Final Regs – Final steps
File: Food Stamps

CENTER ON BUDGET AND POLICY PRIORITIES

Revised October 25, 2000

FOOD STAMP REGULATIONS: CHANGES NEEDED TO REDUCE OBSTACLES TO PARTICIPATION

One of the food stamp program's major shortcomings in recent years has been that it often imposes onerous paperwork burdens on participating households and requires many recipients — especially recipients in working families — to come into the welfare office at fairly frequent intervals, often for hours at a time. In addition, some food stamp offices have begun routinely to contact third parties to verify household information without first giving households the opportunity to provide adequate verification of their own. In some cases, the states are making unannounced home visits to verify household information. The evidence indicates that a significant number of families that remain eligible for substantial benefits leave the program rather than deal with the stigma and hassle.

The proposed regulations would allow states to impose still more burdens on households and effectively increase the stigma attached to the program. Several changes are necessary to ensure that the culture of the food stamp program changes to serve working families better.

OMB
Unearned
income
AG is planning

Food ... 1.5 billion
below

5-7 billion
below

Regs can't ...
... ...

- ***State option to freeze benefits for six months for working families.*** Nationally, the proportion of working families with children required to come to food stamp offices at intervals of three months or less more than tripled between 1994 and 1998, rising from nine percent to 31 percent. It is becoming increasingly clear that this move to short certification periods for working families undercuts the food stamp program's basic mission by depressing participation among eligible families. Between 1994 and 1998, those states that increased by at least 50 percentage points the proportion of working families required to reapply every three months experienced an average decline of 25 percent in participation among working families. By contrast, all other states experienced an average increase in participation among this group of families.

  States have imposed short certification periods for families with earnings as an error reduction measure. If states were allowed to grant longer certification periods without being exposed to quality control errors when fluctuations occur, they likely would do so. To achieve this end, the final regulations should provide states the option of freezing a working household's benefits for six months in the absence of the household reporting a change that shows a serious increase in need, such as the loss of a job or the addition of a new household member. As it did with the recent quarterly reporting option, USDA could use its statutory discretion to prescribe reporting and budgeting options to allow states the option of requiring working families to report only once every six months. Under such a policy, states would effectively freeze benefits for working families over a six-month period unless a household reported a substantial change in its circumstances during the certification period.

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Under this policy many states would likely choose to lengthen certification periods for working families to lessen workload burdens on their local offices. In addition, states would not be subject to QC errors resulting from fluctuations in earnings or other circumstances over the six month period. The result would be an easing of the procedural burdens on working families to the extent that they are no longer required to reapply every three months. Because this policy would be a new state option rather than a restrictive mandate on the states, it could easily be included in the final regulations without state criticism that states were not offered an opportunity to comment.

This approach should not be a substitute for retaining two important principles in the current rules that the proposed rules would eliminate. First, the current requirement that all certification periods be for at least three months, subject to limited exceptions, should be retained. Second, the rules should continue to encourage (though not require) states to treat certification periods of six months or longer as the norm. Both recommendations are provisions of current regulations and therefore should not draw significant state criticism.

no floor
too loose

- ***Reduce burdens on recipient households between scheduled office visits.*** Some states that have <u>not</u> adopted short certification periods impose different kinds of burdens on households. They may demand that a household provide new information regarding its circumstances or shorten a household's certification period in mid-stream, requiring the household to come into the welfare office after a fairly brief period. The proposed regulations would allow states to shorten certification periods in a larger number of circumstances. That would pose a significant risk of depressing participation further. It also is contrary to the spirit of the Administration's July 1999 food stamp access initiative, which was intended to encourage states to lengthen certification periods for working families -- and to an array of Administration initiatives in Medicaid.

  Current rules that limit this kind of activity should be retained (and enforced). States should disrupt a certification period only when there is a clear change in a household's circumstances and the state does not have sufficient information to recalculate the household's food stamp benefits.

- ***Establish clear limits on intrusive verification methods***. Some states currently call employers, landlords, or others without households' explicit permission to verify information provided by the household. Such third-party or collateral contacts should be a last resort and done with the household's permission. Also, the state should not reveal any confidential information to the third party, such as that the household has applied for food stamps.

  In addition, a small but growing number of states are inappropriately conducting unannounced home visits for a significant share of applicant households via a loophole in the current regulations. By calling these home visits "fraud investigations," states are able to show up at an applicant's home, interview their neighbors and contact their employers. Of course, authority for states to conduct legitimate fraud investigations is essential. But using this authority to target large numbers of working households for home visits is inappropriate, and the loophole should be closed.

