



United States Department of Agriculture

Food and
Nutrition
Service

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SUBJECT: Supplemental Nutrition Assistance Program – Section 4006 of the
Agricultural Act of 2014 – Questions and Answers

TO: All Regional Directors
Supplemental Nutrition Assistance Program

The attached questions and answers are intended to address State agency concerns regarding the Food and Nutrition Service's (FNS) March 5, 2014, Implementing Memorandum for Section 4006, "Standard Utility Allowances Based on the Receipt of Energy Assistance," of The Agricultural Act of 2014 (P.L. 113-79). These questions and answers serve as formal guidance for use by FNS Regional Offices and State agencies as they implement the provisions of Section 4006.

If further questions arise related to the implementation of these provisions, please contact Mary Rose Conroy at MaryRose.Conroy@fns.usda.gov.

A handwritten signature in blue ink that reads "Lizbeth Silberman".

Lizbeth Silberman
Director
Program Development Division

Attachment

Part I. Certification Policy LIHEAP Implementation Questions Answers

1. What is the timeframe for implementation?

State agencies are required to apply Section 4006 of the Agricultural Act of 2014 (“the Act”) immediately to *new* SNAP households whose initial certification periods begin on or after March 10, 2014.

However, State agencies have some flexibility on when they apply the provision to *ongoing* SNAP households scheduled for recertification on or after March 10, 2014. For these households, State agencies have the option to begin applying the provision on the date of recertification, or at any point within a five month window following the date of recertification. The State options for these ongoing households are discussed in more detail below.

- *Implement at Recertification:* The State agency applies the provision to all households at their recertification date.
- *Use Full Implementation Delay:* The State agency applies the provision to all households five months from each household’s recertification date. For example, a household recertifying in June, 2014 would have the provision applied in November, 2014 and a household recertifying in October, 2014 would have it applied in March, 2015.
- *Use Partial Implementation Delay:* States choosing to delay for only part of the five-month window could do so in one of two ways. First, the State agency could delay implementation of the provision for all ongoing households for a **certain number of months** (1, 2, 3, or 4 months) from their respective recertification dates. For example, if the State agency opted for a three-month delay, a household recertifying in June 2014 would have the provision applied in September 2014 and a household recertifying in October 2014 would have it applied in January 2015.

Alternatively, a State agency could choose to implement the provision at a **date certain** within the five-month window for all ongoing households that had been recertified since the effective date (i.e., apply the provision to households recertifying in April, May, June, and July, on July 1, 2014). The provision would apply to remaining households at their recertification thereafter.

If the State chooses to use the option to delay implementation for ongoing SNAP households, FNS expects that the State will collect utility information at the household’s next recertification on or after May 5, 2014. For example, should the household no longer be eligible for the heating or cooling standard utility allowance (HCSUA) based on the LIHEAP link, the State may need information on whether or not the household pays out-of-pocket heating or cooling costs. This information

should be collected at that recertification period, even though the provision will not be implemented until a later date.

Consistent with the 60-day time period normally provided to States for initiating and completing system changes, FNS will begin holding States accountable for implementing the changes associated with the provision 60 days from the issuance of FNS' March 5, 2014 LIHEAP Implementation Memorandum (May 5, 2014).

2. Does the Secretary have discretion in increasing the amount of the LIHEAP payment that is required to be received in order to confer eligibility for the heating or cooling SUA?

No, the language of the Act does not provide the Secretary with this authority.

3. How will this provision affect States that were not issuing nominal LIHEAP payments?

This provision applies to all States. All States, including those that had nominal LIHEAP policies and those that did not, must only use LIHEAP payments or other similar energy assistance payments **that have been received** in the current month or previous 12 months in order for a household to qualify for the HCSUA based on a LIHEAP payment. Applying the HCSUA to a household's case based on anticipated receipt of LIHEAP is no longer permissible. Coming into compliance will likely involve updating State manuals, retraining of staff, and making changes to State eligibility systems so that both the receipt of the greater than \$20 payment and the payment date can be documented in the case file.

4. If a household has not received a LIHEAP payment in the current month or preceding 12 months, but has applied for or intends to apply for LIHEAP, can the State agency reasonably anticipate receipt of the LIHEAP payment?

No, the language of the Act does not allow for anticipating receipt of LIHEAP. The household must have received a payment (or had a payment made on its behalf) greater than \$20 in the previous 12 months or the current month in order to qualify for the HCSUA based on LIHEAP participation. If a LIHEAP payment greater than \$20 (or payment which would bring the household's total LIHEAP payments for the year to a total greater than \$20) is scheduled for the current month, the payment may be considered to have been received for the purposes of conferring eligibility for the HCSUA. However, if the payment is not actually made within that month, benefits received by the household would be considered an overissuance and a claim would need to be established against the household for any benefits issued in error.

5. Who has responsibility for determining whether the household received a LIHEAP payment or similar energy assistance payment greater than \$20 annually? How should receipt be verified?

Responsibility for determining receipt of a greater than \$20 LIHEAP payment or similar energy assistance payment rests with the State agency. States should modify their data sharing agreements with their respective LIHEAP agencies as appropriate to ensure transmission of timely and accurate information needed for SNAP eligibility and benefit determination. Receipt of more than \$20 in LIHEAP or similar energy assistance payment does not require verification for SNAP purposes, unless questionable. In States with mandatory SUAs, utility costs do not require verification for SNAP purposes, unless questionable. In States that do not mandate use of the SUA, verification is mandatory if the household wishes to claim utility costs in excess of the State agency's utility standard and the expense would actually result in a deduction. State agencies should consider program access, integrity, and the potential for Quality Control errors in determining their verification procedures.

