

CONFORMANCE ISSUE: APPLICATION PROCESSING STANDARDS

FOOD STAMP PROGRAM PROVISIONS

Section 11(e)(3) of the Food Stamp Act requires State agencies to complete processing an application and provide an allotment not later than 30 days after the filing of an application. Section 11(e)(9) requires State agencies to provide an allotment no later than five calendar days after application to the following households: (1) Households with liquid resources of \$100 or less who (a) have income less than \$150 or (b) are destitute migrant or seasonal farmworker households, (2) homeless households, and (3) households whose combined gross income and liquid resources are less than their rent or mortgage and utilities.

Section 273.2(g) of the regulations implements the 30-day normal processing requirement. Eligible households that complete the initial application process shall have an opportunity to participate as soon as possible, but not later than 30 days after the date the application was filed. An exception is made for residents of public institutions who apply jointly for supplemental security income (SSI) and food stamps prior to release. The processing time frame for those households is 30 days from the date of release from the institution. Section 273.2(i) implements the special provisions for households entitled to expedited service. Section 273.10(a)(1)(ii) provides that benefits shall be provided from the date of application, except for individuals who apply jointly for SSI and food stamps prior to release from a public institution.

AFDC PROVISIONS

Section 402(a)(10)(A) of Title IV-A of the Social Security Act requires that AFDC benefits be provided to eligible applicants "with reasonable promptness." Section 206.10(a)(3) of the AFDC regulations requires that a decision of eligibility shall be made "not in excess of 45 days" from the date of application. Section 206.10(a)(6) provides that assistance for eligible families shall begin no later than either the date of authorization of payment or 30 days from the date of receipt of a signed and completed application form, whichever is earlier. Federal financial assistance is provided as early as the date of application if the assistance unit meets all eligibility conditions; however, States that pay for the month of application must prorate the benefits.

SUMMARY

FSP and AFDC provisions differ in that there are no expedited service requirements in AFDC and the maximum application processing time for AFDC is 45 days, compared with 30 days in the FSP. In AFDC, States may opt to set a standard of less than 45

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days for application processing, and benefits are not automatically provided from the date of application as they are in the FSP. According to the 1989 edition of Characteristics of State Plans for AFDC, action must be taken on applications with 45 days in 37 States, within 30 days in 16 States, and within 15 days in one State. Assistance for eligible families begins with the date of application in 32 States, with the date of payment authorization or no later than 30 days after application in 21 States, and 15 days after application in one State.

**CONFORMANCE ISSUE: APPLICATION PROCESSING - REQUIREMENT TO
SCHEDULE A SECOND INTERVIEW**

FOOD STAMP PROGRAM PROVISIONS

Section 273.2(e)(3) of the food stamp regulations requires a State agency to attempt to schedule another interview if the household misses the one originally scheduled. The household does not have to provide good cause for missing the interview. Section 273.2(g)(2) provides that if the household has failed to appear for two scheduled interviews and has expressed no further interest in continuing the application process, the State agency shall send the household a notice of denial on the 30th day after application.

AFDC PROVISIONS:

There is no requirement in the AFDC regulations that a State agency reschedule a missed interview.

SUMMARY

In food stamps, the agency must attempt to schedule a second interview if the household misses the first one. There is no similar requirement in AFDC.

CONFORMANCE ISSUE: APPLICATION PROCESSING - VERIFICATION

FOOD STAMP PROGRAM PROVISIONS

The Food Stamp Act contains specific requirements for verification of client information at the time of application. Under the provisions of section 11(e)(3) of the Act, State agencies must verify nonexcluded income, household size (if questionable), and other factors the Secretary deems necessary. States may verify other factors at their option, including household size even if it is not questionable. The Act requires States to provide applicants a clear written statement explaining what the household must do in order to cooperate in obtaining verification. The State agency must assist the household in obtaining verification. Households cannot be required to submit additional proof of a matter on which the State agency already has current verification, unless there is reason to believe the information is inaccurate, incomplete or inconsistent. The agency must not deny an application because of the failure of a person outside the household to cooperate.

Section 11(e)(19) requires that information be requested and exchanged for purposes of income and eligibility verification in accordance with section 1137 of the Social Security (SS) Act. Any additional information available from agencies administering State unemployment compensation laws under section 303(d) of the SS Act must be requested and used to the extent permitted under that section.

In addition, section 121(c) of the Immigration Reform and Control Act (IRCA) of 1986 (Public Law 99-603) requires State agencies to validate the documentation of alien applicants for food stamps through use of the Systematic Alien Verification for Entitlement (SAVE) system developed by the Immigration and Naturalization Service (INS).

Food Stamp Program regulations provide detailed requirements for verification at application, including identification of the eligibility and benefit factors that must be verified, State agency options, sources of verification, and documentation. Section 273.2(f)(1) requires States to verify gross nonexempt income, alien status, actual utility expenses of households that claim actual costs, medical expenses, social security numbers, residency, identity, disability, and household composition if it is questionable. In addition, State agencies must verify all factors of eligibility for households who reapply after being terminated for refusal to cooperate with a State or Federal quality control reviewer. Section 273.2(f)(2) requires State agencies to verify eligibility factors the State agency considers questionable and to establish guidelines as to what is questionable. Section 273.2(f)(2)(ii) requires verification of citizenship if the household's statement that one or more of its members are U.S. citizens is questionable.

Section 273.2(f)(3) allows the State agency to verify any other factor of eligibility or allotment, including household size even if it is not questionable. The requirement may be applied Statewide or in single project areas, but not on a case-by-case basis. If a State agency opts to verify a deductible expense, and obtaining the verification may delay the household's certification, the State agency shall advise the household that its eligibility and benefit level may be determined without the deduction.

Section 273.2(f)(4) provides requirements regarding sources of verification. Documentary evidence is the primary source of verification for all items except residency and household size. Residency and household size may be verified either through readily available documentary evidence or a collateral contact. Home visits may be used as verification only when documentary evidence is insufficient to make a firm determination of eligibility or benefit level or when documentation cannot be obtained. The home visit must be scheduled in advance with the household. Section 273.2(f)(5) provides that the household has the primary responsibility for providing documentary evidence of its circumstances, but the State agency must assist the household in obtaining verification if the household cooperates. If documentation is insufficient or cannot be obtained, the State agency may require the household to provide the name of a collateral contact. If the collateral contact designated by the household is unacceptable, the State agency shall either designate another, ask the household to designate another or provide an alternative, or substitute a home visit. If unverified information from a source other than the household contradicts the household's statements, the household must be given an opportunity to resolve the discrepancy prior to a determination of eligibility or benefits. The agency may try to verify the information directly and contact the household only if it is unsuccessful. As provided in section 273.2(f)(6), case files must be documented in sufficient detail to permit a reviewer to determine the reasonableness and accuracy of the determination.

Sections 272.8 and 273.2(f)(9) provide requirements for operation of the Income and Eligibility Verification System (IEVS) required by section 1137 of the SS Act. The State must request wage and benefit information for applicants and recipients from the State Wage Information Collection Agency (SWICA), the Social Security Administration (SSA), and the agency administering Unemployment Insurance Benefits. Unearned income information must be requested from the Internal Revenue Service (IRS). Section 273.2(f)(9) describes the actions the State must take in response to the information. Information obtained from an agency regarding that agency's benefits is considered verified upon receipt. However, if the information obtained from IEVS about a

particular household is questionable, regardless of source, the information shall be considered unverified upon receipt and must be verified independently. Information not considered verified upon receipt is that obtained from nonsource agencies, including unearned income information from IRS and wage information from SSA and SWICAs. The State agency must obtain independent verification of this information by contacting the household and/or the appropriate source. If the agency contacts the household, it must do so in writing and request that the household respond within 10 days. Section 273.2(f)(1)(v) requires the agency to submit the social security numbers (SSN) of household members to SSA for verification. The agency shall accept as verified an SSN that has been verified by AFDC, SSI or another program participating in IEVS.

Sections 272.11 and 273.2(f)(10) contain requirements for validation of alien documents through the INS SAVE system. The State agency must allow an applicant alien at least 10 days in which to submit acceptable documentation of eligible alien status. If an alien has not done so by the 30th day after application, the alien (not the entire household) is ineligible for participation. The written consent of an alien is not required as a condition for the State agency to contact INS. The use of SAVE must be documented in the case file or other agency records.

AFDC PROVISIONS

There are no verification requirements in Title IV-A of the SS Act except the provisions in Section 402(a)(25) relating to the IEVS requirements of Section 1137 of the Act. Section 1137(d) of the SS Act requires verification of alien documentation through the INS SAVE system.

Sections 205.51 through 205.62 of the AFDC regulations implement the requirements for obtaining and using information from IEVS sources. Section 205.52(g) requires State agencies to submit all unverified SSNs to SSA for verification. The State agency may accept as verified an SSN provided directly to the State by SSA or by another federal or federally assisted benefit program which has received the number from SSA or has submitted it to SSA for verification. Section 205.56(a)(1)(ii) requires the State agency to verify that the information obtained through IEVS is accurate and applicable to case circumstances, either through the applicant or recipient or through a third party, if verification is determined appropriate based on agency experience. Unearned income information provided by IRS must be independently verified. The verification of IRS data must indicate the amount of the resource or income involved, whether the applicant or recipient actually has or had access to the resource or income

for his or her own use, and the period when the individual had the resource. The agency must verify the IRS information by requesting the source of the income to verify the amount of the unearned income or resource or by sending a letter to the client informing him or her of the information and asking for a response within a specified time period. If benefits are reduced, suspended, terminated or denied as a result of information obtained through IEVS, the agency must provide notice and an opportunity for a fair hearing in accordance with section 205.10(a).

Section 206.10(a)(8) provides that each decision regarding eligibility or ineligibility must be supported by facts in the case record.

SUMMARY

Food stamp law and regulations include specific requirements for verification and documentation of information needed for eligibility and benefit determinations. Except for provisions related to computer matching, AFDC regulations give States flexibility in determining the information to be verified and the source to be used. FSP regulations prohibit unscheduled home visits; AFDC regulations do not. Verification of some deductible expenses is required for food stamps but not for AFDC. However, there are similarities in verification requirements. Both the Food and Nutrition Service and the Family Support Administration review the accuracy of eligibility decisions and the benefit amounts through quality control systems, with the result that information is verified prior to certification in order to avoid errors. Both agencies are required to validate alien documentation through the INS SAVE system and to access and use income information from SSA, IRA, SWICAs and UIB agencies. Both agencies give States some degree of flexibility in determining which information to verify.

CONFORMANCE ISSUE: BUDGETING - BEST ESTIMATE/ANTICIPATING INCOME
FOOD STAMP PROGRAM PROVISIONS

Section 5(f)(3) of the Food Stamp Act requires that a prospective income calculation be based on income reasonably anticipated to be received by the household during the period for which eligibility or benefits are being determined. The Act requires that regulations regarding prospective budgeting take into account both the income reasonably anticipated to be received by the household during the period for which benefits are provided and the income received by the household during the preceding 30 days.

Section 273.10(a) of the FSP regulations provides that a household's eligibility shall be determined for the month of application by considering the household's circumstances for the entire month of application. Section 273.10(c) contains procedures for anticipating monthly income. In determining eligibility and benefits for the month of application, the State agency must take into account the income already received by the household during the certification period and any anticipated income the household and the State agency are reasonably certain will be received during the period. If the amount of income or the date it will be received is uncertain, the portion of the income that is uncertain is not counted. If receipt of the income is reasonably certain but the monthly amount may fluctuate, the household may elect to have the income averaged.

