

Appendix J
Supporting Statement A – Appendix

Further information on A.2.

What information will be collected?

State/Local/Tribal Government Level

Reporting: State and Local governments will be required to collect information as an institution moves through the serious deficiency process. State or Local agencies will be required to identify serious management problems and define a set of standards to help measure the severity of a problem to determine what rises to the level of a serious management problem and how it affects the institution or facility's ability to meet Program requirements. If a State or Local agency identifies a serious management problem in a Program's operation, they are required to report that information on a notice that is given to the institution and the appropriate FNS Regional Office (FNSRO). As part of the notice, the State or Local agency must include information on the identified serious management problems; specific regulatory citations, instructions, or policies that justify the serious management problem determination; the names of all responsible principals and responsible individuals; actions needed to correct the serious management problems; and set a deadline for completing the corrective action. Similar notices must be submitted to the institution and the appropriate FNSRO when the State or Local agency assesses that a corrective action was successful or unsuccessful, the institution made a successful appeal, or when the State or Local agency moves to terminate the institution and declare them seriously deficient.

As part of the serious deficiency process, State agencies are required to report information to a State agency list. The State agency list is required to collect the same information that is reported

on the notices of the serious deficiency process, in addition to collecting the names and mailing addresses of each institution, day care home, or unaffiliated center that is determined to have a serious management problem. This State agency list would be updated as institutions move through the serious deficiency process and must be provided to FNS upon request.

The proposed rule requires additional provisions regarding the administration of Multi-State Sponsoring Organizations (MSSOs) in the CACFP. State agencies will be required to enter into a permanent written agreement with a MSSO, approve the MSSO's administrative budget, conduct monitoring of MSSO operations, and conduct audit resolution activities within their State. State agencies will also be required to notify other State agencies of termination and disqualification actions that have an agreement with the same MSSO.

State agencies that have an MSSO's center of operations located within their jurisdiction must assume the role of Cognizant State agency and conduct additional reviews of the MSSO's headquarters and financial records center. Cognizant State agencies are also required to establish audit thresholds and requirements for for-profit MSSOs. If a State agency conducts a review of an MSSO's operations, they are required to provide a summary of the review to the Cognizant State agency.

The proposed rule will also require the collection of additional information as required by the Computer Matching Act (CMA). To comply with regulations, State agencies will be required to enter into written agreements with FNS to participate in a matching program involving an FNS Federal system of records. Some flexibility is provided to State agencies to fulfill CMA requirements. As such, State agencies may submit a request to FNS to waive the two-step independent verification and notice requirement of the CMA.

Recordkeeping: State agencies are required to maintain records associated with the serious deficiency process. All State agencies must collect and maintain records on CACFP agreements between FNS and the State agency, CACFP agreements between the State agency and the CACFP institutions, records received from applicant and participating institutions, documentation of administrative reviews, and Program assistance activities, results, and corrective actions.

The proposed rule will also require State agencies to collect and maintain on file corrective action plans submitted by institutions, unaffiliated centers, or day care homes. State agencies are also required to maintain records of what corrective actions have been taken to correct each serious management problems.

State agencies are also required to maintain information on disqualified institutions and individuals on FNS Form-843 and Form-844 (Appendices D & E). Both forms collect information, such as name, address, contact information, and the reason for the disqualification of all individuals and institutions that have been disqualified from CACFP participation. These records are used to populate the National Disqualification List (NDL) to ensure that institutions and individuals who have been disqualified from participation in one State cannot participate in another State. For the proposed rule, new reporting burden will be included in the revision to the currently approved NDL collection; however, records maintained for the NDL will be included in this revision to the currently approved collection for the CACFP. Reporting burden associated with the NDL is found in the currently approved collection OMB Control Number, 0584-0584, *Child and Adult Care Food Program (CACFP) National Disqualified List*.

Public Disclosure: As part of the proposed MSSO provisions, a Cognizant State agency will be required to conduct a full review of an MSSO's headquarters and financial records center. The Cognizant State agency is required to coordinate the timing of those reviews with other State

agencies. Cognizant State agencies are also required to make copies of the monitoring reports and findings available to all other State agencies that have agreements with the MSSO.

