Issue Brief

Serious Deficiency in the CACFP

Date Published: 3/14/2024
Prepared by: CACFP Roundtable Staff, Board, and Community
Audience: Sponsors of Family Child Care Providers, Sponsors of Centers, Child Care Centers, Adult Day Centers, State Agencies, and anyone else in the CACFP Community interested in the topic

Issue Brief: Serious Deficiency

Why this issue?

The United States Department of Agriculture, Food and Nutrition Service (USDA FNS) published a proposed rule about serious deficiency (SD) process in the Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP) on February 21, 2024 (Federal Register, 89 FR 13150). Serious deficiency was addressed in the Child Nutrition Program Integrity Rule (81 FR 17563) in 2016. The comments received during that proposed rule’s public comment period about serious deficiency prompted USDA FNS to issue a Request for Information (RFI) in 2019, The Serious Deficiency Process in the Child and Adult Care Food Program, (Federal Register, Vol. 84, No. 96). USDA FNS wanted to better understand experiences and receive recommendations from CACFP operators, state agencies, and sponsoring organizations about serious deficiency policies, processes, and practices.
Serious deficiency in the CACFP is often cited as a challenge for program operators and administrators as well as a barrier to program participation. It is an established process to ensure integrity and due process within CACFP. The proposed rule (see side box) and the request for public comments provides the community an opportunity to advise USDA FNS and state agencies about a serious deficiency policy and process that can work for administrators and operators, improve program access, as well as ensure integrity and due process in the CACFP.

The CACFP Deliberative Forum: Serious Deficiency, which will be held on March 27, 2024, is an initial step in critical analysis and deliberation of the proposed rule and more broadly, about the serious deficiency process. This issue brief will define serious deficiency as it currently is, provide a brief history of the serious deficiency process, outline why a serious deficiency process is needed, outline stated challenges, and provide some questions to consider for public comment. The CACFP Deliberative Forum is a discussion facilitated by CACFP Roundtable, as a neutral moderator. During this discussion, the community will weigh the pros and cons of each discussion topic, suggest new ones, and come to an understanding of how to proceed with recommendations and comments regarding serious deficiency.

Overview of Serious Deficiency in the CACFP (under current rule)

Serious deficiency is a process that is defined by federal regulations [7 CFR 226.6] for states and sponsoring organizations of family child care homes to follow when program rules are not being followed. The process is a precursor to 1) corrective action, and/or 2) termination. The serious deficiency process is intended to ensure compliance with laws, regulations, and due process within the program. Below is a brief overview for those who aren’t familiar with the serious deficiency process and a level set for the discussion during the CACFP Deliberative Forum: Serious Deficiency. For details about serious deficiency and the processes as laid out by USDA FNS see the Serious Deficiency Suspension and Appeals Handbook (USDA FNS, 2015).

Serious Deficiency Process in the Child and Adult Care Food Program and Summer Food Service Program proposed rule was published on February 21, 2024.

Deadline to comment is on May 21, 2024. Resources can be found here and will continue to be updated.

The deliberation this issue brief is informing will contribute to the submission of public comment.
What entities could be seriously deficient?

- Child care centers (affiliated and independent)
- Head Start/Early Head Start centers
- At-Risk afterschool centers
- Adult day care centers
- Family child care homes
- Sponsors of family child care homes
- Sponsors of child care centers

What entities are not included in the serious deficiency process in CACFP?

- Unaffiliated centers that operate under a sponsoring organization

State agencies determine serious deficiency and execute the process with all entities except family child care homes and unaffiliated centers that operate under a sponsoring organization. A sponsoring organization of family child care homes determines when the homes are seriously deficient and executes the process. Currently, there are no rules set forth for unaffiliated centers operating under a sponsoring organization but they are included in the proposed rule.

What is the serious deficiency process?

