



Questions and Answers Regarding the Food Stamp Program (FSP) Certification Provisions of the 2002 Farm Bill - Food Security and Rural Investment Act of 2002 (P.L. 107-171)

General

Question 1: Will there be a hold harmless period for quality control (QC)?

Answer: For the mandatory provisions, the State will be held harmless for 120 days from the mandated implementation date. For the optional provisions, the State will be held harmless for 120 days from the date the provision was initially implemented.

Section 4101 - Encouragement of Payment of Child Support (effective October 1, 2002)

Question 4101-1: To be excluded, do child support payments have to be court-ordered?

Answer: Yes.

Question 4101-2: To be excluded, does the household actually have to pay the child support?

Answer: If determining eligibility prospectively, the household must reasonably anticipate paying child support.

Question 4101-3: Under this option, do States treat child support arrearages as excluded income?

Answer: Yes, for court-ordered payment of arrearages.

Question 4101-4: Do the same provisions that currently apply to income deductions apply to income exclusions, such as deducting/excluding child support payments made to a person outside the household for a child inside the household?

Answer: Yes, the same provisions that currently apply to income deductions apply to income exclusions, including situations in which court-ordered child support payments are made to a parent outside the household for a child that has returned to the household.

Question 4101-5: If the person paying child support is a disqualified/ineligible household member, is the entire amount of the child support payment excluded from the ineligible member's income before his/her income is prorated to the remaining eligible members?

Answer: Yes. When a State chooses this option, it decides that it will not count a household's child support payment as income.

Question 4101-6: If the State opts to treat child support payments as an income exclusion, how does this affect the 20 percent earned income deduction?

Answer: We will address this issue in a proposed rule. The State has discretion until a final rule is issued. In this situation, there are a number of possible methods for calculating the 20 percent earned income deduction. One method is for States to calculate the deduction based on a household's total earned income, without subtracting the child support exclusion from its earned income. This method produces an earned income deduction that reflects a household's actual costs of earning income and is likely to be less error prone than other methods. Other methods are possible.

Question 4101-8: What general guidance can the Food and Nutrition Service (FNS) provide to States in developing a simplified method?

Answer: We recommend that States use prior payment history as an indicator of future payments by averaging a series of past monthly payments to determine the anticipated amount of future payments. The State has the discretion to set the length of history to be used in this method. In situations in which payments either have just begun or there is no reliable history of payments, we recommend that the eligibility worker (EW) be provided with the discretion to determine the anticipated amount of the payments.

Question 4101-9: As part of its simplified method for determining child support deductions/exclusions, is the State required to ask the household about anticipated changes?

Answer: No. The State has the discretion in this matter.

Question 4101-10: After the State determines a household's child support payment using its simplified method, is the household required to report a change?

Answer: It depends on the household's reporting requirement. Under 7 CFR 273.12(a)(4), a household is only required to report a change in the child support obligation. Under simplified reporting, there is no reporting requirement for child support if the State continues to treat child support payments as an income deduction. However, if the State opts to treat child support payments as an income exclusion, there are a number of possible approaches to establishing household reporting requirements. Generally, households are required to report all income, and the EW determines whether reported changes affect a household's eligibility or benefit level. In States that use both a simplified method and simplified reporting, this general approach may result in a monthly reporting requirement for households whose eligibility depends on the allowance of a child support income exclusion. One alternative approach is for the EW to: (1) provide each household with an individualized reporting threshold, which would be the sum of the monthly gross income limit for the household and its child support exclusion amount ; and (2) direct the household to report when its income exceeds this limit. Other alternatives are possible.

Question 4101-11: After the State determines a household's child support payment, is the State required to act on a change reported by the household?

Answer: Yes, with the following two exceptions: 1) the State has opted not to act on changes in this deduction; and 2) the deduction decreases, the household has simplified reporting, and the State is prohibited from reducing the household's allotment.

Section 4102 - Simplified Definition of Income (effective October 1, 2002)

Question 4102-1: What types of income are excluded under Temporary Assistance for Needy Families (TANF) and Section 1931 of the Social Security Act (i.e., Medicaid) programs?

Answer: This varies by State. Each State should be able to identify the specific TANF and medical assistance (MA) programs in its State that provide income exclusions that may also be used for FSP purposes under this provision.

