



Georgia Department of Early Care and Learning

BRIGHT FROM THE START: Georgia Department of Early Care and Learning

Nutrition Services

POLICY	No.: CACFP/00-9	Effective Date:	2/1/2000
		Revised:	7/1/2016
		Revision Effective:	7/1/2016

SUBJECT: Serious Deficiency Process for Applying (New), Renewing and Participating Institutions

LEGAL AUTHORITY: 7 C.F.R. § 226.6 (c); O.C.G.A. § 20-1A-5

Cross Reference/See Also:

I. PURPOSE

The purpose of this policy is to define and describe: (1) serious deficiencies for new, renewing and participating institutions in the Child and Adult Care Food Program (CACFP) and (2) the procedures for new, renewing and participating institutions that have been declared seriously deficient.

II. APPLIES TO

Potential applicants and all institutions currently participating in the Child and Adult Food Program (CACFP).

III. DEFINITION(S)

"Administrative Review" means the fair hearing provided upon request to:

- An institution that is given notice by Bright from the Start: Georgia Department of Early Care and Learning (Bright from the Start) of any action or proposed action that would adversely affect their participation or reimbursement under the CACFP.

- A principal or individual responsible for an institution's serious deficiency after the responsible principal or responsible individual has been given a notice of intent to disqualify from participation in the CACFP.

"Corrective Action" means any action directed by Bright from the Start and/or taken by an

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institution to fully and permanently correct an isolated/repeat finding(s) and/or serious deficiency(ies). In response to the serious deficiency notice, an institution must submit in writing, what corrective action has been taken. This correspondence details the internal controls implemented to ensure the serious deficiencies are fully and permanently corrected. For "each" corrective action item requested by Bright from the Start, the institution's response must include, in detail, the following elements:

- (1) what processes and/or procedures the institution has implemented to fully and permanently correct the finding;
- (2) who is responsible for implementing and complying with the processes and/or procedures;
- (3) how the institution will ensure the processes and/or procedures are followed consistently in order to prevent future findings, including how the institution's staff will be informed of the new processes and procedures;
- (4) when the processes and/or procedures for addressing the serious deficiency will be implemented and at what frequency (i.e., weekly, monthly, etc.) will the processes/procedures be performed/verified; and
- (5) where the corrective action plan documentation will be retained.

Additional supporting documentation must be submitted with the corrective action response. Hand-written responses and use of the review Findings, Recommendations and Corrective Action form are not permitted.

"Disqualified" means the status of an institution, a responsible principal or responsible individual, or a day care home that is ineligible for participation. Institutions disqualified from the CACFP are also disqualified from the Summer Food Service Program (SFSP).

"FNS" means the Food and Nutrition Service of the United States Department of Agriculture.

"FNSRO" means the appropriate Regional Office of the United States Department of Agriculture's Food and Nutrition Service.

"Institution" means a sponsoring organization, child care center, outside-school-hours care center, emergency shelter, or adult day care center which enters into an agreement with Bright from the Start to assume final administrative and financial responsibility for Program operations. It also includes homeless shelters and "at-risk" after school care programs.

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"National Disqualified List" means the list, maintained by the United States Department of Agriculture, of institutions, responsible principals and responsible individuals, and day care homes disqualified from participation in the CACFP.

"New Institution" means an institution applying to participate in the Program for the first time, or an institution applying to participate in the Program after a lapse in participation.

"Notice" means a letter sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email, that describes an action proposed or taken by Bright from the Start or the Food and Nutrition Service (FNS) with regard to an institution's Program reimbursement or participation. The notice must specify the action(s) being proposed or taken and the basis for the action(s), and is considered to be received by the institution or day care home when it is delivered, sent by facsimile, or sent by email. If the notice is undeliverable, it is considered to be received by the institution or responsible principal or individual, or day care home five (5) days after being sent to the addressee's last known mailing address.

"Office of State Administrative Hearings" (OSAH) means the executive state agency responsible for the impartial administration of the Georgia Administrative Procedure Act. This agency conducts the Administrative Review. OSAH is not accountable to the management of the CACFP or the state agency.

"Renewing Institution" means an institution that is participating in the CACFP at the time it submits a renewal application.

