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Dear Ms. Sandu:

Thank you for this opportunity to provide comments in response to the U.S. Department of Agriculture (USDA) proposed rule: Serious Deficiency Process in the Child and Adult Care Food Program and Summer Food Service Program (Federal Register, Vol. 89, No. 35, P.13150 (February 21, 2024)). Home Grown appreciates USDA's commitment to trying to create a more equitable and effective system of oversight and technical assistance in the Child and Adult Care Food Program (CACFP). Improving this process is vitally important.

The mission of Home Grown is to increase access to and the quality of home-based child care. Home Grown believes CACFP training, standards, and resources are important in supporting quality care, good nutrition, and a sustainable business model for home-based child care. For this reason, ensuring equity in CACFP payment and accountability policies and practices is fundamental to robust and accessible food *and* care systems.

Home Grown envisions a country in which all children have the care they need to grow, learn and thrive. Home Grown's theory of change says that economic stability of the home-based child care workforce is essential and is a matter of economic justice. Child care workers continue to make up one of the most underpaid segments of the workforce (CSCCE, 2020). Home-based child care providers often work an average of 10 to 12 hours each day caring for children and still must make time to handle administrative duties and other responsibilities such as cleaning, gathering supplies and other chores to ensure their programs are ready for the next day.

For Home Grown, CACFP's ability to support the economic viability of child care providers is fundamental to addressing the economic, education, and nutrition security needs of providers and the children in their care.



Nearly 6.4 million children ages 0-5 receive care in a home-based child care setting, which includes licensed family child care and licensed-exempt family, friend and neighbor care. A significant portion of these children are living in households struggling to put food on the table: 16.7% of families with young children experienced food insecurity in 2022 ([USDA, 2023](#)) Among lower-income families, that number climbs to 39.6% experiencing food insecurity ([USDA, 2023](#)). What we learn from home-based child care providers is that they will never let a child go hungry if they can do something about it, and too often they are forgoing meals themselves in order to help a child. Providers also experience hunger at alarming rates with one in three child care providers experiencing hunger themselves ([Stanford University, 2022](#)).

For many children, the food provided while at child care is their primary source of food. Without a robust CACFP program, they are faced with missing out on the adequate nutrition they need to grow healthy bodies and minds.

Home Grown works alongside providers, listening to them and together creating the necessary policy action. It is in that spirit that CACFP is a major priority for our advocacy, research, and programmatic investments.

Home Grown applauds USDA for working to improve a central part of the monitoring and oversight approach known as the serious deficiency process. The current serious deficiency process needs significant revision. It is vaguely written in regulation, allowing for inconsistent application and variability of outcomes across monitors.

The serious deficiency process should be designed to help protect children's access to nutritious meals in child care, not unnecessarily jeopardize it. Removing the threat of unfair termination and disqualification will make CACFP more attractive to providers at a time when inflation and the loss of pandemic benefits is [driving down CACFP participation](#). Accountability policy improvements also help the sponsors to succeed. Maintaining the viability of diverse CACFP sponsoring organizations is important to supporting home-based child care providers' participation in the program.

The early childhood workforce in child care centers, family child care programs, Head Start and Early Head Start programs, and the community-based staff of CACFP sponsors need a common-sense process that appreciates the human nature of this work. Accountability policies must be strong, effective, understandable, and applied consistently.

## **Recommendations**

The proposed rule includes steps to move to a system of technical assistance and oversight that would only deploy the "serious deficiency" process for the most severe problems, create a pathway to a return to good standing, and offer fair and impartial hearings, while aiming to





ensure an application of the serious deficiency process that is consistent, fair and fully implemented. We support these goals and offer the following recommendations to ensure the proposal works as intended and brings the field to the expected outcome.

