



Food Stamps
**CENTER ON BUDGET
AND POLICY PRIORITIES**

Shirley,

Bob asked that I send
you a copy of our final
comments on the food
stamp regs. We look
forward to working with
you on this issue.

Stacy Dean



CENTER ON BUDGET AND POLICY PRIORITIES

May 1, 2000

Mr. Patrick Waldron, Program Analyst
Certification Policy Branch
Program Development Division
Food and Nutrition Service
USDA
3101 Park Center Drive
Alexandria, VA 22302

RE: 7 C.F.R. Parts 272, 273, 274, and 277 - Food Stamp Program: Noncitizen Eligibility, and Certification Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

Dear Mr. Waldron:

We are writing to submit comments on the U.S. Department of Agriculture's proposed food stamp regulations published on February 29, 2000. While the proposed rules include several significant improvements in food stamp eligibility rules, we are deeply troubled by the majority of the changes proposed in the regulations. Although a few of the revisions implement changes in the statute from the 1996 welfare law, the majority of the changes are not required by law.

Four broad principles guided the development of our comments.

- *Regulatory changes should not result in benefit cuts.* The 1996 welfare law cut the food stamp program dramatically despite the Administration's strong objections. Nothing should be done via the administrative process that would further reduce eligible low-income families' benefits beyond what Congress required. While the proposed regulations would result in several benefit cuts, we are confident they were inadvertent. One particularly troublesome provision would result in food stamps being cut off for thousands of poor citizen children with immigrant parents. Another provision would impose administratively what would be tantamount in many states to a freeze on the component of the food stamp shelter deduction that deals with utility costs. In addition, under the proposed regulations, many poor families would likely experience a benefit reduction by having the filing of their food stamp applications delayed.
- *The food stamp regulations should make the food stamp program transparent to all interested parties,* including states, federal agencies, advocates, local level service

providers, recipients and the public. Thousands of individuals rely upon the food stamp regulations to understand the program for their own use or for families they are assisting. The regulations ought to be user friendly, clear and complete for these readers, not just food stamp policy experts. Having policies and procedures that USDA intends be part of the food stamp program but that are no longer included in the regulations is likely to make the program more confusing to many low-income households and other interested parties.

We believe the current regulations represent a useful and comprehensive guide to this federal program. Any changes should continue to meet this standard. Unfortunately, the proposed regulations do not. By deleting critical policy clarifications and examples, the proposed regulations will not fully or clearly represent USDA's expressed policies. In some important places where USDA has deleted language but intends no change in policy, the result may be that states think they are free to implement different policies than those the Department believes it is maintaining.

- *Steps must be taken to improve food stamp program access for the working poor, families leaving the TANF program and other under-served populations.* Over the past five years, food stamp participation has dropped by 11 million persons, or about 40 percent. This decline is much larger than can be explained by the reduction in poverty and the food stamp eligibility changes in the welfare law. USDA and HHS-funded as well as other research indicates that a significant part of the caseload declines in both food stamps and Medicaid is attributable to unintended effects of changes in the welfare system. Many families leaving cash assistance appear to be losing food stamps and Medicaid despite remaining eligible.

Recent research also indicates that the costs of participating — for example, hassles, reporting requirements and complicated application processes — are a significant barrier to participation. A new ERS paper, "Does the Decline in Food Stamp Use by Rural Low-Income Households Represent Less Need or Less Access?" reports that the proportion of low-income households that receive food stamps has declined substantially in recent years and that data on food security "indicate that much of this part of the food stamp caseload decline resulted from reduced access to food stamps rather than from less need for food assistance."

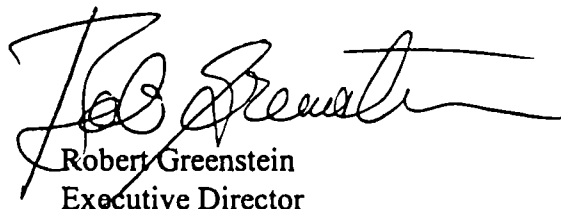
As a new report from Mathematica on food stamp and Medicaid participation suggests, USDA needs to work with states to find ways to streamline enrollment processes, simplify applications, extend office hours, create customer service plans, increase use of phone and mail, simplify recertification processes, and use less intrusive employment and income verification processes. That is not the course the proposed rules chart. If these proposed regulations are final, the likely result will be more circumstances in which households are required to visit the office and provide still more information, as well as a more complicated and burdensome application process. In addition, the proposed rules would seriously undercut the important initiatives the Administration has made over the past year to improve access to food stamps, particularly for the working poor.

- *The need for payment accuracy must be balanced with the goal of ensuring and improving access to the food stamp program.* Ensuring strong program integrity and payment accuracy is important in all of the federal food assistance programs. Unfortunately, in recent years, state efforts to improve food stamp payment accuracy appear to have come at the expense of program access. States have warned that serving families working their way off TANF, other working poor households, and immigrant households can place them at risk for quality control errors. They believe the quality control system forces them to impose onerous paperwork requirements on food stamp applicants and recipients. Similarly, they believe that if they adopt administrative procedures designed to ease barriers to participation, especially among the working poor, their error rates will increase.

If changes are to be made to the regulations governing program administration and operations, they should be changes that offer states options to reduce administrative burdens on themselves and low-income families without fear of increased error rates. Sadly, the proposed rules emphasize only one aspect of USDA's mission – giving states broader opportunities to respond more strenuously to the Department's payment accuracy concerns – at the expense of serving the customers for whom Congress created the program.

Attached, you will find our detailed comments on specific proposals. We look forward to working with USDA toward the goal of improving food stamp participation among eligible households by making the program easier to access and less burdensome for poor families to navigate. We are hopeful, given the Department's and the Administration's leadership in this area, that the final regulations will incorporate the many needed changes.

Sincerely,



Robert Greenstein
Executive Director

COMMENTS ON PROPOSED FOOD STAMP RULES

These comments respond to the proposed food stamp regulations the U.S. Department of Agriculture's Food and Nutrition Service (FNS) published on February 29, 2000, at 65 *Federal Register* 10856.

May 1, 2000

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PART ONE: ACCESS PROVISIONS, INCLUDING PROVISIONS REGARDING THE APPLICATION PROCESS, DENIALS FOR PROCEDURAL REASONS, AND BURDENS ON LOW-INCOME HOUSEHOLDS

I. INTRODUCTION

Although some provisions of these proposed rules are positive, many would do damage to the Administration's initiatives to expand access to food stamps for the working poor. They also could undercut the congressional goal of having food stamps serve as a safety net for families no longer receiving cash assistance due to time limits, procedural terminations, diversion programs, and similar policies. These provisions could increase the burdens of participating in the Food Stamp Program for families at risk, exacerbate the risk of procedural denials of eligible, needy families, and lead to further declines in participation beyond the eleven million individuals that have left the Program in recent years. Access to food assistance would depend increasingly on how well a family knew how to maneuver within complex agency procedures.

At a time when the Secretary of Agriculture is promising to end domestic hunger within ten years, these proposed rules take a significant step in the opposite direction. These rules emphasize one aspect of FNS's mission — giving states broader opportunities to respond more strenuously to the Department's payment accuracy concerns — at the expense of serving the customers for whom Congress created the Food Stamp Program. The 40 percent decline in food stamp participation over the past several years, a decline fed by dropping participation rates among eligible families, highlights the unmet needs of the Program's primary customers and their vulnerability to procedural barriers as they make the transition from welfare to work.

An important report Mathematica Policy Research recently completed for the Administration for Children and Families at HHS captures many of these points: M. Robin Dion and LaDonna Pavetti, *Access to and Participation in Medicaid and the Food Stamp Program: A Review of the Recent Literature* (March 7, 2000). Among this report's many important findings was that "[c]osts of [p]articipating (e.g., hassles; reporting requirements; complicated application process)" was a significant barrier to participation. (*Id.*, pp. x-xii.) If these proposed regulations are final, the result from eligible households' point of view is likely to be greater costs of participation in the form of increased hassles, more circumstances in which they are required to report additional information to the food stamp office, and a more complicated and demanding application process. By allowing increased procedural denials of eligible households, the proposed rules will multiply the costs of participating by increasing the likelihood that some households will have to submit two or more successive applications in order to obtain food stamps. In addition, by allowing more intrusive verification methods and approaches to interviewing, the proposed rules would increase other costs of participation — such as adverse reactions from employers and others — while likely exacerbating the stigma that Mathematica identifies as another significant barrier to participation. Mathematica recommends several steps to reduce the costs of participation: "[s]treamline enrollment processes; simplify applications, extend office hours, create customer service plans, increase use of phone and mail; simplify recertification processes; use less intrusive employment and income verification processes." (Dion and Pavetti, p. x.) This is not the course the proposed rules chart.

In numerous places USDA proposes to remove important policies and clarifications from current rules while asserting in its preamble to the rules that no change in policy is intended. The notion is that this will streamline and simplify the regulations. This is not the case. Eligibility workers, and indeed state food stamp administrators, are unlikely to have this preamble, or the preamble to the final rules, available as an on-going reference guide. States rely upon USDA's current, published regulations. It is unrealistic for USDA to suggest that policies removed from its regulations will remain in force. Even if it confirms this intention in unpublished policy guidance, for state agencies' staff to refer to such guidance on an on-going basis is too burdensome to be practicable. Mathematica reports that even with the current, clearer regulations, "many workers are struggling to understand eligibility criteria." (Dion and Pavetti, p. xii.) GAO already is reporting that USDA needs to provide more policy guidance to preserve access to food stamps, particularly where food stamp policy differs from that most states apply to TANF. (See Dion and Pavetti, pp. 23 and 32.) These rules move in the opposite direction.

In other contexts, limiting the published regulations to the most important policies and sending targeted policy memos to those individuals affected by more detailed policies might make sense. But given the sheer volume of people and agencies involved in implementing the Food Stamp Program, such a policy is likely to be counter-productive here. The proposed rules also would reduce the transparency of the Food Stamp Program, making it more difficult for eligible families to know if they have been fairly treated, for interested members of the media and public to monitor its operations, and for individual eligibility workers and supervisors to know whether their actions are appropriate. USDA is asking local non-profit organizations to monitor state practices, yet how will this be possible in the absence of a comprehensive guide to the rules?

Prior to 1978, a much smaller fraction of USDA's food stamp policies were expressed in regulations. The comprehensive regulations issued that year reflected a consensus that USDA's unpublished policies were not being implemented in many areas and that the lack of clear, explicit regulations was not serving the needs of either states or beneficiaries. These regulations also honored the requirements of sections 5(b) and 4(c) of the Food Stamp Act 7 U.S.C. §§ 2014(b) and 2013(c)) that USDA "shall establish uniform national standards of eligibility" and that such standards be promulgated in accordance with the Administrative Procedure Act. These explicit, published standards also helped ensure compliance with the statutory prohibitions on states imposing additional conditions on the participation of eligible families. Food Stamp Act §§ 5(b) and 11(e)(5); 7 U.S.C. §§ 2020(e)(5).

These proposed rules represent a move back toward the level of generality and vagueness that characterized the pre-1978 regulations. Yet if that system did not work well before 1978, it would almost certainly work even less well now. USDA currently has only a small fraction of the number of staff members involved in making, interpreting, and enforcing policy now that it did prior to 1978. Also, prior to 1978 USDA had an outstanding and comprehensive certification manual that brought together the most important unpublished policies; nothing of the kind exists today or is contemplated. The range of policy questions that arose then was narrower than those that exist today since fewer food stamp recipients worked, the Food Stamp Program was interacting with one AFDC program instead of 53 jurisdictions' TANF-funded programs, and food stamp quality control was far from the pervasive influence on the Program that it is now. As a

result, the impact of what USDA is proposing would go far beyond the numerous explicit policy changes it proposes.

To be sure, some material in the current regulations is truly unnecessary. For example, current 7 C.F.R. § 273.2(i)(3)(ii), stating that the general expedited issuance procedures also apply to residents of substance abuse treatment centers and group homes, serves no obvious purpose since nothing would suggest otherwise. Similarly, the size of the food stamp regulations can be pared — indeed, reduced far more extensively than the proposed rules would — by deleting genuinely superfluous material. For example, 7 C.F.R. § 272.1(g) contains over thirty pages of obsolete information about the implementation dates of regulatory amendments, some of them more than two decades old. The elimination of these pages would cause no confusion among any of USDA's customers. More broadly, it is appropriate to reduce the prescriptiveness of federal regulations in areas where the federal interests at stake are relatively modest and the state interests are great.

The federal interests are strong, however, in assuring access to food stamps and in preventing the Program's procedural requirements from interfering with households' relationships with their employers. These areas merit more specific involvement than the proposed rules would provide. The proposed rules' approach serves neither states (who may remain subject to reviews for violating policies that will no longer be in the regulations), eligible low-income households (whose treatment will depend on whether their eligibility worker happens to remember the former regulations and to understand that USDA intends that they still be current policy), or members of the general public interested in the Program, who will no longer have a comprehensive published guide to the Program's policies. In fact, for nearly all of these parties the program will become less transparent and more difficult to understand.

In several areas, PRWORA repealed explicit statutory mandates that are reflected in the current regulations. PRWORA did, however, retain USDA's general regulatory oversight of the Program and added a new requirement of "timely, accurate and fair service" in section 11(e)(2)(B)(i) (7 U.S.C. § 2020(e)(2)(B)(i)) that the Department may enforce through regulations. Some of the regulatory provisions involved antedate the statutory material that was deleted and thus clearly do not depend on it. In addition, the Department can, and in some places should, decide that other provisions that may have been promulgated in response to the now-removed statutory language nonetheless are essential elements of "timely, accurate, and fair service" that merit retention in the same or modified form. The PRWORA changes in this area should be seen as Congress deferring to USDA to determine what requirements truly are essential and granting the Department the discretion to update and adjust the Program's procedural rules as changing conditions warrant. The steep and unexpected drop in food stamp participation over the past several years is an example of just the kind of changed circumstance for which this delegation was designed.

In numerous places, the proposed rules would delete cross-references to other parts of the regulations addressing similar issues. USDA apparently wishes to do this in the interests of brevity and does not intend any change in policy. Nonetheless, the likely result is an increase in misapplications of policy and improper denials of eligible households. The food stamp regulations are long and complex; few eligibility workers will have an intimate knowledge of all of their pro-

visions. Because of high turnover in a strong economy, many states have cut back on training, with the result that eligibility workers' command of the regulations may be weaker than ever. Some states have been unable to compete for more skilled workers and thus are having to entrust program administration to persons who are less able to understand and apply the concepts in the regulations without clear guidance even as the caseload each individual worker must manage rises. In addition, quality control concerns may be driving states to emphasize substantive eligibility rules and error reduction techniques in their training, to the detriment of procedural rules relating to households' access to the Program, since QC does not measure compliance with these rules. Current regulations recognize these limitations and group or cross-reference related requirements together to reduce the likelihood they will be missed. The proposed rules move a long way toward abandoning this principle.

In a similar vein, USDA in several places proposes to delete illustrative examples to reduce the number of pages of regulations. The preamble argues that these examples are unnecessary and can be dropped without affecting the administration of the Program. This is unrealistic. In a program as complex as food stamps, numerous policies will be counterintuitive for many eligibility workers. This is particularly true of provisions that protect households' access to the Program since many of these policies will differ from the ones eligibility workers are accustomed to applying in the states' TANF-funded programs. Mathematica discusses the problem of eligibility workers mistakenly applying more familiar TANF policy to food stamps and Medicaid. (Dion and Pavetti, pp. 14-15.)

Without examples showing how the rules' abstract principles should be applied to concrete cases similar to those eligibility workers are accustomed to seeing, these principles often are likely to be misapplied. Here again, the less experienced, less well-trained eligibility workers will be particularly likely to err. Neither USDA nor state food stamp agencies have sufficient enforcement staff to identify more than a tiny fraction of these misapplications of policy after the fact. Principles of amicable federal-state relations suggest that USDA should emphasize a positive role, crafting rules that will teach eligibility workers to the greatest extent possible to prevent misapplications of policy, rather than an enforcement role, criticizing what states have already done. By eliminating illustrative examples, the Department will make the rules less clear to many eligibility workers and increase the likelihood of errors that may lead to contentious federal-state interactions.

In each of these areas, the Department should focus on the results it wishes to achieve in the administration of the Program in local food stamp offices rather than the precise form of a regulation. If including a cross-reference or a one-sentence illustrative example in the regulations will improve the outcomes experienced by the Program's customers, that should be a compelling reason for including that material in the final regulations even if that material might not be strictly necessary to convey the Department's policy to more sophisticated readers. Deleting it does not improve federal state relations or simplify the regulations.

The final rules should more closely reflect the priority the Administration has given to preserving access to food stamps for low-income families in need and to parallel the Administration's efforts to reduce barriers to access to Medicaid. A number of the proposed changes

should be reconsidered and revised to reflect these principles. In addition, the Department should reject any suggestions to further undermine the current rules' access provisions.

The Department should not be under the illusion that giving states new options to adopt procedures that increase procedural denials or raise the burdens of participation will reduce criticism of the Program. States and their advocates already harshly criticize the Food Stamp Program for the procedural burdens it places on households, specifically citing practices that are *already state options*. If the final rules expand the options available in these areas, most states likely will feel that QC concerns compel them to take these options particularly since states are sanctioned for an error rate above the national average. If some states take these options, others are likely to feel they have to follow suit. That, however, will not prevent them and other critics of the Program from citing those very practices as examples of USDA's supposed maladministration of the Food Stamp Program. More importantly, these practices will discourage the working poor from receiving food stamps; without clear evidence that food stamps are indeed a viable work support for this population, public support for the Program will remain in jeopardy.

II. LIMITING AND DELAYING THE OPPORTUNITY TO APPLY

The date on which a household applies for food stamps is important both because it starts the clock running on the deadlines food stamp offices must meet to deliver food stamps to eligible households and because food stamp benefits are pro-rated from the date of application. Anything that delays the date a household submits an application thus both delays the date on which the household will first receive food assistance and reduces the amount of assistance eventually provided. Unfortunately, the proposed rules contain several provisions that are likely to cause such delays:

A. Informing Households That They May Apply

Most households applying for food stamps are not familiar with the rules and procedures of the Program. PRWORA clearly preserved in section 11(e)(2)(B)(iv) of the Food Stamp Act (7 U.S.C. § 202(e)(2)(B)(iv)) the longstanding assurance that households may file an incomplete application containing at least a name, address, and signature. The opportunity to file such an application, however, will mean little if households are unaware of it. PRWORA gave USDA flexibility about how households would be informed of the possibility of filing an incomplete application. In the preamble to these proposed regulations, USDA notes that "it is very important to notify households through some means of these rights because benefits are provided to eligible households retroactive to the date of application." 65 *Fed. Reg.* 10864.

Unfortunately, the proposed regulations undercut that goal by deleting existing provisions for informing households of their ability to file an incomplete application without providing an effective substitute. The likely result is that many households will postpone applying until they have time to complete the entire application form. Some states' applications can exceed twenty pages.

USDA originally added these requirements to the food stamp rules because in their absence, many households did not submit applications until their interview. This remains a real danger if the final rules eliminate the existing provisions that seek to inform households of the opportunity to apply. In addition, many states' TANF-funded cash assistance programs have policies that seek to discourage households from applying or to delay the time when the household applies until after it has complied with conduct requirements that may be quite time-consuming. Mathematica reports that "[t]here is some evidence to suggest that TANF diversion policies may be unintentionally contributing to lower rates of FSP and Medicaid participation by eligible families." Its report recommends "practices and systems that ensure processing of FSP and Medicaid application[s] regardless of TANF diversion policy [and] inform[ing] applicant[s] of potential to receive FSP/Medicaid benefits regardless of TANF determination." (Dion and Pavetti, pp. ix-xi, 14-15.)

Without the provisions of current regulations making clear that food stamp rules are different, families' food stamp applications are likely to be delayed as well.

Proposed section 273.2(b)(2) contains a list of requirements for state application forms, but these do not include information that households may apply without delay and information about the importance of this opportunity. Instead, the proposed rules would merely require states to "make available . . . advisory materials" with this information. Proposed 7 C.F.R. § 273.2(b)(2). This information could be buried in the middle of long, detailed pamphlets or handouts that also cover numerous matters involving food stamps and other programs. Even for the few households that may read such materials, the clear message likely will often be lost. Also, because these messages may appear to conflict with the messages the state agency is providing in connection with cash assistance, if they are not provided prominently, many households are likely to miss them entirely or to assume that they have been superseded.

- ***The final regulations should continue to require that applications include a place on the front page of the application form where the applicant can write his or her name, address, and signature (current 7 C.F.R. § 273.2(b)(1)(iv)).***
- Current section 273.2(b)(1)(v) requires that "plain and prominent language on or near the front page of the application" inform households that it may file the application immediately as long as it contains the applicant's name, address, and signature, of the availability of expedited service for households in particularly dire need, and of the fact that food stamp benefits are provided only from the date of application. Also, current section 273.2(c)(1) requires that the food stamp office advise households they do not need to be interviewed before filing an application and may file an incomplete form so long as it contains the applicant's name, address, and signature. ***The final rules should require that this information either continue to be provided prominently on the application form or be provided on a single-page leaflet distributed with that form.***
- Finally, current section 273.2(c)(4) requires that signs be placed in food stamp offices explaining the processing standards and that a household may file an application on the first day it contacts the food stamp office. ***This requirement should be restored to the final regulations.***

The proposed rules may intend to set an “outcome standard” in this area, leaving it up to state agencies on how best to implement such a standard. Unfortunately, this approach is little different in practice from largely abandoning efforts to convey this information to households. Even if USDA staff become aware of a particular office’s approach and consider it deficient, they will have little ability to require correction since the food stamp office can argue that the regulation allows its approach. More importantly, the proposed regulation provides ineffective guidance to the numerous food stamp offices that are sincerely willing to provide this information but would like to know what method USDA “has in mind.” These rules also provide interested members of the public no basis for gauging a food stamp office’s performance in this area. Public monitoring is crucial in light of the severe reductions in staff that all of USDA’s regional offices have experienced.

B. Encouraging or Discouraging Applications

The proposed rules also would delete the requirement that states shall encourage a household to file an application *on the same day* the household first contacts the office seeking assistance. Current 7 C.F.R. § 273.2(c)(2)(i). Proposed section 273.2(c)(2) would maintain the requirement to encourage households to apply for food stamps — and, indeed, would broaden it to apply to all households contacting the office about financial difficulties whether or not they mention food stamps — but would delete the requirement that households be encouraged to file “the same day.”

In addition, the proposed regulations would define the food stamp office’s obligation to encourage the filing of an application as requiring only that it mention the Food Stamp Program and the household’s opportunity to apply. Thus, after mentioning those items, a receptionist or eligibility worker could recite a “diversion” speech designed to discourage households from applying for welfare benefits or could tell the household that in order to apply that day, it would be required to wait hours to see an eligibility worker. The recent Mathematica study found that long waits at food stamp offices with “first-come, first-served” procedures were a major problem for the working poor, who might have to miss many hours from work, sometimes over successive days, in order to apply for food stamps. (Dion and Pavetti, pp. 21-22.) Inevitably this must try employers’ patience.

In addition, “[m]ost TANF programs stress the importance of moving recipients into employment as quickly as possible. This focus can inadvertently interfere with the receipt of FSP and Medicaid benefits for families moving into work or for those applying for cash assistance.” (Dion and Pavetti, pp. ix and 15.) “If not informed otherwise, some families may assume that diversion requirements apply to all programs, so these families may not apply for benefits or may even abandon their application process before it is complete.” (*Id.*, p. 15.)

The final rules on this issue should:

- ***retain the food stamp office’s obligation to encourage applications and should broaden that obligation to cover circumstances in which the prospective applicant does not explicitly mention food stamps;***

- *continue to require food stamp offices to encourage same-day filing of applications; and*
- *explicitly state that the duty to encourage applications means that food stamp offices may not suggest any disadvantages of applying for food stamps and, when explaining the disadvantages of applying for other programs or requirements that do not apply to food stamps, must clearly explain that those remarks do not relate to the Food Stamp Program. In addition, the regulations should include a duty to explain to applicants that certain TANF policies, such as time limits, do not apply to food stamps.*

C. Accepting Applications and Recording their Date

Proposed section 273.2(b)(3) states the deadlines for processing a joint TANF/food stamp application form begin on “the date the joint application was initially accepted by the State agency.” Some states, however, have adopted policies that do not permit families to apply for benefits from a TANF-funded program without first complying with behavioral requirements, such as documenting a certain number of job contacts. (See Dion and Pavetti, p. 15.) Other states may simply decline to accept TANF applications that are not fully filled-out. *The final regulations should make clear that the requirements to accept incomplete applications and to encourage immediate filing even of incomplete forms applies to all joint applications as well as applications for food stamps only.* This is certainly an area where the Department should act on the recommendations of GAO and Mathematica to provide clear guidance distinguishing food stamp policy from that of other programs. (See Dion and Pavetti, pp. x, 23 and 32.)

The proposed rules repeal the current requirement that the food stamp office document the date that an application is filed by recording on the application the date it is received. Current 7 C.F.R. § 273.2(c)(1). USDA reasons that states now have different ways of recording applications’ filing dates, such as automated systems. 65 *Fed. Reg.* 10864. The regulations could readily accommodate this concern by allowing states to record the date of filing on the form, through an automated system, or through any other means that ensures clear, contemporaneous recording of this important date. *The final rules should make this requirement more flexible to account for new technology, but they should not delete it.*

D. Applications by Mixed Immigrant Households

Proposed section 273.2(c)(1) requires that, in order to file an application, an adult household member must sign a statement under penalty of perjury that all members of the household are U.S. citizens or eligible immigrants. This is likely to confuse many households in which some but not all members are ineligible immigrants. Read literally, it could be taken to mean that these households may not even truthfully apply for food stamps, much less receive them.

First, this should not be a requirement for acceptance of the application form. Section 11(e)(2)(B)(iv) of the Food Stamp Act (7 U.S.C. § 2020(e)(2)(B)(iv)) clearly allows states to require only the name, address, and signature of an applicant in order to file a form. The proposed regulation effectively would require the applicant also to answer immigration questions before filing its forms. These are likely to be among the most complicated and sensitive questions on

the form. Although the SAVE statute requires these questions to be answered for any household member before he or she *may receive benefits*, it should *not* be required to start the application process. Many other questions (involving income, resources, age, disability, etc.) must be answered prior to the authorization of benefits. ***Only a name, address, and a signature (attesting to the accuracy of the name and address supplied) should be required to start the process.***

In addition, the final regulations should require that the application form make clear that this attestation applies only to those members of the household who are applying for food stamps, not to members the household identifies as ineligible immigrants or to other non-applicants. Households commonly will contain legal permanent resident (LPR) parents who are ineligible under PRWORA, older LPR children whose eligibility was restored in 1998, and younger children who are U.S. citizens because they were born in the U.S. The parents could not sign the statement required by the proposed rules because they are not eligible immigrants.

E. Requests for Applications and Applications Filed at Incorrect Offices

Current regulations require food stamp offices to mail an application on the same day a household requests one by telephone. 7 C.F.R. § 273.2(c)(2)(i). They also require a food stamp office that receives an application it cannot process because the applicant household resides outside its catchment area to mail the application to the correct food stamp office the same day the form is received. 7 C.F.R. § 273.2(c)(2)(ii). USDA proposes to provide states with an extra business day in each case, with the likely result that these affected household will lose at least 1/30th of their benefits for the month of application (or more where a weekend or holiday intervenes). Proposed 7 C.F.R. § 273.2(c)(2). As one federal court noted when striking down earlier USDA rules that allowed delays in processing applications, "hunger takes no holidays." *Harley v. Lyng*, 653 F. Supp. 266 (E.D. Pa. 1986).

While we appreciate the concern this aspect of the proposed rules seeks to address, we think this proposal goes farther than is necessary. Food stamp applications in blank envelopes can and should be kept on hand at the food stamp office's reception desk. It is no harder for a receptionist to write down the caller's address on the envelope than on any other piece of paper. Even if the call comes in near the close of business, this should not take an extra day. Forwarding misaddressed applications should take only modestly more time. ***The final regulations should offer states the option of forwarding a misfiled application by mail the day it is received or by fax the following day.*** To be sure, the fine print on some forms might not resolve well over a fax, but since the recipient food stamp office is familiar with the form, it need only read the information the household supplies. The proposed rules allow households to fax in applications initially; faxing an application to the correct food stamp office should be no more difficult.

The boundaries of some food stamp offices' catchment areas are drawn in arbitrary ways that many households will be unable to intuit; in urban areas, food stamp offices may be located outside their catchment areas. The regulations already provide that the processing time for a misfiled application does not begin until it arrives at the correct food stamp office. Poor households should not have their applications further delayed. (To be sure, some applicant households will call first to get the correct address. Some poor families, however, lack telephones. More

significantly, staff at some food stamp offices can be difficult to reach and do not always promptly return telephone calls.) A working family that cannot take time off from work to visit one food stamp office to determine where it should apply may have little practical choice but to mail in its application to what it judges to be the most likely food stamp office.

The final rules could allow an exception if the food stamp office is open non-traditional hours to accommodate working families and a household calls in a request for an application, or a misfiles an application, after the last mail collection for the day.

F. Filing Electronically or by Fax

Proposed 7 C.F.R. § 273.2(c)(1) would allow households to file applications electronically or by fax. Although few households eligible for food stamps likely have fax machines, social service agencies that assist food stamp applicants may. *This provision should be retained in the final rules.*

III. INCREASING THE LIKELIHOOD THAT ELIGIBLE HOUSEHOLDS WILL BE DENIED OR TERMINATED FROM FOOD STAMPS

The sole purpose of the food stamp application process should be to determine whether an applicant household qualifies for food stamps. The purpose of the Food Stamp Act — “to alleviate . . . hunger and malnutrition” — and USDA’s goals of improving customer service and ending domestic hunger, are undermined when eligible families are denied food stamps. Current rules include numerous provisions designed to prevent technical denials of food stamps to eligible, needy families. Unfortunately, the proposed regulations would weaken or eliminate many of those provisions. These aspects of the proposed rule are very serious concerns and are inconsistent with the Food Stamp Act’s mandate to provide “timely, accurate, and fair service” to applicants and recipients.

In some places, USDA’s preamble to the proposed regulations suggests that it intends no change of policy even though it is removing a requirement from the regulations. This is unrealistic. Few state administrators, much less eligibility workers, will be aware of policies that USDA no longer publishes in its regulations. Improper denials of eligible households are likely to result. *Certainly the public will have no means to comprehend food stamp policies not stated in the regulations.* More generally, sections 5(b) and 4(c) of the Food Stamp Act (7 U.S.C. §§ 2014(b) and 2013(c)) oblige USDA to govern the Program with uniform national rules promulgated under the Administrative Procedure Act. In most food stamp offices, where time to tease out the implications of the food stamp rules is scarce, USDA should not expect that policies removed from those rules will in fact remain fully in force.

A. Denying Households Making Good Faith Efforts to Cooperate

Current section 273.2(d)(1) sets the basic principle of fairness in the application process by declaring that a household may be denied food stamps for procedural reasons only if it “refuses to cooperate with the State agency in completing this process For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it

will not take actions that it can take and that are required to complete the application process. For example, to be denied for refusal to cooperate, a household must refuse to be interviewed not merely failing to appear for the interview. If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be denied. . . . The State agency shall not determine the household to be ineligible when a person outside of the household fails to cooperate with a request for verification. ”

USDA’s preamble avows continued adherence to this principle. Yet the proposed regulations themselves significantly weaken it in important ways that are both unnecessary and unwise. No legitimate purpose is served by denying food stamps to an eligible household that is making good faith efforts to cooperate, even if those efforts have yet to bear fruit. ***The final rules should maintain the principle that households should not be denied food stamps for a lack of participation absent a demonstrated refusal to cooperate. They should not include the proposed changes discussed below that would undermine that principle.***

1. Cooperation Requirements in General

- **Requiring actions outside the control of the household.** As noted above, current section 273.2(d)(1) requires that for the food stamp office to deny a household’s application for refusal to cooperate, the household must be able to cooperate but clearly demonstrate that it will not take actions *it can take* that are required to complete the application process. The proposed rules remove the words “it can take.” This suggests a household could be denied food stamps based on its failure to produce a document that has been destroyed or its failure to obtain a note from its estranged landlord. ***The final rules should restore this important phrase.***
- **Failing to put the rules’ principles into practice.** The proposed rules would delete the important example from section 273.2(d)(1): that “to be denied for refusal to cooperate, a household must refuse to be interviewed not merely failing [sic] to appear for the interview.” The former AFDC rules contained no principle protecting applicants making good faith efforts to cooperate. Neither do many states’ cash assistance programs. This principle, as important as it is, may seem counter-intuitive to eligibility workers whose primary training has been in AFDC and TANF. Mathematica reports problems with eligibility workers mistakenly applying TANF policies to food stamps in areas such as this. (Dion and Pavetti, pp. ix-xii, 15-16, 23 and 32.) Without this or another, similar, concrete example, the principle set forth in this rule may seem too abstract to affect food stamp offices’ day-to-day operations. ***The final rules should include the current example, or one like it, to make clear that households making good faith efforts to cooperate may not be denied.***

Making this provision clear to eligibility workers by providing a example is important to the success of USDA’s efforts to improve service to the working poor. Because of a lack of control over when their employer will let them take a few hours off and the potential for problems with child care, the households most

likely to miss interview appointments are the working poor. Eliminating this example is likely to cause some of them to be denied inappropriately as eligibility workers fail to apply the general principle of section 273.2(d)(1).

- **Denials based on the non-cooperation of third parties.** USDA also proposes to delete the statement that “[t]he state agency shall not determine the household to be ineligible when a person outside of the household fails to cooperate with a request for verification.” The preamble asserts that this requirement still stands, but without a clear statement in the regulations eligibility workers will have no way of knowing this and are likely to deny applications accordingly. Employers hostile to public benefit programs, landlords upset over rent arrearages, and bureaucratic utility companies all may fail to respond to requests for verification. *The final rules should retain this important statement.*
- **Denials based on past acts of non-cooperation.** Current section 273.2(d)(1) also provides that “[o]nce denied or terminated for refusal to cooperate, the household may reapply” This language, too, is deleted. Although it does not appear USDA intends to allow eligibility workers to deny subsequent applications based on non-cooperation in connection with an earlier request for food stamps, in the absence of this clear language, mistakes of that kind are likely. *The final rules should retain this important statement.*
- **Denying households for lack of verification that they cannot obtain but the food stamp office could.** Prior to PRWORA, section 11(e)(3)(B) of the Food Stamp Act (7 U.S.C. § 2020(e)(3)(B)) required food stamp offices to “assist each applicant in obtaining appropriate verification and completing the application process.” Accordingly, current section 273.2(c)(5) required food stamp offices to inform each applicant of the food stamp office’s obligation to assist.

Section 835 of PRWORA repealed this statutory requirement and gave USDA discretion as to what level of assistance to require under the requirement of “timely, accurate, and fair service” to applicants and recipients. Proposed section 273.2(c)(4) continues the requirement that food stamp offices assist in obtaining verification only for “special needs households.” The regulation would define such households to “include, but not be limited to, households with elderly or disabled members, households in rural areas with low-income members, homeless individuals, households residing on reservations, and households in areas in which a substantial number of members of low-income households speak a language other than English.” This definition is borrowed from section 11(e)(2)(A) of the Food Stamp Act (7 U.S.C. § 2020(e)(2)(A)), which PRWORA added to direct states to take special care in serving these households.

The final rules should retain the proposed language and require food stamp offices to assist special needs households obtain verification. We commend USDA for this proposal. As discussed in Part Two of these comments, the last group of the list should be revised to apply to ‘households with adult members

who speak a language other than English.” Some kinds of verification may be difficult or impossible for *any* household to obtain on its own. These might include documents from out-of-state employers or vital records bureaus as well as billing records from utilities that do not routinely provide duplicate statements to their customers. ***The final rules should add the working poor, although not specifically named in section 11(e)(2)(A) of the Act, to the list of special needs households, just as proposed section 273.2(a) appropriately does.*** Doing so is clearly consistent with Congress’s demonstrated concern for the working poor in PRWORA. It also reflects the fact that working poor families may be more vulnerable to barriers to participation “because of the decreased availability of free time.” (Dion and Pavetti, p. xii.)

Also, the final regulations should require food stamp offices to offer assistance in obtaining verification to households that have not refused to cooperate but that are at risk of having their applications denied (or benefits reduced) due to a failure to provide verification that is beyond the household’s ability to provide without assistance. By offering assistance in such circumstances, the food stamp office can either obtain the information it requires to complete processing the application or determine that a household is not, in fact, cooperating (and thus can be denied without further delay). In many cases, the only help the household may need is a simple clarification. For example, a third party may have told the household that it would send information directly to the food stamp office; if the food stamp office informs the household that it has not received the information, the household may be able to take action. Other households may believe that their inability to obtain particular documents dooms their application; if the food stamp office suggests some alternative forms of verification, the household may be able to produce them promptly. In still other situations, a household may believe it has provided all that the food stamp office requested and would happily supply additional wage stubs or utility bills if the household knew they were needed. Denying applications in these cases serves no useful purpose and undermines the Food Stamp Program’s goal of helping low-income households meet their nutritional needs.

- ***Denying households for failure to produce specific documents that may be unobtainable.*** Current sections 273.2(f)(4)(i) and (5)(i) address important barriers to access by prohibiting food stamp offices from requiring households to submit particular types of verification. Further, they require food stamp offices to be concerned with whether proffered verification adequately establishes the truth of the household’s statements rather than insisting that a household produce any one specific document. A significant portion of this language is retained in proposed sections 273.2(f)(4) and (5). ***The final rules should retain these provisions. The final regulations also should make clear that the lack of verification is grounds for denying a household’s application only when it makes it impossible for the food stamp office to know whether the household is***

eligible; in other cases, the rules should instruct the eligibility worker to calculate and provide benefits based on the best information available.

Unfortunately, important specific language relating to the verification of identity and residency are removed in the proposed rules. This could lead to serious misapplications of policy in verifying these matters where eligibility workers fail to understand correctly the implications of the more general policy. Specifically, current section 273.2(f)(1)(vii) states that acceptable verification of identity includes "a driver's license, work or school ID. . . Any documents which reasonably establish the applicant's identity must be accepted and no requirement for a specific type of document, such as a birth certificate, may be imposed." Proposed section 273.2(f)(1)(i) would delete this. This language was added because in some areas, a barrier to participation in the 1970s was a requirement for a specific form of documentation of identity, often a birth certificate. If it is deleted, some food stamp offices feeling quality control pressure may once again insist that a household produce the one form of verification they consider "best" even if the applicant lacks that form of identity. Obtaining a birth certificate for an individual who lost, or never had, one can be an expensive and time-consuming process, particularly for individuals who no longer live in the community in which they were born. The removal of this language could pose particular problems for eligible immigrants, who may be asked to produce documents (such as birth certificates) that can only be obtained overseas or forms that INS does not issue rapidly.

USDA would remove comparable language from current section 273.2(f)(1)(vi), which states that if verification of residency cannot be accomplished in conjunction with verification of other information, the state shall use a collateral contact or other readily available document as evidence. The current rule also states that "[a]ny documents or collateral contact which reasonably establish the applicant's residency must be accepted and no requirement for a specific type of verification may be imposed." All of this language is removed from proposed section 273.2(f)(1)(ii). All that remains is a provision allowing eligibility workers to exempt homeless households and migrant farm workers from verifying residency if doing so proves impossible.

The final rules should restore the current language prohibiting demands for specific forms of verification of applicants' identity or residency.

On the other hand, the proposed rules retain the requirement of current section 273.2(f)(2)(i) that households be certified based on the best available income information if the person or organization providing the information refuses to cooperate in providing verification. Proposed 7 C.F.R. § 273.2(f)(1)(vi). This provision is important for household members who can only find work in the informal economy (including some immigrants) and for those that work for employers hostile to public benefit programs. ***The final rules should retain this provision.***

2. Denying New Applicants and Recipients Applying for Recertification who are Attempting to Cooperate

- **Denying food stamps to households that are trying in good faith to cooperate.** Proposed section 273.2(h) is inconsistent with section 273.2(d)(1) and would actually *require* states to deny food stamps to an eligible household when the household's good faith efforts to cooperate fail. States would have the option of either denying the household's application completely or keeping the application pending but denying the household benefits for the period until the required verification was obtained. Even in the latter case, a household that had done nothing wrong would be denied food stamps for which it was substantively eligible. This seems inconsistent with the Food Stamp Act's purpose of providing food assistance to families in need: such families have done nothing that justifies denying them the benefit of section 5(a)'s requirement that "[a]ssistance under this program shall be furnished to all eligible households who make application for such participation." 7 U.S.C. § 2014(a). .

Proposed section 273.2(h)(3)(ii) defines delays in application as the fault of the household when there is "(A) [f]ailure to cooperate with the State agency in resolving any unclear or incomplete information provided at the interview; . . . (C) [f]ailure to provide missing verification; or (D) [f]ailure to reschedule a missed appointment." An applicant that failed to secure the cooperation of a third party, even if the applicant him or herself is attempting to cooperate to the best of his or her ability, would be deemed at "fault" for purposes of this provision.

Proposed section 273.2(h)(2) gives states two choices in cases where a delay is determined to be the household's fault under these criteria: deny the application outright, or hold it pending but deny benefits for the period prior to when the outstanding issues are resolved. Although the option to "pend" an application is the more moderate of these two choices, it results in the loss of some food stamp benefits to a household that is trying in good faith to comply. Thus, an applicant that is unable to obtain a document sought by the food stamp office due to the refusal of a third party (such as a landlord or employer) to provide the document would be denied food stamps for all days until he or she can obtain that document.

Section 8(c)(1) of the Act (7 U.S.C. § 2017(c)(1)) provides that benefits shall be provided from the date of application; providing benefits only from the date an employer signs an income verification form (or a landlord provides rental verification) would seem to be inconsistent with that section. This seems not to be the "timely, accurate, and fair service" called for by section 11(e)(2)(B)(i) of the Food Stamp Act (7 U.S.C. § 2020(e)(2)(B)(i)). In addition, it is inconsistent with section 11(e)(3) of the Act (7 U.S.C. § 2020(e)(3)), which requires food stamp offices to conduct the verification in a manner "so as to complete certification of and provide an allotment retroactive to the period of application to any eligible household" within thirty days. When the food stamp office demands a piece of verification that a third party refuses to provide, it is imposing requirements on the

verification process that prevent the office from complying with the mandate to provide benefits within thirty days. A household that is able to provide a document but does not do so on a timely basis can reasonably be said to have waived the benefit of this provision, but not one whose cooperation has been frustrated by a third party's recalcitrance.

The final rules should recognize that in some special cases, delays are neither the fault of the food stamp household nor the fault of the household. (It should be noted that when the current regulations on this point were written in 1978, food stamps were not pro-rated from the date of application.) In cases where the household has not refused to cooperate (as defined by 7 C.F.R. § 273.2(d)(1)) and the food stamp office is waiting to process the application because of the lack of action by a third party rather than by the household itself, the food stamp office should be required to hold the application pending. For example, if a household has tried to get its landlord to provide a statement the food stamp office needs to process its application but the landlord is refusing to cooperate, the household should not lose food stamps as a result. If the necessary steps to complete the determination of eligibility are ultimately completed, the household should receive benefits retroactive to the date of application since it has done nothing to justify forfeiture of those benefits.

The food stamp office should be allowed to require the household to keep it apprised of the household's progress in obtaining the necessary verification so that the office can confirm that the household is still cooperating. If the household ceases to cooperate, the application should be denied. If, after sixty days from the date of application, the food stamp office still lacks sufficient information to make an eligibility determination, the application could be denied at that time as under current rules.

- **Refusing to re-open an application when the applicant complies with procedural requirements.** Under current section 273.2(h)(2)(A), a food stamp office has two choices when a household's eligibility cannot be determined, despite the office's best efforts, by the end of the thirtieth day after application. One option is to hold the application pending for up to sixty days. The other is to send the household a notice of denial but to inform the household that its application will be reactivated if the household takes the required actions within thirty additional days. In either case, the household has a total of at least sixty days to submit the necessary material without having to complete a new application. (If the delay was the fault of the household, benefits are retroactive only to the date when the household provided the information.)

USDA's proposed regulations repeal section 273.2(h)(2)'s requirement that denied applications be reopened. Where a food stamp office has not chosen to hold an application pending, low-income households could be required to submit a new application and restart the application process even though they have produced the verification necessary to determine their eligibility. This change likely

will cause some eligible households to become discouraged and abandon their efforts to obtain food stamps. Other households' reapplications will be delayed, causing them to lose eligibility for food stamps for the period until they reapply.

The final rules should preserve some requirement that households be told their applications can be reopened and approved after denial. If USDA is unwilling to retain the requirement in that form, it could require the application be reopened and approved if the household is able to provide the missing verification by a specified number of days following the date of application and allow states to set the standard anywhere between the 45th day after application and the 60th day. For many households, the first indication they may have that their application is in serious trouble may be the notice of denial. Having some period after this notice in which to set matters right can mean the difference between getting food assistance to a family in need and having that family permanently give up on getting food stamps because it believes the Program's procedural requirements are insuperable. This is an area where studies like Mathematica's suggest that application barriers should not be increased.

- **Denying a household without allowing sufficient time to gather required documents.** Current section 273.2(h)(1)(i)(C) requires food stamp offices to provide households at least 10 days from the date the office requests *a specific document*. Thus, if a state has requested additional verification and the 30-day point comes at a time when fewer than 10 days have elapsed from the date of the "state agency's initial request for the particular verification that is missing," the state may *not* close the case and must continue to process it.

The proposed rules are not clear on this point and could be read to weaken this principle significantly. Proposed sections 273.2(e)(1), 273.2(f) and 273.2(h)(3)(i)(C) require only that households be given ten days to provide verification. The words "particular verification that was missing" are dropped from the proposed section 273.2(h)(3)(i)(C). This would create problems USDA likely does not intend. Suppose, for example, an applicant is told at the interview that he or she must bring proof his or her children reside in the household and returns on the eighth day with library cards (or some similar document) in the children's names that show the applicant's address. The eligibility worker might insist on seeing school records proving the children's address. The applicant may not be able to obtain those records within two days, especially if the applicant must work (or if the school is closed for a vacation). Without the dropped language, the rule even could be read to mean that if a household is given a printed list of documents to bring to its interview at the time it applies it could be denied food stamps if the interview is scheduled more than ten days after the household applies and what the household brings to the interview is insufficient. We doubt either of these circumstances are what USDA intends.

To address these problems, the final rules should maintain language that makes clear the current practice remains in this area, under which the household must receive ten days to provide any specific piece of verification.

In addition, current section 273.2(g)(3) prohibits denying a household until the thirtieth day after the application is filed even if the household has received 10 days to provide a specific document. The proposed rules omit this provision, too. The current regulation was written to curb what had been the widespread practice of automatically denying applicants after ten days regardless of whether they were trying to obtain the required verification. This proposed change in the rules could pose particular problems for immigrants, who may need more time to get certain documents from government agencies or from overseas.

The rules should maintain the current practice of not denying a household for procedural reasons before the 30 day point if the household is cooperating. Earlier denial should occur only if the household is found ineligible or has refused to cooperate.

3. Rules that Apply Specifically at Recertification that would Terminate Recipients who are Attempting to Cooperate

- **Terminating food stamps to households that are trying in good faith to cooperate.** Current section 273.14(e)(2) states that if a household files a timely application for recertification at the end of its certification period but “fails to take a required action” such as appearing for a scheduled interview, the food stamp office may deny the case immediately or may wait until the end of the household’s expiring certification period or until the end of 30 days.

