



Cumulative Questions and Answers on Certification and Work Issues in PRWORA

Current as of April 24, 1998

This guidance was provided by the Food and Nutrition Service (FNS) National office to FNS Regional offices to assist in providing guidance to State agencies to help them implement the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) and subsequent legislation.

[Additional Questions and Answers on Certification and Work Issues in PRWORA](#)

Current as of January 23, 1998

Section 103 - Block Grants to States

Q. Does Section 404(i) regarding disqualifications for failure to ensure that minors go to school and 404(j) regarding disqualifications if an adult does not work toward attaining a secondary school diploma apply to food stamp households?

A. We have been informally advised by the Office of General Counsel that these provisions do apply to the Food Stamp Program if the State has been awarded a block grant for temporary assistance for needy families.

Q. Can sections 404(i) and (j) be applied to non-assistance households and mixed households as well as TANF households?

A. Yes, the law does not limit the disqualifications to Title IV-A households.

Section 115 - Denial of Assistance and Benefits for Certain Drug-related Convictions

Q. What information will States be required to obtain to implement the drug conviction provision? Will States be required to do some kind of computer matching or will this only apply if the applicant household identifies one of the members as a drug felon?

A. States will be required to act on available information. Unless a State law has been passed to allow the State to opt out of this provision, a State shall require each individual applying for assistance to attest in the application process if the individual or any member of the household has been convicted of a crime.

Q. If an individual receives a 2 year disqualification for a drug conviction under Section 6(b)(1)(B)(ii)(II) of the Food Stamp Act, serves the full term, and comes back to the FSP, will the provisions of Section 115, Denial of assistance and benefits for certain drug-related convictions apply?

A. The food stamp violation may not be a felony, but if it is, Section 115 applies and the person is permanently disqualified unless the State has passed a law opting out of this provision.

Q. This section allows States to opt out of the provision if the State enacts a law to exempt any or all individuals from this provision. Can States delay implementation of the drug conviction provision if their legislature is not in session?

A. The law requires implementation by 7/1/97 unless the State enacts a law before then.

Q. If a State wants to implement this provision, does this section apply to both applicants and recipients?

A. Unless States opt out of this provision (which they can only do by legislation), States must implement this provision for applicants and recipients July 1, 1997. However, only convictions occurring after August 22, 1996, can make an applicant or recipient ineligible under this provision.

Q. For how long is an individual ineligible?

A. An individual is permanently ineligible unless the State pas:

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State passes a law "opting out" of the provision entirely).

Q. Can a person cure his or herself?

A. There is no cure provision other than the State option to limit the length of the disqualification by law.

Q. Are there any good cause or hardship exemptions such as a parent just out of prison trying to resume parental duties for children?

A. The State may pass a law opting out of the provision or limiting the period for which the disqualification applies, but there is no other cure or exemption.

Q. How are these ineligible people to be tracked?

A. Currently, these ineligible individuals are not included in the DRS system. We are reviewing the costs and feasibility of modifying the system to include these individuals. In the meantime, States should develop their own procedures for identifying such people. However, under current law, individuals disqualified by a Federal, State, or local court for trading food stamps for a controlled substance will continue to be included in DRS.

Q. Can the signed statement that no one in the household has a drug conviction be on the application?

A. The statement may, but need not, be on the application.

Q. Do all members have to sign the statement that no one in the household has a drug conviction?

A. States may allow one person to attest for all members.

Q. How should States handle drug convictions involving deferred adjudication where the conviction is postponed until the end of the probationary period and where the conviction is erased due to the probation being served?

A. The provision applies to convictions, not pending charges. Therefore, if adjudication has been deferred, there is no conviction. We may address the question of cases where convictions are "erased" or purged in the regulations.

Q. How should States handle drug convictions for minors where the record is cleared when they reach 18 or 21?

A. We will either address this in regulations or allow State flexibility in this area.

Section 402 - Limited Eligibility of Qualified Aliens for Certain Federal Programs

(Eligibility)

Q. Does a qualified alien as defined in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), as amended, also have to meet one of the food stamp eligibility criteria in section 402?

A. Yes. To be eligible for food stamps, an alien must be both a qualified alien as defined in section 431(b) or (c), as amended, and meet one of the criteria in section 402. It is easiest to first determine if an alien is a qualified alien and then determine if the qualified alien meets one of the food stamp criteria. The criteria for refugees, asylees, Cubans, Haitians, and aliens whose deportation has been withheld are the same under both sections. Amerasians (Section 402) are admitted as permanent resident aliens (Section 431) at the point of entry so they may be eligible. Parolees, conditional entrants, and battered aliens are listed in 431 as qualified aliens but not in 402 as food stamp eligible so they also have to meet one of the criteria in 402 such as having a military connection to be eligible. Persons with a military connection are listed in 402 but not 431 so they have to meet one of the criteria in 431 such as being a permanent resident alien to be eligible. Aliens admitted for lawful permanent resident are listed in 431 but only those that have 40 quarters of work or who meet one of the other criteria in 402 may be eligible.

Q. Are refugees, asylees, deportees, Cubans, Haitians and Amerasians eligible for food stamps for 5 years?

A. Yes.

Q. When does the 5-year count begin for noncitizens that can participate for 5 years after they obtain the status of refugee, asylee or deportee?

A. For refugees, the count begin from the date they entered the country. Refugee status is given before the person enters

the country. For asylees and deportees, it is the date they were granted a particular status. For example, a noncitizen entered the country in 1991 as a student but his status was changed to asylee in 1992. If otherwise eligible, he could participate until 1997.

Q. If an individual who is admitted as a refugee in 1993 has his status changed to lawfully admitted for permanent residence in 1996, would he still be eligible to participate until 1998?

A. Yes. Section 402 provides that refugees are not prohibited from participation until 5 years after the date they entered the country as a refugee.

Q. Section 402(a)(2)(C)(iii) provides that the unmarried dependent child of a veteran or individual on active duty may be eligible. Does this apply to a dependent child over 18?

A. Policy on the age of the child has not been determined. State agencies may develop their own policy until regulations are issued. NOTE: Both the DOJ guidance and SSI instructions refer to a dependent child as a child under 18 or, if a full-time student, under age 22.

Q. Can an unmarried disabled adult dependent child of a veteran be eligible for food stamps?

A. We will either address this in regulations or allow State agency discretion in this area.

Q. Does a noncitizen who is a veteran or on active military duty have to be a legal permanent resident to be eligible?

A. No, but they do have to be a qualified alien in accordance with Section 431.

Q. Is there a specific definition for "honorably discharged" as used in section 402 when referring to veterans?

A. Please refer to Exhibit B to Attachment 6 of the DOJ guidance for further information on this topic.

Q. Are the alien spouse and children of a U.S. citizen who is a veteran or individual on active duty eligible under section 402(a)(2)(C)?

A. Yes. Section 402(a)(2)(C)(iii) provides that the spouse or unmarried dependent child of an individual described in clause (i) or (ii) of section 402(a)(2)(C) is eligible.

Q. Does Supplemental Security Income (SSI) categorical eligibility mean that an SSI recipient does not have to meet the new noncitizen eligibility requirements?

A. No. The alien provisions in the PRWORA apply notwithstanding any other provision of law. Further, Section 273.2(j)(2)(v) of the regulations provides that no person shall be included as a member in any household which is otherwise categorically eligible if the person is an ineligible alien.

Q. Are there any special provisions for legal noncitizen migrants under the PRWORA?

A. No, migrants who are not citizens must meet the same noncitizen eligibility requirements as other noncitizens.

Q. How do these new provisions affect the food stamp eligibility of Canadian Indians residing in the U.S.?

A. There are no special exceptions in the PRWORA for North American Indians. Therefore, they must establish their citizenship or eligible noncitizen status the same as other applicants.

Q. The PRWORA made aliens whose deportation was withheld under section 243(h) of the Immigration and Nationality Act (INA) eligible for food stamps. The PRWORA was subsequently amended to include section 241(b)(3). How does this affect the food stamp eligibility provisions?

A. Section 243(h) was renumbered section 241(b)(3), and the two former procedures of deportation and exclusion were consolidated into one procedure called removal. Therefore, noncitizens whose removal was withheld under section 241(b)(3) after April 1, 1997, are eligible on the same basis as noncitizens whose deportation was withheld under section 243(h).

Q. Can the State agency certify a noncitizen who has a letter from INS saying that he has met all the requirements for naturalization except the swearing-in ceremony?

A. No. To be eligible as a citizen, the noncitizen must have completed all of the requirements for citizenship and have verification of citizen status.

(Verification)

Q. Can the I-94 be used as verification of permanent resident status?

A. States should use the DOJ verification guidelines to determine alien status. Those guidelines provide that the INS I-94 can be used if it has an unexpired temporary I-551 stamp or if it is annotated with a stamp showing grant of asylum under section 203(a)(7), 207, 208, parolee as "Cuban/Haitian Entrant" under 212(d)(5), or admission for at least one year under section 212(d)(5).

Q. Does INS have a list of noncitizen status codes that could be shared with State agencies?

A. The DOJ verification guidelines references the appropriate codes.

Q. How should State agencies determine that a noncitizen is a battered spouse or child for the purposes of Food Stamp Program eligibility?

A. See exhibit B to attachment 5 of the Department of Justice verification guidance.

NOTE: In addition to being a "qualified" noncitizen, a battered individual also has to meet the criteria in section 402. The only applicable requirement in section 402 is the provision allowing eligibility for the spouse or dependent child of a person on active duty or a veteran.

Q. Are current methods for verifying noncitizen status adequate or will they be more stringent?

A. Current methods should be adequate for some aliens but overall more information will have to be verified because additional eligibility factor were added. States should follow the DOJ verification guidelines. In addition to alien status per se, 40 quarters of work or a military connection will have to be verified for some aliens.

Q. Are noncitizens entitled to expedited service without verification of their status?

A. Yes. Verification of noncitizen status is not required for expedited service. Section 273.2(i)(4) provides that the applicant's identity shall be verified and that all reasonable efforts shall be made to verify other eligibility factors within the expedited processing standards. Benefits shall not be delayed beyond 7 days solely because factors other than identity have not been verified.

Q. If SSA reports through the Quarters of Coverage History System (QCHS) that an applicant does not have 40 quarters but the applicant disputes that determination, may the person participate pending SSA's investigation.

A. Yes, the person may participate up to 6 months pending the results of the investigation.

Q. If the household disputes SSA's determination, does it have to ask SSA to review the determination or can it provide documentation directly to the State agency showing 40 quarters of coverage? Can the household request a fair hearing?

A. Except for lag quarters, the preferred way of determining the number of qualifying quarters is by having SSA review the case. However, we cannot mandate use of SSA records, and in some cases State agencies will have to evaluate the verification of work history provided by the household and make an eligibility determination. Examples of acceptable verification are provided in 7 CFR 273.2(f)(4) and in the SSA guidance. All State agencies will have to obtain verification from the applicant for the most recent quarters which do not appear in SSA's records (lag quarters). The household may request a fair hearing if it disagrees with any adverse food stamp action taken on its case.

Q. Does the provision which allows participation up to 6 months pending SSA review apply if the State determines eligibility by obtaining information about the applicant's work history from the household instead of or in addition to using the QCHS?