"Responsible principal and/or responsible individual" means:

- A principal (i.e. managers, board members, officers), whether compensated or uncompensated, who is responsible for the managing and/or operating the CACFP and/or who Bright from the Start or FNS determines to be responsible for an institution's serious deficiency;
- Any other individual employed by, or under contract with, an institution or sponsored center, who Bright from the Start or FNS determines to be responsible for an institution's serious deficiency; or
- An uncompensated individual who Bright from the Start or FNS determines to be responsible for an institution's serious deficiency.

"Seriously deficient" means the status of an institution or day care home that has been determined to be non-compliant in one or more aspects of its operation of the Program.

IV. POLICY

Bright from the Start works to ensure the Child and Adult Care Food Program (CACFP) is

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operated with integrity. Bright from the Start works to ensure program integrity, in large part, by monitoring institutions that are participating in the CACFP. Findings or violations of program requirements may result from any of the following types of monitoring visits and/or documents for new, participating, and renewing institutions:

- Compliance and/or follow-up reviews by Bright from the Start’s Nutrition Compliance Consultants;
- Audits;
- Special investigations;
- Complaint investigations; and
- Application documents and review.

Federal regulations require the State agency to initiate actions to deny an institution’s application or propose to terminate an institution’s agreement, in addition to initiating actions to disqualify the institution and its responsible principals and individuals, if the State agency determines the institution has committed one or more serious deficiencies. Actions that must be initiated include declaring the institution seriously deficient. According to federal regulations (7 C.F.R. § 226.6(c) , a serious deficiency determination by Bright from the Start is not subject to administrative review or appeal.

Once an institution is declared seriously deficient, the institution will be given an opportunity to fully and permanently correct the findings and must provide Bright from the Start with appropriate corrective action(s) that indicates actions have been taken to correct the serious deficiencies by a deadline date specified by Bright from the Start. If Bright from the Start determines the corrective actions implemented are sufficient, the serious deficiency determination will be temporarily deferred. However, if Bright from the Start determines that the corrective actions are insufficient or not implemented by the deadline date, Bright from the Start will deny the institution’s application or propose to terminate the institution’s agreement, in addition to disqualifying the institution and its responsible principals and individuals from future participation. Institutions and responsible principals and/or individuals that have been disqualified from the CACFP will be placed on the National Disqualified List. The institution may seek an administrative review of the application denial or proposed termination and disqualifications.

A. List of Serious Deficiencies for New Institutions

Serious Deficiencies for New Institutions include, but are not limited to, the following criteria provided under 7 CFR § 226.6(c):

1. Submission of false information on the institution's application, including but not limited to, a

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determination that the institution has concealed a conviction for any activity that occurred during the past seven years and that indicates 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, or any other activity indicating a lack of business integrity as defined by Bright from the Start.

Other examples:

- Failure to disclose information about ineligible officers, directors, key employees.
- Listing fictitious employees/officers/board members on an application.
- Claiming tax-exempt status when denied, rescinded, etc.
- Submitting the IRS tax-exempt determination letter of a different, or even defunct or non existing organization.
- Claiming non-existing/non-participating facilities, children, or adults.
- Inflated meal counts.
- Claiming nonexistent costs.
- Claiming costs disallowed or not included in the approved budget.
- Claiming costs for fictitious employees.
- Any information submitted to Bright from the Start that does not accurately reflect the institution's operations.
- Falsification of any documentation.

2. Any other action affecting the institution's ability to administer the Program in accordance with Program requirements.

B. List of Serious Deficiencies for Renewing Institutions

Serious deficiencies for Renewing institutions include, but are not limited to, the following criteria provided under 7 CFR § 226.6(c):

1. Submission of false information on the institution's application, including but not limited to, a determination that the institution has concealed a conviction for any activity that occurred during the past seven years and that indicates 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, or any other activity indicating a lack of business integrity as defined by Bright from the Start (See previously listed additional examples);

2. Failure to operate the Program in conformance with the Performance Standards (Financial Viability and Financial Management, Administrative Capability, and Program Accountability);

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3. Failure to comply with the bid procedures and contract requirements of applicable Federal procurement regulations;

Examples:

- Failure to competitively procure goods and services.
- Anti-competitive practices, such as collusion, kickbacks, conflicts of interest.
- Inclusion of non-competitive provisions in a bid, e.g., "successful bidder for a contract to provide meals must establish a scholarship fund."