This already is a harsh rule that is unsuited for serving the working poor and other households with special needs who may encounter more difficulty than other households in appearing at scheduled interviews or providing documents within tight timeframes. (See Dion and Pavetti, p. xii.) It provides for terminating food stamps to households that may be trying in good faith to cooperate. It also appears to conflict with 7 C.F.R. § 273.2(d)(1), which prohibits denying the applications of households that have failed but not refused to cooperate. (Since an application for recertification is itself an application, it is unclear which regulation would take precedence.) If the household is not *refusing* to take a required action, the state should not be able to deny its application for recertification and terminate its food stamps until 30 days have passed and, at a minimum, not before the end of the household’s current certification period.

The proposed rules, however, would go farther and make the rule harsher. The proposed rules would create additional risks that eligible households would be denied and lose food stamp benefits for innocent failures to meet procedural requirements. Current section 273.14(e)(2)(iii)(A) provides that if a food stamp office elects to send a notice of denial immediately (rather than after 30 days or at the end of the current certification period) to a household that has submitted a

timely application for recertification but failed to take some other required action (such as making an interview or meeting a verification time frame), the food stamp office must reinstate the household without requiring a new application if the household takes the required action within 30 days of application. Under these circumstances, the household would get the full amount of food stamps to which it otherwise would be entitled. The proposed rules, however, would allow the food stamp office to decline to reopen the application in these cases. As a result, not only would the household not receive its full food stamp benefits for the first month after its old certification period expired, it would not even receive food stamps from the day it corrected whatever omission had led to the denial. Instead, the state could require the household to start over again and submit a new application, thereby denying the household benefits until the date the new application is submitted.

This is a particularly inappropriate time for USDA to be proposing a change of this nature since PRWORA requires states to pro-rate a household's food stamp benefits after any gap in participation, no matter how short. Pro-ration would not apply where the household reapplies prior to the end of its last certification period. But by allowing food stamp offices to deny those applications for innocent technical failings of households, the proposed rules would force more households to re-apply the following month and suffer pro-rating even though they remained eligible throughout the entire period.

The final rules should modify the approach in both the current and proposed section 273.14(e) to conform to current section 273.2(d)(1) by barring procedural denials of households that have not refused to cooperate. The rules should not allow food stamp offices to terminate food stamps to recipient households that have failed to appear at their first scheduled interview appointment at recertification just as they should not be denied for failing to appear at a scheduled interview at initial application. (See discussion in section III(B) below.) Denial in such circumstances ignores the realities of life that working households face, especially in areas where interviews are scheduled only during normal working hours or without working out with the household a time it can make. Similarly, households that have not refused to cooperate in providing verification should not have their applications for recertification denied when they are unable to produce requested verification by the deadline given them by the food stamp office.

- **Terminating food stamps at recertification to households that have not been informed of the deadline for submitting verification.** Current section 273.14(b)(4) requires the food stamp office to give a recipient household that is reaching the end of its certification period a list of the items of verification it must submit to continue receiving food stamps and to "notify the household of the date by which the verification requirements must be satisfied." The proposed rules would delete the requirement to notify the household of the date by which verification must be provided. This is particularly disturbing because, as was described above, the proposed rules also would allow a state to deny an application for re-

certification immediately — and refuse to reopen it, terminating the household's food stamps at the end of the certification period and requiring it to file a whole new application — if the household misses the verification deadline. Thus, the household could be terminated from the Program and would likely lose some food stamps irretrievably when its benefits under a new application are pro-rated as a result of missing a deadline of which it was never informed. Here again, PRWORA's provision requiring that households' benefits be pro-rated when they reapply after any break in participation suggests that the Department's final rules should endeavor to avoid unnecessary procedural denials of recertification to eligible households. *The final rules should maintain the current provision.*

B. Denying Eligible Working Poor or Homeless Households that are Unable to Appear at a Scheduled Appointment

Working poor households may have difficulty getting time off from work to attend interviews at the food stamp office. This is particularly true because many food stamp offices assign interview times based upon the availability of eligibility workers without consulting the household. Mathematica notes the cumulative burden that required visits to the food stamp office imposes on the working poor. (Dion and Pavetti, p. xii.) Homeless and other eligible low-income families may have transportation or child care difficulties that prevent them from appearing. In addition, many low-income households have no vehicle. (Some of those that do may have an unreliable vehicle.) Mathematica identifies “difficulty getting to the FSP office” — e.g., the “need to arrange for dependent care, losing pay while at the FSP office, physical difficulties getting to [the] FSP office because of poor health or disabilities” — as a major barrier to participation. (*Id.*, p. 21.) Although a household whose application is denied based on a missed interview can always reapply, some may not realize that fact. Even if the household does understand this, it will lose some food stamps for which it otherwise would have qualified because of pro-rating.

Accordingly, current section 273.2(e)(3) requires food stamp offices to attempt to reschedule interviews for households that do not appear for their first scheduled interview. Specifically, the rules prohibit denying an application unless the household “has failed to appear for two scheduled interviews and not made a subsequent contact with the state agency to express interest in pursuing the application.”

USDA now proposes to repeal this requirement. Proposed section 273.2(h)(3)(i)(D) requires the food stamp office “to notify the household that it could reschedule a missed interview appointment,” but that notification could be buried in the fine print of the application form that the household submitted to the food stamp office or in a long, dense information pamphlet that discusses many other subjects and is unlikely to be read. Moreover, if a household were to call to reschedule an interview that it missed due to a work conflict, a sick child, a child care problem, etc., and the food stamp office did not respond or could not find an interview time that the household could make before the end of the 30-day period, the application could be denied. This policy seems likely to result in the denial of food stamps to a number of working poor households.

While the proposal to make the current rules in this area less prescriptive makes sense, the final rules should require food stamp offices to provide several safeguards:

- ***The food stamp office should routinely notify all applicants about the possibility of waiving the face-to-face interview in cases of hardship and the procedure for requesting such waivers. Similarly, the food stamp office should notify all applicants that they may send an authorized representative to their interview if they cannot attend personally.***
- ***The food stamp office should notify the applicant of the date and time of the interview in person, by telephone, or by letter mailed at least seven days in advance of the scheduled interview. At present, some households miss interviews because the notice of the date and time they are required to appear arrives so shortly before they are to appear that they cannot arrange time off from work or appropriate child care.***
- ***The food stamp office should send an applicant that misses a scheduled interview a notice informing him or her of this fact. The notice should ensure that the household has at least ten days (or, if longer, until the thirtieth day following the date of application) in which to contact the food stamp office to reschedule an interview before the application may be denied and should provide a general telephone number the applicant may call to reschedule the appointment without having to reach any particular eligibility worker. Scheduling an appointment is important. Mathematica found that offices providing interviews on a "first-come, first-served" basis forced working poor households to miss a great many hours from work if they persevered in their pursuit of food stamps. (Dion and Pavetti, pp. 21-22.)***
- ***The food stamp office should reschedule the interview for any applicant that visits or calls the office on or before the thirtieth day after filing his or her application if the household indicates a continued interest in receiving food stamps. This is particularly important for applicants who, because of child care problems, delays on public transit, etc., may appear late for their scheduled interview.***
- ***The rules should state that where the applicant has informed the food stamp office that all adults in the household are working, the food stamp office should attempt to accommodate that household but be given several options of how to do so. Where the food stamp office is open during hours when the applicant does not work — either because it is open during non-traditional hours or because the applicant's work schedule does not cover all of the regular hours the office operates — it could offer the applicant an interview time that does not conflict with his or her work schedule. If the food stamp office is not open during hours when a working applicant is not working, it could offer the applicant a telephone interview, perhaps during the applicant's lunch hour or scheduled break. If the food stamp office is unwilling or unable to accommodate a working applicant in either of these ways, it should be required***

to attempt to reschedule the first missed interview. Although this is a crude accommodation, and likely inferior for both the office and the household to an appropriately-scheduled face-to-face interview or an interview over the phone, it may nonetheless be necessary: a low-income worker may not know until the last minute whether activity at work is slow enough to allow him or her to take time off to attend the food stamp interview. The Food Stamp Program should support families' work efforts and should seek to avoid forcing households to choose between alienating their employers and being denied food stamps.

States with waivers from the existing requirement should be given a reasonable length of time to come into compliance with these new procedures.

A similar rule should apply to recipient households seeking recertification. Proposed section 273.14(e)(2) would allow a food stamp office to deny a household immediately when the household "fails to take a required action" such as appearing for an interview. (Current section 273.14(e)(2)(ii) allows denials in most such circumstances.) Households in this situation — including households who didn't make the interview because of a work conflict — would not even be given the opportunity to seek to reschedule the interview before being denied. This is a particularly harsh and inequitable rule and, as Mathematica shows, is likely to cause some eligible working poor households to be terminated from food stamps, both because their work schedules are likely to make it more difficult for them to appear at the interview time scheduled by the food stamp office and because many states require working poor families to reapply for food stamps more frequently than other recipients. (Dion and Pavetti, pp. 15, 21-22, and 32.)

In addition, section 273.2(d)(1)'s prohibition on denying households based on their mere failure (but not refusal) to cooperate should include the current rules' requirement that a household cannot be denied for refusal to cooperate merely because it misses one interview.

C. Denying Households Without Allowing an Opportunity to Resolve Apparent Discrepancies

Current section 273.2(f)(4)(iv) requires the food stamp office to attempt to resolve any discrepancies that may arise between unverified information the office has received and the household's own statements. Proposed section 273.2(f)(4) retains this provision. ***This provision also should be retained in the final rules.***

The proposed rules would, however, delete the requirement in current section 273.2(f)(9)(v) that the food stamp office put in writing any information it has received from a computer match through the income and eligibility verification system (IEVS) if it is requesting independent verification from the household. The quality of information in computer data bases accessed through IEVS varies considerably. Some data is current and carefully maintained; other records are months out-of-date and sometimes unreliable. A household that has been told it must resolve a discrepancy without being given a clear, written statement of what the food stamp office understands to be the case may face an almost impossible task. If, for example, IEVS reports that the household member has unreported income, without a written statement describing the basis of that belief the household member may have to guess whether the match results from one of his or her former jobs, from a transposed digit in the reported date or Social

Security number of the reported information, another individual working fraudulently under the applicant's Social Security number, or a glitch of some other kind.

States successfully persuaded Congress to make their food stamp agencies' participation in IEVS optional in PRWORA precisely because IEVS returns so much faulty information. The same awareness of IEVS's shortcomings should lead to a retention of the requirement that an applicant or recipient be given clear, written, advance notification any time the food stamp office proposes to take action affecting him or her on the basis of an IEVS hit. ***The final rules should retain this.***

D. Increasing the Risk of Improper Terminations of Households Leaving Cash Assistance Programs or Experiencing Other Changes

Studies of families leaving cash assistance rolls over the past several years have found that many have incomes well below the poverty line and thus are likely still to qualify for substantial food stamp benefits. Nonetheless, a substantial fraction of these families are not receiving food stamps. For example, Mathematica reports that "a study of TANF recipients who reached time limits in Virginia indicated that six months later, 54.1 percent of all cases not receiving food stamps thought they were not eligible, despite the fact that 54.4 percent of the sample had an income below 130 percent of poverty." (Dion and Pavetti, p. 21.)

Some of these families may be ineligible for reasons the studies do not disclose, but the majority appear to be missing out on benefits they qualify to receive and likely need. It appears that many of these eligible families leave the Food Stamp Program at the same time their cash assistance cases are closed. Some may be consciously severing ties with the public benefit system, but others may be losing benefits due to procedural errors in making the transition or because the pressures of their new jobs prevent them from taking the steps the food stamp office requires for them to continue to receive food stamps. Still others, particularly those terminated from cash assistance due to time limits or sanctions, may erroneously believe they are ineligible for food stamps as well. Mathematica reports "a fair amount of drop-off" in food stamp participation when families are sanctioned off of cash assistance even though most TANF sanctions do not render an entire household ineligible for food stamps. (Dion and Pavetti, pp. ix and 14-15.)

One of the central principles of the President's welfare policy is that families that work full-time, year-round at the minimum wage should not be poor. Since 1993, the Administration's formula has been that the combination of full-time minimum wage earnings, the EITC and *food stamps* should lift a family of four to the poverty line. Even if it gets the EITC, a family of four supported by a full-time minimum wage will fall about twenty percent (or several thousand dollars) short of the poverty line without food stamps. Ensuring that food stamp eligibility continues as a family moves from welfare to work thus is essential to ensuring that work holds the promise of a better life and that the President's "make work pay" goal is met. ***The final rules should include a duty for food stamp offices to inform households that they may still be eligible for food stamps if they get a job or if they stop receiving TANF assistance for another reason, such as a time limit.***

In addition, special care should be taken to help families making the difficult transition from cash assistance to retain their food stamp benefits if they so desire. Accordingly,

PRWORA amended section 11(i)(2) of the Food Stamp Act (7 U.S.C. § 2020(i)(2)) to provide that “no household shall have its application to participate in the food stamp program denied nor its benefits under the food stamp program terminated solely on the basis that its application to participate has been denied or its benefits have been terminated under” a TANF-funded program (except when a TANF sanction makes the household ineligible for food stamps). Current food stamp regulations also are designed to prevent inappropriate procedural terminations of food stamps to families as they leave the cash assistance rolls. Section 273.12(f)(4) requires that when a household’s cash assistance benefits are terminated and the food stamp office has sufficient information to determine the household’s food stamp eligibility and the appropriate new benefit level, it must make the appropriate adjustments without disturbing the household. ***USDA appropriately does not propose to change this regulation, and the Department should not weaken this provision in the final rules. Indeed, to make this provision clearer (in face of what appears to be significant confusion by some food stamp offices), the final rules should include the examples and explanations provided in the access guide the Department issued last July.*** Mathematica reports that some states may not have appropriate systems for separating action on TANF benefits from that on food stamps and Medicaid, with food stamp and Medicaid benefits being terminated as a result. (Dion and Pavetti, pp. 14-15, 23 and 32.)

Section 273.12(f)(5) of both the current and proposed regulations addresses situations in which the food stamp office does *not* have sufficient information to determine the household’s eligibility or benefit level after the termination of cash assistance (*e.g.*, because a new member has joined the household and the food stamp office has no information about that individual’s income or because the household’s income has risen above the limit for cash assistance but the office lacks knowledge of the specific new income level). Here, the proposed regulations contain significant changes that are out of sync with the most critical problem facing the Food Stamp Program today: dramatic declines in participation, especially among families leaving welfare for work. ***Rather than addressing this problem, the proposed rules would make it more serious.***

- **Prohibition on terminating benefits.** The current regulation explicitly requires that when cash assistance is terminated and the food stamp office lacks sufficient information to determine food stamp eligibility and benefits, the food stamp office “shall not terminate the household’s food stamp benefits.” The proposed rules would eliminate that language. Although USDA does not appear to intend that these households be terminated, removing this language increases the risk that local food stamp offices or individual eligibility workers will mistakenly terminate these households. Given the evidence that eligible households already are being terminated improperly under these circumstances, this is a particularly inappropriate time to remove this clear statement from the regulations. ***The final rules should restore this explicit statement.***
- **Limiting the cases in which households can be required to take action before the end of their certification periods.** Current section 273.12(f)(5) allows food stamp offices to shorten the food stamp certification periods of households leaving cash assistance only when two conditions are both met. First, the food stamp office must know that the household’s circumstances have changed in a way that is relevant to the household’s food stamp eligibility and benefit level.

Second, the food stamp office must lack sufficient information about that change to adjust the household's benefits properly. The termination of cash assistance benefits, by itself, is not a change sufficient to meet these conditions since the food stamp office is fully aware of the amount of the reduction and can recalculate the household's benefits accordingly. The regulations suggest that an absent parent returning to the household could force the food stamp office to shorten the household's certification period if the food stamp office has no information about the new member's income or resources.

Where both of these conditions are met, current section 273.12(f)(5)(ii) directs the food stamp office to send a "notice of expiration" even if the household's certification period still has several months remaining. These households' certification periods thus would come to a premature end, and the household would be terminated from food stamps if it did not reapply and complete the recertification process by the end of the following month.

Nonetheless, some food stamp offices currently appear to interpret section 273.12(f)(5) as allowing them to shorten the certification periods of most or all households terminated from cash assistance because of earnings from a new job, time limits, sanctions, or procedural reasons. These offices argue that they do not know how the household is managing without cash assistance and thus they lack sufficient information to certify the household for food stamps. This approach can result in almost all households that leave the cash assistance rolls being required immediately to reapply for food stamps (except in the unlikely event that the household not only reported but verified in detail its earnings from a new job). These practices probably have contributed significantly to the low food stamp participation rate among TANF leavers. (See Dion and Pavetti, pp. xii and 21.)

The proposed rules propose two major changes in this area. First, they would greatly expand the circumstances under which food stamp offices could shorten households' certification periods. Second, they give states the option of using the current method of shortening certification periods with an early notice of expiration (NOE) or following a new procedure under which the food stamp office first would request information from the household and then send the household a notice of adverse action (NOAA) if the household did not respond satisfactorily. ***As is discussed below, the final rules should significantly narrow the circumstances under which food stamp offices may demand that households provide additional information. The final rules also should abandon the current practice of using NOEs and require states to follow the new procedure USDA proposes of requesting information and then, if necessary, sending a NOAA. That procedure should, however, be refined in some significant ways from the version included in the proposed rules.***

The preamble argues that the current practice of shortening a household's certification period "allows the state agency to request that the household report for an interview and recertification in a non-confrontational way." 65 Fed. Reg.

10886. This view is too optimistic. A household that has just been terminated from cash assistance and receives a notice that this is causing its food stamp certification period to be terminated may not believe that going through the food stamp recertification process is likely to be fruitful. As Mathematica has noted, many recipients apparently do not fully understand the differences between the complex rules of the two programs. (Dion and Pavetti, pp. xi-xii, 14-15, 21, and 32.) Instead, they are more likely to see their relationship with the welfare office holistically: if the welfare office felt they deserved to be terminated from cash assistance, they may reason, it likely is inclined to terminate them from food stamps as well.

In many cases, the suggestion of a recertification interview is unlikely to change this perception: some states schedule "exit interviews" for families being terminated from cash assistance at the end of the time limit. The availability of the interview does not imply that the office is willing to continue the family's benefits. Some states report that these exit interviews are poorly attended. Eligible households are likely to miss food stamp recertification interviews for similar reasons.

Although food stamp offices' desire to have full information about the circumstances of all TANF leavers is reasonable, a blanket requirement that households must reapply is a poor method for achieving that result and is contrary to what current regulations intend. Although households cannot continue indefinitely with no cash income, a change may take more than one month to occur. By calling the household in immediately after its cash assistance benefits are terminated, the food stamp office will learn of changes that take place immediately but not those that take a month or two more to materialize. For those changes, the food stamp office must rely on the household to make a report whether or not it shortens the household's certification period.

In light of the powerful research evidence from the Urban Institute and elsewhere that large numbers of eligible households are losing food stamps when they leave cash assistance, USDA should be adjusting procedures to address this problem. ***The final rules should strengthen section 273.12(f)(5) by stating that the loss of cash assistance income by itself is not sufficient grounds for shortening the household's certification period and that any decision to require additional information from a household must be based on an individualized assessment of that household's circumstances.*** This would *not* represent a change from the policy of the current regulations. It is necessary, however, because many eligible families are losing food stamps as an apparent result of the current policy not being faithfully implemented.

The final rules should seek to reduce reliance on shortening certification periods. USDA's proposed rules give food stamp offices the option to request that households submit new information, with the household's certification period being shortened only if the household fails to respond. This request for informa-

tion should be a mandatory precondition to shortening a household's certification period (and, as is discussed more fully below, significant safeguards should be added to this procedure). In other words, while USDA's proposed rules would give a food stamp office the choice between the current method, in which it may immediately shorten a household's certification period, and a new procedure in which the food stamp office would be required first to request the necessary information from the household, *the final rules allow only the new procedure.*

The final rules should provide that a household's benefits be continued while the household is requested to bring the food stamp office up to date on the specific circumstances that are unclear. Only if the household fails to respond within the specified timeframe (or initially responds but then refuses to cooperate in resolving any remaining eligibility issues) should the food stamp office be permitted to send it a NOAA. Moreover, the notice should be required to make clear that the household's benefits will continue if it provides the requested information (so long as the requested information indicates that the household continues to qualify).

- **Terminating eligible households' benefits based on failure to access electronic benefits.** The preamble notes that states have argued they should be allowed to shorten a household's certification period and terminate its food stamps when the electronic benefit transfer (EBT) system shows that the household is not accessing its benefits in a timely fashion. 65 Fed. Reg. 10885. The proposed rules do not appear to allow food stamp offices to shorten households' certification periods in these cases. In light of research and anecdotal evidence that many households getting modest benefits accumulate several months' benefits before using them to minimize the number of occasions they are seen using food stamps, *USDA is right to reject the suggestion that failure to access EBT benefits should be grounds for requiring a household to provide additional information to the food stamp office.* Households that receive modest allotments include the elderly, the disabled, the working poor, and households with ineligible immigrant members.

An eligible household that still wishes to participate in the Food Stamp Program could fail to access its benefits promptly for a number of legitimate reasons. Elderly and disabled households that receive very small food stamp allotments (often just \$10 per month) may save up several months of benefits to be used in one shopping trip (rather than expose themselves to stigma by using their benefits every month). These households may not realize that EBT systems record this activity and take their benefits off-line after three months of inactivity. Shortening these households' certification periods serves no useful purpose and is likely to cause many to leave the program. Also, because USDA has often waived its regulations requiring that households be trained in the operation of EBT systems before such systems are put in place or when the household is newly certified to receive food stamps, some households that are not accessing their food stamp benefits may not know how to do so or may be waiting until a more techno-

logically-savvy friend is available to help them do so. Offering assistance to such households might be appropriate; terminating their certification periods is not.

- **Procedures for shortening households' certification periods.** Proposed section 273.10(f)(4) would create a sweeping new procedure for terminating households' food stamp benefits in the middle of a certification period. It would allow a food stamp office to shorten a household's certification period under any of four broadly stated circumstances after sending the household a request to provide information within ten days. If the household does not respond within a period (usually ten days), or "does not provide sufficient information to clarify its circumstances," the food stamp office could send a NOAA, terminating the household's certification period and requiring it to reapply.

The preamble suggests that its rules allow food stamp offices to "apply this new policy only in the most compelling circumstances." 65 Fed. Reg. 10886. Unfortunately, the language it proposes does not accomplish this. Under the proposal, a food stamp office could send the demand for information that is the precondition to shortening the household's certification period if it believes that a household had not provided "adequate" information about a change in household circumstances other than income or if the food stamp office has information indicating that the household is not reporting any of its earned or unearned income "properly" in any way. The food stamp office also could initiate this process if the household reports a change that causes the food stamp office to fear that the household's "circumstances are very unstable." Because of intense pressures to reduce quality control error rates, some states or food stamp offices may consider a report of any change in the number of work hours or in the amount of child support paid as placing a household in the "very unstable circumstances" category. Workers' hours can fluctuate a bit as the number of work hours in a month changes because of the calendar or a household member misses a day of work due to illness, etc. (Studies have found that most parents leaving welfare for work do not have paid sick leave.) Similarly, child support payments may not be identical from month to month since the timing of both payment by the absent parent to the state's child support enforcement agency and the agency's remittance of such payments to the household can vary, with two months' payments sometimes received one month and none the next. In practice, this new procedure would likely represent a major new burden on working households, recipients of child support, and other eligible, honest low-income households if the final rules are as broad as the proposed rules.

Such an open-ended procedure should not be included in the final rules. The Food Stamp Act establishes certification periods as a trade-off: in exchange for having periodically to undergo redeterminations of eligibility that are substantially more arduous than those in Medicaid and other programs — and being denied pending benefits if they request a fair hearing to dispute the food stamp office's actions at recertification — households are given relative security against additional procedural demands on them during that certification period. USDA's

proposed rules would effectively eliminate the security that certification periods are intended to provide households while making the process at the end of certification periods even more burdensome. This is inconsistent with the Administration's recent efforts to reduce barriers to access to the Food Stamp Program.

If this procedure is retained in the final rules, the criteria under which it may be invoked should be narrowed substantially. This would ensure that it truly is used "only in the most compelling" circumstances. Only where the food stamp office has clear, specific information about a particular household that contradicts the household's statements should it be permitted to require the household to submit additional information in the middle of a certification period. This provision should allow the food stamp office to make such demands only when the source of the information is a computer match, a report from another public agency of a specific, relevant change, or a statement from the household itself (such as an incomplete change report) or from someone reporting that he or she has joined the household. ***Proposed section 273.12(f)(4)(i)(C), allowing the food stamp office to initiate this procedure in response to "unstable" circumstances, should be dropped entirely*** because it is so subjective as to allow large numbers of working poor households and recipients of child support to be buffeted with additional, burdensome demands for information that will likely discourage many from receiving food stamps.

Finally, if this new procedure is included in the final rules, it should be permitted only where a food stamp office observes several important safeguards:

- ***Opportunity to respond.*** The notice requesting additional information must provide a dedicated, toll-free reporting telephone line that the household can call to provide the requested information. With some states assigning five hundred or more food stamp cases to each eligibility worker, many households may have great difficulty reaching their eligibility worker, especially if their work schedule limits when they can call.
- ***Clear request for information.*** The four criteria in proposed section 273.10(f)(4)(i) are extremely broad. Households receiving such broadly drawn requests for information are unlikely to know just what the food stamp office wants. For example, some households may believe that a request to "verify your income" simply asks for an attestation of the amount of their most recent paycheck (while the food stamp office probably wants to receive the household's pay stubs for the past month or, if the household has been working for less than a month, specific information on the period covered by each pay stub that is available). The final rules should require food stamp offices' requests for information to be clear and specific.

- ***Presumption of continued benefits.*** In the application process, even the proposed regulations would allow households ten days to produce requested verification. Here, by the time the Postal Service delivers the request for information, part of the ten days will have expired. Some households that are not expecting the request may not be able to produce verification in this time frame without assistance from the food stamp office. In the application process, the household bears the burden of establishing its eligibility. In the middle of a certification period, however, the presumption should be of continued benefits. Even if USDA is not prepared to continue to require food stamp offices to provide assistance to all applicant households, it should be required to assist those on whom it chooses to impose additional burdens in the middle of a certification period. The proposed regulations do not extend the duty to assist even to special needs households — which they would maintain for new applicants — in these cases where households are asked to provide additional information in the middle of a certification period. A state also should be required to extend the time a household has in which to provide the information by at least ten days if the household reports that it is trying to provide the requested information having difficulty meeting the original deadline. At a minimum, the final rules should make the same provisions for assisting households with special needs that apply to new applicants equally applicable to households asked to provide verification in the middle of a certification period.
- ***Clarifying unclear or inadequate submissions.*** Proposed section 273.10(f)(4)(ii) provides that if the household “does not provide sufficient information to clarify its circumstances,” the food stamp office may terminate its certification period and require the household to reapply if it wishes to receive further benefits. This is too harsh and is likely to result in a significant number of terminations of eligible households’ certification periods. In some cases, households will legitimately misunderstand what the state is requesting. In other cases, what the state requests may be unavailable (e.g., documentation of the household’s wages from a new job where the household’s agreement with the employer is only verbal). In still other cases, the household will respond fully to the food stamp office’s request but the information it supplies may raise new concerns. If the household responds, the food stamp office should work with the household until either the household — and should not send a notice of adverse action — until either the household provides the necessary information, the household can be determined to have refused to cooperate as defined in 7 C.F.R. § 273.2(d)(1), or the household has failed to produce a piece of

verification at least ten days after a request for that specific item. (This is the same standard for cooperation in the current section 273.2(h)(1)(i)(C).)

- ***Shortening certification periods for households that have cooperated.*** Proposed section 273.10(f)(4)(ii) allows the food stamp office to shorten the certification period even if a household that provides a full and adequate response to a request for information if the household “agrees that changes in its circumstances warrant filing a new application.” Unfortunately, quality control pressures have driven many states to prefer to undertake complete recertification processes for households whenever a change occurs. The final rules should not include this provision, which would allow food stamp offices to press households into consenting to having their certification periods shortened without fully understanding the consequences of that action. If the final rules do include this provision, however, they should be clear that the food stamp office cannot pressure a cooperating household into agreeing to have its certification period shortened.
- ***Reinstatement for submission of information prior to termination of certification period.*** Where a household is not able to submit the requested information prior to the close of the initial ten-day period but does so before the expiration of the food stamp office’s NOAA, the household’s certification period should be reinstated. Any changes in the household’s eligibility or benefit level that this information shows to be in order should be addressed with a subsequent notice of adverse action. (Where the original notice only proposed to terminate the household only for failing to provide requested information, a household that subsequently provided information would not have timely and adequate notice of any substantive basis of ineligibility that the food stamp office inferred from that information. It would need to receive new notice so that it would have the opportunity to request a hearing if it believes the food stamp office has misinterpreted the information it provided.)
- **Transitional food stamp benefits for families leaving cash assistance.** At page 10886 of the preamble, USDA solicits public comments on “the most effective way to allow States to continue to provide nutritional support for families leaving TANF.” At present, access concerns — wanting to reassure families leaving TANF that they can continue to receive food stamps and providing workable procedures through which they can do so — are conflicting with states’ concerns about avoiding quality control errors resulting from these households’ potentially unstable circumstances. To date, this trade-off has been resolved in favor of payment accuracy concerns: food stamp offices have made extensive demands for

additional information from families at a time when the families' relationships with the human services system may not be the best and when the families are either trying to manage the stresses of a new job (if they have one) or avoid the threat of destitution (if they do not). This rigid approach to these vulnerable families appears to have contributed significantly to declining food stamp participation.

States will not abandon their quality control concerns; for any approach that improves access for these families to be workable, it must insulate states from errors. For both the state and family, the first few months following a family's exit from TANF is crucial. Once the family has received additional months of food stamps following the termination of its cash assistance, it should understand that food stamp eligibility is independent of TANF eligibility and hence more likely to believe that cooperating with food stamp procedural requirements will be worth its time. From the food stamp office's point of view, once the family is beyond the first few months after the termination of its cash assistance, the family's circumstances are likely to have stabilized enough to reduce the risk of a payment error.

One way to get the food stamp office and the family through those first few difficult months would be to freeze temporarily the family's food stamp benefit at the level it received prior to the termination of its cash assistance if the family has not provided the food stamp office sufficient information to recalculate its benefits. For families that have found work, this often will mean a food stamp benefit somewhat higher than they would have received under the regular formula. For families that have been terminated from cash assistance due to time limits, sanctions, or procedural non-compliance, this will often mean a food stamp reduction since families with no income ordinarily will receive the maximum food stamp benefit.

Current law appears to provide authority for freezing households' benefits under these circumstances. Section 5(f)(2)(A) of the Food Stamp Act (7 U.S.C. § 2014(f)(2)(A)) gives states the option to determine most households' eligibility and benefits retrospectively. States may adopt retrospective budgeting for some households and not others and may switch a household from prospective to retrospective budgeting and vice versa in response to a change in the household's circumstances, such as obtaining or losing a job. Section 5(f)(3)(B) of the Food Stamp Act (7 U.S.C. § 2014(f)(3)(B)) defines retrospective budgeting only as "eligibility or benefits . . . being determined on the basis of income received in a previous period."

Current sections 273.21(a) and (d), which the Department has not proposed to change, allow states to adopt retrospective budgeting systems that base eligibility and benefit calculations either on the month before benefits are issued or on the month before that. Thus, under these regulations, a state could apply one-month retrospective budgeting to a household terminated from cash assistance during the first month after the termination and could then apply two-month retrospective

budgeting during the second month following termination. This may sound complex but would not be: there would simply be a two-month benefit freeze. In each month, the household would receive the same food stamp benefit it did during its last month receiving cash assistance and the food stamp office would be immune to any quality control errors relating to changes in the household's circumstances that occurred during those two months.

This approach is permissible, albeit somewhat cumbersome, under current rules. It would not be very different from what some states already do when they convert a household from prospective to retrospective budgeting when it gets a job. Nonetheless, it is sufficiently obscure that no state apparently has proposed implementing it. ***The final rules should make a one- to three-month freeze in the household's food stamp benefits an explicit state option for households leaving cash assistance.*** These rules, relying on the broad flexibility that sections 5(f)(2)(A) and (3)(B) provide, should streamline and simplify the process state food stamp agencies would have to undertake in order to implement this option. Also, although current regulations provide for only one- and two-month retrospective budgeting systems, the Department's final rules should allow states to freeze the level of the food stamp benefits to families leaving cash assistance for up to three months (with regular rules going back into effect at any point during that period when the household provides the food stamp office sufficient information to redetermine its eligibility and benefit levels under its new circumstances).

Allowing states to continue the household's food stamp benefits at the prior level for a period of up to three months should substantially reduce states' desire to shorten these households' certification periods. This period would reassure the household that food stamps can continue independently from cash assistance and provide sufficient time for the household to provide information on any changed circumstances. Also, where the household has been terminated from cash assistance without having an alternative source of support, two or three months should be a sufficient time for the household to determine how it will cope: by finding employment, moving in with a friend, or, where possible, returning to cash assistance. By contrast, if the food stamp offices shortens a household's certification period immediately upon the household's exit from cash assistance, it may interview the household too soon to learn which course the household will take and, as a result, may feel that it must put the household on a very short certification period. That would further exacerbate the burden of participation on a household, increasing the chances the household may drop off the Program or be terminated for procedural non-compliance. ***The final rules should make the option of transitional food stamps explicitly available to states. The final rules also should encourage states to use this option in preference to shortening these households' certification periods.***

- **Lengthening or renewing certification periods.** The proposed rules are one-sided in this regard. They would give states broad new authority to shorten

certification periods. Proposed section 273.12(f)(5) would still, however, prohibit states from lengthening certification periods once issued. (USDA says it might consider granting waivers in this area, but its preamble is discouraging about states' prospects. 65 *Fed. Reg.* 10887.) This policy is squarely at odds both with the Administration's efforts to encourage longer intervals between reviews of eligibility in Medicaid as well as its July 1999 initiative to allow longer food stamp certification periods. It also is incongruous for the proposed rules to so sharply limit state flexibility where it could be used to reduce barriers to access for working poor and other households at the same time they would eliminate, in the name of state flexibility, numerous longstanding rules designed to increase access for eligible households.

When, as a result of a reported change, a household has provided information and verification that has brought the food stamp office up to date on the household's circumstances, the food stamp office should be allowed to lengthen the household's certification period (or to provide the household a new certification period if the food stamp office believes the circumstances warrant it). The final rules should make clear that the prior certification period need not be terminated before a new one is approved (although any reduction in benefits would be subject to notice and an opportunity for a hearing with pending benefits). The prospect of receiving a new certification period may encourage some households to report changes promptly rather than waiting for their next recertification. In general, food stamp offices should be given discretion to lengthen existing certification periods subject to the statutory limit of twelve months for the certification periods of most households (and 24 months for households composed entirely of elderly and disabled members who are not working). Food Stamp Act § 3(c); 7 U.S.C. § 2012(c).

The final rules should allow food stamp offices both to issue new certification periods before the expiration of the prior period and to extend existing certification periods.

E. Increasing the Risk of Improper Denials of Households Applying Jointly for Food Stamps and TANF-funded Benefits

1. Denying Food Stamp Applications Prematurely

Although the denial of a TANF application should not adversely affect the food stamp eligibility of a household that meets all food stamp eligibility criteria, approval of a TANF application *can* allow an otherwise ineligible household to receive food stamps. Accordingly, current section 273.2(j)(1)(iv) requires a food stamp office to postpone denying the application of a household that is applying for TANF-funded benefits and that would be categorically eligible for food stamps if the household's TANF application is approved. Section 273.2(j)(1)(iv) also requires that notices denying food stamps to households with applications pending for cash assistance or SSI should inform the household that it should notify the food stamp office if its cash assistance or SSI benefits are approved.

The proposed rules would delete these provisions. ***The final rules should retain these provisions. In addition, the final rules should be clear that food stamp offices must reopen and approve food stamp applications that they have denied when the TANF application is approved after the denial. In addition, the final rules should apply these same procedures to households that appear ineligible for food stamps because of excess resources if the owner of those resources has a pending application for TANF-funded benefits or SSI.***

2. Improperly Reducing the Benefits of Households Applying Jointly for Food Stamps and TANF-funded Benefits

The proposed rules would delete two provisions of current section 273.2(j)(1)(iv) that seek to ensure that food stamp offices do not inappropriately count initial cash assistance payments to reduce households' food stamp benefits. One states that if the amount or date of receipt of an initial cash assistance payment cannot be reasonably anticipated at the time the household is determined eligible for food stamps, that initial payment should not be counted. The food stamp office would make an appropriate change to the household's benefit amount for future months when and if the cash assistance payment is actually received. The second provision states that any portions of initial cash assistance benefits provided retroactively for previous months should be excluded (as a lump sum payment) when calculating the household's income.

The final rules should retain, not delete, these provisions. Although USDA may not have intended a change in policy here, deletion of these provisions is likely to lead to benefit reductions. These two provisions recognize that a household cannot spend money it has not received, and may not receive, and that retroactive cash assistance payments typically must be spent for past-due rent, mortgage or utility payments. Although these provision represent logical interpretations of 7 C.F.R. §§ 273.10(c)(1) and 273.9(c)(8), respectively, many eligibility workers are likely to draw the opposite conclusion if these provisions are removed from the rules. Few state food stamp directors, much less individual eligibility workers, have ready access to old *Federal Register* preambles or to USDA's unpublished policy memos; for these policies to be effective, they need to be included in the actual regulations themselves.

3. Applying the More Restrictive Provisions of Other Programs' Rules to Food Stamp Applications

Even before PRWORA, the Food Stamp Program's procedures placed a greater emphasis on access for eligible applicants and recipients than did AFDC or most states' general assistance (GA) programs. Today, many states' TANF-funded programs deliberately limit low-income families' access to cash assistance far more stringently than AFDC did. Thus, important food stamp policies are likely to be seriously impaired if eligibility workers mistakenly apply rules from those programs in determining food stamp eligibility and benefits. Mathematica reports that because food stamp and Medicaid applications "are often part of a joint TANF application, the eligibility determination for these programs may be delayed, or the application may not be processed at all." (Dion and Pavetti, pp. xi and 14-15.) Unfortunately, the proposed rules would remove several important features of the current rules that are designed to prevent that sort of confusion. ***The final rules should restore these provisions.***

- Current section 273.2(j) provides that households applying jointly for food stamps and either TANF-funded benefits or GA, as well as those “categorically eligible” for food stamps because they receive SSI or TANF-funded benefits, “shall be certified in accordance with food stamp procedural, timeliness, and notice requirements,” including the requirement that households in particularly dire need receive expedited issuance with most verification requirements postponed. The proposed rules would delete this statement. *The final rules should restore it.*
- Similarly, current section 273.2(j)(1)(iii) prohibits food stamp offices from delaying a household’s food stamp benefits beyond 30 days if the state has sufficient verification to determine food stamp eligibility even if it is waiting for further information it needs to determine the family’s eligibility for TANF-funded benefits. The proposed rules would delete it. Deletion of this provision would be very troublesome. With many states requiring an applicant to produce proof of having made a large number of job contacts before cash assistance can be authorized, - many applicants likely will not, on many occasions, have submitted their proof of job contacts by the thirtieth day. If the food stamp office believes it can postpone action on the family’s food stamp eligibility until it can also act on the family’s TANF application, many needy households are likely to face much longer waits for food assistance. *The final rules should restore this provision.*

4. Preventing Households from Losing Food Stamps When They Obtain Employment or Leave Cash Assistance

Mathematica found that “some TANF workers may not inform clients of their potential for continued eligibility in the event of employment, or clients may not understand that they may still receive benefits while they are working.” Mathematica recommended educating households that TANF time limits do not apply to food stamps prior to the households exhausting their available months of cash assistance. Accordingly, *the final rules should require that each interview conducted with a family that is applying for or receiving cash assistance inform the household of this important fact.* (See Dion and Pavetti, pp. ix-x.) Knowing that food stamp eligibility is likely to continue even after they report employment may spur some households to comply more rapidly with their change reporting obligations. On the other hand, because some eligibility workers regard working poor families as error-prone and burdensome to serve, they may be disinclined to provide this message absent a specific requirement to do so. This is a case where a documented problem in existing practice calls for a federal response to ensure continued access for families moving from welfare to work.

F. Denials Because of Confusion Resulting from the Organization of the Rules

- **Prohibition on durational residency requirements.** Current section 273.2(f)(1)(vi), governing the verification of residency, provides that “No durational residency requirement shall be established.” Section 273.3(a) would continue to prohibit durational residency requirements. *But without a cross-reference to that provision in the verification rules, it could be missed by many eligibility workers, resulting in improper denials.*

- **Applications for Social Security numbers (SSNs).** Food stamp rules require that all members of a household that will receive food stamps either have an SSN or have applied for one. 7 C.F.R. § 273.6. Current section 273.2(f)(1)(v) provides that “[a] completed SSA Form 2853 shall be considered proof of application for an SSN for a newborn infant.” USDA proposes to delete this language, arguing that it duplicates section 273.6. 65 Fed. Reg. 10867. This is incorrect: section 273.6 nowhere mentions the SSA Form 2853. *The final rules should include an explicit reference to that form in one section or the other to ensure that eligible households are not denied benefits by eligibility workers that are not familiar with which SSA forms demonstrate an application for an SSN.*
- **Joint applications.** Proposed section 273.2(j)(1)(ii) states that “households that apply jointly for TANF or SSI and food stamps and whose food stamp eligibility depends on their categorical eligibility status must be issued benefits from the beginning of the period for which TANF or SSI benefits are paid or the original food stamp application date whichever is later.” This is the current rule as well. Although technically sound, it raises the risk that some eligibility workers will believe that they can or should delay providing food stamps to households that qualify *without regard to categorical eligibility* if the household is also applying for benefits from a TANF-funded program or SSI. For these households, the eligibility worker might provide food stamps only from the date the other benefits were authorized rather than from the date of application for food stamps. With many states requiring extensive job searches and other activities prior to authorizing benefits under their TANF-funded programs, TANF benefits might not be authorized until long after the date of application. (See Dion and Pavetti, pp. 14-15.) Indeed, if this policy were misapplied to persons applying jointly for food stamps and SSI disability benefits, the applicants could have to wait months to begin receiving food stamps.

The final rules should clarify that this approach is only applicable to households that would be ineligible for food stamps in the absence of categorical eligibility. In addition, the final rules should make clear that food stamp benefits should be calculated from the date of application for food stamps regardless of the date or disposition of any TANF application where the household qualifies for food stamps under the Program’s regular eligibility rules without regard to categorical eligibility. Also, the final rules should restore the sentence from the current section 273.2(j)(1)(iv) that states that any household determined to be eligible for public assistance benefits for a period of time that begins within the 30-day food stamp application processing period shall be provided food stamp benefits back to the date of the food stamp application. Deletion of this sentence is likely to be read by many eligibility workers to mean that, in these cases, food stamp benefits are to be pro-rated back to the start of the TANF benefit period rather than to the date of the food stamp application. Such an interpretation would lead to food stamp benefit losses.

IV. IMPOSING UNDUE BURDENS ON THE WORKING POOR AND OTHER ELIGIBLE HOUSEHOLDS

USDA's July 14, 1999, initiative to improve participation in the Food Stamp Program sought to reduce the administrative burdens the Program imposes on the working poor. New policies were designed to reduce the number of times working households would have to call food stamp offices with changes, the number of occasions when they would have to provide verification of changes, and the number of times they would have to come in to food stamp offices to be recertified. Since USDA was acting through guidance rather than rules, it could not require states to lighten these burdens on households. USDA did, however, strongly encourage states to reduce burdens on working poor households with those initiatives, as well as with its adjustment of food stamp quality control (QC) liabilities in September to hold states harmless for additional errors resulting from serving high or rising numbers of working poor families or immigrant families. This rule-making offers the opportunity to consolidate those gains and go further to reduce burdens on these households.

Instead, numerous provisions of the proposed rules would *increase* the burdens on working poor and other low-income households needing food assistance. The likely result is that new workers will have to miss more days from work to attend interviews or gather verification and that a significant number of the families for whom the Program was designed will cease to receive food assistance at all. Mathematica has found this already to be a problem, in part perhaps because the Department has allowed or encouraged states to require more numerous face-to-face interviews of households without regard to the current requirement that households be certified for as long a period as its circumstances allow. (Dion and Pavetti, p. xii.)

This is unfortunate. The time is long past when it was appropriate for agencies administering means-tested programs such as food stamps to make policy as if complying with their procedural requirements should be the first priority for working poor families. USDA and state food stamp agencies should want low-income families to make work, or the pursuit of work, their primary concern and should design the procedural requirements imposed on those families to accommodate and support the families' work efforts. These proposed rules move in the opposite direction. Promoting and supporting work is an important national concern that should take precedence over the generalized preference for state flexibility that USDA cites in support of many of these proposals.

A. Requiring Households to Appear for Unnecessary Face-to-Face Interviews

In most means-tested public benefit programs, once an agency approves an individual's or family's application, benefits continue until the agency makes a new finding that the individual or family is no longer eligible. In the Food Stamp Program, by contrast, households are approved to receive food stamps only for a fixed certification period. The shorter a household's certification period is, the more often the household will have to go through the food stamp application process. This both heightens the chances for procedural denials of eligible households and increases the number of days a working poor household must take away from work to apply.

- **Short certification periods.** Since 1994, food stamp participation has dropped by more than one-third. Some of this decline results from eligibility changes and an improving economy, but careful analysis has found that a large part cannot be explained by these factors alone. A significant factor appears to be the continuing low participation rate among the working poor.

Although causation is difficult to establish, this period of unprecedented declines in food stamp participation has coincided with a substantial increase in states' use of short certification periods. All five of the states with the largest declines in participation between 1994 and 1998 (the latest year for which complete data are available) dramatically increased their use of short, three-month certification periods for working families with children during this period. Some jurisdictions are now routinely requiring working families to reapply for food stamps every month. Until last summer, USDA was encouraging states to shorten the certification periods they granted as a way to reduce quality control (QC) errors. As noted above, Mathematica's recent study describes low-income households that do not receive food stamps reporting they had "difficulty getting to the FSP office (e.g., need to arrange for dependent care, losing pay while at the FSP office, physical difficulties getting to FSP office because of poor health or disabilities)." (Dion and Pavetti, p. 21.) Accordingly, Mathematica recommends "decreasing the need for face-to-face meetings between workers and clients (through increased use of phone and mail, for example)." (Dion and Pavetti, p. 32.)

A recognition that reducing administrative burdens on hard-pressed working poor families is crucial to making food stamp benefits available to them was the major driving force behind the Administration's food stamp access initiative last summer. In addition to reducing reporting burdens, USDA also allowed states to grant working poor households longer certification periods. A study recently completed for USDA found that most low-income families find that applying or reapplying for food stamps entails substantial costs in time and money. In addition, results from a recent study by USDA's Economic Research Service show that shorter certification periods lead to lower food stamp participation by eligible families.

Although, as is discussed below, the proposed rules appropriately codify the waivers the Department has granted some states to limit face-to-face interviews to once a year, the burden of frequent recertifications remains. The error reduction concerns that drove states to adopt short certification periods in the first place are likely to cause many to continue to require multiple interviews each year (only about one-quarter of the states have accepted USDA's existing offer of waivers to allow states to eliminate face-to-face interviews at some recertifications). Even without an interview, applying for recertification still requires households to complete and return a recertification form within a relatively short period of time and to assemble and submit verification of their circumstances.

Current regulations limit unduly short certification periods, which require working poor and other households to go through the time-consuming recertification process frequently. Current section 273.10(f)(4) requires that “households shall be assigned the longest certification periods possible based on the predictability of the household’s circumstances.” This section also requires that households be certified for at least three months except in certain narrowly defined circumstances. Current section 273.10(f)(8) requires that households required to submit monthly reports receive certification periods of at least six months. And current section 273.10(f)(5) provides for six-month certification periods for households “if there is little likelihood of changes in income and household status.” USDA proposes to eliminate all of these important sections of the rules.