Income received during the past 30 days must be used as an indicator of income that is and will be available to the household during the certification period, with the following exceptions:

1. Income received during the past 30 days is not used as an indicator if there have been changes in income or changes can be anticipated.
2. If income fluctuates so much that a 30-day period alone cannot provide an accurate indication of anticipated income, the State agency and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income.
3. If the income fluctuates seasonally, agencies may use the most recent season comparable to the certification period rather than the last 30 days.
4. Households, except those that are destitute and monthly reporting households, may elect to have their income averaged.

5. There are special procedures for handling self-employment and contract income. Those procedures are discussed as a separate issue.
6. Education income is averaged over the period for which it was provided.

AFDC PROVISIONS

Section 233.31(b)(1) of the AFDC regulations provides that in prospective budgeting, the agency must determine eligibility and compute the amount of assistance based on its best estimate of income and circumstances which will exist in that month. This estimate must be based on the agency's reasonable expectation and knowledge of current, past or future circumstances.

Section 233.20(a)(3)(iii) provides that State agencies may prorate income received by individuals employed on a contractual basis over the period of the contract or may prorate intermittent income received quarterly, semiannually, or yearly over the period covered by the income. The income may be prorated in determining eligibility prospectively and benefit amounts both prospectively and retrospectively.

SUMMARY

The Food Stamp Act and regulations contain specific requirements for anticipating income, including provisions that income received in the past 30 days be used as an indicator of future income unless special circumstances are present and that income not be used if the date or amount is uncertain. The AFDC regulations allow the State agency to develop a best estimate of income based on reasonable expectations and knowledge of the household's circumstances.

CONFORMANCE ISSUE: RETROSPECTIVE BUDGETING - INCOME FROM A TERMINATED SOURCE

FOOD STAMP PROGRAM PROVISIONS

The Food Stamp Act does not address treatment of terminated income in retrospective budgeting. There are two regulatory provisions. One applies to all households with income that terminates in a beginning month. The other applies only in States that count the public assistance (PA) grant from the issuance month in determining eligibility and benefits.

The beginning month provision in 7 CFR 273.21(g)(3) requires State agencies to disregard income received in a either or both of the beginning months from a terminated source when the beginning month becomes the budget month. The disregard applies only if the income was counted in the household's prospective budget for the beginning month. It applies to income the household received in the budget month from a source that no longer provides income to the household. Income is considered to be from a terminated source if it is anticipated that it will not be received again from exactly the same funding source. For example, a household member works as an aide at the Sunset Nursing Home. In July her employment ends and she applies for food stamps. In August she begins work as an aide at the Family Nursing Home. In determining food stamp benefits for September in a two-month retrospective budgeting system, her earnings for July would be disregarded if they were counted prospectively.

The regulations at 7 CFR 273.21(j)(1)(vii)(B) contain a special provision for disregarding terminated income in a household that receives PA. It applies if the State agency has opted to use the PA grant from the issuance month in determining the household's benefits for that month. Any income received in the budget month from a terminated source is disregarded in determining the issuance month's allotment, if it resulted in an increase in the PA grant and the household reported the termination of the income either in the monthly report for the budget month or in some other manner in time for the State agency to process the change and reflect it in the allotment for the issuance month.

AFDC PROVISIONS

Section 233.35(b) provides that for the first and second payment month for which retrospective budgeting is used, the State agency shall not count income from the budget month which is not of a continuous nature and which was already considered for any payment month determined prospectively. In the example cited above, the client's income from the Sunset Nursing Home would not be disregarded in calculating the September AFDC payment because she obtained work of a similar nature the next month.

SUMMARY

The programs differ in the application of the terminated income disregard. In food stamps, a source of income is defined narrowly to mean a specific employer or funding agency. In AFDC, a source of income is more broadly defined to mean a type of employment or similar funding source.

CONFORMANCE ISSUE: RETROSPECTIVE BUDGETING - SUSPENSION

FOOD STAMP PROGRAM PROVISIONS

Section 273.21(n) of the food stamp regulations gives State agencies the option of suspending a household for one month instead of terminating it when the household becomes temporarily ineligible due to a periodic increase in recurring income or other change not expected to continue in the next month. If the household is suspended, the agency must send it a monthly report for the month of suspension and, if the suspended household again becomes eligible, the agency must issue benefits on the household's normal issuance date. If the suspended household does not become eligible after one month, its certification is terminated.

Section 273.21(o) provides that if a household has been terminated or suspended based on an anticipated change in circumstances, the State agency shall not count any noncontinuing circumstances which caused the prospective ineligibility when calculating the household's benefits retrospectively in a subsequent month.

In food stamps, current regulations allow prospective suspension. That is, if it is anticipated that a household will receive five weekly paychecks in March instead of the usual four checks and the increased income will cause the household to be ineligible for March, the agency may suspend the household for March rather than terminating it. When the household submits its monthly report for March and reports receipt of the five checks, the agency will disregard the fifth check in determining benefits for May (in a two-month system), in accordance with section 273.21(o). FNS has approved waivers for State agencies to suspend retrospectively; that is, to issue benefits for March in the example given (based on the four checks received in January) and to suspend the household in May (based on the five checks received in March).

Section 273.21(g)(1) provides that prospective budgeting shall be used in the beginning months. Section 271.2 defines "beginning month" as either the first month for which the household is certified for food stamps in a one month system or the first two months in a two-month system. Except for those months, a beginning month cannot be any month which immediately follows a month in which a household is certified. Therefore, a food stamp household must be budgeted retrospectively following suspension because the household's certification continued during the month of suspension.

AFDC PROVISIONS

Section 233.34(d) allows suspension rather than termination when the unit is ineligible because of income or other circumstances in the corresponding budget month and the ineligibility will be for only one payment month.

Section 233.34(c) provides that a State shall compute the amount of the AFDC payment for the initial month of eligibility retrospectively if (1) assistance has been suspended, and (2) the initial month follows the month of suspension, and (3) the family's circumstances for the initial month have not changed significantly from those reported in the corresponding budget month, e.g., there has been no loss of a job.

SUMMARY

The food stamp regulations allow households to be suspended prospectively if a change is anticipated that will make the household ineligible for one month. Suspended households are budgeted retrospectively after the month of suspension. In AFDC, households are suspended retrospectively and may be budgeted prospectively following the month of suspension if there has been a significant change from the circumstances reported in the corresponding budget month.

CONFORMANCE ISSUE: BUDGETING - CONVERTING INCOME TO A MONTHLY AMOUNT

FOOD STAMP PROGRAM PROVISIONS

Section 273.10(c)(2) of the food stamp regulations provides that whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the State agency shall convert the income to a monthly amount by one of the following methods: multiplying weekly amounts by 4.3 and biweekly (every two weeks) amounts by 2.15, using the State agency's public assistance conversion standard, or using the exact monthly figure if it can be anticipated for each month of the certification period. Although it is not specified in the regulations, the option selected must be applied in all cases. Section 273.21(j)(1)(vii)(A) provides that in retrospective budgeting, the State agency has the option of converting to a monthly amount the income a household receives weekly or biweekly.

AFDC PROVISIONS

There is no similar provision in the AFDC regulations. However, State agencies may use income averaging factors, such as the food stamp conversion factors, in reaching a best estimate of income. Conversion is authorized in the adult assistance programs.

SUMMARY

Food stamp regulations allow State agencies to convert income to a monthly amount by using a conversion factor. AFDC regulations do not address conversion, but State agencies may use conversion factors to calculate a best estimate of income.

CONFORMANCE ISSUE: BUDGETING - PRORATION OF CONTRACT AND SELF-EMPLOYMENT INCOME

FOOD STAMP PROGRAM PROVISIONS

Section 5(f)(1)(A) of the Food Stamp Act provides that the income of households who receive their annual income in a period of time shorter than one year from contract or self-employment (other than on an hourly or piecework basis) shall have the income averaged over a twelve-month period. If the averaged amount does not accurately reflect the household's actual monthly circumstances because of a substantial increase or decrease in earnings, the income must be calculated based on anticipated earnings. This section was amended by the Hunger Prevention Act of 1988 (Public Law 100-435) to add a special provision for households with income from farming. Farm households with irregular business expenses may (at the option of the household) have their income calculated by averaging the income and expenses over a 12-month period.

Sections 273.10(c)(3)(ii), 273.11(a), and 273.21(f)(2) of the food stamp regulations implement the provisions of the Act. Section 273.10(c)(3)(ii) includes farmers and other self-employed households, school employees, and share croppers as examples of households whose income is annualized. The income of migrant or seasonal farm workers may not be annualized.

Section 273.11(a) provides that for prospectively budgeted households self-employment income which represents a household's annual support is annualized even if the household receives income from other sources. Self-employment income representing a household's annual support but which is received on a monthly basis is usually averaged over a 12-month period. State agencies must budget self-employment income based on anticipated circumstances if the averaged amount does not accurately reflect the household's actual monthly circumstances because of a substantial increase or decrease in business. Self-employment income which is intended to meet the household's needs for only part of the year is averaged over the period of time the income is intended to cover. Also, if a household's self-employment business has been in existence for less than a year, the income is averaged over the period of time the business has been in operation and the monthly amount is projected for the coming year. If the business has been in operation for such a short time that there is insufficient information to make a reasonable projection, the household may be certified for less than a year.

Retrospectively budgeted households who are self-employed farmers with monthly income and irregular business expenses may have their farm income and expenses annualized. Section 273.21(f)(2)(i) provides that the State agency shall annualize self-employment income of retrospectively budgeted households which is received other than monthly, in accordance with section

273.11(a). Section 273.21(f)(2)(ii) provides that the State agency shall prorate and budget retrospectively contract income received over a period of less than one year. The income cannot be counted in more months than the number of months in the period over which it is prorated.

AFDC PROVISIONS

Section 233.20(a)(3)(iii) of the AFDC regulations allows State agencies to average or prorate income received by individuals paid on a contractual basis over the period of the contract or to prorate intermittent income received quarterly, semiannually or yearly over the period covered by the income. The income of farmers or other self-employed individuals may be prorated over the period covered by the income.

SUMMARY

The Food Stamp Program requires State agencies to annualize income received in a period of time shorter than one year if it represents the household's annual income. This applies in the case of school teachers, for example, who receive their annual income in a period of less than a year and who will be reemployed the next year. If self-employment or contract income does not represent the household's annual income, it is prorated over the period it is intended to cover. In AFDC, self-employment and contract income may be prorated over the period they cover.

CONFORMANCE ISSUE: CHANGES - EFFECTIVE DATE

FOOD STAMP PROGRAM PROVISIONS:

The Food Stamp Program regulations contain detailed requirements for the dates by which changes in household circumstances must be reflected in the household's eligibility status or benefits. The effective dates vary with the type of change, the household's reporting requirements, and the budgeting system under which the household's benefits are calculated.

Prospective eligibility and budgeting:

Prospectively budgeted households are required to report certain changes in circumstances within 10 days, in accordance with 7 CFR 273.12(a). Regulatory requirements in 7 CFR 273.12(c)(1) for prospective eligibility and budgeting provide that changes resulting in increased benefits shall be effective no later than the first allotment issued 10 days after the date the change was reported to the State agency. However, if the change is due to the addition of a new household member or a decrease of \$50 or more in the household's gross monthly income, the State agency shall make the change effective not later than the first allotment issued 10 days after the change was reported but no later than the month following the month in which the change is reported, even if a supplementary allotment must be issued. Therefore, if a new household member is reported on March 28, for example, the increase must be effective with the April allotment or with a supplemental issuance.

Section 273.12(c)(2) provides that if a change is reported that results in ineligibility or a decrease in benefits, the State agency shall issue a notice of adverse action within 10 days of the date the change was reported, unless no adverse notice is required. The decrease in benefit level is effective no later than the allotment for the month following the month in which the notice of adverse action period has expired, provided a fair hearing and continuation of benefits have not been requested. The regulations require that when a notice of adverse action is not required, the decrease shall be effective no later than the month following the change.