Business Level

Reporting: Institutions will be required to collect information as a facility moves through the serious deficiency process. Institutions will be required to identify serious management problems and define a set of standards to help measure the severity of a problem to determine what rises to the level of a serious management problem and how it affects the institution or facility's ability to meet Program requirements. If an institution identifies a serious management problem in a Program's operation, they are required to report that information on a notice that is given to the facility. As part of the notice, the institution must include information on the identified serious management problems; specific regulatory citations, instructions, or policies that justify the serious management problem determination; the names of all responsible principals and responsible individuals; actions needed to correct the serious management problems; and set a deadline for completing the corrective action. Similar notices must be submitted to the facility when the institution assesses that a corrective action was successful or unsuccessful, the facility made a successful appeal, or when the institution moves to terminate the facility and declare them seriously deficient.

The proposed rule will require unaffiliated sponsors and independent centers, which include child care centers, after-school care centers, and outside-school-hours care centers, to enter into a permanent written agreement with a sponsoring organization. The agreement with the sponsoring organization must specify the rights and responsibilities of both parties.

In addition to the permanent written agreement, institutions that operate in more than one state must provide the required information for the affiliated, unaffiliated centers, and day care homes to the State agency, including the required contact information.

Is the information collected via a report, public disclosure, or is it a record that must be maintained?

Information is collected via reports, maintained records, and public disclosures. State agencies, local government agencies, institutions, and facilities must collect information via a report. State agencies will also be required to collect information through maintained records and through public disclosures.

Is the collection voluntary, mandatory, or necessary to obtain benefits?

All of the information, related to MSSOs and the serious deficiency process, is a mandatory collection. The serious deficiency process is a means to protect program integrity. Information is gathered from institutions or facilities that have been identified as having serious management problems. Steps are then taken to resolve those serious management problems. If the institution or facility is unable to correct them, then they are terminated and disqualified from the Program and declared seriously deficient. The proposed rule does not make this optional. If an institution or facility voluntarily ends its participation in the Program after being notified that serious management problems have been identified, they will still be terminated and disqualified from the Program and declared seriously deficient. Whether or not they decide to provide the necessary information, their continued eligibility and participation in the Program relies on the institution or facility to provide the mandatory information.

A majority of information, related to the CMA provisions, are mandatory collections, barring one provision that is voluntary. If a State agency believes it cannot immediately comply with the CMA requirements, it may submit a waiver request to FNS to waive the independent two-step verification and notification requirement. If approved, then the State agency can waive the independent two-step verification and notification requirement for the duration of the waiver.

From whom will the information be collected? If there are different respondent categories, each should be identified along with the type of collection activity that applies.

The information will be collected from (1) 3,313 State and local government agencies (including all 56 SAs that administer the CACFP in the 50 States,¹ District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands; and 3,257 local government agencies that serve as sponsoring organizations that administer the Program); and (2) 75,671 businesses (including 41,136 institutions and 28,535 facilities) that serve as sponsoring organizations, child and adult care center facilities, and family day care homes that administer or offer free and reduced-priced meals under the Program.

How will this information be used?

This collection is a revision to OMB Control Number 0584-0055, *Child and Adult Care Food Program (CACFP)*, to make changes to the serious deficiency process in the CACFP. The proposed rule consolidates old and new requirements under a new subchapter for consistency and efficiency. The simplified serious deficiency process introduces a "path to full correction" which changes the point at which a serious deficiency termination is made. Information collected from corrective action plans and from more frequent and full reviews allows the State agency and institutions to make a decision regarding the termination, disqualification, and declaration of serious deficiency of an institution or facility.

The proposed rule also extends the serious deficiency process to unaffiliated centers and independent child care centers. These facilities were previously not covered under the serious deficiency process. Unaffiliated centers and independent child care centers would fall under the serious deficiency process and would provide the necessary information to ensure that any serious management problems are corrected.

¹ The child and adult components of CACFP are administered by two separate SAs in Florida and Illinois.