#### Recommendation Summary:

1. A determination of a “serious management problem” triggering the serious deficiency process should only occur when technical assistance options have been exhausted (with the exception of fraud.)
2. Ensure fair and reasonable determinations regarding what rises to the level of a serious management problem.
3. Limit serious deficiency findings to USDA federal requirements only.
4. Ensure due process and a system of checks and balances for the proposed serious deficiency process.
5. Give providers access to options for hearings.
6. Allow family child care providers adequate time to understand, respond, and address issues.
7. When a provider or sponsor has successfully completed the corrective action plan and been returned to good standing, the matter should be considered fully resolved.
8. Reduce the time programs must spend on the National Disqualified List from seven years to four years.
9. Strengthen and centralize Multi State Sponsoring Organization rules.
10. Ensure effective and consistent implementation through clear guidance, training, and evaluation of enforcement at all levels of CACFP operations.

#### RECOMMENDATION 1

**A determination of a “serious management problem” triggering the serious deficiency process should only occur when technical assistance options have been exhausted (with the exception of fraud.)** Technical assistance requirements and expectations for state agencies and sponsoring organizations should be fully integrated into the final regulations. This will help to ensure USDA intentions regarding the technical assistance are realized consistently across all states, organizations, and monitors.

This clarity in the final rule will empower and protect sponsors to fully expend all options in technical assistance before moving to determine a serious management problem. In a recent example, despite a sponsor asking for more time to provide technical assistance, a state agency forced the sponsor to declare a set of providers seriously deficient. These were providers who needed the additional time and technical assistance to learn the CACFP rules. These providers, and the families counting on them, lost their access to CACFP and the financial and nutrition support that comes with it, over a matter that could have been resolved without banning them



from the program. This was, in our view, not a good use of oversight staffing resources, an unfortunate loss for the young children in those programs, and an unnecessarily harsh financial punishment for providers.

In addition, the final regulations should specify that the technical assistance and training must reflect the language and cultural preferences, educational, and organizational capacities of program operators. Provider leaders from our network cited the need for “resources and assistance in the different languages” to help providers struggling with CACFP record keeping and program requirements.

## RECOMMENDATION 2

**Ensure fair and reasonable determinations regarding what rises to the level of a serious management problem.** Home Grown recommends the final rule clearly define the distinction between “inadvertent human error” and a serious systemic error. The complexity of CACFP programmatic and recording keeping requirements often results in inadvertent human error. A home-based child care provider is often a solo operator, responsible for all aspects of taking care of children from changing diapers to educational activities, preparing and serving the food, and then all the paperwork.

Home Grown recommends the final rule require all five of the newly proposed criteria be met in order to make the determination of a serious management problem, including: the nature of the requirements that relate to the problem; severity of the problem; degree of responsibility; impact on program integrity; and the institution’s history of participation. The final rule should ensure the range of compliance issues are calibrated to their real-life severity and clearly explained. The application of the criteria should reflect the realities of home-based child care:

*“Children aren’t born with a manual. If they are hungry 15 minutes before lunch is scheduled, I’m going to feed them lunch. If my monitor shows up at the scheduled lunch time and does not see a meal, that’s a problem. There needs to be a human aspect to the record-keeping of the program.” - Home-based child care provider, California*

Home Grown supports USDA’s effort to establish quality control to secure consistency in implementing the proposed system. Home Grown’s network of providers report significant variability in oversight depending on the monitor doing the review/visit. It is very common to hear praise for monitors, “The sponsor/monitor goes above and beyond to help, tries everything she can to teach us how to do the program to avoid going to a serious deficiency.” But we also heard that some monitors are not nearly so helpful and well-informed. Some monitors try to hold providers to impossibly perfect standards, and others may enforce non-existent rules and hold



program operators accountable, declaring a “finding” for not meeting non-requirements. Clear and specific rules are necessary to improve this situation.

### **RECOMMENDATION 3**

**Limit serious deficiency findings to USDA federal requirements only.** Additional state level requirements should not be the basis for actions within the proposed serious deficiency process including a determination of a serious management problem and termination. Through research and work by the USDA paperwork reduction committee, it has been established that enforcing additional state level requirements contributes to program complexity creating barriers to participation in CACFP. As a result, the USDA memo, [Additional State Agency Requirements in the CACFP](#), limits the use of state level CACFP requirements as the basis for a serious deficiency ([USDA, 2013](#)). The final regulations should specify that determinations of serious management problems, corrective action plans, determinations of serious deficiency and termination can only be based on federal regulations and not additional state requirements.