Retrospective eligibility:

Changes affecting eligibility that occur in the budget month are reflected in the issuance month, in accordance with 7 CFR 273.21(e)(2).

Prospective eligibility and retrospective budgeting:

In a system using prospective eligibility and retrospective budgeting, the State agency determines eligibility by considering all factors of eligibility prospectively for each of the issuance months, in accordance with 7 CFR 273.21(e)(1). Monthly reporting

households are required to report changes on a monthly report form in accordance with 7 CFR 273.21(h). These households may report changes as they occur in addition to reporting them on the monthly report form, but they are not required to do so. Retrospectively budgeted households that do not report monthly must report changes in accordance with 7 CFR 273.12(a).

Under the retrospective budgeting procedures described in 7 CFR 273.21(f), changes that occur in the budget month (except increases in household composition in a two-month system) are reflected in the household's allotment for the corresponding issuance month. Section 273.21(f) provides that in a two-month system if a household reports an increase in household composition during the processing month, the State agency will include the individual and the individual's income, deductible expenses and resources in determining the issuance month eligibility and benefit level of either the household from which the individual has moved or the household into which the individual has moved, but not both.

AFDC PROVISIONS

Title IV-A of the Social Security Act does not specify the effective date of changes. Section 233.20(a)(13)(i) of the AFDC regulations provides that an overpayment means a financial assistance payment received by or for an assistance unit for the payment month which exceeds the amount for which that unit was eligible. The State agency may deny assistance for the payment month rather than recovering the payment if the following conditions are met: (1) the household was ineligible for the budget month, (2) the State became aware of the ineligibility when the monthly report was submitted, (3) the household accurately reported the budget month's income and other circumstances, and (4) the household will be eligible the month following the payment month.

Section 233.20(a)(13)(ii) provides that an underpayment is a financial assistance payment received by or for an assistance unit for the payment month which is less than the amount for which the assistance unit was eligible or failure by the State to issue a financial assistance payment for the payment month to an eligible assistance unit if such payment should have been issued.

SUMMARY

In the Food Stamp Program, the effective date of a change depends on the type of change and the reporting, eligibility and budgeting systems which apply to the household. A payment may be considered correct in some cases even if the household's actual circumstances for a month differ from those used to determine the household's eligibility or allotment. In AFDC, changes that affect eligibility or benefits are effective beginning with the month in which they occur, and either an overpayment is established for the amount of an overissuance or a supplemental payment is issued for the amount of an underpayment.

CONFORMANCE ISSUE: CHANGES - MONTHLY REPORTING AND BUDGETING REQUIREMENTS

FOOD STAMP PROGRAM PROVISIONS

Under the Food Stamp Act of 1977, State agencies may require monthly reporting by categories of households. However, Section 6(c)(1)(A) of the Food Stamp Act as amended by the Mickey Leland Memorial Domestic Hunger Relief Act (Public Law 101-624), provides that State agencies may not require the following households to report monthly and the benefits of these households must be determined by prospective budgeting: households in which all members are elderly or disabled and have no income, migrants and seasonal farmworker households, homeless households, and households residing on reservations. Other households not required to report monthly shall have their incomes calculated prospectively or retrospectively, at the State agency's option. P.L. 102-237, the Food, Agriculture, Conservation and Trade Act of 1991, postponed implementation of the prohibition against requiring monthly reporting by households on Indian reservations from February 1, 1992 to April 1, 1993.

Section 273.21(b), as amended by regulations issued December 4, 1991, specifies that migrant or seasonal farmworker households, households in which all members are homeless, households with no earned income in which all adult members are elderly or disabled, and households residing on Indian reservations must be excluded from monthly reporting systems and have their benefits determined prospectively. The provision will not apply to households on Indian reservations until April 1, 1993.

AFDC PROVISIONS

Under the Social Security Act, as amended by the Omnibus Budget Reconciliation Act of 1990 (OBRA) (Public Law 101-508), categories of households may be required to report monthly, at State agency option. Households not required to report monthly must be budgeted prospectively.

SUMMARY

The Food Stamp Act specifies that certain households cannot be required to report monthly and also requires that these households be budgeted prospectively. Title IV-A of the Social Security Act has no similar restrictions. In food stamps, State agencies may budget nonmonthly reporting households (except those exempt by law from monthly reporting) either prospectively or retrospectively. In AFDC, nonmonthly reporting households must be budgeted prospectively. However, food stamp compatibility waivers may be granted to allow retrospective budgeting of nonmonthly reporting AFDC cases that are retrospectively budgeted for food stamps.

CONFORMANCE ISSUE: CHANGES - NOTICE OF ADVERSE ACTION

FOOD STAMP PROGRAM PROVISIONS

Section 273.13 of the food stamp regulations describes procedures for using a notice of adverse action, the required content of the notice, instances when advance notice is not required, and a list of situations in which no notice is required.

Advance Notice of Adverse Action

Except as indicated below, the regulations specify that the agency must provide "timely and adequate advance notice" prior to taking an action to reduce or terminate a household's benefits during the certification period. The requirement for this advance notice is based on the due process standards established by the Supreme Court decision in the 1970 lawsuit Goldberg vs. Kelly. Several other lawsuits have established the principle that entitlement to food stamp benefits is a property interest and is subject to full protection under the fourteenth amendment's due process clause.

The notice is considered timely if the advance notice period conforms to the adequate notice period for the State's public assistance (PA) caseload, provided that period is at least 10 days from the date the notice is mailed to the date upon which the action becomes effective. (Time frames in the Food Stamp Program are usually in calendar days, unless the regulation specifies working days. If the PA notice requirement is 10 working days, the requirement for food stamps may also be 10 working days.) If the adverse notice period ends on a weekend or holiday, and a request for a fair hearing and continuation of benefits is received the day after the weekend or holiday, the request is considered to be timely.

An advance notice of adverse action is required in a monthly reporting case when a change that results in an adverse action is reported outside the monthly report form or when information is obtained from a third party instead of the household's written report. This requirement is discussed in the preamble to the final monthly reporting rule issued December 8, 1983 (page 54960).

Adequate Notice of Adverse Action

Section 11(e)(1) of the Food Stamp Act authorizes use of an adequate (not advance) notice when a household's benefits are reduced or terminated based on clear written information provided by the household. Under the provisions of section 273.13(a)(2), the notice is considered adequate if it explains in easily understood language the proposed action; the reason for the action; the household's right to request a fair hearing; the telephone number of the food stamp office (a toll-free number or

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a number where collect long-distance calls will be accepted) and, if possible, the name of the person to contact for additional information; the availability of continued benefits; and the liability of the household for any overissuances received while awaiting a fair hearing if the hearing official's decision is adverse to the household. The notice must also contain information about free legal representation, if any is available.

The agency may send the household a notice of adverse action that will be received no later than the date the household receives or would have received its allotment (adequate notice) if the following conditions are met:

1. The household reports the information which results in the adverse action.
2. The reported information is in writing and is signed by the household.
3. The State agency can determine the household's allotment or ineligibility based solely on the information provided by the household.
4. The household retains its right to a fair hearing and continued benefits if the fair hearing is requested within the State's required time period and the agency continues the household's previous benefit level, if required, within 5 working days of the household's request for a fair hearing.

In addition, Section 273.21(j)(2) provides that all notices regarding changes in a household's benefits resulting from a change reported on the monthly report form shall meet the definition of an adequate notice as defined in section 271.2. According to that definition, which applies in a monthly reporting system, an adequate notice is a written notice informing the household of the action the agency has taken or intends to take; the reason for the intended action; the household's right to request a fair hearing; the name of the person to contact for additional information, the availability of continued benefits, and the liability of the household for any overissuances received while awaiting a fair hearing if the hearing official's decision is adverse to the household. The notice may be received prior to agency action, at the time reduced benefits are received, or if benefits are terminated at the time benefits would have been received. In all cases, participants will be allowed ten days from the mailing date of the notice to contest the agency action and to have benefits restored to their previous level. Section 273.21(p)(2) requires that benefits be continued within five days from the day the agency receives the household's request if the State agency received a monthly report from the household by the extended filing date. The preamble to regulations issued May 25, 1982

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explains the rationale for requiring adequate rather than advance notice of an adverse action when a change is reported on the monthly report form.

Notice of Adverse Action Not Required

Section 273.13(b) provides that individual notices of adverse action are not required when:

1. The adverse action was the result of a mass change.
2. On the basis of reliable information, the agency determines that all members of the household have died or moved from the project area.
3. The household has been receiving an increased allotment because of restoration of benefits previously lost, the restoration is complete, and the household was previously notified in writing of when the increased allotment would end.
4. The household was notified in advance that its allotment would vary from month to month.
5. The household was notified that the allotment it received while waiting for approval of an application for PA or general assistance (GA) benefits would be reduced upon approval of the PA/GA grant.
6. A household member is disqualified for intentional program violation or the benefits of the remaining members are reduced or terminated to reflect the disqualification of that household member.
7. A household was certified for expedited service with postponed verification and the household has received written notice that the receipt of benefits beyond the month of application is contingent on its providing the verification which was initially postponed and that the State agency may act on the verified information without further notice.
8. The State agency must change the household's benefits back to the original benefit level because the agency opted to increase benefits in response to a reported change before receiving verification in accordance with section 273.12(c)(1)(iii) and the household did not provide the verification.
9. The household is converted from cash and/or food stamp coupon repayment to benefit reduction.
10. The State agency is terminating the eligibility of a

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resident of a drug or alcoholic treatment center or a group living arrangement because the facility loses either its certification from the appropriate agency of the State or has its status as an authorized representative suspended because of FNS disqualification.

11. The household voluntarily requests in writing or in the presence of a caseworker that its participation be terminated. If the household does not provide a written request, the State agency shall send the household a letter confirming the voluntary withdrawal. Written confirmation does not entail the same rights as a notice of adverse action except that the household may request a fair hearing.

12. The State agency determines that the household will not be residing in the project area and will be unable to obtain its next allotment.

AFDC PROVISIONS

Section 205.10(a)(4) requires the State or local agency to give timely and adequate notice in cases of intended action to discontinue, terminate, suspend or reduce assistance or to change the manner or form of payment to a protective, vendor, or two-part payment. "Timely" means that the notice is mailed at least 10 days before the date upon which the action would become effective. "Adequate" means a written notice that includes a statement of what action the agency intends to take, the reasons for the intended action, the specific regulations supporting such action, explanation of the individual's right to request an evidentiary hearing and a State agency hearing, the circumstances under which assistance is continued if a hearing is requested, and if the agency action is upheld that such assistance must be repaid under Title IV if the State plan provides for recovery of such payments.

Section 205.10(a)(4)(ii) provides that the agency may send a notice which is adequate but not timely in the following circumstances:

1. The agency has information confirming the death of a recipient or of the AFDC payee when there is no relative available to serve as a new payee.

2. The agency receives a clear written statement signed by a recipient that he/she no longer wishes assistance or that gives information requiring termination or reduction of assistance, and the recipient has indicated in writing that he/she understands the consequence of supplying the information.

3. The recipient has been admitted or committed to an

institution and further payments do not qualify for Federal financial participation under the State plan.

4. The recipient has been placed in skilled nursing care, intermediate care or long-term hospitalization.

5. The claimant's whereabouts are unknown and agency mail has been returned by the post office indicating no know forwarding address. The claimant's check must be made available if his/her whereabouts become known during the payment period covered by a returned check.

6. A recipient has been accepted for assistance in a new jurisdiction and that fact has been established by the jurisdiction previously providing assistance.