The proposed rule will also require additional information regarding MSSOs. The information collected from MSSOs and their administering State agencies is required to ensure proper monitoring of sponsoring organizations that operate facilities in more than one state and to coordinate review activities between different State agencies. This information helps ensure that MSSOs are operating in accordance to Program standards and reduce the duplication of work across multiple State agencies.

Proposed regulations seek to collect additional information regarding the CMA. The CMA applies when a Federal agency conducts a computer match of two or more personally identifiable information records for establishing or verifying eligibility under a Federal benefit program. CACFP uses the NDL to protect program integrity by preventing institutions or individuals terminated for cause from participating in the Program in other States. The NDL is a computer matching program that would fall under the CMA. As such, the information collected by the proposed rule is used to ensure that State agencies are complying with Federal statute in regard to the usage of the NDL.

The Program is administered at the SA level and operated at the institution level, and the Act requires that SAs and Program operators maintain accounts and records as may be necessary to enable FNS to determine whether the Program is in compliance with this Act and the regulations. FNS uses the information collected to ensure that Program funds are appropriately disbursed and expended according to legislative and regulatory requirements.

How will the information be collected? Does the respondent have multiple options for providing the information? If so, what are they?

Permanent written agreements between State agencies and institutions and agreements between institutions and facilities collect acknowledgement and consent from both signees and

stipulate the Program rights and responsibilities between the State agency and institution or the institution and facility.

Serious deficiency process notices relay information to the institution or facility with identified serious management problems and the appropriate FNSRO. State agencies are required to report information on institutions and institutions are required to report information on facilities as they move through the serious deficiency process. Notices are issued when a serious management problem is identified, when a corrective action plan is successfully or unsuccessfully implemented, and when a requested fair hearing vacates or upholds the administering agency's decision. The State agency list would be updated when new notices get issued as institutions and facilities move through other steps in the serious deficiency process. These records would be maintained on the State agency list for the duration of the Program.

Corrective Action Plans collect reported information from the institution or facility on actions taken to correct identified serious management problems. Once approved by the State agency or institution, the corrective action plan is kept as a record documenting the steps taken to resolve serious management problems and is referenced when making determinations further along the serious deficiency process.

At the end of the serious deficiency process, an institution or individual may be terminated, disqualified, and declared seriously deficient. If an institution or individual are disqualified from Program participation, their information must be reported on the FNS Form-843 and Form-844, which will be used to populate the NDL. The NDL maintains records for Form-843 and Form-844 submissions for other State agencies to reference the disqualification status of institutions and individuals terminated from Program participation.

Information related to MSSO reviews will primarily be reported through the review summaries produced by the State agencies. State agencies are required to describe the findings from a review of an MSSO in a summary document and transmit those findings to the appropriate Cognizant State agency.

CMA-related information is collected through written agreements with FNS. The State agency must enter into a written agreement that describes what is necessary to comply with the CMA for the State agency to participate in a computer matching program involving an FNS Federal system of records. If a State agency requires exemption from the two-step independent verification and notice requirement of the CMA, then they are required to submit a waiver to FNS for approval.

How frequently will the information be collected?

State/Local/Tribal Governments (State agencies)

Reporting: State agencies will be required to collect reporting information at different frequencies based on the type of information being collected. The frequencies of this collection range from 1 to 390 responses annually, and from 1 to 10,570 responses on occasion to meet Program requirements. The Burden Narrative details the specific frequency for the burden requirements (Appendix F).

Recordkeeping: State agencies will be required to maintain records at different frequencies based on the type of information being collected. The frequencies of this collection range from 3 records on occasion to 5 records annually to meet Program requirements. The Burden Narrative details the specific frequency for the burden requirements.

Public Disclosure: State agencies will be required to publicly disclose information based on the type of information collected. The frequency of this collection is 23 public disclosures annually

to meet Program requirements. The Burden Narrative details the specific frequency for the burden requirement.

State/Local/Tribal Governments (Local government agencies)

_____ *Reporting:* Local government agencies will be required to collect reporting information for different requirements. The frequency of this collection is 1 response annually and on occasion to meet Program requirements. The Burden Narrative details the specific frequency for the burden requirements.