- ***Establish rules that require states to distinguish food stamps from TANF when discouraging TANF applications and educating clients about time limits.*** Many states have adopted practices in their welfare offices designed to discourage families from filing an application for cash assistance benefits. These practices include specific pre-application requirements such as mandating that families make numerous job contacts before they can file an application. Other practices are more subtle, such as requiring families to talk to a state worker who encourages the family to try to turn to other sources of help such as extended family members or the church. Because families do not always understand that no such requirements apply to food stamps or Medicaid, these practices have had the unfortunate impact of deterring participation in those programs as well.

  Furthermore, it is not clear that families participating in food stamps and cash assistance understand that TANF time limits do not apply to food stamps. Many families are likely to leave the food stamp program once TANF time limits begin to take effect — unaware that they may continue to receive food stamps.

  The final rules should ensure that states distinguish food stamps from TANF cash assistance when states apply any policy that might attempt to deter or delay cash assistance applications. This requirements should be in place at the initial point of contact, before an application is filed as well as in the interview with the eligibility worker. States should also be required to point out to families that TANF time limits and certain other restrictions do not apply to food stamps.

- ***Make it clear to families when they could lose their benefits for missing a step in applying for recertification.*** A significant number of working families may have trouble making their recertification appointments, since states rarely make any effort to schedule them at times convenient for working families or offer evening or weekend hours. Under current and proposed rules, if a recipient misses an appointment at which an eligibility worker planned to have him or her fill out a re-application, its benefits are terminated at the end of the month without further notice. The recipient likely will not discover that his or her family has been cut off until the next month when the food stamps do not arrive. At that point, the family has to go through the entire up-front application process, which can take up to 30 days and require several visits to the office.

  The final rules should provide that a recipient household that fails to take a required step in the recertification process, including filing an application for recertification or missing an interview, should be sent a notice of that fact, informing the household that it will lose its food stamps and explaining how to remedy the problem without going through the full application process (e.g. by immediately filing a re-certification application or by immediately requesting a new interview.)

State option allowing to calculate or [illegible]

- ***Simplify the option to disregard the income of ineligible immigrant members of mixed households.*** The great majority of food stamp households containing a legal immigrant whom the 1996 welfare law made ineligible also include one or more eligible members, typically U.S. citizen children. By administrative guidance, USDA has allowed states to disregard the incomes of the ineligible legal immigrant members when determining benefits for these children. This moderates the impact of the 1996 immigrant benefit cuts by increasing the size of the benefit that goes to the eligible household member. If adopted by every state, this policy would restore to immigrant households an amount of food stamps roughly equivalent to the amount restored to immigrants by the food stamp amendments in the 1998 Agriculture Research law. To date, however, only five states have taken this option. This is in significant part because of uncertainties about whether the final regulations would permit this option or, if they did, whether the regulations would impose conditions that would make it administratively burdensome or error-prone.

  Unfortunately, the proposed rules impose just such a condition. USDA would require states taking this pro-immigrant option to conduct two separate benefit calculations, one under the pre-1996 rules and one under current policy, to determine the benefit level for a single household. A mistake in either of these calculations could result in a quality control (QC) error being charged against the state.

  If this condition remains in the final rules, it will effectively kill this promising option. The states that have adopted this option so far are generally unenthusiastic about it, in part because of the complexity of this additional step which they undertook in the belief that the final rules would mandate it. Although FNS has a fair argument in a technical, accounting sense that this condition can avoid certain anomalies, the far greater risk is that states will reject this option altogether. The final rules should drop this second benefit calculation. Otherwise states that have taken the options may well drop the option altogether. It could certainly prevent additional states from taking the option. That could deprive tens of thousands of poor U.S. citizen children of the food stamps they need to obtain an adequate diet.

post '99 rule

- ***Make permanent and improve the quality control sanction adjustment to account for immigrants and working families.*** USDA has broad authority to adjust food stamp quality control sanctions. In September 1999, USDA used this discretion to adjust FY 1998 and 1999 food stamp sanctions downward for those states serving relatively high or increasing shares of working households and households with immigrant members. Such households have higher average error rates than households receiving only public assistance. This is because low-wage workers often have fluctuating incomes that make it difficult to predict their income and because Congress made managing immigrants' eligibility more difficult by enacting very complicated eligibility rules as a part of welfare reform.