7. An AFDC child is removed from the home as a result of a judicial determination or voluntarily placed in foster care by his legal guardian.

8. The agency takes action because of information the recipient furnished in a monthly report or because the recipient has failed to submit a complete or a timely monthly report without good cause.

9. A special allowance granted for a specific period is terminated and the recipient has been informed in writing at the time of initiation that the allowance shall automatically terminate at the end of the specified period.

10. The agency has made a presumption of mismanagement as a result of a recipient's nonpayment of rent and provides for post-hearings in such circumstances.

In addition, Section 205.10(a)(4)(iii) provides that when changes in either State or Federal law require automatic grant adjustments for classes of recipients, timely notice is required. The notice is "adequate" if it includes a statement of the specific change in law requiring such action and a statement of the circumstances under which a hearing may be obtained and assistance continued.

Section 205.10(a)(4)(iv) provides that a notice must be mailed at least five days prior to the effective date of an adverse action when the agency obtains facts indicating that assistance should be discontinued, suspended, terminated or reduced because of the probable fraud of the recipient, and, where possible, such facts have been verified through collateral sources.

SUMMARY

The following are among the differences in the food stamp and AFDC provisions regarding notices of adverse action:

1. Although the content of the adverse action notices required in both programs is generally the same, the food stamp notice for households that do not report monthly must include a number for the food stamp office that can be called without charge and information about free legal aid, if any is available. The AFDC regulations require that the notice contain a reference to the specific regulations supporting the action taken.
2. In the Food Stamp Program, individual notices are not required when (among other reasons) the adverse action was the result of a mass change. In AFDC, timely notice is required.
3. Under food stamp regulations, a confirmation letter rather than a notice of adverse action is sent when a household voluntarily requests, in the presence of a caseworker, that participation be terminated. There is no similar provision in AFDC.
4. In AFDC, adequate notice is required if assistance is terminated because agency mail is returned with no known forwarding address. An advance notice of adverse action is required in food stamps.

CONFORMANCE ISSUE: CHANGES - REPORTING REQUIREMENTS

FOOD STAMP PROGRAM PROVISIONS

The Food Stamp Act contains reporting requirements for both monthly reporting and nonmonthly reporting households. Section 6(c)(1)(A) gives State agencies the option of requiring certain categories of households to file periodic reports of income and household circumstances. However, under the Act, a State may not require periodic reporting by (1) migrant or seasonal farm worker households, (2) households residing on a reservation, (3) households in which all members are homeless, or (4) households in which all adult members are elderly or disabled and have no earnings. The prohibition against requiring periodic reporting by households residing on a reservation was added by the Mickey Leland Memorial Domestic Hunger Relief Act (Public Law 101-624, November 28, 1990). Section 6(c)(3) of the Act provides that periodic reports shall be considered complete if they contain the information relevant to eligibility and benefit determinations that is specified by the State agency. Reports required to be filed monthly are to be the sole reporting requirement for the subject matter included in the report. Section 6(c)(1)(B) of the Act provides that nonmonthly reporting households shall report changes in income or household circumstances the Secretary considers necessary to assure accurate eligibility and benefit determinations.

Section 273.21 of the food stamp regulations implements the requirements of the Act concerning monthly reporting households. Final regulations were published December 4, 1991 which revise 7 CFR 273.21(b) to implement the exception to the monthly reporting requirements contained in the Leland Act for households residing on reservations. A provision of the Food, Agriculture, Conservation, and Trade Amendments of 1991 postpones implementation of this exception to April 1, 1993. Section 273.21(h) of the regulations contains requirements for the monthly report form. Section 273.21(h)(3) gives State agencies the authority to determine which information households should be required to report.

Section 273.12 contains the reporting requirements for nonmonthly reporting households. The following changes must be reported by household within 10 days of the date they become known: (i) changes in the source of income or in the amount of gross monthly income of more than \$25, (ii) all changes in household composition, (iii) changes in residence and the resulting changes in shelter costs, (iv) the acquisition of a licensed vehicle not fully excludable, (v) changes in liquid resources that cause the resources to exceed \$2,000, and (vi) changes greater than \$25 in the total amount of allowable medical expenses. Applicant households must report all changes at the certification interview. Changes which occur after the interview but before the date of the notice of eligibility must be reported by the household within 10 days of the date of the notice.

AFDC PROVISIONS

Under the Social Security Act, as amended by the Omnibus Budget Reconciliation Act of 1990 (OBRA) Public Law 101-508), categories of households may be required to report monthly, at State agency option. Households not required to report monthly must be budgeted prospectively unless a food stamp compatibility waiver has been granted permitting the cases to be budgeted retrospectively. Monthly reporting requirements are contained in 45 CFR 233.36.

Section 233.36(a) of the AFDC regulations requires recipients to report budget month income, family composition and other relevant circumstances as well as changes in income, resources, or other circumstances affecting eligibility which the household expects in the current or future months. Households must also report the income and resources of a stepparent or alien sponsor, where appropriate. Section 233.36(c) requires recipients to report information about household circumstances as they become aware of expected changes rather than waiting to inform the State agency on the monthly report.

Section 206.10(a)(2)(ii) of the AFDC regulations also requires State agencies to adopt procedures designed to assure that recipients make timely and accurate reports of any changes in circumstances that may affect their eligibility or the amount of assistance. States may define "timely."

SUMMARY

Reporting requirements for participants in AFDC and the Food Stamp Program differ as follows:

1. The Food Stamp Act prohibits State agencies from requiring certain categories of households to report monthly. There is no comparable provision in AFDC.
2. AFDC regulations for monthly reporting specify that recipients must report budget month income, family composition and other circumstances as well as any current or expected changes affecting eligibility. The food stamp regulations allow State agencies to determine what information households must report on the monthly report.
3. The FSP regulations contain specific requirements for changes to be reported by nonmonthly reporting households and the time frame for reporting. The AFDC regulations do not contain specific requirements.

4. Under the provisions of the Food Stamp Act and regulations, monthly reporters are not required to report changes as they occur. The monthly report is the household's only reporting requirement. In AFDC, households are required to report changes as they occur and on the monthly report.

CONFORMANCE ISSUE: CHANGES - SUPPLEMENTAL BENEFITS FOR NEW MEMBERS

FOOD STAMP PROGRAM PROVISIONS

In the Food Stamp Program, the date from which benefits are provided for a new household member depends on the budgeting system used to determine the household's benefits.

Section 273.12 provides procedures for adding a new member under prospective budgeting. Section 273.12(c)(1)(ii) requires that when the addition of a new household member causes an increase in benefits, the change shall be made effective not later than the first allotment issued 10 days after the date the change was reported. The change cannot be made later than the month following the month in which the change is reported. Agencies must issue supplemental allotments if necessary to effect the change. Supplemental benefits may be issued for the month the change is reported.

If the addition of a new household member causes a decrease in benefits, the change is effective no later than the month following the month in which the notice of adverse action expires. If no adverse action notice is required, the change is effective no later than the month following the change.

For retrospectively budgeted households, 7 CFR 273.21(f)(1) provides that if a household's eligibility is determined retrospectively, the State agency shall use the household composition that existed on the last day of the budget month to determine benefits for the corresponding issuance month. If the household's eligibility is determined prospectively, the agency must determine the household's composition as of the issuance month.

Section 273.21(f)(1)(iii) provides that in a two-month retrospective budgeting system, eligible new members who are not already certified in another household will be added in the issuance month following the month the change is reported. The State agency may increase the allotment for the month the change is reported only if the new member is reported before the allotment for that month has been issued and a notice of adverse action is not required and pending.

AFDC PROVISIONS

In the AFDC program, a new member is treated as an applicant and is added to the household in accordance with procedures for applicants. Section 206.10(a)(6) of the regulations provides that assistance shall begin no later than the date payment is authorized or 30 days from the date of application, whichever is earlier. States may provide benefits from the date of

application if all eligibility conditions are met, but the payment must be prorated.

SUMMARY

Procedures for adding new members differ as follows:

1. In AFDC, the same procedures for adding new members apply under both prospective and retrospective budgeting. Food stamp procedures differ for households in different budgeting systems.
2. In AFDC, States that provide benefits from the date of application must prorate the new member's benefits. In food stamps, a new member's benefits are not prorated.
3. In AFDC, States may add a new member the month the change is reported. In food stamps, State agencies may not issue supplemental benefits for the month a new member is added to a household in a two-month retrospective budgeting system.

CONFORMANCE ISSUE: DEDUCTIONS - DEPENDENT CARE

FOOD STAMP PROGRAM PROVISIONS

Section 5(e) of the Food Stamp Act allows a dependent care deduction for actual expenses up to \$160 a month per dependent, regardless of age, when care enables the household member to accept or continue employment or participate in training or education preparatory to employment.

Section 273.9(d)(4) of the Food Stamp Program Regulations allows a deduction (up to the maximum of \$160 for each dependent) for payments for actual costs for care of children or other dependents when necessary for a household member to accept, seek or continue employment, comply with employment and training, or participate in training or education that is preparatory to employment. Section 273.10(d)(1)(ii) provides that the deduction is allowed only when the household pays for care provided by someone outside the household. Food stamp policy provides that the deduction is allowed for care of a nonhousehold member if the other requirements are met. High school or college attendance is considered "preparatory to employment."

AFDC PROVISIONS

The Family Support Act of 1988 (Public Law 100-485) contained several provisions affecting the AFDC dependent care disregard. Section 301 required States to guarantee child care for each family with a dependent child to the extent the State determines such care is necessary for an individual to accept employment or remain employed. A State may guarantee child care through the dependent care disregard or any other method it deems appropriate. Section 402(a) of the law amended Section 402(a)(8)(A)(iii) of Title IV-A of the Social Security to increase the limit on the dependent care disregard to \$175 (\$200 for children under two) and to change the order of the earned income disregards so that the dependent care disregard is applied last. These amendments were effective October 1, 1989.

Section 402(a)(8)(A)(iii) of Title IV-A also includes a provision of section 2301 of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35) under which the Secretary was granted authority to specify an amount lower than the dependent care disregard limit for individuals who are employed part-time.

Current AFDC regulations do not reflect the changes required by the Family Support Act amendments. A Notice of Proposed Rulemaking to make the changes was issued August 22, 1990. The rule proposes, in addition to the required increases, that for part-time employment and employment not continuing throughout the month, the full \$175 or \$200 may be applied, or the State agency may establish a procedure under which it determines and applies disregard limits less than the \$175 or \$200. This is being

proposed to allow maximum State flexibility in using the disregard as a method to guarantee child care for JOBS participants and other employed recipients.

SUMMARY

The food stamp and AFDC provisions differ in the following areas:

1. The FSP dependent care deduction is subtracted from the total of household (not individual) earned and unearned net income remaining after the earned income, standard and medical deductions have been subtracted from gross income. In AFDC, the disregard is applied to an individual's earnings after the other earned income disregards have been subtracted.
2. In food stamps, the deduction is allowed if a household member is in school or training or looking for work. In AFDC, the disregard is allowed from earned income only.
3. AFDC has proposed to allow States the option to set a lower dependent care maximum for individuals employed part-time or part of the month. The Food Stamp Program has no similar provision.
3. There are two AFDC maximums, depending on the age of the child. The FSP has only one maximum.

**CONFORMANCE ISSUE: DEDUCTIONS - EARNED INCOME
DEDUCTION/DISREGARD**

FOOD STAMP PROGRAM PROVISIONS

Section 5(e) of the Food Stamp Act and 7 CFR 273.9(d)(2) allow a deduction of 20 percent of a household's nonexcluded earned income to compensate for taxes, other mandatory deductions from salary, and work expenses.

