CACFP-680

Subject: Child and Adult Care Food Program (CACFP) Integrity Rule: Summary of Major Provisions and Deadline Chart

To: STATE AGENCY DIRECTORS – Colorado DPHH, Iowa, Kansas, Missouri Health, Montana DPHHS, Nebraska, North Dakota, South Dakota, Utah and Wyoming

The following information was sent to you via e-mail from Mary Nielsen on July 23, 2002. In addition, a letter mailed to you signed by Stanley Garnett dated July 23, 2002, which also disseminated this information. This information is being disseminated again now through our numbered policy memorandum process.

As you know, the interim rule, Implementing Legislative Reforms to Strengthen Program Integrity, was published in the Federal Register on June 27, 2002. Except for the monitoring staffing requirement for currently participating sponsors, the provisions of the rule become effective on July 29, 2002. (The monitoring staffing requirement is effective one year later on July 29, 2003.)

However, in addition to the overall effective date of the rule, there are several instances throughout the rule in which state agencies (SA) and sponsors are required to take a specific action by a certain date. To assist SAs in ensuring compliance with these deadlines, we are attaching a chart (Enclosure 1) that outlines each of these requirements and provides the applicable regulatory citations and deadlines. With regard to application changes for participating institutions, although these changes are effective on July 29, 2002, they do not need to be implemented until the next time the institution re-applies.

We are also attaching a narrative summary of the major provision of the interim rule (Enclosure 2). The narrative is cross-referenced by the regulatory citation(s) where the provision appears, and by the page number where it appears in the unofficial consolidation of 7 CFR Part 226. This summary is designed to help you and your staff quickly locate specific provisions within the Program regulations.
If you have any questions, please contact a member of the CACFP staff at 303-844-0359.

DARLENE SANCHEZ
Regional Director
Special Nutrition Programs
### Enclosure 1

**CACFP Interim Rule**  
*Implementing Legislative Reforms to Strengthen Program Integrity*  
Quick-Reference for Regulatory Deadlines

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Affected Entity</th>
<th>Regulatory Citation</th>
<th>Deadline</th>
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<tbody>
<tr>
<td>Submit an outside employment policy to the State agency.</td>
<td>Sponsors participating on 7/29/02</td>
<td>226.6(b)(16)</td>
<td>9/27/02</td>
</tr>
<tr>
<td>Provide to the appropriate FNSRO the name, mailing address, and date of birth of providers terminated for cause on or after July 29, 2002.</td>
<td>State agency</td>
<td>226.6(c)(8)(ii)</td>
<td>Beginning 7/29/02, information must be provided 10 days after receipt of notice of the provider's termination from the sponsor.</td>
</tr>
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<td>Establish and apply factors, consistent with 226.16(b)(1), to consider in determining whether a sponsor has sufficient staff to perform required monitoring responsibilities at its sponsored facilities.</td>
<td>State agency</td>
<td>226.6(f)(2)</td>
<td>Apply factors to new sponsors beginning 7/29/02, and to current sponsors 7/29/03.</td>
</tr>
<tr>
<td>Submit a management plan or plan amendment that meets the monitoring staffing requirement.</td>
<td>Sponsors participating on 7/29/02</td>
<td>226.16(b)(1)</td>
<td>7/29/03</td>
</tr>
<tr>
<td>Notify FNSRO whether it will offer State-level administrative reviews for day care homes proposed to be terminated, or whether it will require sponsoring organizations to offer the administrative reviews.</td>
<td>State agency</td>
<td>226.6(l)(1)</td>
<td>9/25/02 (and within 30 days of any subsequent change)</td>
</tr>
<tr>
<td>Provide each sponsored center written notification of the right of the sponsor, the State agency, the Department, and other State and Federal officials to make announced or unannounced reviews of their operations, and that anyone making such reviews must show photo identification.</td>
<td>Sponsors of centers</td>
<td>226.16(d)(4)(v)</td>
<td>For sponsored centers participating on 7/29/02, the sponsor must provide the notice by 8/29/02. For centers approved after 7/29/02, notice must be provided before Program meal</td>
</tr>
<tr>
<td>Amend the current agreement with each day care home to include the right of the sponsor, the State agency, the Department, and other State and Federal officials to make announced or unannounced reviews of the home’s operations and to have access to its meal service and records during its normal hours of child care operations.</td>
<td>Sponsors of day care homes</td>
<td>226.18(b)(1)</td>
<td>For homes participating on 7/29/02, agreement must be amended by 8/29/02.</td>
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<tr>
<td>The agreement between day care homes and their sponsoring organizations must include a description of the State agency’s policy to restrict transfers of day care homes between sponsoring organizations.</td>
<td>Sponsors of day care homes</td>
<td>226.18(b)(13)</td>
<td>No deadline specified; sponsors may wish to include the transfer policy at the same time they amend agreements to include the provision from 226.18(b)(1) on announced and unannounced reviews.</td>
</tr>
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</table>
Summary of changes and regulatory citations in the CACFP Integrity rule