Question 4102-2: Under this provision, may States exclude adoption assistance income from the definition of income?

Answer: If the income is provided under Title IV of the Social Security Act, it must be counted. Otherwise, it may be excluded.

Question 4102-3: Although this option clearly does not apply to court-ordered child support payments, what about voluntary or direct support payments?

Answer: We will address the issue of non-court ordered support in a proposed rule. The State has discretion until a final rule is issued.

Question 4102-4: Does FNS intend to propose in regulations that "contributions" be designated as a type of income that is essential to fair determinations of FSP eligibility and benefit amounts?

Answer: We will address this issue in a proposed rule. The State has discretion until a final rule is issued.

Question 4102-5: Why has FNS requested that States provide their FNS regional offices with lists of the specific types of income that will be excluded under this provision?

Answer: We need to know this information to avoid misunderstandings in Federal QC reviews, as well as to assist us in the formulation of a proposed rule.

Section 4103 - Standard Deduction (effective October 1, 2002)

Question 4103-1: What if a State cannot implement the provision by October 1, 2002?

Answer: If a State fails to implement the provision on October 1, 2002, and a household was entitled to a higher standard deduction than it received, the State must issue restored benefits to the household.

Question 4103-2: How are ineligible and disqualified members treated when determining the proper standard deduction amount for the household's size?

Answer: We will address this issue in a proposed rule. The State has discretion until a final rule is issued. However, we believe that the intent of the law is to base household size for the purpose of determining the standard deduction as equal to the number of eligible household members.

Question 4103-3: For larger households, is there a negative adjustment to the allotment if the household size decreases during the certification period?

Answer: As discussed under Section 4106, States are required to act on changes in household size during the certification period. When a State acts on such changes, larger households could see a reduction in their monthly benefits as a result of a drop in the size of their standard deduction.

Section 4104 - Simplified Utility Allowance (effective October 1, 2002)

Question 4104-1: Are States required to have a mandatory standard utility allowance (SUA) in order for this provision to be applied?

Answer: Yes.

Question 4104-2: For States that already have mandatory SUAs, is this provision optional?

Answer: Yes.

Question 4104-3: Does this provision mean that when two or more households share a residence each household may receive the full SUA, limited utility allowance (LUA), or telephone standard, for which it qualifies?

Answer: Yes.

Question 4104-4: Is there no longer a requirement for prorating the SUA for households living in either shared living quarters or public housing?

Answer: Correct. The provision eliminates the current requirement to prorate the SUA when households share living costs.

Question 4104-5: Does this provision affect residents in public housing? For example, would a household that incurs an energy surcharge for having a separate freezer be eligible for the SUA?

Answer: The provision allows States to use the heating/cooling SUA for households in public housing with shared meters who are only charged for excess utility costs. Nevertheless, to qualify for a heating/cooling SUA, the household still has to have a heating or cooling expense. There may be situations in which households in public housing do not have a heating/cooling expense.

Question 4104-6: Do all other existing rules regarding receipt of Low Income Home Energy Act (LIHEAA) assistance or the LUA, such as requiring two utility expenses to receive the SUA, remain the same?

Answer: Yes. We are not presently contemplating any policy changes in this area.

Section 4105 - Simplified Determination of Housing Costs (effective October 1, 2002)

Question 4105-1: What is the difference between what is currently allowed as a homeless shelter allowance and the new provision?

Answer: Under current regulations, the States could develop their own standard amount or use the standard provided by us. Under Section 4105, however, States must use \$143 a month. The new provision is essentially the same as current regulations. Current regulations at 7 CFR 273.9(d)(6)(i), implemented in the final rule on Noncitizen Eligibility, and Certification Provisions of Pub. L. 104-193, as amended by Public Laws 104-208, 105-33, and 105-185, published on November 21, 2000 at 65 FR 70133, already provide States the option of using a standard shelter deduction (i.e., a deduction from net income) for homeless households.

Question 4105-2: What verification will be required to prove that homeless households had shelter expenses during the month? Most notably, what does QC examine?