There are six steps in the serious deficiency process:

1. Family child care home sponsor or state agency identifies the serious deficiency.
2. Family child care home sponsor or state agency issues a notice of serious deficiency.
3. Written corrective action plan submitted by the institution or family child care home that has been determined seriously deficient.
4. Two possibilities with step 4:
   a. Corrective action plan approved by either the sponsor or the state agency results in notice of temporary deferral of the serious deficiency; or
   b. Corrective action plan is not adequate (or no corrective action plan is received) as determined by the state agency or sponsor, they will issue a notice of proposed termination and disqualification, including appeal procedures.
5. Appeal (administrative review) by an independent third party, if requested by the institution or family child care home. If the appeal is not requested, the process moves to Step 6a (Notice of termination and disqualification and placement on the National Disqualified List (NDL)).
6. After the appeal/review process has occurred the hearing official will determine whether the institution/family child care home prevails or whether the State prevails. At that time signed letters will be sent with a copy of the hearing official’s written outcome.

“The serious deficiency process of the Child and Adult Care Food Program (CACFP) was established to ensure compliance with U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) regulations and guidance. It offers State agencies, sponsoring organizations, and FNS the right to terminate for cause centers or Day care Homes (DCH) that are not in compliance with Federal regulations” (USDA, 2015).
a. If the institution or family child care home does not prevail, or if no appeals hearing was requested in a timely manner, they will be placed on the NDL and sent a notice of termination and disqualification.
b. If the institution or family child care home does prevail, they will be sent a notice of temporary deferment.

Visuals of the current process and proposed rule are in Appendix A. You can also find them in the Serious Deficiency, Suspension, & Appeals for State Agencies & Sponsoring Organizations Handbook pages 86 and 87. USDA FNS, 2015, p. 60

Timeframe

Family child care homes
- Submit corrective action plan within 30 days (or less if required by sponsor) of receipt of notice.
- Correct serious deficiency “as soon as possible but not to exceed 30 days.”
- Follow-up visit by sponsoring organization, best practice is within 30 days to ensure correction of serious deficiency (USDA FNS, 2012).
- Appeal: Timing as determined by the state agency and/or sponsoring organization.

Institutions
- Corrective action is not to exceed 90 days from the date the institution receives a serious deficiency notice unless the state agency determines it is a long-term corrective action plan. The timeframes can be shorter as determined by the state agency and should match the serious deficiency infraction.
- Fraud, false claims and/or information, unlawful practices, criminal background; corrective action must be within 30 days.
- Appeal: 15 days from notice of action, state to acknowledge receipt within 10 days.

What determines serious deficiency?
There are several non-compliance issues that can be determined as serious deficiencies. There are the obvious ones such as false information on applications, false claims for reimbursement, and conviction of certain business practices that show a very serious lack of integrity. Other noncompliance issues could be deemed seriously deficient, as stated in the regulations, such as failure to keep required records or non-compliance with the meal pattern. These could be mistakes that occur as a result of human error, language barriers, or time constraints among other things. The state agency or sponsor of homes is to determine if the violation rises to a serious deficiency. USDA FNS advises with some considerations bulleted below. It is worth noting that this is advice provided in the handbook and therefore does not have the force of law.
- The severity of the problem
- The degree of responsibility
- History of participation
● Nature of program requirements related to the problem
● The degree to which the problem impacts program integrity

Once a serious deficiency has been determined and documented, the process cannot be reversed; an institution or family child care home must engage in the corrective action process or be terminated and listed on the NDL for seven years. Should a provider or institution complete their corrective action, they are placed on temporary deferral for perpetuity while they participate in the CACFP. If they make the same mistake, they are immediately put back in the serious deficiency process with pending proposed termination. Serious deficiency determinations vary by state and sponsor, as the interpretation of federal regulations varies.

What is the appeal process (administrative review)?

Institutions (not family child care homes)

The Administrative Review or Appeal policies are created by individual states and sponsors. The policies and procedures must be consistent with the rules set forth in regulations; [7 CFR 226.6(k)] for institutions and [7 CFR 226.6(l)] for family child care homes. The “purpose of the hearing is limited to a determination as to whether the State agency/Sponsor acted in accordance with Program requirements in taking the actions being appealed” (USDA FNS, 2015, p. 60).