A. No. Participation for up to 6 months is allowed to give SSA time to complete an investigation. The normal application processing time frames would apply if the State agency is obtaining verification from the household.

Q. What if a parent or spouse refuses or is unable to sign the consent form for release of quarters of coverage information from records of the Social Security Administration (SSA)?

A. SSA's computer system cannot be used. In these instances only the pertinent quarters can be disclosed. A form SSA-513 should be used to request this information if the person is living. A copy is attached to SSA's guidelines for making determinations using SSA's quarters of coverage history system. The applicant does not have to complete a consent form for a deceased spouse.

(Income and Resources of Ineligible Aliens)

Q. How should the income and resources of newly ineligible noncitizens be counted in determining the eligibility and benefits of the rest of the household?

A. PRWORA does not address the treatment of income and resources of the newly ineligible noncitizens. We will either address this in regulations or allow State flexibility in this area. In the meantime, States may use their discretion. They may count all, a prorated share or none of the ineligible noncitizen's income.

Q. Can a State choose to exclude certain types of cash payments and count all or a prorated share of other income of newly ineligible noncitizens?

A. Until regulations are issued, States may use their discretion. In the regulations, we plan to define income as it is defined in the Food Stamp Act .

Q. Does the income of an ineligible noncitizen's sponsor and sponsor's spouse have to be determined so that it can be counted in calculating the benefits of the rest of the household?

A. We will either address this in the regulations or allow State flexibility in this area. In the interim, States may use their own discretion.

(Quarters)

Q. What kind of earnings qualify as a quarter of work?

A. Covered earnings are wages or self-employment income creditable for Social Security benefits. Uncovered earnings are other earnings. Covered earnings qualify. Uncovered earnings of Federal civilian employees hired before 1984, earnings of employees of State and local governments, and certain agricultural and domestic earnings qualify. Based on a letter from the Committee on Ways and Means and a DOJ interpretation, it was the intent of Congress that any earnings of a noncitizen for work legally performed in the United States—not just covered earnings—should be used in the quarters of coverage calculation.

Q. What if a noncitizen worked in the U.S. legally but lived in another country during the time the work was performed?

A. If the noncitizen worked legally in work covered by social security and paid social security taxes, the quarters worked would count. It is not necessary for the alien to reside in the U.S. during the period the work occurred if the work is covered by social security. However, quarters worked in another country cannot be counted.

Q. Whose quarters can be counted?

A. Quarters earned by (1) the alien, (2) a parent while the alien was under 18, and (3) a spouse during their marriage if the marriage continues or the spouse is deceased. Quarters are credited in the case of a common law marriage or if the couple is holding themselves out to the community as husband and wife. An alien of any age can be credited with quarters earned by a parent through the quarter the alien attains age 18, regardless of whether the parent is currently living. Quarters earned by a current spouse and one or more deceased spouses during marriage can be added together and credited.

Q. A noncitizen was certified based on quarters earned by a spouse. Subsequently, the couple divorce. Is the noncitizen now ineligible? Would the noncitizen be considered ineligible at the next recertification or if he or she reapplied after a break in participation?

A. A former spouse's quarters cannot be credited if the marriage ended, unless by death, before a determination of the alien's current eligibility is made. In the example given, the noncitizen would become ineligible at time of recertification or if there is a break in participation when the alien reapplies.

Q. In trying to determine whether or not the members of an applicant household have sufficient sufficient quarters, should the number of years and quarters reported for each person be added and can the same quarters be credited for all noncitizens? For example, a husband and wife and two minor children, all of whom are immigrants, apply for benefits. They have all been living together in the U.S. for 5 years. The husband and wife each worked 20 quarters.

A. Each spouse can claim the quarters worked by the other spouse and the children can claim the quarters worked by their parents. In the example given, each of the 4 people would have 40 quarters.

Q. Can quarters of coverage earned by minor children be credited to their parents?

A. No. Credits can be claimed only for the work of a spouse or parent.

Q. If a child has no parents in the U.S., can the child qualify based on the quarters of the adult who is assuming parental responsibility for the child?

A. Only quarters earned by a natural, adoptive, or step-parent can be credited to a child.

Q. What quarters earned by an adoptive parent may be included?

A. All quarters earned by an adoptive parent can be credited through the quarter the alien attains age 18 if the adoption occurred before the alien attained age 18. Quarters earned by a biological parent whose parental rights are lost as a result of the adoption of the child by another person are not creditable.

Q. What quarters earned by a step-parent may be included?

A. Quarters earned by a stepparent can be credited from the quarter of the marriage of the stepparent and the natural or adoptive parent through the quarter of attainment of age 18 if the marriage between the stepparent and the natural or adoptive parent occurred before the alien attained age 18 and has not ended by divorce or annulment before the 40 quarter determination is made. Quarters can be credited if the natural or adoptive parent and stepparent are separated but not divorced. Quarters can be credited from both natural or adoptive parents and the stepparent during the time the stepparent is married to the natural or adoptive parent if the marriage between the stepparent and the natural or adoptive parent occurred before the alien attained age 18 and has not ended by divorce or annulment.

Q. Are quarters earned by a parent before a child enters the U.S. counted in determining the eligibility of the child?

A. Yes. All quarters earned prior to the alien's birth through the quarter the alien attains age 18 can be credited.

Q. A quarter creditable after December 31, 1996 cannot be counted if the noncitizen or the noncitizen's spouse or parent received any Federal means-tested public benefit during the quarter. What programs qualify as Federal means-tested public benefits?

A. The agency administering the program determines if the program qualifies. As of now, only SSI, Medicaid, and Temporary Assistance for Needy Families have been determined officially to be Federal means-tested public benefits for purposes of this provision. There is a notice in the clearance process that would designate the Food Stamp Program as a Federal means-tested public assistance benefit.

Section 421 - Federal Attribution of Sponsor's Income and Resources to Noncitizen and Section 423 - Requirements for Sponsor's Affidavit of Support

Q. To which noncitizens does deeming apply?

A. Deeming applies to all noncitizens sponsored by individuals. Very few sponsored noncitizens will be eligible for food stamps. Refugees, asylees, and deportees do not need to be sponsored. Deeming does not apply to noncitizens sponsored by groups. Deeming ends when a noncitizen has 40 quarters. Therefore, deeming will apply for food stamp purposes only to those who qualify under the military service provision.

Q. Are battered noncitizens exempt from the deeming provisions?

A. If the battered noncitizen lives in the same household as the batterer, there is no exemption. If the battered noncitizen is not living in the same household, battered noncitizens and noncitizens whose child or parent has been battered may be exempt from the deeming provisions for a 12-month period provided that there is a substantial connection between the need for food stamps and the battery.

Q. For situations involving a sponsor's income, if 3 years have passed and the new affidavit has not been signed, is the sponsor's income still counted?

A. For noncitizens whose sponsors signed the old affidavit, deeming ends after 3 years. Current sponsors will not be required to sign a new affidavit. State agencies should follow the requirements of 7 CFR 273.11(j) for these noncitizens.

Q. When will the new legally binding affidavits of support be used?

A. The new affidavits of support will be required for applications for immigrant visas or for adjustments to permanent resident status filed on or after December 19, 1997. The deeming and other sponsored noncitizen provisions contained in the PRWORA must be used for these noncitizens.

Q. Does Section 421 of the PRWORA (deeming of a sponsor's income) replace or make obsolete all of section 5

(i) of the Food Stamp Act?

A. The provisions in section 5(i) apply to sponsored noncitizens whose sponsor signed the old affidavit of support. The new deeming provisions apply to immigrants whose sponsors have signed the new affidavit of support form. Therefore, with two or three possible exceptions, section 5(i) will be obsolete for noncitizens signing the new affidavit of support. The provisions that we are considering carrying over to the new provisions are the ones that provide that the spouse of the sponsor must be living with the sponsor before his or her income and resources are deemed, the requirement for the noncitizen to provide information, and the provision that deeming would not apply if the sponsor is included in the same food stamp household as the sponsored noncitizen. We will either address these three issues in the regulations or allow State flexibility in these areas. In the meantime, State agencies should not deem the income or resources of the spouse of the sponsor unless the spouse is living with the sponsor.

Q. What if a sponsor or the required documents cannot be located?

A. State agencies should follow the requirements of 7 CFR 273.11(j)(7) of the regulations for action to be taken pending receipt of information needed to determine the income and resources of the sponsor and the sponsor's spouse. The noncitizen is ineligible until all necessary facts are obtained, and the eligibility of any remaining household members is determined by considering the income and resources of the ineligible noncitizen, excluding the deemed income and resources of the noncitizen's sponsor and sponsor's spouse. The Department of Justice is developing a computer database that will contain the names of the sponsored noncitizens and the names and addresses of their sponsors. The data will be made accessible to State agencies.

Q. If a sponsor is receiving public assistance or SSI, should the assistance be counted as available to the sponsored noncitizen?

A. Yes.

Q. Is there a time limit during which sponsored indigent noncitizens can be exempted from the full deeming provisions?

A. Yes. If the State agency determines that a sponsored noncitizen would, in the absence of the assistance provided by the agency, be unable to obtain food and shelter, taking into account the noncitizen's own income, plus any cash, food, housing, or other assistance provided by other individuals, including the sponsor, the amount deemed shall be the amount actually provided for a period beginning on the date of such determination and ending 12 months after such date. The State agency must notify the Attorney General of each such determination, including the names of the sponsor and the sponsored noncitizen involved.

Q. Do the States have to prepare any reports on sponsored aliens?

A. Yes. State agencies have to report identifying information and the number of months aliens have received benefits for those aliens that they have determined to be indigent and they have to report on any court orders against sponsors for repayment of food stamps benefits issued to sponsored aliens. The time frame for reporting this information has not yet been established.

Q. Section 423(e) of the welfare reform law provides that upon notification that a sponsored alien has received any benefit under any means-tested public benefit program, the appropriate agency shall request reimbursement by the sponsor in the amount of such assistance. Does the Food Stamp Program qualify as a means-tested public benefit program for purposes of this provision?

A. Yes.

Q. Instead of certifying sponsored aliens and then trying to collect from the sponsor, can the State agency just determine that the aliens are not eligible to begin with?

A. No. If sponsored aliens meet the qualified criteria and the specific food stamp criteria, they must be certified and the State agency must then request repayment from the sponsors.

Q. How should requests for reimbursement be handled?

A. We will either address this in regulations or allow States flexibility in this area. In the meantime, they should be handled as household-caused error claims, but the sponsor should be billed. States should be able to get the address of the sponsor from an INS computer system.

Section 801 - Definition of Certification Period

Q. Can FNS still waive the certification period requirement in the law?

A. The amendment to section 3(c) of the Food Stamp Act made by section 801 of the PRWORA removed the authority to

grant waivers of the certification period requirements of the law. Waiver authority still exists under the demonstration project provisions of section 17(b). FNS may also grant waivers of the 2-year certification period for monthly reporting households on reservations, as provided in section 6(c)(1)(C)(iv).

Q. What kind of contact is needed at the end of 12 months for elderly and disabled households?

A. State agencies may determine what kind of contact to require, such as a face-to-face interview, a telephone interview, or completion of a form.