Answer: Current regulations at 7 CFR 273.2(f)(2)(iii) provide verification requirements for the homeless household shelter deduction. The regulations state that if a homeless household has difficulty in obtaining

traditional types of verification of shelter costs, the EW must use prudent judgment in accepting claims of shelter costs that appear to be reasonable. QC reviewers will attempt to verify the actual circumstances of the homeless household, and will cite a certification error if the household received the deduction but was ineligible for it. If the QC reviewer has difficulty obtaining verification of the actual circumstances of the household, the deduction is allowed if it appears likely from available information that the homeless household is eligible for it.

Question 4105-3: What qualifies as "extremely low" shelter costs?

Answer: Current regulations at 7 CFR 273.9(d)(6)(i), as well as Section 4105, permit the State to deny the homeless household shelter deduction to households with "extremely low shelter costs." We did not define "extremely low shelter costs" in the regulations and are unlikely to do so in the future. States, therefore, should use their own discretion in determining what constitutes "extremely low shelter costs."

Question 4105-4: May the State opt to use the standard shelter deduction of \$143 for most homeless households but use actual shelter costs for homeless households with high shelter costs?

Answer: Under current rules at 7 CFR 273.9(d)(6)(i), homeless households may choose to claim actual shelter costs and receive a deduction for excess shelter expenses under 7 CFR 273.9(d)(6)(ii) rather than claim the homeless household shelter deduction if actual shelter costs are higher and verified. Note that under current rules, it is the household's option whether to claim actual shelter costs rather than the standard, not the State's option.

Section 4106 - Simplified Determination of Deductions (effective October 1, 2002)

Question 4106-1: Do States have the flexibility to apply this provision to only certain deductions or certain types of households?

Answer: As specified in the law, States must act on reported changes of residence and earned income. Otherwise, until regulations are issued, States have the discretion to apply this provision to only certain deductions and certain types of households. It is unlikely that we will seek to limit this flexibility in proposed regulations.

Question 4106-2: Will the household's reporting requirements change in States that choose this option?

Answer: This provision does not address household reporting requirements. Until a final rule is issued, the reporting requirements under current regulations, as modified by section 4109 of the Farm Bill, remain in effect. However, we will consider waivers of the requirements of 7 CFR 273.12 as necessary to facilitate implementation of this option.

Question 4106-3: May a State act on changes in only one direction, e.g., only act on reported changes that increase the household's allotment but not on changes that would decrease it?

Answer: We will address this issue in a proposed rule. However, we will likely propose in regulations that if a State chooses to act on reported changes for a particular deduction, it must act on changes in both directions, i.e., it must act on changes that both increase and decrease benefits. Congress did not anticipate that this provision would affect program costs. However, it will affect costs if States are permitted to act on changes in only one direction.

Question 4106-4: May States ignore reported changes in household size that affect the standard deduction?

Answer: States must act on reported changes in household size. Although a State that chooses this option is not technically required to act on a corresponding change in the household's standard deduction, it is likely that the State's data system would automatically recalculate the standard deduction when it processes a reported change in the household's size.

Question 4106-5: Under this provision, States must act on reported changes in earned income. What deductions are affected by changes in earned income?

Answer: A reported change in earned income will affect the amount of a household's earned income deduction and may affect the computation of the shelter deduction. Additionally, a change in earnings could have an impact on a household's child support or dependent care deduction. The State agency could choose not to act if the household voluntarily reports changes in the amounts of these expenses.

Section 4107 - Simplified Determination of Resources (effective October 1, 2002)

Question 4107-1: Under this provision, what resources may States exclude under the simplified definition of resources?

Answer: States will exclude all resources currently excludable under the provisions of Section 5(g) of the Food Stamp Act of 1977, and may also exclude certain currently non-excludable resources they do not consider when determining eligibility for TANF cash assistance or medical assistance (MA) under Section 1931 of the Social Security Act. Under this option, States may not exclude cash, licensed vehicles, amounts in financial institutions that are readily available, or other resources, as determined by FNS through regulations, that are essential to fair determinations of food stamp eligibility and benefit amounts unless they are already excluded under Section 5(g). In the absence of such regulations, States should exercise their good judgment in identifying resources that should not be excluded.

Question 4107-2: What types of resources are excluded under TANF and Section 1931?

Answer: This varies by State. Each State should be able to identify the specific TANF and MA programs in its State that provide resource exclusions that also may be used for FOOD STAMP purposes under this provision.