The process as outlined by the Serious Deficiency, Suspension, and Appeals Handbook (USDA FNS, 2015):

● Notice of Action: this underscores the action being taken, the basis for the action, and the procedure under which an institution can request an appeal. The notice needs to be sent to the executive director, the chairman of the board, and any additional responsible individuals.
● Timing:
  ○ An appeal must be requested in writing within 15 calendar days of receipt of the notice of action.
  ○ Written documentation that either the institute or the state agency would like the hearing official to consider must be submitted no later than 30 days after the notice of action was received.
  ○ The decision must be issued within 60 days of the state agency’s receipt of the request for appeal.
  ○ If a hearing is requested, the state agency and institution must have 10 days’ notice. A rescheduled hearing must occur during the window of rendering a decision and within 60 days of the original request for appeal.
● Hearing: Upon request of the institution or responsible person, the hearing can occur via written documentation or in person. If the institution or responsible person requests an in-person hearing, it must occur.
● Hearing Official: The hearing official must be independent and impartial. The person can be an employee of the state agency but must not be a part of the action that is subject to appeal nor “occupy a position in which he or she is potentially subject to undue influence from the individual responsible for the state agency’s action. Nor should the official occupy a position in
which he or she may exercise undue influence on the individual responsible for action” (USDA FNS, 2015, p. 62). The hearing official is appointed by the state agency for institutions and either by the state agency or sponsoring organization for family child care homes (depending on the state).

- There are a number of items that qualify for an appeal; however, the serious deficiency determination itself cannot be appealed. For a list and abbreviated description of the actions subject to appeal, see pages 63 and 64 of the Serious Deficiency, Suspension, and Appeals Handbook (USDA FNS, 2015). Actions that are not subject to appeal are listed on page 66 of the Serious Deficiency, Suspension, and Appeals Handbook (USDA FNS, 2015). It is worth noting that findings that require fiscal action or an overclaim can be appealed.

Family Child Care Homes

The appeal procedure for family child care homes varies by state and possibly by sponsor. States can determine whether the procedures are a state-level appeal process or they can require that sponsoring organizations offer appeals and create their own process according to specific rules set forth in regulations [7 CFR 226.6(l)] and outlined by the Serious Deficiency, Suspension, and Appeals Handbook (USDA FNS, 2015, p. 71).

When a family child care home requests an appeal the state agency or sponsor must follow these basic procedures:

- Uniformly apply the same procedures to all family child care homes.
- Family child care homes may represent themselves, retain counsel, or have someone else represent them.
- Family child care homes may “review the record on which the sponsoring organization’s decision was based and refute the action in writing,”
- The hearing official may be an employee of the state agency or part of the sponsoring organization but cannot have been involved in the action on which the appeal is being heard. They cannot have undue influence and must be independent and impartial.
- The hearing official is not required to hold the hearing in person, which is different from institutions.
- The time frame is set by the state agency or sponsoring organization according to their policies and procedures.
- The procedures must be provided annually to all family child care homes, whenever an action is taken subject to appeal and any other time upon request.
- Payments to family child care homes must continue until the appeal process is over, except when the action is because of an imminent threat to the health and safety of the child or the public.

What can be appealed by family child care homes? Different from institutions, the only thing family child care homes can appeal is a notice of proposed termination or suspension.
Challenges identified through community conversation and previous public comment letters:¹

- **National Disqualified List (NDL).** Time on the NDL is too long and the consequences too severe. This contributes to the decline of participation of centers, family child care homes, and sponsors of family child care homes.

- **Inconsistency.** It is difficult for sponsors of family child care homes to confidently determine serious deficiency. The subjectivity of determination is believed to create inequities throughout the program. Sponsors are more likely to begin the serious deficiency process instead of doing the necessary technical assistance because they are protecting themselves against their own serious deficiency determination.

- **Administrative Burden.** Creating serious deficiency letters and corrective action is a hardship for sponsors and state agencies. It is also not cost-effective and an overly prescriptive, inefficient process. Additionally, the amount of time required to maintain the records for the sponsors, state agencies, and USDA FNS is a burden.

- **Turnaround time.** The turnaround time is unrealistic for family child care homes to: 1) submit their corrective action plan, and 2) correct the issue.

- **Temporary Deferment.** This element of serious deficiency creates a situation in which a serious deficiency can never be resolved completely. If an institution makes the same mistake, then the overseeing agency is required to “re-issue a notice of proposed termination and disqualification” without a corrective action process.