This adjustment that USDA made for 1998 and 1999 error rates was badly needed and well received by states. It was widely taken as a sign that the Administration is serious about its access initiatives and rewarding states that work to serve the working poor. USDA has yet to issue guidance or regulations making permanent its sanction adjustment policy for households with earnings and immigrant households. It should do so now. In addition, some technical revisions to the adjustments should be made.

October 27, 2000

Citations for Major Issues in the Food Stamp Regulations

The below table presents the specific regulatory citations that correspond to the seven issues raised in CBPP's most recent policy paper on the Noncitizen Eligibility and Certification Provisions (NECP) food stamp regulation. The proposed rule was published in the federal register on February 29, 2000. Section references are to Title 7 of the Code of Federal Regulations. References to CBPP comments are to the Center on Budget and Policy Priorities' comments submitted on May 1, 2000, or supplemental comments submitted on May 5, 2000. "Rewrite" refers to the September 12, 2000 illustrative rewrite of the proposed rules that incorporates the CBPP comments.

Provision(s)		Related Provisions in Current Regulation	Related Provisions in Proposed Regulation	CBPP comments/rewrite
1. Reduce short certification periods				
	Allow a state option to freeze benefits for six months for working families	none	none	comments, pp. 38-40, suggested language for § 273.21 attached.
	Require minimum 3-month certification periods (current policy)	§ 273.10(f)(4)	§ 273.10(f)	comments, pp. 38-40, suggested rewrite attached.
	Provide 6-month norm for certification periods (current policy)	§ 273.10(f)(5)	§ 273.10(f)	comments, pp. 38-40, suggested rewrite attached.
2. Reduce burdens on recipient households between scheduled office visits				
	Limit circumstances under which states may require a household to reapply during its certification period	no general rule § 273.12(f) for PA/GA	§ 273.10(f)(4)	comments, pp. 24-28, rewrite pp. 56-57.

Provision(s)	Related Provisions in Current Regulation	Related Provisions in Proposed Regulation	CBPP comments/rewrite
Design procedure states use to shorten a certification periods to minimize burdens on working families	no general rule § 273.10(f)(3)(i) and § 273.12(f)(5)(ii) for PA/GA	§ 273.10(f)(4)	comments, pp. 28-31, rewrite pp. 56-57.
Prohibit states from requiring office visits during a certification period	none	§ 273.2(d)(1) allows office visits in some cases to resolve discrepancies.	comments, p. 42, rewrite p. 11.
Conform the specific rule for PA/GA households to these procedures	§ 273.12(f)(4) and (5)	§ 273.12(f)(4) and (5)	comments, pp. 23-31, rewrite pp. 67-68.
3. Establish clear limits on intrusive verification methods			
Collateral Contacts			
Limit the circumstances under which states may conduct collateral contacts	§ 273.2(f)(4) and (5)	§ 273.2(f)(4) and (5)	comments, pp. 43-49, rewrite, pp. 19-20.
Include privacy safeguards in the manner states conduct collateral contacts to prevent stigma	§ 273.2(f)(4) and (5)	§ 273.2(f)(4)	comments, pp. 43-49, rewrite, pp. 19-20.
Limit the circumstances under which states may conduct home visits	§ 273.2(f)(4) and (5)	§ 273.2(f)(4)	comments, pp. 43-49, rewrite, pp. 19-20.
4. Require states to distinguish food stamps from TANF at intake	none	none	comments, pp. 7-8, rewrite p. 9.

Provision(s)	Related Provisions in Current Regulation	Related Provisions in Proposed Regulation	CBPP comments/rewrite
5. Make it clear to families that they could lose their benefits for missing a step in the application or certification process			
Provide a notice to households that fail to apply for recertification	none	§ 273.14(b)(2)	comments, pp. 18-19, rewrite, p. 69.
Provide a notice to households missing an interview that informs them of how they may reshedule	§ 273.2(e)(3)	none	comments, pp. 20-22, rewrite, pp. 13, 26, and 69.
Require states to assist households that are attempting to cooperate in providing verification at recertification	none	none	comments, pp. 18-19, rewrite, pp. 69-70.
6. Make key state options simple to encourage states to adopt them			
Simplify the option to disregard the income of ineligible immigrant members of mixed households	§ 273.11(c)(2)	§ 273.11(c)(3)(ii)(B)	supp. comments pp. 5-6, rewrite p. 62.
Retain broad categorical eligibility policy announced 7/99 without requiring individual FNS approvals	none	none	comments, pp. 82-84, rewrite, pp. 30-31.
Implement simple transitional food stamp policy	none	none	comments, pp. 31-33, rewrite, p. 54.
7. Make permanent and improve the quality control sanction adjustment to account for immigrants and working families	none	none	forthcoming CBPP analysis.