Q. Are States required to certify everyone for 12 months?

A. State agencies are no longer required to certify certain types of households for specific periods. However, no certification periods can be longer than 12 months except for households in which all adult members are elderly or disabled and households on reservations that are required to report monthly.

Q. Section 805 puts a 90-day limit on the time a household living with others can be considered homeless. Does this mean that the certification period for this type of household cannot exceed 3 months?

A. State agencies can determine how long the certification period should be for these households.

Q. Regarding the definition of a certification period, what is meant by contact? Must this be a face-to-face or would a telephone or mail contact suffice?

A. We will either address this in the regulations or allow State flexibility in this area. In the interim, States may use their discretion.

Q. Some States now have waivers to allow households other than those with elderly or disabled members to have certification periods longer than 12 months. Since the waiver authority has been removed from the law, what does this mean for current and future waivers in this area?

A. You will receive further guidance in this area.

Section 803 - Treatment of Children Living at Home

Q. Do the exceptions for the elderly and disabled and siblings remain in place?

A. These exceptions were deleted by the Leland legislation. However, the provision that allows a person who is elderly and so disabled that he or she is unable to prepare meals, and the person's spouse, to be a separate household provided that the income of the others with whom the individual resides does not exceed 165 percent is still in place.

Q. If a child under 22 who is living with a parent who does not want to participate or will not cooperate, for example the parent will not provide income information, can the child be certified without the parent?

A. No. The law does not allow parents and children under 22 who are living with them to be separate households. Therefore, the household is ineligible until such time as the parent cooperates.

Q. Does Section 803 eliminate the parental control element when determining household composition?

A. No, but parental control does not apply to natural, adopted, or step-children. Natural, adopted, and step-children under 22 who are living with a parent must now be included as a member of the parent's households even if they are living with a spouse or child and they purchase and prepare meals separately. Unrelated children under 18, other than foster children, who are under the parental control of a household member must be included as a member of the household even if they purchase and prepare meals separately.

Q. Can a person under the age of 18, who does not live with his or her parent, receive food stamp benefits in their own home?

A. Yes.

Section 805 - Definition of Homeless Individual

Q. A household living in the residence of another person can only be considered homeless for 90 days. When does the 90-day time period begin?

A. We will either address this in the regulations or allow State flexibility in this area. In the interim, a State agency may use its discretion.

Q. If there is a break in participation during the 90-day period, does the 90-day period start over upon reapplication? What if the individual is at the same address as before the break?

A. We will either address this in the regulations or allow State flexibility in this area. In the interim, States may use their discretion.

Q. If a person moves from the residence of one individual to the residence of another individual, does the 90-day period start again?

A. We will either address this in the regulations or allow State flexibility in this area. In the interim, a State agency may use its discretion.

Q. What is the significance of retaining the homeless definition if we are eliminating homeless from expedited service?

A. It is needed because of the optional homeless shelter deduction and States are supposed to develop special operating procedures for them.

Q. To what type of shelters does the 90-day homeless provision apply?

A. It only applies to people living in the residence of another person, i.e. no shelters.

Section 806 - State Option for Eligibility Standards

Q. Can fingerimaging be made an eligibility criterion?

A. Fingerimaging cannot be made an eligibility criterion, and waivers will not be allowed to permit the use of fingerimaging. However, in accordance with current policy, fingerimaging may be used as a method for ensuring that a person does not participate in more than one jurisdiction in any month. This is because the law requires States to have a system for preventing duplicate participation and if that is the method chosen by a State, an individual may not receive their benefits if they refuse to comply with the State's fingerimaging requirements.

Section 807 - Earnings of Students

Q. Does the exclusion for the earning of students under age 18 include students who are obtaining GED's?

A. Students who attend classes to obtain a General Equivalency Diploma that are recognized, operated, or supervised by the student's State or local school district are eligible for the exclusion.

Q. The earnings of a child are excluded until his or her birthday. Does this mean prorating the income for the month the child turns 18 (in some States this would have to be done prospectively, in others retrospectively); or would a State agency begin counting this income beginning the month after the month the child turns 18; or would the change be made at next recertification?

A. The student's income must be excluded until the month following the month in which the student turns (18) for both new applicants and students who turn (18) during the certification period.

Section 808 - Energy Assistance

Q. Should the regions send a special notice to the State agencies that are currently exempting a portion of their AFDC or GA grants as energy assistance advising them when this provision is to be implemented and the proper notification requirements for households that will receive a reduction in benefits due to the increase in countable income?

A. We expect the regions will do this.

Q. How did this section change existing energy assistance policy?

A. It makes the following changes in the treatment of energy assistance:

1. It eliminates the exclusion for energy assistance provided as part of the grant funded by Title IV-A of the Social Security Act;

2. It eliminates the exclusion for State or local energy assistance provided under State or local laws unless no assistance can be provided in cash;

3. It allows an exclusion for one-time State or Federal payments for weatherization or emergency repair or replacement of a heating or cooling device; and

4. It eliminates the specific exclusion for the portion of third-party general assistance housing payments provided for energy or utilities.

Q. Are payments under both the regular and crisis components of the Low Income Home Energy Assistance Act (LIHEAA) excluded?

A. Section 808 excludes any payments or allowances made for the purpose of providing energy assistance under any Federal law (other than part A of title IV of the Social Security Act). Section 808 also contains a specific exclusion for one-time weatherization or emergency repair or replacement of a heating or cooling device. The LIHEAA excludes all home energy assistance payments or allowances. Therefore, if the payment is for energy assistance, weatherization, or emergency repairs or replacements it is excluded.

Q. In general, what energy assistance payments count and what payments do not count under a State's general assistance (GA) program?

A. All State assistance is counted as income, except (1) one-time payments for weatherization and emergency repair or replacement of a heating or cooling device and (2) assistance provided as a third-party payment under a State or local GA program that by law cannot be provided in cash.

Q. If a local welfare office buys fuel oil for a client through a voucher system, can it be excluded?

A. If the payment is funded by State or local general assistance, the payment would be counted unless (1) it is not anticipated and the household is prospectively budgeted or (2) by law the assistance cannot be given in cash.

Q. How is a State-funded emergency assistance payment to be handled when that payment is issued to cover an energy expense?

A. In general, State-funded energy assistance is counted as income unless it is a one-time payment for weatherization or emergency repair or replacement of an unsafe or inoperative furnace or other heating or cooling device, as provided in section 5(d)(11)(A) of the Food Stamp Act; a payment that could not be anticipated for a prospectively budgeted household; or a vendor payment provided by a program that is prohibited from giving cash assistance by State law.

Q. Are State or private emergency program payments to prevent utility shutoffs considered to be energy assistance? Can this amount be prorated over the heating season?

A. State or private emergency program payments to pay a household's heating or cooling expense would be considered energy assistance. Vended private energy assistance is excluded as provided in regulations at 7 CFR 273.9(c)(1)(vii). Energy assistance may be prorated over the heating or cooling season the payment is intended to cover, in accordance with 7 CFR 273.10(d)(6).

Q. Federal or State one-time assistance for weatherization is excluded as energy assistance. How is weatherization defined?

A. We do not plan to define "weatherization." The State agency should apply the definition used by the program providing the assistance.

Q. Is weatherization a shelter cost or a utility expense?

A. Weatherization is not an allowable shelter (or utility) cost for purposes of the excess shelter deduction.

Q. How is a second weatherization or emergency furnace repair payment budgeted?

A. If the second payment was made on an as-needed basis, rather than as a regular periodic payment, it would be considered a one-time payment and would be excluded. We plan to address the issue of two payments that are intended to cover a one-time expense in the regulations.

Q. Does Section 808(a) regarding energy assistance apply to HUD payments?

A. Yes. To the extent that HUD payments are for energy, or utility expenses, they are excluded from income for food stamp purposes.

Q. There is an income disregard for a one-time payment or allowance under a Federal or State law for the costs of weatherization or emergency repair or replacement of an unsafe or inoperative furnace or other heating/cooling device. Does "one-time" refer to once in the certification period? Can this payment or

allowance be paid in more than one payment?

A. This issue will be addressed by the regulations.

Section 809 - Deductions from Income

(Earned Income Deduction)

Q. Is income under a Title IV-A work supplement program counted as unearned income for food stamp purposes or would the earned income deduction only apply to the unsubsidized portion of the income?

A. The earned income deduction would only apply to the unsubsidized portion.

Q. In computing an overissuance due to a household's failure to report earned income timely, does this apply to both intentional and unintentional failures to report?

A. Yes, it applies to both situations.

Q. An earned income deduction is disallowed for any income not reported in a timely manner. Will States be allowed to establish "good cause" with regard to timely reporting?

A. Yes. States will be allowed to establish "good cause".

(Homeless Shelter Deduction)

Q. Is the homeless shelter allowance still part of the excess shelter deduction?

A. No. It is now a separate (optional) deduction.

Q. What must be verified for the household to get the homeless shelter deduction (each expense or just that they have an expense)?

A. There is no need to verify each expense if one will entitle the household to the homeless shelter estimate. If the State sets a minimum shelter amount, an expense or expenses that exceed that amount should be verified.

Q. Can States set a minimum amount that would entitle a homeless household to the deduction?

A. Yes, the law provides that the State agency may make a household with extremely low shelter costs ineligible for the allowance.

Q. If a State decides to provide a homeless shelter deduction for homeless households, would it be mandatory for homeless households or could they claim actual shelter costs if higher under the excess shelter calculation?

A. We will either address this in the regulations or allow State flexibility in this area. In the interim, States may use their best judgment.

Q. A State wants to use its homeless shelter allowance as the homeless shelter deduction. What will FNS require in terms of approval of the deduction amount?

A. The Act provides that a State agency may develop a standard homeless shelter allowance, which shall not exceed \$143 per month. Therefore, States may set the amount provided that it does not exceed \$143 per month.

(Standard Utility Allowance (SUA))

Q. For households that have 24-month certification periods, as allowed by section 801, can States allow households to switch between actual costs and the SUA at the mid-certification contact?

A. Under section 5(e)(7)(C)(iii)(II) of the Food Stamp Act, as amended by the PRWORA, a State agency that does not take the option to use a mandatory SUA shall allow a household to switch between the SUA and actual costs at the end of a certification period. Therefore, households with 24-month certification periods can switch only at the end of the 24-month period.

Q. Section 5(e)(7)(C)(iii)(II) of the Food Stamp Act as amended by the PRWORA provides that a State agency that does not opt for a mandatory SUA shall allow a household to switch at the end of a certification period

between the SUA and actual costs. Does this preclude the State agency from allowing the household to switch from an SUA to actual costs or vice versa when a household moves to another residence during the certification period?

A. Current policy is that households that were incurring no utility costs that move and begin incurring allowable utility costs may choose between the SUA and actual costs at the time of the move. The amendments to the Food Stamp Act by the PRWORA do not change this policy.

Q. Can a waiver be granted to offer a switch at mid-certification or at any other time during a certification period?

A. FNS has no authority to approve a waiver of section 5(e)(7)(C)(iii)(II) under the waiver authority in 7 CFR 272.3(c).

Q. In States that choose to make the SUA mandatory for all households, do the rules for the telephone standard remain the same?