- **Language/Literacy Barriers.** The most common errors are due to paperwork errors, which are often tied to limited language and literacy proficiencies. These types of errors are repeated because the CACFP funding and rules lack proper accommodations and support for language and literacy barriers. This leads to unfair and severe actions which fall hardest on the most vulnerable populations.

- **Appeal Process (Administrative Review process).** The process, as it stands, does not allow for a provider or institution to appeal the reason for the serious deficiency and the process, in particular for family child care homes, is unclear.

**Important terms for context:**

**Appeals:** Appeals (Administrative Reviews) are the process in which institutions and family child care homes can oppose the actions taken by the state agency or sponsoring organization. Institutions appeal specific actions listed [here](https://drive.google.com/drive/folders/17Vc1RsuSFHxXgaV_pFzb9tSHOediDnjL?usp=sharing), and family child care homes can only appeal the notice for termination and disqualification. The serious deficiency itself cannot be appealed to Institutions and family child care homes.

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¹ Organization Comment Letters regarding the 2019 Request for Information, Google Drive, [https://drive.google.com/drive/folders/17Vc1RsuSFHxXgaV_pFzb9tSHOediDnjL?usp=sharing](https://drive.google.com/drive/folders/17Vc1RsuSFHxXgaV_pFzb9tSHOediDnjL?usp=sharing)
Institution: All entities aside from family child care homes and unaffiliated centers that participate under a sponsor. Another way to think about it is any entity operating CACFP that has a direct contract with the state.

National Disqualified List (NDL): Institutions and family child care homes are placed on this list when determined seriously deficient and then terminated and disqualified. They remain on this list for 7 years or longer when a debt is owed. No one can be removed from the list if a debt is owed. When on this list they may be ineligible for other federal funds or benefits, depending on the circumstances.

Responsible Principal/Responsible Individual (RP/I):

- “Responsible principals [are] those institution officials who, under their management position, bear responsibility for the institution’s serious deficiencies. These management officials also bear responsibility for the poor performance of non-supervisory employees who may have caused the serious deficiency” (USDA FNS, 2015, p. 16).
- “A responsible individual is any non-principal associated with the institution’s operation of the Program. Non-supervisory employees, including contractors and unpaid staff, should be named as responsible individuals only when they have been directly involved in Program violations, such as filing false reports or otherwise actively participating with institution principals to mismanage the Program” (USDA FNS, 2015, p. 16).

Temporary deferral: This is the term used to describe the status of the institution or family child care home that is no longer seriously deficient because a corrective action plan has been accepted and approved. However, if an institution or family child care home “fails to maintain the corrective action plan” (USDA FNS, 2015), the institution or home will be issued a proposed termination notice with appeal rights without any corrective action opportunity.

Proposed Rule Summary

The Serious Deficiency Process in the Child and Adult Care Food Program and Summer Food Service Program proposed rule addresses three new program operators. The proposed rule enforces:

1. Unaffiliated centers that operate through a CACFP Sponsor. This includes child care, adult, and emergency centers that contract with a sponsoring agency – not the state agency.
2. Summer Food Service Program (SFSP). SFSP operators have certain determinations of management issues currently, but now it is proposed that they be aligned with and included in CACFP serious deficiency process.
3. Multi-State Sponsoring Organizations (MSSOs). This isn’t specifically tied to serious deficiency but proposes definitions, processes, and procedures for state agencies, regional offices, and MSSOs to operate CACFP through regulation in place of memos that do not hold the rule of law.
The proposed rule adds definitions, shifts some terminology, and adds some new parts to the procedure. As a whole package (without all the details), the proposed rule contains the following description of a process:

- In place of labeling a program operator “seriously deficient” the proposed label is “serious management problem” until after termination and disqualification is imminent.
- Notification to the program operator and the corrective action plan process are unchanged.
- There is a path to full correction replacing temporary deferral. If the corrective action plan is approved and then achieved (without repeat findings or new findings) within a specific time period (differing among, centers, homes, and SFSPs), full correction can be achieved. The period of time varies depending on the type of CACFP operations, (e.g., independent centers, family child care homes, and summer food service programs).
- If the corrective action plan is not approved or achieved a notice of proposed termination is issued with an option and instructions to request a “fair hearing” (appeal).
- If the fair hearing official rules on the side of the authority agency, agencies will issue a notice of serious deficiency and disqualification from the program and be placed on the NDL. Should the hearing official rule on the side of the program operator, the state agency or sponsoring organization will issue a notice to vacate the proposed termination. The program operator will need to implement the policies and procedures to fully correct the serious management problem (previously the serious deficiency determination).
Ideas for Discussion