I. Basic institution eligibility criteria; review and approval of institutions’ applications; serious deficiency determinations; corrective action; suspension; termination, and disqualification; and administrative reviews

A. Basic requirements for institution eligibility

1. Limits on outside employment: all sponsors must have a policy that restricts other employment by employees that interferes with their Program responsibilities. [§ 226.6(b)(16)—page 14 of consolidation]

2. Bonding: new sponsors applying after June 20, 2000, must have bond if required by State law, regulation, or policy. [§§ 226.6(b)(17) and 226.16(b)(4)—pages 15 and 53]

3. Tax exempt status: all nonprofit institutions must have tax exempt status prior to participation. [§§ 226.15(a), 226.17(b)(2), 226.19(b)(2), 226.19a(b)(4)—pages 50, 58-59, 62, 64]

4. Past performance: during prior 7 years, all institutions and principals must not have been determined ineligible for a publicly-funded program due to their violation of program requirements, and must not have been convicted of, or concealed, certain crimes indicating a lack of business integrity. [§§ 226.6(b)(13)-(14), 226.15(b)(7)-(8)—pages 14, 50-51]

Other changes necessary to implement ARPA:

- SA must not approve an institution or home if the institution, home, or its principals is on the National disqualified list. [§§ 226.6(b)(12), introductory paragraph, and 226.15(b), introductory paragraph—pages 13-14, 50]

- Institution must not submit an application if the institution or any of its principals is on the National disqualified list. [§§ 226.15(b), introductory paragraph—page 50]

- We will capture most of the above information on the application. The institution will be required to include in its application a list of all publicly funded programs in which it participated for the past 7 years,
and certify that neither the institution nor its principals have been declared ineligible for these programs or convicted of a business-related offense during those 7 years. [§§ 226.6(b)(13)-(14)] [226.15(b)(7)-(9)—pages 14, 50-51]

B. Standards for SA review of an institution’s application

The law’s requirements that all institutions be financially viable, administratively capable, and have internal controls to ensure accountability (VCA) are implemented in the rule as “performance standards” that must be met in order for the State agency to approve the application [§ 226.6(b)(18)—pages 15-16].

1. Financial viability: all institutions must have adequate resources to operate the Program, and must document their viability through audits and/or financial statements, and submit budgets in which costs are reasonable, necessary, and allowable. Sponsors must establish a “need for their services”, and use appropriate recruiting practices. [§226.18(b)(18)(i)—page 15]

2. Administrative capability: all institutions must have adequate staff to perform Program responsibilities. Sponsors must meet the monitoring staffing standards required by law and established in this rule. [§226.18(b)(18)(ii)—page 15]

3. Accountability controls: all nonprofit institutions must have adequate oversight by a Board of Directors; all institutions must have financial management systems in place and appropriate recordkeeping practices; sponsors must ensure facility compliance with regulatory requirements. [§226.18(b)(18)(iii)—pages 15-16]

C. Additional condition for SA approval of new sponsor

New sponsors must establish a need for services (i.e., that they will provide the Program to currently unserved providers and children). [§§ 226.6(b)(11) and (b)(18)(i)(A)—pages 13, 15]

D. Serious deficiency determination, corrective action, suspension, termination, and disqualification [Refer to Attachment 1]

1. Denial of an application from a new or renewing institution: establishes different procedures relating to declarations of serious deficiency based on applications submitted by new and renewing institutions. [§ 226.6(c)(1)-(2)—pages 16-20]

2. Actions based on serious deficiency determinations. The preamble:
- differentiates between "seriously deficient" and "disqualified" institutions [page 43457 of preamble];

- discusses SA process of differentiating between errors and serious deficiencies, and role of SA judgment in making these determinations [pages 43457-43458 of preamble];

- establishes separate lists of serious deficiencies for new institutions, renewing institutions, and participating institutions, and adds more specificity to the list for participating institutions [§§ 226.6(c)(1)(ii), 226.6(c)(2)(ii), and 226.6(c)(3)(ii)—pages 16-17, 18-19, 21-22];

- discusses notification requirements for those principals and individuals named as responsible for the serious deficiency [§§ 226.6(c)(1)(iii)(A), 226.6(c)(2)(iii)(A), 226.6(c)(3)(iii)(A)—pages 17, 19, 22];

- requires extension of the institution’s agreement (until resolution of serious deficiency/corrective action/termination/any appeal) when the declaration of serious deficiency results from SA review of an institution’s renewal application [§ 226.6(c)(2)(iii)(D)—page 20]

- institutions declared seriously deficient may not evade disqualification by voluntarily terminating their agreement [§§ 226.6(c)(2)(iii)(C)(3), 226.6(c)(3)(iii)(C)(3)—pages 20, 23; NOTE—not applicable to new institutions since they have not yet signed an agreement]

3. Corrective action: specifies maximum periods of time for corrective action [§ 226.6(c)(4)—page 23]:

- 90 days for most serious deficiencies;

- 30 days for serious deficiencies involving false or fraudulent claims or other unlawful practices; and

- more than 90 days permitted if a “management system” requires revision in order to correct the deficiency.