A. Yes. The provision in 7 CFR 273.9(d)(6)(v)(C) allowing State agencies to mandate use of a telephone standard would remain the same.

Q. Section 809 provides that State agencies may mandate use of a standard utility allowance (SUA) if the State agency has developed both a heating and cooling standard and a standard that does not include heating and cooling and the standards will not result in increased Program costs. Is the status of current nonheating/cooling waivers affected by this provision?

A. Current waivers allowing limited (nonheating/cooling) SUAs will remain in place until final regulations are published.

Q. Will FNS consider additional requests for limited waivers for States that do not choose the option to make SUAs mandatory?

A. Yes. State agencies may continue to submit requests for limited SUAs.

Q. If a State opts to use mandatory standards, do they have to be approved by FCS?

A. Yes. The FNS national office will review State requests to use mandatory standards.

Q. Will States be required to submit cost impact evaluations for mandated SUAs?

A. FNS will work with State agencies interested in the option to develop standards that do not increase costs.

Q. If a State agency opts for a mandatory SUA, will the State be allowed or required to adjust it from year to year?

A. State agencies would have to submit justification for any increase or decrease in a standard.

Q. Is there any indication that the SUA amount could be capped?

A. The law does not cap the SUA amount.

Q. Is there a shelter deduction cap when budgeting excess shelter costs for the elderly and disabled?

A. No.

Section 811 - Vendor Payments for Transitional Housing Counted as Income

Q. Is a definition for "transitional housing payment" available? If it isn't, can a State agency use a definition that exists for another Department?

A. We do not plan to define transitional housing payments. States may use a definition that exists for another Department. According to the preamble to regulations published February 3, 1992 (57 FR 3961), the Department decided not to define "transitional housing" in implementing the exclusion for transitional housing payments in section 1721 of the Mickey Leland Memorial Domestic Hunger Relief Act because a flexible definition was already available. The preamble indicates that transitional housing was defined in section 422(12)(A) of the Stewart B. McKinney Homeless Assistance Act as housing which has the purpose of facilitating the movement of homeless individuals or families to independent living within a reasonable amount of time, as determined by the Secretary of Housing and Urban Development (HUD). Section 422(12)(A) also provides that transitional housing includes housing primarily designed to serve deinstitutionalized homeless individuals and other homeless individuals with mental disabilities, and homeless families with children. State agencies

may use the HUD definition in making case-by-case determinations as to whether housing for homeless households is transitional or permanent. The preamble indicates that the term would not be defined in February 3, 1992 regulations, and we do not propose to define it in regulations implementing the PRWORA.

Section 812 - Simplified Calculation of Income for the Self-employed

Q. According to section 812, USDA is to establish a procedure before August 22, 1997 for States to use in submitting simplified methods of calculating self-employment income for approval. How should State agencies submit these requests?

A. Until regulations are published establishing a procedure, State agencies may continue to submit requests for simplified self-employment calculations in a format similar to administrative waiver requests.

Q. Will States be required to offer the client a choice of using actual costs or the simplified calculation?

A. We will either address this in the regulations or allow State flexibility in this area. In the interim, States may submit requests outlining the methods they want to use in estimating costs.

Q. Regarding the simplified calculation of self-employment income, will FNS get involved in establishing methodology for calculating income, or will it just set up a process for evaluating and approving State processes to ensure federal cost will not increase? Will the approvals be for an indefinite period of time?

A. We will probably set guidelines and require that the methodology be reviewed periodically.

Q. Who will be responsible for reviewing and approving State proposals for simplified calculation of self-employment income?

A. The national office will be responsible.

Section 813 - Doubled Penalties for Violating Food Stamp Program Requirements

Q. Section 813 disqualifies an individual trading food stamps for a controlled substance for 2 years. Section 115 would make individuals convicted of a felony drug violation ineligible for the program. Does this mean that anyone convicted of a drug felony relating to the sale of food stamps would become ineligible as opposed to disqualified?

A. Unless the State has opted out of the permanent disqualification by State law or the State has passed a law limiting the period that the disqualification applies, the indefinite period applies. Regardless of whether the person is considered to be ineligible or disqualified, all of his or her income and resources would be counted for food stamp purposes in accordance with section 115 of the recent law or 7 CFR 273.11(c)(1).

Q. Do the provisions in Sections 813 and 115 apply to legal but controlled substances? Do they apply to drug-related violations, i.e., violations committed while under the influence of drugs?

A. Section 813 applies to a finding by a Federal, State, or local court of the trading of a "controlled substance" as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802) for coupons. Section 115 makes an individual convicted under Federal or State law of any felony offense which has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substance Act permanently ineligible for the program unless the State passes a law to opt out of this provision. Section 102(6) provides that,

The term "controlled substance" means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this subchapter. The term does not include distilled spirits, wine, malt beverages, or tobacco....

Q. Is advance notification required before applying the provisions of this Section?

A. The regular due process requirements in the regulations apply. There is nothing in the new legislation that requires a special notice to households.

Section 814 - Disqualification of Convicted Individuals

Q. Can an individual be disqualified based on an administrative decision if the amount of the items involved has a value of \$500 or more?

A. The introductory language to the amended section provides that an administrative determination may be made but the violations referred to are felony and misdemeanor convictions. Only courts can render felony and misdemeanor convictions.

Section 815 - Disqualification

Q. Section 815 states, in part, that "no physically and mentally fit individual over the age of 15 and under the age of 60 shall be eligible to participate in the Food Stamp Program if ... the individual refuses without good cause to register for work, participate in an employment and training program, accept employment, provide information, However, Section 824 indicates that individuals under 18 or over 50 would be subject to the able-bodied adult without dependents (ABAWD) disqualification provisions. Can this apparent discrepancy in the age requirements be reconciled?

A. We do not see these as conflicting provisions although the age limits are not consistent. Section 815 requires a person to register for work, participate in an employment and training (E&T) program, etc., and it contains its own disqualification penalties for failure to comply. Section 824 is an additional (and overriding) requirement and provides time-limited benefits to certain people (ABAWDs) if they are not working or participating in a work program. This distinction was deliberately made by Congress.

Q. If a recipient meets an exemption criteria while under an employment and training sanction, what happens to the sanction?

A. The sanction will end if the sanctioned individual becomes exempt from work registration.

Q. Would a penalty be imposed in a situation where a recipient has earnings equal to 30 hours a week times the minimum wage and subsequently reduces hours of work so that the earnings were no longer equal to 30 hours a week times the minimum wage?

A. The Act requires a penalty for those who are working more than 30 hours per week and then cut their hours to less than 30. The Secretary has the authority to determine the meaning of "reducing work effort." Proposed rules incorporating the welfare reform changes will address situations in which an individual has earnings equal to 30 hours times the applicable minimum wage—but does not actually work 30 hours—and reduces their work hours.

Q. If an applicant or recipient quits a 40 hour per week job that pays \$5 per hour to go to work at a 26 hour per week job that pays \$10 per hour job, would they be subject to a penalty because they reduced their hours below thirty per week or would this be acceptable because the wage at their new job equals or exceeds 30 hours per week X minimum wage and also exceeds the earnings from the old job?

A. Although the Act requires a penalty for those who are working more than 30 hours per week then cut their hours to less than 30, the Secretary has the authority to determine the meaning of "reducing work effort." Current regulations, which provide for comparable hours or wages (working 30 hours weekly or receiving weekly earnings at least equal to the Federal minimum wage multiplied by 30 hours), will remain in effect.

Q. Lack of child care has been deleted as good cause exemption for refusal to meet work requirements. Are there exceptions to this provision?

A. The new law eliminated the language that included the lack of adequate child care for children above the age of 5 and under the age of 12 as a good cause reason for refusing an offer of employment. The Secretary has the authority to determine the meaning of good cause for paragraph 6(d)(1). Proposed rules will address the determination of good cause. In the interim, States should be encouraged to consider the child care needs of prospective workers.

Q. Would a temporary, voluntary reduction in earnings agreed to by a client in order to eventually obtain a higher rate of pay at a different job subject the client to a penalty?

A. Current rules recognize that such job changes occur and, to prevent forcing food stamp recipients to remain in dead end jobs, allow the individual to avoid the voluntary quit penalty by accepting employment of comparable hours or salary. Although the term "comparable" has not been defined, State agencies are not expected to reject a new job as not comparable simply because the number of hours or the salary of that job is lower than the job that was quit. Proposed rules will retain this approach.

Q. If a mandatory work registrant who has failed to comply, complies (or agrees to comply) during the NOAA period, is the disqualification imposed?

A. If the work registrant actually complies with the requirement during the NOAA period, the proposed disqualification can be canceled. Once canceled, the proposed disqualification would not count as an "occurrence."

Q. If the State agency fails to take timely action to disqualify an individual or household for its non-compliance with work registration requirements, how is the disqualification applied?

A. In the event a State agency fails to take timely action to disqualify an individual or household, the State agency must implement the full disqualification at the end of the adverse action period.

Q. Does a voluntary quit still have to be within 60 days of application? Does the 20 hours per week provision still apply for voluntary quit?

A. The 60 day period will continue to apply. Since the Secretary has the authority to determine the meaning of voluntarily quitting, proposed rules will address the standards—including hours worked—that actually establish voluntary quit.

Q. Does a reduction in work effort have to occur within the past 60 days to subject an individual to disqualification under Section 815?

A. The proposed rule will address reduction of work effort.

Q. A State intends to impose the following sanctions: 1 month for the 1st offense; 3 months for the second offense; and 6 months for the third and subsequent offenses. Is the following statement correct? An individual fails to comply a second time and is sanctioned for October-December. The individual cures the noncompliance in November but doesn't begin to receive benefits again until January (assuming he's otherwise eligible).

A. The statement is correct. Assuming the State agency opts to limit the sanction for the second violation to 3 months, the individual may not regain eligibility until the end of the 3 month period. The Act specifies that the individual will remain ineligible until the later of the date the individual becomes eligible or the date that is 3 months after the date the individual became ineligible.

Q. The law provides that USDA define the meaning of good cause, voluntary quit, and reducing work effort. Also under disqualifications, the State is required to determine the meaning of other terms. Are there parameters or restrictions to the State developed definitions? Will these State defined terms be subject to FNS approval?

A. The law requires States to determine the meaning of terms other than good cause, voluntary quit, and reducing work effort. (Examples of terms subject to State determination include: the meaning of physically/mentally fit; what constitutes sufficient information or a refusal.) The parameters and restrictions are that none of the States' determinations can be less restrictive than comparable determinations under Title IV-A of the Social Security Act. FNS approval is not required.

Q. This provision deletes lack of adequate child care as an explicit good cause exemption for refusal to meet work requirements. According to the summary by DHHS on Title VI (Child Care), single parents with children under 6 who cannot find child care would not be penalized for failure to engage in work activities. Is Title VI only referring to the TANF? Are the provisions in Title VI and Section 815 mutually exclusive? Will waivers be considered for extremely rural areas or other extenuating circumstances?