4. Use of a food service management company that is in violation of health codes;

5. Failure by a sponsoring organization of day care homes to properly classify day care homes as tier I or tier II in accordance with federal regulations (7 CFR § 226.15 (f));

6. Failure by a sponsoring organization to properly train or monitor sponsored facilities in accordance with federal regulations (7 CFR § 226.16 (d));

7. Failure to perform any of the other required financial and administrative responsibilities required by federal regulations;

8. Failure to properly implement and administer day care home termination and administrative review provisions (7 CFR § 226.16 (l)); and

9. Any other action affecting the institution's ability to administer the Program in accordance with Program requirements.

C. List of Serious Deficiencies for Participating Institutions

Serious Deficiencies for Participating Institutions include, but are not limited to, the following criteria provided under 7 C.F.R. § 226.6 (c):

1. Submission of false information on the institution's application, including but not limited to, a determination that the institution has concealed a conviction for any activity that occurred during the past seven years and that indicates 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, or any other activity indicating a lack of business integrity as defined by Bright from the Start (See previous listed additional examples);

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2. Permitting an individual who is on the National Disqualified list to serve in any capacity within the institution or, if a sponsoring organization, permits such an individual to serve in any capacity in a sponsored center or as a day care home provider;

3. Failure to operate the Program in conformance with the performance standards (Financial Viability and Management, Administrative Capability, and Program Accountability);

4. Failure to comply with the bid procedures and contract requirements of applicable Federal procurement regulations (See previously listed examples);

5. Failure to return to Bright from the Start any advance payments that exceeded the amount earned for serving eligible meals, or failure to return disallowed start-up or expansion payments;

6. Failure to maintain adequate records;

Examples include but are not limited to:

- Sponsors who consistently have missing records during reviews, complaint investigations or audits
- Missing/incomplete/different amounts or payees for invoices, receipts, canceled checks, inventories resulting in false/inflated/unsubstantiated claimed costs
- Cost records not maintained according to generally accepted accounting principles resulting in false/inflated unsubstantiated claimed costs
- Missing/incomplete enrollment records and/or income eligibility applications
- Missing/incomplete participation records
- Missing/incomplete menu records
- Missing/incomplete meal count records

7. Failure to adjust meal orders to conform to variations in the number of participants;

Example:

Inflated meal counts, the meals claimed always equals the number of meals ordered/planned or the number of participants on the center roster;

8. Claiming reimbursement for meals not served to participants;

Examples:

- Claiming meals delivered/planned for as meals served to participants.
- Claiming meals for participants not present on a given day or for a particular meal.
- Claiming meals served to non-existent children or adults.

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- Claiming meals served to non-enrolled children and adults or to staff.
- Inflating facility meal counts.
- Claiming non-existent and non-participating facilities.
- Claiming meals for ineligible facilities.
- Knowingly claiming dual participation of facilities.
- Claiming the same participant for the same meal at more than one facility.

9. Claiming reimbursement for a significant number of meals that do not meet Program requirements;

10. Use of a food service management company that is in violation of health codes;

11. Failure of a sponsoring organization to disburse payments to its facilities in accordance with federal regulations and in accordance with its management plan;

Examples:

- Checks prepared after 5 days.
- Payments sent without endorsements or otherwise incomplete.
- Payments made for other than the full amount the facility is entitled to.
- Payments made to a facility other than the facility that earned the payment.
- Payments made to an entity/person other than the facility (without express permission of the facility).
- Checks not mailed within the 5 day time frame or first business day thereafter.
- Failure to transfer the full amount of facility payments to payment bank account within 5 day time frame.
- Failure to maintain the full amount of facility payment in commingled bank account until checks clear.
- Using administrative or provider advance funds to pay ineligible facilities/providers.
- Using provider reimbursement funds to pay provider advances.
- Using day care home funds (advance or reimbursement) to pay sponsored centers and vice versa.
- Retaining sponsored center funds in excess of the amount approved in the management plan.