4. Suspension: Preamble explains that law shifted from pre-appeal to post-appeal termination, but still specifies two circumstances warranting suspension of participation, including payments: imminent threat to participants’ and/or public health or safety (institutions and providers); knowing submission of false and fraudulent claims (institutions only). [§ 226.6(c)(5)—pages 24-26] Regulatory language specifies procedural requirements for suspension in each circumstance:
Public health or safety violations [§ 226.6(c)(5)(i)—pages 24-25];

False or fraudulent claims [§ 226.6(c)(5)(ii)—pages 25-26]

5. **FNS determination of serious deficiency:** modifies existing regulatory authority for FNS to take action by incorporating new procedures mandated by the statute. [§ 226.6(c)(6)—pages 26-28]

If FNS disqualifies an institution, or a principal associated with an institution, any SA that has an agreement with a disqualified institution or an institution with a disqualified principal must initiate the serious deficiency process within 45 days of the disqualification. [§ 226.6(c)(6)(ii)(G)]—pages 27-28

6. **National disqualified list:** Explains placement on the list for institutions, individuals, homes, and sponsored centers; effect on multi-State sponsors. [§ 226.6(c)(7)—page 28]

- Procedures for removal of institutions, responsible principals, responsible individuals, and day care homes from the National disqualified list. Institutions, principals, and individuals will remain on the list for 7 years, unless the State agency and FNS concur before then that the corrective is complete. Homes will remain on the list for 7 years, unless the State agency determines before then that the corrective is complete. However, no person or entity may be removed from the list if they have not repaid all debts owed under the Program. [§ 226.6(c)(7)(v)—page 28]

7. **State agency lists:** establishes parallel State-level list for data analysis purposes. Will permit tracking of all serious deficiency determinations from declaration to final resolution. [§ 226.6(c)(8)—pages 28-29]

E. **Administrative reviews for institutions and responsible principals and individuals**

Explains how administrative reviews (appeals) will proceed under the new post-appeal termination procedures required by the statute:

- Lists adverse actions that are and are not appealable; clarifies that serious deficiency declarations are not appealable; and clarifies that, under the new statutory mandates, it is the proposed termination that is appealable, not the actual termination. [§§ 226.6(k)(2)-(3)—pages 34-35]

- Clarifies that those individuals and principals named as "responsible" in the serious deficiency notice also have appeal rights, but that their appeals will be combined with the institution's appeal unless either the institution or the
individual demonstrates to the satisfaction of the hearing official that their interests conflict [§§ 226.6(k)(2)(iv) and (k)(8)—pages 34-35 and 37]

- Provides for “abbreviated” review of proposed application denial or termination of agreements based on certain serious deficiencies (institution’s presence on the National disqualified list, submission of false information on the Program application, etc.) [§ 226.6(k)(9)—page 37];

Other changes necessary to implement ARPA:

- Requires all SAs to follow appeal procedures in regulations (which, under current practice, are only required if the SA lacks appeal procedures). [§§ 226.6(k)(1) and (k)(5)—pages 34, 35-36]

II. State agency and institution review and oversight requirements

A. Unannounced reviews: Law requires that sponsors conduct unannounced reviews. Rule implements this by requiring:

- sponsors to conduct two of their three annually required reviews unannounced, with at least one unannounced review including observation of a meal service [§§226.16(d)(4)(i)(A)-(B)—page 54];

- that, after detection of serious deficiency, the next review must be unannounced [§226.16(d)(4)(iv)—page 55];

- minimum procedures (conduct during normal business hours; photo ID) for unannounced reviews [§ 226.16(d)(4)(vi)—page 55];

- that, when SAs are conducting reviews of sponsors, 15 percent of their facility reviews be unannounced [§ 226.6(m)(4), introductory paragraph—page 39];

- unannounced reviews of institutions by SAs are optional, but SA-institution agreements must be amended to state that they may be conducted [§ 226.6(f)(1)—page 31];

- facilities must be notified (by amending next sponsor-home agreement or, for sponsored centers, through separate notice) that unannounced reviews may be conducted and of procedural requirements [226.16(d)(4)(v)—page 55]
B. **Sponsor monitoring staff:** Law requires sponsor to have “appropriate number” of monitoring staff, based on the characteristics of the facilities they serve. Rule implements this by:

- Requiring sponsors of homes to have one FTE monitor for each 50-150 homes [§ 226.16(b)(1)—page 53];

- Requiring sponsors of centers to have one FTE monitor for each 25-150 centers [§ 226.16(b)(1)—page 53];

- Defining activities that count in determining the FTE [§ 226.16(b)(1)—page 53];

- Instructing SAs to develop “factors” they will apply (rural-urban; low literacy; ESL providers, etc.) in determining where, within that range, a sponsor’s monitoring staffing must fall. [§ 226.6(f)(2)—page 32]

- **Delaying implementation:** Sponsors to revise management plans and be in compliance by July 29, 2003. [§ 226.6(f)(2)—page 32]

C. **State review cycle:** law requires all institutions to be reviewed at least once every three years, necessitating a minor change to current review requirements. [§§ 226.6(m)(4), introductory paragraph, 226.6(m)(4)(i), and 226.23(h), introductory paragraph—pages 39, 84]

To fully implement ARPA the rule:

- refines the definition of “large sponsors” that have to be reviewed every other year (from 200 homes to 100 facilities) [§ 226.6(m)(4)(i)-(ii)—page 39];

- requires targeting institution for more frequent reviews after a serious deficiency is detected. [§226.6(m)(2)—pages 38-39]

III. Other operational provisions

A. **Definition of institution:** Emergency shelters added. [226.2, definition of “Institution”—inadvertently omitted from consolidation; see amendatory language, changes to § 226.2, p. 43476 of rule].

B. **Ceiling (15%) on administrative reimbursement for sponsors of centers:**

- Clarifies that 15% is a ceiling, not a floor [§§ 226.6(f)(3), 226.16(b)(1)—pages 32, 53];
• SAs must still review and approve budget [§§ 226.6(f)(3), 226.16(b)(1)—pages 32, 53];

• Waivers allowed for cause [§§ 226.6(f)(3), 226.7(g)—pages 32, 41];

• Same rules for affiliated center sponsors and proprietary center sponsors [preamble discussion, p. 43471]

• Overclaims must be established if ceiling exceeded [§ 226.16(b)(1)—page 53]

C. Day care home transfers: limits day care home transfers to once per year except with SA approval for cause. Rule requires limit to be added to sponsor-home agreement. [§§ 226.6(p) and 226.18(b)(13)—pages 39, 61]

D. Notice to parents: Sponsor or sponsored facility must distribute notice to parents containing basic Program information [§§ 226.16(b)(5), 226.17(d), and 226.18(b)(16)—pages 53-54, 59, 61]

E. Funds recovery: Applies to institutions, not facilities. Repayment plans are at SA discretion. [§ 226.14(a)—page 49]

F. Disqualification of day care homes and appeals for homes:

• Only “termination for cause” and suspension are appealable [§§ 226.6(l)(2)-(3)—page 38];

• Serious deficiencies for homes identified [§ 226.16(l)(2)—page 56];

• Serious deficiency procedures for homes established [§ 226.16(l)(3)—pages 56-57];

• Suspension procedures for homes established (imminent threat to health or safety only) [§ 226.16(l)(4)—pages 57-58];

• Homes declared seriously deficient may not evade disqualification by voluntary termination of their agreements [§ 226.16(l)(3)(i)(F)—page 57]

• Notice and appeal procedures for homes established (maximum 30 days for corrective action; no hearing required) [§ 226.6(l)(5)—pages 37-38].
Regulatory requirements:
Pre-appeal vs. post-appeal termination

Prior to Public Law 106-224

1. Serious deficiency declared
2. Every reasonable opportunity for corrective action
3. Resolution of CA/termination/appeal rights

Changes resulting from Public Laws 106-224 and 106-472

1. Serious deficiency declared; officers, responsible principals, and responsible individuals notified
2. Corrective action (except health or safety) with clear deadlines. SA may specify separate CA for institution and individuals
3. Resolution of CA/proposed termination/appeal rights (review officer may separate institution and individual appeals)

[3a. Payments stop]

[3a. Payments do not stop unless suspended for health or safety or false or fraudulent claim]

3b. Suspension review (false/fraudulent only; not health/safety)

4. Appeal resolved; retroactive payment if institution upheld on appeal
5. Placement on seriously deficient list
6. On list indefinitely, or until FNS and SA concur that CA is complete.

5. Placement of institution, officers, and responsible principals and responsible individuals on National disqualified list
6. On list for up to 7 years, unless FNS and SA concur earlier that CA is complete; or longer than 7 years, if there is an unpaid debt owed to Program.

I:ndppdb:wp: Summary of interim rule with reg cites