This section outlines some topics and ideas for further discussion about what could make the serious deficiency process more efficient and fairer while maintaining integrity and due process for the CACFP community. Many of the ideas and topics outlined below are recommendations and suggestions outlined in organization comment letters submitted during the Request for Information (RFI) in 2019, *The Serious Deficiency Process in the Child and Adult Care Food Program*, (Federal Register, Vol. 84, No. 96). They are also based on discussions with stakeholders, and specifically from a meeting with a diverse group of stakeholders in CACFP to inform this issue brief.

The tables below are intended to inspire dialogue within the CACFP community. The proposed rule is published and now we have the opportunity to weigh in. Now is the time to think through what we – as a community – want. What seems like a great idea? What are the unintended consequences of these ideas? Does it improve the process for everyone, including the state agency? Does it make it harder? Would it cost more to approach the process in this way? How does it make it better for institutions, sponsors, family child care homes, state agencies, and USDA FNS? What is missing from the tables that you’re thinking about?

**Discussion Topic One: Clarity and Consistency with Serious Deficiency Determinations**

<table>
<thead>
<tr>
<th>Ideas/Community Perspective</th>
<th>Addressed in Rule?</th>
<th>Discussion Questions, Drawbacks, and Tensions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address the subjectivity of the process</td>
<td>The rule proposes to codify criteria in the handbook. 1) Severity of the problem. 2) The degree of responsibility attributable to the program operator.</td>
<td>Do the 5 criteria proposed reach the goal of addressing subjectivity? What else can we recommend that would make it less subjective?</td>
</tr>
<tr>
<td>Categories of serious deficiency should be narrowed to only those which are clearly defined</td>
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*Organization Comment Letters regarding the 2019 Request for Information, Google Drive, [https://drive.google.com/drive/folders/17Vc1RsuSFHxXgaV_pFzb9tSHOedlDnjL?usp=sharing](https://drive.google.com/drive/folders/17Vc1RsuSFHxXgaV_pFzb9tSHOedlDnjL?usp=sharing)*
and reflect deliberate falsification of information or fraudulent behavior.³

| 3) The program operator’s history of participation and training in CACFP. |
| 4) The nature of the requirements that relate to the problem. |
| 5) The degree to which the problem impacts program integrity. |

If we narrowed the categories of serious deficiency further, could it have the drawbacks listed below, or others?

- A checklist/black-and-white approach is applied to the review process
- Serious deficiency determinations and do not allow for contextual circumstances
- There is no change to states and/or sponsors taking a harsher approach to serious deficiency determinations because of fear of review findings

State agency guidance becomes more specific

State agencies can be more specific in guidance to staff, sponsors, and institutions about what actions fall under serious deficiency.

State agency guidance mentioned in intention of proposed rule.

Do the 5 criteria proposed reach this goal?

What can we recommend to make it better?

Potential drawbacks to increased specificity include:

- Increased differences and inconsistencies across states
- No change to the concern that subjectivity can lead to more harsh determinations for some, creating unintentional, but systemic inequities throughout the CACFP
- No change to states nervousness about their own findings in their Management Evaluations (ME)

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³ Food Research and Action Center Serious Deficiency Comment Letter, 2019, [https://drive.google.com/file/d/1iEeustBRaQK5Rmr1mcADAg-e0h3wlbRm/view?usp=sharing](https://drive.google.com/file/d/1iEeustBRaQK5Rmr1mcADAg-e0h3wlbRm/view?usp=sharing)
### Discussion Topic Two: Inequities and Severity of the Consequences of the Serious Deficiency Determinations