6. What if a household is not entitled to a heating or cooling SUA at certification but later receives a LIHEAP payment or similar energy assistance payment greater than \$20 during its certification period?

If, at the time of certification, a household does not have out-of-pocket heating or cooling expenses and has not received a greater than \$20 LIHEAP payment or similar energy assistance payment in the current month or previous 12 months, the household is not entitled to the HCSUA. If the household subsequently receives a LIHEAP payment greater than \$20 or such a LIHEAP payment is made on its behalf during the certification period, the household will become eligible for the HCSUA during the certification period or at its next recertification, depending on the household's circumstances.

For households that were not receiving the HCSUA but still qualified for the excess shelter deduction, the State agency may recalculate the deduction and make any changes in benefits at the time the LIHEAP or similar energy assistance payment is received. Alternatively, in accordance with 7 CFR 273.12(c)(4), the State agency may at its option disregard the change and continue to provide the household the deduction amount that was established at certification until the household's next recertification or after the sixth month for households certified for 12 months. For households that were not receiving the HCSUA and did not qualify for the shelter deduction, the State agency must apply the HCSUA to the household's case and make any necessary benefit adjustments in accordance with SNAP regulations at 7 CFR 273.12(c)(1). State agencies should follow procedures outlined in Question #5 for determining receipt of a LIHEAP or similar energy assistance payment during the certification period.

7. When does the State need to determine if the household has actual utility expenses?

FNS expects that States will collect utility information at the household's next recertification on or after May 5, 2014. This information collected at recertification can be used at the time the State agency elects to implement the provision for the household, whether implemented at recertification or delayed.

8. Can households that previously qualified for the heating or cooling SUA due to receipt of nominal LIHEAP still qualify for the HCSUA or for other standard utility allowances if they have utility expenses?

Yes, SNAP households that are billed out-of-pocket for utility costs are entitled to a SUA as appropriate for the types of utility expenses they have. (In States that do not have mandatory SUA policies, the household is entitled to use its actual costs, rather than the standard.) First, the State must determine if a household previously entitled to the HCSUA due to LIHEAP pays out-of-pocket for utilities. Households with expenses that include heating or cooling are entitled to the HCSUA. Households with expenses that do not include heating or cooling may be entitled to other standard utility allowances – including the limited utility allowance and single utility allowances (depending on the type of utility they are billed for) -- or to the use of actual expenses, depending on the State's standard utility policy. FNS encourages all State agencies to review their available utility allowances to ensure that all households with actual expenses are able to claim an allowance that best represents that types of utility expenses they have.

Part II. Quality Control (QC) LIHEAP Implementation Questions & Answers

1. The March 5, 2014 LIHEAP Implementation Memorandum ("LIHEAP Implementation Memo") states that in accordance with 7 CFR 275.12(d)(2)(vii), States will be held harmless for 120 days from March 10, 2014 for QC variances occurring as a result of the implementation of this provision. The variance exclusion will end on July 8, 2014. Does this mean that States will be held harmless for variances occurring as a result of the implementation of this provision in all QC sample months through and including July 2014?

Variances occurring as a result of an action taken on a case directly related to the implementation of this provision, consistent with the Act and the LIHEAP Implementation Memo, in the period from March 10, 2014 through July 7, 2014 (120 day period) will be excluded by Quality Control until such time as the case is required to be recertified or acted upon for some other reason. The variance exclusion period will expire on July 8, 2014 and, as of that date, will no longer be available to States.

2. How does the QC variance exclusion period apply to new certifications that occur on or after the March 10, 2014 effective date?

The QC variance exclusion period will apply to variances that result from new certification actions that occur in the period from March 10, 2014 through July 7, 2014 and that are directly related to the implementation of this provision, implemented in accordance with the Act and the LIHEAP Implementation Memo. For all new certification cases, the QC variance exclusion period expires on July 8, 2014; therefore, any action taken on or after July 8, 2014, which results in a variance, would not be excluded.

3. How does the QC variance exclusion period apply to recertifications that occur on or after the March 10, 2014 effective date?

The QC variance exclusion period will apply to variances that result from recertification actions that occur in the period from March 10, 2014 through July 7, 2014 and that are directly related to the implementation of this provision, implemented in accordance with the Act and the LIHEAP Implementation Memo. For all recertification cases, the QC variance exclusion period expires on July 8, 2014; therefore, any action taken on or after July 8, 2014, which results in a variance, would not be excluded.

For States that choose to delay implementation of this provision for ongoing SNAP households in accordance with the Act and the LIHEAP Implementation Memo, Quality Control will review the case without taking into account this provision until such time as the sample month falls outside of the implementation date for that particular case. For example, for an ongoing SNAP household that is recertified on June 1, 2014 for a 6-month recertification period:

- If the State has chosen to implement this provision upon recertification, Quality Control will take into account this provision on June 1, 2014 and variances that are directly related to the implementation of this provision and that occur on or before July 7, 2014 will be excluded.
- If the State has chosen to apply this provision five months from each household's recertification date, Quality Control will not take into account this provision until November 1, 2014. Because there will be no variances that are directly related to the implementation of this provision and that occur on or before July 7, 2104, this case would not be subject to the 120-day QC variance exclusion period.
- If the State has chosen to apply the provision one month from each household's recertification date, Quality Control will take into account this provision on July 1, 2014 and variances that are directly related to the implementation of this provision that occur in the period from July 1, 2014 through July 7, 2014 will be excluded.