AFDC PROVISIONS

Section 402(a)(8)(A)(ii) of Title IV-A of the Social Security Act (as amended by Public Law 100-485, the Family Support Act of 1988,) requires State agencies to disregard the first \$90 of the total earned income of any assistance unit member, effective October 1, 1989. Section 402(a)(8)(A)(iv) requires an additional disregard of the first \$30 of the total of a member's earnings not disregarded under other provisions and one-third of the remaining earned income. Section 402(a)(8)(B)(ii) limits the \$30 and one-third disregard to four consecutive months. The \$30 disregard is allowed for eight additional consecutive months. The sequence of disregards cannot be applied again until the person has not received aid for 12 consecutive months. A Notice of Proposed Rulemaking was published on August 22, 1990 to incorporate these provisions in sections 233.20(a)(11)(i)(B) and (C) and 233.20(a)(11)(ii)(B) of the AFDC regulations.

The earned income disregards for dependent care and earnings of dependent students are discussed separately, as are penalties for failure to report earnings and definitions of earned income.

SUMMARY

In food stamps, 20 percent of the household's earned income is deducted from the total of household income from all sources. In AFDC, the first \$90 and an additional \$30 and one-third of the remaining income are disregarded from the earnings of each individual for specified periods of time.

CONFORMANCE ISSUE: DEDUCTIONS - PENALTY FOR FAILURE TO REPORT
EARNED INCOME

FOOD STAMP PROGRAM PROVISIONS

Section 5(e) of the Food Stamp Act, which authorizes the 20 percent earned income deduction, was amended in 1987 to provide that the deduction will not be allowed on income the household willfully or fraudulently fails to report. The determination of willful or fraudulent failure to report must be made by a State or federal court or administrative process. This provision was incorporated in 7 CFR 273.18(c)(2)(ii), which addresses calculation of intentional program violation claims.

AFDC PROVISIONS

Section 402(a)(8)(B)(i) of Title IV-A of the Social Security Act provides that the \$90 earned income disregard, the dependent care disregard and the \$30 and one-third disregard shall not be allowed if the individual without good cause voluntarily quit a job or reduced his income, refused to accept employment, or failed to submit a timely monthly report of the income. Section 402(a)(8)(B)(ii) limits the \$30 and one-third disregard to four consecutive months. The \$30 disregard is allowed for eight additional consecutive months. The sequence of disregards cannot be applied again until the person has not received aid for 12 consecutive months.

Section 233.20(a)(11)(iii) of the AFDC regulations implements these provisions and adds a fourth circumstance under which the earned income disregards are not applied. The disregards are not allowed if the individual voluntarily asks that assistance be terminated for the primary purpose of avoiding application of the \$30 and one-third disregard for four consecutive months. Sections 233.37(b) and (c) provide further instructions regarding the disallowance of the earned income disregards when the client fails without good cause to submit a timely monthly report. If the Agency establishes that good cause did exist, the disregards are allowed.

SUMMARY

Both programs penalize clients for failure to report earnings. In food stamps, the penalty is applied only if a household member is determined to have intentionally violated the reporting requirement. The penalty is the loss of the earned income deduction in determining the amount of overissued benefits. In AFDC, the penalty is applied whenever it is discovered that earnings were not reported timely without good cause. The penalty involves loss of the first \$90, \$30 and one-third, and dependent care disregards.

CONFORMANCE ISSUE: ELIGIBILITY - ALIEN STATUS

FOOD STAMP PROGRAM PROVISIONS

Background: The Food Stamp Act of 1964 contained no durational residency nor citizenship requirements for food stamp eligibility. Each State set standards consistent with federally aided public assistance programs. In July 1970, an instruction became effective which prohibited durational residency and citizenship requirements. Aliens were able to receive food stamps as long as they met the normal eligibility criteria. However, the law establishing the Supplemental Security Income (SSI) program in 1972 excluded illegal aliens and aliens temporarily present in the U.S. from receiving SSI. In 1973, the Department of Health, Education and Welfare (HEW) issued rules that banned participation by aliens in SSI, AFDC and Medicaid.

In January 1974, the Agriculture Department issued proposed rules barring illegal and temporarily present aliens from food stamp participation on the basis of consistency with the HEW rules. The final rule directed States to prohibit participation in the program by individuals who were not either (a) a citizen or (2) an alien "lawfully admitted for permanent residence or otherwise permanently residing in the U.S. under color of law," including aliens lawfully present under sections 203(a)(7) or 212(d)(5) of the Immigration and Nationality Act (INA).

Prior to the passage of the 1977 Act, the categories of aliens eligible for food stamps under the "permanently residing in the U.S. under color of law" provision were (1) permanent residents under color of law who have maintained continuous residency since before July 1948, (2) aliens granted indefinite voluntary departure or an indefinite stay of deportation for humanitarian reasons, (3) refugees under conditional entry status, and (4) parolees admitted for an indefinite period.

According to the House Report on the Food Stamp Act of 1977 (H.R. 95-464, p. 147), the Agriculture Committee decided to prescribe a firm and precise statutory basis for the alien disqualifications by making an exclusive statutory list of those aliens who could be eligible. The intent was to prevent participation by illegal aliens or persons living in the U.S. temporarily. The Committee was also concerned about increases in participation which might be caused by an amnesty for illegal aliens or judicial stays of deportation.

Current Provisions: Section 6(f) of the Food Stamp Act provides that no individual who is a member of a household otherwise eligible to participate shall be eligible unless he or she is a U.S. citizen or an alien residing in the U.S. under specified provisions of the INA. Under those provisions, aliens must be:

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1. Admitted for lawful permanent residence as an immigrant as defined in Sections (101)(a)(15) and (101)(a)(20);
2. Deemed to be admitted for lawful permanent residence under Section 249 because they have continuously maintained residence in the U.S. since entering prior to June 30, 1948;
3. Qualified for conditional entry under sections 207 or 208 as refugees or asylees;
4. Lawfully present for emergent reasons or reasons deemed in the public interest (paroled) under section 212(d)(5); or
5. Subject to withholding of deportation under section 243.

Tourists, visitors, diplomats and students who enter the U.S. with no intention of abandoning their residence in a foreign country are not eligible.

In addition, the Immigration Reform and Control Act (IRCA) of 1986 (Public Law 99-603) expanded the categories of aliens eligible for lawful resident status. Aliens who may now be eligible include the following:

- (1) Aliens who have resided continuously since before January 1, 1972 under section 249 of the INA, as amended by section 203 of IRCA;
- (2) Newly legalized aliens admitted for temporary or permanent residence under section 245A of the INA (as amended by section 201 of the IRCA) and who are aged, blind or disabled as defined in section 1614(a)(1) of the Social Security Act, or Cuban and Haitian entrants as defined in paragraph (1) or (2)(A) of section 501(e) of P.L. 96-422);
- (3) Newly legalized aliens who were granted temporary resident status under section 245A(a) of the INA (as amended by section 201 of the IRCA) at least five years prior to applying for food stamps and who subsequently gained lawful permanent resident status pursuant to section 245A(b)(1) of the INA;
- (4) Aliens who have resided in the U.S. and performed agricultural work for specified periods of time prior to May 1, 1986 (special agricultural workers) admitted under INA section 210(a), as added by section 302 of IRCA; and
- (5) Additional (replenishment) special agricultural workers who may be admitted in fiscal years 1990 through 1993 under section 210A(a) of the INA, as added by section 303 of IRCA.

Section 245a(h)(1)(A)(iii) of the INA (as added by section 201 of the IRCA) specifies that with the exceptions noted in (2) above,

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newly legalized aliens who are granted temporary or subsequent permanent resident status by INS under section 245A are prohibited from participating in the FSP and certain other types of public assistance programs for a five-year period following the date the alien is granted lawful temporary resident status. Thus, the aliens in (3) above will not be eligible to participate in the FSP until at least May 1992.

Sections 273.4(a)(1) through (7) and 273.4(b) of the FSP regulations implement the provisions of the Food Stamp Act. Sections 273.4(a)(8) through (11) implement the IRCA provisions.

AFDC PROVISIONS

Section 402(a)(33) of Title IV-A of the Social Security Act provides that in order for any individual to have his needs included in the grant, he or she must be a citizen or an alien lawfully admitted for permanent residence or permanently residing in the U.S. under color of law, including those admitted for lawful permanent residence under sections 207(c) (formerly 203(a)(7)), 208, and 212(d)(5).

Sections 233.50(a) and (b) of the AFDC regulations implement the provisions of Title IV-A. Under Section 233.50(c), which implements provisions of the IRCA concerning eligibility for AFDC, the following aliens granted lawful temporary resident status under sections 201, 302, or 303 of the IRCA meet the AFDC alien eligibility requirements:

- (1) Cuban or Haitian entrants as defined in paragraph (1) or (2)(A) of section 501(e) of Public Law 96-422, as in effect on April 1, 1983;
- (2) An applicant for adult assistance programs in Puerto Rico, Guam and the Virgin Islands; or
- (3) An applicant for AFDC who is not a Cuban and Haitian applicant under (1) who was adjusted to lawful temporary resident status more than five years prior to application.

All other aliens granted lawful temporary or permanent resident status pursuant to sections 201, 302 or 303 of the IRCA are disqualified for five years from the date lawful temporary resident status is granted.

AFDC Action Transmittal FSA-AT-88-4 dated March 3, 1988, provides clarification of policy regarding the eligibility of aliens permanently residing in the U.S. under color of law (PRUCOL). The determination of whether or not an alien is permanently residing under color of law is based on two factors: (1) evidence of an official INS decision that an alien is

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legitimately present in the U.S. and (2) evidence of a determination that the alien is legitimately present for an indefinite period of time. This policy was upheld in 1985 by the U.S. Court of Appeals for the Ninth Circuit in *Sudomir v. McMahon*. The court declared that an alien is considered "permanently residing" if INS has granted permission to remain in the U.S. "so long as he is in a particular condition." That condition could change and the alien could be deported. The Action Transmittal listed the following categories of aliens who meet the AFDC alien eligibility requirements, the INS section governing their status and the documents indicating that status. The list is not all-inclusive:

1. Refugees admitted under section 207(c) or the former 203(a)(7). Document: I-94.
2. Political asylees under section 208. Document: I-94.
3. Aliens granted temporary parole status under section 212(d)(5). Document: I-94.
4. Cuban/Haitian entrants with a notation "Status Pending Reviewable January 15, 1981" pursuant to section 212(d)(5). Document: I-94.
5. Aliens under an INS order of Supervision under section 242(d). These aliens have been found deportable, but INS has not enforced deportation for a variety of reasons. Document: I-220B.
6. Aliens granted an indefinite stay of deportation for humanitarian reasons. Document: I-94 and/or a letter from INS.
7. Aliens granted an indefinite voluntary departure status under section 244. [Section 244 provides conditions under which an alien who applies for suspension of deportation may have his status adjusted to that of an alien lawfully admitted for permanent residence.] Document: I-94 or a letter from INS.
8. Aliens granted a voluntary departure status under section 242(b) of the INA with a deportation date of not less than one year. This status must be subject to renewal. Document: I-94 or I-210.
9. Aliens granted deferred action status which defers departure. Document: I-210 and/or a letter from INS.
10. Aliens granted suspension of deportation pursuant to section 244 of the INA. Document: I-94, court order, or a letter from INS.
11. Aliens who can produce evidence of entry into the U.S. prior to January 1, 1972 and continuous residence since that date

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pursuant to section 249 of the INA.