The final rules should not eliminate these provisions. Instead of allowing states to shorten certification periods, the final rules should maintain the current standards. In fact, given the direction the Administration has moved with regard to certification periods in Medicaid and the emphasis in the July 1999 food stamp guidance on avoiding three-month certification periods, USDA should consider providing that all households receive certification periods of at least six months unless factors specific to a household suggest that its circumstances cannot reasonably be predicted for that long (e.g., a household member has a seasonal job that will end after four months).

The final rules also should provide states more flexibility in dealing with households containing non-custodial parents than does proposed section 273.10(f)(3). That provision, like current section 273.10(f)(9), requires three-month certification periods for many households with non-custodial parents that qualify for a deduction for payment of child support obligations. Averaging the amount of the child support deduction over a certification period longer than three months should provide adequate insurance against abuse. This provision is doubly troubling because it burdens non-custodial parents who are responsibly paying child support and because many of the low-income parents who have the resources to pay child support are working in low-wage jobs. The wages lost because of time away from work completing frequent food stamp recertifications may have the perverse effect of making it harder for poor non-custodial parents to continue making child support payments in full.

- **Conforming food stamp redeterminations to those in cash assistance programs.** Current section 273.10(f)(3)(i) *requires* that a household in which all members are included in a single cash assistance grant be given a food stamp certification period equal to the number of months until the household’s next scheduled redetermination for cash assistance. This section also provides that food stamp certification periods may be shortened (or lengthened) to conform to unanticipated changes in the review schedule for cash assistance.

The final rules should adopt those proposals and delete these provisions of current rules. When this rule was originally drafted, states typically scheduled

AFDC or GA redeterminations six months or one year apart. Addressing the household's continuing food stamp eligibility at the same time was a convenience to both the household and the state agency. Today, however, states are seeking to put pressure on families to leave cash assistance programs by requiring frequent interviews at which the family's progress in finding work is reviewed and its continued eligibility is judged based on the degree of the household's compliance. In some states, these cash assistance reviews may occur monthly. Even where reviews are not scheduled for every month, eligibility workers may call a recipient in for a new review at the first sign of trouble in a work or training program. Some states treat these reviews as full redeterminations, allowing eligibility workers to make any change they see as appropriate in the household's benefits. Requiring states to tie food stamp certification periods to these reviews would effectively mean that many households would have to reapply for food stamps every month. This would dismantle the concept of a fixed certification period during which a household is entitled to continued receipt of benefits so long as its circumstances do not change.

- **Conforming food stamp certification periods to the timing of reviews of Medicaid eligibility.** At the same time states are discouraging and restricting access to cash assistance, many are adopting eligibility procedures designed to ease low-income families' access to Medicaid. These include long intervals between eligibility reviews as well as simplified application forms and limited verification requirements. To the extent that food stamp eligibility procedures remain tied to those of cash assistance programs, food stamp participation is likely to suffer from the effects of states' efforts to reduce their cash assistance rolls. Conversely, to the extent that food stamp and Medicaid eligibility procedures can be coordinated, states may be willing to apply some of their simplified Medicaid procedures to food stamps as well.

The proposed rules, however, would delete current section 273.10(f)(3)(ii), which allows food stamp offices to conform a household's food stamp certification period to the interval between its required redeterminations in Medicaid.

Although this provision does not require food stamp offices to take such action, it provides appropriate encouragement to coordinate food stamps with Medicaid, a program serving many of the same families. It is consistent with the Administration-wide effort to facilitate participation in Medicaid and food stamps by eligible low-income working families.

The final rules thus should restore this provision. Indeed, the final rules should go further and encourage states to conform the review schedules in the two programs by waiving any other limitations on the length of food stamp certification periods (except for the statutory twelve-month limit for households not composed entirely of elderly and disabled members) where a state conforms to Medicaid practice. The final rule also should allow for extending the food stamp certification period a reasonable time in such cases if the Medicaid review is postponed. Proposed section 273.10(f)(5), which would change cur-

rent practice by prohibiting states from extending a certification period once it has been established, should be revised in this regard.

- **Allowing states to waive some face-to-face interviews for all households.** An excellent feature of the proposed rules would allow states to limit face-to-face interviews to once per year for all households, regardless of individual hardship. This is found in proposed section 273.2(e)(1). An increasing number of states are waiving face-to-face interviews for Medicaid; this change brings the Food Stamp Program into closer conformity with the other major state-administered entitlement program serving the working poor. ***The final rules should follow the proposed rules in giving states broad discretion to limit the number of face-to-face interviews required to obtain food stamps.***
- **Requiring households to resolve discrepancies in person.** Proposed section 273.2(d)(1) would require households to appear for additional interviews to resolve what the food stamp office believes to be inconsistencies in the verification it has received. Although some discrepancies probably are best addressed in person, others can be adequately explained over the telephone or by sending in additional documents. Working poor households may abandon their applications if they feel they cannot afford to take another day away from work without angering their employers. As noted above, Mathematica found that the difficulty of making visits to the food stamp office was a major impediment to participation in the Program and urged that more business be transacted by mail or telephone. (Dion and Pavetti, pp. 21 and 32.)

The final rules should give households the option whether to attempt to resolve inconsistencies in person or through other means. This option is particularly important for working poor households. In addition, if the final rules retain a requirement for an additional in-person interview under these circumstances, the rules should require food stamp offices to follow the same procedures for households that miss one of these interviews — including offering an opportunity to reschedule a missed interview, accommodation of households' work schedules in setting the time for the interview, and waiver of the interview for households for which appearing would be a hardship, such as the elderly and disabled.

- **Requiring households to present verification in person.** Current section 273.2(f)(5)(i) prohibits the food stamp office from requiring a household to present verification in person. Proposed section 273.2(f)(5) contains a similar requirement but creates an exception "as provided in paragraph (d)(1) of this section." This reference is unclear: section 273.2(d)(1) is the general requirement that households cooperate with the application process. As proposed, this rule could be interpreted as allowing food stamp offices to require households to present verification in person as part of their general obligation to cooperate in the application process. ***The final rules should retain the current language without***

qualification. Here again, the Mathematica recommendation to minimize the demands for in-person visits to the food stamp office is sound.

- **Requiring more frequent applications from the elderly, disabled, and other households for which coming to the food stamp office is a hardship.** Food stamp regulations provide for waiving the requirement that applicants appear at the food stamp office for a face-to-face interview where appearing would be a hardship for the household. 7 C.F.R. § 273.2(e)(2). *The proposed regulations continue this rule, which should also be reflected in the final rules.*

Current section 273.2(e)(2)(iii), however, also provides that households for whom the face-to-face interview is waived may not be assigned shorter certification periods as a result. The proposed rules would delete this provision. This means that a food stamp office could require households whose physical disabilities prevent them from appearing for face-to-face interviews to reapply for food stamps every few months. Although they would not have to come in for an interview on those occasions, they would be required to gather extensive verification of their eligibility and could see their food stamps end if they failed to submit their application for recertification and the necessary verification by the deadline the food stamp office sets.

The final rules should restore the current rule in this area to avoid imposing additional procedural burdens on persons with disabilities. Some persons with severe disabilities for whom appearing at the food stamp office would be a serious burden may nonetheless not seek a waiver of the in-office interview to avoid being given a short certification period. Others that are given shorter certification periods will be more vulnerable to procedural terminations since they could have to renegotiate the application process more frequently. Indeed, for a food stamp office to require more frequent reapplications by households that receive accommodation for their disabilities through a telephone or out-of-office interview may violate the Americans with Disabilities Act (ADA) and section 504 of the Rehabilitation Act. *The final rules should squarely prohibit such discriminatory practices.*

B. Intrusions upon Households' Privacy

The Administration's July 14, 1999, initiative sought to expand food stamp availability to the working poor. The proposed rules, however, largely fail to take these concerns into consideration. They continue a policy on home visits that, while reasonable on its face, is largely meaningless as USDA has allowed states to interpret it. In addition, they would allow food stamp offices to call families' friends, neighbors, and employers more freely, exacerbating existing state practices that invade the privacy of working poor households and discourage them from participating in the Food Stamp Program. Mathematica's recent report recommended "less intrusive employment and income verification processes" for precisely this reason. (Dion and Pavetti, p. x.) The proposed rules also weaken existing standards for assuring the confidentiality of interviews conducted with applicants.

Because of the intense pressure states feel to reduce payment error rates, many states are likely to take advantage of license in such areas. If these problems are not addressed, the Administration's other food stamp initiatives and outreach efforts are unlikely to result in broad participation among eligible working poor families. To the contrary, the net effect of these rules and the USDA initiatives is likely to be further participation declines.

1. Home visits

Few public actions are more inherently offensive and humiliating than having government agents enter one's home. The Framers of the Constitution recognized this: both the third and fourth amendments explicitly protect the sanctity of private homes against government intrusion. As the Department notes at page 10869 of the preamble, federal courts have held these intrusions to be unconstitutional under some circumstances in cases such as *Roberts v. Austin*, 632 F. 2d 1202 (5th Cir. 1980), *cert. denied*, 454 U.S. 975 (1981), and *Reyes v. Edmunds*, 472 F. Supp. 1218 (D. Minn. 1979).

If applying for food stamps means that government agents may appear at the door, many needy families will avoid the Program. This is particularly true of working poor families and those with immigrant members. No other program supporting the working poor requires recipients to submit routinely to such intrusions, and the Food Stamp Program will be less effective as a work support program if it does.

On its face, section 273.2(f)(4)(iii) of the current regulations strictly limits food stamp offices' ability to conduct home visits of food stamp applicants and recipients: "[h]ome visits may be used as verification only when documentary evidence is insufficient to make a firm determination of eligibility or benefit level, or cannot be obtained, and the home visit is scheduled in advance with the household." USDA commendably proposes to retain this same language in section 273.2(f)(4) of the proposed regulations. *This language should appear in the final rules as well.*

In fact, however, USDA has allowed states to interpret this provision in a way that renders it not very meaningful. USDA has told states that because section 273.2(f)(4)(iii) is in a section of its regulations dealing with verification, it only constrains home visits conducted for the purpose of verification. If a food stamp office wants to conduct an unannounced home visit, or a home visit on a household that already has fully verified its statements in its application, all it must do under USDA's interpretation is declare that the purpose of the visit is not verification but fraud prevention. No showing of any specific reason to suspect the particular applicant of fraud is required.

Indeed, officials of the Texas Department of Human Services stated in a presentation at the food stamp directors' conference in 1999 that in some regions of the state, they were routinely conducting unannounced home visits on a significant percentage of all new applicants and households seeking recertification, as well as a significant number of those reporting changes. The households to be visited are selected through a broad "error-prone" profile, which apparently treats households with earned income as being at increased risk of errors. Investigators routinely flash badges to ensure that the households grant them access. One Texas agency employee even stated that they do not consider a visit unannounced if they knock first.

Although Texas's practices may be extreme, they are by no means unique. Reliable information about states' home visits is difficult to collect, but many of those whose practices are known do conduct some unannounced home visits.

Nothing in the existing or proposed section 273.2(f)(4) ties the restrictions in these rules to the reason for which the visit is conducted. Moreover, the distinction between "fraud prevention" and "verification" is so murky as to offer little meaningful constraint on food stamp offices' actions. The reason the Food Stamp Program requires verification is to prevent fraud. The intrusion upon and embarrassment of the household is at least as severe if the purpose of the investigation is "fraud prevention" rather than "verification."

It is unclear whether USDA would allow a state to deny a household's application for turning away an unannounced home visit. But because households are told in the application process that refusal to cooperate will result in a denial, few are likely to believe they have any choice but to submit to the intrusion. More important, once word is circulated in the low-income community that applying for food stamps may bring a "fraud investigator" to your door even if you have done nothing wrong, more low-income working and immigrant families are likely to avoid food stamps.

The final rules should retain the current and proposed rules' restrictions on home visits (as reflected in section 273.2(f)(4)) but also should urge the Department to clarify that these rules apply to all home visits conducted or arranged by the food stamp office. State law enforcement officials that have probable cause to believe a particular household is attempting to commit fraud (beyond merely meeting an "error-prone profile") could, of course, conduct their own investigations and conduct unannounced home visits. The language in the current and proposed rules will be effectively meaningless if USDA allows food stamp offices to evade its limits on home visits by renaming those visits or by making routine referrals for home visits based only on a broadly-drawn error-prone profile.

2. Collateral contacts

Receipt of food stamps still carries an element of stigma in some areas, particularly rural areas. Many eligible, needy, families would rather forego receiving food stamps than have their receipt known to their neighbors, their employer, or their children's school. Working poor families may be particularly concerned that if their employers learn that they are seeking or receiving food stamps, their opportunities for advancement may be affected. In addition, applying for and receiving food stamps requires households to divulge highly sensitive, often embarrassing information. Families that fear this information may be shared with neighbors, employers, and others may hesitate to participate in the Food Stamp Program, despite being in need.

Current regulations allow food stamp offices to make collateral contacts — calls to third parties — to verify important information that cannot otherwise be established. Even when made carefully, collateral contacts inevitably divulge some confidential information to third parties; if nothing else, the mere fact that the food stamp office is calling with questions about the Smith family reveals the Smiths have applied for benefits. A hurried or poorly trained eligibility

worker may inadvertently share more: he or she may recite the information the household has provided and ask the contact if there is any reason to doubt its veracity.

Under the food stamp rules promulgated in 1978, collateral contacts could only be made with the permission of the household. The Reagan Administration loosened this restriction but maintained several important safeguards. Unfortunately, the proposed rules would depart significantly from the Reagan-era rules and allow procedures that applicants could legitimately fear would expose the fact that they are applying for food stamps to employers, neighbors, and even their children's schools.

- **Documentary evidence as the primary source of verification.** Current section 273.2(f)(5)(i) provides that the food stamp office shall "accept any reasonable documentary evidence provided by the household and shall be primarily concerned with how adequately the verification proves the statements on the application." Current section 273.2(f)(4)(i) provides that "[a]lthough documentary evidence shall be the primary source of verification, acceptable verification shall not be limited to any single type of document and may be obtained through the household or other source." Thus, the food stamp office must accept any documents a household has or can obtain that establish the veracity of the household's statements.

The proposed rules' approach to this issue is less clear. On the one hand, proposed section 273.2(f)(5) requires the food stamp office to "accept any reasonable documentary evidence provided by the household." On the other hand, proposed section 273.2(f)(4) allows states to "establish their own standards for sources of verification, subject to the provisions of this paragraph (f)(4). Such standards shall emphasize determining the adequacy of the documentary evidence the household provides to support the statement on the application." Food stamp offices are prohibited from insisting on any one form of verification only "if other documents can equally prove its statements."

The final rules should address several problems with these proposed rules. First, if states are to be permitted to establish their own standards for sources of verification, these standards should be made subject to all of the federal rules — including section 273.2(f)(5)'s requirement that food stamp offices accept any reasonable verification provided by the household — rather than just paragraph (4). Second, food stamp offices should not be permitted to reject verification a household has presented on the grounds that it is not "equal" to some other form the state prefers. For example, it is probably true that a signed statement from the employer is the single most reliable source of information on the household's earnings. The proposed rules would appear to allow states to establish verification standards requiring all applicant households with earnings to have their employer complete a wage statement form, which inevitably informs the employer that the employee is seeking public benefits. The final rules should retain the current language, requiring food stamp offices to "accept any reasonable documentary evidence provided by the household" rather than the

higher standard in the proposed rule, which allows the food stamp office to insist that a household submit a particular piece of verification unless the household has already presented other verification that is fully "equal" to what the office is demanding. In addition, the final rules should clearly require, as the current rules do, that the only criteria for evaluating an individual piece of verification is whether it adequately supports the household's statements. Food stamp offices could, of course, reject any proffered verification that appears outdated, altered, incomplete, or unreliable.

- **Collateral contacts as a last resort.** Current section 273.2(f)(4)(i) provides that "[w]henver documentary evidence cannot be obtained or is insufficient to make a firm determination of eligibility or benefit level, the eligibility worker may require collateral contacts or home visits. For example, documentary evidence may be considered insufficient when the household presents pay stubs which do not represent an accurate picture of the household's income (such as out-dated pay stubs) or identification papers that appear to be falsified." Current section 273.2(f)(5)(ii) contains a similar requirements.

Here again, the proposed rules are less clear. Proposed section 273.2(f)(4) requires the food stamp office to "afford the household an opportunity to verify the information using alternate means" before making a collateral contact. It is unclear, however, what would constitute an "opportunity" for the household to verify the information on its own. ***The final rules should require that households be given at least ten days to produce a specific piece of documentary evidence before the food stamp office resorts to a collateral contact unless the household agrees that it is unlikely to be able to obtain documentary verification or prefers to have the food stamp office make a collateral contact. At a minimum, the standards in the current rule should be maintained.***

- **Designating the collateral contact.** Since collateral contacts can compromise a household's privacy, low-income households will naturally have a strong interest in *whom* the food stamp office calls if a collateral contact is to be made. A worker may be willing to trust his or her immediate supervisor with the knowledge that he or she is receiving food stamps but feel the risk of discrimination is too great if a higher-level manager is contacted.

For this reason, the 1978 regulations forbade collateral contacts without the household's permission (although failure to grant permission could result in a denial of benefits if other means of verification could not be found). As amended by the Reagan Administration, section 273.2(f)(5)(ii) currently provides:

The State agency, generally, shall rely on the household to provide the name of any collateral contact. The household may request assistance in designating a collateral contact. The State agency is not required to use a collateral contact designated by the household if the collateral contact cannot be expected to provide an accurate third-party verification. When

the collateral contact designated by the household is unacceptable, the State agency shall either designate another collateral contact, ask the household to designate another collateral contact or to provide an alternative form of verification, or substitute a home visit.

This gives the household a clear opportunity to limit disclosure of the fact that it has applied for public benefits.

The proposed rules would allow food stamp offices far greater latitude to contact persons whom the applicant family wants not to know about its application for benefits. Proposed section 273.2(f)(4) allows the food stamp office to select a collateral contact if the household fails to designate one or designates one that is "unacceptable" to the food stamp office. The proposed rules specify no criteria for what collateral contacts may be deemed "unacceptable." For example, a food stamp office could insist that only an official from a child's school is an acceptable collateral contact to verify those children's presence in the home. It could thus reject the household's suggestion that it contact the household's minister, who has first-hand knowledge of the family's circumstances. Under current rules, the food stamp office could only insist upon contacting the school in such a case if it could argue that the minister "cannot be expected to provide an accurate third-party verification."

The food stamp office must notify the household of its selection of a collateral contact, but the proposed rule does not require the food stamp office to tell the household that it may make its own suggestion. Thus, only those households that know independently that they may make a suggestion of another collateral contact may be able to participate in this process, and even those households' suggestions can be rejected as "unacceptable" without regard to whether they are likely to provide reliable information. Indeed, a food stamp office could even adopt a policy of rejecting any collateral contacts suggested by the household on the theory that such persons might be biased in favor of the household.

The final rules should restore the provision of the current rules giving the household primary control over the selection of collateral contacts and limiting food stamp offices' authority to reject households' nominations to cases where reliable information is unlikely to be obtained.

- **The manner in which collateral contacts are conducted.** Neither current rules nor those USDA is proposing address the manner in which an eligibility worker conducts collateral contacts. The access guide USDA released as part of its food stamp initiative in July 1999, however, instructs food stamp offices that they should not inform the collateral contact that the applicant has sought food stamps. Instead, the guide recommends that the contact be told only that the applicant has requested services. In addition, the access guide points out that none of the information supplied by the household should be shared with the collateral contact. Finally, eligibility workers and investigators should avoid using the word "fraud"

since this will inevitably stigmatize the applicant or recipient household in question. FNS, USDA, *The Nutritional Safety Net: At Work for Families* pp. 9-10 (July 1999). These practices are important to complying with section 11(e)(8) of the Food Stamp Act (7 U.S.C. § 2020(e)(8)), which limits the disclosure of households' confidential information. Unless these limits on the way in which collateral contacts may be conducted are included in regulations, however, they are unlikely to be known, much less followed, by most eligibility workers. ***The final rules should include requirements similar to those in last summer's access guide.***

- **Applicability of the rules on collateral contacts.** As is the case with home visits, some state agencies have disregarded the current restrictions on collateral contacts, arguing that they are conducting "fraud prevention" investigations rather than verification of the household's eligibility. Here again, the distinction between verification and fraud prevention is semantic: verification is done to prevent fraud. The violation of a household's privacy is the same whether the disclosure of confidential information is made by someone engaged in a "collateral contact" or a "fraud prevention" investigation, and the potential to deter applications by eligible, honest families, particularly the working poor, is just as large. ***The final regulations should make clear that they apply to all telephone calls and visits to third parties made or requested by the food stamp office.*** Of course, state and local law enforcement officials with specific reason to believe that a particular individual may be attempting to defraud the Food Stamp Program (as opposed to simply finding that household fits a generic "error-prone profile") would be free to conduct appropriate investigations.

3. Confidentiality of interviews

Current section 273.2(e)(1), which requires applicants for food stamps to be interviewed by eligibility workers, provides that "[t]he applicant's right to privacy shall be protected during the interview. Facilities shall be adequate to preserve the privacy and confidentiality of the interview."

Proposed section 273.2(e)(1) includes the first of these sentences but drops the second. This is inadequate. Many food stamp offices operate in large open spaces such as former warehouses partially divided by low panels. In other food stamp offices, eligibility workers may be crowded together, feet or even inches apart. Where two or more adjoining eligibility workers conduct interviews at their desks at the same time, there often is nothing that either the worker or the applicant can do to meaningfully assure the applicant's privacy. Prospective applicants seeing that they will have to submit to an interview under these conditions may decline to seek assistance out of concern for their privacy. Applying for food stamps may entail a certain degree of stigma, and reasonable steps should be taken to limit that effect. Eligibility workers are unlikely to have private offices, but some food stamp offices have interviewing rooms where confidential conversations can take place.

In this area, too, working poor, elderly, and disabled persons, whose benefits may be somewhat smaller and who may be less comfortable with the atmosphere of a public assistance office, may be among those least willing to follow through with an application if they believe their private affairs will be made known to others as part of the process. Mathematica reports on a series of focus groups of low-income households not receiving food stamps in which participants reported that "the application and recertification questions were too personal." (Dion and Pavetti, p. 21.) If households are uncomfortable discussing these matters with eligibility workers, they likely will be even more reluctant if their answers can be overheard by other applicants and recipients.

Moreover, households interviewed in facilities that do not protect confidentiality are less likely to be candid with eligibility workers, which could undermine the Program's integrity. This, as well as preserving the dignity of the Food Stamp Program's customers and enforcing the statute's confidentiality requirements, are sufficiently important federal policies to merit the retention of regulatory standards in this area. Although providing private interviewing facilities may require effort on the part of the food stamp office and may inconvenience some eligibility workers, it should be one of those areas where the Department requires that effort.

The final rules should restore the final sentence of current section 273.2(e)(1) so that food stamp offices continue to be required to provide interviewing rooms or other appropriate facilities that can reasonably assure households' privacy.

In addition, the final rules should explicitly prohibit group interviews in which any household is invited or expected to provide information or ask questions in front of another household. Households' privacy cannot be protected in such circumstances. In addition, group interviews of that kind pose a threat to program integrity since some applicants with confidentiality concerns may withhold relevant information in such a setting. This rule should not prohibit food stamp offices from showing videos, or providing generic explanations of rights and responsibilities, to a group of applicants so long as each household is clearly told that it will have an opportunity to ask any questions and to explain its circumstances subsequently in private.

4. Home interviews

Current section 273.2(e)(2) and proposed section 273.2(e)(1) provide for waiving the usual requirement that a household be interviewed in the food stamp office if coming in would work a hardship on the household. The waiver of in-office interviews is an important method of providing access to some elderly and disabled households and also could benefit some families in rural areas that lack transportation as well as some working poor families. These sections of the current and proposed also require that any home interview be arranged in advance with the household. ***The Department should retain these provisions in the final rules.***

Current section 273.2(e)(2)(i) provides that interviews may be conducted in the household's home (or over the telephone) if the household requests waiver of the in-office interview. The proposed rules, however, give the food stamp office far broader authority to require households to submit to in-home interviews even when the household is willing and able to appear in the food stamp office. It provides that the interview may be conducted "at the food stamp office or another mutually convenient location *of the State agency's choosing*, including the house-

hold's residence." (Emphasis added.) Since a household can hardly claim that it cannot get to its own residence, this appears to give the food stamp office the unlimited authority to require household to submit to an in-home interview in order to get to food stamps. For the same reason that a household may find a home visit for verification (or "fraud prevention" purposes) intrusive and humiliating, mandatory home interviews are likely to discourage some eligible households from participating in the Food Stamp Program.

The final rules should allow any household that wishes to come to the food stamp office for an interview to do so. In addition, the final rules should allow home interviews to be held only when the household agrees to be interviewed there or offers no reasonable alternative (such as an interview in a location near but outside of the household's home).

C. Discrimination in Setting Verification Requirements

Section 273.2(f)(2)(i) of both the current and proposed regulations requires food stamp offices to verify information that a household supplies if that information is "questionable" and directs state food stamp agencies to formulate guidelines for determining which information should be considered questionable. The proposed rules retain the provision in the current rules that prohibit these state guidelines from discriminating on the basis of race, religion, ethnic background or national origin and that prohibit singling out specific groups, such as migrant farm workers and Native Americans, for more intensive verification.

Current section 273.2(f)(3)(i) also gives states the option to require verification of additional elements of eligibility beyond those that section 273.2(f)(1) requires of all households. Section 273.2(f)(3)(i), too, includes the same anti-discrimination language as section 273.2(f)(2)(i) does for verification of questionable items. The proposed rules, however, would remove the anti-discrimination language applicable to section 273.2(f)(3)(i). The proposed rules also rewrite the anti-discrimination language in proposed section 273.2(f)(2)(i) in such a way that it does not apply to state verification options. Furthermore, although USDA would continue to prohibit state optional verification requirements to be "selectively imposed on a case-by-case basis," it deletes the current requirement that these state optional standards "not allow for inadvertent discrimination."

The final rules should retain the prohibition on singling out groups in a discriminatory manner for additional verification demands and should extend it to all aspects of the verification process, including the methods of verification that are permitted, as well as verification of questionable information and state options for additional items to be verified. For example, states should be prohibited from having more stringent restrictions on which collateral contacts they will accept for migrant farm workers than they do for other households. The final rules also should include the language in the current section 273.2(f)(3)(i), requiring states to prevent inadvertent discrimination, and should apply it to all aspects of the application process. Finally, the final rules should add the working poor, families with immigrant members, and homeless households to the list of groups that may not be singled out for additional verification beyond that required by federal rules and should provide that the non-discrimination provision applies to all aspects of the application process rather than just the verification of questionable information. Federal rules require working poor

households to submit verification of wages and households seeking benefits for immigrant members to verify those members' immigration status. Obviously these requirements are not imposed on other applicants. But food stamp offices should not be permitted to single out these groups for *additional* verification requirements. For example, a food stamp office should not be permitted to require statements from schools verifying the residence of all children in working poor households. Because working poor and immigrant households are generally regarded as more error-prone, some food stamp offices might feel that obtaining the maximum possible verification from such households is prudent.

The final rules should retain the language proposed for section 273.2(a) that requires food stamp offices to provide timely, accurate and fair service, that prohibits additional eligibility, application or application processing requirements beyond those expressed in the Act and regulations, and that requires food stamp offices to inform households of their rights and responsibilities. One possible approach to the non-discrimination language discussed above would be to move it from sections 273.2(f)(2)(i) and (3)(i) to section 273.2(a) so that it need appear only once yet can be made applicable to all aspects of the application process. Although the general civil rights rules applicable to USDA prohibit overt discrimination based on race, gender, religion, etc., without explicit civil rights rules such as those now appearing in sections 273.2(f)(2)(i) and (3)(i), food stamp offices may not understand their obligations extend to setting up systems that prohibit *inadvertent* discrimination and that groups such as migrant farm workers that are not among those explicitly named in many civil rights rules should nonetheless be a focus of civil rights rules because they are composed disproportionately of racial and ethnic minorities.

D. Unnecessary Verification Requirements

- **Minor changes in income and utility expenses.** Current section 273.2(f)(8)(A)(i) prohibits food stamp offices from requiring a household to verify a change in income of less than \$25 per month if the source of that income has not changed unless the information is incomplete, inaccurate, inconsistent, or outdated. This prohibition applies both during a certification period and at recertification. Similarly, this section prohibits food stamp offices from requiring households to verify utility costs that have changed by less than \$25 per month unless the information the household has supplied is not credible.

The proposed rules not only remove this prohibition but *impose a new prescriptive requirement* that *any* changes in income or utility costs large enough to affect benefit levels at all — including changes that would affect benefits by as little as one dollar per month — *must* be verified. Almost every reported change, no matter how minute, would have to be verified since even a change of three dollars per month in income or utility costs generally affects benefit levels. The primary burden is likely to fall on working poor households, whose earnings fluctuate due to routine changes in hours. In most instances, the changes involved will be ones the household was not required to report. Food stamp offices should be encouraging households to err on the side of more diligent reporting of changes; under this rule, those households would be punished with additional unnecessary verification

requirements that they could have avoided by simply failing to report. This does not make sense.

The final rules should maintain the structure of the current rule, prohibiting food stamp offices from requiring verification of changes of less than \$25 unless the eligibility worker determines that the report is questionable. The final rules also should give states the option to raise this \$25 threshold to \$100. The Administration's initiative last summer to increase access to the Food Stamp Program gave states the option to raise the threshold above which households must report changes in earned income to \$100; that same option is appropriate here.

- **Households with high utility costs.** Like the current rules, proposed section 273.2(f)(1)(x) would require households to verify utility costs that exceed the amount of the applicable "standard utility allowance" (SUA), a standardized estimate of utility costs used to calculate households' shelter costs in lieu of actual expenses. (See the discussion of the SUA in below.) This seems excessive. *The final rules should give states the option whether to require such verification from all households or to limit such verification to cases that eligibility workers believe to be questionable.*
- **Incidental shelter expenses for homeless households.** Many households that are primarily homeless may use whatever funds they have available to pay for partial shelter. For example, a homeless person who receives \$100 for a few days of labor may give it to a friend or relative in exchange from being able to sleep in that person's basement, attic, or garage for a week or two. Because these transactions are informal and irregular, and homeless people have difficulty retaining paperwork (if any ever existed), section 5(e)(5) of the Food Stamp Act (7 U.S.C. § 2014(e)(5)) allows states to give homeless households a standard shelter deduction of up to \$143 per month *in lieu of* the regular excess shelter deduction provided to other households. The Act allows, but does not require, states to deny this allowance to homeless households with extremely low shelter costs.

Current section 273.2(f)(1)(xi) requires homeless households to verify their shelter costs in order to gain the benefit of the slightly different procedure that existed prior to PRWORA. Its second and third sentences provide, however, that "[i]f a homeless household has difficulty in obtaining traditional types of verification of shelter costs, the caseworker shall use prudent judgment in determining if the verification obtained is adequate. For example, if a homeless household claims to have incurred shelter costs for several nights and the costs are comparable to costs typically incurred by homeless people for shelter, the caseworker may decide to accept this information as adequate information and not require further verification."

The proposed rules would delete these two sentences from their comparable subparagraph (273.2(f)(1)(ix)). USDA asserts that “[t]hese sentences do not provide specific verification requirements and thus are not necessary.” 65 Fed. Reg. 10868. But these sentences *are* necessary. Without them, the regulations require food stamp offices to deny this deduction to the many homeless households that cannot verify their shelter deductions. The result would be a benefit reduction for some homeless households.

The final regulations should make verification of shelter costs by homeless households a state option (since the statute does not require it and the amount of money at issue is relatively modest). The final rules also should provide that, where a state chooses to verify homeless households’ shelter costs, it follow the procedure set out in the second and third sentences of the current rules, under which eligibility workers use their best judgment where the homeless applicant or recipient cannot provide verification of shelter costs.

- **Child support payments received.** Current section 273.12(a)(1)(i) exempts households from having to report changes in their cash assistance benefits because the welfare office has prior knowledge of those changes. ***The final rules should expand this provision to cover child support payments received from the state’s child support enforcement (CSE) agency.*** Because of irregular payments by absent parents and processing delays at CSE agencies, child support income is among the most volatile types received by low-income families. Current rules require many recipient families to report and verify changes almost every month. This should be unnecessary now that most child support payments to low-income families are being made through states’ CSE agencies, which are required by law to have effective computer systems. States should be required to obtain information about child support from their CSE systems; households should only be required to report changes in child support received outside the CSE system.

Imposing heavy reporting and verification requirements on families receiving child support from state agencies is inconsistent with the Administration’s initiatives to promote child support enforcement. Indeed, some state Medicaid officials and advocates report that their efforts to provide longer intervals between reviews of eligibility in that program have been undercut because the same families are being called in every three months to review their child support status. ***The final rules should give states the discretion to use modestly lagged information on child support receipts if the state’s CSE computer system cannot provide completely current information. This option should be available even if the household is otherwise budgeted prospectively.***

- **Physical or mental incapacities.** Current section 273.2(f)(1)(xii) addresses the method of verifying that an individual is physically or mentally unfit if he or she claims exemption from the Program’s restrictions on college students’ eligibility on that basis. USDA proposes to remove this paragraph, allowing states to dispense with verification of students’ incapacity except where the household’s

statement is questionable. 65 Fed. Reg. 10868. *The deletion of this requirement is a sensible if modest reduction of the verification burden imposed on households and food stamp offices and should be reflected in the final rules.*

E. Burdensome Forms

States have broad discretion in how their food stamp application forms are designed. States wishing to have short, simple, accessible forms typically include a few general questions and then follow-up in the application interview where the household's answers indicate that more information is needed. For example, a single question might ask the household if it owns any of a long list of assets, such as boats, airplanes, snowmobiles, vacation homes, stocks, bonds, mutual funds, etc. If the household answers "yes," the eligibility worker obtains the details during the interview. Tennessee has a joint TANF-food stamp-Medicaid application that is one page, front and back. At the other extreme, some states have application forms that exceed twenty pages.

- **Review of state forms.** PRWORA eliminated the requirement that USDA approve all states' food stamp application forms in advance. *The final rules should, however, make clear that states must submit copies of application forms to USDA and that the Department has the authority to require changes where an application form is so confusing, intrusive, or burdensome that it violates the "timely, accurate, and fair service" requirement of section 11(e)(2)(B)(i) of the Act (7 U.S.C. § 2020(e)(2)(B)(i)).*
- **Model forms.** Prior to PRWORA, states were required to use a USDA-designed food stamp application unless USDA had approved the state's use of a joint application form covering other programs, such as AFDC, GA, and Medicaid. All states had approved joint applications; as a result, USDA's model form was used for relatively few applications. It did, however, provide a useful benchmark for judging states' forms since it provided a fairly exhaustive treatment of all food stamp eligibility criteria in less than six pages. It also provided a model that states could adapt to help keep the length of their applications from becoming excessive.

Because its model form will no longer have legal (if not practical) standing, USDA's proposed rules eliminate all mention of it. The preamble flatly states "FNS will no longer be developing model forms." 65 Fed. Reg. 10891.

This is a mistake. *Far from abandoning model application forms, USDA should expand its efforts in this area to promote better access to food stamps. It should both maintain (and update) its food stamp-only form and prepare a model application for recertification. It also should work with the Health Care Financing Administration (HCFA) to design a model joint food stamp-Medicaid-CHIP application form. The final rules should make clear that such forms will be developed.*

Recognizing the importance of simple, user-friendly application forms to promote program access — and recognizing that forms that are complex or fail to deal ap-

appropriately with sensitive matters inhibit participation — HCFA has expanded its production and promotion of model forms in Medicaid. HCFA is doing this in the absence of any statutory mandate and despite the fact that Medicaid affords states far more flexibility in establishing eligibility criteria than the food stamp program does (and also provides benefits that are only a little over half federally-funded).

It is inadvisable for USDA, administering a program whose benefits are entirely funded by the federal government, with a national benefit structure, and with far more serious participation decline problems than Medicaid, to abandon work on model applications. Even if the quirks of states' computer systems compel them to deviate from the USDA form in some ways, having a good, clear starting point is likely to result in better state forms. Moreover, without a USDA-HCFA model joint form, simple joint state food stamp/Medicaid forms for working poor families are much less likely to be developed.

- **Recertification forms.** Food stamp offices typically know far more about current recipients than they do about new applicants for benefits. Accordingly, current section 273.14(b)(2) allows states to develop a special application for recertification that is shorter and simpler than its initial application for benefits. Unfortunately, this section of the current rules appears to allow states to use this form only for households applying before the end of their previous certification period. The proposed rules are even more restrictive, allowing states to use "the recertification process" only for households that reapply by this date.

Both the current rule and especially the proposed rule are unnecessarily restrictive on states. If a working household is unable to reapply until a few days after the end of the certification period, it is still a household whose circumstances are well-known to the food stamp office. States should be encouraged to use a streamlined recertification form and process for households whose certification periods recently expired, not prohibited from doing so. Forcing these households to go through the regular application process could cause them to take additional time off from work and may deter some from continuing to receive food stamps for which they are eligible. *The final regulations should allow states to use a streamlined recertification process for households that have recently left the Food Stamp Program, as well as those reapplying during their expiring certification periods.* USDA should be seeking to streamline the process by which working poor households can establish their continued eligibility; the proposed rule moves in the opposite direction.

V. REDUCING VERIFICATION BURDENS ON STATES AND HOUSEHOLDS

As USDA notes at various points in the preamble, pressure from states is the primary driving force behind its proposals to make it easier to deny food stamp applications and to allow states to require households to produce more verification and apply for recertification more frequently. States' interest in this area, in turn, is largely the result of pressure from the food stamp

quality control (QC) system, which imposes fiscal penalties upon states with error rates that exceed the national average. In well over half of all cases QC identifies as errors, the food stamp office acted properly given the information it had; the error occurs because of circumstances that were different from what the food stamp office in good faith believed them to be. Thus, to avoid a high error rate a food stamp office must not only act correctly upon the information it has but must also take steps to ensure that it has as much information as possible from households. States' increasing efforts to impose procedural demands on households, and their concerns about procedural rules designed to promote program access, likely would be tempered if states felt they could operate somewhat less exhaustive verification systems without exposing themselves to QC sanctions.

Because QC can impose sanctions whenever a state's error rate exceeds the national average, and because the calculation of error rates is subject to substantial statistical fluctuation, over thirty states each year are either subject to or at risk of QC sanctions. In addition, because the QC system offers enhanced funding for states with error rates below six percent, a number of states not at immediate risk of sanctions nonetheless are pressing to lower their error rates further to qualify for these payments. Thus, the overwhelming majority of states have strong incentives for imposing substantial pressure on applicant and recipient households to disclose all relevant information and for intensively verifying most information the household supplies at frequent intervals.

The pressure QC puts on states to demand exhaustive verification, and to require households to reapply frequently for benefits, is at odds with the goals of reducing the burdens imposed on eligible low-income households seeking to participate. Indeed, the conflict is worst with regard to the working poor, whose incomes tend to fluctuate from month to month and as a result tend to be targeted in states' "error-prone profiles." Similarly, since households leaving cash assistance may have unstable circumstances, they are often regarded as "error-prone" and required to reapply and to reverify their circumstances. As long as QC holds states strictly accountable for facts they did not know when they acted, states will want to maintain intense pressure on households to provide more information.

The food stamp regulations should be amended to provide that a variance between the amount of food stamps a household actually received and the amount it would have received if the food stamp office had had perfect information should not be counted in determining a state's error rate where the food stamp office relied upon certain types of high-quality verification specified by USDA. Under this proposal, USDA would issue a list (perhaps as part of its QC manual) of types of highly reliable forms of verification (a "gold standard"), such as computer-generated wage stubs or utility bills. If a food stamp office properly verified a household's statements using one of these methods and the information later turned out to be in error, any variance in benefits would not count as an error because the food stamp office had relied on documentation that USDA had determined is ordinarily highly reliable. This proposal would be analogous to employment laws that forbid companies from hiring non-citizens that lack work authorization, but immunize an employer from liability if it has verified an employee's identity and work authorization by examining any of the types of documents on an officially approved list.

This would not excuse states from verifying information supplied by households. It also would not immunize states from liability for errors resulting from households' failure to report changes. And it would not excuse states for errors they make misreading or misprocessing the verification they do have. This policy would, however, allow a state that obtains computerized pay stubs covering the most recent month to forego further demands for verification from the household. Under current rules, if those pay stubs were defective and failed to capture all of the wages the recipient had in fact received from the employer, the state would be liable for an error. This risk of liability has driven some food stamp offices to press households to provide statements from their employers (an additional burden for the food stamp office, the worker, and the employer alike).

As other highly reliable means of verification were identified, USDA could update its list of the types of verification that will be treated as conclusively valid. For example, new technology is allowing some states' computerized wage reporting systems to provide access to a worker's earnings record with only a relatively short delay. USDA might determine that if a computerized wage data system could meet certain specifications, states could check households' statements with those systems and conclusively rely upon the household's statements as supported by the wage data system.

This new QC exemption could not be applied to all or even most forms of verification. Nonetheless, recognizing that a food stamp office has fulfilled its obligations and need not (indeed, should not) go further once it has obtained a highly reliable form of documentation could ease the verification pressures on states and households alike. This approach should be especially helpful in reducing verification demands placed on working poor households. Including this in the final rules likely would please states at least as much as — and, most likely, considerably more than — some of the more troubling procedural changes proposed in these rules. Although USDA's proposed regulations do not explicitly address QC issues, they do embrace a complete revision of the rules on the application and verification processes. The change proposed here goes to the heart of how the verification process operates.

A QC exemption of this kind is not without precedent. USDA's rules prohibit states from delaying the applications of households eligible for expedited service for verification of any issue other than identity. USDA has recognized that holding states accountable for errors in eligibility factors they have been prevented from verifying would be unfair and would punish states for faithful compliance with the requirement of expedited issuance. Accordingly, errors resulting postponing verification for applicants receiving expedited food stamps are excluded from the calculation of states' error rates under 7 C.F.R. § 275.12(f)(2)(ii). Thus, food stamp offices are not under pressure to demand verification of income or other eligibility factors (apart from identity) before issuing an initial month's benefits to households certified under expedited issuance. The proposal here is somewhat analogous in that it would protect states from suffering QC errors as a result of their adherence to the "gold standard" approach in making verification demands on households.

Similarly, states are prohibited from reducing a household's benefits during the "advance notice" period of a notice of adverse action (NOAA) or while a household's benefits have been continued pending a request for a fair hearing. Erroneous issuances during these periods are not

counted as QC errors because federal regulations limit the state's ability to act then. This is true even the household's benefits had been erroneous in one or more of the months prior to the food stamp office's issuance of the NOAA.

The final rules should include a provision authorizing the Department to establish a "gold standard" of highly reliable verification through the QC manual and excluding from error rate calculations and variances that occur despite a food stamp office's correct processing of information provided by such a source. The Department can then issue an initial list of "gold standard" types of verification and update that list as it becomes aware of new practices or new technology that produce highly reliable information in a manner that does not unduly burden low-income households or disclose their pursuit of benefits to persons not entitled under the Food Stamp Act to receive confidential information. Items should be selected for the list based on their reliability as well as their accessibility to households. If the latter criterion is not also employed, states may be tempted to demand "gold standard" verification from a household that cannot obtain it but can produce other reasonable verification.

PART TWO: NONCITIZEN PROVISIONS

II. INTRODUCTION

The proposed rules will have a profound effect not only on legal immigrants, but also on citizen children who live in immigrant families. Between 1994 and 1997, the number of children receiving food stamps who live with legal immigrants fell by 41 percent, compared to a 15 percent decline for children living with native-born parents.¹ The proposed rules contain a number of damaging provisions that could exacerbate this trend.

One of the most troubling provisions in the proposed rules would count a sponsor's income in determining the benefits of *citizens and non-sponsored immigrants* who happen to live with a sponsored immigrant, even where the sponsored immigrant is ineligible for food stamps. In the vast majority of these cases, counting the sponsor's income will make the other non-sponsored household members — including citizen children in the household — ineligible for food stamps. *If adopted, this rule would result in the denial of food stamp benefits to thousands of citizen children and eligible immigrants.* There is no evidence that Congress intended this result. This proposed rule is not required by federal law, and USDA has discretion to craft deeming rules that would not have this unintended consequence.

Some of the other immigrant-related provisions in the proposed rules also are quite problematic and would likely make it harder for eligible immigrants and citizen children to access food stamps, while still other immigrant-related provisions of the proposed rules are positive. In particular, a number of significant changes related to verification of immigration status, income and other information could burden immigrant families and lead to further declines in food stamp participation by eligible immigrant households and citizen members of immigrant households. In contrast, the provisions related to the treatment of income of immigrants made ineligible for food stamps under PRWORA are generally excellent (although one key modification is needed).

II. PROVISIONS RELATED TO DEEMING AND THE TREATMENT OF INCOME OF INELIGIBLE IMMIGRANTS

A. Deeming of Sponsor's Income to Non-sponsored Immigrants and Citizen Children

A particularly troubling immigrant-related provision in the proposed rule would result in the denial of food stamp benefits to thousands of citizen children. The proposed rule in question (proposed 7 C.F.R. § 273.11(c)(3)(v)) requires that a sponsor's income and resources must be counted in determining the benefits of citizens and non-sponsored immigrants who reside with a

¹ United States Department of Agriculture, Food and Nutrition Service, Office of Analysis, Nutrition, and Evaluation, *Who is Leaving the Food Stamp Program? An Analysis of Caseload Changes from 1994 to 1997*, March 1999. According to recent data provided by USDA to the National Immigration Law Center, participation in the food stamp program by citizen children of LPRs has fallen even more drastically, from an average of 1.355 million in FY1994 to 252,000 in FY1998, a more than 80 percent decline.

sponsored immigrant who is ineligible for food stamps as a result of PRWORA. Under current USDA guidance, states have discretion on this issue and do not have to count the income of sponsors in determining the benefits of other household members.²

The proposed rule would apply to any food stamp household containing a sponsored immigrant who filed an application for an immigrant visa or adjustment of status on or after December 19, 1997. In the vast majority of such cases, counting the sponsor's income will make the *non-sponsored* household members ineligible for food stamps for several years. (Under recent immigration law changes, sponsors who entered into affidavits of support on or after December 19, 1997, must have sufficient income to support their own family and any immigrants they sponsor at no less than 125 percent of the poverty line.)

Even in cases where a sponsor's income would not make such household members ineligible for food stamps, the reporting and paperwork requirements associated with deeming make receipt of benefits unlikely. Sponsors may be unwilling to reveal full details of their personal finances to a food stamp agency, or even if they initially provide such information, may fail to update it regularly. Sponsors also may not want to cooperate with income and resource verification requirements because they fear potential liability for any means-tested public benefits provided to the household. Although a sponsor can be held liable only for means-tested public benefits received by a sponsored immigrant, it seems likely that many sponsors may not understand this limitation since their income and resources are being used to determine the food stamp benefits of the entire household and not just of the sponsored immigrant.

B. Deeming When a Sponsored Immigrant is Not Eligible for Food Stamps

The USDA proposal to attribute a sponsor's income and resources to citizen children and non-sponsored immigrants is not required by federal law. Section 421 of PRWORA (8 U.S.C. § 1631) only requires sponsor deeming in determining the eligibility and amount of benefits of sponsored aliens:

... in determining the *eligibility and the amount of benefits of an alien* ... the income and resources of the alien shall be deemed to include ... [t]he income and resources of any person who executed an affidavit of support pursuant to section 213A of the Immigration and Nationality Act ... *on behalf of such alien* ... [emphasis added].