A. Title VI refers to TANF. The provisions are not necessarily mutually exclusive. The language of the new law eliminated the previous language concerning lack of adequate child care as a good cause for refusing an offer of employment. However, the statute gives the Department the authority to determine the meaning of good cause for section 6(d) of the Food Stamp Act.

Section 816 - Caretaker Exemption

Q. Which States were denied waivers (as of August 1, 1996) to lower the age at which a child exempts a parent/caretaker from the FSP work rules, but can now under legislation lower the age to between 1 to 6 years of age?

A. A comprehensive review of these denied waivers is underway. To date, States qualifying for this provision are: Kansas, Maryland, Michigan, North Dakota, Wisconsin, and Wyoming.

Section 817 - Employment and Training

Q. 1997 Employment & Training (E&T) Plans include inadequate child care as an exemption. However, legislation (provision 815) deletes lack of adequate child care as an explicit good cause exemption for refusal to meet work requirements. Does provision 815 preclude States from using inadequate child care as an E&T exemption?

A. The language of the new law (815) eliminated the previous language concerning lack of adequate child care as a good cause for refusing an offer of employment. However, the statute gives the Department the authority to determine the meaning of good cause for section 6(d). Provision 817 deals specifically with E&T requirements and removes specific Federal rules as to States' authority to exempt categories of individuals and individuals from E&T requirements. In short, States may elect to establish an E&T exemption for individuals for lack of adequate child care as a part of their E&T plan.

Q. What is a Statewide workforce development system and are States required to operate the E&T program through a Statewide workforce system?

A. A Statewide workforce development system is defined by the State. Characteristics of such a system are that it usually offers employment services which may include working with individuals to remove barriers to employment, employment matching, vocational and technical education/training, etc. The law requires that the E&T program be delivered through such a system, if the system is available locally.

Q. Will the requirement that States submit E&T plans for FNS approval continue?

A. Yes, the requirement will remain and FNS' Regional offices (ROs) will continue to receive and have authority to approve State E&T plans. Currently, FY97 plans are under review and ROs will direct requests to States asking for plan updates that are reflective of the Act.

Q. Would the 50% funding permitted by the Act for self-sufficiency related case management be budgeted and accounted separately from other E&T related administrative costs?

A. No, such initiatives and activities should be included in the standard reporting of administrative costs.

Q. Legislation now requires States to "promptly notify" USDA if the allocated E&T funds will not be entirely expended. How is "promptly notify" defined?

A.. Currently the phrase "promptly notify" is undefined. However, it will be defined in new regulations. Until regulations are published States should assume that they are to notify USDA as soon as they become aware that allotted funds will not be fully expended.

Q. Will the FCS-583 still be required? If so, will it require any modification under legislation?

A. The requirement that States collect and report E&T data remains. This information is used for statistical purposes and to establish States' annual grant amounts. The methodology for such collection will be specified in regulations. If the FCS-583 is continued, revision would be necessary to capture information not currently included (i.e., for instance, number of ABAWDS).

Q. The legislation removed the requirement that E&T placements be restricted to employment that meets a public purpose. What does this achieve since placements to private concerns were previously allowed?

A. Legislation is silent on the specific of public purpose. However, the general consensus pertaining to self-sufficiency and welfare-to-work is that all employment--private or public--services a public purpose.

Q. The provision limits the E&T funding for services to title IV-A recipients to the amount used by the State for AFDC recipients in fiscal year 1995. Will States be advised of the limit or will States advise FNS of the limit?

A. This limit should be provided by the States in their revised E&T plans. FNS Regional offices will work with States to acquire this information.

Q. Will the existing \$25 per month E&T transportation reimbursement limit be increased for Federal reimbursement purposes?

A. No. The Federal government will continue to reimburse State agencies 50 percent of their total participant transportation reimbursement costs, up to a total amount of \$25 per participant per month.

Q. PRWORA specifies that able-bodied adults without dependent children (ABAWDs) can meet the work requirement if they participate in and comply with the requirements of a program under section 20 of the Food Stamp Act or a comparable program established by a State or political subdivision of a State. Would a workfare component under E&T be considered "comparable"?

A. Yes. ABAWDs can meet the work requirement if they participate in and comply with the requirements of a program under section 20 of the Food Stamp Act or a comparable program established by a State or political subdivision of a State.

Q. How does the workfare component under E&T differ from section 20 workfare?

A. If workfare is operated as part of a State's E&T program, it is included as a component in the State agency's E&T Plan. The administrative costs of a workfare component may be funded by the State agency's 100% E&T grant, and component participants are entitled to reimbursements of participant expenses and dependent care expenses, up to the maximum levels established in regulations.

An optional workfare program (independent of the State's E&T program) may be operated by a State, as well as a local entity. The local entity is not required to work through the State agency to operate a workfare program. The State or local agency must submit a workfare plan to FNS for approval. FNS will fund 50 percent of agency's administrative costs incurred in operating an optional workfare program, including a participant reimbursement up to \$25 per month for any

transportation and/or other costs directly related to program participation.

Q. Are TANF recipients permitted to participate in workfare and can their status be designated as mandatory?

A. TANF recipients exempt from food stamp work registration because they are subject to the work requirements under title IV of the Social Security Act will be subject to workfare under section 20 of the Food Stamp Act if they are currently involved less than 20 hours a week in title IV work activities. Those recipients involved 20 hours a week or more may be subject to workfare at the option of the State agency or the political subdivision operating the workfare program. A TANF recipient may be exempt from workfare on the basis of other exemptions, such as responsibility for a child under six years of age.

Q. Can a State with a large ABAWD population exercise its option to exempt individuals or categories of (non-ABAWD) individuals from E&T in order to make more slots available to the ABAWDs?

A. PRWORA removed specific Federal restrictions on States' authority to exempt categories of individuals and individuals from E&T requirements. States are free to exempt whoever they choose from E&T. The only condition to this liberty is that exemptions be "periodically evaluated" for validity.

Q. PRWORA mandates that USDA define the meaning of voluntary quit. How should voluntary quit be considered and treated in the interim?

A. State agencies should continue to comply with current rules.

Q. PRWORA limits E&T funding for services to title IV-A recipients to the amount used by the State for AFDC recipients in FY 95. When does the funding limit become effective and what source will be used to determine the amount used by the State for AFDC recipients in FY 95?

A. The funding limitation provision was signed into law on August 22, 1996, effective October 1, 1996. The rules and procedures for verifying FY 95 title IV-A spending levels and for tracking current FY expenditures will be established in the proposed rule. In the interim, guidance for establishing base FY 95 expenditures and for on-going State data gathering and reporting requirements was issued to FNS regional offices, for transmission to States, on December 31, 1996.

Q. PRWORA removes the requirements for E&T performance standards which have traditionally been tied to funding awards. How will future funding amounts be determined?

A. The formula for allocating the annual Federal 100% E&T grant has not yet been determined. However, the Act requires that the formula give consideration to the ABAWD population.

Q. Will the form 583 be amended to specifically capture ABAWD participation?

A. We anticipate that there will be a need to capture ABAWD participation data; however, the mechanism for this data collection is yet to be determined.

Q. PRWORA allows States the option to extend disqualifications for failure to perform actions required by other means-tested programs to the FSP. Would this allow a TANF sanction (due to non-compliance with OJT) to be applied to food stamps, if there is no OJT component under the FSET component?

A. The Food Stamp Act requires that a non-exempt TANF recipient who fails to comply with a title IV work requirement be treated the same as if he or she failed to comply with a food stamp work requirement. Thus, if an individual is disqualified from participation in TANF for noncompliance with OJT, that individual must be sanctioned according to food stamp disqualification requirements, depending on the frequency of the occurrence.

Section 819 - Comparable Treatment for Disqualification

Q. A joint Title IV-A and food stamp initial application is taken. The State agency denies Title IV-A benefits because the household is a teen parent who does not live at home without good cause. Can food stamps be denied at the same time based on the comparable disqualification provision?

A. Since this is a discretionary provision and the final regulations have not yet been published, the State agency may apply its own interpretation for the time being. However, our preliminary position, subject to change during the regulatory process, is that the household must be receiving Title IV-A benefits before there can be a Title IV-A disqualification. Therefore, we do not think that the comparable disqualification provision should be applied at the time of initial application for Title IV-A. (We interpret Section 11(i)(2) of the Food Stamp Act, as amended, to only apply to joint applications for recertification when there has been no break in participation.)

Q. In Section 819 regarding comparable disqualifications, does the disqualification have to happen after enactment?

A. Yes.

Q. Does this apply to food stamp applicants as well as recipients?

A. If a disqualification has been imposed by another assistance program while the person was participating in that program and it is still in effect when the person initially applies for food stamps, the disqualification may be imposed at the time of initial food stamp application.

Q. Does the comparable disqualification period have to be for the same period of time as the disqualification in the assistance program?

A. The food stamp disqualification should be concurrent with the assistance program disqualification to the extent possible. A food stamp disqualification period should never be imposed before the disqualification is imposed for purposes of the assistance program. It may not always be possible to impose the full disqualification period for food stamp purposes because of advance notice of adverse action requirements during the certification period.

Q. Can comparable disqualifications include permanent disqualifications? For example, a person may be permanently disqualified in a public assistance program after the third violation.

A. Yes. If another assistance program disqualifies a person permanently for failure to take a required action, he or she may be disqualified permanently for food stamp purposes.

Q. Can States set limits on the length of permanent or indefinite disqualifications?

A. We will either address this in regulations or allow State flexibility in this area.

Q. Must States develop their own systems to keep track of disqualifications in other programs?

A. States must develop their own system.

Q. The law provides that Title IV-A rules and procedures can be used. If Title IV-A disqualifies the whole household, can the whole household be disqualified for food stamps?

A. Disqualifications should only be applied to the individual.

Q. Can food stamps disqualify the whole household under the comparable disqualification provision although the food stamp work requirement only disqualifies an individual for some offense?

A. No.

Q. If a person fails to perform an action required by a general assistance program and the whole household is disqualified, can the whole household be disqualified for food stamp purposes?

A. Only the individual can be disqualified under the comparable disqualification provision.

Q. If a person is disqualified under a HUD Section 8 housing program, can the person be disqualified for food stamps?

A. Yes, a person may be disqualified under the comparable disqualification provision.

Q. Must the household be given a notice before the person can be disqualified for food stamps during the certification period?

A. Yes, the household must be given a notice of adverse action in accordance with 7 CFR 273.12(c)(2).

Section 820 - Disqualification for Receipt of Multiple Food Stamp Benefits

Q. This section provides that if an individual is found to have made a fraudulent statement or representation with respect to identity or place of residence in order to receive multiple benefits simultaneously under the Food Stamp Program, the individual shall be ineligible for 10 years. Does the household have to actually receive multiple benefits or just attempted to receive them?

A. The act of fraud is complete when the fraudulent statement is made. Therefore, the household does not have to actually receive multiple benefits.

Q. What data bases should States use?

A. States need to have an in-State system for identifying people who make a fraudulent statement or representation with respect to the identity or place of residence of the individual to receive multiple benefits simultaneously. If a State knows of out-of-state violations, they must act on this information, but they are not required to develop a system to track out-of-state violations. We expect to eventually be able to track these households through the DRS.