<table>
<thead>
<tr>
<th>Ideas/Community Perspective</th>
<th>Addressed in Rule?</th>
<th>Discussion Questions, Drawbacks, and Tensions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Temporary Deferral</td>
<td>Yes, Temporary deferral no longer exists under the proposed rule.</td>
<td><strong>Potential drawbacks to consider:</strong></td>
</tr>
<tr>
<td><strong>Elimination:</strong> Restore the option to fully and permanently resolve a successfully corrected serious deficiency.</td>
<td>USDA FNS proposes that the serious deficiency process provide program operators with the opportunity to correct serious management problems through a corrective action plan, which would occur within a defined period of time and result in full correction. When achieved, the serious management problem would be vacated, not deferred.</td>
<td>● If eliminated, the administrative burden for state agencies and sponsors with systemic noncompliance of programs could increase.</td>
</tr>
<tr>
<td><strong>Categorizing Modification:</strong> The response could be tiered depending on the infraction category of serious deficiency.</td>
<td></td>
<td>● If tiered, identifying and categorizing “deferment tiers” could add confusion for USDA FNS, state agencies, and sponsors.</td>
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<tr>
<td><strong>Timing Modification:</strong> Two years instead of indefinitely</td>
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<td>● If timing is modified, the paperwork burden for tracking could increase and create unexpected costs to USDA FNS, state agencies, and sponsors</td>
</tr>
<tr>
<td>National Disqualified List – Length of Time</td>
<td>Partially addressed. The number of years is not addressed. However, the proposed rule would ensure the removal of names/entities</td>
<td><strong>How would the proposed rule impact those who are currently on the NDL?</strong></td>
</tr>
<tr>
<td>Topic</td>
<td>Description</td>
<td>Question</td>
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<tr>
<td>Child Care Home, Responsible Individual is on the NDL</td>
<td>7 years. Make this timeframe less; such as 2 years and still allow for requests for removal. This could also be dependent upon the seriousness of serious deficiency infraction.</td>
<td>What is a fair and reasonable amount of time one spends on the NDL? Does the proposed rule go far enough (or too far) in limiting low-level deficiencies from landing on the NDL? Should USDA FNS further explore the role bias plays determining who ends up on the NDL?</td>
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</table>

Voluntary Termination
Allow voluntary termination once the serious deficiency process has started without being placed on the NDL. This could be dependent upon the seriousness of infraction. For example, if the infraction that prompts the serious deficiency process is related to unintentional paperwork issues, not going to trainings, or language barriers, the state agency and child care center can come to an agreement to voluntarily leave the program (same with the sponsor and family child care home). No, this recommendation is not addressed in the proposed rule. The proposed rule states that once a Serious Management Problem has been triggered, voluntary termination would not be allowed. Potential drawbacks:

- Could infringe upon due process, which is the stated purpose of serious deficiency.
- Could lead to perceived (or real) coercion that a sponsor/state agency is encouraging a family child care home/institution to leave the program instead of engaging in a corrective action plan. |

Responsible Individuals on the National Disqualified List
Modify the process of responsible individuals who need to be included on the NDL. Board chairs and owners of institutions could only be included on the NDL if there is serious | This is partially addressed in the proposed rule. It is proposed that responsible individuals and principal individuals are separate, as described in the definitions. Does this allow too much subjectivity on the states part? |