12. Claiming reimbursement for meals served by a for-profit child care or outside hour school center during a calendar month in which less than 25 percent of its enrolled children, or 25 percent of its licensed capacity, whichever is less, were title XX beneficiaries;

13. Claiming reimbursement for meals by a for-profit child care or outside-school-hours center during a month in which less than 25% of its enrolled children, or 25% of its licensed capacity, whichever is less, qualified for free or reduced priced meals;

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14. Claiming reimbursement for meals served by a for-profit adult day care center during a calendar month in which less than 25 percent of its enrolled adult participants were title XIX or title XX beneficiaries;

15. Failure by a sponsoring organization of day care homes to properly classify day care homes as tier I or tier II in accordance with federal regulations (7 CFR § 226.15 (f));

16. Failure by a sponsoring organization to properly train or monitor sponsored facilities in accordance with federal regulations (7 CFR § 226.16 (d));

Examples:

- Failure to identify and properly address block claiming in sponsored facilities.
- Failure to appropriately use the sponsoring organization household contact system to verify claim information and/or identify block claiming.
- Failure to use review averaging appropriately and within the guidelines of federal regulations and Bright from the Start policies.

17. Use of day care home funds by a sponsoring organization to pay for the sponsoring organization's administrative expenses;

18. Failure to perform any of the other financial and administrative responsibilities required by federal regulations;

19. Failure to properly implement and administer the day care home termination and administrative review provisions set forth in the federal regulation (7 CFR § 226.16 (l));

20. The fact that the institution or any of the institution's principals have been declared ineligible for any other publicly funded program by reason of violating that program's requirements. However, this prohibition does not apply if the institution or the principal has been fully reinstated in, or is now eligible to participate in, that program, including the payment of any debts owed;

21. Conviction of the institution or any of its principals for any activity that occurred during the past seven years and that indicates 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, or any other activity indicating a lack of business integrity as defined by Bright from the Start; and

22. Any other action affecting the institution's ability to administer the Program in accordance

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with Program requirements.

V. PROCEDURE(S)

A. New Institutions Declared Seriously Deficient

1. Notice of Serious Deficiency

If Bright from the Start determines a new institution has committed one or more serious deficiency(ies), Bright from the Start will notify the institution's executive director/owner and chairman of the board of directors that the institution has been determined to be seriously deficient. The notice will identify the responsible principals and individuals and will be sent to those persons as well. The notice will specify:

- a. The serious deficiency(ies);
- b. The actions to be taken and the outcome needed to correct the serious deficiency;
- c. The time allotted to correct the serious deficiency;
- d. That the serious deficiency determination is not subject to administrative review;
- e. That failure to fully and permanently correct the serious deficiency(ies) within the allotted time will result in the denial of the institution's application, and proposed disqualification of the institution and the responsible principals and individuals;
- f. That Bright from the Start will not pay any claims for reimbursement for eligible meals served or allowable administrative expenses incurred until Bright from the Start has approved the institution's application and the institution has signed a Program agreement;
- g. That the institution's withdrawal of its application, after having been notified that it is seriously deficient, will still result in the institution's formal termination by Bright from the Start and placement of the institution and its responsible principals and individuals on the National Disqualified List; and
- h. That if Bright from the Start does not possess 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 institution and/or individual.
- i. That if the institution is an administrative and/or daycare home sponsor, the institution is prohibited from recruiting, enrolling, and approving facilities to participate under its sponsorship.

Bright from the Start will add the institution to Bright from the Start's list of seriously deficient institutions, along with the basis for the serious deficiency determination, and provide a copy of the notice to FNSRO.

2. Corrective Action (See also Section III. Definitions, "Corrective Action")

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If corrective action is taken to fully and permanently correct the serious deficiency(ies) within the allotted time and to Bright from the Start's satisfaction, Bright from the Start will notify the institution's executive director/owner and chairman of the board of directors, and the people identified as the responsible principals and individuals, that Bright from the Start has temporarily deferred its serious deficiency determination, and offer the new institution the opportunity to resubmit its application. If the new institution resubmits its application, Bright from the Start will complete its review of the application within 30 days after receiving a complete and correct application. If corrective action is complete for the institution but not all the responsible principals and/or individuals, Bright from the Start will continue with the proposed disqualification of the remaining responsible principals and individuals, while allowing the institution to resubmit its application for review.

If Bright from the Start initially determines that the institution's corrective action is complete, but later determines that the serious deficiency(ies) has recurred, Bright from the Start must move immediately to issue a notice of intent to terminate and disqualify the institution, in accordance with 7 C.F.R. §226.6(c)(1)(iii)(c).