12. Aliens granted lawful temporary resident status under section 201 or 302 of IRCA who are either (1) a Cuban and Haitian entrant as defined in paragraph (1) or (2)(A) of section 501(e) of P.L. 96-422, as in effect on April 1, 1983; or (2) an adult assistant applicant for adult assistance programs in Guam, Puerto Rico and the Virgin Islands; or (3) an applicant for AFDC who is not a Cuban or Haitian entrant applicant under (1) above who was adjusted to lawful temporary resident status more than five years prior to application. All other aliens granted lawful temporary or permanent resident status pursuant to sections 201, 302 or 303 are disqualified for five years from the date lawful temporary resident status is granted.

13. An alien whose deportation has been withheld under section 243(h) of the INA.

14. Aliens in possession of a voluntary departure status who can provide evidence that an immediate relative petition has been approved by INS and will result in a change to that of permanent status.

The following are INS categories that do not meet the alien eligibility factor under PRUCOL:

1. Aliens granted a voluntary departure status for whom INS provides a specific departure date allowing the alien time to obtain a visa.

2. Aliens without a current alien status who are initially applying for a status, or aliens applying for an adjustment of status, unless the alien can show that an immediate relative petition has been approved by INS that will result in a change to permanent status, as indicated in paragraph 14 above.

Not included in AT-88-4 are aliens formerly residing in the Federated States of Micronesia. This former trust territory adopted a Compact of Free Association in 1983, and Congress approved the Compact in P.L. 99-239. Arrivals from Micronesia possess an INS form I-94 noted "CFA/FSM" with no expiration date. Since the status has no expiration date and there is no other bar to preclude these persons from establishing residence in the U.S., AFDC considers that they meet the criteria for PRUCOL. Also eligible under PRUCOL are former residents of the Federated States of the Marshall Islands with an I-94 noted "CFA/MIS."

SUMMARY:

There is a basic difference between the language of the Food Stamp Act and Title IV-A which prevents complete consistency in

determining alien eligibility. Title IV-A allows participation by aliens lawfully admitted for permanent residence or "permanently residing in the U.S. under color of law," including those admitted under sections 207(c), 208 and 212(d)(5) of the INA. PRUCOL is open to interpretation and is interpreted differently for AFDC, Medicaid and SSI eligibility. The Food Stamp Act spells out the specific sections of the INA which would allow eligibility. Aliens admitted under other provisions are ineligible.

With the exception of the IRCA provisions, the FSP and AFDC allow participation by essentially the same general categories of aliens: (1) those admitted for permanent residence as immigrants, (2) those residing continuously in the U.S. under INA section 249, (3) refugees and asylees, (4) parolees, and (5) certain aliens for whom deportation has been withheld. The programs differ in that AFDC allows participation by persons in a voluntary departure status if INS designates a departure date of at least a year. Otherwise, aliens in a voluntary departure status with a designated date of less than one year are ineligible for AFDC. Aliens in a voluntary departure status may be eligible for food stamps, depending on the specific section of the INA code under which they are admitted. AFDC allows former residents of the Federated States of Micronesia and the Federal States of the Marshall Islands who are admitted with an I-94 to participate; the FSP does not. Both programs prohibit participation by illegal aliens and aliens residing in the country on a temporary basis, such as students, diplomats, and tourists.

With the IRCA changes, there is now a difference in the basic categories of aliens that may participate. Special and additional special (replenishment) agricultural workers may participate in the FSP, but not in AFDC (until 1992). (Special agricultural workers are eligible for Emergency Assistance only. Additional special (replenishment) agricultural workers are not eligible for Emergency Assistance or AFDC.) Of the aliens legalized under Section 245A, the aged, blind or disabled may participate in FSP, but not in AFDC, except for applicants for the adult programs in Guam, the Virgin Islands and Puerto Rico. The differences caused by the IRCA changes will disappear in 1992 if current legislation is unchanged. However, the differences caused by the PRUCOL provision in Title IV-A and the absence of a similar provision in the Food Stamp Act will continue to cause inconsistencies in eligibility determinations by the two programs for specific groups of aliens.

The attached chart illustrates the similarities and differences in the alien eligibility provisions of the two programs.

**COMPARISON OF ALIEN ELIGIBILITY CRITERIA
IN THE FOOD STAMP AND AID TO FAMILIES
WITH DEPENDENT CHILDREN PROGRAMS**

Aliens admitted under the following sections of the Immigration and Nationality Act meet the alien eligibility requirements.

<u>AFDC</u>	<u>FSP</u>
101(a)(20) (Immigrants)	101(a)(20) (Immigrants)
207(c), previously 203(a)(7) (Refugees)	207 (Refugees)
208 (Asylees)	208 (Asylees)
Disqualified for 5 years from date temporary status granted	210a (Special Agricultural Workers)
Disqualified for 5 years from date temporary status granted	210A (Additional Special Agricultural Workers)
212(d)(5) (Parolees)	212(d)(5) (Parolees)
242(b) (Voluntary Departure): With departure date of year or more	Ineligible
242(d) (Deportation Withheld)	Ineligible
243(h) (Deportation Withheld)	243 (Deportation Withheld)
244 (Deportation Suspended; Voluntary Departure): With indefinite voluntary departure status	244 (Deportation Suspended; (Voluntary Departure): May be eligible, depending on specific section of INS code
245A Cubans or Haitians and others who are aged, blind or disabled (as defined in the Social Security Act) who apply for adult programs in Guam, Puerto Rico or the Virgin Islands. Others with permanent resident status may be eligible 5 years after temporary status granted.	245A Cubans or Haitians and others who are aged, blind or disabled (as defined in the Social Security Act) who are admitted for temporary or permanent residence. Others with permanent resident status may be eligible 5 years after temporary status granted.
249 (Continuous Residency)	249 (Continuous Residency)
Micronesians with I-94 Coded "CFA/FSM"	Ineligible

Former residents of the
Federated States of the
Marshall Islands with I-94
Coded "CFA/MIS"

Ineligible

Others if determined they are
admitted under color of law

Ineligible, unless they meet
FSP requirements

Aliens in the following categories are among those ineligible for benefits:

AFDC

Nonimmigrants, including students, visitors and diplomats who have no intention of abandoning their residence in a foreign country.

Aliens granted amnesty under Section 245 of the INA for 5 years from the date granted temporary legal status, except specified Cubans or Haitians and aliens who are aged, blind or disabled (as defined in the Social Security Act) who apply for adult programs in Guam, Puerto Rico or the Virgin Islands. The disqualified aliens cannot be eligible before 5/1/92.

Aliens applying for a status or adjustment of a current status which makes them ineligible.

Aliens granted voluntary departure status for whom INS provides a specific departure date of less than one year.

Special and additional special agricultural workers.

Eligible

Eligible

Eligible

FSP

Nonimmigrants, including students, visitors and diplomats who have no intention of abandoning their residence in a foreign country.

Aliens granted amnesty under section 245 of the INA for 5 years from the date granted temporary legal status, except specified Cubans or Haitians and aliens who are aged, blind or disabled (as defined in section 1614(a)(1) of the Social Security Act). The ineligible aliens cannot be eligible before 5/1/92.

Aliens applying for a status or adjustment of a current status which makes them ineligible.

Aliens granted voluntary departure status for whom INS provides a specific departure date.

Eligible

Former residents of the Federated States of Micronesia or Federated States of Marshall Islands with I-94

Persons in a voluntary departure status under Section 242(b) of the INA

Persons for whom deportation has been withheld under Section 242(d) of the INA

CONFORMANCE ISSUE: ELIGIBILITY - CERTIFIED UNIT

FOOD STAMP PROGRAM PROVISIONS

Section 3(i) of the Food Stamp Act defines "household" as an individual who lives alone or who lives with others and purchases and prepares meals separately or a group of individuals who live together and customarily purchase and prepare meals together. In general, siblings or parents and their children who live together are treated as one household even if they do not purchase and prepare food together. However, these relatives may be separate households under certain conditions if they purchase and prepare their food separately. An elderly or disabled parent may be a separate household from his or her children, and an elderly or disabled sibling may be a separate household from the sibling with whom he or she resides. Another exception exists for parents of minor children who are living with their parents or siblings. These parents of minor children and their children may be separate households from their parents or siblings if they purchase and prepare meals separately. A special exception is made for persons who are elderly and so disabled that they cannot purchase and prepare meals separately from the individuals with whom they live. These elderly and disabled persons may be separate households even if they do not purchase and prepare meals separately if the gross income of the others with whom they live does not exceed 165 percent of the poverty level.

The Act also provides that people who live in institutions or boarding houses or live with others and pay compensation for their meals are ineligible. This prohibition does not apply to the following: certain elderly or disabled recipients who live in group homes, temporary residents of public or private nonprofit shelters for battered women and children, residents of public or private nonprofit shelters for the homeless, and residents of certain drug or alcohol treatment centers. Boarders may participate as members of the household with which they live.

In addition to these provisions in the Act, there are additional requirements in the Food Stamp Program regulations. Section 273.1(a) provides that a spouse or a minor child under the control of an adult household member cannot be a separate household. Section 273.1(b) lists nonhousehold members who may participate as separate households (roomers, live-in-attendants, and other nonrelatives) and persons who cannot participate as separate households because they are recipients of Supplemental Security Income in States that include food stamp allotments in the State supplemental payments; ineligible aliens or ineligible students; or disqualified for fraud, failure to provide a social security number or failure to comply with work-related requirements. Under Section 273.1(c), boarders are ineligible to participate separately from the individuals with whom they live. However, as a result of a recent court decision, individuals receiving foster care payments are to be considered boarders, but

they may participate as households separate from the family with which they live, at their option.

AFDC PROVISIONS

Under Section 401 of the Social Security Act, AFDC assistance is provided to needy dependent children and the parents or relatives with whom they live.

Section 406 defines "dependent child" as a needy child who has been deprived of parental support because of the death, continued absence, or incapacity of a parent and who is living with a parent, sibling or specified relative in a home maintained by the parent or relative. The dependent child must be under 18 or, at State option, may be 18 and a full-time student expected to finish school before turning 19. Section 407 provides that the definition of "dependent child" includes needy children who have been deprived of support because of the unemployment of the principal earner. Section 402(a)(41) requires State agencies to provide AFDC to dependent children of unemployed parents.

Section 206.10(a)(1)(vii) of the AFDC regulations provides that the assistance unit must include any natural or adoptive parent, or stepparent (in the case of States with laws of general applicability) and any blood-related or adoptive brother or sister. However, the needs and income of disqualified alien siblings are not considered in determining the eligibility and payment of an otherwise eligible dependent child.

Section 233.10(a)(3) prohibits participation in AFDC of a person who is receiving assistance under Titles I, X, XIV or XVI of the Social Security Act.

Section 233.10(b)(3)(ii) provides that Federal financial participation will be provided only for the following: (1) needy children under 18 or 18 and a full-time student in a secondary school or in the equivalent level of vocational or technical training and reasonably expected to complete the program before reaching age 19 who are deprived of parental support because of the death, continued absence, or incapacity of a parent or the unemployment of the principal wage earner; and (2) the parent or other caretaker relative of a dependent child and, in certain situations, the parent's spouse. Section 233.90(c) defines the terms used in the definition of "dependent child."

Section 233.20(a)(2)(vii) gives States the option of including in the assistance unit other needy persons in the home who are essential to the dependent child's basic well-being, including those individuals who provide child care or care for an incapacitated person so that a caretaker relative can work,

receive training or attend GED classes full-time, or participate in an AFDC work program. In 1989, 24 States included essential persons in the assistance unit and 30 did not. States may limit eligibility as an essential person to specified relatives and/or their spouse.

SUMMARY

In food stamps, the certified unit usually consists of individuals who live together and purchase food and prepare meals together. In AFDC, the assistance unit consists of a dependent child and specified relatives or other individuals with whom he or she lives.