Recommended Language on Length of Certification Periods for the Proposed Food Stamp Regulations

This attachment presents how the proposed food stamp rules should be amended to conform with our recommendations on length of certification periods. Section references are to Title 7 of the Code of Federal Regulations. Language from the proposed rule that would not be amended by the recommendations is shown in regular type. ~~Language in the proposed rule that the recommendations would delete is shown stricken.~~ ***Language that the recommendations would add is shown in bold and italics.***

Two changes to the proposed rules are needed:

(1) Add at the end of § 273.21 the following new subsection (the state option to freeze benefits for six months for working families):

"***(u) Semi-annual reporting. For a household with earned income that is certified for six months or longer, the State agency may provide that, in lieu of being required to report changes under subsection (h) or § 273.12, the household shall be required to report on its circumstances once every six months. Such semi-annual reports shall require the household to submit information for the most recently completed month covering such factors as the State agency determines are appropriate, including at least those items required to be reported by households subject to § 273.12(a)(1). Except as may be inconsistent with this subsection (u), the other provisions of this section 273.21 shall apply to such reporting. Households subject to semi-annual reporting shall be informed that they may make interim reports if they experience an increase in need for reasons such as a substantial drop in income or the addition of a new household member. The State agency shall act on any interim reports as provided under § 273.12(c) and on mass changes, changes in income from programs administered by the State agency, or sanctions for non-compliance with program requirements. The State agency shall not be required to act on unverified information received from the household or other sources.***"

(2) Revise proposed § 273.10(f). [Note that the recommendations for § 273.10(f)(3) and (4) are largely from current regulation at § 273.10(f)(4) and (5). These sections of current regulations require a minimum certification period of three months except in unusual circumstances and provide that 6-month certification periods should be used if the household's circumstances are relatively stable.]

"(f) *Certification periods.* The State agency must certify each eligible household for a definite period of time. The first month of the certification period will be the first month for which the household is eligible to participate. The certification period cannot exceed 12 months, except as specified in paragraphs (f)(1) and (f)(2) of this section:

(1) *Households in which all adult members are elderly or disabled.* The State agency may certify for up to 24 months households in which all adult members are elderly or disabled. The State agency must have at least one contact with each household every 12 months. The State

agency may use any method it chooses for this contact.

(2) *Households residing on a reservation.* Households residing on a reservation that are required to submit monthly reports in accordance with § 273.21 must be certified for 24 months unless the State agency obtains a waiver from FNS. Any request for a waiver shall include justification for the shorter period, quality control error rate information for the affected households, and input from the affected Indian tribal organization(s). When households move off the reservation, the State agency must either continue their certification periods until they would normally expire or shorten the certification periods in accordance with paragraph (f)(4) of this section.

~~(3) *Households eligible for a child support deduction.* The State agency may certify for no longer than 3 months households eligible for a child support deduction which have no record of regular child support payments or of child support arrearages and which are not required to report child support payment information periodically (monthly or quarterly) during the certification. The State agency may certify for no longer than 6 months households with a record of regular child support and arrearage payments which are not required to report payment information periodically during the certification period. The State agency may certify for no longer than 12 months households required to report child support payment information monthly or quarterly.~~

(3) Households shall be assigned the longest certification periods possible based on the predictability of the household's circumstances. Households shall be certified for at least 3 months, except as follows:

(i) Households to be assigned a certification period of 3 months or less shall, at the time of certification, have their certification periods increased by 1 month, if the certification process is completed after the 15th day of the month of application and the household's circumstances warrant the longer certification period. For example, if a household which is eligible for a 3-month certification period makes application in June and is not certified until late June or early July, the certification period would include June through September.

(ii) Households shall be certified for 1 or 2 months, as appropriate, when the household cannot reasonably predict what its circumstances will be in the near future, or when there is a substantial likelihood of frequent and significant changes in income or household status; for example, day laborers and migrant workers if income is uncertain and subject to large fluctuations during the work season due to the uncertainty of continuous employment or due to bad weather and other circumstances.

(4) Households shall be certified for up to 6 months if there is little likelihood of changes in income and household status; for example, households with a stable income record and for which major changes in income, deductions, or composition are not anticipated.