3. Denial of Application and Proposed Disqualification

If timely corrective action is not taken to fully and permanently correct the serious deficiency(ies), Bright from the Start will notify the institution's executive director/owner and chairman of the board of directors, and the responsible principals and individuals, that the institution's application has been denied. At the same time the notice is issued, Bright from the Start will update Bright from the Start's list of seriously deficient institutions and will provide a copy of the notice to FNSRO. The notice will specify:

- That the institution's application has been denied, and Bright from the Start is proposing to disqualify the institution and the responsible principals and individuals;
- The basis for the actions; and
- The procedures for seeking an administrative review (in accordance with paragraph 7 C.F.R. §226.6(k)) of the application denial and proposed disqualifications.

Bright from the Start is prohibited from paying any claims for reimbursement from a new institution for eligible meals served or allowable administrative expenses incurred until Bright from the Start has approved its application and the institution and State agency have signed a Program agreement.

If the time for requesting an administrative review expires or if OSAH upholds Bright from the Start's denial and proposed disqualifications, Bright from the Start must notify the institution's executive director/owner and chairman of the board of directors, and the responsible principals

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and responsible individuals that the institution and the responsible principal and responsible individuals have been disqualified. At the same time this notice is issued, Bright from the Start will update its list of seriously deficient institutions. In addition, Bright from the Start will provide a copy of the notice and the mailing address and date of birth for each responsible principal and responsible individual to the United States Department of Agriculture (USDA) and request the institution's name be placed on the National Disqualified List maintained by the USDA. The names of responsible principals, including but not limited to, owners, officers, and board members who are responsible for operating the CACFP for the institution and responsible individuals who are responsible for the serious deficiency(ies) will also be placed on the National Disqualified List. All institutions, responsible principals and individuals that are placed on the National Disqualified List are disqualified from participation in the CACFP.

If OSAH overturns Bright from the Start's application denial and proposed disqualification, Bright from the Start will notify the institution's executive director/owner and chairman of the board of directors, and the responsible principals and individuals that the application denial and proposed disqualification have been temporarily deferred. At the time this notice is issued, Bright from the Start will also update Bright from the Start's list of seriously deficient institutions to reflect the temporary deferment and provide a copy of the notice to FNSRO.

Please Note: If a new institution's application does not meet all of the requirements listed in 7 C.F.R. § 226.6(b) and 7 C.F.R. § 226.16(b), Bright from the Start must deny the application.

B. Renewing Institutions Declared Seriously Deficient

1. Notice of Serious Deficiency

If Bright from the Start determines a renewing institution has committed one or more serious deficiency, Bright from the Start will notify the institution's executive director/owner and chairman of the board of directors that the institution has been determined to be seriously deficient. The notice will identify and be sent to the responsible principals and individuals. The notice will specify:

- a. The serious deficiency(ies);
- b. The actions to be taken and the outcome needed to correct the serious deficiency;
- c. The time allotted to correct the serious deficiency;
- d. That the serious deficiency is not subject to administrative review;
- e. That failure to fully and permanently correct the serious deficiency(ies) within the allotted time will result in Bright from the Start's denial of the institution's application, the proposed termination of the institution's agreement and the proposed disqualification of the institution and the responsible principals and individuals;

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f. That if the institution voluntarily terminates its agreement with Bright from the Start after having been notified that it is seriously deficient, the voluntary termination will still result in the institution's formal termination by Bright from the Start and placement of the institution and its responsible principals and individuals on the National Disqualified List;

g. That if Bright from the Start does not possess 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 institution and/or individual.

H. That if the institution is an administrative and/or daycare home sponsor, the institution is prohibited from recruiting, enrolling, and approving facilities to participate under its sponsorship.

Bright from the Start will add the institution to Bright from the Start's list of seriously deficient institutions, along with the basis for the serious deficiency determination, and provide a copy of the notice to FNSRO.

2. Corrective Action (See also Section III. Definitions, "Corrective Action")

If corrective action is taken to fully and permanently correct the serious deficiency(ies) within the allotted time and to Bright from the Start's satisfaction, Bright from the Start will notify the institution's executive director/owner and chairman of the board of directors, and the people identified as the responsible principals and individuals that Bright from the Start has temporarily deferred its serious deficiency determination, offer the renewing institution the opportunity to resubmit its application and if the same deficiency(ies) are found for the institution in the future, Bright from the Start will propose to terminate the institution's agreement and disqualify the responsible principals and individuals without further opportunity for corrective action.