Almost all sponsored immigrants are *ineligible* for food stamps, even before any consideration of their income, because of their immigrant status. On its face, section 421 does not apply to ineligible immigrants since it only requires deeming "in determining the *eligibility and the amount of benefits of an alien*" For these ineligible immigrants, it is never necessary to use deeming to "determin[e] ... [their] eligibility and amount of benefits" since they are already ineligible. Legislative history supports this construction of section 421. For example, the conference report explains that a sponsor's income is to be taken into account "... in determining the sponsored *individual's* neediness." [emphasis added].

² United States Department of Agriculture, Food and Consumer Service, Cumulative Questions and Answers on Certification and Work Issues in PRWORA, August 15, 1997.

No evidence suggests that Congress intended to make citizen children ineligible for food stamps. Yet this is what the proposed rule would generally do where a citizen child is a member of a household that also includes a sponsored immigrant. Given the plain language of section 421 of PRWORA and the supporting legislative history, USDA should not implement section 421 in a manner that makes significant numbers of citizen children ineligible for food stamps.

A related argument in support of this position is that PRWORA is silent on whether a sponsored alien made ineligible by PRWORA must be treated as a food stamp household member. Although section 402 of PRWORA makes most adult immigrants ineligible for the food stamp program, it does not specify whether they must be treated as food stamp household members. In the absence of clear direction in the legislation, USDA has discretion to define PRWORA-ineligible immigrants as "non-household members" under 7 C.F.R. § 273.1(b) and to exclude a sponsor's income and resources so that citizen children residing with sponsored-immigrant parents can receive food stamps. In fact, a similar approach is taken under the current food stamp rules. Current 7 C.F.R. § 273.11(j)(6) provides that a sponsor's income and resources are not deemed to non-sponsored household members when the sponsored immigrant is ineligible for food stamps because he or she fails to provide information needed to comply with sponsor deeming requirements.

USDA should amend the final deeming rules to prohibit a sponsor's income from being deemed to non-sponsored household members.

Some may make the point that under these rules, the proposal to attribute the income of an ineligible immigrant's sponsor to citizen children and non-sponsored immigrants would be a state option. This could be so because proposed 7 C.F.R. § 273.11(c)(3)(ii)(B) gives states the option not to count the income of an immigrant made ineligible by the welfare law in determining the eligibility and benefit levels of U.S. citizens and eligible immigrants residing with that immigrant. Although the proposed rules are not explicit on this point, it seems reasonable to assume that in a state that elected the option not to count the income of ineligible immigrants, the income of an ineligible immigrant's sponsor also would not be counted.

Even if this is the case, however, it does not solve the serious problem that the proposal to deem the income of an ineligible immigrant's sponsor would create. The majority of states are unlikely to take the option not to count the income of ineligible immigrants who reside with citizen children and eligible immigrants. This option has been available to states (through USDA guidance) since April 1998. Only five states have implemented it. (A few additional states are actively considering it.) Furthermore, a state option to attribute the income of a sponsor of an ineligible immigrant to non-sponsored household members is inappropriate in any case. It is tantamount to giving states the option to deny food stamp benefits to otherwise eligible citizen children, something Congress did not intend.

USDA should not give states the option to deem income to non-sponsored household members. The final rules should bar a sponsor's income from being deemed to non-sponsored household members.

C. Deeming When a Sponsored Immigrant is Eligible for Food Stamps

Under current law, a very small number of sponsored immigrants potentially remain eligible for food stamps (e.g., a veteran with a I-864 affidavit of support). Although pre-PRWORA food stamp deeming rules counted a sponsor's income and resources in determining the food stamp benefits for the entire household in which an eligible sponsored immigrant resided, USDA need not reach the same conclusion in interpreting the deeming rules in PRWORA. As the Supreme Court has noted, "[a]n initial agency interpretation is not instantly carved in stone the agency, to engage in informed rulemaking, must consider varying interpretations and the wisdom of its policy on a continuing basis."³ USDA should reconsider the wisdom of previous deeming policy and consider adopting a construction of the PRWORA deeming provision that does not count the income of sponsors in determining the benefits of unsponsored persons who live with eligible sponsored immigrants. For example, USDA could adopt a policy that required a state first to determine if a household with a sponsored immigrant was eligible under the gross income test. If not, the sponsored immigrant could be removed from the household for the purpose of the eligibility and benefit calculation.⁴

There are ample reasons for USDA to reconsider the wisdom of its previous deeming policy and reach a different conclusion in interpreting section 421 of PRWORA.⁵ As a threshold matter, counting the income of sponsors in determining the benefits and eligibility of unsponsored persons is not compelled by the Food Stamp Act or section 421 of PRWORA. As noted above, section 421 and its legislative history only require deeming in determining the eligibility and benefits of the individual sponsored immigrant. Neither section 421 nor the Food Stamp Act explicitly address how income deemed to an eligible sponsored immigrant should affect other unsponsored persons in the household. Where, as here, Congress has not directly spoken to the precise question at issue, USDA retains discretion to fill the gap that Congress left.

USDA should utilize this discretion to consider a rule that provides that income and resources which are deemed to a sponsored immigrant shall not be considered in determining the need of other unsponsored members of the sponsored immigrant's household except to the extent the income or resources are actually provided to the household. Under the AFDC program, deeming was limited in exactly this fashion. The AFDC regulations provided that:

³ *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 863 (1984).

⁴ Such a policy would establish an inequity between the benefits of a household containing a member with a non-poor sponsor and the benefits of a household containing an individual whose sponsor had income low enough so the household still met the 130 percent gross income test. Nevertheless, this inequity would be a preferable policy outcome to that which would result if all sponsored immigrants except those with very poor sponsors caused their entire households to be ineligible for food stamps, including citizen children.

⁵ It is important to note that USDA would not be changing its interpretation of an existing, unamended statutory provision (section 5(i) of the Food Stamp Act), but instead would be interpreting an entirely new provision that replaces the existing provision. Section 421 of PRWORA applies "[n]otwithstanding any other provision of law" and effectively repeals section 5(i) of the Food Stamp Act.

[i]ncome and resources which are deemed to a sponsored alien shall not be considered in determining the need of other unsponsored members of the alien's family except to the extent the income or resources are actually available.⁶

This approach would recognize that deemed income is unlike any other form of income that is counted in public benefits programs. Deemed income is only *potentially* available to the household. The term deeming connotes income and resources that are "treat[ed] as if" or "construe[d]" to be real.⁷ Deeming attributes to a sponsored immigrant an imaginary amount of the sponsor's income and resources regardless of actual receipt. Given that deemed income is like no other type of income counted in the food stamp program, an approach that treats it differently than other forms of actual income solely in determining whether it affects the benefits and eligibility of other non-sponsored household members does not do violence to the food stamp program's household concept and is a permissible construction of section 421 and the Food Stamp Act.

This interpretation also is consistent with the obligations that sponsors have under federal law. Sponsors are only obligated to support the individual immigrant whom they agreed to sponsor.⁸ They have no obligation to support other family members or the sponsored immigrant's children, unless they also agreed to sponsor those individuals. For example, recent guidance issued by the INS clarifies that "[t]he Affidavit of Support places no obligation on a sponsor or joint sponsor to support any U.S. citizen children of the sponsored immigrant."⁹ The proposed rule, by making the other non-sponsored immigrants ineligible for food stamps, would have the practical effect of making the sponsor responsible for the support of the other non-sponsored immigrants.

Finally, such a construction is warranted in light of dramatic changes in immigrant eligibility for public benefits resulting from the 1996 welfare law. The PRWORA provisions that govern immigrant eligibility for benefits create a radically different statutory framework than that which existed prior to PRWORA. PRWORA includes three distinct types of limits on immigrants' eligibility for food stamps: eligibility bans, deeming, and sponsor liability.¹⁰ Prior to

⁶ 45 C.F.R. 233.51(d)(1997)

⁷ Black's Law Dictionary, 5th Edition (1979).

⁸ 8 U.S.C. § 1183a.

⁹ Immigration and Naturalization Service, Clarification of Service Policy Concerning I-864 Affidavit of Support, Memorandum from Michael D. Cronin, Acting Associate Commissioner Office of Programs, March 7, 2000.

¹⁰ Eligibility bans operate as an outright denial of Food Stamp eligibility to certain categories of immigrants, including most sponsored legal permanent residents. Deeming counts the income and resources of sponsors as if they were available to the immigrant when the immigrant's financial eligibility for assistance is determined. A related provision requires that affidavits of support include an enforceable obligation for sponsors to provide support to maintain a sponsored immigrant at 125 percent of the poverty line. Sponsor liability gives agencies that
(continued...)

PRWORA, there were no eligibility bans that applied to sponsored immigrants. Although deeming was required, it was limited to three years after an immigrant's entry as a lawful permanent resident. Affidavits of support were not enforceable, and there was no statutory authority to seek reimbursement of means-tested public benefits provided to a sponsored immigrant. These changes make deeming a relatively insignificant part of the current statutory scheme that regulates immigrant access to the food stamp program, since so few sponsored immigrants remain eligible for the food stamps. Given that USDA is interpreting new statutory language in light of a completely changed statutory framework, it is appropriate to reconsider how deeming affects other non-sponsored household members, especially since Congress decided not to explicitly apply the PRWORA restrictions to them.

For all of these reasons and in the absence of any evidence of Congressional intent to make citizen children ineligible for food stamps, it is entirely appropriate for USDA to consider adopting a construction of the PRWORA deeming provision that does not count the income of sponsors in determining the benefits of unsponsored persons who live with sponsored immigrants.

D. Deeming of a Sponsor's Gross Income with No Deductions

Another troubling provision (proposed 7 C.F.R. § 273.4(c)(2)(i)) proposes to deem *all* of a sponsor's gross income, except for the food stamp income exclusions provided under 7 C.F.R. § 273.9(c)¹¹, to a sponsored immigrant without any deductions to reflect more accurately the amount of support a sponsor could actually be required to provide to a sponsored immigrant. The proposed rule does not follow existing food stamp deeming rules (7 C.F.R. § 273.11(j)), which allow a 20 percent deduction from the sponsor's earned income and also provide for a deduction from the sponsor's income of an amount equal to the food stamp program's monthly gross income eligibility limit for a household of the same size as the sponsor's household.

This provision will have a negative impact on immigrant households for two reasons. First, if the final rules retain the proposal discussed above to count a sponsor's income in determining benefits for *non*-sponsored household members, the rules that set out how to calculate the amount of a sponsor's income that is deemed will be extremely important and will affect a large number of immigrant households. Second, even if the final rules do not count a sponsor's income in determining the benefits of non-sponsored household members, the provisions in the rule that address the calculation of a sponsor's income, while having less

¹⁰ (...continued)

provide means-tested benefits to sponsored immigrants, including food stamps, the right to recover their costs from the sponsors of those immigrants.

¹¹ Typical income exclusions under this section include certain types of non-monetary or in-kind benefits, irregularly received income that does not exceed \$30 a quarter, certain types of loans and reimbursements for expenses, and earned income tax credits.

immediate importance,¹² will have great significance in the future if any further food stamp restorations are enacted by Congress. Since restorations in the near-future may not include changes to PRWORA's deeming provision, it is possible that the deeming rule USDA adopts in these regulations will apply for some time. An overly restrictive deeming rule could have the practical effect of eliminating food stamp eligibility even for those immigrants who would otherwise benefit from future restorations.

USDA has discretion to adopt a deeming rule that better reflects the amount of a sponsor's income that could lawfully be made available to the sponsored immigrant for support. Unlike the longstanding section 5(i) of the Food Stamp Act (7 U.S.C. § 2014(i)), which provided explicit guidance on how to determine the income of a sponsor for purposes of deeming under pre-PRWORA law, section 421 of PRWORA (8 U.S.C. § 1631) gives USDA broad discretion. Section 421 generally requires deeming in federal means-tested public benefit programs but does *not* state how to determine the amount of income or resources to be deemed. Absent explicit statutory guidance, USDA retains the discretion to determine how to implement deeming. In fact, in the proposed rule, USDA has already used this discretion in positive ways to limit the amount of income deemed and the persons subject to deeming. For example, under the proposed rules:

- the amount of a sponsor's income that is deemed is reduced by the income exclusions provided under 7 C.F.R. § 273.9(c) [proposed 7 C.F.R. § 273.4(c)(2)(i)];
- the amount of a sponsor's resources that is deemed is reduced by the resource exclusions provided under 7 C.F.R. § 273.8 [proposed 7 C.F.R. § 273.4(c)(2)(iii)];
- deeming does not apply to an immigrant who is a member of his or her sponsor's food stamp household, meaning that a sponsor who lives with the sponsored immigrant has his or her income calculated under general food stamp rules which include a number of deductions from income [proposed 7 C.F.R. § 273.4(c)(3)(i)];
- if a sponsored immigrant can show that his or her sponsor sponsors other immigrants, the income and resources deemed must be divided by the number of sponsored immigrants that apply for or are participating in the food stamp program [proposed 7 C.F.R. § 273.4(c)(2)(iv)].

Given this considerable discretion, a range of additional options can and should be considered to further refine PRWORA's general deeming provision. ***The best option would be to calculate the amount of a sponsor's income that must be deemed to the sponsored immigrant in a manner consistent with the current food stamp deeming rules at 7 C.F.R. §***

¹² Under this second scenario, only a very limited number of immigrants will be subject to deeming in the immediate future. The vast majority of sponsored immigrants with Form I-864 Affidavits of Support entered the United States after August 22, 1996, and are no longer eligible for food stamps. These immigrants retain food stamp eligibility only if they are veterans, members of the U.S. armed forces, or one of the very limited number of food stamp-eligible immigrants who were lawfully residing in the United States on August 22, 1996, but did not file an application for an immigrant visa or adjustment of status until on or after December 19, 1997.

273.11(j). Under this provision, the amount of income deemed is the sponsor's total monthly income as defined in 7 C.F.R. § 273.9(b) with the income exclusions provided under 7 C.F.R. § 273.9(c) and with the following deductions as well:

- a deduction equal to 20 percent of the sponsor's earned income; and
- a deduction in an amount equal to the food stamp program's monthly gross income eligibility limit for a household equal in size to a household that consists of the sponsor, the sponsor's spouse, and any dependents the sponsor claims for income tax purposes.

Another option is to exclude income in a manner consistent with the food stamp program's definition of net income and to allow the deductions from income provided under 7 C.F.R. § 273.9(d).¹³ Both options recognize that the sponsor needs to retain some income to support his or her family and that the amount of income deemed needs to bear some relationship to the amount of a sponsor's income that is actually available for the support of a sponsored immigrant.

The treatment of the *resources* of sponsors under the proposed rules is similarly problematic. The current food stamp deeming provisions provide that the resources of a sponsor that must be counted are the total amount of his or her resources as determined under 7 C.F.R. § 273.8, minus \$1,500. The proposed rule (proposed 7 C.F.R. § 273.4(c)(2)(iii)) eliminates the \$1,500 reduction. This reduction should be retained. ***In fact, the resource limit should be increased to \$2,000, the current allowable resource limit under the food stamp program for non-elderly households.*** This reduction — which recognizes that the sponsor needs some assets for his or her own household — was set at \$1,500 when the general food stamp asset limit for non-elderly households was \$1,500. Now that this limit is \$2,000, the reduction also should be \$2,000.

The proposed rules retain a provision of the current rules that limits the amount of deemed income and resources to the sponsor's income and resources divided by the number of immigrants sponsored by the sponsor who apply for or participate in the food stamp program (proposed 7 C.F.R. § 273.4(c)(2)(iv)). Although this provision is positive and deserves support, it should be modified to eliminate the requirement that the other sponsored immigrants must apply for or participate in the food stamp program. This limitation no longer makes sense given that most sponsored immigrants, even if otherwise eligible for food stamps based on their income and resources, are no longer eligible for the food stamp program because of their status as immigrants. ***The final rules provide for the division of the sponsor's income by the total number of immigrants that he or she has sponsored.*** The sponsor still bears responsibility for those other sponsored immigrants.

¹³ These deductions include: a deduction equal to 20 percent of earned income (which is intended to cover taxes and work expenses), a deduction for child care and dependent care costs, a deduction for housing costs that exceed 50 percent of a household's net income, and a deduction for child support paid by a member of the household.

On another matter related to deeming, current rules provide that sponsor deeming does not apply to an immigrant who is participating in the food stamp program as a member of his or her sponsor's household *or* to an immigrant whose sponsor is participating in the food stamp program separate and apart from the sponsored immigrant. 7 C.F.R. § 273.11(j)(3)(i). The proposed rules retain the exemption for immigrants who are participating as a member of their sponsor's household (proposed rule 7 C.F.R. § 273.4(c)(3)). But the proposed rules delete the exemption for immigrants whose sponsors are participating as part of a household separate from that of the sponsored immigrant. ***USDA should retain this additional exemption, since sponsors who are participating in the food stamp program are unlikely to have income that could be made available to the sponsored immigrant for support.***

Finally, USDA proposes to eliminate references to deeming under the pre-PRWORA section of the Food Stamp Act. ***This is a positive change because it should help avoid unnecessary confusion in an already-complex area.***

E. Treatment of Income and Resources of Aliens Made Ineligible Under PRWORA

The proposed rule includes an important state option (proposed 7 C.F.R. § 273.11(c)(3)(ii)(B)) that allows states *not to count* the income of immigrants ineligible under PRWORA in determining the food stamp eligibility and benefits of U.S. citizens and eligible immigrants in the same household. Applying these favorable income-counting rules not only increases benefits to immigrant families but also will enable states to provide more generous state-funded food stamp restorations than would otherwise be possible. By increasing the amount of federally-funded food stamps that an immigrant family receives, this policy reduces the gap a state-funded program must fill.

This is an important provision that should be included in the final regulation. But it also needs revision. As written in the proposed rules, this provision could have the unintended effect of reducing or eliminating benefits for some citizen children and other eligible immigrants.

Proposed 7 C.F.R. § 273.11(c)(3)(ii)(B) provides that a state adopting the option not to count the income of an ineligible legal immigrant must ensure that the resulting benefit level for the eligible household members does not exceed the benefit the household would be receiving if the ineligible immigrant member were "still an *eligible alien*." [emphasis added]. The intent of this aspect of the proposed rules is reasonable. But if the ineligible immigrant household member is a sponsored immigrant with a Form I-864 Affidavit of Support, then stipulating that the eligible household members cannot receive a larger benefit level than the household would receive if the ineligible member were an eligible immigrant would appear to mean that the state would have to go through complex deeming procedures to determine the benefit level that cannot be exceeded.

This would have two deleterious consequences. First, the complexity of the deeming procedures could reduce state interest in the otherwise-helpful option allowing states not to count the income of legal immigrants made ineligible for food stamps by PRWORA. Second, if the

state counts the income deemed from an ineligible immigrant's sponsor, the result will generally be that the eligible household members — who are primarily citizen children — will have their food stamp benefits *reduced or eliminated* as a result of an option that was supposed to help them. *This problem can readily be solved if the food stamp benefit level for the eligible household members is capped at the level the household would be receiving if the ineligible immigrant members were citizens, rather than if they were eligible aliens.* The sole difference here is that by using an “if they were citizens” test, the perverse and presumably unintended application of deeming in these circumstances is avoided.

III. VERIFICATION ISSUES THAT MAY BURDEN PARTICIPATION BY IMMIGRANT FAMILIES

The verification process raises special concerns for immigrant families. Documents required to establish citizenship or a food stamp-eligible immigration status sometimes can be difficult or take a number of weeks to obtain. In addition, routine requests from food stamp offices for immigration status information or the social security numbers of immigrant household members who are ineligible for food stamps — and are not applying for food stamps — may raise concerns about whether the information will be shared with the INS and deter participation by citizens and other eligible household members. Immigrants also may have language barriers that make it difficult to understand or quickly comply with verification requirements.

For these reasons, the verification issues that the proposed rules raise (which are discussed in Part One of these comments) deserve careful consideration and should be crafted in a manner that does not unnecessarily burden participation by immigrant families.

Unfortunately, the proposed rules fail this test. They weaken or repeal a number of longstanding provisions aimed at assisting and protecting immigrant families. The likely result would be to intensify “chill” effects that discourage some eligible immigrants and citizen children from applying for food stamps and also make the program less accessible for such households.

A. Requests for SSNs and Immigration Status

A substantial number of children eligible for food stamps live with parents or other household members who are undocumented or in an immigration status that renders them ineligible for some means-tested programs. Food stamp agency requests for immigration status information or the Social Security numbers of these ineligible family members during the food stamp application process deter citizen children and eligible legal immigrant members of some mixed-status households from participating in the food stamp program.

Sometime in the very near future, HHS and USDA are expected to issue joint guidance relating to state requests for SSN and immigration status information on Medicaid, CHIP, Food Stamps, and TANF application forms. Although these issues are not explicitly addressed in the proposed rules, it is important that the final food stamp rules be consistent with this forthcoming joint agency guidance.

The preferred approach to food stamp agency requests for SSNs and information about immigration status should be modeled on the Medicaid application process. In Medicaid, states

must allow applicants to designate specific family members as “non-applicants” before applicants are asked to provide immigration status information or SSNs for family members applying for Medicaid. A similar approach is allowable under the Food Stamp Act, and the final rules should require its use in food stamps as well. That would more effectively address the concerns that mixed-status households have about applying for food stamp benefits. Such an approach also should facilitate alignment of the food stamp application process with Medicaid and make it easier for states to design joint Medicaid\Food Stamp applications. ***USDA should allow food stamp applicants to designate specific family members as non-applicants before applicants are asked to provide immigration status information or SSNs for those family members who are applying.***

B. Other Verification Issues

The proposed rules raise several other significant issues related to verification, some positive and others problematic.

- **Issues Raised in Part One of the Comments.** Several of the issues raised in Part One of these comments would have a disproportionately adverse impact on immigrant households. See those sections for the detailed discussion.
 - Verification of Identity (Proposed 7 C.F.R. § 273.2(f)(1)(i))
 - Allowing Sufficient Time to Gather Required Documents (Proposed 7 C.F.R. § 273.2(h)(1)(i)(C))
 - Discrimination in Setting Verification Requirements. (Proposed 7 C.F.R. § 273.2(f)(2)(i))
 - Applications by Mixed Immigrant Households (Proposed 7 C.F.R. § 273.2(c)(1))
- **Verification of Alien Status (Proposed 7 C.F.R. § 273.2(f)(1)(iv)):** The first sentence of this proposed provision provides that “[t]he immigration status of aliens must be verified.” ***To prevent agencies from interpreting this provision as requiring the verification of the immigration status of ineligible aliens, USDA should revise this sentence to read: “the immigration status of eligible aliens must be verified.”*** Similarly, the first sentence in proposed 7 C.F.R. § 273.2(f)(9) should be revised to read “[h]ousehold are required to submit documents to verify the immigration status of *eligible* aliens.”

The proposed rule also deletes a sentence in the current rule (7 C.F.R. § 273.2(f)(1)(ii)(C)) that provides: “[i]f the alien does not wish to contact the INS [for purposes of verifying immigration status], the household should be given the option of withdrawing its application or participating without that member.” ***This provision should be retained.***

Finally, the proposed rule (proposed 7 C.F.R. § 273.2(f)(1)(iv)(B)) provides that when the “State agency has submitted a copy of a document . . . to the INS for verification. . . [it] cannot delay, deny, reduce, or terminate the individual’s eligibility for benefits on the basis of the individual’s immigration status”

(emphasis added). ***This provision is important. It should be extended to all situations where verification of immigration-related eligibility factors is pending as a result of a document having been submitted for verification to the appropriate federal agency, not just to the INS.*** This modification is needed because in some cases, an immigrant's eligibility may depend on verification that must be provided by the Department of Defense or the State Department, rather than the INS.

- **Self-Attestation and Verification of Citizenship (Proposed 7 C.F.R. § 273.2(f)(2)(ii)):** The proposed rules retain the current food stamp rules that allow for self-attestation of citizenship. This is positive and should be supported. However, the proposed rule deletes an important protection in the current rules. Under both the current and proposed rules, when a state agency determines that a self-attestation of citizenship is questionable, the individual can be asked to provide verification of citizenship. Under the current rules, if the forms of acceptable verification of citizenship listed in the rule cannot be obtained and there is a reasonable explanation for the lack of verification, the agency must accept a signed statement from some other U.S. citizen which declares, under penalty of perjury, that the member in question is a U.S. citizen. 7 C.F.R. § 273.2(f)(2)(ii)(A). This provision is deleted in the proposed rules. ***This provision is consistent with the Department of Justice verification guidance and should be retained. Also, the rules should provide that the state agency has a duty to assist households in obtaining documents required to verify citizenship;*** some elderly and disabled applicants and child applicants may have difficulty understanding which particular document is needed and what office or agency they can contact to get a copy of such a document.

Finally, the proposed rules provide that where citizenship is questionable “the member whose citizenship is in question is ineligible to participate until the issue is resolved.” Proposed 7 C.F.R. § 273.2(f)(2)(ii). To be consistent with proposed 7 C.F.R. 273.2(f)(1)(iv)(A), which provides that an application may not be delayed pending INS verification of a document attesting to immigration status — and to avoid potential violations of Title VI of the Civil Rights Act of 1964 — ***this rule should be revised to clarify that the agency may not delay, deny, reduce or terminate the applicant's eligibility for food stamps while the agency is awaiting a response from INS (or another federal agency) regarding a document that establishes the applicant's citizenship or immigration status. At a minimum, this rule should cross-reference proposed 7 C.F.R. § 273.2(f)(1)(iv)(A).***

- **State Agency Responsibility to Assist Households with Special Needs (Proposed 7 C.F.R. § 273.2(c)(4)).** This section includes a favorable provision that needs some further refinement. The section requires state agencies to assist certain “special needs” households with obtaining information and documents required for verification purposes. Included in the list of households that the state must provide with assistance are “households residing in areas in which a

substantial number of members of low-income households speak a language other than English.” *The requirement should be rephrased to apply to “households in which the adult members speak a language other than English” and clarified to indicate that in areas in which there are not a substantial number of low-income households that speak a language other than English, the program’s bilingual service requirements may not apply but the state agency must try to assist non-English speaking households with the verification process to the extent it can.*

Non-English speakers who live in linguistically-isolated areas may have greater need for assistance from the state agency in meeting verification requirements than non-English speakers who live in less linguistically-isolated areas. Such a protection also is consistent with Title VI of the Civil Rights Act of 1964. (Title VI has been interpreted by the HHS Office for Civil Rights to impose a duty to furnish language services to all limited-English proficient clients, regardless of the size of the language group needing services.¹⁴ Where only a handful of members of the population to be served speak a particular language, translated written materials may not be required either under Title VI or the general bilingual assistance provisions in the food stamp regulations at 7 C.F.R. § 272.4(b), but the agency has an obligation to comply with Title VI and Food Stamp Act by providing other assistance needed to enable limited-English proficient persons to have a meaningful opportunity to participate in the food stamp program.)

- **Optional Use of SAVE (Proposed 7 C.F.R. § 272.11):** This provision, which implements section 840 of PWRORA to make use of SAVE a state option, needs to be clarified. Under SAVE, there are two ways to verify immigration status. “Primary verification” is an automated process where status is verified through computerized access to the INS data base. “Secondary verification” is a manual process where status is verified by sending immigration documents to the INS. The current rules provide that “[a] state agency must participate in the SAVE program . . .” and that the “secondary verification procedure shall be used by the state agency whenever . . . status has not been verified through [primary verification].” The proposed rules make use of SAVE a state option but could be read to require the mandatory use of secondary verification whenever status have not been verified through primary verification, even in a state that has opted out of SAVE. This would mean that states that opt not to participate in SAVE would be required to verify immigration status by sending immigration documents to the INS for a manual records check. Such a requirement is inconsistent with the current Department of Justice verification guidance, which requires states to

¹⁴ See *In re* Department of Social Services, OCR No. 08917007 at 3, n. 1 (Sept. 30, 1992) (noting that “a recipient who denies services to even one person due to his LEP status violates Title VI.”), quoted in Jane Perkins, Harry Simon, Francis Cheng, Kristi Olson, and Yolanda Vera, *Ensuring Linguistic Access in Health Care Settings: Legal Rights and Responsibilities*, National Health Law Program, January 1998, at page 28. See also United States Department of Agriculture, Food and Nutrition Service, Policy Memo No. 5-11 (December 1, 1978).

accept documentation of status that reasonably appears genuine on its face and bars further verification through the INS in these cases.¹⁵ *At a minimum, the phrase "[t]his secondary verification procedure shall be used" in 7 C.F.R. §273.11(d)(2) should be changed to "[i]n states that participate in SAVE, this secondary verification process may be used"*

IV. OTHER ISSUES

The proposed rules raise (and in some cases, fail to address) several other significant issues, some positive and others problematic. These include:

- **Definition of "Lawfully Residing in the United States":** Certain aliens are eligible for food stamps if they were "lawfully residing" in the United States on August 22, 1996. The proposed rules do not define "lawfully residing" in the United States. *At a minimum, the rules should include in a definition of "lawfully residing" all of the categories of lawfully-present aliens contained in an interim rule published by the Department of Justice that defines "lawfully present in the United States" for the purposes of determining which aliens are eligible for benefits under title II of the Social Security Act.*¹⁶ Included as "lawfully present in the United States" under this definition are: applicants for asylum and withholding of deportation who have been granted employment authorization, aliens who are the spouse or child or a United States citizen whose visa petition has been approved and who have a pending application for adjustment of status, aliens under Temporary Protected Status, aliens currently under Deferred Enforced Departure, and aliens in deferred action status pursuant to INS operations instructions.
- **Sponsor Liability:** The 1996 immigration law allows public agencies that provide means-tested public benefits (including food stamps) to an immigrant to seek repayment from that immigrant's sponsor if the sponsor signed a Form I-864 Affidavit of Support. However, the government agency that provided the benefits is not required to compel repayment and may decide to forego any attempt to compel the sponsor to reimburse the agency.¹⁷ The proposed rules do not contain any regulatory guidance on implementing this provision, except for a sentence in the preamble stating that if a "sponsored alien has received any benefits under a means-tested public benefit program, the *State agency* must request reimbursement by the sponsor in the amount of such assistance. . . . [and i]f within

¹⁵ Department of Justice, Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of PRWORA, 62 Fed. Reg. 61344, 61348-61349 (November 17, 1997).

¹⁶ 61 Fed. Reg. 47039 (September 6, 1996).

¹⁷ 8 U.S.C. § 1183a(b)(2)(A) provides that ". . . an action [to compel reimbursement] *may* be brought against the sponsor pursuant to the affidavit of support." [emphasis added].

45 days after requesting reimbursement, the sponsor has not indicated a willingness to commence payment, legal action may be brought against the sponsor" [emphasis added]. This language is problematic because it suggests that state food stamp agencies have independent legal authority to request reimbursement and commence a legal action against a sponsor.

Under section 13 of the Food Stamp Act (7 U.S.C. 2022), while USDA may delegate its authority to collect food stamp overpayments from recipients to state agencies, it may not delegate its claims authority to states where the claim is against a non-recipient, such as a sponsor.¹⁸ *The rules should clarify that a state agency may not independently commence requests and legal actions for reimbursement without USDA involvement and approval. At a minimum, states should not be permitted to commence requests and legal actions for reimbursements until a process is developed via the regulatory process. Whatever process is developed should be in conjunction with HHS and SSA to ensure that the rules are consistent across agencies.*

The rules should also clarify that the agency may not seek reimbursement for food stamp benefits provided to a sponsored immigrant from a sponsor who resides in the same household as the immigrant. This would be consistent with a provision already in the proposed rules that exempts these households from sponsor deeming (proposed 7 C.F.R. § 273.4(c)(3)(i)). *For those households where the sponsor does not reside with the sponsored members, the sponsor's liability to reimburse USDA for benefits should be explicitly limited to the amount of benefits that are directly attributable to the sponsored immigrant (i.e., a pro rata share of benefits provided to the household). Finally, since food stamps are provided with federal funds, the rule should also specify that any collections from sponsors must be returned to the federal government.*

- **The Seven-Year Eligibility Limit for Refugees, Asylees, and Other Immigrants with Related Statuses (Proposed 7 C.F.R. § 273.4):** Refugees, asylees, and certain other immigrants with related statuses are eligible for food stamps for seven years from the date of entry into the United States. *The rules should clarify two important points: first, that refugees and asylees are eligible for food stamps for seven years even if they subsequently adjust status; and second, that reaching the seven year limit is only a limit on eligibility for these immigrants if they are not otherwise eligible for food stamps (for example, some of these individuals may be eligible at the seven-year point as a veteran, an LPR who has worked 40 qualifying quarters, or a member of a Hmong or Highland Laotian tribe).* Neither of these points is clear in the proposed rules. If these issues are not clarified, eligible immigrants could be wrongfully denied food stamps or terminated as a consequence.

¹⁸ Section 13 provides that "[t]he Secretary shall have the power to determine the amount of and settle and adjust any claim and to compromise or deny all or part of any such claim or claims . . . [and that s]uch powers with respect to claims *against recipients* may be delegated by the Secretary to State agencies"

The rules should also require food stamp agencies to provide ample advance warning to refugees, asylees, and other immigrants with time-limited eligibility that they are approaching the seven-year limit and must have some other basis of eligibility for food stamps once they reach the limit. States should be required either to inform households orally of this fact at a recertification, or to send households a notice on this matter, at some point substantially before the end of the seven-year period, such as one or two years in advance. States could be given flexibility as to when within a fairly broad time period to provide this notice, as well as whether to do so orally or in writing. This notice or oral information should inform immigrants of the other possible ways they can retain food stamp eligibility at the end of the seven-year period. This information is important so that these immigrants understand that, in most cases, they will need to complete the citizenship process or work additional quarters to avert the loss of food stamp assistance.

- **The 40 Quarters Test (Proposed 7 C.F.R. § 273.4):** An immigrant who is lawfully admitted for permanent residence (LPR) is eligible to receive food stamps if she or he has worked 40 qualifying quarters as determined under title II of the Social Security Act. Under certain circumstances, LPRs can be credited with quarters earned by parents or spouses. After December 31, 1996, a quarter in which an immigrant received any federal means-tested public benefit is not creditable toward the 40-quarter total. The proposed rule contains a very limited discussion of the 40 quarters test. The following revisions should be made to clarify the application of the test.
 - ***The rule should specify that a quarter earned by a parent or spouse is creditable to the worker and transferable to the spouse or child even when the child of the parent or spouse receives a federal means-tested public benefit.***
 - ***The rules should mandate that quarters worked before a child is born or adopted are creditable.*** Under current FNS policy, states may develop their own policy concerning quarters worked before a child was born or adopted. A uniform national rule is the most reasonable construction of section 435 of PRWORA which provides that “an alien *shall* be credited with . . . all of the qualifying quarters of coverage . . . worked by a parent of such alien before the date on which the alien attains age 18” Moreover, even if one believes the statute is ambiguous, a uniform national rule is clearly preferable since few states may be aware of the option and there is little justification to treat children differently from their parents. Finally, this construction is consistent with SSI policy. FNS has

previously stated that it intends to make food stamp policy consistent with SSI policy in this area to the extent possible.¹⁹

- ***The rules should make clear that up to four quarters can be earned in any year when an immigrant has sufficient earnings during periods of nonreceipt of benefits.*** This is consistent with the practice SSA has followed since 1978, under which four quarters can be earned in a period of less than a year, since the number of quarters that SSA credits for a year (up to a maximum of four) is based on an individual's total earnings over the course of the year and *not* on the amount earned in each calendar quarter of the year.
- Current FNS policy provides that where an immigrant is determined eligible for food stamps based on quarters earned by a spouse and then the couple subsequently divorces, the divorced spouse retains eligibility until the next recertification. At recertification, FNS policy gives states the option to continue eligibility based on the previous 40 quarters determination. ***The rules should mandate that eligibility continues based on the previous 40 quarters determination.*** A uniform national rule is clearly preferable since few states may be aware of the option and there is little justification to treat the divorced spouse differently from any children of the marriage who remain eligible based on the previous 40 quarters determination.
- ***To avoid confusion, the final rule should provide the list of the five federal means-tested public benefits (TANF, Medicaid, CHIP, food stamps, and SSI) instead of simply referring to federal means-tested public benefits "as defined by the agency providing the benefit."***
- The proposed rule could be read to suggest that evidence of quarters can only be provided by SSA. For instance, proposed 7 C.F.R. § 273.2(f)(iv)(B), allows eligibility for up to six months when a request to verify quarters has been submitted to SSA, but only if "SSA is conducting an investigation to determine if more quarters can be credited." ***As current FNS policy provides,²⁰ the rules should clarify that in certain cases, allowable evidence of qualifying quarters is not available from SSA and may be provided by the applicant.²¹***

¹⁹ Cumulative Questions and Answers on Certification and Work Issues in PRWORA, August 15, 1997.

²⁰ *Id.*

²¹ For instance, SSA records do not show current year earnings and in some cases the last year's earnings, depending on the time of request. Also, in some cases, an applicant may have work from uncovered employment that is not documented by SSA, but is countable toward the 40 quarters test. In both these cases, the individual,

(continued...)

- **Definition of Citizen and Non-citizen National (Proposed 7 C.F.R. § 273.4):** The proposed rule provides that a person who is a "U.S. alien national" is eligible for food stamps. The rule should follow the terminology used by the Department of Justice in its interim guidance on verification of qualified alien status and citizenship under Title IV of PRWORA and refer instead to "non-citizen nationals."²² Also, the preamble states that a reference to the definition of citizen contained in the Department of Justice interim guidance on verification has been added to the rule; however, no such reference appears in the proposed rule. *To avoid confusion, the rule should include a cross-reference to the definition or incorporate the actual definition.²³ Since the definition is unlikely to change, incorporating the actual definition would be more helpful to persons using the food stamp regulations.*
- **Eligibility of Hmong and Highland Lao (Proposed 7 C.F.R. § 273.4(a)(4)):** This provision is unnecessarily confusing because it refers to Hmong or Laotian tribes that "rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964 and ending May 7, 1975." *Instead the rule should simply confer eligibility on any person who was a member of a Hmong or Highland Laotian tribe on or prior to May 7, 1975.* Since tribal membership is by definition lifelong, the beginning date of the Vietnam era, August 5, 1964, is not relevant to the determination.
- **Option to Count All Income of an Alien who is Ineligible Under Section 6(f) of the Food Stamp Act (Proposed 7 C.F.R. § 273.11(3)(i)):** This proposed rule provides that a "state agency must count all or, at the discretion of the State agency, all but a pro rata share" of the income of an alien who is ineligible under section 6(f) of the Food Stamp Act (7 U.S.C. § 2015(f)). Section 6(f) is a pre-PRWORA provision that denies food stamps to undocumented immigrants and others in relatively marginal immigration statuses. Prior to PRWORA, states could count only a pro rata share of the income of such aliens in determining food stamp benefits for the remaining household members. The proposed rule implements section 818 of PRWORA, which gives states the option to count all of the income of these aliens in determining the food stamp benefits for the remaining household members. Because almost all states currently count a pro rata share of the income of these aliens, the order in which the options are listed in

²¹ (...continued)
rather than SSA, would need to provide the evidence need to verify the quarters. See Social Security Administration, Guidelines for Making Determinations Using SSA's Quarters of Coverage History System (Revised June 1998).

²² United States Department of Justice, Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61344, 61347 (November 17, 1997).

²³ Id.

the proposed rule should be reversed, with the option to count a pro rata share of income listed first and the option to count all income listed second.

This provision also includes an option to count all of an alien's income for purposes of the food stamp gross income test while counting only a pro rata share when determining benefit levels. ***This provision is important and should be included in the final regulation since it provides a less restrictive path for states that feel political pressure to take the option that section 818 provides.***

- **Privacy Act Notice (Proposed 7 C.F.R. § 273.2(b)(2)(iii)(D)):** A correct cite to the provision of the Food Stamp Act that allows for the collection of Social Security Numbers (SSNs) should be added (the correct cite is section 16(e) of the Food Stamp Act). The cite to 42 U.S.C. § 2000 appears to be erroneous.

PART THREE: ELIGIBILITY AND BENEFIT PROVISIONS

I. SIMPLIFIED FOOD STAMP PROGRAM

The simplified food stamp program (“simplified FSP”) is a device by which states can make broad changes in the structure of the Food Stamp Program for households in which some or all members receive assistance from a state program that receives TANF funds. Congress designed the simplified FSP in part as a compromise between Members who wanted to preserve the Food Stamp Program and those who wanted to replace the Program with a block grant. For the populations affected, state flexibility to reshape the food stamp benefit structure under the simplified FSP is broad. Section 26 of the Food Stamp Act (7 U.S.C. § 2035) authorizes the simplified FSP.

States’ ability to restructure the Food Stamp Program under the simplified FSP is subject to three principal sets of constraints:

- Simplified FSPs must not increase costs to the federal government. Thus, the simplified FSP cannot expand food stamp benefits without offsetting cuts. Food Stamp Act §§ 26(d)(2)(B) and (e).
- States require USDA’s permission to apply the simplified FSP to “mixed” households in which some, but not all, members receive assistance from a TANF-funded program. USDA does not have discretion to bar an otherwise-lawful simplified FSP that is limited to “pure” TANF households (households in which all members receive assistance from a TANF-funded program). Conversely, USDA may not approve a simplified FSP that applies to households in which no members receive assistance from a TANF-funded program. Food Stamp Act § 26(c).
- Simplified FSP’s may not override a few specific provisions of the Food Stamp Act that are listed in the statute. Food Stamp Act § 26(f).

To date, USDA has issued only two significant pieces of guidance relating to the simplified FSP. One shows states how the simplified FSP can be used to help states meet their TANF work participation rates by allowing them to require households to work off their food stamps as well as their cash assistance. Thus, when determining the number of hours of unpaid work that may be required of a household, a state may add the value of the food stamps the family receives to the amount of its cash assistance before dividing by the minimum wage. This guidance promised automatic approval of simplified FSPs limited to expanded work requirements, and a handful of states have taken this option.

More significantly, USDA issued guidance on April 7, 1998 that explains how it will exercise its discretion concerning the approval of simplified FSPs that change the food stamp benefit structure and affect mixed households. The guidance states that USDA will approve such plans if no more than five percent of affected households lose 10 percent or more of the benefits they otherwise would receive and no households lose more than 25 percent of the benefits that

would have been provided under regular food stamp rules. Reductions in benefits of \$10 or less are not counted towards either of these thresholds. These restrictions are intended to ensure that the Food Stamp Program continues to serve as a nutritional safety net for low-income people.

These restrictions also may prevent states from shifting food stamp benefit dollars to obscure the effects of a reduction in TANF cash assistance benefits (at the expense of mixed households). For example, a state that has cut cash assistance grant levels might wish to exclude some or all of the affected families' remaining benefits from food stamp benefit calculations so that these families' food stamps would increase. It could want to offset this cost — and thus meet the requirement that federal costs not increase — by eliminating the medical deduction for mixed households with elderly and disabled persons or reducing the shelter deduction for some mixed households. The households most likely to benefit from the restrictions on the depth of reductions that may be imposed on households' food stamps are those containing elderly or disabled members who qualify for the excess medical expense deduction and an excess shelter deduction that is not subject to a cap: states can modify or eliminate these features of the benefit structure without affecting most "pure" TANF households. Also, because elderly and disabled persons are more likely to have non-TANF sources of income (such as SSI or Social Security), their presence in a household is likely to make it "mixed" (*i.e.*, not composed entirely of recipients of TANF-funded cash assistance).

The proposed regulations, like the guidance, do not include a comprehensive treatment of the simplified FSP. Proposed 7 C.F.R. § 273.25; 65 *Fed. Reg.* 10892-93, 10911-12. Instead, the proposed rules simply codify USDA's guidance limiting benefit reductions in simplified FSPs that cover mixed households. ***This provision is very important and should be retained in the final regulations: unless this guidance is incorporated into final regulations, a future administration can eliminate it with the stroke of a pen.***

In addition, although USDA has decided against promulgating a complete set of regulations regarding the simplified FSP, ***the Department should clarify a few other statutory restrictions in its final regulations:***

- **Households with high shelter costs.** Sections 11(e)(25)(B) and 26(f)(2) of the Food Stamp Act allow states' simplified FSPs to standardize deductions but require them to "address the needs of households that experience high shelter costs in relation to the incomes of the households." Without specific regulatory guidance, however, states may eliminate the shelter deduction for families with unusually high housing costs and use the savings to increase the standard deduction that all households receive. Because they commit some errors calculating the shelter deduction, eliminating it in favor of a single, uniform increase in the standard deduction could appeal to states seeking to reduce their quality control error rates. States could claim that the enhanced standard deduction takes shelter costs into account *in the aggregate*. Although many households would receive a modest increase in benefits, those with high housing costs and no public subsidies — who may be having the greatest difficulty paying for food because most of their money goes for their rent or mortgage and utilities — could experience sharp reductions.

The final regulations should include some minimum standards for preserving the effect of the excess shelter deduction. Without some provision of this kind, households whose incomes are spent largely on housing costs could face hardship as the food stamp benefit formula no longer takes those costs into account. As these households' rent and utility money is presumed available for food purchases, they could face the choice between "heating and eating" that the Food Stamp Program long has sought to avoid.

One possible minimum standard that the final rules could adopt as a way for simplified FSPs to standardize deductions while still providing some protection to households with high housing costs would be to establish a few standardized shelter costs that would be used in calculating the excess shelter deduction. All households with shelter costs in a given range would have their shelter deductions — the amount by which their housing costs exceed half of their incomes — calculated using the same figure for their shelter costs. For example, one shelter cost figure could apply to all households whose monthly shelter costs exceed \$100 but are less than \$250, another could apply to households with shelter costs from \$251 through \$400, and a third to households paying more than \$400 per month for rent or mortgage plus utilities. (Households with shelter costs of \$100 or less rarely qualify for a substantial shelter deduction under current rules.) Although this approach would markedly reduce the Food Stamp Program's responsiveness to the impact of housing costs on households' ability to purchase an adequate diet, it would be better than ignoring individual shelter costs completely.

- **Deadlines for application processing.** Because the simplified FSP is only applicable to households in which at least one member is receiving TANF-funded assistance, it cannot be used for households that are applying for both cash assistance and food stamps since those households will not have started to receive cash assistance. Thus, it cannot be used to lengthen the expedited (seven-day) or regular (30-day) processing standards for food stamp applications. ***The final regulations should make this point clear.***
- **Restrictive TANF eligibility rules.** Similarly, a state cannot use the simplified FSP to import new restrictions on eligibility from its TANF-funded programs to the Food Stamp Program. If an eligibility limitation prevented a family from qualifying for cash assistance, that family cannot be subject to the simplified FSP and thus must have its eligibility determined under regular food stamp rules. Also, since section 26(f)(3)(B) of the Act requires food stamp benefits to be calculated in a simplified FSP based on the thrifty food plan for the size of the household present (just as under the regular Food Stamp Program), the simplified FSP does not permit family caps or similar TANF policies that render some individuals within a household ineligible to be applied to the simplified FSP and to reduce a household's food stamp benefits. ***The final rules should make these points clear as well.***

- **Only recipients of “assistance” under TANF-funded programs covered.** Finally, *the final regulations should make clear that the simplified FSP is limited to households in which some or all members receive “assistance” under a TANF-funded program*, with the term “assistance” having the same definition as in HHS’s final TANF regulations. Without such a clarification, confusion could arise on this issue since most other cross-references to TANF in the Food Stamp Act — including those relating to categorical eligibility — use the much broader term “benefits” rather than “assistance.” USDA appropriately has construed “benefits” to include services that do not meet the definition of “assistance.” The simplified FSP gives states flexibility to change food stamp rules only where the state is providing a family with “assistance.” The proposed regulations on the simplified FSP use the word “assistance” appropriately but fail to include an explicit cross-reference to the TANF regulations. USDA has issued informal guidance clarifying that the simplified FSP can only be applied to households receiving “assistance” from a TANF-funded program, but if the final rules do not include this point, a future Administration could try to change this policy and allow states to apply the rules of the simplified FSP, rather than national food stamp rules, to households receiving only relatively modest services that happen to be supported by TANF-funded programs.