IMPROVING FOOD STAMP ACCESS: PENDING POLICIES

- Simplifying and improving the food stamp vehicle rules – raising the 'worthless' threshold from $1,000 to $1,500 and simplifying the equity test
- Transitional Food Stamps – allowing states to freeze food stamp benefits for households leaving TANF for up to three months
- Extending last year's state option for quarterly reporting for working households to all households
- Providing states with the option to provide working households with food stamps for six month without requiring any office visits or reporting
- Providing states the option to dramatically simplify the treatment of fluctuating child support income
- Making permanent the 1999/2000 policy of reducing food stamp fiscal penalties to states that serve large numbers of immigrants and working households.

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Memorandum

To:	Jeanne Lambrew
From:	Jocelyn Guyer, Stacy Dean, Dottie Rosenbaum
Date:	October 19, 2000
Subject:	Health care implications of proposed food stamp regulations

Thank you for meeting with us earlier this month on the potential implications of the proposed food stamp regulations for families' ability to apply for and enroll in health care coverage. Since food stamps and Medicaid continue to remain linked in many ways, the outcome of several issues currently under consideration in the proposed food stamp regulations could have a profound impact on families' use of health care coverage. The purpose of this memo is to provide some additional information on why the food stamp regulations could affect families' use of Medicaid, as well as to identify some key issues in the food stamp regulations that are of particular importance from a health care perspective. We hope that you will review the regulations with respect to these issues and ensure that outcomes are appropriate to health programs.

The memo begins with a discussion of the connections between the food stamp regulations and Medicaid enrollment. It then provides a brief description of four key provisions of the food stamp regulations from the perspective of health coverage. Two attachments go into greater detail describing the food stamp provisions and laying out the problematic sections of the proposed regulations and the recommended changes.

Connections Between Food Stamps and Medicaid

- **Many Medicaid beneficiaries continue to apply for coverage at the same time they apply for food stamps.** Although families increasingly have opportunities to apply for coverage for their *children* outside of welfare offices or using mail-in applications, the reality remains that the major "route" to coverage for many children and the majority of parents remains visiting a welfare office and submitting an application for TANF, Food Stamps, and Medicaid. Last year, half of the children on Medicaid in the United States and 57 percent of the parents on Medicaid also received food stamps. The continued overlap in enrollment between Medicaid and food stamps means that how families are treated under food stamp rules is likely to affect how they think about the Medicaid program.

- **Families are likely to confuse Medicaid and food stamp application procedures and rules.** Even though eligibility for food stamps and Medicaid are not directly linked, because states often administer them together, many families enrolled in both programs understandably may have difficulty distinguishing which rules and requirements they face are driven by food stamp versus Medicaid rules. For example, Kaiser data from focus groups indicate that the vast majority of families with children eligible for or enrolled in Medicaid — more than 70 percent — believe that welfare reform time limits apply to Medicaid. Given such confusion, efforts to make Medicaid application and enrollment procedures more family-friendly are likely to be far more successful if food stamp application and enrollment procedures are also improved.

- **In some states, food stamps establishes the "lowest common denominator" for application and re-application rules, procedures, and forms.** In many states, strong linkages remain between the administrative procedures and rules applied to families applying for Medicaid and food stamps. If a state places a high value on conforming its certification and verification rules across programs, the more stringent food stamp rules are likely to also determine Medicaid policies.

- **States increasingly using food stamp information to help families maintain their health care coverage.** In large part due to the Administration's April 7th letter to state health officials on assuring continued Medicaid coverage of eligible families after they leave welfare, a number of states are beginning to use food stamp information to make it easier for families to maintain Medicaid. For example, Washington State now uses information from its food stamp files to reduce the paperwork burden imposed on families seeking to maintain Medicaid. Specifically, the state automatically "re-starts" the Medicaid redetermination period of 12 months whenever a family updates the information in its food stamp file. Thus, in Washington — and, we hope, a growing number of other states — making it easier for families to secure and maintain food stamps directly translates into them facing less paperwork to maintain Medicaid coverage.

- **Concerns about food stamp quality control error rates have lead some states to require children seeking Medicaid to face a more burdensome application process if they happen to be on food stamps.** When we spoke with the state of Maryland earlier this year about its process for enrolling children in coverage (Medicaid and the state's SCHIP-financed Medicaid expansion), we found the state had developed a relatively easy, mail-in application process. However, if a child happens to reside in family that is enrolled in food stamps, the family cannot use the mail-in application process. Instead, the family must visit a county welfare office and apply for health care coverage for its children in person. The reason for this disparate treatment of children in food stamp families is that the state uses the additional face-to-face interview to improve its QC error rate in food stamps.