

USDA Proposed Definition Updates for Serious Deficiency

Contingency plan means the State agency's written process for the transfer of sponsored centers and day care homes that will help ensure that program meals for children and adult participants will continue to be available without interruption if a sponsoring organization's agreement is terminated.

Corrective action means implementation of a solution, written in a corrective action plan, to address the root cause and prevent the recurrence of a serious management problem.

Disqualified means the status of an institution, facility, responsible principal, or responsible individual who is ineligible for participation in the program.

Fair hearing means due process provided upon request to:

- An institution that has been given notice by the State agency of an action that will affect participation or reimbursement under the program;
- A principal or individual responsible for an institution's serious management problem and issued a notice of proposed termination and proposed disqualification from program participation; or
- An individual responsible for a day care home or unaffiliated center's serious management problem and issued a notice of proposed disqualification from program participation.

Finding means a violation of a regulatory requirement identified during a review.

Fiscal action means the recovery of an overpayment or claim for reimbursement that is not properly payable through direct assessment of future claims, offset of future claims, disallowance of overclaims, submission of a revised claim for reimbursement, or disallowance of funds for failure to take corrective action to meet program requirements.

Full correction means the status achieved after a corrective action plan is accepted and approved, all corrective actions are fully implemented, and no new or repeat serious management problem is identified in subsequent reviews, as described in proposed § 226.25(c).

Good standing means the status of a program operator that meets its program responsibilities, is current with its financial obligations, and if applicable, has fully implemented all corrective actions within the required period of time.

Hearing official means an individual who is responsible for conducting an impartial and fair hearing—as requested by an institution, responsible principal, or responsible individual responding to a proposal for termination—and rendering a decision.

Lack of business integrity means the conviction or concealment of a conviction for fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice.

Legal basis means the lawful authority established in statute or regulation.

National Disqualified List (NDL) means a system of records, maintained by the Department, of institutions, responsible principals, and responsible individuals disqualified from participation in the program.

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 a State agency or FNS with regard to an institution's program reimbursement or participation. Notice also 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 a sponsoring organization with regard to a day care home or unaffiliated center's participation.

Principal means any individual who holds a management position within, or is an officer of, a sponsor or a sponsored site, including all members of the sponsor's board of directors or the sponsored site's board of directors.

Program operator means any entity that participates in one or more Child Nutrition Programs.

Responsible individual means any individual employed by, or under contract with an institution or facility, or any other individual, including uncompensated individuals, who the State agency or FNS determines to be responsible for an institution or facility's serious management problem.

Responsible principal means any principal, as described in this section, who the State agency or FNS determined to be responsible for an institution's serious management problem.

Review cycle means the frequency and number of required reviews of institutions and facilities.

Serious management problem means the finding(s) that relates to an institution's inability to meet the program's performance standards or that affects the integrity of a claim for reimbursement or the quality of meals served in a day care home or center.

Seriously deficient means the status of an institution or facility after it is determined that full corrective action will not be achieved and termination for cause is the only appropriate course of action.

State agency list means an actual paper or electronic list, or the retrievable paper records, maintained by the State agency, that includes information on institutions and day care home providers or unaffiliated centers through the serious deficiency process in that State. The list must be made available to FNS upon request and must include information specified in proposed § 226.25(b).

Termination for cause means the termination of a program agreement due to considerations related to an institution or a facility's performance of program responsibilities under the agreement between:

- A State agency and the independent center,
- A State agency and the sponsoring organization,
- A sponsoring organization and the unaffiliated center, or
- A sponsoring organization and the day care home.