Q. Does this provision apply to administrative findings as well as court findings?

A. Yes. The State agency may make an administrative determination or a court may make a determination.

Section 821 - Disqualification of Fleeing Felons

Q. Is the State required to use a database to identify fleeing felons?

A. No. If the State becomes aware of a fleeing felon from any source, it must act on the information. Any further requirements may be addressed by regulation.

Q. What is expected of States in terms of tracking fleeing felons?

A. States should either ask the household during the interview or on the application if a member is a fleeing felon or develop some matching system with a law enforcement agency. There will be no FNS national database on these people. The DRS system will not be used. States may, but are not required to, check with other States.

Q. If a law enforcement officer asks for information on a fleeing felon who is a recipient, does the State agency have to take action to make the person ineligible for food stamps? This could interfere with the police investigation.

A. While the State agency must take action on known information that could affect a household's food stamp benefits, it may delay taking such action if the police ask the State to delay the action because it could interfere with their investigation or apprehension of the fleeing felon.

Section 822 - Cooperation with Child Support Agencies

Q. Does disqualification for failure to cooperate with a child support agency apply to NA, PA or all food stamp households?

A. The provision is optional. If the State chooses to apply it, it may apply it to either NA, PA, or all food stamp households.

Q. What will the penalty be for noncooperation with a child support agency? Will it be a condition of eligibility for the individual not cooperating or the entire household?

A. The individual will be ineligible. We believe that the individual's income and resources should be counted to assure that the household does not receive an increased allotment because of such failure to cooperate.

Q. Please define "cooperation" with child support agencies.

A. At this time we do not plan to define "cooperation". States may use the child support agency's definition or develop their own.

Q. Can a state choose to enforce the provisions of this Section for custodial parents and not enforce the provisions for non-custodial parents?

A. Yes, there are 2 separate provisions in the act and each one is a State agency option.

Q. If Title IV requires a disqualification for the entire household, can the same penalty be applied to the food stamp household?

A. Only the individual who fails to cooperate with a child support agency can be disqualified under this section.

Q. Can States apply the provisions to natural parents but not others?

A. We will either address this in the regulations or allow State flexibility in this area. In the interim, States may use their discretion.

Q. Will the State agency be required to include in the Plan of operation all pertinent procedures?

A. FNS will need to know what options the State agency elects with a description of how it will meet the requirements in the Act.

Section 823 - Disqualification Relating to Child Support Arrears

Q. Regarding disqualification for child support arrears, this provision implies "retroactivity" since an individual would be "ineligible in the month during which he/she was delinquent". This could not be known by the State agency until after the delinquency occurred. How will this be applied?

A. This will be addressed in the regulations. Note that this provision is optional.

Q. Will arrearage in child support payments be a reportable change or will State agencies rely on information from CSEA?

A. We will either address this in regulations or allow State flexibility in this area.

Q. How does the disqualification apply if the arrearage is after benefits have been issued for the month?

A. We will either address this in regulations or allow State flexibility in this area.

Q. What if action has been taken to disqualify the individual because the payment has not been made by the required deadline within the month but then the payment is received by the last day of the month?

A. We will either address this in regulations or allow State flexibility in this area.

Section 824 - Work Requirement (ABAWD)

(Exemptions)

Q. Are Title IV-A and UC recipients categorically exempt from the ABAWDs provision?

A. They are not categorically exempt, but most of them will be exempt. Individuals subject to and complying with a title IV work registration requirement or the Federal-State unemployment compensation system are exempt from the ABAWD provision. Other individuals may be exempt under other food stamp provisions such as the exemption for adults caring for children.

Q. Can a person be exempt if the unemployment compensation system only requires job search?

A. Yes. An individual is exempt from Section 824 if that individual is otherwise exempt under subsection (d)(2) of Section 6 of the Food Stamp Act. Under Section 6(d)(2)(A) of the Food Stamp Act, an individual is exempt if complying with the Federal-State unemployment compensation system, whatever that system requires. The job search and job search training limitation does not apply to the enumerated exemptions, it only applies to what will be considered as participation in a "work program."

Q. Must 2 separate determinations be made--one for E&T and one for the ABAWD provision?

A. An individual must comply with both the E&T requirement and the ABAWD provision.

Q. Are persons exempt from E&T considered ABAWDs?

A. The exceptions to the ABAWD work requirement are enumerated specifically in the law. Individuals are exempt if they are: (1) under 18 or over 50; (2) medically certified as physically or mentally unfit for employment; (3) a parent or other member of a household with responsibility for a dependent child; (4) otherwise exempt under subsection (d)(2) [of section 6 of the Food Stamp Act]; or (5) a pregnant woman.

Q. What does "is otherwise exempt from employment criteria" mean?

A. The law exempts individuals who are "otherwise exempt under subsection (d)(2)" of section 6 of the Food Stamp Act. The exceptions contained in subsection 6(d)(2) of the Food Stamp Act are exceptions to the work registration requirements.

Q. Exemptions from E&T vary from state to state. Does this mean that the definitions of exemptions from E&T will carry forward so that ABAWD exemptions will vary?

A. No. The law says, "otherwise exempt under subsection (d)(2) {of Section 6 of the Food Stamp Act}." The exemptions under this provision are therefore limited to those specifically listed in Section 6(d)(2). This section identifies exemptions from work registration - it does not include State exemptions of work registration from the E&T program.

Q. Will a person be exempt during any trimester of pregnancy?

A. A person will be exempt during any trimester of pregnancy.

Q. What is the definition of "dependent" in this section?

A. We will either address this in the regulations or allow State flexibility in this area. In the interim, State agencies may use their discretion.

Q. Regarding the dependent care exemption, does this mean the individual with primary responsibility for the dependent child is exempt? Would a dependent child exempt one or both parents from the work requirements?

A. We believe that the legislative history shows a clear intent to exempt any parent living with his or her children.

Q. If the parent(s) and one or more other adults are living in the household and all claim to have responsibility for a child, may they all be exempt?

A. This issue will be addressed by the regulations.

Q. What is the age limit for a dependent child to exempt a person from the ABAWD provision?

A. This will be addressed by the regulations.

Q. Can the parents of a child be exempt under Section 824 if the child is temporarily not in the household (e.g., in the hospital for more than 30 days, or where there is shared custody)?

A. We will either address this in the regulations or allow State flexibility in this area. In the interim, State agencies may use their best judgment.

Q. What is the definition of able-bodied or the criteria for such determination?

A. The phrase "able-bodied" does not appear in the legislation. The law exempts individuals who are "medically certified as physically or mentally unfit for employment." We will either address this in regulations or allow State flexibility in this area.

Q. What does "medically certified" mean and is there a special form to be used?

A. We will either address this in the regulations or allow State flexibility in this area. In the interim, State agencies may use their discretion.

Q. Is there a time period for the medical certification?

A. We will either address this in the regulations or allow State flexibility in this area. In the interim, State agencies may use their discretion.

Q. A person "over 50 years of age" is exempt from the ABAWD work requirement. Does an individual have to wait until his or her 51st birthday to become exempt?

A. No. For purposes of this provision, an individual becomes exempt on his or her 50th birthday.

Q. Are teachers exempt from the ABAWD work requirement during the summer months even though they do not actually work during the summer months?

A. Section 824 of the PRWORA exempts from the ABAWD work requirement individuals who are exempt from the work registration requirements. An individual is exempt from the work registration requirements if he or she works 30 hours per week or receives earnings equal the minimum wage multiplied by 30 hours per week. Current policy, as outlined in Policy Memo 81-37, is that the number of weeks to be used for the calculation may be tied to the number of weeks it may best be anticipated that the person will remain in that position. This number shall not exceed either the length of the certification period or the 12-month work registration period. The average may be based on any number of weeks less than either of these two periods which will allow a reasonable approximation of the number of hours worked per week. Therefore, if the number of hours the teacher works during a 12-month certification period is at least 30 hours a week, or his or her salary, when averaged over the 12-month period is equal to the minimum wage times 30 hours per week, the

teacher is exempt during the entire 12-month period from both the work registration and ABAWD requirements.

Q. Some individuals are required to participate in a JTPA program which is like job search. Does this count as a "work program"?

A. The law specifically allows any JTPA program to count as a "work program."

Q. Does the 120 hour per month maximum as time spent in an E&T program under 7 CFR 273.7 also apply to ABAWDs?

A. No. The work requirement of Section 824 is separate from the E&T program. 7 CFR 273.7(f) contains the requirements for an E&T program, one of which provides that an individual cannot be required to work more than 120 hours per month. These requirements are not relevant to the work requirement of Section 824.

Q. How will 20 hours on average be determined?

A. The law says "20 hours per week, averaged monthly." That means that someone who worked 80 hours in 2 weeks would have an average of 20 hours per week for the month.

Q. Is a combination of 20 hours of work and participating/complying with a "work program" acceptable when determining eligibility?

A. We will either address this in the regulations or allow State flexibility in this area. In the interim, we recommend that States allow an exemption based on a combination of work and participation in and compliance with the requirements of a work program which total 20 hours per week, averaged monthly. For example, a person would be exempt from the ABAWD provision if he or she worked for 20 hours during each of the first two weeks in the month and participated in and complied with a work program for 20 hours during each of the last two weeks in the month.

Q. To qualify as "work," does the job have to be paying minimum wage or meet certain criteria? Can self-employment count as "work"? Can volunteer work count as "work"?

A. We will either address this in the regulations or allow State flexibility in this area. In the interim, State agencies may use their best judgment.

Q. If a State has a waiver which exempts certain areas of that state, how is a client who moves from a non-exempt area within the state to an exempt area within the State treated?

A. If a client moves into an exempt area, then the client becomes exempt and his participation while not working does not count toward the 3 month limit. However, his 36 month period continues.

Q. Who determines when an area does not have sufficient employment and how often is that determination made? How will "area" be defined? Will the regional offices or the national offices grant these waivers?

A. FNS issued interim guidance on December 3, 1997, and will address this further in the regulations.

(Regain eligibility)

Q. The language in the law does not preclude someone who regains eligibility and is subsequently fired for good reason (i.e., breaks work rules, frequently absent, etc.) or who quits a job from getting the 3-month extension. Should we apply the language of the law literally and grant the 3-month extension without regard to the reason for the job loss?

A. Section 824 is clear that the rest of the Food Stamp Act still applies; if a voluntary quit or other sanction is imposed, then the client is subject to the sanction. This "additional" eligibility is just additional eligibility under this provision; it does not make someone eligible who is not otherwise eligible.

Q. To regain eligibility under the work requirement of Section 824, does a workfare participant have to work 80 hours over a 30-day period?

A. No. The individual only needs to participate in and comply with the requirements of a workfare program for a 30-day period.

Q. Does the client have to finish the cure before he or she is eligible, or if the client wants to participate in a work program, should the client be approved assuming that they will comply?

A. They have to have worked 80 hours in a 30-day period before they regain eligibility.

Q. The PRWORA states that people who lose then regain eligibility can be eligible for another consecutive 3 month period. How are non-consecutive months treated? For example, a client regains eligibility, then loses it in March. The client receives two months of food stamps, then regains eligibility by meeting the work requirement in the third month. What happens if the client once again fails to meet the work requirements in month five?