USDA does not appear to disagree with any of the interpretations described in the four points above, although it has not publicly explained how it believes states must accommodate the needs of households with high shelter costs. In the absence of formal regulations, a future administration could seek to loosen one or more of these policies.

In addition, *the final regulations should provide that opportunity will be granted for public input on proposed simplified FSPs*, either through a comment period or public hearings. This could occur either prior to state submission to USDA or prior to USDA’s approval of the plan. Since simplified FSPs can fundamentally change the food stamp benefit formula in ways unanticipated by legislation or regulations, giving the public in a state the opportunity to comment could both improve the quality of the plans ultimately approved and increase the accountability of state officials submitting these proposals. In many states, changes of this magnitude in a cash or medical assistance program would require public hearings or a notice and comment period. Because food stamps are funded entirely with federal dollars, and states never previously had discretion on this scale, states’ open government laws may not apply. At present, the formulation and approval of simplified FSPs is generally a closed process involving only state officials, USDA staff, and USDA’s consultant on cost-neutrality issues.

II. CATEGORICAL ELIGIBILITY

Categorical eligibility is a feature of the Food Stamp Program that allows certain kinds of households to qualify for benefits without regard to many of the restrictions on eligibility that would otherwise apply. A household is categorically eligible if all of its members receive benefits under SSI or a TANF-funded program. A categorically eligible household still cannot receive food stamps without applying, and the amount of food stamps (if any) it may receive is

determined under the standard food stamp benefit formula. The most important effect of categorical eligibility is to eliminate the application of the Food Stamp Program's resource rules to categorically eligible households. Categorical eligibility is authorized under section 5(a) of the Food Stamp Act (7 U.S.C. § 2014(a)). A closely related provision, section 5(j) (7 U.S.C. § 2014(j)), excludes the resources of household members who receive benefits under SSI or a TANF-funded program even if the whole household is not categorically eligible because of the presence of one or more persons who do not receive benefits from SSI or a TANF-funded program.

USDA's July 14, 1999, guidance significantly broadened categorical eligibility in the Food Stamp Program. Under this guidance, categorical eligibility applies not just to families receiving cash assistance under TANF-funded programs but also to those receiving services from such programs. Thus, if a state provides information and referral or case management services to people who leave or are diverted from cash assistance programs, those people will be exempt from the food stamp resource limit. At a time of rapidly falling cash assistance caseloads, this innovation is crucial to allowing working poor families to receive food stamps when they have a vehicle that exceeds the Food Stamp Program's harsh and outdated limits. Although preoccupation with reprogramming their computer systems to avoid Y2K problems has slowed implementation, some states now are moving to exempt many or all families with children from the Food Stamp Program's resource limits by providing a simple, inexpensive service that will trigger categorical eligibility.

USDA's proposed rules to update its policy on categorical eligibility for the enactment of TANF were written and put into clearance before the July 14, 1999, guidance was issued. Unfortunately, they do not appear to have been revised to reflect those policies, including the guidance on excluding the resources of recipients of benefits from TANF-funded programs who are members of households that are not categorically eligible for food stamps. In addition, the proposed regulations narrow the effect of categorical eligibility to an extent not authorized by the statute. Finally, the final regulations should be amended to revise procedural requirements on states for households that are categorically eligible but would receive no benefit under the food stamp benefit calculation.

A. Implementing the July 14, 1999, Guidance

The final rules should incorporate the substance of the excellent guidance on categorical eligibility that USDA released last summer, as well as the key points of clarifying questions and answers it has issued since. Among the key points are:

- Any benefits supported by a TANF-funded program, not just cash and other cash-like benefits meeting HHS's definition of "assistance," should suffice to trigger categorical eligibility.
- Categorical eligibility is triggered when the program providing benefits receives money from *either* the TANF block grant *or* funds the state counts towards its TANF maintenance-of-effort obligations. This is true even if the benefits a particular household receives are not supported with any TANF or MOE funds (e.g., benefits from a child care program that receives some TANF or MOE funds

would confer categorical eligibility upon a recipient family even if that family's benefits are supported with Child Care Development Fund dollars).

- A household can be categorically eligible if it has been authorized to receive a service, such as information and referral services, even if it does not actually avail itself of that service during a particular period.
- Where a service or other benefit is provided to one member of a household, the state providing that benefit may determine that it is intended to aid all members of the household and, as a result, that all are categorically eligible for food stamps.
- Where at least half the funds supporting a benefit come from either the federal TANF block grant or state funds counted towards the TANF maintenance-of-effort requirements, the benefit must be considered a benefit from a TANF-funded program for purposes of applying the categorical eligibility requirements.

It is possible the proposed regulations could be interpreted in a manner consistent with the Administration's July 1999 guidance. If, however, the final regulations do not explicitly reflect these key principles, a future Administration could adopt policies overnight that either severely narrow categorical eligibility from what states have begun to implement or so undermine states' ability to track which households are eligible for categorical eligibility that the policy would become unworkable.

B. Excluding the Resources of Recipients of Services from TANF-funded Programs in Non-Categorically Eligible Households

As noted above, section 5(j) of the Food Stamp Act complements categorical eligibility by excluding the resources of any members of non-categorically eligible households who receive benefits from SSI or a TANF-funded program. USDA's July 14, 1999, guidance interpreted section 5(j) in a manner analogous to its interpretation of categorical eligibility: it held that section 5(j)'s resource exclusion applies to persons authorized to receive *any* benefit from a program that itself receives TANF block grant or MOE funds and that such an individual need not actively access those benefits. Some states' decision to confer categorical eligibility on entire households may be influenced by the fact that section 5(j) would apply in any event to any individual recipients of benefits within a household; categorical eligibility is likely to be administratively simpler in many cases than applying section 5(j). Therefore, although section 5(j) may apply to relatively few households itself, its presence encourages states to apply categorical eligibility more broadly.

Section 5(j) is codified in 7 C.F.R. § 273.8(e)(17). Unfortunately, the proposed regulations do not amend this regulation at all to conform to the July guidance. Although the existing regulation is not flatly inconsistent with that guidance, it could easily be construed more narrowly by a future administration. For example, unless the final regulations amend this section to conform to the July 1999 guidance, a future administration could read the existing regulation to permit the exclusion only of the resources of cash assistance recipients — and not of the resources of persons receiving other benefits from TANF-funded programs. ***USDA should make changes in section 273.8(e)(17) that parallel those in the categorical eligibility regulation, 7 C.F.R. § 273.2(j).***

C. Categorical Eligibility for Households in which Members Receive Benefits from More Than One Program

Section 5(a) of the Food Stamp Act provides categorical eligibility to households in which all members receive benefits from SSI, a TANF-funded program or, in certain circumstances, a state general assistance (GA) program. It does not require that all household members receive benefits from the *same* program. For example, a household would be categorically eligible if it includes a parent and one child receiving benefits from a TANF-funded program and another child receiving SSI because of a disability.

Section 273.(j)(4)(vi) of the current rules makes clear that these “combination households” are categorically eligible. The proposed rules would delete it. Although USDA does not appear to intend a change of policy here, the deletion will invite errors by local food stamp offices. *The final rules should retain the current provision.*

D. Categorically Eligible Households Who Are Eligible for No Food Stamp Benefit

Under section 273.10(e)(2)(iii) of the current rules (which the Department does not propose to change), when a household is eligible for no food stamp benefit the state may either deny the household’s application on the grounds that its net income exceeds the level at which benefits are issued or certify the household but suspend its participation. Section 273.2(j)(2)(vii)(F) of the current regulations states that the option to deny such a household does not apply to categorically eligible households. Thus, categorically eligible households must be certified for food stamps (but given zero benefits).

Under the proposed rules, it appears that USDA intends to retain this requirement in section 273.2(j)(2)(vi). (Due to an apparent drafting error, this provision of the proposed rules would apply only to households that are categorically eligible on the basis of receipt of General Assistance benefits.) Because of the Department’s July 1999 guidance on categorical eligibility, significantly more households are likely to be categorically eligible, based on receipt of a TANF-funded benefit, but eligible for no food stamp benefit due to their income. To require states to certify such households for zero benefits would be administratively burdensome and could discourage states from adopting expansive categorical eligibility policies.

The final regulations should be revised to give states the same option that is currently available for households that are not categorically eligible: where a household’s net income exceeds the level at which benefits are provided, states should be allowed to choose between denying the application or certifying the case but suspending benefits. Under this policy, if a state had information that a household that was ineligible at the time of application was about to experience a change in its circumstances that would make it eligible, the state could approve the application and redetermine the household’s eligibility for benefits after the change took place. Otherwise, the state could deny the application and not incur the burden of maintaining an open case for a household that has little likelihood of qualifying for food stamp benefits.

III. EXCLUDING VEHICLES FROM RESOURCE CALCULATIONS

Under current regulations (7 C.F.R. § 273.8(g) and (h)), the Food Stamp Program evaluates vehicles as resources in three steps:

- First, the food stamp office must determine if a vehicle is completely exempt from consideration. Exempt vehicles include those that a household member uses to produce earned income (such as a taxicab), vehicles used to transport physically disabled persons, vehicles used as the household's primary home, and vehicles that migrant farm workers or traveling salespeople use to travel from job to job. If the vehicle is in a category that is completely exempt, it has no impact on the household's eligibility for food stamps and the inquiry ends there.
- Second, all vehicles that are not completely exempt from resource consideration are evaluated under the "fair market value" test. A vehicle's fair market value is its wholesale price, as determined from the used car "blue book" or some similar publication. A car's fair market value is determined without regard to how much equity the household has in the car. The extent of any vehicle's fair market value that exceeds \$4,650 is counted as a resource. Thus, a household with one car worth \$5,150 and another car worth \$5,500 would have \$1,350 (\$500 plus \$850) counted as resources from those cars.
- Finally, some cars are also evaluated under the regulations' "equity" test. Current regulations exempt from the equity test one vehicle per household and one additional vehicle for each household member who needs a vehicle to look for or commute to work. As a result, the equity test applies only in some relatively unusual cases where a household has more than one car and where no one in the household is working or looking for work. If the equity test applies, a household's equity in a vehicle is determined by subtracting any loan balances outstanding on the vehicle from the vehicle's fair market value. Thus, a vehicle with a fair market value of \$5,500 on which the household still owes \$3,000 has an equity value of \$2,500. If the equity test applies to a vehicle, the food stamp office must count as a resource the *greater* of the household's equity in a vehicle and the extent of the vehicle's fair market value that exceeds \$4,650. In practice, if the equity test applies to one or more of a household's vehicles, the household often will be ineligible for food stamps.

Any portion of a vehicle's value that counts as a resource under either the fair market value or equity tests is added to the household's other countable assets and compared to the overall resource limit applicable to the household. A household with an elderly member is subject to a \$3,000 overall resource limit; all other households are ineligible for food stamps if their resources exceed \$2,000.

The proposed regulations include one major positive change in the Food Stamp Program's vehicle policy and invite comments that could lead to another.

A. Vehicles with Extremely Low Equity

The proposed regulations would add cars in which the household has very little equity to the list of vehicles that are *completely exempt* from consideration as a resource in the Food Stamp Program. Proposed 7 C.F.R §§ 273.8(e)(18) and (h)(1)(vii); 65 *Fed. Reg.* 19877-78, 10905. Such vehicles would be treated in the same way that taxicabs and the cars of migrant farm worker families are today: they would be exempt from both the fair market value and equity tests.

When President Clinton announced his intention to make this change on February 23, 2000, he correctly described it as an important advance in making food stamps available to low-income working families that own vehicles with fair market values above the food stamp resource limit but that have little or no equity in these cars because of outstanding loan balances.

Section 5(g)(5) of the Food Stamp Act (7 U.S.C. § 2014(g)(5)) allows USDA to exclude any “resources that, as a practical matter, the household is unlikely to be able to sell for any significant return because the household’s interest is relatively slight” when determining eligibility. This provision was intended to prevent families from being denied food stamps because of resources that could not be sold for a significant amount of money, and therefore could not be used to finance the purchase of significant amounts of food. Unfortunately, for many years, food stamp regulations have prohibited states from applying this exclusion to cars. 7 C.F.R. § 273.8(e)(18).

The proposed revision to the regulation would extend the policy to cars. If the household’s equity in a car is less than half of the applicable resource standard (*i.e.*, less than \$1,000 for the great majority of families, which are subject to a \$2,000 overall resource limit, and less than \$1,500 for families that are subject to a \$3,000 overall resource limit because they include an elderly member), the car will not be counted as a resource available to the family. Such cars would have no bearing on the household’s eligibility for food stamps. The household’s equity is determined by subtracting any outstanding loan balances from the car’s fair market value (*i.e.*, the wholesale price listed in the used car “blue book” or a similar publication). Cars that are not excluded under this new policy would be evaluated under current procedures, as described above.

The new rule will benefit low-income working families that have reliable cars with high loan balances. Compelling these families to sell their cars in order to receive food stamps is counterproductive because without cars it will be more difficult for these families to maintain, or to search for and accept, employment. Selling cars with large outstanding loan balances also makes little money available to buy food since the proceeds go largely to the finance company.

Relatively few vehicles likely will need to be evaluated under this procedure. Categorically eligible families, such as those that receive TANF or SSI benefits, are exempt from the vehicle limits. A vehicle whose fair market value is so low that it would not put a family over the food stamp resource limits would not need to be considered for this exemption. Nor would states need to further examine a car that a family reports has already been largely paid off. Only where an otherwise eligible family is at risk of being denied food stamps because of a car that it recently purchased with a loan would the food stamp office need to consider information on the outstanding loans.

This is a very positive regulatory change that should be retained in the final regulations. The final rule should be improved in two respects:

- ***Defining a “significant return.” The definition of what value represents a “significant return” in section 273.8(e)(18)(ii) of the current and proposed rules should be made uniform for all households rather than having one level for the non-elderly and another for the elderly and should be set at \$2,000.*** The proposal to have separate definitions for households with and without elderly members is unnecessarily complicated. It would be simpler for states and households to have one standard. Section 5(g)(5) of the Act excludes resources that the household is unlikely to be able to sell for a “significant return.” Although the statute does not explicitly define that term, section 5(a) comes quite close. It provides that “[p]articipation in the food stamp program shall be limited to those households whose . . . financial resources . . . are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet.” The Act’s general resource standard of \$2,000 represents Congress’s determination of the level of resources below which a household’s resources do represent a “substantial limiting factor” on its ability to buy food. If resources of \$2,000 or less are a “substantial” limiting factor, the Department can reasonably determine them not to be “significant” for purposes of section 5(g)(5). It should be noted that the \$2,000 general food stamp asset limit is not liberal: it has not been increased in fifteen years. In addition, because of advertising, closing, or other costs, many households may have difficulty obtaining the full equity value for their car if they did sell it (particularly if they were not trading it in to buy a new car). Moreover, in some areas where the economy is very strong, enough consumers are looking for new cars that some dealers may offer less than the listed wholesale value for used cars not being offered as trade-ins. Excluding cars (and other resources covered by the existing regulation) with equities that do not exceed \$2,000 for households would somewhat simplify the administration of this provision (by freeing states from having to determine whether to apply a higher standard for a household with an elderly member) and would protect more low-income working families that need their cars to get to work.

In the alternative, if the Department is not willing to set the threshold for what is “significant” at \$2,000, it should at least raise this level to \$1,500 for all households. This is one area in which no compelling policy reasons justifying different limits for elderly households as opposed to all others. The \$3,000 limit exists primarily so that elderly persons, who may have less opportunity to replenish their assets in the future, will not have to spend down so much of their *liquid* assets. Here, however, the question is whether a household should be required to sell a vehicle. If \$1,500 is not a “significant return” for the elderly, it should not be for other households as well.

- ***Vehicles excluded under other resource exclusions. Section 273.8(h)(1)(vii) of the proposed rules should be amended to exclude from consideration any vehicle that is covered by one of the general resource exclusions in section***

273.8(e). Current rules apply some but not all of the general resource exclusions to vehicles. No good reason exists for these distinctions: some of the general exclusions by their nature do not apply to vehicles, but some of those not now listed in section 273.8(h)(1) could legitimately apply to vehicles and represent valid bases for excluding a car. For example, a car that the household cannot sell because it is collateral for a business loan should be excluded as resources under 7 C.F.R. § 273.8(e)(12), but the current section 273.8(h)(1) leaves that ambiguous.

B. Eliminating the Equity Test for Households with Multiple Vehicles

The preamble to the proposed regulations also invites comments on whether USDA should eliminate the equity test in the current rules. 65 *Fed. Reg.* 10878. As the preamble notes, USDA lacks the authority to change the fair market value test significantly because the Food Stamp Act requires that cars be evaluated in that manner. Since the early 1980s, however, the Food Stamp Act has not required USDA to impose an equity test. (Indeed, since the statute provides for excluding any part of a vehicle's fair market value that is less than \$4,650, a strong argument could be made that the current statute does not even *allow* USDA to impose an equity test in addition to the fair market value test.) At a minimum, USDA is free to eliminate the third step in the three-step process described above if it so chooses.

Eliminating the equity test would represent a significant simplification of the Program's rules. The American Public Human Services Association's recent food stamp policy resolution uses the vehicle rules, including specifically the additional steps required by the equity test, as an illustration of the "complex" and "error-prone" aspects of the Food Stamp Program. This is an opportunity to ease administrative burdens on states while helping poor households at the same time. Although little data exist on which households are denied food stamps under the equity test, they are likely to include households that have needed more than one car so that one or more members can work, but in which a member is currently out of the labor force because of the birth or adoption of a new child, a short-term incapacity, or similar problem. Although such households would regain eligibility once that household member returns to work (or if one of its cars is repossessed or sold), it is likely that many such households will not realize that they have become eligible and can reapply for benefits. Thus, although the equity test may render a household ineligible for just a few months, the resulting loss of benefits may last much longer.

The final rules should eliminate the equity test to reduce the complexity of the Program and to avoid disqualifying working poor families during brief absences from the work force.

IV. INCOME, DEDUCTIONS, AND BENEFIT CALCULATIONS

The proposed regulations make numerous changes in the rules for determining households' income and calculating their benefits to reflect PRWORA's mandates. The proposed rules in this area are generally quite good, although they warrant strengthening in a few areas. There is, however, one adverse rule, regarding standard utility allowances, that would very likely lead to benefit reductions the law does not require.

A. Pro-rating Benefits for Reapplying Households

Since 1981, the Food Stamp Act has required that the benefits of new applicants be pro-rated from the date they applied for benefits. Thus, a household applying on the 16th of a month would receive half of a month's benefits because half of the month had passed by the time the household applied.

The question of whether households reapplying for food stamps after brief gaps in participation should have their benefits pro-rated has been the subject of frequent legislative action. The 1981 legislation that initiated pro-rating in the Food Stamp Program as part of President Reagan's budget cuts exempted households reapplying after gaps of less than a month. In 1982, Congress removed that exception in the search of more savings. In the late 1980s, the U.S. General Accounting Office (GAO) released a report critical of this policy and finding that it contributed to hunger among eligible families terminated from food stamps due to minor procedural difficulties. Congress reinstated the exception to pro-rating for households experiencing brief gaps in participation in 1993. PRWORA removed that exception yet again in 1996.

The statute and proposed regulations provide that migrant farm workers should not have their benefits pro-rated when they reapply after a gap in participation of less than one month. This exception to pro-rating was inserted into the statute as part of disaster relief legislation in 1988 and retained when PRWORA repealed the broader exception for persons reapplying after short gaps in participation. The exception for migrant farm worker families was created in response to concerns that because such families move frequently, they could lose substantial benefits as a result. Unless they were able to apply precisely on the first of the month following a move, their benefits would be pro-rated although they remained continuously eligible. Moreover, because many farm workers may depend on crew leaders or others for transportation to a food stamp office, reapplying on the first day of the next month will often prove impossible. Under those circumstances, pro-rating seemed particularly unfair.

The final regulations include the exception for migrant farm workers, but they provide little guidance on how it is to be implemented. ***The final rules should state explicitly that pro-rating may not be applied to migrant farm workers certified to receive food stamps during the prior month in any county or state.*** Migrant families applying for food stamps should be asked if they received benefits during the prior month and, if so, where. This statement can be confirmed with the office that provided the previous month's food stamps. Indeed, many food stamp offices already make similar inquiries of a migrant family to confirm that the family's prior food stamp case is indeed closed. Greater clarity in these regulations would ensure that eligibility workers that confirm recently-closed food stamp cases in another jurisdiction will not mistakenly apply pro-rating to an applicant migrant family.

In addition, ***for households without migrant farm workers, the final rules should make clear that, prior to pro-rating the benefits of an applicant who received food stamps within a month prior to the date of application, the food stamp office should examine the circumstances that led to the gap in participation.*** Pro-rating should not take place if the state agency rather than the household was at fault for the gap in participation. In that case, the gap should be considered an underissuance. For example, if the food stamp office failed to send the household

a notice of expiration (NOE) or to process appropriately a request for recertification submitted before the end of the last month of the household's previous certification period, the household's benefits should not be pro-rated. Although section 8(c)(2)(B) of the Food Stamp Act (7 U.S.C. § 2017(c)(2)(B)) clearly prohibits pro-rating where the household is in the middle of a certification period and has been terminated without a NOAA, pro-rating the benefits of a household whose benefits have been interrupted by another type of agency error is equally inappropriate. Sections 11(b) and (e)(11) of the Act (7 U.S.C. §§ 2020(b) and (e)(11)) require food stamp offices to identify and correct errors they make that adversely affect households' benefits.

B. Federal Energy Assistance

The proposed regulations would delete the language in the current section 273.9(c)(11) that explicitly excludes utility allowances provided by public housing authorities (PHAs), by HUD, and by the Farmers' Home Administration (FmHA) from income. In its place, it merely repeats the language of the federal statute. The Department has argued in the past that the statutory language does *not* itself require the exclusion of utility allowances from consideration as income. The current Administration commendably adopted this exclusion policy. If the proposed rules go final without a change in this area, a future administration could revert to the prior policy at the stroke of a pen, without seeking any further public comment. As a result, the language in the proposed rules could open the door to a major benefit reduction.

The Department's decision a few years ago to exclude these utility allowances was well-received by states and eligible households alike. It should neither be abandoned nor jeopardized. Moreover, Congress considered and expressly rejected this benefit cut in PRWORA: it was in the welfare bill President Clinton vetoed but was stricken before enactment of PRWORA.

The lack of a specific exclusion for HUD and FmHA utility allowances in the proposed rule would give a future administration the opportunity to do what Congress chose not to do. In addition, it would likely result in confusion among some eligibility workers who, in the absence of clear regulatory guidance, may not understand that utility allowances provided by local PHAs are in fact federal in origin. Should these eligibility workers count PHA utility allowances as income, the resulting underissuances will both result in fewer food stamps reaching eligible households and create underissuances that could increase the Program's error rate. *The final rules should preserve the current exclusion for federal energy assistance — including an explicit exclusion for HUD and FmHA utility allowances — modified only to reflect PRWORA's clarification that the federal statute in question cannot be the TANF subtitle of the Social Security Act.*

C. Non-Federal Energy Assistance

Section 5(d)(11) of the Food Stamp Act (7 U.S.C. § 2014(d)(11)) excludes from food stamp income calculations any payments for the purpose of energy assistance made under any federal law (except for TANF). Prior to 1996, section 5(d)(11) also contained a similar exclusion for payments for state and local energy assistance payments. In practice, several states redesignated parts of their regular monthly AFDC payments as "energy assistance" to have them excluded from food stamp income calculations. Regarding this as an arbitrary and unjustified windfall, Congress in PRWORA repealed the specific exclusion for state and local energy assis-

tance payments except for certain payments for weatherization or the emergency repair or replacement of heating systems.

The proposed rules amend section 273.9(c)(11) of the regulations to implement this change. Although not incorrect on their face, the proposed rules could lead to misunderstandings in a few areas:

- The final rules should make clear that energy assistance payments made under a federal law or program (other than TANF) are excluded even if, as is usually the case, the agency actually making the payments is a state or local one. Thus, for example, although section 273.9(c)(11) would continue to exclude utility allowances paid by the U.S. Department of Housing and Urban Development (HUD), utility allowances under federal housing programs ordinarily are paid by local public housing authorities (PHAs), not HUD. ***The final rules should clarify that the exclusion of federal energy assistance applies as long as the program under which the payments are being provided is federal.*** It should not matter whether the agency making the payments, or even some of the funds, is state or local.
- Some legitimate state and local — or non-governmental — energy assistance, as opposed to artificially redesignated portions of monthly cash assistance payments, can fall within other income exclusions. For example, some energy assistance is provided as a non-recurring lump sum to help a household pay down outstanding balances on its bills and avert a shut-off. It also is sometimes provided in quite-small amounts by private charities. In either case, it should be excluded under section 5(d)(8) of the Food Stamp Act (7 U.S.C. § 2014(d)(8)) and 7 C.F.R. § 273.9(c)(8). In addition, energy assistance provided by utility companies (which may be private companies or municipal utilities) may be provided by cancelling part of a household's outstanding bills. Since it is not in the form of money payable to the household, it should be excluded under section 5(d)(1) of the Food Stamp Act (7 U.S.C. § 2014(d)(1)) and 7 C.F.R. § 273.9(d)(1). Energy assistance provided as a loan to help a family avert a shut-off or energy assistance reimbursements should be excluded under sections 5(d)(4) and (5) (7 U.S.C. §§ 2014(d)(4) and (5)) and 7 C.F.R. §§ 273.9(c)(4) and (5). ***The final rules should also make clear that non-federal energy assistance can be excluded under any other income exclusions that may apply.***

D. Standard Utility Allowances (SUAs)

The most important itemized deduction in the Food Stamp Program is the excess shelter deduction. This deduction protects families whose shelter costs exceed half of their incomes from having money they must spend on their rent (or mortgage) and utilities from being counted as if it was available to purchase food. To calculate the deduction, a household's shelter costs are compared with half of its income (after all other applicable deductions have been allowed). Because utility costs routinely fluctuate from month to month, reporting and adjusting the household's benefits for changes could be quite burdensome for food stamp offices and households alike. To alleviate much of this burden, the Food Stamp Act long has permitted states to offer

households a “standard utility allowance” (SUA) that can be used in these computations in lieu of a household’s actual utility expenses. Food Stamp Act § 5(e)(7)(C); 7 U.S.C. § 2014(e)(7)(C); 7 C.F.R. § 273.9(d)(6). The SUA functions much like the standard deduction does in computing personal income taxes: it is an alternative to itemization. States must obtain USDA’s approval for both the methodologies they use to compute their SUAs and the actual amounts of those allowances.

Submission of SUA level and methodology. Under current regulations, states must update and submit their SUAs every year to respond to changes in utility costs. 7 C.F.R. § 273.9(d)(6)(vi). Although increasing an SUA does not cause a state to incur any benefit costs — a larger SUA merely means that families will receive larger food stamp benefits paid by USDA — many lack the expertise to readily calculate utility costs for low-income people. Some thus have let their SUAs stay at the same level when USDA’s regional offices have not enforced the current regulation on updating. Montana has not updated its SUA since 1990; South Carolina last updated its SUA in 1991.

Under the proposed rules USDA would drop the requirement for annual submission of SUAs. Instead, the rules would require only that states review their SUAs “periodically” and adjust them as appropriate.

This change likely will result in benefit cuts compared to current practice. The lack of a requirement for an annual submission, which most regional offices appear to have enforced, would likely mean that states review and adjust their SUAs considerably less frequently, with the result that SUAs would be lower on average. ***The final regulations should be revised to allow states to submit SUAs for review every five years instead of annually so long as an annual inflation factor is built into the SUA during the intervening period.*** The inflator could be based on recent years’ utility costs and could be a national figure (e.g., a component of the Consumer Price Index) or a state figure. This approach would reduce burdens on states and regional offices without an unnecessary reduction in benefits for households. In the absence of such an approach, benefit reductions that reach a substantial level over time are almost assured.

The proposed rules also would allow states to establish thresholds for making adjustments to the SUA. A policy that would allow states to not raise their SUAs if the amount of the change were less than a threshold amount, \$25 a month for example, would also result in a benefit reduction compared to current practice. ***The final regulations should not allow for the establishment of thresholds. If the state is allowed to use an annual index, as is proposed above, the SUA should be rounded to the nearest whole dollar amount.***

Finally, the proposed regulations require states to submit the methodologies they used in developing and updating the SUAs to FNS for approval but do not require approval of the level of the SUA. The level must be submitted to FNS but need not be approved. ***This is a positive change that would lower administrative burdens on states and is especially appropriate under the proposed option described above.*** If FNS approves a state’s methodology and the methodology includes an annual index, there is no reason for FNS to separately approve the level resulting from indexation. Informing FNS of the level should be sufficient.

Utilities included in the SUA. Proposed section 273.9(d)(6)(ii)(C) includes a list of utilities that are allowed to be included as shelter costs, and for which an SUA may be established. The list includes “the basic service fee for one telephone (including tax on the basic fee).” In many places, this will not include all components of charges incurred for basic telephone service. For example, many telephone companies charge a wire maintenance fee or a subscriber line charge that is not optional but is not packaged as part of the basic service. *The list should be revised to include a more generic description that would include all of the various components of mandatory telephone fees.*

In addition, *the cost of basic internet services should be added to the list of allowable utilities.* Access to the internet is increasingly important for job search purposes, and many employers expect to be able to communicate with their employees via the internet. The President has called for eliminating the “digital divide” and fostering access to the Internet by poor families to improve their job prospects and economic well-being. In fact, this was one of the principal topics of the White House Conference on the New Economy on April 5, 2000, an event at which the President showed such great interest in these matters that he personally chaired and participated in every plenary panel session throughout the full-day conference.

Other SUA changes. PRWORA created an option for states to mandate the use of the SUA, as opposed to allowing households to choose between the SUA and actual utility costs. The statute requires that in order for a state to mandate the use of the SUA, FNS must determine that “the standards will not result in an increased cost....” The proposed rules properly include this requirement. *The proposed rules should be revised to clarify that while mandating the SUA cannot increase costs above what would have been the costs without a mandatory SUA, a state may increase its SUA either at the time it makes the change (so long as the data justify an increase) to mandate the use of the SUA or subsequently.*

In states that do not mandate the use of an SUA, households may choose between using the SUA and using verified actual utility costs at initial certification and at recertification. The opportunity to switch from one to the other is limited within a certification period. The proposed rules make a positive change by allowing an opportunity for households to revisit this decision after moving residences. *This change should be retained in the final regulations.* A household’s shelter expenses may change substantially when it moves. One landlord may include a larger portion of utility costs in the household’s rent than another. It is quite appropriate to allow households to revisit the decision about whether or not it is worth the additional effort to provide verification of actual utility costs when it is faced with a different structure of shelter costs because it has moved.

Finally, the food stamp statute requires that for a SUA that includes heating and cooling to be used for a household shares the expense with, and lives with, other individuals who do not participate in the food stamp program (or participate in a different household), the allowance must be prorated between the household and the other individuals. The proposed rules contain this provision at 273.9(d)(6)(iii)(F). This is a provision that states find particularly burdensome. The final rules should be revised to make two clarifications that would simplify administration of the provision. First, *the final regulations should not require prorating of the SUA if all of the individuals who share utility expenses but are not in the food stamp household are excluded*

from the household only because they are ineligible. For example, the case of a family with ineligible immigrant parents and eligible citizen children is not the type of situation that this provision was designed to address. Rather, it was designed to prevent a food stamp household from getting an entire SUA when in fact it incurred only half the home's utility costs.

Second, *the final regulation should give states flexibility to implement the requirement to prorate in any manner that reasonably achieves the goal of not providing an inappropriately large SUA to such food stamp households.* For example, states could be allowed to prorate among either individuals living in the household or among households. Many states would find it simpler to divide the SUA in two if there were two households, regardless of the number of individuals in each household. Alternatively, a state could choose to provide each household with a smaller, limited utility allowance (LUA), as a way of ensuring that neither household had received an allowance that overstated its utility costs.

E. The Income of Self-Employed Workers

Section 5(d)(9) of the Food Stamp Act (7 U.S.C. § 2014(d)(9)) excludes "the cost of producing self-employed income" from determinations of households' income. Section 812 of PRWORA added a new subsection 5(m) to the Act (7 U.S.C. § 2014(m)) that requires USDA to establish a simplified method for states and households to estimate the expenses of self-employed persons. This provision was inserted because both households and states were finding that documenting all expenses was tedious and error-prone.

Current section 273.11(a)(4)(ii)(A) and (D) exclude from the definition of self-employment expenses all capital costs. Self-employed households such as farmers can *neither* exclude their payments on tractors or other equipment *nor* claim depreciation of those assets as they can in calculating their taxes. Thus, money that a self-employed household spends on payments for necessary equipment is counted as if it were available to meet the household's normal living expenses. This rule was promulgated in the early 1980s because USDA believed that accounting for capital costs in a fair and equitable manner was unduly complex and burdensome for food stamp offices. On the other hand, 7 C.F.R. § 273.11(a)(3) counts capital gains as income to households regardless of the complexity involved in determining the amount of the gain.

The proposed rules rewrite sections 273.11(a) and (b) to implement the new section 5(m) of the statute. Proposed section 273.11(b)(3) allows states several options for using standardized amounts to calculate the expenses of self-employed workers. Proposed section 273.11(b)(2)(i) and (iv) continue to deny households any allowance for capital costs in computing their self-employment income. Even if USDA continues to believe that these costs are too difficult to account for on an individual basis, however, the final rules should make clear that any standardized figure can include an amount fairly representing the typical capital costs associated with self-employment in that field. *Thus, the final rules should make provision for the capital costs of self-employed workers.* This figure presumably should be based on the amount a business typically spends on time payments for capital goods, such as farm equipment or vehicles used in the business. Although these amounts vary considerably from business to business, an average or estimated figure would represent a closer approximation of the portion of gross income from the

business that is unavailable to meet living costs than the current and proposed rules, which effectively assume that this amount is always zero.

F. TANF Diversion Payments

Section 5(d)(8) of the Food Stamp Act (7 U.S.C. § 2014(d)(8)) also excludes from food stamp income calculations any “moneys received in the form of nonrecurring lump-sum payments.” In several pieces of informal guidance from Summer 1998 through Spring 1999, USDA informed states that “TANF diversion payments” — payments states give to seeking help to prevent those households from going onto regular monthly cash assistance — could be excluded from food stamp income calculations as non-recurring lump sums if three conditions were met: (1) payments could only be excluded in this manner once in any twelve-month period; (2) such payments could not be excluded if the household received regular cash assistance in the month the diversion payment was received or in the immediately preceding month (and the payment was intended to cover needs during a period of no more than 90 days); and (3) the state declared that the payment was to help the household become self-sufficient rather than to meet its routine living costs.

USDA’s guidance also noted that a payment could be excluded without regard to these conditions if it met the requirements for one of the other food stamp income exclusions. For example, a direct payment to a mechanic to repair the car a household member uses to commute to work could be excluded as a vendor payment or a reimbursement under sections 5(d)(1) and (5) of the Act (7 U.S.C. §§ 2014(d)(1) and (5)) and 7 C.F.R. § 273.9(c)(1) and (5).

In section 273.9(c)(8) of the proposed regulations, USDA proposes to codify this guidance with minor changes. These payments could now cover expenses over a four-month (rather than 90-day) period, and the state would have to determine that it did not anticipate making a second similar payment within a twelve-month period in order to exclude a diversion payment as a lump sum. USDA reports it adopted the four-month exclusion from HHS’s final TANF regulations published in April 1999. The proposed regulations also make clear that these conditions apply only to payments that are to be excluded as lump sums; the other exclusions in the Act would remain available.

In general, this is a commendable regulation that should be retained in the final regulations with one improvement. A modestly broader exclusion for diversion payments might be possible, and greater coordination with TANF achieved, if the food stamp regulations simply excluded any payments that are not counted as “assistance” under the TANF regulations because of the exception for non-recurrent, short-term benefits. 45 C.F.R. § 261.31(b)(1). ***The final food stamp rules should cross-reference the definition of assistance in the final TANF rules.*** This would, for example, make clearer that the exclusion still applies even if the diversion payment is provided in more than one installment within a short period.

V. NOTICES AND FAIR HEARINGS

USDA proposes four changes in its rules concerning notices and hearings. As noted above, one change involves new procedures for determining the food stamp eligibility of families leaving cash assistance programs. The other three are discussed below.

The Time for Requesting Continued Benefits. The current 7 C.F.R. § 273.13(a)(1) provides that notices of adverse action sent to households in advance of a reduction or termination of food stamp benefits must provide the household with a period in which it may request a hearing before its benefits are terminated. If the household requests an administrative hearing within this "advance notice" period, the adverse action may not be put into effect until the hearing is held or the household's certification period expires. The current regulation states that the length of the "advance notice" period in which the household may request a hearing and continue receiving benefits pending the hearing shall be the same length as the period the state allows for hearings to be requested in its public assistance caseload except that this period may not be shorter than ten days.

USDA proposes to impose an additional limitation on states' authority to conform their notice periods to those in their TANF programs. USDA would not allow a state to use its public assistance notice period if it exceeds 18 days. *Like the proposal, the final rules should maintain a floor of ten days on the advance notice periods states may employ. The final rules should, however, allow states to conform to the advance notice policies in their Medicaid programs, again assuming that period is at least ten days. Conforming to Medicaid should be permitted even if the Medicaid advance notice period is more than 18 days.* Among food stamp recipients today, many more receive Medicaid than receive cash assistance. Some states may wish to conform their food stamp policies to those in Medicaid. Where this can be done without undermining basic access and due process rights of households, it should be encouraged. *Finally, states should be permitted to establish advance notice periods exceeding 18 days provided that doing so does not extend the period so long that the food stamp office cannot act to change an issuance that it could have affected if the notice period had been 18 days.* Thus, a state may wish to establish the same deadline for requesting a hearing with continued benefits for all households sent notices in a given month. If, for example, the practical deadline for changes in the next month's benefits is the 25th of the month, the state may wish to give all households a deadline of the 25th to submit appeals. All households receiving notices between the eighth of the preceding month and the seventh of the current month could be given that same deadline to submit an appeal and receive pending benefits. The first month's benefits affected in the absence of an appeal would be the same in any case, but eligibility workers would not be required to calculate a separate appeals deadline for each notice they issued.

Oral withdrawals of hearing requests. State agencies complained to Congress that they must waste resources convening hearings on complaints that have previously been resolved. Although no hearing is actually held when the household fails to appear, the time of the hearing officer must be scheduled and an eligibility worker must take time away from work to appear. The states reported that they sent withdrawal of hearing forms to households whose grievances they had addressed, but households often did not return them. In response, section 839 of

PRWORA allows states to dismiss hearing requests upon the oral statement of a household that it no longer wishes to pursue the matter.

Accordingly, USDA proposes to amend 7 C.F.R. § 273.15(j) to allow states to honor oral withdrawals of hearing requests. Proposed section 273.15(j)(2) requires states to send households a written notice confirming the withdrawal of the hearing request. The proposed rule states that this notice must “provid[e] the household with an opportunity to request a hearing.”

This is not sufficient. Most applicants for and recipients of food stamps have only a limited understanding of the fair hearing process. Some statements that state agency staff may in good faith construe as withdrawals of hearing requests (e.g., “I don’t want to make any trouble at a hearing”) may in fact be something quite different. In addition, given the broad role eligibility workers appear to play in determining whether household may receive benefits (discretion that the proposed rules would increase), some households may be reluctant to refuse when an eligibility asks them about withdrawing their hearing request. Finally, some households may withdraw their hearing requests based on promises to remedy their grievances; that agreement may fall apart because the state agency misunderstood the household’s grievance or because the household misunderstood what the eligibility worker was agreeing to do.

The final rules should bar state agency staff from soliciting or suggesting oral withdrawals of hearing requests, as distinguished from informing households about the option. In addition, the confirming notice should allow the household to reinstate the hearing request within ten days of receipt of the notice. The sixty-day deadline for deciding hearing requests then could be extended by the time between the date the state agency sent the confirming notice and the time it received the request for reinstatement. The right to file a new appeal should also inform the household of its right to request a new hearing, but this right, by itself, will not protect households from the ill-effects of mistaken or pressured withdrawals. By filing a new appeal, the household would have to wait another sixty days for a decision and likely would lose its right to continued benefits.

Untimely appeals. The proposed section 273.15(j)(1)(i), which authorizes the dismissal of untimely appeals, also deletes a cross-reference in the current rules to 7 C.F.R. § 273.15(g), which establishes the deadline for filing appeals. ***This cross-reference can help prevent misapplication of the regulations and should be retained.*** Without it, some eligibility workers might believe that they may dismiss hearing requests that are filed outside the period during which continued benefits are provided even if they are well within the 90-day period allowed under section 273.15(g).

In addition, the final rules should state that untimely appeals in which a household asserts that it was improperly denied benefits during a period more than 90 days but less than one year earlier should be treated as a request for the correction of an underissuance under 7 C.F.R. § 273.17 and treated accordingly. Section 11(b) of the Food Stamp Act (7 U.S.C. § 2020(b)) requires states to take action to correct an underissuance of which it learns through any means. A hearing request filed outside the 90-day period is an obvious source of information about a possible underissuance.

VI. AUTHORIZED REPRESENTATIVES

The Food Stamp Program recognizes that some eligible households may need assistance in performing some of the tasks necessary to obtain and use food stamp benefits. Accordingly, current regulations allow households to designate "authorized representatives" to apply for benefits (7 C.F.R. § 273.1(f)) and to obtain food stamp benefits and purchase food with them (7 C.F.R. § 274.5). An authorized representative in the Food Stamp Program can perform essentially the same functions as a "representative payee" does in the SSI program.

USDA's proposed regulations would rewrite and consolidate these provisions in a new 7 C.F.R. § 273.2(g). Although most of the proposed changes are largely cosmetic, these regulations do raise several policy issues.

When an authorized representative is permitted. The proposed 7 C.F.R. § 273.2(g)(1), like current regulations, appears to limit the appointment of authorized representatives to cases where "a responsible member of the household cannot complete the application process." This limitation is too narrow for people with disabilities. *Persons with disabilities should be permitted to nominate an authorized representative in cases where completing the application process, or some other step necessary to benefit from the program, would be unusually burdensome but not literally impossible for that individual.*

Similarly, proposed 7 C.F.R. § 273.2(g)(1)(ii) suggests that non-household members living with a food stamp household should be permitted to serve as authorized representatives only where they are the only adults present. Section 273.1(b) makes many types of persons (from roomers and ineligible college students to people who have violated work requirements) ineligible household members. Yet although these people cannot receive food stamps for themselves, most likely would be perfectly capable of serving as authorized representatives. The major exception — persons disqualified for intentional program violations — are addressed separately in proposed section 273.2(g)(4)(ii), which allows their appointment only where no alternative exists. *Proposed section 273.2(g)(1)(ii) should be amended so that it does not limit a household's ability to designate a university student, a legal immigrant, etc., as its authorized representative.*

On the other hand, proposed section 273.2(g)(1)(iii) appropriately provides that only residents of drug and alcohol treatment programs will be required to apply through authorized representatives. In these cases, food stamp benefits are essentially a subsidy for the institution rather than the individual. (Given the serious shortage of substance abuse treatment facilities, this subsidy should be maintained even though it is something of an anomaly in the Food Stamp Program.) For other individuals, however, including persons participating in non-residential treatment programs, the rules properly leave the choice of whether to use an authorized representative up to the household. *All persons other than those in residential substance abuse treatment programs should retain the right to decide whether or not to have an authorized representative.*

The functions of an authorized representative. Like the current regulations, proposed section 273.2(g) makes no provision for authorized representatives' responsibilities during certification periods, such as submitting applications on behalf of the individual for whom the application process is difficult.

tance is also likely to have difficulty completing report forms. ***Households should be permitted to designate authorized representatives to receive notices and comply with reporting requirements for them during certification periods.***

Similarly, proposed section 273.2(g)(2) should allow authorized representatives to be appointed in the middle of a certification period rather than only at the time of application.

Eligibility to serve as an authorized representative. Current regulations, at 7 C.F.R. § 274.5(a)(2), require food stamp offices to take steps to ensure that farm workers are acting voluntarily when they designate a grower or labor contractor as their authorized representatives. The proposed regulations delete this provision. ***Not only should this rule not be deleted, it should be strengthened. Since employers have so much leverage over farm workers, they and their family members should be prohibited from serving as authorized representatives unless it is clear that the household needs such assistance and has no one else to whom to turn.***

For the same reason, proposed section 273.2(g)(4)(iv) properly continues the current rule prohibiting homeless meal providers that are allowed to receive food stamps from serving as authorized representatives. In that case as well, the danger of either coercion or fraud is simply too great.

On the other hand, ***proposed section 273.2(g)(4)(v) quite properly allows states to limit the number of households that a single authorized representative can serve.*** In cases where a staff member at a legitimate social services agency is willing to act as an authorized representative for several elderly people with limited mobility with whom he or she regularly works, the state obviously would not need to exercise this authority to impose a limit. But where an unaffiliated individual appears at the food stamp office purporting to represent a large number of households, a limit on the number of households any such individual may represent may help limit or prevent serious cases of fraud. This is a useful change from the current rules.

Disqualification of authorized representatives for fraud or abuse. Proposed section 273.2(g)(4)(iii) exempts drug and alcohol treatment programs from disqualification in cases of fraud. Where food stamps are provided to residents of these programs, the effect is a subsidy to the program as well as the individual recipient. Programs that defraud, or seek to defraud, the Food Stamp Program should not be permitted to continue to receive these subsidies. Allowing such programs to continue to participate despite clear evidence of abuse could invite further fraud and undermine respect for the Food Stamp Program's integrity and invite public cynicism about the Program's capacity to ensure that tax dollars are wisely spent. The ultimate losers in any such scandals are inevitably low-income recipients who likely will be subjected to benefit cuts or tighter verification procedures when a backlash occurs.

The final rules should seek to ensure that fraudulent acts by substance abuse treatment centers are treated in the same manner as similar acts by retailers. Ordinarily, fraudulent retailers are expelled from the Program. Where the continued participation of the retailer is essential for access for recipient families in the area, and where the violation was the work of an employee rather than the owner, the statute and regulations allow civil fines to be imposed. If the Department does not have the resources to take action itself against a retailer guilty of fraud, it should delegate to state agencies the authority to take appropriate punishment. Acts of fraud by these centers should not, however, be treated as less serious than those by retailers.

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**The Effect of Welfare
Reform on Able-Bodied
Food Stamp Recipients**

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FOREWORD

This report is the first to present information on a little-known segment of the Food Stamp population that has been profoundly affected by welfare reform—unemployed, childless, 18-50 year old able-bodied adults. As government agencies find themselves having to learn quickly about those affected by the new rules of public assistance, the need to gather timely and accurate information has never been greater.

Welfare reform requires States and the Federal Government to make tough decisions on how to overhaul a system seen by many as one that has failed to help poor Americans escape poverty and achieve self-sufficiency. During the welfare reform debates, a guiding principle emerged: that public assistance should encourage self-sufficiency, reinforce the work ethic, and not become a way of life. Work requirements and time limits for benefit receipt were imposed on adults in families with children participating in the new cash assistance Temporary Assistance for Needy Families (TANF) Program.

Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, childless adults are now subject to strict work requirements and time limits on their participation in the Food Stamp Program. They may receive benefits for only three months in any 36-month period unless they work, are exempted under other provisions of law, or live in an area waived from work requirements due to insufficient jobs.