### **RECOMMENDATION 4**

**Ensure due process and a system of checks and balances for the proposed serious deficiency process** by allowing providers and sponsors the option to 1) **contest** an initial determination of a “serious management problem” when the first notification is received; and 2) **appeal** the final serious deficiency determination to terminate on the basis of the validity of the findings, not just procedural issues.

Home Grown’s recommendation, to add an option to **contest** the initial “serious management problem” finding, will provide an early check on the system.

Home Grown recommends the final rule be revised to clearly allow providers to **appeal** the final serious deficiency determination to terminate on the basis of the validity of the findings/allegations. The purpose of the appeal hearing and the basis for decision should not be limited to a determination of program administrators following the proper procedures. (e.g. the notification letter was sent on time.) A provider needs to be able to offer a defense including, if relevant, presenting evidence to prove the facts impacting the validity of the claims against them. For example, presenting evidence that they did not make the alleged mistakes, or the finding was taken out of context and doesn’t meet the severity standard, or they did successfully complete the corrective action plan. A hearing officer should be instructed to consider this evidence in a decision not constrained to a narrow set of considerations.



## RECOMMENDATION 5

**Give providers access to options for hearings.** Home Grown recommends the final rule give providers the right to request a hearing with the state agency or an independent hearing official rather than by a sponsoring organization staff member or committee of sponsoring organization representatives. In addition, providers should have the same option that child care centers and sponsors (institutions) have to request an in-person hearing.

Home Grown recommends the final rule allow providers additional time to request an appeal by extending the proposed time limit from “15 days” to “30 days” after receiving a termination notice.

## RECOMMENDATION 6

**Allow family child care providers adequate time to understand, respond, and address issues** by extending the time to correct compliance issues from 30 days to 90 days, the limit proposed for other program operators. Family child care providers are much more likely to face language, staff capacity, and income barriers to successfully navigating this complex and intimidating process. It is not reasonable to expect a family child care provider to respond successfully within the very limited proposed time frame. Time needs to be allowed, too, for sponsoring organizations to give technical assistance on the corrective action process.

## RECOMMENDATION 7

**When a provider or sponsor has successfully completed the corrective action plan and been returned to good standing, the matter should be considered fully resolved.** The final rule should eliminate the proposed several year period of unnecessary additional oversight and uncertainty required to permanently resolve the process. In answer to USDA’s request for comments on the administrative costs of compliance with provisions in this rule: these additional years of oversight will significantly increase costs for State agencies and sponsors due to increased staff and travel costs for monitoring and reviews, as well as additional paperwork burden for tracking. The proposed pathway can address integrity issues without the extra years of oversight. There are more effective ways to target state and sponsor oversight resources.

If the final regulations continue to include the unnecessary additional years of oversight (subsequent review), then we offer the following fallback recommendations for improving the process to permanently resolve a successfully corrected serious management problem by:

- Allowing full resolution if no repeat findings of the same serious management problem have occurred in the proposed subsequent review period (new problems should be dealt with through a separate process of technical assistance and identification); and



- Eliminating the proposed process of proceeding directly to termination if there is a repeat finding of the same issue, if that finding demonstrates substantial improvement (restart the corrective action process).

Home Grown agrees with USDA's point that clearly defined terminology is essential to fully understand and correctly implement the serious deficiency process. USDA's proposed definition of "good standing" to include a program operator that meets its program responsibilities, is current with its financial obligations, and has implemented all corrective actions is very useful. This productive change is responsive to public comments made in earlier requests for information.