A. The law specifically states that once an individual regains eligibility and then loses it again, the individual, "shall remain eligible for a consecutive 3 month period, beginning on the date the individual first notifies the State agency that the individual no longer meets the requirements in subparagraph (A), (B), or (C) of paragraph (2). [work requirements]. The department may provide further guidance in regulations.

Q. Does the 3-month extension if a person loses his job only apply 1 time in a 36-month period?

A. It only applies one time in a 36-month period.

Q. Individuals may regain eligibility by working or participating in a work program 80 hours in a 30-day period. What if there is a break in the middle of this participation?

A. Within a 30-day period, the individual has to work or participate in a work program for 80 or more hours, or participate in and comply with a work fare program. If the individual works 50 hours, and then 60 days later works another 30 hours, the individual has not worked 80 hours within a 30-day period, and so has not regained eligibility under this provision.

Q. When a person returns to the food stamp office and reapplies to regain eligibility, is the date of application the date the household reports he has just started working or the date the cure is completed?

A. The date of application is the date the household submits an application with a name, address, and signature. This was not changed by the welfare reform law. However, the date that a disqualified person can regain eligibility on the basis that he or she is cured will either be addressed by regulations or States will be allowed flexibility in this area.

Q. To be eligible for the one time 3-month extension, does the individual have to be receiving food stamps at the time his employment or training program participation ends?

A. No. There is nothing in the law that requires that the person be participating in order to regain eligibility.

Q. Will the 3 "additional" months of ABAWD eligibility be allowed only to those individuals who were denied benefits because of the provisions of this Section?

A. Yes. The law specifically states, "An individual denied eligibility under paragraph (2) [work requirements] shall regain eligibility to participate..."

Q. If an individual was denied because he or she was not working or participating in a work or workfare program, the individual can regain eligibility to participate if, during a 30-day period, the individual works or participates in a work or workfare program the required number of hours. If an ABAWD's certification period expired and the ABAWD did not reapply because he or she knew he or she would not be eligible, can the ABAWD subsequently regain eligibility if, during a 30-day period, the individual works or participates in a work or workfare program the required number of hours even though he or she was not technically "denied"?

A. Yes. An ABAWD who would have been denied had they reapplied shall be treated the same as an ABAWD who reapplied and was denied.

Q. A case is closed because an ABAWD is not working or participating in a work or workfare program the required number of hours. The person reapplies because he or she has become medically certified as unfit for employment and the disability is verified. Can the person regain eligibility on the basis that he or she is now exempt from the ABAWD work requirement or does the person have to be working or participating in a work or workfare program the required number of hours to regain eligibility?

A. The person can regain eligibility based on the disability. The ABAWD work requirement does not apply to individuals who are medically certified as physically or mentally unfit for employment.

(General)

Q. If a person leaves the program and then returns, where does his 36 months start?

A. Once started, the 36-month period continues uninterrupted, even while the person is not participating; it is only the 3-month "clock" that starts and stops.

Q. If the recipient has not worked and has received food stamp benefits for 2 ½ months but it is verified that

they will begin employment, will the State agency look at the case prospectively and consider the recipient eligible and determine eligibility?

A. We will either address this in regulations or allow State flexibility in this area. In the interim, State agencies may use their best judgment.

Q. Is a partial or prorated month of eligibility considered one month of the 3 months ABAWDs are eligible for the program without working?

A. We will either address this in regulations or allow State flexibility in this area. In the interim, State agencies may use their best judgment.

Q. When does the actual 36 months begin? Is it a rolling clock or a fixed clock with all time counted against the clock (for the 36-month period)? If a rolling clock is to be used, how will 36-month blocks be defined? Is it different for currently participating individuals?

A. For the current participants, the clock starts November 22, 1996 or the date the State agency sent the notice, whichever is earlier. States have the option to use a rolling or fixed period. But in no event can participation be counted before November 22 or the date the State agency sent the notice. We may address this further in regulations.

Q. When determining length of participation for an ABAWD, if the initial month was prorated, will it be counted as one of the 3 months of eligibility?

A. We will either address this in regulations or allow State flexibility in this area. In the interim, State agencies may use their best judgment.

Q. Will State agencies be required to create new work programs to place recipients in employment or a work or workfare program for purposes of this provision?

A. The law does not require States to create new programs for purposes of this section.

Q. Will a national tracking system be developed to track able-bodied adults without dependents ages 18 through 50? Will States be expected to enforce this requirement for individuals who move from State to State?

A. There are no plans for a national tracking system. The DRS system will only handle IPV disqualifications. States should be concerned primarily with in-State households but must act on other information that is available.

Q. If a person completes a cure on January 1 but does not reapply until February 1 and provides verification of the cure on February 10, from what date would benefits be prorated?

A. Benefits would be calculated from February 1, the date of application.

Q. When an individual has been denied benefits under Section 824, is the household required to report when this individual leaves the household, starts a job, etc.?

A. We will either address this in the regulations or allow State flexibility in this area. In the interim, State agencies may use their best judgment.

Q. Does the reference to 80 hours per month to regain eligibility pertain to 4 weeks or to 30 days?

A. Thirty days. The law specifically states, "an individual denied eligibility under paragraph (2) shall regain eligibility to participate in the food stamp program if, during a 30 day period, the individual works 80 or more hours...."

Q. Should the State act on changes that it becomes aware of (e.g., a client gets a workfare job or someone else tells the worker that the client has lost his or her job, etc.)?

A. Yes. The State agency is required to act on information when it becomes aware of a change in household circumstances.

Q. Can a State consider the first month after a recipient's recertification as the first month of the 3-month time limit?

A. No. The law requires that for current recipients, the 3-month time frame starts either November 22, 1996, or the date the State notifies recipients of this provision, whichever is earlier. Our implementing instructions of August 26, 1996 allowing States to implement this provision at recertification did not waive these provisions of the law. By allowing States to apply this provision at recertification, we were simply indicating that State agencies are not required to perform case

reviews to identify and terminate benefits for individuals that will become ineligible under this provision--they can do this at the time of recertification.

Q. If an individual is ineligible under Section 824, is that individual also ineligible for the Food Distribution Program on Indian Reservations?

A. No. That individual is still eligible for the Food Distribution Program on Indian Reservations (FDPIR) because Section 824 makes individuals ineligible for "the food stamp program." The FDPIR is not "the food stamp program," and so the provisions of Section 824 do not apply.

Q. Section 824 of PRWORA provides that ABAWDs can only get food stamps for three months in three years if they are not meeting the work requirement, not covered by a waiver, or are otherwise exempt. Does that mean State agencies should only assign three month certification periods to ABAWDs?

A. No. The State agency may assign any length certification period it deems appropriate as long as it does not exceed twelve months. However, States may find it to be administratively easier to assign three month certification periods to any ABAWD who is not working at the time of certification.

Q. If the State agency assigns a certification period that is longer than three months to an ABAWD who is not working at the time of certification, and the recipient does not report that he/she has not gotten a job, should the State agency cut him/her off automatically at the end of three months or is the recipient entitled to a notice of adverse action?

A. No. The State agency shall not cut the recipient off automatically. ABAWDs are entitled to a notice of adverse action. However, the issue of when the State agency sends out the notice of adverse action is addressed in the next two Q and As.

Q. The State agency knows at the time of certification that the ABAWD is not working and is subject to the three-month time limit. The State agency assigns a certification period longer than three months. At what point in the certification period should the State agency issue the notice of adverse action?

A. The State agency shall issue the notice of adverse action in a timely fashion to ensure that the ABAWD gets no more than three months of benefits while not working.

Q. If the State agency assigns a certification period longer than three months to an ABAWD who is not working at the time of certification and is subject to the three month time limit, and the State agency has reasonable expectations that the recipient is going to get a job or a workfare slot in the third month, does the State agency have to issue a notice of adverse action?

A. No. If the State agency can verify that the recipient is going to start a job or participate and comply with workfare in the third or fourth month, thus maintaining his/her eligibility, the State agency does not have to issue a notice of adverse action. However, if the recipient fails to begin employment or does not participate and comply in the workfare program as anticipated, the State agency must issue a notice of adverse action and establish a claim for any benefits issued beyond the allowable time period.

Q. An individual applies in January and is denied because he has used up his first and second three months and is no longer meeting the work requirement. In June, this applicant returns and provides verification that he/she is medically certified as unfit for employment and was as of January. Do we provide restored benefits?

A. No. If the applicant fails to disclose on the application that he/she is medically certified as physically or mentally unfit for employment and/or fails to provide verification within the time frames outlined in 273.2(h) then the State agency is not required to provide restored benefits. However, 7 CFR 273.2(j)(1)(iv) provides that households that file joint applications (FS and SSI) and are determined to be categorically eligible after being denied NPA food stamps shall have their benefits for the initial month prorated from the date the SSI is approved or the date of the original food stamp application date, whichever is later.

Section 827 - Benefits on Recertification

Q. Are benefits for migrant and seasonal farmworkers prorated only if there is a break of more than 30 days?

A. Yes, section 8(c)(2)(C) of the Food Stamp Act (Act) continues to provide that benefits for migrant and seasonal farmworkers are prorated only after a break of more than 30 days. The amendment to the Act made by section 827 of the PRWORA did not affect proration for migrant and seasonal farmworkers.

Q. Regarding proration, will the definition of "initial application" be revised? Does this provision apply to any circumstances whereby the household has had any break in participation or does it only apply in untimely recertification situations?

A. The definition will be revised. It will be for any period during which the household was not certified except for migrant and seasonal farmworker households. It will not apply when a household is reinstated under 7 CFR 273.21(k)(2)(ii) when a household fails to submit a monthly report timely and is terminated but submits one before the end of the issuance month and the State chooses to reinstate the household. It will not apply if the household timely reapplies for recertification, but the State agency causes a delay, and it will not apply if the household is certified within 30 days from receipt of an application.

For example:

If a household applies for recertification untimely but in the last month of its certification period, and the application is approved in the next month but within 30 days, benefits will not be prorated.

If a household waits until the 10th of the month following the end of its certification period to apply for recertification, benefits will be prorated from the 10th of the month.

Q. Will there be any "good cause" provisions for not prorating benefits?

A. No. However, benefits will be issued retroactively for State agency errors.

Section 829 - Failure to Comply with Other Means-tested Public Assistance Programs

Q. Can this section be applied if the failure to perform a required action occurs at application or must the household have been receiving benefits in the other program at the time the failure occurs?

A. The individual, unit, or household must have been receiving assistance at the time of the violation and that assistance must be reduced, suspended or terminated because of the failure to perform an action required under the law or program.

Q. Is the provision that allows a percentage reduction in the food stamp allotment in addition to the prohibition on not increasing food stamp benefits as the result of a failure to take a required action in another program or is the percentage reduction a means of preventing an increase?

A. The percentage reduction may be in addition to or may be a means of preventing an increase.

Q. Are States required to establish systems to find this information or act upon it only when they become aware of it?

A. If a State agency is not successful in obtaining the necessary cooperation from another Federal, State or local means-tested welfare or public assistance program to enable it to comply with the requirements of this provision, the State agency shall not be held responsible for noncompliance. We do expect the State agency to act on information that it has available. For example, State agencies should have information available on TANF cases.