This group received little attention prior to welfare reform. The passage of welfare reform, together with the Balanced Budget Act of 1997 and the Agricultural Research, Extension, and Education Reform Act of 1998, put a premium on information about them. Such information is critical to informing policy decisions, issuing guidance to States, implementing new policies, as well as estimating effects of the new legal provisions.

This report draws on existing data from two sources: the fiscal year 1996 Food Stamp Quality Control (QC) File and longitudinal data from the Survey of Income and Program Participation (SIPP). QC data were used primarily to generate a profile of the demographic characteristics of these food stamp recipients, while SIPP data were used primarily to project the likely trends for program participation among this group. Data from both sources predate welfare reform. However, it is unlikely that the demographics have changed much, and the SIPP file still represents the best available information on the dynamics of Food Stamp Program participation. Thus, the report offers a sound picture of what able-bodied adult recipients without children look like and what will happen to them—they are an extremely poor population with limited employment prospects and few sources of support outside the Food Stamp Program.

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Food and Nutrition Service, USDA
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EXECUTIVE SUMMARY

With the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), able-bodied adults without dependents are limited to 3 months of food stamps (consecutive or otherwise) in any 36-month period unless they work or participate in an approved work or training program. PRWORA's work requirement represents a significant change to Food Stamp Program (FSP) rules, and little is known about the population that is subject to the new provision, the number of people who may lose eligibility, or the employment prospects of these people. This report draws on cross-sectional data from the fiscal year 1996 Quality Control (QC) database and longitudinal data from the Survey of Income and Program Participation (SIPP) to address these questions.

CHARACTERISTICS OF FSP PARTICIPANTS WHO ARE AT RISK OF LOSING ELIGIBILITY UNDER PRWORA'S WORK REQUIREMENT AND TIME LIMIT

Of the 24.7 million FSP participants in an average month of fiscal year 1996, only 941 thousand (3.8 percent) are subject to PRWORA's work requirement. Most are exempt either because they are under age 18 or over age 49, or because they live in a food stamp unit that contains children. Of the 941 thousand FSP participants who are subject to the work requirement, 50 thousand (4.7 percent) meet it. The remaining 892 thousand (3.6 percent of all FSP participants) are neither exempt from nor meeting the work requirement, and thus accumulate a month toward PRWORA's 3-month time limit. These participants, referred to as able-bodied adults without dependents, or ABAWDs, are at-risk of losing eligibility under PRWORA's work requirement and time limit.

ABAWDs differ demographically from other FSP participants in two key respects: ABAWDs are more likely to be male and to live in a small food stamp unit.¹ Males make up 58.1 percent of ABAWDs but only 30.1 percent of FSP adults. The difference in terms of unit size is even more striking--71.7 percent of ABAWDs live in a one-person FSP unit, compared with only 29.4 percent of FSP adults. The education level of ABAWDs is nearly identical to that of other FSP adults: just under 60 percent of people in both groups have a high school degree or equivalent, including about 14 percent with some college education.

Compared with FSP adults, ABAWDs are much less likely to have an income, and if they do, it is likely to be smaller. Only 27.7 percent of ABAWDs have any income at all, and the average monthly income of those who do is \$218. The average FSP adult is nearly three times as likely to have an income (79.8 percent have a non-zero income), and the average monthly income of those who do is \$512. The bulk of the unearned income of FSP adults comes through AFDC, SSI, and Social Security. ABAWDs do not qualify for these programs, as they neither have children nor are they elderly or disabled. Not surprisingly, the most common source of unearned income for ABAWDs is General Assistance (14.5 percent receive GA), which typically provides aid to needy

¹The term "food stamp unit" refers to the persons in a household who together are certified for and receive food stamps.

persons who are ineligible for federally subsidized programs. Because of a low income, the average ABAWD receives more in food stamp benefits (\$108) than does the average FSP adult (\$71).

By definition, very few ABAWDs (4.8 percent) are employed, compared with 17.1 percent of FSP adults. The majority of both groups (72.8 percent of ABAWDs and 70.6 percent of FSP adults) are not in the labor force. Compared with FSP adults, however, ABAWDs are much more likely to be unemployed (i.e., not working but looking for work)--21.2 percent of ABAWDs fall into this category, compared with only 8.7 percent of FSP adults.

On average, ABAWDs have participated in the FSP for fewer consecutive months than have FSP adults. About one-third of ABAWDs (34.3 percent) have participated for three months or less, compared with only 17.8 percent of FSP adults. And only 29.3 percent of ABAWDs are in the midst of a participation spell of longer than a year, compared with 49.0 percent of FSP adults.

PEOPLE WHO LOSE ELIGIBILITY UNDER THE WORK REQUIREMENT, AND PATTERNS OF WORK AND FSP PARTICIPATION AMONG ABAWDs

Of the 892 thousand ABAWD FSP participants in an average month of fiscal year 1996, SIPP data indicate that 628 thousand (70.4 percent) have reached PRWORA's 3-month time limit and are no longer eligible to receive FSP benefits. This estimate overstates the number of people who will lose eligibility, as it accounts neither for exemptions granted to people in high-unemployment areas nor for the recently enacted 15 percent exemption. FNS projects that almost half of otherwise non-exempt ABAWDs may qualify for one of these exemptions. In addition to the ABAWD FSP participants, two other groups have a high risk of losing eligibility:

- ***Non-ABAWD FSP Participants Who Have Reached The Time Limit.*** People in this group, which is nearly half as large as the ABAWD participant group, reached the time limit while they were ABAWDs but are not currently ABAWDs. They are eligible to participate only as long as they remain non-ABAWD.
- ***ABAWD Nonparticipants.*** People in this group, which is about 40 percent as large as the ABAWD participant group, reached the time limit when they were participating in the FSP but are not currently participating. Because they have reached the time limit, they are ineligible to participate until the end of the 36-month window.

Changing the length of the time limit in a 25-month window has a modest effect on the percentage of ABAWD FSP participants who lose eligibility: 74.2 percent lose eligibility when the time limit is 3 months, 69.1 percent when the limit is 4 months, and 63.9 percent when the limit is 6 months in 25.² Changing the length of the time-limit and the window has a more substantial effect on the percentage that lose eligibility: 70.4 percent lose eligibility when the limit is 3 months in a 12

²PRWORA's time limit actually applies over a 36-month window, but we are limited to 25 months by the longitudinal SIPP data.

month window, 62.2 percent when the limit is 4 months in 12, and 50.7 percent when the limit is 6 months in 12.

In an average month, there is a turnover of 9.1 percent in the ABAWD population, with an equal number of people making the transition in and out of ABAWD status. The most common reason for a changes in ABAWD status is a change in employment status.

People affected by the time limit fall into two groups: those who accumulate a month toward the time limit in the month in which it is implemented (initial spell cohort) and those who accumulate their first month toward the time limit in a subsequent month (new spell cohort).³ People in the initial spell cohort tend to have longer, more continuous spells of ABAWD status combined with FSP receipt and thus are at greater risk of exhausting the time limit than are people in the new spell cohort. In the 13-month analysis period, 85.8 percent of people in the initial spell cohort accumulate more than 3 months towards the time limit, compared with 74.2 percent of people in the new spell cohort. The disparity is even greater when the time limit is extended to 6 months--66.7 percent of people in the initial spell cohort accumulate more than 6 months compared with only 34.6 percent of people in the new spell cohort. People in the new spell cohort are also more likely than those in the initial spell cohort to find employment.

A third cohort of interest is the ineligible cohort, which consists of people who lose eligibility because of the work requirement at some point between February 1990 and February 1991. One year after the loss of eligibility, 64.6 percent of people in the ineligible cohort are still participating in the FSP. But of this 64.6 percent, over one-third (40.7 percent) have become non-ABAWD (most commonly through employment) and thus are eligible to participate.

EMPLOYMENT PROSPECTS OF ABAWD FSP PARTICIPANTS

Research indicates that the employment prospects of adults who are demographically similar to ABAWDs are not promising, and so we can assume the same to be true for ABAWDs. Largely for two reasons, job opportunities for less-educated job seekers are severely limited, especially for nonwhites and in urban areas, where most ABAWDs live. First, recent research suggests that many large employers of low-skill workers have moved out of the cities to the suburbs. Therefore, many ABAWDs will face a 'spatial mismatch' between the location of their residence and the location of low-skill jobs. Second, since employment in inner cities has become increasingly concentrated in high-skill jobs, ABAWDs will also likely face a 'skills mismatch' between what employers require and what ABAWDs can offer.

Job prospects will be most limited for those who have few connections in the working world. ABAWDs who are members of families, neighborhoods, or communities in which few adults hold

³Because our longitudinal simulation is based on data from January 1990 through February 1992, when a time limit was not in place, nobody in the sample actually leaves the FSP because of a time limit. Consequently, although it would not be permitted under PRWORA, an individual in our simulation can accumulate more than 3 months towards the time limit.

jobs, will be at the greatest disadvantage, because the ability to secure employment even in low-skill jobs is now far more dependent on informal networks and referrals..

Finally, the job prospects of ABAWDs will depend significantly on economic conditions prevailing in their local area and region. The tightness of the local labor market (in the sense that unemployment is low) and the strength of demand, particularly in the industries with the most jobs for low-skill workers, will be an important factor in the probability of becoming employed. In addition, the availability and quality of local institutions supporting employment will influence employment prospects.

I. PRWORA'S WORK REQUIREMENT AND TIME LIMIT

A. BACKGROUND

With the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), certain adults are subject to a strict work requirement that puts a time limit on their receipt of food stamps. Specifically, able-bodied adults without dependents are limited to 3 months of food stamps (consecutive or otherwise) in any 36-month period unless they work or participate in an approved work or training program. PRWORA's work requirement represents the first time limit on participation in the Food Stamp Program (FSP), and little is known about the population that is subject to the work requirement, the number of people who may lose eligibility, or the employment prospects of these people.

This report draws on cross-sectional and longitudinal data to address these questions. This introductory chapter describes the provisions of the new work requirement and explains who loses eligibility under the new law. Chapter II presents a profile of the population at risk of losing eligibility based on administrative data from the FSP. Chapter III presents an estimate, based on longitudinal data from the Survey of Income and Program Participation (SIPP), of the number of people who may lose eligibility due to the work requirement and discusses patterns of work and FSP participation among the at-risk population. Chapter IV draws on existing research and new analysis of SIPP data to summarize what is known about the employment prospects of at-risk adults. Appendix A describes the data and methodology used to estimate the number of FSP participants that would lose eligibility because of the work requirement and discusses some caveats associated with the estimates presented in this report.

B. PROVISIONS OF PRWORA'S WORK REQUIREMENT

PRWORA states that no individual shall be eligible to participate in the FSP if, during the preceding 36-month period, the individual received food stamps for 3 months (consecutive or otherwise) without also having done one of the following: (1) worked at least 20 hours per week; (2) participated in an approved employment and training (E&T) program for at least 20 hours per week; or (3) participated in workfare or a comparable program.

The act exempts from this work requirement any individual who is under age 18 or over age 50, physically or mentally unfit for employment, pregnant, or a parent or other member of a household with responsibility for a dependent child. The act further exempts people who are also exempt from the FSP work registration provision under subsection (d)(2) of 7 U.S.C. 2015. This includes anyone who is:

- Responsible for the care of a dependent child under age six or an incapacitated person
- A student who meets FSP eligibility requirements
- A regular participant in a drug addiction or alcoholic treatment and rehabilitation program
- Working at least 30 hours per week or earning at least 30 times the minimum wage
- Subject to and complying with a work registration requirement under another program (either under Title IV of the Social Security Act or under the federal-state unemployment compensation system).

If an FSP participant meets any of these criteria in a given month, that month does not count towards PRWORA's three-month time limit. Furthermore, previously non-exempt participants who become exempt are eligible to receive benefits regardless of the number of months they have accumulated towards the time limit when they were not exempt. In other words, an individual is ineligible to participate under the work requirement if, (1) the individual is not exempt; and (2) during

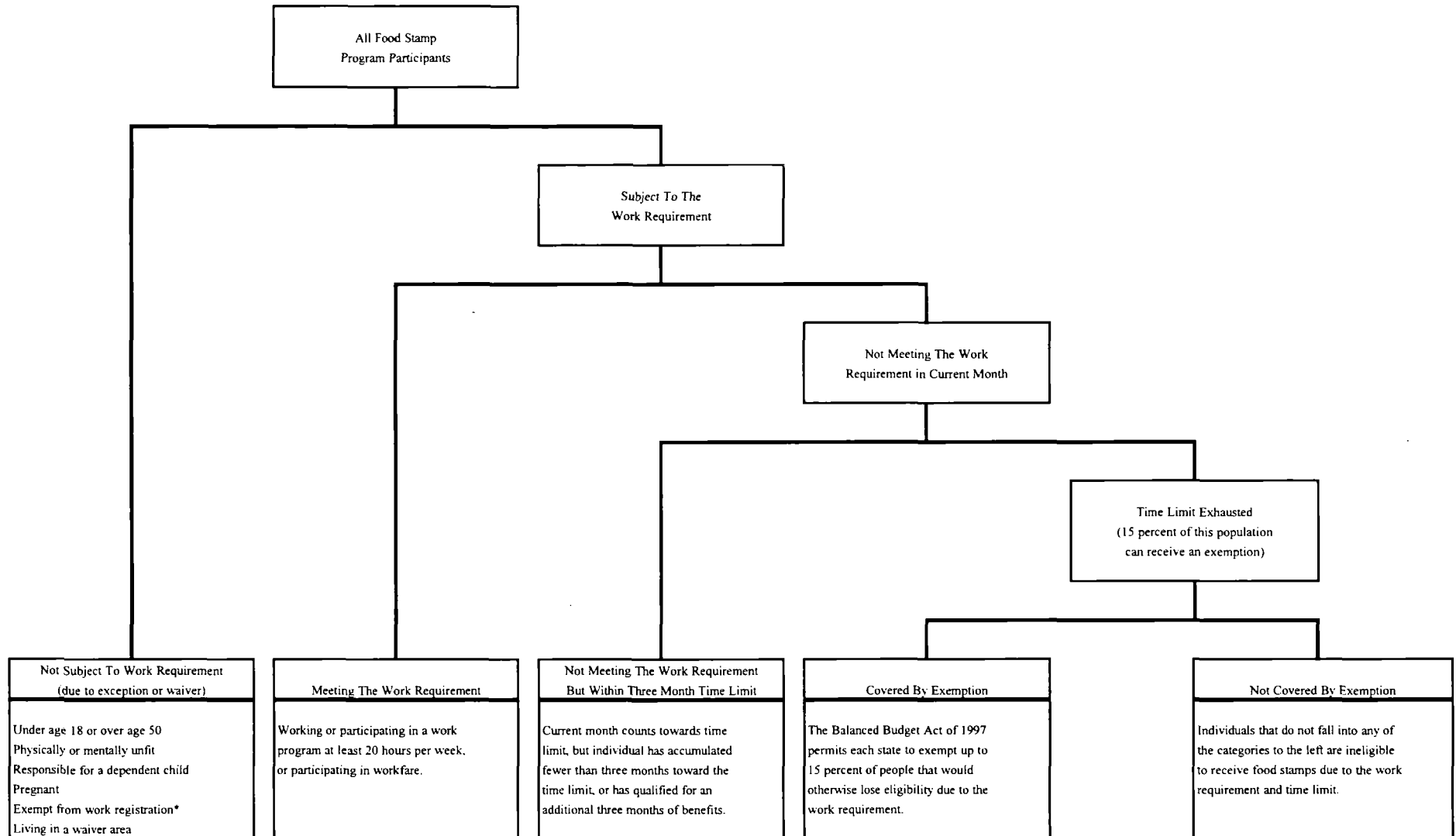
the preceding 36-month period, the individual received food stamps for at least 3 months while he or she was not exempt.

An individual who loses eligibility under PRWORA can regain it by working or participating in an E&T program for 80 or more hours in a 30-day period or by complying with a workfare program for 30 days. An individual who regains eligibility in this way remains eligible as long as he or she continues to meet the work requirement. If, after regaining eligibility, an individual fails to meet the work requirement, he or she remains eligible for 3 consecutive months starting on the date the individual notifies the state agency that he or she no longer meets the work requirement. An individual may only receive these 3 additional months once in any 36-month period.

At a state's request, USDA may waive the work requirement for any group of individuals if the Secretary determines that where they live has either an unemployment rate of over 10 percent or an insufficient number of jobs to provide employment. In addition, each state may exempt up to 15 percent of the people who, after applying all other exemptions and waivers, would still lose eligibility because of the work requirement. Figure I.1 shows which FSP participants can lose eligibility under PRWORA.

FIGURE I.1

FOOD STAMP PARTICIPANTS AFFECTED BY PRWORA'S WORK REQUIREMENT AND TIME LIMIT



* Exempt from FSP work registration for any of the following reasons: (1) caring for a dependent child under age 6; (2) meeting a work requirement under another program; (3) caring for an ill or incapacitated person; (4) meeting the FSP's student eligibility criteria; (5) in a drug or alcohol rehabilitation program.

II. PROFILE OF FSP PARTICIPANTS AT RISK OF LOSING ELIGIBILITY UNDER PRWORA'S WORK REQUIREMENT AND TIME LIMIT

This profile of the population at risk of losing eligibility is based on the fiscal year 1996 Quality Control (QC) database, a nationally representative sample of food stamp households selected for review as part of the Integrated Quality Control System (IQCS).¹ The QC database provides detailed demographic and economic information on FSP participants sampled in each month of fiscal year 1996.² However, it only contains information observed in a single month (the sample month). Since eligibility under the work requirement depends on employment status and program participation for 36 months, the single month of QC data is insufficient for determining whether a participant would lose eligibility. For example, people who failed to meet the work requirement in the QC sample month may have been exempt from or meeting the work requirement in other months. Nevertheless, the characteristics of FSP participants who fail to meet the work requirement in a given month can, by extrapolation, tell us something about the population that is at risk of losing eligibility under PRWORA. The estimates and descriptions presented in this chapter pertain to this at-risk population--FSP participants who are neither exempt from nor meeting the work requirement in a given month, and who thereby have accumulated one month towards PRWORA's time limit.

¹The IQCS is an ongoing review of food stamp household circumstances designed to determine (1) if households are eligible to participate or are receiving the correct benefit amount, and (2) if household participation is correctly denied or terminated.

²The work requirement did not take effect until November 22, 1996 (three months after PRWORA's enactment) or until a state notified affected individuals, whichever was earlier. Regardless of which date applies, no person could have been disqualified due to the time limit during fiscal year 1996 (October 1995 through September 1996). Thus, the fiscal year 1996 QC database contains data on all FSP participants who could be affected by the work requirement.

A. THE AT-RISK POPULATION

The FSP population at risk of losing their eligibility under PRWORA consists of adults age 18 to 49 (inclusive) who are able-bodied, childless, and not working. (See Appendix A, Table A.1 for an explanation of how these people were identified). *Able-bodied* is defined as not disabled,³ not physically or mentally unfit for employment, and not exempt from the FSP's work registration requirement for any of the following reasons:

- Pregnant
- Needed in the home to care for an ill or incapacitated person
- Relative or other caretaker of a dependent child
- Student meeting FSP eligibility requirements
- Employed at least 30 hours per week or receiving weekly earnings at least equal to the federal minimum hourly wage times 30
- Receiving or has applied for unemployment compensation
- Subject to/complying with work requirements under other programs
- Participating in a drug or alcohol rehabilitation program
- Participating in a Community Work Experience Program (CWEP) or other work experience program

Childless is defined as no persons under age 18 in the FSP unit.⁴ *Not working* is defined as employed fewer than 20 hours per week and with total monthly earnings that do not exceed

³A person is considered disabled if he or she is (1) under age 65 and receiving SSI or (2) between the ages of 18 and 61 and receiving Social Security, veterans benefits, or other government benefits as a result of a disability.

⁴The term "food stamp unit" refers to the persons in a household who together are certified for and receive food stamps.

\$368.33.⁵ People who meet these criteria in a given month are referred to as able-bodied adults without dependents, or ABAWDs.

Of the 24.7 million eligible citizen FSP participants in an average month of fiscal year 1996,⁶ only 941 thousand (3.8 percent) are subject to the work requirement; most are exempt either because they are under age 18 or over age 49, or because they live in a food stamp unit that contains children (Table II.1). Of the 941 thousand FSP participants who are subject to the work requirement, only 50 thousand (5.3 percent) meet it.⁷ The remaining 892 thousand (3.6 percent of all FSP participants) are ABAWDs (people who are neither exempt from nor meeting the work requirement).

B. CHARACTERISTICS OF ABAWDs RELATIVE TO FSP PARTICIPANTS

In this section, we describe ABAWD FSP participants in terms of how they compare demographically and economically with adult FSP participants.⁸ We also compare the two groups

⁵\$368.33 is the federal minimum wage in fiscal year 1996 (\$4.25) times 20 hours per week times 4.33 weeks per month.

⁶This population does not include the 1.2 million FSP participants who are permanent resident aliens and thus ineligible under PRWORA. PRWORA disqualifies most permanent resident aliens from the FSP, though aliens with significant work history (40 or more quarters) and those who are veterans are exempt, as are their spouses and minor children. Appendix A describes the methods used to identify which aliens are ineligible under PRWORA. In February 1997, FCS published a profile of ABAWD FSP participants based on fiscal year 1995 QC data--*Characteristics of Childless Unemployed Adult and Legal Immigrant Food Stamp Participants: Fiscal Year 1995*. This earlier profile included PRWORA-ineligible aliens in the analysis and used a slightly different definition of ABAWD. Appendix A lists the specific differences between the two profiles and discusses the impact on the resulting estimates.

⁷The Balanced Budget Act of 1997, which provides funds for additional workfare slots, should increase the number of FSP participants that meet the work requirement.

⁸Because units with children are exempt from the work requirement, there are no children in the ABAWD category. Therefore, we compare ABAWDs to *adult* FSP participants (age 18 and over), rather than to all FSP participants.

TABLE II.1

FSP PARTICIPANTS WITH CHARACTERISTICS RELATED TO ABAWD STATUS

	FSP Participants		
	(000s)	Percent of Total	Percent of Subgroup
All FSP Participants*	24,720	100.0	100.0
Under Age 18	13,025	52.7	52.7
Over Age 50	2,746	11.1	11.1
Age 18 to 50	8,950	36.2	36.2
Age 18 to 50	8,950	36.2	100.0
Disabled / Unfit for Employment	1,612	6.5	18.0
Non-Disabled / Fit for Employment	7,337	29.7	82.0
Children in unit	6,694	27.1	74.8
No children in unit	2,256	9.1	25.2
Exempt From FSP Work Registration Because:			
Meeting work requirement in other program	239	1.0	2.7
Receiving unemployment compensation	123	0.5	1.4
Caring for a dependent child	1,972	8.0	22.0
Caring for ill or incapacitated person	111	0.4	1.2
Student meeting FSP eligibility criteria	228	0.9	2.5
In drug or alcohol rehabilitation program	59	0.2	0.7
Employed a minimum of 30 hours per week	1,277	5.2	14.3
Pregnant	88	0.4	1.0
Subject To PRWORA's Work Requirement**	941	3.8	10.5
Subject to PRWORA's Work Requirement	941	3.8	100.0
Meeting the Work Requirement			
Working 20+ hours per week	44	0.2	4.7
CWEP participant	6	0.0	0.6
Not Meeting the Work Requirement (ABAWDs)	892	3.6	94.7

SOURCE: Fiscal Year 1996 Quality Control Database

* Excluding PRWORA-ineligible aliens

** Age 18 to 50, fit for employment, no children in unit, and not exempt from FSP work registration for any of the specified reasons.

in terms of employment and training program participation as well as the length of their current spell of FSP participation.

1. Demographic Characteristics

ABAWDs differ demographically from other FSP participants in two key respects: ABAWDs are more likely to be male and to live in a small food stamp unit (Table II.2). Males make up 58.1 percent of ABAWDs but only 30.1 percent of FSP adults. The difference in terms of unit size is even more striking--71.7 percent of ABAWDs live in a one-person FSP unit, compared with only 29.4 percent of FSP adults. On average, ABAWD units (those with at least one ABAWD) are about half as large as the typical FSP unit (1.3 people compared with 2.5 people).

Of the 639 thousand ABAWDs who file for food stamps for themselves only (i.e., one-person food stamp units), 388 thousand (60.7 percent) are male (Table II.3). In contrast, only 41.3 percent of FSP adults in one-person units are male. Of the 200 thousand ABAWDs in a two-person unit, 160 thousand (80.2 percent) are in a unit containing a member of the opposite sex. FSP adult two-person units also tend to be male/female units (64.2 percent), though units containing two women (33.2 percent) are also common.

By definition, ABAWDs range in age from 18 to 49. They are distributed fairly evenly across this age range, though there appears to be some concentration in the 18-to-20 age group as well as in the 31-to-45 age group (Table II.2). The average age of an ABAWD is 34.

Compared with FSP adults, ABAWDs are more likely to be African American (46.2 percent versus 33.9 percent) and less likely to be white (40.7 percent versus 49.0 percent).

The education level of ABAWDs is nearly identical to that of other FSP adults: about 35 percent of both groups report having at least a high school degree (Table II.2). However, because the education status of many adults in the QC database is unknown, a more meaningful measure of

TABLE II.2
DEMOGRAPHIC CHARACTERISTICS OF SELECTED FSP PARTICIPANTS
(universe excludes PRWORA-ineligible aliens)

	All FSP Participants		FSP Adults		Age 18-50, No Kids		ABAWDs	
	Number (000s)	Percent	Number (000s)	Percent	Number (000s)	Percent	Number (000s)	Percent
Number (000s).....	24,720	100.0	11,696	100.0	2,334	100.0	892	100.0
Male.....	10,057	40.7	3,520	30.1	1,248	53.5	518	58.1
Female.....	14,659	59.3	8,176	69.9	1,086	46.5	374	41.9
Unknown.....	4	>0	>0	>0	>0	>0	-	-
Age Distribution								
0-17 years old.....	12,992	52.6	-	-	-	-	-	-
18-20 years old.....	978	4.0	978	8.4	214	9.2	95	10.7
21-25 years old.....	1,682	6.8	1,682	14.4	244	10.4	116	13.0
26-30 years old.....	1,641	6.6	1,641	14.0	241	10.3	104	11.7
31-35 years old.....	1,715	6.9	1,715	14.7	354	15.2	156	17.5
36-40 years old.....	1,374	5.6	1,374	11.7	424	18.2	163	18.3
41-45 years old.....	965	3.9	965	8.2	426	18.3	157	17.6
46-50 years old.....	711	2.9	711	6.1	430	18.4	100	11.3
51-59 years old.....	950	3.8	950	8.1	-	-	-	-
60+ years old.....	1,680	6.8	1,680	14.4	-	-	-	-
Unknown.....	33	0.1	-	-	-	-	-	-
Unit Size								
1 Person.....	3,584	14.5	3,443	29.4	1,737	74.5	639	71.7
2 Persons.....	4,680	18.9	2,687	23.0	485	20.8	200	22.4
3 Persons.....	5,570	22.5	2,209	18.9	91	3.9	45	5.1
4 Persons.....	4,913	19.9	1,695	14.5	16	0.7	6	0.7
5 Persons.....	3,112	12.6	931	8.0	2	0.1	1	0.2
6 Persons.....	1,538	6.2	422	3.6	2	0.1	>0	>0
7 Persons.....	715	2.9	179	1.5	-	-	-	-
8+ Persons.....	267	1.1	55	0.5	-	-	-	-
Unknown.....	341	1.4	74	0.6	-	-	-	-
Race/Ethnicity								
White, Non-Hispanic.....	10,439	42.2	5,726	49.0	1,174	50.3	363	40.7
African-American, Non-Hispanic.....	8,671	35.1	3,961	33.9	884	37.9	412	46.2
Hispanic.....	4,314	17.5	1,492	12.8	200	8.6	87	9.8
Asian or Pacific Islander.....	552	2.2	215	1.8	25	1.1	7	0.8
American Indian or Alaskan Native.....	353	1.4	159	1.4	27	1.1	14	1.5
Unknown.....	391	1.6	143	1.2	23	1.0	9	1.0
Citizenship Status								
U.S. Citizen.....	23,705	95.9	11,013	94.2	2,235	95.8	852	95.5
Permanent Resident Alien.....	253	1.0	207	1.8	11	0.5	4	0.4
Other Alien.....	389	1.6	244	2.1	28	1.2	13	1.5
Unknown.....	372	1.5	232	2.0	60	2.6	23	2.6
Education								
Zero education.....	5,663	22.9	119	1.0	28	1.2	6	0.7
Grades 1-5.....	3,177	12.9	200	1.7	20	0.9	5	0.6
Grades 6-8.....	1,840	7.4	614	5.2	103	4.4	38	4.2
Grades 9-10.....	1,824	7.4	1,128	9.6	217	9.3	91	10.2
Grade 11.....	1,115	4.5	915	7.8	199	8.5	86	9.7
High school graduate or GED.....	2,996	12.1	2,967	25.4	593	25.4	250	28.1
Some college, but less than 2 years	541	2.2	531	4.5	95	4.1	38	4.3
2-3 years of college, including								
graduate of 2 year college.....	324	1.3	323	2.8	65	2.8	22	2.4
College graduate or post-graduate								
study.....	121	0.5	121	1.0	31	1.3	9	1.0
Unknown.....	7,119	28.8	4,777	40.8	981	42.0	346	38.8

Source: Fiscal Year 1996 Food Stamp Quality Control sample
- Data not available.
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TABLE II.3

DISTRIBUTION OF FSP ADULTS AND ABAWDs BY UNIT SIZE AND GENDER

	FSP Adults			ABAWDs		
	(000s)	Percent of Subgroup	Percent of Adults	(000s)	Percent of Subgroup	Percent of ABAWDs
FSP Participants in One-Person Units	3,443	100.0	29.4	639	100.0	71.7
Female	2,019	58.7	17.3	251	39.3	28.1
Male	1,423	41.3	12.2	388	60.7	43.5
FSP Participants in Two-Person Units	2,687	100.0	23.0	200	100.0	22.4
Male / Female	1,724	64.1	14.7	160	80.2	17.9
Female / Female	893	33.2	7.6	32	15.9	3.6
Male / Male	71	2.6	0.6	8	3.9	0.9

SOURCE: Fiscal Year 1996 Quality Control Database

educational attainment may be derived by computing percentages based on the adults for whom there are education data.⁹ As shown in Table II.4, when persons with missing data are excluded from the sample, 57.0 percent of FSP adults and 58.5 percent of ABAWDs have at least a high school degree.

2. Income Sources and Amounts

Compared with FSP adults, ABAWDs are much less likely to have an income, and if they do, it is likely to be smaller (Table II.5). Only 27.7 percent of ABAWDs have any income at all, and the average monthly income of those who do is \$218. The average FSP adult is nearly three times as likely to have an income (79.8 percent have non-zero income), and the average monthly income of those who do is \$512.

This disparity in income between ABAWDs and FSP adults is apparent in comparisons of both earned and unearned income; 18.7 percent of FSP adults have earned income (\$663 per month on average), compared with only 7.0 percent of ABAWDs (\$148 per month). Similarly, 72.9 percent of FSP adults have unearned income (\$391 per month), compared with 24 percent of ABAWDs (\$208 per month).

The bulk of the unearned income of FSP adults comes through AFDC, SSI, and Social Security. ABAWDs do not qualify for these programs, as they neither have children, nor are they elderly or disabled. Not surprisingly, the most common source of unearned income for ABAWDs is General Assistance, which typically provides aid to needy persons who are ineligible for federally subsidized programs.

⁹This assumes that the education of adults with missing information does not differ systematically from that of adults whose information is reported. Tabulations based on data from SIPP suggest that this assumption is valid. In a January 1992 SIPP sample, high school graduates comprised 55.8 percent of ABAWDs--similar to the QC-based estimate of 58.5 percent. ABAWDs in the SIPP sample were identified using a definition largely analogous to the QC-based definition.

TABLE II.4

DISTRIBUTION OF FSP ADULTS AND ABAWDs BY EDUCATIONAL ATTAINMENT

	FSP Adults (000s)	ABAWDs (000s)
Total	11,696	892
With non-missing education data	6,919	545
As a Percentage of Total		
Less than high school degree	25.4%	25.4%
High school degree or GED	25.4%	28.1%
Some college or college graduate	8.3%	7.7%
Missing data	40.8%	38.8%
As a Percentage of Non-Missing		
Less than high school degree	43.0%	41.5%
High school degree or GED	42.9%	45.9%
Some college or college graduate	14.1%	12.6%

SOURCE: Fiscal Year 1996 Quality Control Database

Table II.5
INCOME CHARACTERISTICS OF SELECTED FSP PARTICIPANTS
(universe excludes PRWORA-ineligible aliens)

	All FSP Participants			FSP Adults			Age 18-50, No Kids			ABAWDs		
	Persons With Income Source		Avg Over Persons With Income Source	Persons With Income Source		Avg Over Persons With Income Source	Persons With Income Source		Avg Over Persons With Income Source	Persons With Income Source		Avg Over Persons With Income Source
	Number (000s)	Percent		Number (000s)	Percent		Number (000s)	Percent		Number (000s)	Percent	
Total.....	24,720	100.0	-	11,696	100.0	-	2,334	100.0	-	892	100.0	-
Earned Income.....	2,289	9.3	\$652	2,188	18.7	\$663	270	11.6	\$365	62	7.0	\$148
Wages and Salaries.....	2,116	8.6	680	2,029	17.3	691	237	10.2	397	43	4.8	174
Self-Employment.....	147	0.6	296	147	1.3	296	27	1.2	144	17	1.9	93
Other Earned Income.....	39	0.2	291	25	0.2	225	8	0.3	78	3	0.3	67
Unearned Income.....	9,483	38.4	383	8,525	72.9	391	1,352	58.0	365	214	24.0	208
AFDC.....	3,632	14.7	356	3,380	28.9	360	50	2.1	272	14	1.6	287
General Assistance.....	622	2.5	256	616	5.3	257	361	15.5	227	129	14.5	244
Supplemental Security Income..	2,581	10.4	333	2,282	19.5	317	606	26.0	360	-	-	-
Social Security.....	2,314	9.4	398	2,014	17.2	430	330	14.1	444	-	-	-
Unemployment Income.....	175	0.7	475	173	1.5	474	37	1.6	395	9	1.0	367
Veterans' Benefits.....	145	0.6	239	144	1.2	239	21	0.9	263	4	0.5	332
Workers' Compensation.....	40	0.2	534	40	0.3	534	9	0.4	347	1	0.2	236
Other Government Benefits.....	88	0.4	214	87	0.7	214	12	0.5	211	5	0.6	197
Household Contributions.....	425	1.7	207	387	3.3	212	31	1.3	121	16	1.8	104
Household Deemed Income.....	4	>0	145	3	>0	141	1	>0	234	1	0.1	234
Educational Loans.....	12	0.1	124	12	0.1	126	2	0.1	30	1	0.1	40
Child Support Payments.....	512	2.1	138	495	4.2	138	3	0.1	106	1	0.2	86
Other Unearned Income.....	1,299	5.3	60	1,213	10.4	48	163	7.0	26	37	4.1	30
Non-Zero Income.....	10,330	41.8	496	9,333	79.8	512	1,450	62.1	409	247	27.7	218
Zero Income.....	14,390	58.2	<0	2,363	20.2	<0	884	37.9	<0	644	72.3	<0

Source: Fiscal Year 1996 Food Stamp Quality Control sample
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3. Economic and Employment Characteristics

Over three-quarters of ABAWDs (81.9 percent) are in a food stamp unit with a gross income below half the poverty level, and over half (56.8 percent) are in a food stamp unit with no income at all (Table II.6). In comparison, 39.4 percent of FSP adults live in a unit with a gross income below half the poverty level, and only 9.5 percent live in a unit with no gross income. The average unit-level gross income of ABAWDs is 20.0 percent of the poverty level, while that of FSP adults is 58.3 percent of the poverty level.

Because of their low income, the average ABAWD receives more in food stamp benefits (\$108) than does the average FSP adult (\$71). Most ABAWDs (80.0 percent) receive over \$100 in per capita FSP benefits, and very few (4.5 percent) receive less than \$50 (Table II.6). In comparison, only 24.9 percent of FSP adults receive as much as \$100, and 29.5 percent receive less than \$50. In fiscal year 1996, the maximum food stamp benefit for a one-person unit in the contiguous U.S. was \$119.

Only 12.0 percent of ABAWDs have any financial assets and, of those who do, less than half (48.1 percent) have assets in excess of \$100 (Table II.6).¹⁰ The average FSP adult is twice as likely as the average ABAWD to have financial assets (26.3 percent have non-zero assets) and, of those who do, over half (55.7 percent) have assets in excess of \$100.

By definition, very few ABAWDs (4.8 percent) are employed. The few who do have jobs work fewer than 20 hours per week or, if they do not report hours worked, have an income below 20 times the minimum wage. In comparison, 17.1 percent of all FSP adults are employed, and 10.2 percent work at least 30 hours per week.

¹⁰Asset information on the QC database pertains to the food stamp unit. To construct a person-level measure of assets, each person was assigned the asset amount of his or her food stamp unit.

Table II.6
ECONOMIC AND EMPLOYMENT CHARACTERISTICS OF SELECTED FSP PARTICIPANTS
(universe excludes PRWORA-ineligible aliens)

	All FSP Participants		FSP Adults		Age 18-50, No Kids		ABAWDs	
	Number (000s)	Percent	Number (000s)	Percent	Number (000s)	Percent	Number (000s)	Percent
Number (000s).....	24,720	100.0	11,696	100.0	2,334	100.0	892	100.0
Gross income as a Percent of Poverty								
0.....	1,680	6.8	1,108	9.5	672	28.8	507	56.8
>0-25.....	2,285	9.2	922	7.9	155	6.6	81	9.0
>25-50.....	6,723	27.2	2,584	22.1	322	13.8	143	16.0
>50-75.....	6,691	27.1	2,770	23.7	430	18.4	112	12.6
>75-100.....	5,127	20.7	3,112	26.6	577	24.7	39	4.3
>100-130.....	2,124	8.6	1,131	9.7	157	6.7	11	1.2
>130.....	90	0.4	69	0.6	21	0.9	-	-
Per capita benefit								
0-25.....	2,183	8.8	1,548	13.2	290	12.4	12	1.4
>25-50.....	4,117	16.7	1,901	16.3	227	9.7	27	3.1
>50-75.....	6,597	26.7	2,570	22.0	295	12.6	63	7.1
>75-100.....	7,153	28.9	2,762	23.6	261	11.2	75	8.4
>100-125.....	4,585	18.5	2,864	24.5	1,241	53.2	705	79.1
>125.....	85	0.3	50	0.4	19	0.8	8	0.9
Assets								
\$0.....	18,451	74.6	8,579	73.4	1,881	80.6	783	87.8
\$1 - \$100.....	2,879	11.6	1,363	11.7	213	9.1	55	6.2
\$101 - \$200.....	684	2.8	336	2.9	53	2.3	12	1.4
\$201 - \$300.....	489	2.0	243	2.1	32	1.4	5	0.6
\$301 - \$400.....	340	1.4	181	1.5	27	1.2	6	0.7
\$401 - \$500.....	311	1.3	159	1.4	18	0.8	4	0.4
\$501 - \$1000.....	822	3.3	429	3.7	55	2.3	12	1.3
\$1001 - \$1500.....	364	1.5	195	1.7	28	1.2	7	0.8
\$1501 - \$2000.....	249	1.0	136	1.2	14	0.6	4	0.4
\$2001 - \$3000.....	41	0.2	28	0.2	2	0.1	-	-
> \$3000.....	15	0.1	8	0.1	2	0.1	1	0.1
Unknown.....	76	0.3	39	0.3	8	0.4	2	0.2
Employed.....	2,023	8.2	2,001	17.1	229	9.8	43	4.8
9 hours or less/week.....	88	0.4	86	0.7	25	1.1	11	1.3
10-19 hours/week.....	157	0.6	154	1.3	29	1.2	13	1.5
20-29 hours/week.....	265	1.1	256	2.2	47	2.0	-	-
30-39 hours/week.....	565	2.3	564	4.8	52	2.2	-	-
40+ hours/week.....	633	2.6	632	5.4	26	1.1	-	-
Other employed*.....	315	1.3	310	2.6	50	2.2	18	2.0
Unemployed.....	1,066	4.3	1,017	8.7	281	12.1	189	21.2
One year or less.....	509	2.1	500	4.3	141	6.0	98	11.0
More than one year.....	349	1.4	347	3.0	95	4.1	65	7.3
Other.....	209	0.8	170	1.5	46	2.0	26	2.9
Not in labor force.....	9,912	40.1	8,256	70.6	1,760	75.4	649	72.8
Employment status unknown.....	11,719	47.4	421	3.6	63	2.7	12	1.3

Source: Fiscal Year 1996 Food Stamp Quality Control sample

* Hours unspecified, active duty military service, migrant farm labor, or primarily self employed

- Data not available.

The majority of both groups (72.8 percent of ABAWDs and 70.6 percent of FSP adults) are not in the labor force. A person is “not in the labor force” if he or she is neither working nor actively looking for work. Compared to FSP adults, however, ABAWDs are much more likely to be unemployed (i.e., not working but looking for work)--21.2 percent of ABAWDs fall into this category, compared with only 8.7 percent of FSP adults. About half of the unemployed adults in both groups have been unemployed for less than one year.

4. Work Registration Status/Participation in Employment and Training Programs

Of the 11.7 million FSP adults, 8.5 million (72.5 percent) are exempt from the FSP’s work registration requirement (Table II.7). Most are exempt because they are physically or mentally unfit (21.3 percent), a relative or caretaker of a dependent child (17.0 percent), over the required age (11.4 percent), or employed full time (11.5 percent).¹¹ By definition, most ABAWDs are not exempt from work registration requirements.¹²

Just over 12 percent of ABAWDs participate in an employment and training program (Table II.7). Of the ABAWDs who participate in E&T, 50.5 percent are in a job-search or job-search training program (activities that do not meet PRWORA’s work requirement), 18.6 percent are in a program that combines job-search with work experience, and 13.4 percent are in an education related activity.

¹¹Persons over age 60 and most persons under age 18 over are not required to register for work.

¹²According to Table II.7, 0.8 percent of ABAWDs are exempt because they are under or over the required age. These anomalous cases represent inconsistencies in the QC data. No ABAWDs should qualify for this exemption, as they are all between the ages of 18 and 49.

Table II.7
WORK REGISTRATION STATUS OF SELECTED FSP PARTICIPANTS
(universe excludes PRWORA-ineligible aliens)

	All FSP Participants		FSP Adults		Age 18-50, No Kids		ABAWDs	
	Number (000s)	Percent	Number (000s)	Percent	Number (000s)	Percent	Number (000s)	Percent
Number (000s).....	24,720	100.0	11,696	100.0	2,334	100.0	892	100.0
Exempt from work registration.....	21,309	86.2	8,482	72.5	1,472	63.1	104	11.6
Physically or mentally unfit.....	2,564	10.4	2,496	21.3	988	42.4	-	-
Pregnant.....	102	0.4	91	0.8	29	1.2	-	-
Under or over required age.....	13,370	54.1	1,328	11.4	12	0.5	7	0.8
Needed in home to care for an ill or incapacitated person..	135	0.5	133	1.1	20	0.9	-	-
Relative or other caretaker of a dependent child.....	2,064	8.3	1,993	17.0	20	0.9	-	-
Student.....	817	3.3	230	2.0	63	2.7	-	-
Employed fulltime.....	1,347	5.4	1,343	11.5	96	4.1	-	-
Program not offered in area (remote).....	103	0.4	95	0.8	27	1.1	23	2.5
Receiving or applied for unemployment compensation....	136	0.5	134	1.1	41	1.7	-	-
Complying with work requirements under other programs.....	264	1.1	260	2.2	38	1.6	-	-
Participating in a drug addiction or alcohol treatment program.....	63	0.3	62	0.5	52	2.2	-	-
Other.....	345	1.4	317	2.7	85	3.6	74	8.3
Required to register for work but not participating.....	2,602	10.5	2,557	21.9	717	30.7	667	74.8
Participating in JOBS or Food Stamp Employment and Training Program.	598	2.4	577	4.9	129	5.5	109	12.2
Job search training.....	80	0.3	80	0.7	17	0.7	17	1.9
Job search.....	156	0.6	154	1.3	41	1.8	38	4.3
Combined job search/work experience.....	85	0.3	83	0.7	24	1.0	20	2.3
CWEP or other work experience...	22	0.1	22	0.2	6	0.2	-	-
Work supplementation, grant diversion, or OJT.....	7	>0	7	0.1	2	0.1	2	0.2
Education/GED/GED prep.....	45	0.2	31	0.3	4	0.2	4	0.4
Post-secondary education.....	67	0.3	66	0.6	6	0.3	5	0.5
Remedial education.....	8	>0	8	0.1	1	0.1	1	0.2
Vocational education/JTPA.....	16	0.1	16	0.1	6	0.2	4	0.5
Other.....	111	0.5	109	0.9	22	1.0	17	1.9
Volunteers in an employment and training program	54	0.2	52	0.4	8	0.3	7	0.8
Work registration status unknown...	158	0.6	28	0.2	7	0.3	6	0.6

Source: Fiscal Year 1996 Food Stamp Quality Control sample
- Data not available.
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5. Distribution by State

Not surprisingly, the states that have the most FSP participants also have the most ABAWDs. Over half of all food stamp participants (50.5 percent) reside in eight states: California, Florida, Illinois, Michigan, New York, Ohio, Pennsylvania, and Texas (Table II.8). Those same states have 52.2 percent of all ABAWDs. ABAWDs represent a disproportionately large share of the food stamp population (5 percent or more) in Connecticut, the District of Columbia, Hawaii, Maine, Oregon, and West Virginia; they represent a disproportionately small share (2 percent or less) in Colorado, New Hampshire, Guam, and the Virgin Islands.

In terms of regional distribution, ABAWDs constitute between 3 and 4 percent of the FSP caseload in each of the seven FSP regions--ranging from a low of 3.0 percent in the Northeast and Mountain Plains regions to a high of 4.0 percent in the Midwest (Table II.9).

6. Number of Consecutive Months Receiving FSP Benefits

Although the QC database does not indicate the number of months that an individual has received food stamps over the preceding 36 months, it does indicate how long an individual has participated in the FSP during the current uninterrupted period of participation. Table II.10 shows the distribution of FSP adults and ABAWDs by the number of consecutive months of participation. On average, ABAWDs have participated in the FSP for fewer consecutive months than have FSP adults. About one-third of ABAWDs (34.3 percent) have participated for three months or less, compared with only 17.8 percent of FSP adults. And only 29.3 percent of ABAWDs are in the midst of a participation spell of longer than a year, compared with 49.0 percent of FSP adults.