CONFORMANCE ISSUE: ELIGIBILITY - CHILD SUPPORT COOPERATION

FOOD STAMP PROGRAM PROVISIONS

The Food Stamp Program has no requirement regarding child support cooperation.

AFDC PROVISIONS

Section 402(a)(26) of Title IV-A of the Social Security Act requires that as a condition of eligibility for AFDC, applicants or recipients must be required to assign to the State rights to support from any other person they may have in their own right or in behalf of any other family member, including support that may have accrued at the time assignment is made. The applicants or recipients must also agree to cooperate with the State in establishing paternity and obtaining support and to identify and provide information to assist the State in pursuing any third party who may be liable to pay for care and services under Title IV, unless they have good cause for not doing so.

The provisions of 45 CFR 232.11 and 232.12 implement the requirements of the law by requiring applicants and recipients to assign support rights and to cooperate with the State in identifying and locating the parent of the child for whom aid is sought, establishing the paternity of a child born out of wedlock for whom aid is claimed, and obtaining support payments and any other payments due the applicant/recipient or the child.

"Cooperate" includes appearing at an office of the State or local agency to provide verbal or written information or attest to the lack of information under penalty of perjury, appearing as a witness, and paying to the child support agency any support payments received from the absent parent after assignment has been made. Applicants or recipients who fail to cooperate without good cause will not be eligible for benefits; however, the eligible child will receive protective payments.

Sections 232.40 through 232.49 contain detailed good cause provisions relating to the cooperation requirement, including a sample notice to clients. The burden of proving that good cause exists is on the client. The determination of whether or not good cause exists must be in writing and must be made within a State standard that does not exceed 45 days from the date the claim is made, unless the record shows that additional time is needed for verification. If the agency determines that good cause does not exist, the client will be notified and given an opportunity to cooperate, withdraw or have his/her case closed. Continued refusal results in the imposition of sanctions. In determining good cause, the agency will determine that cooperating is against the best interest of the child if the client's cooperation in establishing paternity or support is reasonably anticipated to result in physical or emotional harm to

the child or physical or emotional harm to the caretaker relative. Good cause also exists if it is difficult to proceed to establish paternity or obtain support because the child was conceived as a result of incest or forcible rape, legal proceedings for adoption are pending, or the client has been working with the social agency to resolve adoptive issues for 3 months or less.

A person who claims good cause for noncooperation must provide corroborative evidence within 20 days from the day the claim was made, unless the agency determines additional time should be allowed. The good cause determination must be reviewed and approved or disapproved by supervisory personnel. The State agency may investigate the circumstances, if necessary, and may contact the absent parent or putative father after notifying the client to enable him or her to present additional information, withdraw the application or have the good cause claim denied.

The agency may not deny, delay or discontinue assistance pending a determination of good cause for refusal to cooperate if the applicant or recipient has complied with the requirements to furnish evidence and information. If the circumstances on which a good cause determination is based are subject to change, the validity of the determination must be reexamined at each redetermination.

SUMMARY

As a condition of eligibility for AFDC, applicants must agree to cooperate with the child support collection agency, unless they can show good cause for refusal. There is no similar requirement for food stamp eligibility.

CONFORMANCE ISSUE: ELIGIBILITY - POTENTIAL SOURCES OF INCOME

FOOD STAMP PROGRAM PROVISIONS

There is no requirement in the Food Stamp Program regarding potential sources of income.

AFDC PROVISIONS

Section 233.20(a)(3)(ix) of the AFDC regulations requires State agencies to establish and carry out policies with reference to applicants' and recipients' potential sources of income that can be developed to a state of availability. States implement this provision by requiring families, as a condition of eligibility, to apply for other income for which they might be eligible, such as social security or unemployment compensation.

SUMMARY

In AFDC, applicants are required to apply for other available assistance for which they might be eligible. There is no similar requirement for food stamp eligibility.

CONFORMANCE ISSUE: ELIGIBILITY - SOCIAL SECURITY NUMBERS

FOOD STAMP PROGRAM PROVISIONS

Section 16(e) of the Food Stamp Act requires each household member to furnish to the State agency his or her social security number (SSN) or numbers as a condition of eligibility. The State agency must use the number in the administration of the program.

Section 273.6 of the food stamp regulations requires the State agency to explain to applicants and participants that refusal or failure without good cause to provide an SSN will result in disqualification of the individual for whom an SSN is not obtained. If the State has an enumeration agreement with the Social Security Administration (SSA), the State agency will document the verification of identity, age, and citizenship or alien status as required by SSA and forward the application for an SSN (form SS-5) to SSA for the applicant. If no enumeration agreement exists, the individual must apply at the SSA office, and the State agency must arrange with SSA to be notified directly of the SSN when it is issued. The State agency must inform the household where to apply and what information will be needed, including any information which may be needed for SSA to notify the State agency of the SSN. The State agency must also advise the household member that proof of application from SSA will be required prior to certification.

A household member who has refused or failed without good cause to provide or apply for an SSN is ineligible to receive food stamps. The disqualification applies to the individual for whom the SSN is not provided and not to the entire household. The earned or unearned income and resources of an individual disqualified from the household for failure to comply with this requirement are counted as household income and resources to the extent specified in 273.11(c).

In determining whether good cause exists for failure to comply with the requirement to apply for or provide the State agency with an SSN, the State agency shall consider information from the household member, SSA, and the State agency itself. For example, good cause would exist if the State agency was responsible for sending the SS-5 to SSA and either did not process it or did not process it in a timely manner. Documentary evidence or collateral information that the household member has applied for an SSN or made every effort to supply SSA with the necessary information to complete an application for an SSN is considered good cause for not complying timely with the requirement.

Good cause does not include delays due to illness, lack of transportation or temporary absences because SSA makes provision for mailing in applications in lieu of applying in person. If the household member can show good cause why an application for an SSN has not been completed in a timely manner, he or she is allowed to participate for one month in addition to the month of

application. If the household member applying for an SSN has been unable to obtain the documents required by SSA, the State agency caseworker must try to provide assistance. Good cause for failure to apply must be shown monthly. Once an application has been filed, the State agency shall permit the member to continue to participate pending notification of the State agency of the household member's SSN.

Section 273.11(c)(2) provides that if a member is disqualified for failure or refusal to provide an SSN, the resources of the ineligible member continue to count in their entirety to the remaining household members and a pro rata share of the income of the ineligible member is counted as income to the remaining members. A household member disqualified for failure to provide or apply for an SSN is added back into the household as a new member when he does apply for or provide a number.

Section 273.2(f)(1)(v) requires the agency to submit the SSNs of household members to SSA for verification. Policy Memo 89-3 provides that if SSA returns the number as unverified, the agency must recontact the household to determine whether the information the household provided is correct and to obtain correct information. If a household member refuses to cooperate in providing the information, the entire household may be disqualified for failure to cooperate.

Occasionally, a household member refuses to provide or obtain an SSN on religious grounds. On June 11, 1986, the Supreme Court decided Bowen v. Roy, a case challenging the collection of SSNs in the food stamp and AFDC programs. The decision allows government use of SSNs which are already in its possession, but may be interpreted as restricting the authority to require an SSN to be provided in the face of a valid religious objection. The USDA Office of General Counsel has advised that on the basis of the Bowen v. Roy decision, households with religious objections should be advised that a method of assigning SSNs to persons without their cooperation or obtaining SSN information from other sources for persons who refuse to provide them may be developed for use in the FSP. A notice has been developed to be given to the affected households.

AFDC PROVISIONS

Section 1137(a) of the Social Security Act provides that State agencies must require as a condition of eligibility that each applicant for or recipient of benefits furnish his/her social security number or numbers. The State must use the numbers in administration of the program. This requirement is contained in section 205.52 of the AFDC regulations, which provides that if

the applicant or recipient cannot furnish an SSN because none has been issued or it is unknown, he must apply for one. If he applies through SSA, he must submit verification of application. The State or local agency may not delay benefits pending the issuance or verification of the number if the client has complied with the requirement to apply for an SSN and must help the client in applying for a number. The State or local agency must notify the applicant or recipient that furnishing the SSN is a condition of eligibility for assistance required by section 1137 of the SSA and that the SSN will be used in the administration of the program. The State agency will submit all unverified SSN's to SSA for verification. The State agency may accept as verified an SSN provided directly to the State agency by SSA or by an other Federal or federally assisted benefit program which has received the number from SSA or has submitted it to SSA for verification.

SUMMARY

In the Food Stamp Program, there are good cause provisions for households unable to apply for an SSN. In AFDC, there are no specific good cause provisions in the regulations.

CONFORMANCE ISSUE: ELIGIBILITY - RESIDENCY REQUIREMENT

FOOD STAMP PROGRAM PROVISIONS

Under the provisions of 7 CFR 273.3, a household must live in the project area in which it applies. State agencies may make exceptions to allow particular households to file applications in nearby specified project areas. A project area is defined in 7 CFR 271.2 as the county or similar political subdivision designated by a State agency as the administrative unit for program operations. With FNS approval, a city, Indian reservation, welfare district, or any other entity with clearly defined boundaries, or a combination of entities, may be designated as a project area. A State as a whole may be designated as a single project area.

No individual may participate as a member in more than one household or in more than one project area in any month, unless the individual is a resident of a shelter for battered women and children and was a member of a household containing the abuser. The State agency cannot require an otherwise eligible household to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility. Households are not required to have an intent to reside permanently in the State or project area, but persons in a project area solely for vacation purposes are not considered residents.

Section 1529 of the Food Security Act of 1985 amended Section 11(e)(2) of the Food Stamp Act to require that State agencies provide a method to certify and issue coupons to eligible households that do not reside in a permanent dwelling or have a fixed mailing address. The legislative history (House Report 99-271, page 134) emphasizes that the prohibition against a fixed residency requirement does not relieve States of their responsibility to protect against program abuse, including multiple participation.

Section 273.2(f)(1)(vi) of the regulations requires that State agencies verify residency except in unusual cases where verification is difficult. Such cases include homeless households, some migrant farmworker households, or households newly arrived in a project area. The regulations require that verification be accomplished to the extent possible through use of documents obtained in conjunction with the verification of other household information. If that is impossible, then the State agency must use a collateral contact or other readily available documentary evidence. Any documents or collateral contacts that reasonably establish the applicant's residency must be accepted. State agencies may not impose a requirement for a specific type of verification.

AFDC PROVISIONS

Section 233.40 of the AFDC regulations prohibits State agencies from imposing any residence requirement that excludes any individual who is a resident of the State. A resident is defined as a person voluntarily living in the State with the intention of making his or her home there and not on a temporary basis. A child is a resident of the State in which he or she is living other than on a temporary basis. Residence may not depend upon the reason for which the individual entered the State, except to determine whether the individual is there voluntarily or for a temporary purpose. The term "resident" also includes persons living in the State who are not receiving assistance from another State and who are seeking employment in the State or entered the State with a job commitment. Under this definition, the child is a resident of the State in which the caretaker is a resident. Temporary absence from the State does not interrupt continuity of residence.

SUMMARY

In AFDC, families are required to be a resident of the State as defined in the regulations. Although there are no durational requirements, applicants must intend to live in the State. In food stamps, households must live in the project area in which they apply, but there is no requirement to have a fixed address. With FNS approval, States may designate the entire State as a project area.

CONFORMANCE ISSUE: ELIGIBILITY - STRIKERS

FOOD STAMP PROGRAM PROVISIONS

Section 6(d)(3) of the Food Stamp Act provides that a household with a striking member is ineligible to participate unless the household would have been eligible immediately prior to the strike. However, an eligible household shall not receive an increased allotment because of the strike. The prohibition against participation by striker households does not apply if the striking member was not required to register for work. It also does not apply if there is a lockout situation instead of a strike. In addition, refusal to accept a job at a workplace involved in a strike or lockout does not cause ineligibility if no member is on strike. Section 6(d)(1) of the law provides that an employee of Federal, State or local government who strikes against that government and therefore loses his job shall be considered to have voluntarily quit the job without good cause. The law uses the definition of strike in section 501(2) of the Labor Management Relations Act of 1947 (29 U.S.C. 142(2)).