If corrective action is taken to fully and permanently correct the serious deficiency(ies) within the allotted time and to Bright from the Start's satisfaction, Bright from the Start will notify the institution's executive director/owner and chairman of the board of directors, and the people identified as the responsible principals and individuals, that Bright from the Start temporarily deferred its serious deficiency determination, and offer the institution the opportunity to resubmit its application. If the renewing institution resubmits its application, Bright from the Start will complete its review of the application within 30 days after receiving a complete and correct application.

When this notice is issued, Bright from the Start will also update its list of seriously deficient institutions to indicate that the serious deficiency(ies) has been corrected and provide a copy of the notice to FNSRO. However, if corrective action is complete for the institution but not for all of the responsible principals and individuals, Bright from the Start will continue with the proposed disqualification of the remaining parties, while allowing the institution to resubmit its application.

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If Bright from the Start initially determines that the institution's corrective action is complete, but later determines that the serious deficiency(ies) has recurred, Bright from the Start must move immediately to issue a notice of intent to terminate and disqualify the institution, in accordance with 7 C.F.R. §226.6(c)(1)(iii)(c).

3. Denial of Application and Proposed Disqualification

If timely corrective action is not taken to fully and permanently correct the serious deficiency(ies), Bright from the Start will notify the institution's executive director/owner and chairman of the board of directors, and the responsible principals and individuals, that the institution's application has been denied. At the same time the notice is issued, Bright from the Start will update Bright from the Start's list of seriously deficient institutions and will provide a copy of the notice to FNSRO. The notice will specify:

- a. That the institution's application has been denied, and Bright from the Start is proposing to terminate its agreement and disqualify the institution and the responsible principals and individuals;
- b. The basis for the actions;
- c. That if the institution voluntarily terminates its agreement after receiving the notice of the proposed termination, the institution and the responsible principals and individuals will be disqualified;
- d. The procedures for seeking an administrative review of the application denial and proposed disqualifications; and
- e. That the institution may continue to participate in the Program and receive reimbursement for eligible meals served and allowable administrative costs incurred until its administrative review is completed.

If the institution's permanent application renewal period expires before the end of the time allotted for corrective action, and/or the conclusion of any administrative review requested by the renewing institution, Bright from the Start will temporarily extend its current agreement with the renewing institution and continue to pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative expenses incurred. However, the permanent application will not be approved for renewal unless the seriously deficient determination has been temporarily deferred.

When the time for requesting an administrative review expires or when OSAH upholds Bright from the Start's denial of the institution's application, the proposed termination, and the proposed disqualifications, Bright from the Start will notify the institution's executive director/owner and chairman of the board of directors, and the responsible principals and individuals, that its

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agreement has been terminated and that the institution and the responsible principals and individuals have been disqualified. At the time this notice is issued, Bright from the Start will update Bright from the Start's list of seriously deficient institutions and provide a copy of the notice and the mailing address and date of birth for each responsible principal and responsible individual to FNSRO.

If OSAH overturns Bright from the Start's application denial and proposed disqualification, Bright from the Start will notify the institution's executive director/owner and chairman of the board of directors, and the responsible principals and individuals that the application denial and proposed disqualification have been temporarily deferred. At the time this notice is issued, Bright from the Start will also update Bright from the Start's list of seriously deficient institutions to reflect the temporary deferment and provide a copy of the notice to FNSRO.

Please Note: If a renewing institution's application does not meet all of the requirements listed in 7 C.F.R. § 226.6(b), 7 C.F.R. § 226.15(b) and 7 C.F.R. § 226.16(b), Bright from the Start must deny the application.

C. Participating Institutions Declared Seriously Deficient

Based on the finding(s) or other information received, Bright from the Start will determine whether to classify a finding as an isolated error, an error (repeated or otherwise) that does not rise to the level of serious deficiency or as a serious deficiency. An institution may be declared seriously deficient at any time any of the criteria provided under Title 7 of the Code of Federal Regulations, Section 226.6 (c) is met.

