individuals will be placed on the NDL.

An imminent threat to health or safety requires the immediate suspension of a site/provider without the opportunity for corrective action.

If the site/provider appeals and loses, send the provider a *Notice of Termination and Disqualification* informing the provider that:

- The site/provider's agreement is terminated for cause.
- The site/provider is disqualified and placed on the NDL.

If the site/provider appeals, and the CE's actions are overturned, send the site/provider a *Notice of Serious Deficiency Temporary Deferral and Suspension Rescission Following Successful Appeal of Suspension, Proposed Termination, and Proposed Disqualification* informing the site/provider that:

- The suspension ended on the date of the hearing official's decision.
- The site/provider's agreement will not be terminated.
- The site/provider will not be disqualified and may claim for eligible meals served during the suspension period.

Send a copy of the *Notice of Termination and Disqualification or Notice of Serious Deficiency Temporary Deferral and Suspension Rescission Following Successful Appeal of Suspension*,

Proposed Termination, and Proposed Disqualification to TDA via the CACFP Serious Deficiency Process Notification Form.

NOTE: If a CE determines there is an imminent threat to health or safety in a day care home, it must immediately inform the health or licensing authority and then take action that is consistent with the authority's recommendation. Follow the procedures outlined above as applicable.

10700 Removal from the National Disqualified List

Organizations, responsible principal(s), and responsible individual(s) that are disqualified from participation in the CACFP are placed on the NDL and will remain on the list for a minimum of seven years from the date of disqualification unless a debt is owed under the CACFP, in which case they will remain on the list until the debt has been repaid.

NOTE: Due to the egregious nature of certain activities, TDA will not consider a request for early removal of an organization or individual who was disqualified for falsification of records, making false representations, making false claims, engaging in an unlawful practice, or any other activity indicating a lack of business integrity as determined by TDA.

For disqualifications because of other serious deficiencies that do not indicate a lack of business integrity, organizations and individuals may submit a request to be removed from the NDL before the seven years have elapsed. However, note that:

- Submission of a request does not guarantee the request will be approved
- Denial of a request for early removal is not subject to appeal; and
- Approval of a request for early removal does not equal approval to participate in the CACFP. A new application for participation in the program must be submitted and processed in accordance with TDA's application process.

For a request to be considered, the organization, responsible principal(s), or responsible individual(s) must submit the following to TDA:

- Corrective action that includes:
 - **An acceptable Corrective Action Plan (CAP):** The organization, principal(s), or individual(s) must submit an acceptable CAP outlining the actions that will be taken or have been taken to correct the serious deficiencies that caused placement on the NDL. If TDA rejects the CAP, this action cannot be appealed.
 - **Any outstanding audits:** If the serious deficiency(ies) include failure to submit an acceptable audit, the organization must submit an audit that complies with Single Audit requirements or for-profit audit requirements that were in effect at the time the audit was originally due. Corrective action must also include a plan to address any deficiencies identified in the audit.
 - **All outstanding funds owed:** If the organization has an outstanding debt for a previous CACFP claim, adjusted claim, advance overpayment, or audit finding, the debt must be repaid, including interest.
 - **One of the following:**

- An explanation, setting forth detailed, objective, verifiable facts, indicating why the principal(s) or individual(s) identified as being responsible for the serious deficiency(ies) should now be eligible to participate in the CACFP, if the person or persons are requesting removal.
- A statement that the principal(s) identified as being responsible for the serious deficiency(ies) are no longer principals in the organization, if they are not included in the request for removal.
- A statement that the individual(s) identified as being responsible for the serious deficiencies do not perform any tasks related to the CACFP, or are no longer employed by the organization, if they are not included in the request for removal.

Requests for removal, including required documentation, should be submitted via the [Removal Request Form - National Disqualified List or Texas Excluded Summer Food Service Program List](#) located on SquareMeals on the National Disqualified List / Texas Excluded Summer Food Service page (<https://squaremeals.org/FandN-Resources/National-Disqualified-List>).

Requests may also be submitted via letter to:

Texas Department of Agriculture
Food and Nutrition
Attn: Community Operations
P.O. Box 12847
Austin, Texas 78711

Or via overnight delivery to:

Texas Department of Agriculture
Food and Nutrition
Attn: Community Operations, 10th Floor
1700 N Congress Avenue
Austin, Texas 78701

If TDA determines that the organization, principal(s), and/or individuals have taken corrective action to fully and permanently correct the serious deficiencies, an assessment will be forwarded to USDA.

USDA will determine, in consultation with TDA, if the organization, principal(s) and/or individuals will be removed from the ND. TDA will notify the organization and responsible principals and individuals of USDA's decision.

If either TDA or USDA does not accept the corrective action and decides to retain the organization, responsible principal(s) or responsible individual(s) on the ND, the decision may not be appealed.