Section 273.1(g) of the Food Stamp Program Regulations implements the requirement of the law by providing that a household with a striking member is ineligible unless the household was eligible for benefits the day before the strike and is otherwise eligible. A striker is defined as anyone involved in a strike or concerted work stoppage (including a stoppage caused by expiration of the collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees, not including lockouts. The provision does not apply to household members who are exempt from work registration the day prior to the strike for reasons other than employment. Nonstrikers who are eligible include employees unable to work because of a strike by other employees and employees who are not in a bargaining unit on strike who are afraid to cross the picket line. Pre-strike eligibility is determined by considering the day prior to the strike as the day of application and assuming the strike did not occur. To determine the household's eligibility, the worker must compare the striking member's income before the strike to the striker's current income and add the higher of the two to the income of the other household members. Appropriate deductions are allowed. Strikers whose households are eligible to participate must register for work unless they are exempt. Policy Memos 89-11 and 84-15 clarify the definition of "striker".

AFDC PROVISIONS

Section 402(a)(21)(A) of Title IV-A provides that participation in a strike shall not constitute good cause for leaving or refusing to seek or accept employment. Section 402(a)(21)(B) provides that a family is ineligible for AFDC in any month in which any caretaker relative with whom the child is residing is on strike the last day of the month. If an individual is on strike the last day of a month, his needs shall not be included

STRIKERS

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in determining the household's needs for that month.

Section 233.106 of the AFDC Regulations implements these provisions and requires State agencies to define "strike" by using the National Labor Relations Board definition in 29 U.S.C. 142(2) or another definition current in State law. The State agency must define "participating in a strike." "Caretaker relative" means any adult relative specified in 45 CFR 233.90(c)(1)(v).

SUMMARY

The Food Stamp Program and AFDC statutory requirements differ in the following respects:

1. The Food Stamp Act provides that the entire household containing a striker is ineligible (unless eligible immediately prior to the strike). Title IV-A distinguishes between ineligibility for the family if any caretaker relative is on strike or ineligibility for the individual if he/she is not the caretaker relative.
2. The Food Stamp Act allows a household containing a striker to be eligible if the household would have been eligible prior to the strike. Title IV-A has no similar provision.
3. The Food Stamp Act provides that no household shall have an increased allotment as the result of participation in a strike. Title IV-A has no similar provision.
4. The Food Stamp Act provides that the striker prohibition does not apply to individuals exempt from work registration. Title IV-A has no similar provision.
5. The Food Stamp Act provision applies to future ineligibility. Title IV-A makes the ineligibility retroactive for the month in which the member is on strike, if he is on strike the last day of the month.
6. Title IV-A allow States more authority to determine what constitutes a strike and participation in a strike than the Food Stamp Act and regulations.

CONFORMANCE ISSUE: ELIGIBILITY - STUDENTS

FOOD STAMP PROGRAM PROVISIONS

Section 6(e) of the Food Stamp Act, as amended by the Mickey Leland Memorial Domestic Hunger Relief Act (Public Law 101-624, enacted November 28, 1990) provides that, effective February 1, 1992, an otherwise eligible individual who is enrolled at least half-time in an institution of higher education is ineligible for food stamps unless he or she is one of the following:

1. Under age 18 or age 50 or older;
2. Not physically or mentally fit;
3. Assigned to or placed in the institution of higher education through or in compliance with a program funded under the Joint Partnership Training Act, a food stamp employment and training program, a program under section 236 of the Federal Trade Act of 1974, or another appropriate program operated by a State or local government, as determined by the Secretary;
4. Employed a minimum of 20 hours per week or participating in a State or federally financed work study program during the regular school year;
5. A parent responsible for the care of a dependent child under age 6 or a parent responsible for the care of a dependent child above the age of 5 but under 12 if adequate child care is not available to enable the individual to attend class and satisfy the work requirement or participate in work study;
6. Receiving AFDC benefits;
7. Enrolled as a result of participation in a work program under Title IV of the Social Security Act; or
8. Enrolled full-time and is a single parent with the responsibility for the care of a dependent child under age 12.

An institution of higher education is defined in 7 CFR 271.2 as an institution that normally requires a high school diploma or equivalency certification for enrollment. The term includes, but is not limited to colleges, universities and vocational or technical schools at the post-high school level.

Section 273.5(b)(2) describes the enrollment status of a student. It begins the first day of the school term and continues through normal periods of class attendance, vacation and recess unless

the student is suspended or expelled, drops out, or does not intend to register for the next normal school year, not including summer school.

AFDC PROVISIONS

AFDC has no restrictions on student participation.

SUMMARY

Certain students attending institutions of higher education must meet specific eligibility criteria for food stamp participation. AFDC has no similar requirement.

CONFORMANCE ISSUE: INCOME - COMPLEMENTARY PROGRAMS

FOOD STAMP PROGRAM PROVISIONS

The legislative history of the Food Stamp Act of 1977 indicates that Congress intended direct payments from other programs to be counted as income unless specifically excluded by law. (In-kind assistance and vendor payments are discussed in a separate paper.) Section 5(d) of the food Stamp Act defines household income as all income from whatever source, except for 16 specific exclusions. There is no single provision similar to that of the AFDC program which allows States to exclude assistance from other programs. However, among the income exclusions in Section 5(d) of the Act, there are some that allow exclusion of a particular type of income from another agency or organization. These exclusions are contained in section 273.9(c) of the food stamp regulations, as follows:

1. Any income received too infrequently or irregularly to be reasonably anticipated, not to exceed \$30 in a quarter. This exclusion applies only to prospectively budgeted income.
2. Most education assistance except that provided for normal living expenses.
3. All loans other than education loans on which repayment is deferred.
4. Reimbursements for expenses such as medical and dependent care costs and expenses related to work and training (other than normal living expenses), which do not exceed expenses actually incurred and which do not represent a gain or benefit to the household. Annual clothing allowances issued by the State agency are excluded, provided the AFDC grant is not reduced in the month the allowance is provided.
5. Money received and used for the care and maintenance of a third-party beneficiary who is not a household member.
6. Non-recurring lump-sum payments.
7. Any income that any other Federal law specifically excludes from consideration as income for the purpose of determining eligibility. For example, Section 301 of Public Law 100-485, the Family Support Act, requires the exclusion of the value of any child care payment or reimbursement provided in connection with employment and training as income in any federally-assisted program. Portions of income received under the Job Training Partnership Act and the Higher Education Act are also disregarded, as provided in regulations.

8. Any energy assistance payments or allowances under any Federal law and energy assistance provided under State or local law, provided FNS has approved the exclusion, including assistance combined with a GA or PA payment.

9. The Title IV-D \$50 child support pass-through payment, if the State reimburses FNS for the extra coupons issued.

10. Cash donations based on need from private nonprofit charitable organizations, not to exceed \$300 in a quarter.

11. Advance earned income tax credits.

The regulations will be revised to include the exclusion in section 5(d)(16) of the Act added by the Food, Agriculture, Conservation and Trade Act Amendments of 1991 (Public Law 102-237). The exclusion is for any amounts necessary for the fulfillment of a plan for achieving self-support (PASS) of a household member as provided under section 1612(b)(4)(B)(iv) of the Social Security Act.

In addition, as a result of court action, regulations are being revised to exclude foster care payments unless the foster child or adult is included as a member of the household. A proposed rule was issued November 30, 1990 (55 FR 49630).

AFDC PROVISIONS

Section 233.20(a)(3)(vii) of the AFDC regulations provides that State agencies may opt to disregard assistance from other agencies and organizations in determining eligibility and the amount of AFDC to be paid. However, they must ensure that no duplication exists between the other assistance and that provided by AFDC. To determine whether duplication exists, the agency considers the following:

1. The purpose for which the assistance is provided. If it is for a purpose other than that for which the grant is provided, it is nonduplicative.

2. The provision of goods and services that are not included in the State standard of need. If the need is not included in the State's AFDC needs standard, the assistance is nonduplicative.

3. The fact that public assistance funds are insufficient to meet the total amount of money needed in accordance with the needs standard. Although a need may be addressed in a grant, there may be insufficient funds to provide all the assistance needed through AFDC. In this situation, aid from another program

is nonduplicative and may be disregarded to the extent that the assistance does not exceed the difference between the State's need and payment standards.

Under these provisions, assistance such as student assistance from any source and certain vocational rehabilitation funds could be excluded. In 1989, all but one State agency disregarded assistance from other agencies and organizations in determining need and amount of assistance. Additionally, under separate regulations, various types of payments required to be excluded from consideration as income in AFDC by any Federal statute are disregarded. Further, at State option, bona fide loans from any source and for any purpose may be disregarded, and earned income tax credit payments are also disregarded.

SUMMARY

Although the Food Stamp Program has no single income exclusion comparable to AFDC's complementary programs exclusion, there are a number of other income exclusions in the Food Stamp Program which are applied to assistance from other programs. Both programs exclude to some extent assistance from other programs for housing, education, heating and cooling, and child care. The major difference is that in AFDC, assistance from other programs is generally disregarded if it does not duplicate needs included in the standard; in the FSP, it is counted unless specifically excluded.

CONFORMANCE ISSUE: INCOME - EARNINGS OF 18-YEAR-OLD HIGH SCHOOL STUDENTS

FOOD STAMP PROGRAM PROVISIONS

Section 5(d)(7) of the Food Stamp Act excludes from income the earnings of students under 18. There is no exclusion for the earned income of students 18 or older.

Section 273.9(c)(7) of the regulations implements this provision. It provides that the income exclusion continues to apply during temporary breaks in school attendance if enrollment will resume after the break. If the child's earnings cannot be separated from that of other household members, the total earnings are prorated equally among the working members, and the child's pro rata share is excluded. Individuals are considered children if they are under the parental control of another household member.

AFDC PROVISIONS

The AFDC program has several statutory disregards that apply to the earned income of dependent children. The Social Security Act defines a dependent child as a child who is under the age of 18, or at State option, under the age of 19, if the child is a full-time student and is expected to complete high school before reaching age 19. If the State covers 18-year-old high school students as dependent children, the disregards described below are applied to the child's earned income.

Section 402(a)(8)(A)(i) and 45 CFR 233.20(a)(11)(i) and (ii) provide that in determining need and benefits, the State agency shall disregard all the earned income of each dependent child receiving AFDC who is a full-time student or a part-time student who is not employed full-time and is attending a school, college, university or a vocational training course.

For 185 percent of gross income eligibility purposes, State agencies may disregard any earned income of a dependent child who is a full-time student, as provided in section 402(a)(18) of Title IV-A of the Social Security Act and 45 CFR 233.20(a)(3)(xix). The amount of the disregard and the time period, not to exceed 6 months, may be determined by the State. Section 402(a)(8)(A)(vii) of Title IV-A and 45 CFR 233.20(a)(3)(xx) provide that if the State chooses this disregard, it may also disregard the earned income of applicant full-time students in determining need.

SUMMARY

The provisions differ in that food stamps excludes the earnings of children only up to age 18 if they are in school at least part-time. If the State covers 18-year-old high school students as dependent children, AFDC requires exclusion of the earnings of the 18-year-old recipients for need and benefit determination if they expect to complete high school before age 19. The AFDC provisions also differ from the FSP policy because in applying the disregard, they distinguish between exclusions for eligibility and benefits, applicants and recipients, and full and part-time students.