1. Notice of Serious Deficiency

If Bright from the Start determines a participating institution has committed one or more serious deficiency(ies), Bright from the Start will notify the institution's executive director/owner and chairman of the board of directors that the institution has been determined to be seriously deficient. The notice will identify the responsible principals and individuals and will be sent to those persons as well. The notice will specify:

- a. The serious deficiency(ies);
- b. The action(s) to be taken to correct the serious deficiency(ies);
- c. The time allotted to correct the serious deficiency(ies);
- d. That the serious deficiency determination is not subject to administrative review;
- e. That failure to fully and permanently correct the serious deficiency(ies) within the allotted time will result in Bright from the Start's proposed termination of the institution's agreement and the proposed disqualification of the institution and the responsible principals and

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individuals;

f. That if the institution voluntarily terminates its agreement with Bright from the Start after having been notified that it is seriously deficient, the voluntary termination will still result in the institution's formal termination by Bright from the Start and placement of the institution and its responsible principals and individuals on the National Disqualified List;

g. That if the State agency does not possess 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 institution and/or individual.

H. That if the institution is an administrative and/or daycare home sponsor, the institution is prohibited from recruiting, enrolling, and approving facilities to participate under its sponsorship.

Bright from the Start will also add the institution to Bright from the Start's list of seriously deficient institutions and send a copy of the serious deficiency notification to FNSRO.

2. Corrective Action (See also Section III. Definitions, "Corrective Action")

If corrective actions are taken to fully and permanently correct the serious deficiency (ies) for both the institution and the responsible principals and individuals within the allotted time and no new findings are cited, the compliance review is closed and the serious deficiency determination will be temporarily deferred. Bright from the Start will notify the institution's executive director/owner and chairman of the board of directors, and the responsible principals and individuals, that Bright from the Start has temporarily deferred its serious deficiency determination and that if the same deficiency(ies) are found for the institution in the future, Bright from the Start may propose to terminate the institution's agreement and disqualify the responsible principals and individuals without further opportunity for corrective action. Bright from the Start will remove the institution from Bright from the Start's list of seriously deficient institutions and send a copy of the notice stating that the serious deficiency determination has been temporarily deferred to FNSRO. If corrective action is complete for the institution but not for all of the responsible principals and individuals (vice versa), Bright from the Start will continue with the proposed termination and disqualification of the remaining parties.

If the Bright from the Start initially determines that the institution's corrective action is complete, but later determines or finds in a subsequent Program review, that the serious deficiency(ies) has recurred, Bright from the Start must move immediately to issue a notice of intent to terminate and disqualify the institution, in accordance with 7 C.F.R. §226.6(c)(1)(iii)(c).

3. Proposed Termination and Proposed Disqualification (Intent to Terminate and Disqualify)

If, however, timely corrective action is not taken to fully and permanently correct the serious deficiency (ies), and/or additional findings are cited, or corrective action is incomplete for the

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institution and responsible principals and individuals, Bright from the Start will notify the institution's executive director/owner and chairman of the board of directors, and the responsible principals and individuals, that Bright from the Start is proposing to terminate the institution's agreement and to disqualify the institution and the responsible principals and individuals. At the same time the notice is issued, Bright from the Start will update Bright from the Start's list of seriously deficient institutions and provide a copy of the notice of intent to terminate and disqualify to the FNSRO. The notice will specify:

- a. That Bright from the Start is proposing to terminate the institution's agreement and to disqualify the institution and the responsible principals and individuals;
- b. The basis for the actions;
- c. That if the institution voluntarily terminates its agreement after receiving the notice of proposed termination, the institution and the responsible principals and individuals will be disqualified;
- d. The procedures for seeking an administrative review of the proposed termination and disqualifications; and
- e. That unless participation has been suspended, the institution may continue to participate and receive Program reimbursement for eligible meals served and allowable administrative costs incurred until its administrative review is completed.

A Notice of Intent to Terminate and Disqualify is classified as an adverse action; therefore, the institution will be notified in writing of its right to appeal the proposed termination and disqualification(s) (See CACFP Appeal Procedures).

Institutions participating in the CACFP that have received a notice of intent to terminate and disqualify and have submitted an appeal, will be reimbursed for all valid claims submitted to Bright from the Start that are supported by appropriate documentation during the appeal process until the administrative hearing official issues a final decision. However, if the serious deficiency(ies) constitutes an imminent threat to the health or safety of participants, or the institution has engaged in activities that threaten the public's health or safety, Bright from the Start will suspend the institution's participation (including all program payments). Also, if the serious deficiency is the submission of a false or fraudulent claim, Bright from the Start may suspend the institution's participation (including all program payments).

