

Attachment I
Supporting Statement A – Appendix

Further information on A.2.

What information will be collected?

State/Local/Tribal Government Level

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

As a part of the serious deficiency process, State agencies are required to report the same information that is reported in the serious deficiency notices to the State agency list, in addition to collecting the names and mailing addresses of each sponsor 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.

Local government agencies can operate as a sponsor in the SFSP. If a State agency has notified a local government agency that they have identified a serious management problem at one of their site's operations, the local government agency must describe and document all actions taken to correct the serious management problems in a corrective action plan. The corrective action plan would be submitted to the State agency to assess whether corrective actions have been taken and are successful, leading the Local government agency to the path of full correction.

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

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 information on disqualified institutions and individuals on FNS Form-843 and Form-844 (Attachments C & D), which collect name, address, contact information, and the reason for the disqualification of all individuals and institutions that have been disqualified from SFSP 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 SFSP. While the recordkeeping burden related to FNS Forms 843 and 844 is included in this collection, the reporting burden associated with these forms is approved in the burden for OMB Control Number 0584-0584 *Child and Adult Care Food Program (CACFP) National Disqualified List (expiration date 9/30/2026)*.

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

Business Level

Reporting: Sponsors that are approved to operate the Program in more than one State must provide additional information to the State agency as part of the new proposed requirements. MSSOs are required to provide the number of affiliated and unaffiliated sites it operates, by State; the names, addresses, and phone numbers of the organization's headquarters and the officials who

have administrative responsibility; and the names, addresses, and phone numbers of the financial records center and the officials who have financial responsibility.

Sponsors identified with a serious management problem at one of their site's operations must describe and document all actions taken to correct the serious management problems in a corrective action plan. The corrective action plan would be submitted to the State agency to assess whether corrective actions have been taken and are successful, leading the sponsor to the path of full correction.

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 and non-profit institutions and camps 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, 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, the institution's or facility's continued eligibility and participation in the Program is dependent upon them providing 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, 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) 986 State and Local government agencies (including all 53 SAs that administer the SFSP; and 933 Local government agencies that serve as sponsors and operate the Program); and (2) 477 businesses that serve as sponsors and operate the Program.

How will this information be used?

The proposed serious deficiency process introduces a "path to full correction" that corresponds to the proposed serious deficiency process in the CACFP. As a part of the "path to full correction", information collected from corrective action plans and from more frequent and full reviews allows the State agency to make a decision regarding the termination, disqualification, and declaration of serious deficiency of a sponsor.

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 sponsors that operate sites 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 reduces 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. The proposed rule introduces the NDL, which is a computer matching program that falls under the CMA, to the SFSP. The NDL protects program integrity by preventing institutions or individuals terminated for cause from participating in the Program in other States. The new information collected by the proposed rule ensures that State agencies use the NDL in compliance with Federal statute.

The Program is administered at the SA level and operated at the sponsor level. 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?

Serious deficiency process notices relay information to the institution or facility with identified serious management problems and to the appropriate FNSRO. State agencies are required to report information as sponsors 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 are

issued as sponsors 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 sponsor on actions taken to correct identified serious management problems and are used to assess whether the sponsor is on the "path to full correction".

At the end of the serious deficiency process, a sponsor or individual may be terminated, disqualified, and declared seriously deficient. If a sponsor 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 from Form-843 and Form-844 submissions for other State agencies to reference the disqualification status of sponsors 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. Likewise, the Cognizant State agency must also make copies of monitoring reports and findings available and publicly disclose to all State agencies that have an agreement with the MSSO.

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, 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 3 responses annually, and 1 to 5 responses on occasion, to meet Program requirements. The Burden Narrative details the specific frequency for the burden requirements (Attachment E).

Recordkeeping: State agencies will be required to maintain records related to the State agency list. The frequency of this collection is 145 records annually to meet Program requirements.

Public Disclosure: State agencies will be required to publicly disclose information from the reviews of the MSSO headquarters and financial records center. The frequency of this collection is 3 public disclosures annually to meet Program requirements.

State/Local/Tribal Governments (Local government agencies)

Reporting: Local government agencies will be required to report actions taken to correct serious management problems in a corrective action plan. The frequency of this collection is 1 response on occasion to meet Program requirements.

Businesses (Non-profit Institutions and Camps)

Reporting: Businesses 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.

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

FNS receives data collected via the FNS Form-843 and Form-844 from State agencies. This data is used to populate the NDL with information on sponsors and individuals that have been

disqualified from Program participation (Attachments C & D). State agencies use the NDL to prevent disqualified sponsors 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, modifying termination procedures, establishing a serious deficiency process in the SFSP, and establishing 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 that 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 this 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. The final rule also did not extend the serious deficiency process to the SFSP. This proposed rule has taken the feedback from the previous rulemakings to inform the proposed serious deficiency process for SFSP.