<p>| - The responsible individuals may not take the consequences as seriously if they aren’t held responsible in this way. |</p>
<table>
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<tr>
<th>Organizational Mismanagement, Serious Fiscal Discretions, Intentional Fraudulent Behavior, or Deliberate Falsification of Information</th>
<th>States would determine who are responsible and who are principal individuals.</th>
<th>Would this change eliminate the opportunity for due process for new institutions?</th>
</tr>
</thead>
</table>
| Serious Deficiency of New Institutions  
New institutions could not be considered seriously deficient unless there are obvious implications of fraud, falsification of documents, and intentional financial mismanagement  
- No NDL unless there was obvious intent to defraud or significant financial mismanagement | Yes, the proposed rule addresses this recommendation. | If this process doesn’t meet the needs, what would we suggest to make it better?  
Would the proposed rule or the community idea in the far-left column of this row create more confusion for sponsors and state agencies to determine which infractions fall into which category?  
What other ideas do you have to make it so there aren’t just two options in serious deficiency that force institutions and state agencies into these very specific pathways? |
| Tiered Approach to Include Correction Notice and Serious Deficiency  
- Every infraction does not need to be determined seriously deficient. A tiered approach could include levels of action, such as a correction notice, a corrective action plan, and technical assistance. | This is partially addressed in the proposed rule.  
The proposed rule introduces that the Serious Management Problem (SMP). This term, in the proposed rule, is in place of when the Serious Deficiency is initially triggered.  
The proposal of SMP and a new path to full correction, could create a middle ground to serious deficiency determinations.  
The proposed rule also states that a program operator/responsible individual/responsible principal would not be deemed seriously deficient until the fair hearing process was over (or time elapsed for initiation) and the program was terminated, disqualified and put on the NDL. | If this process doesn’t meet the needs, what would we suggest to make it better?  
Would the proposed rule or the community idea in the far-left column of this row create more confusion for sponsors and state agencies to determine which infractions fall into which category?  
What other ideas do you have to make it so there aren’t just two options in serious deficiency that force institutions and state agencies into these very specific pathways? |
<table>
<thead>
<tr>
<th>Literacy and language justice reflected in Serious Deficiency Process</th>
<th>The proposed rule uses the word “plain language” as a requirement for notices.</th>
<th>Discussion Question: Does the proposed rule go far enough in addressing the concerns around literacy and language justice?</th>
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<tbody>
<tr>
<td>Ensure serious deficiency notifications reflect literacy level and primary language of providers.</td>
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<td>Possible drawbacks:</td>
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<td></td>
<td></td>
<td>- If additional funds are not appropriated by the federal government this could be an extreme financial burden on state agencies and sponsoring organizations.</td>
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Discussion Topic Option Three: Appeal (Administrative Review) Process

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<thead>
<tr>
<th>Ideas/Community Perspective</th>
<th>Addressed in Rule?</th>
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<tbody>
<tr>
<td>Expand appeals process to resolve disputes over state-specific requirements</td>
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<td></td>
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<tr>
<td>● Include corrective action steps</td>
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<tr>
<td>● Interpretation of CACFP regulation and policy</td>
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<tr>
<td>● Additional state agency requirements that conflict with USDA FNS regulation or guidance</td>
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<tr>
<td>No, this is not addressed in the proposed rule.</td>
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<td>What seems to be the most important element of this recommendation for those who are attracted to this approach?</td>
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<td>Can you think of an argument against increased opportunity to resolve disputes between state agencies and institutions?</td>
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<tr>
<th>Mediation process</th>
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<tr>
<td>Establish a mediation process to resolve differences in interpretation and implementation.</td>
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<tr>
<td>No, this is not addressed in the proposed rule.</td>
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<tr>
<td>Is there a downside to this course of action?</td>
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<thead>
<tr>
<th>Hearing Officials</th>
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<tr>
<td>Hire independent fair and impartial professional hearing officials for CACFP hearings (not state agency employees).</td>
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<tr>
<td>No, this is not addressed in the proposed rule.</td>
</tr>
<tr>
<td>Can you illustrate how this recommendation would change fairness in the SD process?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sponsors enabled to elevate State Agency disputes to USDA FNS</th>
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<tbody>
<tr>
<td>Consistent timeline and process for sponsors to elevate and mediate disputes through USDA FNS national office.</td>
</tr>
<tr>
<td>No, this is not addressed in the proposed rule.</td>
</tr>
<tr>
<td>What are the costs/risks of elevating disputes to the highest level of government?</td>
</tr>
<tr>
<td>Is there a tension between the concern that state agencies may not be considered “independent and impartial hearing officials,” but USDA FNS could play this role?</td>
</tr>
</tbody>
</table>
Appendix A – Side by side Comparison of the basic Serious Deficiency Process (does not include the notice process). Find a larger version here.

Serious Deficiency Process comparing the current rule and proposed rule
Works Cited


Food Research and Action Center (2019). Serious Deficiency Comment Letter. Retrieved on March 14, 2019, https://drive.google.com/file/d/1iEeustBRaQK5Rmr1mcADAg-e0h3wJbRm/view?usp=sharing