## RECOMMENDATION 8

**Reduce the time programs must spend on the National Disqualified List from seven years to four years.** The current policy of seven years is too high a cost for noncompliance with the resulting exclusion from CACFP *and* possible impacts to eligibility for other federally funded programs or future employment. We are deeply concerned about this restriction, especially in the context of current policy and practice, and the above noted concerns.

Reciprocal disqualifications: In some states and cities, many four year old children attend school-based preschool programs and receive meals and snacks through the federal food programs. For this reason, Home Grown recommends USDA's "Options B: Termination and disqualification and subsequent reciprocal disqualification procedures apply to responsible principals and individuals only. The SFA itself is not subject to reciprocal disqualification." We also suggest this same targeting of consequences be considered for CACFP. State agencies could be given the discretion to place only responsible individuals and responsible principals on the National Disqualified List without placing the CACFP institution (sponsor) on the list. This offers a pathway, when State agencies deem it appropriate and safe, to preserve integrity and continued access to CACFP for children in home-based care.

## RECOMMENDATION 9

**Strengthen and centralize Multi State Sponsoring Organization rules.** Home Grown approves of USDA's proposal to establish the responsibility of multi state sponsoring organizations (MSSO) with the "cognizant agency" where the MSSO headquarters are located. Strengthening and centralizing the MSSO rules will help to facilitate efforts to solicit sponsors to expand to serve home-based child care providers in soon-to-be-unserved states. For example, for the out-of-state sponsoring organizations being solicited to move into Wyoming or Rhode Island to fill the gap being left by the loss of the last remaining in-state sponsors, these issues are central to their assessment of the viability and risk of the expansion into another state.



Cognizant states should be given preemptory authority to review and approve a MSSO's comprehensive budget to demonstrate viability, capability, and accountability, as well as ensure compliance with procurement procedures. MSSOs should no longer have to demonstrate compliance in these areas to each state individually. In addition, USDA should create clear and specific audit tools for CACFP, similar to those developed for the National School Lunch Program, Administrative Review Guidance and Tools, ([USDA, 2020](#)). These resources should include onsite and offsite assessment forms that will help ensure states evaluate multi-state sponsoring organizations using a unified set of standards.

## **RECOMMENDATION 10**

**Ensure effective and consistent implementation through clear guidance, training, and evaluation of enforcement at all levels of CACFP operations.** Home Grown recommends providing training for regional, state agency, and sponsoring organization staff and monitors in important areas, including the technical assistance requirements, correctly determining when compliance errors meet the stringent standards for the serious deficiency process – offering confidence and clarity on severe and systematic error, and fair implementation of the process. After the initial roll out, ongoing and “on demand” training should be available for new staff. Providers cited monitor turnover as a big problem because new monitors do not understand CACFP's complex rules. In addition, USDA and state agencies should develop materials and training to fully inform program operators of their rights and responsibilities.

Home Grown commends USDA's efforts to expand program materials to more languages and inform people about translation services. To support the many home-based child care providers who learn and understand best in a language other than English, the final rule should ensure that materials, supports, *and* engagement opportunities for providers are available in the appropriate languages.

Finally, Home Grown recommends system processes and policies are continually evaluated, improved and refined based on stakeholder feedback in predictable, transparent review cycles that are accessible to providers.

## **Conclusion**

Home Grown appreciates USDA's commitment to equitable access to CACFP. Participating sponsors, early childhood programs and families are barely surviving because of inequitable workforce wages, staff shortages, inflation, vendor loss, gas prices, and a myriad of other hardships. We can strengthen program integrity without exacerbating these stressors on a sector that is already strained to the breaking point.





Accountability policies should allow state agencies, CACFP sponsors, and providers to have confidence in implementing the program. We share USDA's commitment to improving the serious deficiency process as a crucial step to ensuring children can access healthy meals and snacks in child care from providers and CACFP sponsors who they trust and rely on.

Home Grown looks forward to working collectively with USDA, providers and partners to ensure integrity and equitable access to a well-run CACFP program. If you have questions, please contact Geri Henchy, Home Grown consultant, at (202)390-2513, gerihenchy@gmail.com.

Sincerely,

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