Businesses (Institutions)

_____ *Reporting:* Institutions will be required to collect reporting information for different requirements. The frequency of this collection is 1 response annually and on occasion to meet Program requirements. The Burden Narrative details the specific frequency for the burden requirements.

Businesses (Facilities)

_____ *Reporting:* Facilities will be required to collect reporting information for different requirements. The frequency of this collection is 1 response annually to meet Program requirements. The Burden Narrative details the specific frequency for the burden requirements.

Will the information be shared with any other organization inside or outside USDA or the government?

FNS receives data collected on the FNS Form-843 and Form-844 from State agencies. Information from the forms is used to populate the NDL with information on institutions and individuals that have been disqualified from Program participation (Appendices D & E). State agencies use the NDL to prevent disqualified institutions and individuals from participating in their

State or under another organization operating in their State. Unless otherwise noted, no other data is shared outside of FNS.

Further information on A.8

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years even if the collection of information activity is the same as in prior years. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

When FNS finalizes an information collection package and it is submitted to the Office of Management and Budget for review, the package will be available through www.reginfo.gov for review and comment by stakeholders such as State agencies, community groups, and the public regarding any proposed changes as the result of legislative, regulatory, or administrative changes. FNS consults with FNS Regional offices (FNSRO) regarding any proposed changes as the result of legislative, regulatory, or administrative changes. FNSRO are in daily contact with State agencies, which provide feedback on FNS processes and procedures for this information collection. Feedback from the State agencies is then used by FNS to help shape the burden estimates for this collection.

In the proposed rule, *Child Nutrition Program Integrity* (81 FR 17563), published on March 29, 2016, FNS applied existing serious deficiency requirements to establish a serious deficiency process for service institutions and individuals and proposed amendments that would extend the serious deficiency process to unaffiliated centers in CACFP. FNS proposed expanding the serious deficiency process to unaffiliated child care centers and adult day care

centers, modify termination procedures, establish a serious deficiency process in the SFSP, and establish an NDL for the SFSP.

For the final rule, FNS received 532 comments, in which 11 were supportive, 47 were opposed, and 474 responses were mixed. Many respondents voiced their concern for using the current CACFP process as a model for establishing procedures in other Child Nutrition Programs. FNS received similar feedback regarding the establishment of a serious deficiency process in the SFSP, in which 104 comments were supportive, 8 were opposed, and 124 were mixed. The commenters requested additional definitions and clarification of terms used to describe the serious deficiency process while others suggested alternatives that would extend the timeframe for corrective action, adapt the amount of time for corrective action to specific types of serious deficiencies, and allow State agencies to approve long-term corrective action plans. FNS agreed with the respondents suggesting that modifications were needed to improve the serious deficiency process.

In response, FNS published the notice, *Request for Information: The Serious Deficiency Process in the Child and Adult Care Food Program*, in the Federal Register (84 FR 22431), on May 17, 2019, to gather additional information on the experiences of State agencies and program operators participating in the Program. FNS received 580 comments in response to the request for information. In response, FNS decided to delay the expansion of the serious deficiency process to publish a separate rulemaking to propose improvements to the serious deficiency process and provide an opportunity for the public to comment on the changes.

Regarding reciprocal disqualification, FNS received 127 comments. Seven comments were supportive of the proposed changes, stating that they would promote integrity across all Child Nutrition Programs. The 105 comments that were opposed to the proposed changes were

concerned about the impact of the provision could have on CACFP participation, with many SFAs commenting that they would be reluctant to sponsor the CACFP if they put their NSLP participation at risk. These comments suggested limiting the reciprocal disqualification provision to only entities terminated for cause and placed on the NDL. FNS decided to pursue a separate rulemaking process to propose improvements to the serious deficiency process that would also address the legal requirements for records maintained on individuals on the NDL. New requirements regarding reciprocal disqualification and the NDL have been incorporated in the proposed rule.

The final rule, *Child Nutrition Program Integrity*, (88 FR 57792) published on August 23, 2023, codified some amendments related to the serious deficiency process in CACFP, but other issues, brought to attention by public commentators, lead to the development of the new proposed rule. This proposed rule has taken the feedback from the previous rulemakings to inform the proposed serious deficiency process for CACFP.