



Food and
Nutrition
Service

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Center

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SUBJECT: Supplemental Nutrition Assistance Program – Clarification of Eligibility of Fleeing Felons Final Rule – Questions and Answers March 2016

TO: All Regional Directors
Supplemental Nutrition Assistance Program

Since the September 10, 2015 (80 FR 54410) publication of the final rule, Clarification of Eligibility of Fleeing Felons, the Food and Nutrition Service (FNS) received several questions regarding its implementation.

As you know, the Food and Nutrition Act of 2008, as amended, (the Act) prohibits individuals who are fleeing felons or violating a condition of probation or parole from receiving Supplemental Nutrition Assistance Program (SNAP) benefits. This final rule implemented Section 4112 of the Food, Conservation, and Energy Act of 2008, which required FNS to define the terms "fleeing" and "actively seeking" as contained in the Act. By defining those terms, the Final Rule seeks to ensure consistent procedures are used across States to accurately identify and disqualify individuals under the Act.

Note that relatedly, the 2014 Farm Bill added a prohibition in the Act preventing anyone convicted of certain particularly violent crimes, who are also not in compliance with the terms of their sentence or are a fleeing felon, from receiving SNAP benefits. This disqualification only applies to convictions for conduct occurring after the date of enactment of the 2014 Farm Bill, February 7, 2014. FNS is currently drafting a proposed rule on this provision.

We hope the attached questions and answers help State agencies clarify the requirements of the Final Rule. If you have any further questions or concerns about this rule, please contact Sasha Gersten-Paal at sasha.gersten-paal@fns.usda.gov.

Thank you,

/s/ Lizbeth Silberman

Lizbeth Silberman
Director
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Attachment

**Supplemental Nutrition Assistance Program
Final Rule – Clarification of Eligibility of Fleeing Felons
Questions and Answers**

Question 1: What is the time frame for implementation of the Final Rule for States and when is the deadline to notify FNS of the option taken?

Answer 1: The rule became effective on November 9, 2015 (60 days from date of publication).

Each State agency must submit an amendment to its State Plan identifying the option it selects. State agencies must either adopt the definition of fleeing felon as proposed (using either the 4-part definition or Martinez, as applicable) or adopt the Martinez definition alone. FNS added a requirement to 7 CFR 272.2(d)(1) to mandate that each State agency identify the option chosen in its State plan and modified 7 CFR 273.11(n) to reflect the two alternative tests to establish whether a person is a fleeing felon. State agencies may notify FNS upon implementation of the change to their annual State plans but there is no required deadline for the notification.

Question 2: May States have a grace period (60-90 days from the November 9, 2015 date) to implement the Final Rule?

Answer 2: State agencies must have implemented the rule on November 9, 2015. There is no flexibility with that date.

Question 3: Will FNS be issuing any more detailed guidance on the final rule?

Answer 3: Aside from these questions and answers, there are no current plans to issue additional policy guidance. The rule is meant to primarily define “fleeing” and “actively seeking.” The goal was to ensure that States use consistent procedures regarding who is disqualified as a fleeing felon. The disqualification is not a new provision, and the Final Rule is written to allow State agencies some flexibility to implement the disqualification how they choose, where those flexibilities exist. In the event any additional questions arise, please contact your Regional Office representative.

Question 4: Does the fleeing felon qualification apply to individuals who have out of state warrants?

Answer 4: The fleeing felon disqualification does not say a person can only be fleeing in the State to which they are requesting benefits. Federal law clearly implies that the activity involved (fleeing) can be interstate. As

this is not a new provision, and there are no parameters on procedures for out of State warrants specifically, it is again up to the State's discretion to decide what works best for them.

Question 5: Do State agencies need to verify fleeing felon status for all applicants or only those who indicate they are a fleeing felon?

Answer 5: State agencies may include a question or questions on the SNAP application to ascertain fleeing felon status. For applicants who respond affirmatively, the State agency must verify the information. After certification, the State agency must verify the fleeing felon status if the State becomes aware that an individual is a fleeing felon, according to the State agency's chosen criteria to verify fleeing status.

Question 6: Can you provide an expanded definition of the three National Crime Information Center (NCIC) classification codes under the Martinez test?

Answer 6: The Department of Justice provides information on crimes through a number of sources, including the Federal Bureau of Investigation (FBI). The FBI's NCIC is an electronic clearinghouse of data on crimes that nearly all criminal justice agencies nationwide can access.

NCIC codes refer to uniform offense codes categorizing felony arrest warrants on the FBI's national database – as they are categories they are not really defined terms. Among those categories are: 4901 – Escape, 4902 – Flight to Avoid, and 4999 – Flight-Escape.

Question 7: The NCIC is only accessible by law enforcement agencies, not State benefit-granting agencies. Are State agencies expected to enter into memoranda of understanding with all pertinent law enforcement agencies or district courts in their State in order to access to this information?

Answer 7: FNS does not lay out specific requirements on what the State's relationship with law enforcement authorities should look like. As discussed in the preamble of the proposed rule, these relationships vary across the nation. There are requirements regarding verification timelines/response time from law enforcement agencies in the regulatory text (see 273.11(n)(4)), but State agencies should use discretion to decide what is most appropriate for them in terms of the type of relationship they have with law enforcement.

Question 8: Do State agencies have the discretion to choose the test that is most administratively efficient for them?

Answer 8: Both standards are appropriate. If the four-part test identifies individuals subject to the prohibition more accurately, the State agency should choose whatever option works best in their State.

Question 9: Our State categorizes many State crimes into its own code categories. Is there a way for State codes to conform to the Martinez test's use of NCIC codes, or do a hybrid Martinez test with Part 4 of the four-part test?

Answer 9: The Martinez test relies on NCIC codes for its standard. If a warrant is presented and does not have an NCIC code, the State agency may not substitute its own code and still satisfy the Martinez test. State agencies also may not conduct a hybrid of the Martinez test and four-part test (for example, be presented with a warrant with no NCIC code and then one of the four parts of the four-part test).

If common practice by law enforcement officials in the State does not lend well to the Martinez test, Martinez may not be the best option for that State. If a State agency is unable to use the Martinez test because a warrant presented by a law enforcement officer does not have an NCIC code, but the warrant merely states that the person is a fleeing felon, the warrant is not sufficient to establish that the person is in fact a fleeing felon for the purpose of this final rule. FNS recommends in such a case that the best practice would be for the State agency to then use the four-part test.

Question 10: The States would like more clarification for Parts 2 and 3 of the four-part test. Please provide additional examples.

Answer 10: Part 2 of the four-part test provides that the individual must be aware of, or should reasonably be able to expect that, a warrant has or would have been issued. Examples of awareness or reasonable expectation of the issuing of a warrant could include violating the terms of a restraining order, committing an act that often results in a felony charge and conviction, and receipt of notice from a court or law enforcement about a felony conviction or incarceration. The State agency has the responsibility to establish standards in this area that work best for them.

Part 3 of the four-part test provides that the individual has to have taken some action to avoid being arrested or jailed. The State has discretion to make a determination that satisfies the criteria in the manner most appropriate in that State, however, we can provide a few examples. Avoiding arrest or jail could be fleeing the scene of an attempted arrest or convincing family or friends to lie about the person's location to law enforcement seeking to put them into custody.

FNS also provides an example for Part 3 in the Final rule preamble – that evidence from a law enforcement officer that an individual left a jurisdiction after a court appearance may satisfy this requirement. FNS also explains that it is up to the State agency to establish a reasonable standard for these elements of the test so that cases are evaluated separately and consistently.