Question 4107-3: States are not allowed to apply this provision to licensed vehicles. Is the provision in Public Law 106-387 that allows States to use a TANF program's vehicle rules for food stamp purposes still in effect?

Answer: Public Law 106-387 is still in effect.

Question 4107-4: If a TANF cash assistance program excludes all resources and the State withdraws this program, does the FSP withdraw the exclusion as well?

Answer: Yes. When a TANF cash assistance program is withdrawn, the State should review its remaining TANF cash assistance programs to determine which resource exclusions will be used for food stamp purposes.

Question 4107-5: If a TANF cash assistance program provides a resource exclusion for Individual Retirement Accounts (IRAs), may the State also exclude IRAs as resource for food stamp purposes?

Answer: We will address this issue in a proposed rule. The State has the discretion until a final rule is issued. However, if IRAs are excluded as a resource for FSP purposes, the State must show that these funds are not readily available to the household.

Question 4107-6: If a State has several MA programs with different types of resource exclusions, may the State choose which resource exclusions they wish to use for food stamp purposes?

Answer: States may only exclude resources not considered in determining eligibility for MA programs under Section 1931 of the Social Security Act. If a State operates more than one MA program under Section 1931, the State may choose which resources exclusions to use for food stamp purposes.

Question 4107-7: Why has FNS requested that States provide their FNS regional offices with lists of the specific types of resources that will be excluded under this provision?

Answer: We need to know this information to avoid misunderstandings in Federal QC reviews, as well as to assist us in the formulation of a proposed rule.

Section 4108 - Alternative Issuance Systems in Disasters (effective May 13, 2002)

Question 4108-1: Will a disaster plan with a cash-out component be approved?

Answer: Yes, as long as the cash option is used only as a last resort and we are satisfied that all other alternatives are fully depicted in the plan.

Question 4108-2: Will FNS have paper coupons available if a State needs them?

Answer: No. States cannot rely on FNS to provide coupons for use in a disaster. FNS will cease printing coupons in the near future. In addition, with full implementation of electronic benefits transfer (EBT) system, there will no longer be an infrastructure to support the use of coupons.

Question 4108-3: If EBT is down and there are no coupons, what alternative is there other than cash?

Answer: To date, EBT has proven to be effective in most disaster situations. We believe this provision provides for the use of cash in situations in which the use of EBT would be ineffective. However, as noted above, FNS considers the issuance of cash during a disaster to be a last resort.

Question 4108-4: Who will make the determination to use cash in lieu of EBT?

Answer: We will make that determination based on a State request and after consultation with the State.

Section 4109 - State Option to Reduce Reporting Requirements (effective October 1, 2002)

Question 4109-1: May States opt to implement this provision anytime on or after October 1, 2002?

Answer: Yes.

Question 4109-2: Current regulations provide this option to households with earned income. Does this new provision simply extend this option to households without earned income?

Answer: Yes.

Question 4109-3: May States continue to use this option only for households with earned income?

Answer: Yes. States may identify the types of households to be included in simplified reporting.

Question 4109-4: What types of households are excluded from this provision?

Answer: Households that have no earnings and in which all adult members are elderly or disabled, households in which all members are homeless, or households that include migrant and seasonal farmworkers are excluded.

Question 4109-5: A State may choose this option if it requires the household to report "less often than every three months." What does this mean?

Answer: The law provides States with more flexibility than provided under current program rules. Consequently, States now may choose to have a reporting period of four, five, or six months.

Question 4109-6: Under this option, is the household required to report when its income has risen above the gross income limit?

Answer: Yes.

Question 4109-7: If a categorically eligible household reports that its income has risen above the gross income limit, is the household required to continue to report its income every month?

Answer: The State has the discretion in this matter.

Question 4109-8: May States choose this option and also choose the option that pends action on reported changes in some deductions?

Answer: Yes. Until a final rule is issued, the reporting requirements under current regulations, as modified by section 4109 of the Farm Bill, remain in effect. If a State needs further guidance regarding how to implement these two options, it should contact its FNS regional office for assistance.

Question 4109-9: What guidance can FNS provide with respect to simplified reporting and able-bodied adults without dependents (ABAWDs)?