Table II.8
DISTRIBUTION BY STATE OF SELECTED FSP PARTICIPANTS
(universe excludes PRWORA-ineligible aliens)

	All FSP Participants		FSP Adults		Age 18-50, No Kids		ABAWDs	
	Number (000s)	Percent	Number (000s)	Percent	Number (000s)	Percent	Number (000s)	Percent
Total.....	24,720	100.0	11,696	47.3	2,334	9.4	892	3.6
Alabama.....	533	100.0	260	48.8	45	8.4	18	3.5
Alaska.....	48	100.0	21	44.2	4	9.0	2	4.4
Arizona.....	401	100.0	173	43.2	32	7.9	13	3.1
Arkansas.....	279	100.0	143	51.3	23	8.4	9	3.4
California.....	2,925	100.0	958	32.8	166	5.7	111	3.8
Colorado.....	236	100.0	114	48.1	21	9.1	5	1.9
Connecticut.....	210	100.0	106	50.3	24	11.4	12	5.5
Delaware.....	53	100.0	24	46.0	4	8.1	1	2.7
Dist. of Col.....	93	100.0	45	48.6	13	13.6	7	7.7
Florida.....	1,302	100.0	606	46.6	110	8.5	40	3.1
Georgia.....	805	100.0	384	47.7	60	7.5	27	3.4
Guam.....	16	100.0	6	36.9	1	3.5	>0	0.8
Hawaii.....	117	100.0	64	54.8	18	15.5	6	5.2
Idaho.....	78	100.0	38	48.6	7	8.6	2	2.9
Illinois.....	1,039	100.0	503	48.4	124	11.9	47	4.5
Indiana.....	390	100.0	189	48.6	45	11.5	13	3.2
Iowa.....	174	100.0	90	51.9	17	9.8	4	2.5
Kansas.....	170	100.0	83	48.8	16	9.5	4	2.3
Kentucky.....	477	100.0	265	55.5	49	10.2	21	4.4
Louisiana.....	685	100.0	325	47.4	53	7.7	26	3.9
Maine.....	127	100.0	76	60.0	19	14.8	7	5.2
Maryland.....	383	100.0	181	47.3	36	9.4	8	2.2
Massachusetts.....	349	100.0	163	46.8	37	10.7	10	2.8
Michigan.....	932	100.0	464	49.8	126	13.5	54	5.8
Minnesota.....	294	100.0	144	48.9	33	11.2	9	2.9
Mississippi.....	443	100.0	223	50.4	37	8.2	16	3.6
Missouri.....	562	100.0	287	51.1	58	10.3	23	4.1
Montana.....	73	100.0	37	50.1	7	9.7	2	3.2
Nebraska.....	101	100.0	49	48.7	10	9.4	2	2.3
Nevada.....	102	100.0	50	49.3	11	10.8	5	4.7
New Hampshire.....	54	100.0	27	50.5	5	10.2	1	1.6
New Jersey.....	514	100.0	240	46.6	53	10.3	13	2.6
New Mexico.....	226	100.0	103	45.5	15	6.8	6	2.6
New York.....	1,916	100.0	986	51.5	219	11.4	60	3.1
North Carolina.....	632	100.0	328	51.9	48	7.7	18	2.9
North Dakota.....	37	100.0	20	54.5	4	11.7	1	3.9
Ohio.....	1,023	100.0	536	52.4	125	12.2	33	3.3
Oklahoma.....	349	100.0	186	53.2	35	10.0	13	3.7
Oregon.....	283	100.0	153	54.2	44	15.6	15	5.4
Pennsylvania.....	1,104	100.0	592	53.6	146	13.2	50	4.6
Rhode Island.....	86	100.0	39	45.2	7	8.0	2	2.6
South Carolina.....	358	100.0	168	46.9	25	6.9	9	2.5
South Dakota.....	47	100.0	23	48.3	4	9.1	1	2.3
Tennessee.....	627	100.0	344	54.9	70	11.2	28	4.4
Texas.....	2,253	100.0	962	42.7	135	6.0	70	3.1
Utah.....	108	100.0	50	46.6	9	8.7	2	2.3
Vermont.....	60	100.0	33	54.6	6	10.7	3	4.2
Virgin Islands.....	21	100.0	8	37.2	1	5.1	>0	1.9
Virginia.....	537	100.0	278	51.7	54	10.0	19	3.6
Washington.....	482	100.0	239	49.6	58	12.0	15	3.2
West Virginia.....	294	100.0	171	58.1	42	14.2	16	5.5
Wisconsin.....	278	100.0	122	43.7	19	6.7	7	2.7
Wyoming.....	33	100.0	16	48.1	3	9.5	1	4.1

Source: Fiscal Year 1996 Food Stamp Quality Control sample
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Table II.9
DISTRIBUTION BY REGION OF SELECTED FSP PARTICIPANTS
(universe excludes PRWORA-ineligible aliens)

	All FSP Participants		FSP Adults		Age 18-50, No Kids		ABAWDs	
	Number (000s)	Percent	Number (000s)	Percent	Number (000s)	Percent	Number (000s)	Percent
Number (000s).....	24,720	100.0	11,696	47.3	2,334	9.4	892	3.6
Region								
Northeast.....	2,801	100.0	1,430	51.0	318	11.4	93	3.3
Mid-Atlantic.....	3,000	100.0	1,539	51.3	348	11.6	116	3.9
Southeast.....	5,176	100.0	2,578	49.8	444	8.6	178	3.4
Midwest.....	3,957	100.0	1,957	49.5	471	11.9	163	4.1
Southwest.....	3,793	100.0	1,719	45.3	262	6.9	125	3.3
Mountain Plains.....	1,543	100.0	770	49.9	150	9.7	47	3.1
Western.....	4,451	100.0	1,703	38.3	340	7.6	169	3.8
Urban/Rural Indicator								
Rural.....	5,798	100.0	3,057	52.7	561	9.7	218	3.8
Urban.....	18,909	100.0	8,632	45.7	1,770	9.4	672	3.6
Unknown.....	14	100.0	7	48.7	2	11.6	1	6.3

Source: Fiscal Year 1996 Food Stamp Quality Control sample

TABLE II.10

DISTRIBUTION OF FSP ADULTS AND ABAWDs
BY NUMBER OF CONSECUTIVE MONTHS PARTICIPATING IN THE FOOD STAMP PROGRAM

	FSP Adults		ABAWDs	
	(000s)	Percent	(000s)	Percent
Total	11,696	100.0	892	100.0
Consecutive Months of Participation				
1	525	4.5	94	10.6
2	759	6.5	114	12.8
3	795	13.3	97	10.9
4-6	1,744	14.9	159	17.9
7-9	1,105	9.4	98	11.0
10-12	904	7.7	53	5.9
13 or more	5,727	49.0	261	29.3
3 or fewer	2,079	17.8	306	34.3
3 or fewer, and no prior receipt of food stamps	530	4.5	95	10.6
Missing Data	137	1.2	14	0.8

SOURCE: Fiscal Year 1996 Quality Control Database

ABAWDs who have participated for less than 3 consecutive months (34.3 percent of all ABAWDs) may not have exhausted their 3 months of FSP eligibility,¹³ though some of these short-term recipients probably received food stamp benefits prior to the current participation spell but within the 36-month PRWORA window. Indeed, QC data indicate that only 10.6 percent of ABAWDs have participated for 3 consecutive months or less *and* have no prior spells of food stamp receipt. These two estimates--10.6 percent and 34.3 percent--probably represent lower and upper bounds of the percentage of ABAWDs who have not reached PRWORA's time limit.¹⁴

¹³An individual has exhausted his or her eligibility, or has reached the PRWORA time limit, if one of the following is true: (1) the individual has used up the initial 3 months of eligibility and never regained eligibility, or (2) the individual has used up the initial 3 months of eligibility, regained and re-lost it and at least 4 months have passed since eligibility was re-lost.

¹⁴The upper bound could conceivably be higher, since longer-term FSP recipients may not have reached the time limit if fewer than three of the months in their current spell are countable towards the time limit. This type of error, though, is probably offset by short-term recipients whose prior spells cause them to exceed three months.

III. ESTIMATING THE NUMBER OF PEOPLE WHO LOSE ELIGIBILITY DUE TO THE WORK REQUIREMENT, AND PATTERNS OF WORK AND FSP PARTICIPATION AMONG ABAWDs

Although QC data can be used to estimate the number of ABAWDs and to describe their demographic and economic characteristics, the database cannot be used to determine which participants eventually reach the time limit. SIPP, however, can be used for this purpose and for examining patterns of work and FSP participation over time among ABAWDs because it provides 26 months of data (January 1990 through February 1992) for each person who is part of the 1990 SIPP panel.¹ The estimates in this chapter of the number of people who would lose eligibility under PRWORA are based on a subset of cases from the 1990 SIPP longitudinal file.

A. ESTIMATING THE PERCENTAGE OF ABAWDs WHO LOSE ELIGIBILITY UNDER PRWORA'S WORK REQUIREMENT

Under PRWORA's work requirement, an individual is ineligible to receive food stamps under two conditions: if he or she is an ABAWD *and* if, during the preceding 36-month period, the individual received food stamps for 3 months while he or she was an ABAWD.² Thus, to determine whether an individual would lose FSP eligibility in a given month, we need to answer two questions. First, was the individual an ABAWD in that month? Second, has the individual received food stamps for 3 months as an ABAWD during the preceding 36-month period?

¹Because the 1990 longitudinal SIPP file contains only 26 months of data for each person, it cannot be used to simulate the impact of the time limit at the end of the initial 36-month window. The 1992 and 1993 longitudinal SIPP files, when completed, will contain 34 months of data for each person in the corresponding panels.

²An individual who meets both of these criteria can still receive FSP benefits if he or she lives in a waiver area or is covered by the 15 percent exemption. These impact of these exemptions is discussed later in this section and in Appendix A.

1. Identifying ABAWDs Using SIPP Data

People in the longitudinal SIPP file are identified as ABAWDs according to a definition that is largely analogous to the definition for identifying them in the QC file. However, compared with QC data, SIPP data do not provide as much of the information needed to determine whether an individual is exempt from ABAWD status.³ Because several exemptions cannot be modeled, some of the people identified as ABAWDs on SIPP may not be so. But this is not a major concern, since the goal is to determine not the number of ABAWD FSP participants in SIPP but the percentage who have reached the time limit.⁴ Including a small number of non-ABAWDs in our analysis should have a negligible effect on the estimated percentage.

2. Counting the Number of Months Accumulated Toward the Time Limit

Using the SIPP longitudinal file, we can determine, for each month between January 1990 and February 1992, whether an individual is an ABAWD and whether he or she receives food stamps. If an individual is both an ABAWD and receiving food stamps in a given month, the individual accumulates one month toward PRWORA's time limit. By tracking individuals across months, we can determine whether and when they hit the three-month limit. Essentially, this procedure simulates what would have happened if the time limit had gone into effect in January 1990. However, because this simulation is based on data from January 1990 through February 1992, when a time limit was not in place, nobody in the sample actually leaves the FSP because of a time limit. Consequently,

³Specifically, SIPP data do not indicate whether a person is (1) pregnant, (2) needed in the home to care for an ill or incapacitated person, (3) participating in a drug or alcohol rehabilitation program, (4) subject to and complying with a work registration requirement under another program, or (5) participating in CWEP or some other work experience program.

⁴According to the SIPP longitudinal file, 592 thousand FSP participants were ABAWDs in January 1992 (3.2 percent of all FSP participants). Similar tabulations based on fiscal year 1996 QC data place the figure at 892 thousand (3.6 percent of all FSP participants). The discrepancy between these two estimates is examined in Appendix A.

although it would not be permitted under PRWORA, we can speak in terms of *exceeding* the time limit during the 25-month analysis period. The results of this simulation are presented in Tables III.1A and III.1B. Three of the rows in each table are labeled with letters (in the left margin) to highlight important categories of people.

The first row of Table III.1A shows the number of FSP participants each month from January 1990 to February 1992. The next block of rows shows the distribution of these FSP participants by the number of months they have accumulated toward the time limit (i.e., the number of months they have received food stamps as an ABAWD). For those who have accumulated more than 3 months toward the time limit (row A), Table III.1A then provides answers to the following questions:

- How many have regained eligibility by working 80 or more hours in a subsequent month?
- Of those who have regained eligibility, how many have “re-lost” it (by failing to meet the work requirement in a subsequent month) and exhausted their final 3 months of benefits allowed during the current 36-month window?
- How many have exhausted their eligibility entirely (row B)?
- How many are ineligible because of PRWORA’s time limit (row C)? (A person is ineligible in a given month if he or she has reached the time limit and is an ABAWD that month.)

Table III.1B shows how many people are in each of these categories, expressed as a percentage of the total FSP caseload in a given month.

The boldface column in Tables III.1A and III.1B (January 1992) illustrates what would have happened to the January 1992 FSP caseload if PRWORA’s time limit had gone into effect in January

TABLE III.1A
MONTHLY DISTRIBUTION OF FSP PARTICIPANTS
BY NUMBER OF MONTHS EXHIBITING SELECTED CHARACTERISTICS

(All Numbers in Thousands)

		MONTH																									
		1/90	2/90	3/90	4/90	5/90	6/90	7/90	8/90	9/90	10/90	11/90	12/90	1/91	2/91	3/91	4/91	5/91	6/91	7/91	8/91	9/91	10/91	11/91	12/91	1/92	2/92
FSP Participants		16,917	17,077	17,290	17,259	17,141	17,502	17,477	17,477	17,528	17,764	18,036	17,910	18,035	18,514	18,263	18,163	18,299	18,490	18,364	18,782	18,691	18,765	18,689	18,849	18,787	18,834
Months Accumulated Toward the Time Limit																											
1-3		444	518	591	268	239	205	223	248	306	290	350	350	377	357	291	276	268	288	237	233	212	225	204	254	316	323
4-6					327	415	454	204	199	180	194	221	204	217	274	286	294	244	211	203	206	185	184	191	162	181	174
7-12								234	253	294	305	373	381	243	215	187	230	232	222	233	221	228	253	236	248	232	227
13-18														161	182	199	204	227	230	129	130	148	138	122	109	126	129
19-25																				116	126	137	137	160	173	168	83
26																											77
A Accumulated More Than 3 Months Toward Time Limit					327	415	454	439	452	473	499	593	585	621	670	672	727	702	663	679	683	698	711	709	692	706	690
Regained eligibility						12	52	57	51	64	57	83	95	103	92	115	137	157	155	162	174	172	188	189	166	172	181
"Re-lost" eligibility and exhausted final 3 months										5	4	9	15	40	50	48	43	51	63	65	65	77	91	99	99	81	77
B Exhausted Time Limit					327	403	402	382	401	414	446	519	505	558	628	605	633	596	571	582	574	603	614	619	625	615	586
FSP Participants		16,917	17,077	17,290	17,259	17,141	17,502	17,477	17,477	17,528	17,764	18,036	17,910	18,035	18,514	18,263	18,163	18,299	18,490	18,364	18,782	18,691	18,765	18,689	18,849	18,787	18,834
ABAWDs		444	498	573	543	563	538	508	531	584	607	703	699	700	739	639	631	582	605	603	590	592	552	520	545	592	557
Exhausted Time Limit					327	403	402	382	401	414	446	519	505	558	628	605	633	596	571	582	574	603	614	619	625	615	586
C PRWORA-Ineligible					327	403	395	345	347	334	398	424	426	439	505	462	488	452	427	449	445	461	444	437	430	417	371
PRWORA-Ineligible Nonparticipants					0	5	18	48	69	75	68	56	102	96	102	142	157	164	169	166	188	170	161	171	182	184	230

SOURCE: 1990 SIPP longitudinal file

This table uses longitudinal SIPP data from January 1990 through February 1992 to simulate the impact of imposing PRWORA's work requirement and time limit in January 1990. Each column shows the distribution of FSP participants by the number of months they have accumulated towards the time limit (i.e., received food stamps as an ABAWD) between January 1990 and the column month.

Row A shows the number of FSP participants who have accumulated more than 3 months towards the time limit. Row B includes all people in A, except those that have regained (and not subsequently re-lost) eligibility. Row C shows the number of FSP participants that have exhausted the time limit and are ABAWDs in the column month, thus making them ineligible to participate in the FSP under PRWORA.

Note that this simulation is based on behavior observed during a period when the time limit did not exist. To the extent that people change their behavior in response to the time limit, the estimates presented in this table may over- or understate the number of people that leave the FSP.

TABLE III.1B
MONTHLY DISTRIBUTION OF FSP PARTICIPANTS
BY NUMBER OF MONTHS EXHIBITING SELECTED CHARACTERISTICS

(All Numbers in Percentages)

		MONTH																										
		1/90	2/90	3/90	4/90	5/90	6/90	7/90	8/90	9/90	10/90	11/90	12/90	1/91	2/91	3/91	4/91	5/91	6/91	7/91	8/91	9/91	10/91	11/91	12/91	1/92	2/92	
FSP Participants		100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Months Accumulated Toward the Time Limit																												
1-3		2.6	3.0	3.4	1.6	1.4	1.2	1.3	1.4	1.7	1.6	1.9	2.0	2.1	1.9	1.6	1.5	1.5	1.6	1.3	1.2	1.1	1.2	1.1	1.3	1.7	1.7	
4-6					1.9	2.4	2.6	1.2	1.1	1.0	1.1	1.2	1.1	1.2	1.5	1.6	1.6	1.3	1.1	1.1	1.0	1.0	1.0	0.9	1.0	0.9		
7-12								1.3	1.4	1.7	1.7	2.1	2.1	1.3	1.2	1.0	1.3	1.3	1.2	1.3	1.2	1.3	1.3	1.3	1.2	1.2		
13-18														0.9	1.0	1.1	1.1	1.2	1.2	0.7	0.7	0.8	0.7	0.7	0.6	0.7		
19-25																				0.6	0.7	0.7	0.7	0.9	0.9	0.9	0.4	
26																											0.4	
A Accumulated More Than 3 Months Toward Time Limit					1.9	2.4	2.6	2.5	2.6	2.7	2.8	3.3	3.3	3.4	3.6	3.7	4.0	3.8	3.6	3.7	3.6	3.7	3.8	3.8	3.7	3.8	3.7	
Regained eligibility						0.1	0.3	0.3	0.3	0.4	0.3	0.5	0.5	0.6	0.5	0.6	0.8	0.9	0.8	0.9	0.9	0.9	1.0	1.0	0.9	0.9	1.0	
"Re-lost" eligibility and exhausted final 3 months										0.0	0.0	0.0	0.1	0.2	0.3	0.3	0.2	0.3	0.3	0.4	0.3	0.4	0.5	0.5	0.5	0.4	0.4	
B Exhausted Time Limit		0.0	0.0	0.0	1.9	2.4	2.3	2.2	2.3	2.4	2.5	2.9	2.8	3.1	3.4	3.3	3.5	3.3	3.1	3.2	3.1	3.2	3.3	3.3	3.3	3.3	3.1	
FSP Participants		100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	
ABAWDs		2.6	2.9	3.3	3.1	3.3	3.1	2.9	3.0	3.3	3.4	3.9	3.9	3.9	4.0	3.5	3.5	3.2	3.3	3.3	3.1	3.2	2.9	2.8	2.9	3.2	3.0	
Exhausted Time Limit					1.9	2.4	2.3	2.2	2.3	2.4	2.5	2.9	2.8	3.1	3.4	3.3	3.5	3.3	3.1	3.2	3.1	3.2	3.3	3.3	3.3	3.3	3.1	
C PRWORA-Ineligible																												
Percent of all FSP participants					1.9	2.4	2.3	2.0	2.0	1.9	2.2	2.4	2.4	2.4	2.7	2.5	2.7	2.5	2.3	2.4	2.4	2.5	2.4	2.3	2.3	2.2	2.0	
Percent of ABAWD participants					60.2	71.6	73.4	67.9	65.3	57.2	65.6	60.3	60.9	62.7	68.3	72.3	77.3	77.7	70.6	74.5	75.4	77.9	80.4	84.0	78.9	70.4	66.6	

SOURCE: 1990 SIPP longitudinal file

This table uses longitudinal SIPP data from January 1990 through February 1992 to simulate the impact of imposing PRWORA's work requirement and time limit in January 1990. Each column shows the distribution of FSP participants by the number of months they have accumulated towards the time limit (i.e., received food stamps as an ABAWD) between January 1990 and the column month. Unless otherwise specified, all figures represent the percentage of all FSP participants in the column month.

Row A shows the percentage of FSP participants who have accumulated more than 3 months towards the time limit. Row B includes all people in A, except those that have regained (and not subsequently re-lost) eligibility. Row C shows the percentage of FSP participants that have exhausted the time limit and are ABAWDs in the column month, thus making them ineligible to participate in the FSP under PRWORA.

Note that this simulation is based on behavior observed during a period when the time limit did not exist. To the extent that people change their behavior in response to the time limit, the estimates presented in this table may over- or understate the number of people that leave the FSP.

1990. Of the 18.8 million participants in January 1992, 706 thousand (3.8 percent) would have used up their initial 3 months of eligibility (row A). Of these 706 thousand, 172 thousand (24.4 percent) would have regained eligibility by working at least 80 hours in a month subsequent to their simulated loss of eligibility, but nearly half (81 thousand) of those who regained eligibility would have later stopped working and exhausted their final 3 months of eligibility.

In all, 615 thousand (3.3 percent) of the FSP participants in January 1992 would have reached the time limit (row B). But because the time limit only applies to people who are ABAWD in a given month, of the 615 thousand FSP participants who would have exhausted the time limit, only the 417 thousand who were ABAWD in January 1992 would have been ineligible that month (row C).⁵ The other 208 thousand are FSP participants who would have remained eligible only as long as they were non-ABAWD. Generally, this means they would have remained eligible as long as they continued to work 20 or more hours per week.

Another population that would have been unaffected in January 1992, but would be at risk of being affected in future months, consists of people who are ABAWD and have used up all months of eligibility but chose not to participate in the FSP in January 1992. These 184 thousand ineligible nonparticipants would remain ineligible until at least January 1993 (the end of the initial 36-month window). More precisely, they could not participate until 36 months after they first accumulated a month toward the time limit.

⁵Another 20 thousand ABAWD FSP participants would have been in their third time-limited month in January 1992. Barring a change in ABAWD status, these individuals would be ineligible in subsequent months. Similarly, 21 thousand ABAWD FSP participants in January 1992 would have recently re-lost eligibility, becoming ineligible within 3 months.

Other columns in Tables III.1A and III.1B illustrate how the impact of the time limit varies across months.⁶ Most of the impact would be felt in month four, the first month in which people could reach the time limit. In that month, 1.9 percent of all FSP participants and 60.2 percent of all ABAWD FSP participants would lose eligibility (Table III.1B, row C). These percentages change very little over the course of the next two years. The percentage of FSP participants who would lose eligibility rises from 1.9 percent in April 1990 to a high of 2.7 percent in early 1991, then falls to 2.2 percent in January 1992. Similarly, the percentage of ABAWD FSP participants who would lose eligibility rises from 60.2 percent in April 1990 to just over 80 percent in late 1991, then drops to 70.4 percent in January 1992.

Much of the fluctuation in the percentage of ABAWD FSP participants who would lose eligibility may be attributable to sampling error. There is some evidence, though, that the gradual increase in the percentage throughout 1991 is caused by a steady decline in the denominator (the number of ABAWD FSP participants), combined with little or no change in the numerator (the number of ABAWD FSP participants who would lose eligibility). This may indicate that, during 1991, the employment rate increased among ABAWD FSP participants but that those gains were realized by short-term ABAWDs.

3. Estimating the Number of FSP Participants Who Lose Eligibility Under PRWORA's Work Requirement

In the previous section, we simulated what would have happened if PRWORA's time limit had gone into effect in January 1990: data from January 1992 (25 months after the imposition of the time limit) show that 70.4 percent of all ABAWD FSP participants in that month would have exhausted

⁶Weighted counts in Table III.1A may be less reliable for months other than January 1992, since the sample is weighted to match the U.S. population in January 1992.

their 3 months of eligibility. To determine the *number* of FSP participants who would have lost eligibility, we apply this percentage to FSP caseload estimates derived from the QC database.

QC data indicate that there were 892 thousand ABAWD FSP participants (3.6 percent of all FSP participants) in an average month of fiscal year 1996 (Chapter I, Table I.1). SIPP analysis suggests that 70.4 percent of these people have exhausted their 3 months of eligibility. Thus, we estimate that 628 thousand ABAWD FSP participants (2.5 percent of all FSP participants) will have exhausted their eligibility 2 years after PRWORA takes effect.

This estimate of PRWORA ineligibles is the most accurate we can derive given the available data. Nevertheless, it overstates the number of people who will lose eligibility because we did not model the high-unemployment-area waiver or the recently enacted 15 percent exemption. Thus, some of the people identified as ABAWD FSP participants will be exempt from the work requirement. FNS estimates that about 36.8 percent of ABAWD FSP participants live in areas covered by a high-unemployment waiver, and that 15 percent of the remaining ABAWDs will be granted an exemption.⁷ Based on these estimates, only 337 thousand (53.7 percent) of the 628 thousand ABAWD FSP participants who reach the time limit would actually lose eligibility.⁸

These estimates of the number of people who will lose eligibility under PRWORA should be interpreted in light of three other caveats. First, the FSP caseload decreased in size by about 8 percent between fiscal year 1996 and fiscal year 1997. Presumably, the number of ABAWD FSP participants also declined over this period. Second, we assume that people do not change their behavior in response to the time limit. To the extent that this assumption is incorrect, the estimates

⁷FNS's waiver estimate is based on approved waivers that states had implemented or intended to implement as of August 21, 1997.

⁸The 53.7 percent figure is calculated as: $100\% - 36.8\% - (63.2\% * 15.0\%) = 53.7\%$.

presented here may over- or understate the number of people who lose eligibility.⁹ Third, we consider an ABAWD FSP participant to be disqualified the instant he or she reaches the 3-month time limit. In practice, the individual may not be disqualified until he or she applies for recertification. Consequently, the impact of the work requirement will be spread out over several months, rather than focused in month four as our analysis suggests.

4. Sensitivity of the Impact of the Work Requirement to Changes in the Length of the Time Limit

The simulated impact of the work requirement is most severe in the fourth month--the first month in which people can lose eligibility. After the fourth month, the percentage of participants affected remains relatively constant (see Table III.1B, row C). This may indicate that the ABAWD population is a static one, and that most ABAWD FSP participants will lose eligibility no matter how long the time limit. To test this hypothesis, we examined the distribution of ABAWD FSP participants in January 1992 by the number of months they accumulated toward the time limit between January 1990 and January 1992 (Table III.2).

Of the ABAWD FSP participants in January 1992, 74.2 percent have accumulated more than 3 months toward the time limit and thus lose eligibility (Table III.2).¹⁰ As the length of the time limit

⁹For example, faced with a three-month time limit, some people would probably begin to comply with PRWORA's work requirements (i.e., work or participate in a work program for 20 or more hours a week) and thus remain eligible for the FSP. To the extent that this occurs, the estimates presented here will overstate the number of PRWORA ineligibles. On the other hand, some able-bodied people might choose to leave the FSP before they reach the time limit (or never to enter the FSP in the first place) so as to preserve their three months of eligibility. To the extent that this occurs, the estimates presented here will understate the number of people leaving the program.

¹⁰This estimate of the percentage of ABAWD FSP participants that have accumulated more than three months toward the time limit (74.2 percent) is slightly higher than the percentage that lose eligibility due to a three month time limit (70.4 percent, Table III.1B). The reason for the discrepancy is that the larger number includes ABAWD FSP participants who are in their final three-month period of eligibility, after having "re-lost" eligibility.

TABLE III.2

DISTRIBUTION OF ABAWD FSP PARTICIPANTS IN JANUARY 1992,
BY NUMBER OF MONTHS ACCUMULATED TOWARD A SIMULATED TIME LIMIT

	ABAWD FSP Participants, January 1992			
	25 Month Window (January 1990 to January 1992)		12 Month Window (February 1991 to January 1992)	
	(000s)	(Percentage)	(000s)	(Percentage)
Total	592	100.0	592	100.0
Number of Months Accumulated Toward the Time Limit				
1	74	12.5	95	16.0
2	59	10.0	59	10.0
3	20	3.4	20	3.4
4	30	5.1	49	8.3
5	12	2.0	30	5.1
6	19	3.2	38	6.4
1-6	214	36.1	291	49.2
7-12	125	21.1	300	50.7
13-18	91	15.4	NA	NA
19-25	162	27.4	NA	NA
more than 3	439	74.2	417	70.4
more than 4	409	69.1	368	62.2
more than 6	378	63.9	300	50.7
more than 12	253	42.7	NA	NA

SOURCE: 1990 SIPP longitudinal file

is changed, there is a modest impact on the percentage of people who lose eligibility. For instance, when the time limit is extended to 4 months, 69.1 percent of ABAWD FSP participants lose eligibility. A 6-month time limit causes 63.9 percent to lose eligibility, and a 12-month time limit causes 42.7 percent to lose eligibility.

However, the impact of the time limit is driven not only by the number of months an individual is allowed to accumulate, but by the length of the “window” over which those months accumulate. To illustrate the impact of changes in the length of the window, we simulated the impact of various time limits when the window is reduced from 25 months to 12 months,¹¹ counting months toward the time limit if they fall between February 1991 and January 1992. Surprisingly, the percentage of ABAWD FSP participants who would reach the 3-month limit during the 12-month window (70.4 percent) is nearly as high as the percentage who would reach the limit during the 25-month window (74.2 percent). But estimates based on the 12-month window start to diverge from those based on the 25-month window as the length of the time limit increases. For example, a 4-month limit during a 12-month window would cause 62.2 percent to lose eligibility, and a 6-month limit would cause 50.7 percent to lose eligibility, compared with 69.1 percent and 63.9 percent, respectively, during the 25-month window.

This analysis indicates that the impact of PRWORA’s work requirement varies modestly in response to changes in the length of the time limit and to changes in the length of the window. Thus, the population at risk of losing eligibility is not entirely static. Indeed, there is a monthly turnover of nearly 10 percent in the population of ABAWD FSP participants. Of the 2.0 million people who would have accumulated at least one month toward the time limit between January 1990 and February 1992, 1.0 million were ABAWD in an average month (Table III.3). Each month, an average of 9.1

¹¹PRWORA’s time limit actually applies over a 36-month window, but we are limited to 25 months by the longitudinal SIPP file.

February 1992, 1.0 million were ABAWD in an average month (Table III.3). Each month, an average of 9.1 percent of these ABAWD people become non-ABAWD, and an equal number of non-ABAWD people become ABAWD. So while there is little change in the size of the ABAWD population over time, it is not static in terms of composition.

B. PATTERNS OF ABAWD STATUS, EMPLOYMENT, AND FSP PARTICIPATION

The most common reason for changes in ABAWD status is a change in employment status. A loss of employment accounted for 71.3 percent of transitions into ABAWD status, and a gain of employment accounted for 66.4 percent of the transitions out of ABAWD status between January 1990 and February 1992. The second leading cause of transitions into ABAWD status was losing the student exemption--probably the result of 18-year-olds graduating from high school. The second leading cause of transitions out of ABAWD status was the birth of a child.

To understand the dynamics of the ABAWD population, we examined patterns of ABAWD status, employment, and FSP participation among three groups: (1) people who accumulate their first month toward the time limit in the month it is implemented (in our simulation, January 1990); (2) people who accumulate their first month toward the time limit in a subsequent month; and (3) people who lose eligibility because they reach the time limit. Basing the distinction between groups on when the first month is accumulated is important because people who accumulate their first month in January 1990 are more likely to be long-term ABAWD FSP participants.¹²

¹²To see why this is the case, consider participants who accumulate their first month in January 1990. This group comprises people who are ABAWD FSP participants for the first time in January 1990 and people whose spell of ABAWD participation started prior to January 1990. Although we cannot observe behavior prior to January 1990, tabulations suggest that 85 percent of ABAWD FSP participants in January 1990 were also ABAWD FSP participants prior to January 1990. People in this group are more likely to be long-term ABAWD FSP participants than are people who become ABAWD FSP participants in a subsequent month.

TABLE III.3

TRANSITIONS IN AND OUT OF ABAWD STATUS
IN AN AVERAGE MONTH BETWEEN FEBRUARY 1990 AND FEBRUARY 1992

UNIVERSE = People That Accumulate at Least 1 Month Toward the Time Limit Between January 1990 and February 1992

	People Subject to the Time Limit in an Average Month Between February 1990 and February 1992	
	(000s)	Percentage
ABAWD Population	1,016	100.0
Transitions from Non-ABAWD to ABAWD	+100	+9.1
Transitions from ABAWD to Non-ABAWD	-99	-9.1
Net Change in ABAWD Population	+1	+0.1
Transitions from Non-ABAWD to ABAWD	96	100.0
Reason Exempt in Previous Month*		
Under age 18 or over age 49	6	6.5
Parent in previous month	2	2.2
Disabled	2	2.2
Working 20+ hours	69	71.3
Receiving unemployment insurance	7	6.8
FSP eligible student	13	13.7
Transitions from ABAWD to Non-ABAWD	95	100.0
Reason Exempt in Current Month*		
Under age 18 or over age 49	2	2.0
Parent in current month	10	10.8
Disabled	7	7.7
Working 20+ hours	63	66.4
Receiving unemployment insurance	8	8.2
FSP eligible student	9	9.4

SOURCE: 1990 SIPP longitudinal file

* Column may sum to more than total because people can be exempt for multiple reasons

Two methods were used to examine the behavioral patterns of these three groups. First, we looked at monthly rates of employment, FSP participation, and other selected characteristics over a 13-month period. Second, we examined the distribution of people in each group by the cumulative number of months in which they exhibit selected characteristics over the same 13-month period. The 13-month analysis period does not necessarily encompass the same months for people in different groups. For the group that accumulates its first month toward the time limit in January 1990 (the initial spell cohort), we track behavior over the 13-month period from January 1990 to January 1991. For the group that accumulates its first month after January 1990 (the new spell cohort), we track behavior over the 13 months starting with the first time-limited month. For the group that loses eligibility (ineligible cohort), we track behavior over the 13 months starting with the month in which eligibility is lost.¹³

1. Initial Spell Cohort

The initial spell cohort consists of people who are ABAWD FSP participants in January 1990. By tracking the behavior of this group, we can gauge PRWORA's likely impact on people who accumulate their first month toward the time limit in the month that goes into effect.¹⁴ In the 13 months from January 1990 through January 1991, 85.8 percent of people in the initial spell cohort accumulate more than 3 months toward the time limit, 66.7 percent accumulate more than 6 months, and 36.3 percent accumulate 13 months (Table III.4).

¹³We limit the new spell cohort to people who accumulate their first time-limited month between February 1990 and February 1991. Similarly, we limit the ineligible cohort to people who lose eligibility between February 1990 and February 1991. This ensures that we have 12 months of prospective data on all individuals. Thus, for these two cohorts, month 1 could correspond to any month between February 1990 and February 1991.

¹⁴Recall that this analysis assumes no behavioral response to the time limit. We simply track the historical behavior of each cohort.

TABLE III.4

DISTRIBUTION OF PEOPLE IN THE INITIAL SPELL COHORT, NEW SPELL COHORT, AND INELIGIBLE COHORT,
BY NUMBER OF MONTHS EXHIBITING SELECTED CHARACTERISTICS DURING THE ANALYSIS PERIOD*

	Initial Spell Cohort		New Spell Cohort		Ineligible Cohort	
	(000s)	Cumulative Percentage	(000s)	Cumulative Percentage	(000s)	Cumulative Percentage
All People	444	100.0	972	100.0	930	100.0
Number of Months Accumulated Toward the Time Limit						
13	161	36.3	90	9.2	205	22.1
7-12	135	66.7	247	34.6	268	50.9
6	35	74.7	86	43.5	61	57.5
5	32	81.9	64	50.1	46	62.4
4	18	85.8	234	74.2	54	68.1
3	27	91.9	54	79.7	99	78.8
2	29	98.4	87	88.7	33	82.4
1	7	100.0	110	100.0	164	100.0
Number of Months Receiving Food Stamps						
13	265	59.7	276	28.4	410	44.1
7-12	121	87.0	277	56.9	247	70.7
6	0	87.0	101	67.3	31	74.0
5	14	90.1	59	73.3	75	82.0
4	6	91.4	168	90.6	13	83.5
3	19	95.7	40	94.8	50	88.9
2	15	99.0	33	98.1	16	90.6
1	5	100.0	18	100.0	88	100.0
Number of Months ABAWD						
13	220	49.5	253	26.0	351	37.8
7-12	117	75.8	303	57.2	276	67.4
6	49	86.8	76	65.0	46	72.4
5	26	92.7	54	70.5	32	75.8
4	12	95.3	111	81.9	45	80.7
3	11	97.8	37	85.7	85	89.9
2	7	99.4	51	91.0	11	91.0
1	3	100.0	88	100.0	84	100.0
Number of Months Employed (working 20 or more hours)						
13	0	0.0	0	0.0	0	0.0
7-12	38	8.4	253	26.0	130	14.0
6	7	10.0	34	29.5	11	15.1
5	19	14.3	21	31.7	37	19.2
4	15	17.6	70	38.8	74	27.1
3	12	20.3	35	42.4	39	31.3
2	7	21.7	51	47.6	50	36.6
1	31	28.6	69	54.7	53	42.3
0	317	100.0	441	100.0	536	100.0
Number of Months Receiving Food Stamps and Employed						
13	0	0.0	0	0.0	0	0.0
7-12	3	0.8	62	6.4	17	1.9
6	0	0.8	12	7.6	5	2.4
5	28	7.0	31	10.7	20	4.5
4	12	9.5	43	15.2	56	10.6
3	21	14.3	47	20.0	54	16.3
2	5	15.3	76	27.8	65	23.3
1	28	21.6	87	36.8	53	29.0
0	348	100.0	615	100.0	660	100.0

SOURCE: 1990 SIPP longitudinal file

- * The analysis period for the initial spell cohort spans from January 1990 to February 1991 (13 months).
The analysis period for the new spell cohort covers the 13 months starting with the first month the person accumulates towards the time limit.
The analysis period for the ineligible cohort covers the 13 months starting with the month the person loses eligibility because of the time limit.

Most of the people who stop accumulating time toward the time limit do so by the 8th month. The percentage of the initial spell cohort that is ABAWD and receiving food stamps declines from 100 percent in January 1990 to 51.6 percent in August 1990 (month 8), then stabilizes at about 55 percent (Table III.5A and Figure III.1A). A snapshot of the initial spell cohort in January 1991 (month 13) shows that 54.5 percent are ABAWD FSP participants, which includes the 36.3 percent who have been ABAWD FSP participants in each of the 13 months. Thus, of the people in the initial spell cohort who are ABAWD FSP participants in month 13, 66.6 percent have been ABAWD FSP participants for at least 13 consecutive months.¹⁵ The remaining 33.4 percent have spent at least one month as non-ABAWD FSP participants--that is, they went from being ABAWD FSP participants to not being ABAWD FSP participants, and back.

By definition, nobody in the initial spell cohort works 20 or more hours in January 1990, but by June 1990 (month 6) the cohort's employment rate is at 16.9 percent (Table III.5A and Figure III.1A).¹⁶ Though the employment rate fluctuates after month 6, the "steady state" rate appears to lie between 10 and 15 percent. Over the course of the 13-month analysis period, 28.6 percent of people in the initial spell cohort work at least one month (Table III.4), and just over half of those who work in an average month continue to receive food stamps (Table III.5A).¹⁷

¹⁵ $(36.3\% / 54.5\%) = 66.6\%$.

¹⁶Here, the employment rate refers to the percentage that either works 20 or more hours per week or has weekly earnings of at least 20 times the hourly minimum wage.

¹⁷For example, in June 1990 (month 6), 16.9 percent of people in the initial spell cohort are employed, and 9.7 percent are both employed and receiving food stamps (Table III.5A).

2. New Spell Cohort

The new spell cohort consists of people who are ABAWD FSP participants for the first time at some point between February 1990 and February 1991. By tracking the behavior of this group, we can gauge PRWORA's likely impact on people who accumulate their first month toward the time limit subsequent to the month it goes into effect.

The impact of the work requirement on the new spell cohort is less severe than on the initial spell cohort. In the 13 months starting with the first time-limited month, 74.2 percent of people in the new spell cohort accumulate more than 3 months toward the time limit; 34.6 percent accumulate more than 6 months; and 9.2 percent accumulate all 13 months (Table III.4).¹⁸ Thus, while most people in the new spell cohort (74.2 percent) reach a 3-month time limit, substantially fewer (34.6 percent) reach a 6-month time limit. This discrepancy is less dramatic among the initial spell cohort, where 85.8 percent reach a 3-month limit and 66.7 percent reach a 6-month limit.

The percentage of the new spell cohort that is ABAWD and receiving food stamps declines from 100 percent in month 1 to 34.1 percent in month 5 (Table III.5B and Figure III.1B).¹⁹ A snapshot of the new spell cohort in month 13 shows that 28.8 percent are ABAWD FSP participants, which includes the 9.2 percent who are ABAWD FSP participants in each of the 13 months. Thus, of the people in the new spell cohort who are ABAWD FSP participants in month 13, only 31.9 percent

¹⁸A disproportionately large share of the new spell cohort (24.1 percent) accumulates exactly four months toward the time limit. This is an artifact of the "seam effect" on SIPP, whereby sample members tend to report the same value of a characteristic for all four months of a reference period. In reality, some of those in the four-month category probably accumulate fewer than four months while others accumulate more than four months.

¹⁹The sharp drop-off from 68.4 percent in month 4 to 34.1 percent in month 5 is another artifact of the SIPP's seam effect (see footnote 18).

TABLE III.5A

PATTERNS OF WORK AND FSP PARTICIPATION OF THE INITIAL SPELL COHORT*

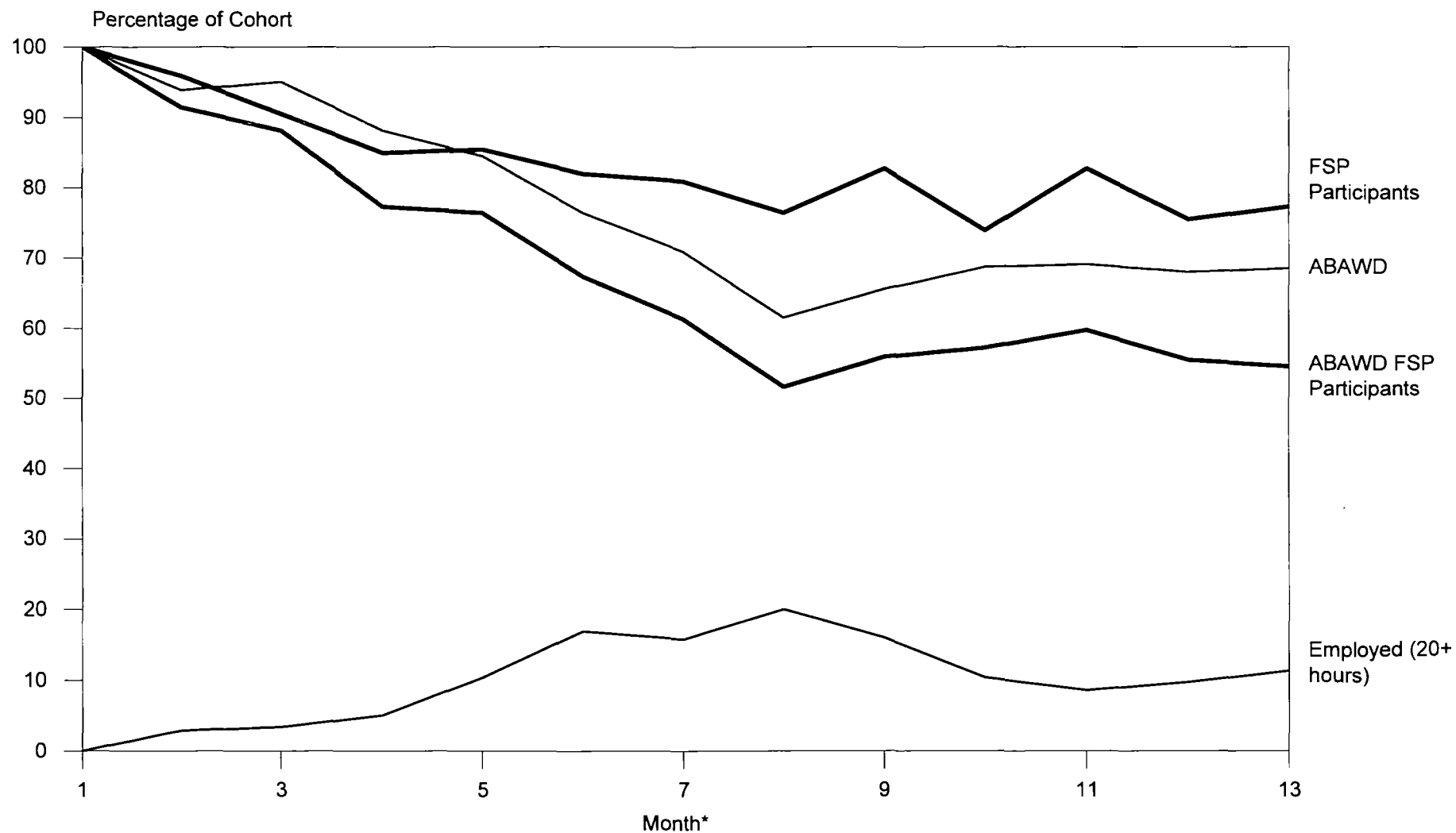
Thousands	MONTH												
	1/90	2/90	3/90	4/90	5/90	6/90	7/90	8/90	9/90	10/90	11/90	12/90	1/91
Initial Spell Cohort (n = 109)	444	444	444	444	444	444	444	444	444	444	444	444	444
Employed (Working 20+Hours)	0	13	15	22	46	75	70	89	71	46	38	43	50
Working 1 to <20 hours	37	25	35	34	33	19	5	0	25	16	12	13	6
Not Working	408	406	395	389	364	350	369	355	348	382	394	388	389
Receiving Food Stamps	444	426	402	377	379	364	359	339	367	328	367	335	343
ABAWD	444	417	422	391	375	339	315	273	291	305	307	302	304
ABAWD and Food Stamps	444	406	391	343	339	299	272	229	248	254	265	246	242
Employed and Food Stamps	0	6	4	10	25	43	35	40	48	20	24	28	31

Percentages	MONTH												
	1/90	2/90	3/90	4/90	5/90	6/90	7/90	8/90	9/90	10/90	11/90	12/90	1/91
All Persons (n = 109)	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Employed (Working 20+Hours)	0.0	2.9	3.4	5.0	10.4	16.9	15.8	20.0	16.0	10.4	8.6	9.7	11.3
Working 1 to <20 hours	8.3	5.6	7.9	7.7	7.4	4.3	1.1	0.0	5.6	3.6	2.7	2.9	1.4
Not Working	91.9	91.4	89.0	87.6	82.0	78.8	83.1	80.0	78.4	86.0	88.7	87.4	87.6
Receiving Food Stamps	100.0	95.9	90.5	84.9	85.4	82.0	80.9	76.4	82.7	73.9	82.7	75.5	77.3
ABAWD	100.0	93.9	95.0	88.1	84.5	76.4	70.9	61.5	65.5	68.7	69.1	68.0	68.5
ABAWD and Food Stamps	100.0	91.4	88.1	77.3	76.4	67.3	61.3	51.6	55.9	57.2	59.7	55.4	54.5
Employed and Food Stamps	0.0	1.4	0.9	2.3	5.6	9.7	7.9	9.0	10.8	4.5	5.4	6.3	7.0

SOURCE: 1990 SIPP longitudinal file

* The initial spell cohort includes all people who accumulate their first month toward the time limit (i.e., ABAWD and receiving food stamps) in January 1990.

FIGURE III.1A
PATTERNS OF ABAWD STATUS, EMPLOYMENT, AND FSP PARTICIPATION
(INITIAL SPELL COHORT)



SOURCE: 1990 SIPP longitudinal file

* For initial spell cohort, month 1 is January 1990.

