NATIONAL CACFP SPONSORS ASSOCIATION

A National Platform for the Child and Adult Care Food Program Community.

Andrea Farmer, Chief, School Meal Programs Branch
Policy and Program Development Division,
Child Nutrition Programs
Food and Nutrition Service
Department of Agriculture,
3101 Park Center Drive,
Alexandria, Virginia 22302–1594

Re: Comments on Proposed Rule - DEPARTMENT OF AGRICULTURE Food and Nutrition Service 7 CFR Parts 210, 215, 220, 225, 226 and 235 RIN 0584–AE08 Child Nutrition Program Integrity

Dear Ms. Farmer,

NCA would like to thank FNS for extending the time frame for comments on the proposed Child Nutrition Integrity Regulations. This allowed for an opportunity to revisit and address some concerns that were not addressed in our prior comment letter. Please note that this comment is an addendum to our prior comments and not intended to replace our prior comments.

Termination for Convenience

The proposed rule expands the CACFP termination for convenience clause to include agreements between the State agency and an institution, and between a sponsoring organization and an unaffiliated center. While a sponsoring organization may need to terminate an unaffiliated center for convenience, it is assumed the center can and will find services with another sponsoring organization or the State Agency. This option does not inhibit participation from the program.

However, if the State Agency has the option to terminate for convenience, the institution likely has no other option for participation. There is a strong possibility that a State Agency could choose to terminate for convenience rather than pursue the complicated serious deficiency process. At the very least, this termination for convenience must be by mutual agreement of both parties. There may be some instances where an institution closes its doors, or fails to claim for an extended time. This could necessitate a termination for convenience, yet without a review or appeal process in place there is much room for misuse of this regulation. Per the preamble, "*Examples of termination for convenience include a State agency's inability to effectively monitor a remote location.*". This example gives cause for alarm. If an institution is serving children and operating within the guidelines, it is unconscionable that the State Agency can choose to not offer these entitlement funds.

NCA is also concerned about state agency unilateral termination for convenience of an operating sponsoring institution without notice of intention or during the reapplication and renewal process or for any other reason not related to its performance of the program if mutual consent is established. We urge USDA to provide safeguards or oversight to review all terminations of convenience by the USDA RO.

Appeals for fines

Many States may use the same entity for processing appeals that established the assessment against the SFA or institution. This creates an unfair and biased appeal process or appearance of an institutional conflict of interest. NCA recommends that the agency that hears the appeal should not be

the same agency that oversees the program in question. However, please note from our prior letter, that NCA does not support fines for institutions, facilities or family child care providers.

Serious Deficiency and Termination for Unaffiliated Sponsored Centers

NCA is deeply concerned about the serious deficiency process as it applies to unaffiliated child care centers reporting to a sponsoring organization. These facilities have chosen to undergo additional scrutiny in order to ensure compliance and in essence have more exposure to risk in the serious deficiency process. While sponsoring organizations have processed serious deficiencies for family child care for quite some time, we believe that the scope and significance for the unaffiliated center will put the sponsoring organization at risk of constantly being in litigation without the tools or funds to appropriately defend their case. State agencies have routinely been the entity that has pursued termination for cause for these types of organizations, and generally has the support of the state level attorney general's office. Sponsoring organizations must either be provided with funding for this purpose or the appeal process for such terminations should be handled at the State Agency level. This is the time to reiterate that the serious deficiency process not be utilized for repeated errors that are not significant, severe or systemic and which would generate disallowances at the sponsor level. We also implore USDA to ensure that CACFP sponsors are not automatically declared seriously deficient because of a serious deficiency at one of their unaffiliated centers.

We ask USDA to offer clear definitions of what constitutes a severe or egregious violation that would warrant the determination of a serious deficiency. Further, we call upon the Department to apply these definitions to the existing serious deficiency process for other types of organizations as well. In addition, serious deficiency determinations must themselves be appealable.

While in our prior comment letter we addressed the need to revisit the entire SD process, we would like to add that this is also the time to revisit the process for removal from the NDL. State agencies should be able to base decisions on a review of the prior deficiency, remove the individual from the NDL and possibly add a probationary time frame with additional monitoring requirements for those wanting to participate on the program again.

Time frame for implementation

We ask USDA to allow a full year for implementation of the final rule.

Making the proposed regulations easier to understand

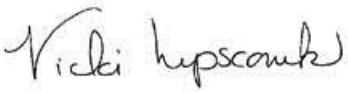
In addition, we would like to comment on the proposed rule format. We believe the regulation would be better understood if the layout of the proposed rule were different. We would suggest having the current rule and the proposed rule side by side for comparisons. Then follow each section with the explanation in the preamble. We found that reading the preamble was helpful; then we would refer to the new rule, and then we would look up the current rule, and manually insert the new language in order to have a better understanding. This process was cumbersome and time-consuming.

In addition, when one reads the preamble and the intent seems clear, but, because the same language is often not in the rule, the message is lost in the years to come. The regulation needs to be as clear as possible in terms of intent. An example would be "*Failed to correct repeated violations of Program requirements*". While the preamble discusses the severity of a problem, the rule could be interpreted to mean any repeated area of noncompliance; when indeed due to human error, there may be repeated areas of noncompliance that are not significant. We envision a facility having missing enrollment forms on one review. When at a later date, another enrollment form is incomplete. Should this be deemed "significant"? A designation of "significant" should depend on how large and/or costly the issue is. One form out of 10 is much different than one form out of 100. We recommend the rule also use the language that relates to severity.

Respectfully submitted on behalf of the NCA Board of Directors and NCA membership.

Thank you. We appreciate the opportunity to offer comments on this highly important rule.

Sincerely,



Vicki Lipscomb
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