Answer: We recommend that States not put ABAWDs in simplified reporting for the following reasons: 1) If the ABAWD is subject to the three-month time limit, the State will have to remove the ABAWD before the next recertification or interim report; and 2) The household must report a change in ABAWD status.

Question 4109-10: What changes in ABAWD status is a household required to report?

Answer: The household must report a decrease in hours worked below 20 hours weekly. When a household member is designated as an ABAWD and its eligibility depends on working 20 hours, the household has to report if the ABAWD's hours drop below 20 hours weekly. In situations in which the last child in household either leaves the household or turns eighteen years of age, the household is not responsible for reporting changes in ABAWD status, because the household has not been advised of its ABAWD reporting requirements. However, this does not apply to situations in which ABAWDs are improperly informed about their reporting requirements.

Question 4109-11: If an ABAWD was working 20 hours weekly and became temporarily incapacitated and could not work, what would happen under simplified reporting?

Answer: Although regulations at 7 CFR 273.12(a)(1)(vii) do not address reporting of ABAWD status, regulations at 7 CFR 273.12(a)(1)(viii) require ABAWDs subject to the time limit in 7 CFR 273.24 to report

when their work hours fall below 20 hours weekly. Consequently, regardless of whether ABAWDs are in incident or simplified reporting, they still have a reporting requirement under this provision.

Question 4109-12: The "Questions and Answers on Noncitizen Eligibility and Certification Provisions Final Rule (November 21, 2000)" policy memorandum, which is available on the FNS website, contains questions and answers about simplified reporting. Are these questions and answers still valid?

Answer: The web address is: http://www.fns.usda.gov./Memo/00/NCEP_Q_As.htm

The previously issued questions and answers provide useful guidance with the following exceptions. Questions A-1, A-2, and A-3 on earned income are no longer relevant. Question E-3 on six-month reports should take into account that the State now may require an interim report any time after the third month up to a date around the end of the sixth month.

Section 4114 - Availability of Food Stamp Program Applications on the Internet (effective November 13, 2003)

Question 4114-1: When the State has multiple websites, does the food stamp application have to be available on all its websites?

Answer: The application must be available on at least one State website.

Question 4114-2: Does this provision require States to accept applications through the Internet?

Answer: No. This provision only requires that the State's application be available online so that external users can access it.

Question 4114-3: Does this requirement apply to a State that has an outside contractor maintain its website?

Answer: Yes.

Section 4115 - Transitional Food Stamps for Families Moving from Welfare (effective October 1, 2002)

Question 4115-1: How do current regulations at 7 CFR 273.12(f)(4), regarding the types of households ineligible for the Transitional Benefits Alternative (TBA), apply to Section 4115?

Answer: Section 4115 is less restrictive than current regulations. Consequently, except for households that are currently disqualified from TANF and/or the FSP, the State has the discretion to identify the types of households that are ineligible for TBA.

Question 4115-2: Is a household eligible for TBA if the TANF participation and food stamp certification periods end at the same time?

Answer: Yes. If a household's TANF participation and food stamp certification periods end at the same time, the State may extend the household's food stamp certification period and provide transitional benefits for up to 5 months.

Question 4115-3: If a household loses TANF because it no longer contains an eligible child and as a consequence a household member is designated as an ABAWD, may the State still opt to provide the household with TBA for a five-month period?

Answer: Yes. The law does not require an analysis of their ABAWD status.

Question 4115-4: If new or increased income causes the loss of TANF, is the income counted in determining the transitional benefit?

Answer: New or increased income that causes the loss of TANF would not be counted in calculating the transitional benefit, unless the State opts to act on information from another program in which the household participates. To calculate the transitional benefit, the State must use the prior month's food stamp budget. For example, a household reports new earnings in the middle of February. Because of the adverse action timeframes, the March TANF payment and food stamp benefit are not changed, but when the change is processed the family becomes ineligible for TANF. The transitional food stamp benefit would be based on the March food stamp budget minus the TANF payment but not including the new or increased income.

Question 4115-5: In addition to changes due to information from another program, may a State opt to act on other reported changes?

Answer: No. Section 4115 allows adjusting the transitional benefit due to the loss of TANF and to information from another program in which the household participates. In addition, the household may reapply and be certified for benefits.