TABLE III.5B

PATTERNS OF WORK AND FSP PARTICIPATION OF THE NEW SPELL COHORT*

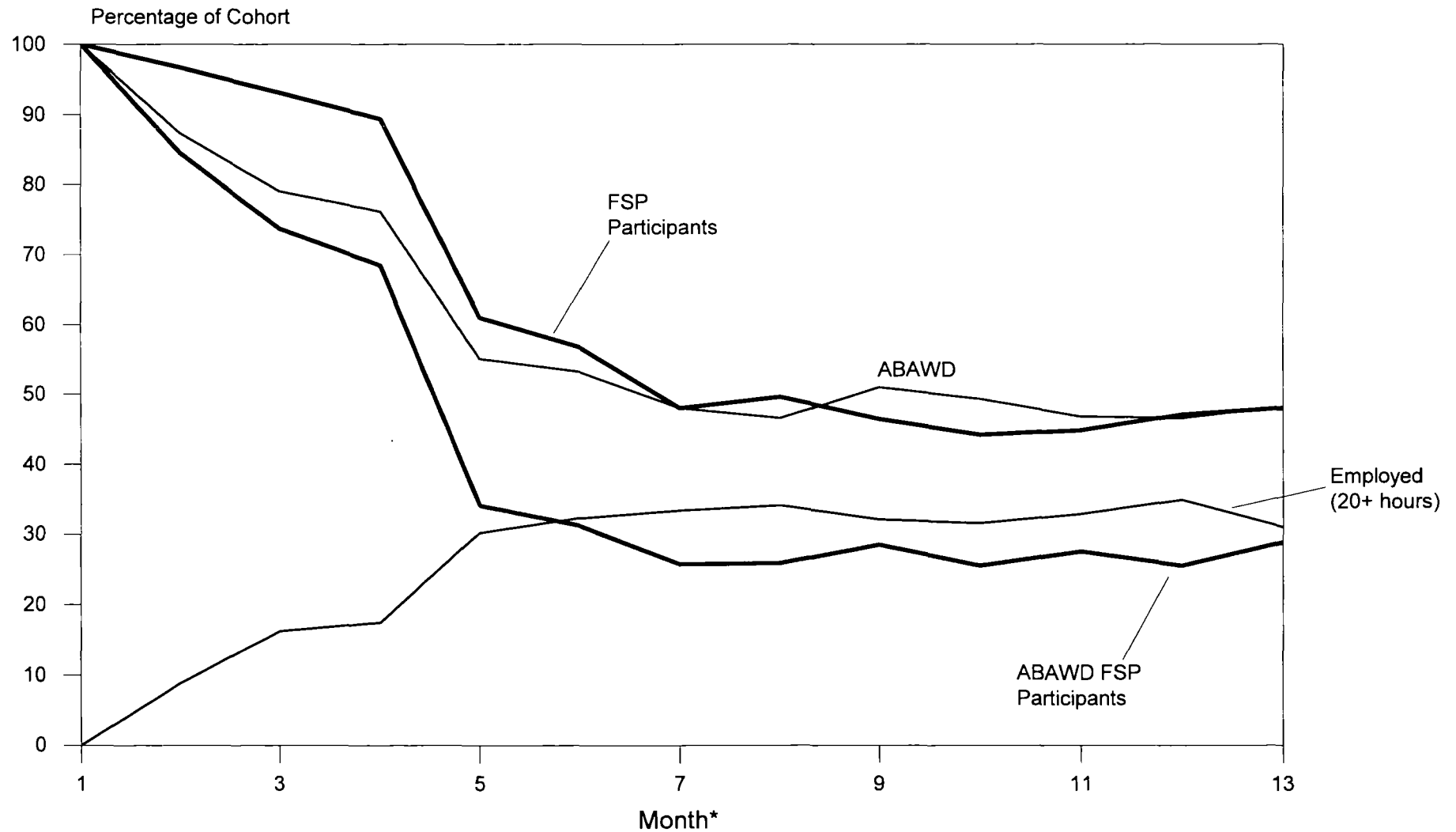
Thousands													
	MONTH**												
	1	2	3	4	5	6	7	8	9	10	11	12	13
New Spell Cohort (n = 224)	972	972	972	972	972	972	972	972	972	972	972	972	972
Employed (Working 20+Hours)	0	85	158	169	293	314	325	332	312	307	320	340	302
Working 1 to <20 hours	186	91	67	92	55	68	63	56	49	56	58	67	63
Not Working	787	797	748	711	624	590	584	585	611	610	595	566	608
Receiving Food Stamps	972	940	906	868	593	551	467	482	451	430	436	458	466
ABAWD	972	849	768	740	536	518	467	453	496	479	455	453	468
ABAWD and Food Stamps	972	821	717	665	331	304	250	252	277	248	267	248	280
Employed and Food Stamps	0	80	149	156	159	146	107	117	83	94	76	113	74
Percentages													
	MONTH**												
	1	2	3	4	5	6	7	8	9	10	11	12	13
All Persons (n = 224)	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Employed (Working 20+Hours)	0.0	8.8	16.2	17.4	30.2	32.3	33.4	34.1	32.1	31.6	32.9	34.9	31.0
Working 1 to <20 hours	19.1	9.3	6.9	9.4	5.6	7.0	6.5	5.8	5.0	5.7	5.9	6.9	6.4
Not Working	80.9	81.9	76.9	73.1	64.2	60.7	60.1	60.1	62.9	62.7	61.1	58.2	62.5
Receiving Food Stamps	100.0	96.7	93.1	89.3	61.0	56.7	48.0	49.6	46.4	44.2	44.8	47.1	48.0
ABAWD	100.0	87.3	79.0	76.1	55.1	53.2	48.0	46.6	51.0	49.3	46.8	46.6	48.2
ABAWD and Food Stamps	100.0	84.5	73.7	68.4	34.1	31.2	25.7	25.9	28.5	25.5	27.5	25.5	28.8
Employed and Food Stamps	0.0	8.3	15.3	16.1	16.3	15.0	11.0	12.0	8.5	9.7	7.8	11.7	7.6

SOURCE: 1990 SIPP longitudinal file

* The new spell cohort includes all people who accumulate their first month toward the time limit (i.e., ABAWD and receiving food stamps) between February 1990 and February 1991.

** Month 1 refers to the first month accumulated toward the time limit. Months 2 through 13 are the 12 months following that month.

FIGURE III.1B
PATTERNS OF ABAWD STATUS, EMPLOYMENT, AND FSP PARTICIPATION
(NEW SPELL COHORT)



SOURCE: 1990 SIPP longitudinal file

* For new spell cohort, month 1 is first month accumulated towards time limit.

have been ABAWD FSP participants for at least 13 consecutive months.²⁰ The remaining 68.1 percent have cycled in and out of the population of ABAWD FSP participants. This sort of cycling is much less common among the initial spell cohort, where only 33.5 percent of ABAWD FSP participants in month 13 are “cyclers”.

People in the new spell cohort are more likely than people in the initial spell cohort to find employment. By month 6, the employment rate of the new spell cohort reaches 32.3 percent, which is roughly the cohort’s steady state employment rate (Table III.5B and Figure III.1B). In comparison, the employment rate of the initial spell cohort peaks at 20 percent. Over the course of the 13-month analysis period, over half (54.7 percent) of the people in the new spell cohort work at least one month, and 26.0 percent work at least 7 months (Table III.4). Of those who work in an average month, about one-third continue to receive food stamps (Table III.5B).

3. Ineligible Cohort

The ineligible cohort consists of people who lose eligibility at some point between February 1990 and February 1991. By tracking the behavior of this group, we can speculate about what might happen to people after they lose eligibility. This analysis should be interpreted with caution, since our assumption of no behavioral response to the time limit is particularly tenuous for the ineligible cohort. In other words, there is a good chance that people will deviate from their historical behavior when they lose their FSP benefits.

In month 13, one year after the simulated loss of eligibility, 64.6 percent of people in the ineligible cohort are still participating in the FSP (Table III.5C and Figure III.1C). Of the 64.6 percent who receive FSP benefits in month 13, over one-third (40.7 percent) are non-ABAWD

²⁰ $(9.2\% / 28.8\%) = 31.9\%$.

and thus are eligible to participate regardless of the time limit.²¹ Only 38.3 percent of the ineligible cohort are still ABAWD FSP participants in month 13, including 22.1 percent who are ABAWD FSP participants throughout the 13-month analysis period (Table III.4). Thus, of the people in the ineligible cohort who are ABAWD FSP participants in month 13, 57.7 percent have been ABAWD FSP participants for at least 13 consecutive months.²² The remaining 42.3 percent have cycled in and out of the population of ABAWD FSP participants.

By month 6, the employment rate of the ineligible cohort reaches 18.2 percent. The cohort's steady state employment rate is between 15 and 20 percent, and between one-third and one-half of those who work continue to receive food stamps (Table III.5C and Figure III.1C). Over the course of the 13-month analysis period, 42.3 percent of people in the ineligible cohort work at least one month (Table III.4).

²¹In month 13, 64.6 percent of people in the ineligible cohort receive food stamps and 38.3 percent are ABAWD FSP participants. Thus, 59.3 percent ($38.3\% / 64.6\%$) of FSP participants are ABAWD. The remaining 40.7 percent are non-ABAWD.

²² $(22.1\% / 38.3\%) = 57.7\%$

TABLE III.5C

PATTERNS OF WORK AND FSP PARTICIPATION OF THE INELIGIBLE COHORT*

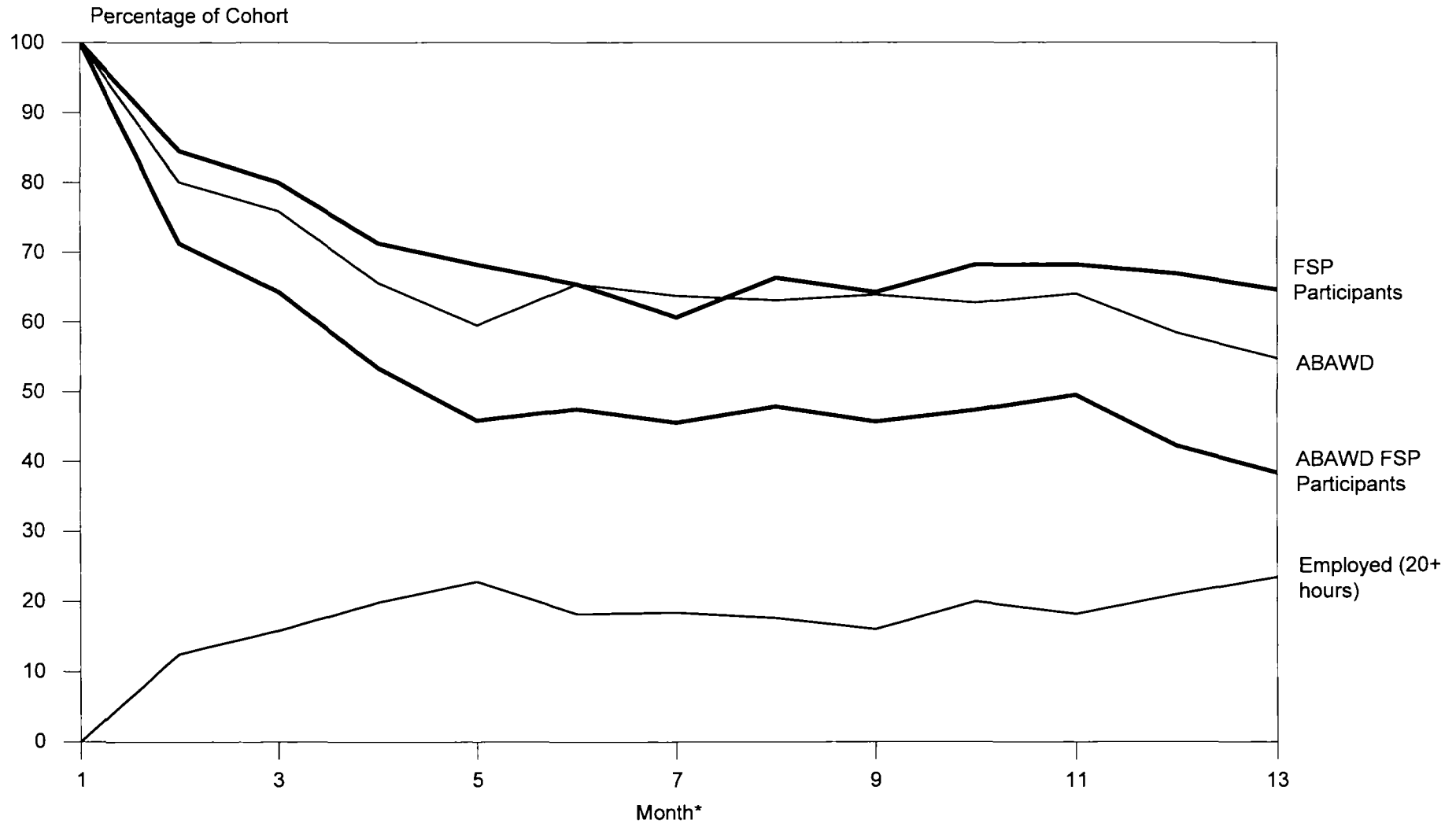
Thousands	MONTH**												
	1	2	3	4	5	6	7	8	9	10	11	12	13
Ineligible Cohort (n = 211)	930	930	930	930	930	930	930	930	930	930	930	930	930
Employed (Working 20+Hours)	0	116	147	184	212	169	171	164	149	186	169	195	218
Working 1 to <20 hours	83	45	62	44	27	50	48	43	59	39	47	43	44
Not Working	846	769	720	702	691	711	711	723	721	704	713	692	667
Receiving Food Stamps	930	786	744	663	634	608	564	617	597	634	634	622	601
ABAWD	930	745	706	610	553	608	592	587	594	583	595	543	509
ABAWD and Food Stamps	930	663	598	497	426	442	423	445	425	440	460	392	356
Employed and Food Stamps	0	68	84	69	83	48	46	49	54	84	61	96	104
Percentages													
	MONTH*												
	1	2	3	4	5	6	7	8	9	10	11	12	13
All Persons (n = 211)	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Employed (Working 20+Hours)	0.0	12.5	15.8	19.8	22.8	18.2	18.4	17.6	16.0	20.0	18.2	21.0	23.4
Working 1 to <20 hours	8.9	4.8	6.7	4.7	2.9	5.4	5.2	4.6	6.3	4.2	5.1	4.6	4.7
Not Working	91.0	82.7	77.4	75.5	74.3	76.5	76.5	77.7	77.5	75.7	76.7	74.4	71.7
Receiving Food Stamps	100.0	84.5	80.0	71.3	68.2	65.4	60.6	66.3	64.2	68.2	68.2	66.9	64.6
ABAWD	100.0	80.1	75.9	65.6	59.5	65.4	63.7	63.1	63.9	62.7	64.0	58.4	54.7
ABAWD and Food Stamps	100.0	71.3	64.3	53.4	45.8	47.5	45.5	47.8	45.7	47.3	49.5	42.2	38.3
Employed and Food Stamps	0.0	7.3	9.0	7.4	8.9	5.2	4.9	5.3	5.8	9.0	6.6	10.3	11.2

SOURCE: 1990 SIPP longitudinal file

* The ineligible cohort includes all people who lose eligibility due to the time limit between April 1990 and February 1991.

** Month 1 refers to the month the person loses eligibility due to the time limit. Months 2 through 13 are the 12 months following that month.

FIGURE III.1C
PATTERNS OF ABAWD STATUS, EMPLOYMENT, AND FSP PARTICIPATION
(INELIGIBLE COHORT)



SOURCE: 1990 SIPP longitudinal file

* For ineligible cohort, month 1 is the month eligibility is lost.

IV. EMPLOYMENT PROSPECTS OF ABAWD FSP PARTICIPANTS

In that job gain accounted for two-thirds of all transitions out of ABAWD status, the ability of ABAWD FSP participants to find employment will be a key determinant of the number of people who eventually reach PRWORA's time limit. In this chapter, we examine the employment prospects of ABAWD FSP participants, focusing particularly on what is known about the labor market conditions that these individuals face and the likelihood that they will obtain jobs. This examination includes both a descriptive analysis of SIPP data and a comprehensive review of the literature related to employment of adults similar to those likely to be disqualified from the FSP because of PRWORA's work requirement.

A. PEOPLE WHO WILL BE SEEKING EMPLOYMENT

As pointed out by Holzer (1996), welfare recipients who reach time limits will be competing for a small set of jobs within the nation's labor market. The same is true for ABAWD FSP participants, as both populations are concentrated in terms of location, skill, and other socioeconomic characteristics relevant to the labor market. By definition, all ABAWDs are between the ages of 18 and 49, have no children, and are not disabled. Data from the Current Population Survey indicate that nearly 80 percent of ABAWDs live in urban areas and nearly 60 percent live in inner cities, suggesting that employment for residents of these areas will be the most relevant to consider.¹

Nearly three-quarters of ABAWD FSP participants are outside the labor force, and 21 percent are unemployed (Table II.6). The fact that most of them are not actively seeking work suggests that they have low labor force attachment. They also have low educational attainment. About 42 percent

¹QC data indicate that 75 percent of ABAWDs live in urban areas, but the database does not reveal the proportion who reside in inner cities (Table II.9).

did not complete high school, and 46 percent completed high school or a GED but no further education (Table II.4). Despite these common characteristics of the population, it is also diverse in several key ways. It includes sizable proportions of males and females (Table II.2) as well as sizable proportions of whites (41 percent) and blacks (46 percent). These population characteristics suggest that we should focus on employment prospects for less educated males and females who are whites or nonwhites, have low labor force attachment, and reside primarily in urban areas.

B. THE PROBABILITY OF EMPLOYMENT: EVIDENCE FROM SIPP

The first step in assessing the employment prospects of ABAWD FSP participants is to use SIPP data to examine the probability of obtaining employment. This analysis provides insight into whether persons subject to PRWORA's work requirement will find a job. Using data from the 1990 SIPP longitudinal file, we estimate the likelihood of working at least 20 hours per week on a monthly basis for ABAWD FSP participants who were not working in January 1990 (the ABAWD FSP sample). Because this sample is small, we examine employment probabilities for two other related samples to test the robustness of our findings: the larger sample of ABAWD persons with household income less than 130 percent of poverty in January 1990 (the low-income sample), and ABAWD FSP participants who were not working in January 1991 (instead of 1990).

For the two January 1990 samples, we estimate employment rates for a 26-month period ending in February 1992. As shown in Figure IV.1, the employment rate of the ABAWD FSP participant sample initially increases for approximately 7 months, reaching 18 percent in month 8 (August 1990). During months 9 through 21, the employment rate of this group hovers in the 10- to 15-percent range, with a mean of 11 percent. In the last 5 months (22 through 26), the rate increases again, rising to 19 percent by the end of the period. The mean employment probability during these 5 months is 17 percent.

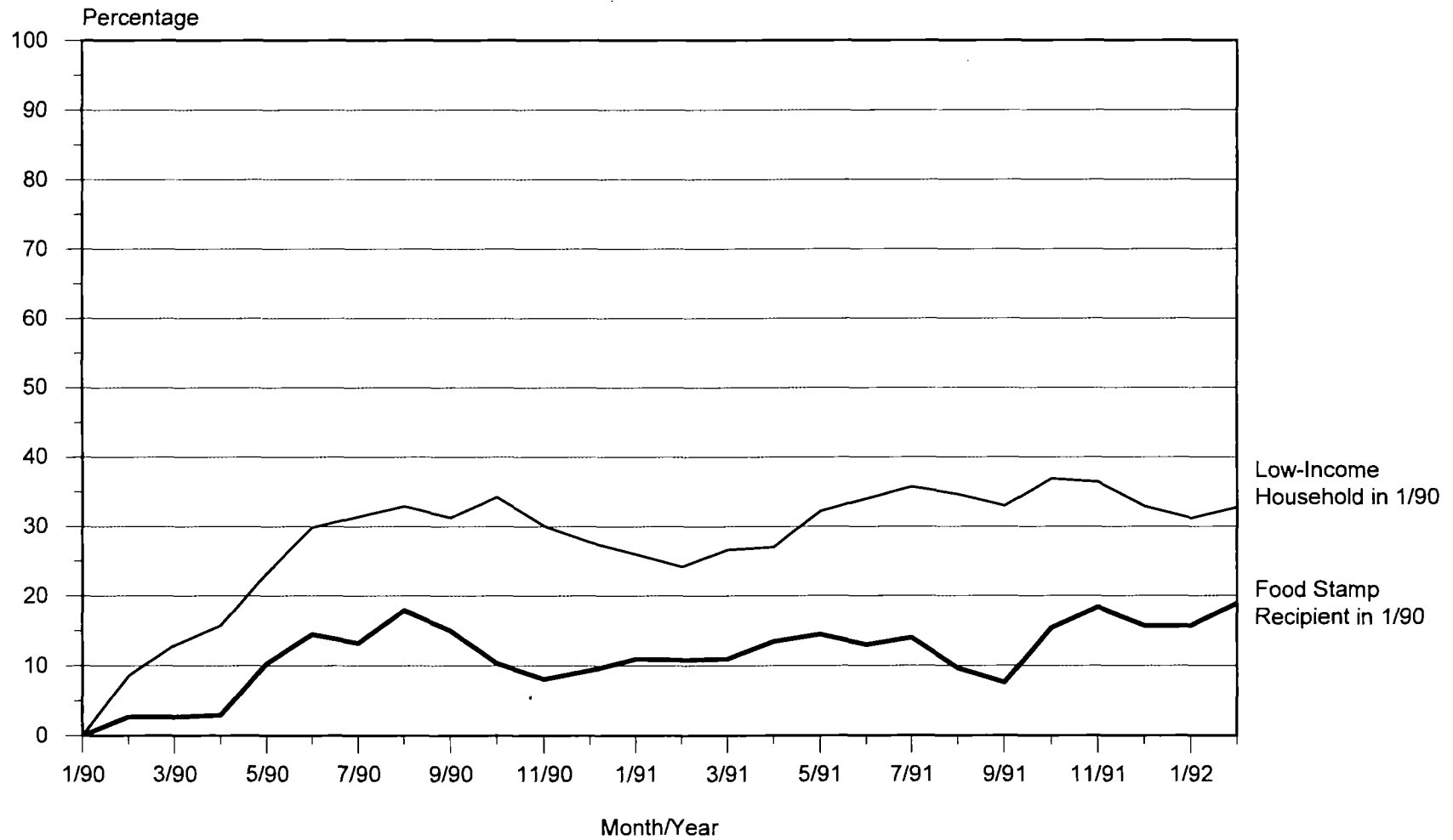
This trend is reinforced by our analysis of the low-income sample, ABAWD persons in households with income less than 130 percent of poverty and not working in January 1990. As shown in Figure IV.1, the low-income sample has a higher level of employment in each month than does the ABAWD FSP sample, but the trends in employment probabilities over time are quite similar.² We would expect the level to be higher for the low-income sample, since it is relatively less economically disadvantaged than the ABAWD FSP sample.

Our analysis of the sample of ABAWD FSP participants who were not working in January 1991 also lends support to our initial findings. When we estimate employment rates for a 14-month period, again ending in February 1992, we find that the levels and patterns in monthly employment probabilities are similar for both groups--ABAWDs who were not working in January 1991 and those who were not working in January 1990. In each case, employment increases from 0 percent to about 15 percent over a 6- to 7-month period, and then levels off between 10 and 20 percent. Figure IV.2 shows the results of the January 1991 analysis and, for comparison, the first 14 months of data for the January 1990 analysis.

It is noteworthy that the above analyses do not reflect any possible behavioral responses to the new law. In particular, they do not account for any increase in employment that may stem from the incentive effect of the time limit--that is, the power of the time limit to motivate individuals to obtain employment in order to maintain or regain FSP eligibility, or to sustain independence. If the time limit does provide an incentive, our estimates may understate the employment prospects of ABAWD FSP participants. On the other hand, our estimates could potentially overstate the

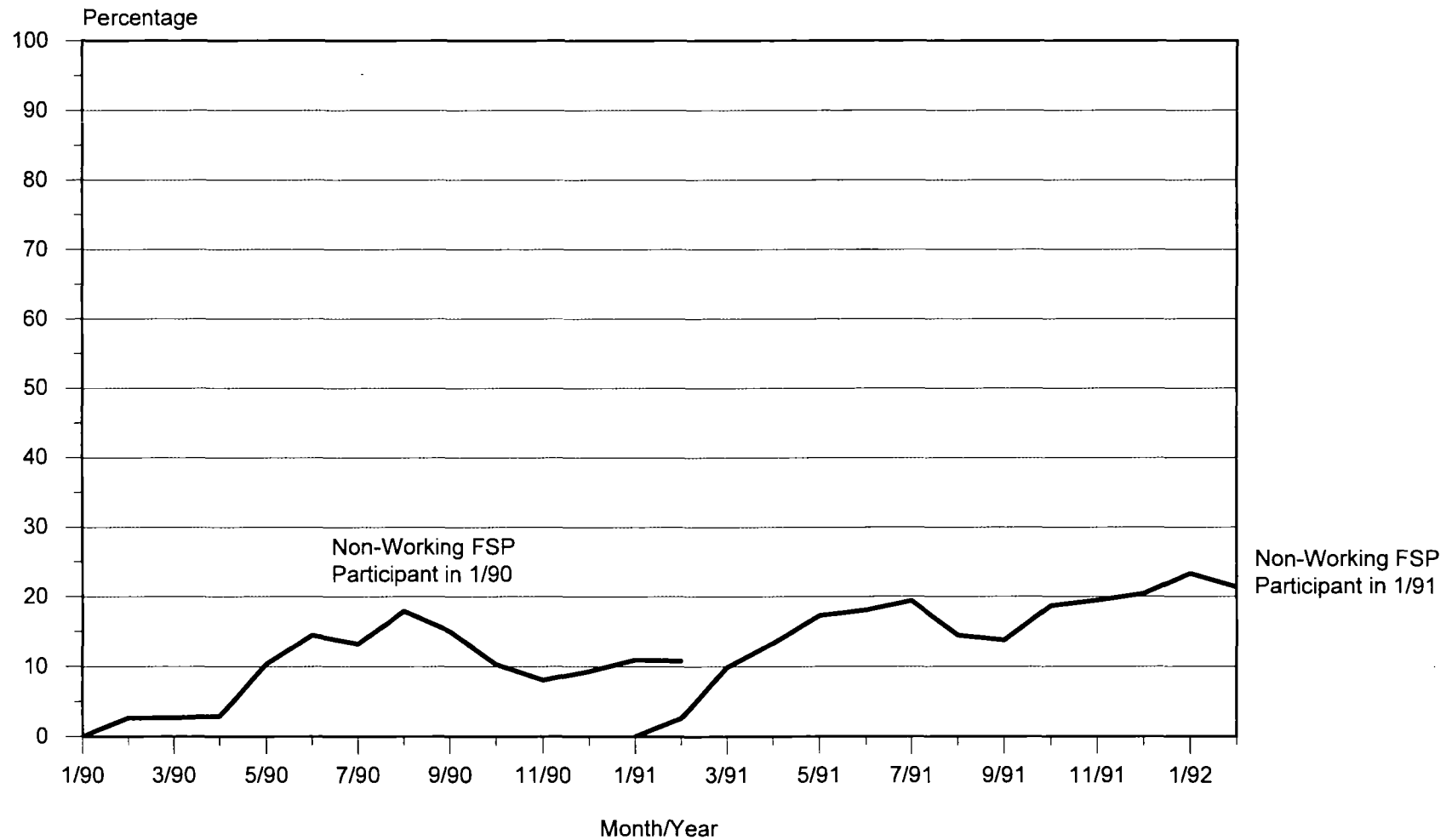
² In the low-income sample, the probability of employment increases for approximately 7 months (from 0 to 33 percent) and then plateaus.

FIGURE IV.1
EMPLOYMENT PROBABILITIES FOR ABAWDs
NOT WORKING IN JANUARY 1990



Source: 1990 SIPP Longitudinal File

FIGURE IV.2
EMPLOYMENT PROBABILITIES FOR ABAWDs
NOT WORKING IN JANUARY 1990 / JANUARY 1991



Source: 1990 SIPP Longitudinal File

prospects of ABAWDs who are disqualified because these longer-term ABAWDs probably have weaker job prospects than ABAWDs who are not working in a given month. If we assume that the competing possibilities (understating and overstating) offset each other, then our finding that approximately 10 to 20 percent of ABAWD FSP participants become employed after about 7 months is a reasonable approximation of employment prospects for this population.

C. EMPLOYMENT PROSPECTS: EVIDENCE FROM THE LITERATURE

In this section, we synthesize evidence from the research literature to address the following six questions relating to the likelihood that ABAWDs will be able to obtain jobs:

1. How many jobs are available for these types of workers?
2. What types of jobs are most available? In what occupations and industries?
3. Where are the jobs? What locational issues will these workers face?
4. What kinds of skill requirements will these workers face?
5. What recruitment and hiring processes will these workers face?
6. How will local conditions affect employment prospects?

1. Overall Job Availability

Implicit in PRWORA's work requirement is the assumption that there are enough employment opportunities for ABAWDs--that is, they can find work if they seek it.³ This is consistent with Mead's (1992) view that poor, low-skill adults are not working because they do not seek jobs, not because of insufficient opportunities. However, a relatively large body of research indicates that the

³PRWORA does include a provision that allows states to seek federal permission to exempt ABAWDs from the work requirement if they live in an area where the unemployment rate is above 10 percent or if not enough jobs are available. Later in this chapter, we discuss the importance of local economic conditions.

labor market situation of the low-skilled has become considerably worse in recent decades and that their current employment prospects are limited. This suggests that even if ABAWDs are willing to work, they may be unable to do so because there are not enough jobs for low-skilled workers.

a. Trends

Structural changes in the U.S. economy during the past few decades have adversely affected the employment prospects of low-skill workers (Acs and Danziger 1993, Bound and Holzer 1993, Blackburn et al. 1990). Technological advances and international competition, among other changes, have reduced employment in well-paying, low-skill manufacturing jobs while increasing employment in high-skill service jobs. In general, industries and occupations with the most job growth increasingly demand substantial education and training, putting low-skill workers at a disadvantage. In addition to this 'mismatch' between skills demanded by employers and skills offered by low-skill workers, research suggests that a 'spatial mismatch' has developed in which low-skill workers, concentrated in cities, are separated from low-skill jobs, concentrated in suburbs (see Holzer 1991 for a review). The spatial mismatch theory (described in detail in Section 3) maintains that the suburbanization of employers and educated populations has left the urban poor and less-educated, especially blacks, to contend with a weak secondary labor market in the inner cities.

b. The Current Situation

The most recent research on employment prospects for low-skill adults suggests that there will be relatively few jobs available for ABAWDs. Holzer (1996) has completed a comprehensive study of the employment prospects for less-educated workers in the U.S. based on a survey of over 3,000 employers in four major metropolitan areas (Atlanta, Boston, Detroit, and Los Angeles). On the basis of his findings, Holzer concludes that "the employment and earnings prospects of less-educated and

less-skilled workers, especially among minorities and those with limited work experience (such as long term welfare recipients), look particularly grim.”

Holzer found a net shortage of available positions for less-educated workers seeking employment. In the locations he studied, the unemployment rate was 6 to 7 percent, while the job vacancy rate--the percent of positions unfilled--was under 3 percent. This implies that there will be a substantial amount of “queueing up” for jobs. Holzer points out that the more disadvantaged, less-skilled job seekers--which many ABAWDs will be--are always at the back of the queue, and for this reason, jobs will not be available to them even when the economy is strong. He found that there is more unemployment per vacancy in the inner cities than in the suburbs, indicating even less job availability for city residents. In Detroit, he found that the unemployment-to-vacancy ratio is two to three times higher in the inner city than in the entire metropolitan area.

Newman and Lennon’s (1995) recent study of minimum wage employment provides more clear evidence of the large imbalance between job seekers and vacancies in the inner city. Looking at the fast-food industry in Harlem, they found 14 job seekers for every 1 hire. In addition, 83 percent of job seekers who did not initially obtain employment had not found a job one year later.

These recent studies confirm earlier research by Abraham (1983, 1987) and Holzer (1993) on the imbalance between job seekers and job vacancies. Abraham’s first study on this topic showed that since the 1960s, the number of unemployed persons and job seekers have consistently exceeded the number of job vacancies. Using data on 28 local labor markets, Holzer (1993) also found that unemployment rates significantly exceed vacancy rates throughout the business cycle. Of interest to the present study, he found that unemployment is greater in labor markets with high concentrations of less educated workers.

Together, these studies depict a situation in which ABAWDs--particularly the urban, less-educated, minority individuals--will have limited job prospects because they will enter job markets in which there is a shortage of jobs vacancies for persons with their skills.

2. Types of Jobs That Are Available

According to the recent study by Holzer (1996), the jobs that are available to less-educated workers in the current economy are concentrated in retail trade and service industries, while jobs in manufacturing and construction are relatively limited. In particular, 60 to 65 percent of jobs that do not require a college education are in retail trade, finance, or services, while only 16 to 25 percent are in manufacturing. These results are consistent with the finding that there has been a broad-based shift away from manufacturing in the U.S. economy in recent decades (Acs and Danziger 1993, Bound and Holzer 1993, Holzer 1991). This trend has clearly continued to the present, when jobs in manufacturing constitute only a small fraction of the available positions in metropolitan areas and an even smaller fraction in inner cities (Holzer 1991).

In terms of occupation, Holzer (1996) found that the jobs most available to workers without a college education are in white-collar occupations, especially clerical. In Atlanta, Boston, and Los Angeles, clerical jobs account for 38 to 40 percent of all new jobs for noncollege workers. In Detroit, however, the highest proportion of jobs are in the service sector (26 percent). In the suburbs of all four cities, the clerical area has the highest proportion of jobs. The next occupation category in which new jobs are most often available for the noncollege educated is either sales or professional/managerial. Together, these two occupations account for another 31 to 33 percent of noncollege jobs in the four cities and for 27 to 32 percent in their suburbs.

3. The Spatial Mismatch Theory

Assuming that the spatial mismatch theory is actually operating, it does not bode well for the employment prospects of ABAWDs. The concept of 'spatial mismatch' has been examined in several recent studies (Holzer 1996, Newman and Lennon 1995, Moss and Tilly 1995a) as well as many earlier ones (see Holzer 1991a for a review). Originally this theory was developed to explain employment differences between blacks and whites. It posits that the combination of segregation in the housing market and the shift of low-skill jobs from the inner cities to the suburbs has created an acute imbalance between the location of black workers and the jobs available to them. Holzer's (1991) review of 20 years of research on spatial mismatch concludes that the phenomenon has a substantial negative effect on employment prospects for blacks, and that the importance and relevance of spatial mismatch has been growing over time. Kasarda (1990) suggests that employers have moved to the suburbs in response to economic incentives, while black urban residents have not been able to follow these jobs because of spatial constraints. Recently, Moss and Tilly (1995a) suggested that companies have moved not only in response to pure economic incentives, such as lower land costs, but also because they prefer a suburban, predominantly white workforce.

Empirical evidence of the spatial mismatch is provided by the employment outcomes of Chicago's Gautreaux program, which relocates low-income, inner-city Chicago blacks to middle-class suburbs. In studying this program, Popkin et. al (1993) found that those who moved into private housing in the suburbs were 13 percent more likely to be employed than a control group of residents who moved to private housing in the inner city, even though the program has no job training or counseling. Additionally, 46 percent of those who had never been employed found work after moving to the suburbs, compared with 30 percent of the city residents who had never been employed.

Other research has shown that the positive effect of moving to the suburbs on employment is maintained after controlling for training, education, parental status, and job history (Skinner 1995).

Most of the spatial mismatch literature has focused on males, especially blacks. However, at least one study that included women suggests that women may be particularly affected by spatial mismatch (Blackley 1990). In fact, this study of the mismatch between suburban low-skill jobs and urban low-skill residents in large U.S. metropolitan areas found stronger evidence of spatial mismatch for women than for men.

Holzer (1996) provides evidence of spatial mismatch and locational constraints on employment for less-educated workers in the current labor market. He found a shortage of available noncollege jobs in the inner cities relative to the suburbs, which he suggests has been driven by the fact that manufacturers, traditionally one of the largest employers of low-skill workers, have been the most likely to move to the suburbs. He also found that it is more difficult to “match” workers to jobs in the inner cities because of the relatively high skill requirements of jobs remaining there and the relatively low skills of city residents. In addition, Newman and Lennon’s (1996) study of Harlem suggests that even for the low-skill jobs in the central cities, there are limited prospects for urban residents because employers prefer job applicants who commute from more distant neighborhoods. Holzer points out that the separation of suburban low-skill jobs from urban low-skill workers would not be a problem if these workers had means of traveling to the suburbs to work and to seek work. However, he notes that it is difficult for poor, urban residents, many of whom do not have automobiles, to commute to the suburbs.

4. Skill Requirements

The employment prospects of ABAWD FSP participants are closely tied to the level and nature of skills demanded by employers relative to the skills these individuals bring to the labor market. We

know that most of these individuals have no more than a high school education and are not actively seeking work, from which we infer that they have relatively weak labor force attachment and experience. In this section, we examine evidence on the demand for these types of workers and the skill requirements they face.

a. The Decline in Low-Skill Employment

As noted by Moss and Tilly (1995b), the significant decline in the demand for low-skill workers in the U.S. economy in recent decades stems from at least two sources. First, in response to technological change, shifts in the industrial structure of the economy have generated the growth of high-skill sectors and the decline of low-skill sectors. Second, changes within industries and occupations have increased the demand for higher skills. Both of these trends have negatively affected the employment prospects of low-skill workers. The net shortage of jobs in the inner cities, as described above, has also led to increasing demands for higher skills, further disadvantaging low-skill urban residents, particularly those with little work experience (Newman and Lennon 1995, Moss and Tilly 1995a). In an environment where the number of job applicants far exceeds the number of jobs, employers have been able to select those with the most skills and experience, even within the low-skill sector (Newman and Lennon 1995, Holzer 1996). This has diminished the job prospects of low-skill workers in inner cities above and beyond the difficulties posed by the 'skills mismatch' that exists economy-wide (Wilson 1987, Kasarda 1995).

b. The Skills Demanded in Low-Skill Jobs

The recent studies by Holzer (1996) and Moss and Tilly (1995a) have examined the skill requirements for jobs available to low-skill workers, where low-skill is defined as having no more than a high school education. These studies are based on interviews with employers in Atlanta,

Boston, Detroit, and Los Angeles. Holzer found that the majority of noncollege jobs require workers to use a range of cognitive and interactive skills on a daily basis, including reading, writing, arithmetic, using computers, and dealing with customers. These skill requirements are particularly prevalent in noncollege jobs in clerical and professional/managerial, or white collar, occupations. The requirements are also more common in inner cities than in the suburbs, even within particular occupations. Only 5 percent of noncollege jobs in the inner city do not require reading, writing, arithmetic, using computers, or dealing with customers (Holzer 1996).

Holzer also examined the credentials that employers require for low-skill jobs. He found that most require a high school diploma (75 percent), general work experience (70 percent), references (73 percent), and specific work experience (60 percent). A substantial minority of employers require previous training (40 percent). Employers are particularly unlikely to hire applicants who do not have stable work histories. Approximately 80 to 85 percent of employers reported that they would hire someone who was a welfare recipient; however, Holzer noted that this could be biased upward since employers may have felt this was the “politically correct” response. At the same time, less than 50 percent reported that they would hire someone who had no more than part-time or short-term prior experience, which would be true of many ABAWDs.

Moss and Tilly’s studies (1995a and 1995b) highlight the growing importance of “soft skills,” such as motivation, good communication, teamwork, and “people” skills in addition to the “hard skills” of reading and math. Interviews with employers showed that entry-level jobs that require no more than a high school education are demanding an increasing level of both hard and soft skills as a result of both technological and organizational changes during the past 10 years. Moss and Tilly argue that the rising demands for soft skills, in particular, put low-skill black males at a disadvantage because employers perceive that they do not have such skills. More generally, Holzer (1996) found

that employers “perceive a lack of a broad range of skills and credentials among black and Hispanic job applicants” for noncollege jobs. These findings suggest that nonwhite ABAWDs will face even greater difficulty securing employment than their white counterparts.

5. Recruitment and Hiring Conditions

Another important element in the employment prospects of ABAWD FSP participants is the recruitment and hiring processes they will face in seeking low-skill jobs. Three recent studies have highlighted the importance of informal networks and personal connections in recruitment (Holzer 1996, Newman and Lennon 1996, Moss and Tilly 1995a). These studies suggest that these informal connections between job seekers and jobs, well-known to be important at the high end of the labor market, are also crucial at the low end. Holzer’s (1996) survey of employers in Atlanta, Boston, Detroit, and Los Angeles found that over 50 percent of hires for noncollege jobs are generated by referrals, and nearly half of all referrals come from current employees. Interviews with employers in four industries in Los Angeles and Detroit conducted by Moss and Tilly (1995a) also highlight the importance of “word of mouth” and employee referral in recruiting for low-skill jobs. The researchers found that these practices are used by about two-thirds of employers, many of whom consider them the primary source of job applicants.

Holzer (1996), Newman and Lennon (1995), and Moss and Tilly (1995a) all reach a similar conclusion regarding the growing importance of informal recruiting practices: job seekers who have few connections in the market--such as low-skill persons in families, neighborhoods, or ethnic groups in which few adults hold jobs--are at a significant disadvantage in securing employment. This is consistent with Wilson’s (1987) “social isolation” hypothesis, in which an important factor in joblessness among black males is their isolation from informal job networks. Together, these studies suggest that the employment prospects of ABAWDs will be contingent upon an individual’s

connections in the labor market. For those with few connections, the probability of securing employment will be particularly low.

6. The Importance of Local Conditions

Research suggests that the employment prospects of ABAWDs will depend significantly on the prevailing economic and other conditions in the location of their job search. PRWORA includes a provision that allows states to exempt ABAWDs from the work requirement if they reside in areas with high unemployment or an insufficient number of jobs. This provision seems to respond to the hypothesis that the probability of obtaining a job is greatly diminished when there is a shortage of available jobs in the local economy. Consistent with this hypothesis, a study by the Institute for Women's Policy Research (1996) has shown that welfare recipients in states with low unemployment rates are significantly more likely to secure employment.

a. Aggregate Demand and Employment

The literature indicates that the labor market demand and overall employment in the local economy will be significant determinants of the employment prospects of ABAWDs. A study by Osterman (1991) suggests that gains from a strong economy do extend to the lowest skilled and most economically disadvantaged. This study is based on a comparison of data on the Boston economy before and during the "Massachusetts Miracle" of the late 1980s with data on the national economy from the Current Population Survey for the same years. In 1987, Boston's citywide unemployment rate had fallen to 2.7 percent, compared with a national unemployment rate of 6.2 percent; Osterman's comparison of poverty rates in Boston in 1980 and 1988 and between poverty rates in Boston and the nation as a whole strongly suggest that sustained full employment in an area does improve the employment and income situation of the poorest residents. Hence, a tight local labor

market--tight in the sense that unemployment is low--is likely to matter significantly to ABAWDs seeking jobs.

Supporting this hypothesis, Freeman (1991) found that in metropolitan statistical areas (MSAs) with tight labor markets--defined as market with an unemployment rate of 5 percent or less--the employment prospects of young black men with low education (fewer than 12 years) are substantially improved. Similarly, Moore and Laramore (1990) found that increases in total employment in the inner city significantly increase the labor force participation of black males. Additionally, Bound and Holzer (1993) found that employment outcomes for black and white males were significantly affected by MSA-level economic conditions. It is also noteworthy that local labor markets vary substantially in terms of "tightness." In 1994, when national unemployment in metropolitan areas was at 6.1 percent, it varied from a low of 2.6 percent in Lincoln, Nebraska, to a high of 18.2 percent in McAllen-Edinburg-Mission, Texas (Wolman 1996).

Several studies of public assistance recipients suggest that the preceding findings also pertain to the welfare population. For example, Vartinian (1995) found that increases in the unemployment rate of the recipients' metropolitan area lower the likelihood of exiting welfare through employment. In addition, West et al. (1993) found that increases in the unemployment rate reduce the probability that participants in job training programs are employed 20 or more hours per week 13 weeks following training. Fitzgerald (1995) also found that local area economic conditions, including the unemployment rate and level of retail sales, are significant predictors of the probability of exiting welfare for blacks.

b. Regional Variations

Differences in economic conditions and in the demand for skilled workers are likely to result in varied employment prospects for ABAWDs living in different regions of the country. Herzog and

Schlottmann (1995) found significant regional effects on the re-employment of displaced workers after controlling for worker, job, and locational characteristics. Holding these factors constant, the probability of re-employment is greatest in the South, second highest in the West, third highest in the Midwest, and lowest in the Northeast. They also found that less-educated workers are relatively more disadvantaged in the West and Midwest, where having a college degree provides the largest advantage in terms of re-employment probabilities. Overall, this study suggests that the employment prospects of ABAWDs will vary by region of residence, even after taking account of individual differences.

c. Other Local Factors

In addition to demand, a number of other local factors, including the labor supply conditions and several institutional systems, are likely to affect the employment prospects of ABAWDs. Wolman (1996) argues that such factors are important in moving welfare recipients to work. For example, where the proportion of low-skill persons already seeking work in the local economy is higher, welfare recipients who reach time limits can be expected to have more difficulty securing employment than their counterparts in otherwise similar locales with fewer low-skill job seekers. Wolman also argues that local institutions that support employment--such as employment and training programs, employment agencies, vocational schools, and economic development agencies--are likely to have an important impact on the employment prospects of welfare recipients. Where the availability, quality, and integration of such institutions is high (low), there is the potential for increased (decreased) employment prospects. Other institutional systems that support employment and may vary by location, such as health care, substance abuse treatment, transportation, and child care, are

also likely to positively affect welfare recipients' transition to employment. With the exception of child care, such institutions are also likely to affect the transition to employment among ABAWDs.

D. CONCLUSIONS

Our analyses of SIPP data and our review of the research literature both suggest that the employment prospects of ABAWD FSP participants are likely to be quite limited. From the SIPP data, we infer the following about the likelihood of ABAWDs obtaining employment:

- ABAWDs who are not working in a given month have an increasing probability of obtaining employment for the subsequent six to seven months.
- In the absence of any incentive effects created by the new law, we can expect approximately 10 to 20 percent of ABAWDs to obtain employment, allowing for the adjustment period described above.

From our review of the literature, we learn that:

- ***Job prospects for ABAWDs do not look promising.*** Structural changes in the U.S. economy over the past few decades have adversely affected the employment prospects of low-skill workers as demand has shifted away from the industries, locations, and skill levels in which ABAWDs are concentrated. The most up-to-date research suggests that current prospects for less-educated job seekers are severely limited, especially for nonwhites and in urban areas, where most ABAWDs reside (Holzer 1996).
- ***Of the jobs that are available to the less-educated, most can be found in the retail trade and service industries and tend to be white collar, especially clerical, jobs.*** This is particularly true in urban areas, where the vast majority of ABAWDs live. It is no longer true that the manufacturing and construction sectors are the dominant employers of low-skill workers.
- ***Many ABAWDs will face a 'spatial mismatch' between the location of their residence and the location of low-skill jobs.*** While over half of ABAWDs reside in inner cities, many large employers of low-skill workers have moved out of the cities to the suburbs. Hence, these individuals are geographically separated from many of the jobs that could have been available to them.
- ***ABAWDs will also likely face a 'skills mismatch' between the skills employers require and the skills they possess.*** This will be particularly true for urban residents, since

employment in the inner city has become increasingly concentrated in high-skill jobs. In addition, competition for the low-skill jobs that do remain in the cities has increased the skill requirements within the low-skill sector.

- ***Jobs that are available to less-educated workers tend to require a range of cognitive and interactive skills.*** These include “hard” skills such as reading, writing, arithmetic, and computers, as well as “soft” skills such as communication and teamwork. Such skill requirements are particularly prevalent in white collar, clerical occupations, where much of the employment is available, albeit limited.
- ***Job prospects will be worse for those who have few connections in the working world.*** This stems from the growing importance of informal networks and referrals in recruitment for low-skill jobs. ABAWDs who are members of families, neighborhoods, or communities in which few adults hold jobs will be at the greatest disadvantage.
- ***The job prospects of ABAWDs will depend significantly on economic conditions prevailing in their local area and region.*** The tightness of the local labor market and the strength of demand, particularly in the industries with the most jobs for low-skill workers, will be an important factor in the probability of employment. In addition, the availability and quality of local institutions supporting employment will influence individuals’ employment prospects.

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