If the institution's permanent application renewal period expires before the end of the time allotted for corrective action, and/or the conclusion of any administrative review requested by the renewing institution, Bright from the Start will temporarily extend its current agreement with the institution and continue to pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative expenses incurred. During this period, the State agency may base administrative payments to the institution on the institution's previous approved budget, or

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may base administrative payments to the institution on the budget submitted by the institution as part of its renewal application. However, the permanent application will not be approved for renewal unless the seriously deficient determination has been temporarily deferred.

When the time for requesting an administrative review expires or when the decision to terminate and disqualify is upheld by OSAH, unless instructed otherwise, Bright from the Start will issue a notice of termination and disqualification. Bright from the Start will also notify the United States Department of Agriculture (USDA) that the institution's name should be placed on the National Disqualified List maintained by the USDA. The names of responsible principals, including but not limited to, owners, officers, and board members who are responsible for operating the CACFP for the institution and responsible individuals who are responsible for the serious deficiency(ies) will be placed on the National Disqualified List. All institutions, responsible principals and individuals that are placed on the National Disqualified List are disqualified from participation in the CACFP.

If OSAH overturns Bright from the Start's proposed termination and disqualification of the institutions and responsible principals/individuals, respectively, Bright from the Start will notify the institution's executive director/owner and chairman of the board of directors, and the responsible principals and individuals that the proposed termination and proposed disqualification have been temporarily deferred. At the time this notice is issued, Bright from the Start will also update Bright from the Start's list of seriously deficient institutions to reflect the temporary deferment and provide a copy of the notice to FNSRO.

Bright from the Start is prohibited from allowing more than 90 days for corrective action from the date the institution receives the serious deficiency notice.

D. Placement on the National Disqualified List – New, Renewing and Participating Institutions

Institutions placed on the National Disqualified List will not be able to participate in the CACFP as an institution or facility. In addition, no individual on the National Disqualified List may serve as a principal in any institution or facility or as a day care home provider.

Bright from the Start must deny the application of a new or renewing institution if the institution is on the National Disqualified List, and Bright from the Start must terminate the agreement of any participating institution that is disqualified by another state agency or by FNS.

Bright from the Start must also deny the application of a new or renewing institution if any of the institution's principals are on the National Disqualified List. If an institution permits an individual who is on the National disqualified list to serve in a principal capacity for the institution or for one or more of its facilities, Bright from the Start must declare the institution

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seriously deficient and initiate action to terminate the institution’s agreement and disqualify the institution.

E. Record Retention for Institutions Declared Seriously Deficient and Institutions Place on the National Disqualified List

Please refer to DECAL’s Policy CACFP No. 2-18. Per this policy, all records to support any claims must be retained for the current year plus a period of three years after the submission of a claim for the fiscal year to which they pertain. Sponsored facilities are also required to keep all applicable records on file at the facility for three years plus the current year.

The aforementioned principle applies to the serious deficiency process. Consistent with the requirements of DECAL Policy CACFP No. 2-18 and 7 C.R.F. § 226.10(d) concerning the retention of claims-related records, records relating to any serious deficiency shall be retained by DECAL or the sponsoring organization for three years after DECAL and FNS (for institutions or responsible principals or individuals) or sponsoring organization (for family day care homes) accepts the corrective action. This timeframe will permit DECAL (or the sponsoring organization, in the case of a family day care home) to conduct one or more follow-up reviews to ensure that the institution or home has fully and permanently corrected the serious deficiency, and will provide the necessary documentation for a proposed termination if it is found that the corrective action has not been permanently implemented.

Additionally, the principals of DECAL’s Policy CACFP No. 2-18 applies to the retention of records relating to institutions, responsible principals or individuals, and family day care homes that have been placed on the CACFP’s National Disqualified List. These records are considered to pertain to the entire period that an individual or institution remains on the NDL, since the documentation supporting the disqualification must be available to respond to any challenge to the institution’s or individual’s inclusion on the NDL, or to a request for removal from the NDL. Therefore, DECAL and/or institutions must retain records relating to the disqualification for three years after the institution, responsible principal or individual, or family day care home is removed from the NDL.

VI. COMMENT(S)

For questions concerning this policy, contact the Policy Administrator/Coordinator at (404) 651-7181.