Question 4115-6: If the State becomes aware of an error in the TANF benefit and/or the food stamp allotment, either at the time of calculating the transitional benefit or later, should the transitional benefit be adjusted to correct the error?

Answer: When TBA begins, the State must recalculate the household's budget less TANF to determine the household's transitional benefit. Both the State and the household are to be held harmless for inaccuracies in the transitional benefit that are due to prior errors in the food stamp benefit if the transitional benefit is correctly computed based on the benefit during the final month of TANF receipt, even if this benefit was not correct. However, the State and the household may be liable for errors in allotment amounts prior to the TBA period. If EWs make errors in the transitional benefit amount due to improperly subtracting the TANF payment amount or not accounting for information received from other assistance programs (State option), the State must make appropriate changes. In such instances the provisions of 7 CFR 273.17, 7 CFR 273.18, and 7 CFR 275 continue to apply. If the State determines that errors are due to improper reporting by the household in the past, the State has the discretion to terminate the household from TBA and redetermine its eligibility.

Question 4115-7: How should the State handle situations in which a household member moves out of a TBA household and either reapplies as a new household or is reported as a new member of another household?

Answer: The Food Stamp Act strictly prohibits duplicate participation. Consequently, the State must adjust both households' allotments in accordance with 7 CFR 273.12(c).

Section 4401 - Partial Restoration of Benefits to Legal Immigrants (various effective dates)

Question 4401-1: Do EWs still have to determine whether an immigrant is legal and qualified?

Answer: EWs must continue to determine if a noncitizen is eligible according to the criteria set forth at 7 CFR 273.4(a). However, as stipulated at 7 CFR 273.4(b)(2), when an individual indicates unwillingness or inability to document immigration status, EWs must cease further verification efforts. Such an individual is ineligible.

Question 4401-2: Does the provision on disabled immigrants apply to elderly immigrants?

Answer: No, unless they are also disabled.

Question 4401-3: Does the term "disabled" include temporarily disabled household members, such as those receiving worker's compensation?

Answer: To be considered disabled, the household member must be receiving disability benefits as outlined in the definition of "elderly or disabled member" in 7 CFR 271.2, which does not include worker's compensation.

Question 4401-4: Does it matter if an immigrant has been in and out of the United States during the five-year residency period?

Answer: No. The Conference Committee bill removed the term "continuously" from the language of the provision.

Question 4401-5: Under these provisions, will there be immigrants who gain eligibility and then lose it again?

Answer: Yes. For example, an immigrant child who has been here fewer than 5 years may become eligible as a child, then become ineligible at age 18, then eligible again after gaining 5 years of residency.

Question 4401-6: Are immigrant children eligible for benefits until the month after they turn 18 years old?

Answer: We will address this issue in a proposed rule. The State has discretion until a final rule is issued.

Question 4401-7: What about deeming?

Answer: The law only changes deeming requirements for children. On October 1, 2003, the deeming

requirements for immigrant children are eliminated. However, the indigent rules in 7 CFR 273.4(c)(3)(iv) will apply to many lawful permanent residents who become eligible under Section 4401, but who have neither naturalized, nor meet the requirement for 40 qualifying quarters of work.

Question 4401-8: How do the deeming requirements apply in situations in which both an adult and a child have the same sponsor?

Answer: We will address this issue in a proposed rule. The State has discretion until a final rule is issued. However, there already is a procedure for determining deeming amounts when a sponsor has multiple sponsored aliens (7 CFR 273.4(c)(2)(v)). The State may follow this procedure for determining how much to exclude when the deeming requirements for immigrant children are eliminated.

Question 4401-9: How should States handle situations in which immigrants apply for benefits before they are eligible? Do States have a responsibility to track these people?

Answer: For ineligible members of on-going households, we recommend that States have some means to identify these members and to certify them by the statutory dates. For ineligible households, we recommend that States provide applicants with general notices about when to return to apply. For ineligible households that apply in the month before they become eligible, we recommend that States deny benefits for the month of application and certify the household for subsequent months in accordance with current regulations and policies.

Information on this page is provided for historical reference and may not reflect recent policy or legislative changes. Please refer to <http://www.fns.usda.gov/snap/government/Policy.htm> for the latest information on SNAP policy and legislative changes.

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