Q. Can the Notice of Action serve as the required notification before penalty is imposed?

A. Yes. Regular due process standards must be applied. There are no special notice requirements for this section of the welfare reform law.

Q. If recouping for a public assistance overpayment, do the provisions of section 829 apply?

A. Yes. The recouped amount is to recover for a past overissuance which may or may not be related to the current reduction in the amount of the public assistance grant. For example, a household was getting \$300 public assistance. The State determined that the person failed to report earned income in the months of February and March and that the person subsequently quit his or her job. Public assistance was overissued in February and March in the amount of \$100 each month because of the unreported income. The total amount of the public assistance grant is being reduced for April through July in the amount of \$50 during that period of time because the person was disqualified for quitting a job. The State agency should attribute \$50 additional public assistance income for the months of April through July (or apply a percentage reduction to the food stamp allotment).

Q. Would the percentage reduction be applied to Title IV recouped amounts?

A. Set percentage reductions are based on the food stamp allotments. If the State opts to prevent an increase in food stamps by increasing the PA grant by a percentage based on the percent an individual PA grant was reduced at the time of the failure to take an action, the individual percentage amount would be applied to the total PA grant before any recoupments are made.

Q. The food stamp office is recouping 20 percent of the allotment for a food stamp IPV. If the State chooses to reduce the food stamp allotment by 25 percent to prevent an increase due to a violation in another program, should the 25 percent amount be applied to the full allotment or the amount remaining after the food stamp

recoupment?

A. We will address this in the regulations or allow State flexibility in this area. In the interim States may use their discretion.

Q. What programs are means tested?

A. There is no list of qualified means-tested programs. We will either address this in regulations or allow State flexibility in this area.

Q. Does this apply to new applicants who have never applied before?

A. We will either address this in regulations or allow State flexibility in this area.

Q. Does this apply to applicants who reapply after a break in participation?

A. We will either address this in regulations or allow State flexibility in this area.

Q. Does this follow the person from county to county?

A. We will either address this in regulations or allow State flexibility in this area.

Q. Will continued benefits be allowed pending a food stamp fair hearing on this issue?

A. Food stamp benefits may be continued in accordance with 273.15(k) if food stamp benefits are reduced or terminated because of the deemed income or application of a percentage amount.

Q. Will there be one fair hearing for all applicable programs?

A. When an action is planned to reduce food stamp benefits during the certification period, the State agency must notify the households of the planned action and advise them of their right to a fair hearing. The State agency may, but is not required, to combine fair hearings for multiple programs.

Q. How is Section 829 regarding the prohibition against increasing food stamp benefits for failure of a person to take an action required in another assistance program different from the 5/1/96 rule?

A. The violation no longer has to be "intentional," the food stamp allotment can be reduced by not more than 25 percent (rather than keeping track of the benefits the household would have gotten in the other program but for the disqualification), Title IV-A procedures can be used for Title IV-A penalties, and the implementation date is 8/22/96 rather than no later than 11/27/96.

Q. Can States decrease benefits by less than 25 percent, for example 15 percent?

A. Any percent through 25 percent may be used provided it is high enough to prohibit an increase in most cases.

Q. If a State opts to use a flat percentage, can it use this amount even if the actual assistance decrease would have been greater?

A. Yes. If a State opts to use a flat percentage, it should reduce the food stamp allotment by that percent even when the actual reductions in assistance would have been more or less.

For example, the State agency has chosen to reduce food stamp allotments by 20 percent for failure of a household member to comply with a particular requirement in another program. In one case, based on an individual computation, the household would have received a \$10 increase in Title IV-A but for the disqualification and in another case a household would have received a \$50 increase in Title IV-A but for the disqualification. In both cases, rather than attributing the actual amount of additional assistance the household would have received but for the disqualification and computing a new food stamp allotment, the food stamp allotment computed based on the amount of assistance the household actually received would be reduced by 20 percent.

Q. For purposes of the provision prohibiting an increase in food stamp benefits, does the failure to take a required action have to happen after enactment?

A. This will be addressed in the regulations since the 5/1/96 rule applied to disqualifications prior to 8/22/96.

Q. A person is disqualified under another assistance program for 2 months or until they comply, whichever is longer. After 2 months the person applies for food stamps but does not reapply for AFDC to cure him or

herself. Should this be considered a 2-month disqualification or a permanent disqualification? The person may not be eligible for the other assistance program for some other reason or may not choose to reapply. The person may not be given the chance to cure him or herself even if he or she reapplied for Title IV-A.

A. This is a category 1 inquiry that will be addressed in the regulations.

Q. Can State agencies define failure to comply with another assistance program requirement?

A. Yes, for purposes of the provision that prohibits an increase in food stamp benefits as long as the States do not define it so broadly as to permanently deny households food stamps because of provisions in other programs such as time-limited benefits or family cap provisions.

Section 830 - Allotments for Households Residing in Centers

Q. Can the section on allotments for households living in centers also be applied to group living situations?

A. No. Just addict and alcoholic centers.

Q. Is the State or the center responsible for giving the partial allotment to addicts and alcoholics?

A. The language says the State agency may provide an allotment for the individual to (A) the center and (B) the individual, if the individual leaves the center. The provision is optional, but the language indicates that the State must provide partial months allotments for residents of treatment centers.

Q. Will the provision allowing States to give partial allotment for households in centers change the current regulations to allow such residents to name the shelter as the authorized representative?

A. There will be no change if the State does not opt to issue the allotment in two monthly installments. If the State chooses to do so, the State "may" require the household to designate the center as the authorized representative. In the latter situation, the State could allow applicants to apply on their own behalf or designate someone else. (In the past centers have objected to giving recovering addicts and alcoholics benefits that can be traded for drugs.)

Q. Would a State that elects to issue 2 allotments have to do so routinely since it will usually not know in advance when a person is going to leave the treatment center?

A. We will either address this in the regulations or allow State flexibility in this area. In the interim, States may use their discretion.

Section 835 - Operation of Food Stamp Offices

Q. In an automated system, does the name, address, and signature of the household still have to be on paper?

A. We will either address this in regulations or allow State flexibility in this area.

Q. Does removal of the language requiring a single interview for joint processing of Title IV-A cases in effect remove the mandate for only one interview of any kind for food stamp applicants?

A. Yes. The revised language removed the requirement for an interview and joint processing of Title IV-A cases and leaves it up to the State agency to determine the procedures that best serve households in the State.

Q. What "operating procedures" is this provision referring to?

A. Primarily application, interview, and other intake procedures.

Q. What effect does Section 835 have on the designation of authorized representatives?

A. Section 11(e)(7) which allows authorized representatives in the certification and issuance process and for the purchase of food was not changed.

Q. After a disqualification is served for whatever reason, must the household request inclusion of the member or does the State agency need to track the ending of the penalty and add the person back to the case?

A. We will either address this in regulations or allow State flexibility in this area.

Q. When do States need to stop using the homeless shelter allowance in the excess shelter cost computation

and start allowing a flat deduction?

A. The provision of section 809 removing the requirement to develop a homeless shelter estimate was effective on the date of enactment. It is required to be implemented for applicants immediately and for the ongoing caseload at recertification. State agencies have the option of using a standard homeless deduction and can implement the deduction by submitting a State plan amendment.

Q. How will a State's Administrative Procedures Act affect implementation?

A. Federal law takes precedence over State law. State agencies are required to timely implement the provisions of the PRWORA as required by Federal law.

Section 849 - Work Supplementation or Support Program

Q. What is the goal of work supplementation or support?

A. The goal of work supplementation or support is to help move public assistance food stamp recipients into non-subsidized jobs and promote self sufficiency.

Q. What is work supplementation?

A. Work supplementation allows the value of food stamp benefits to be paid in cash as a wage subsidy to an employer who agrees to hire and employ recipients.

Q. What households can participate in wage supplementation?

A. Any household receiving cash public assistance that is also paid as a wage subsidy.

Q. How does a State exercise this option?

A. States that wish to select this option should prepare a State plan amendment describing their proposed work supplementation or support program. This amendment must follow the parameters set forth in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) and specify how public assistance recipients in the proposed program shall, within a specified period of time, be moved from supplemented or supported employment to employment that is not supplemented or supported. The State plan amendment should be sent to the appropriate FNS Regional Office. These submissions will be forwarded to the National Office for review.

Q. How will work supplementation or support program plans be reviewed?

A. The National Office will review each submission and provide guidance and technical assistance as necessary before programs are implemented.

Q. Can an employer offer only part-time jobs for work supplementation or support programs?

A. Yes. Both full and part-time jobs qualify for work supplementation or support programs.

Q. Will limits be placed on the amount of time a public assistance recipient may participate in a work supplementation or support program?

A. This question will be addressed in regulations. PRWORA specifies that State agencies must provide a description of how public assistance recipients participating in work supplementation or support programs will, within a specified period of time, be moved from supplemented or supported employment to employment that is not supplemented or supported.

Some work supplementation or support demonstration projects had time limits on the length of time a public assistance recipient could participate of one year or less. (Some States choose a lesser period of time - three, six or nine months - and some allowed for extensions for good cause.) The Department expects that the length of the wage subsidy will be sufficient to motivate employers to hire persons they otherwise would not hire, but not longer than participants would otherwise stay on the Food Stamp Program.

Q. What would constitute good cause for an extension of participation in work supplementation or support program?

A. Good cause will be defined by the State. However, good cause could mean, for example, that additional training or experience is recommended because of the technical aspect of the job; excusable health or family problems have caused a significant loss of time on the job; or the work supplementation or support assignment is part-time and additional job training would help increase the recipient's marketability.

Q. How are wages set for work supplementation or support programs?

A. Wages for work supplementation or support programs must be set at the applicable Federal or state minimum wage or higher.

Q. What happens to the participant's food stamp allotment?

A. The participant's allotment is paid to the employer as a wage subsidy. PRWORA specifies that the participant shall not receive a separate food stamp allotment while participating in a work supplementation or support program. However, in cases where the wages paid are less than the allotment, the participant is entitled to a supplemental issuance.

Q. What if the food stamp allotment exceeds the wage subsidy amount paid to participants?

A. If, for example, a participant is only working part-time or a participant misses work because of illness, and does not receive at least the amount of the food stamp allotment from wages, the State agency shall provide the amount of the allotment in excess of the wage subsidy as a supplement to the participant in the form of coupons, or, as an electronic food stamp benefit accessed through point-of-sale machines in areas where an EBT system is operating. No food stamp benefits shall be provided in the form of cash.

Q. Is the food stamp allotment "frozen" at the beginning of participation in a work supplementation or support program?

A. This question will be addressed in regulations. In the meantime, State agencies have the option to freeze the food stamp allotment at the current level, or at a level which anticipates the income from the work supplementation or support program, as long as the public assistance grant is also frozen in the same way.

State agencies also have the option to act on changes as long as adjustments are made to both food stamp and public assistance benefits.

Q. Do recipients receive the 20% earned income deduction for wages received in a work supplementation or support program?

A. PRWORA disallows the earned income deduction for the subsidized public assistance and food stamp portion of wages received under a work supplementation or support program. PRWORA does not specify how the unsubsidized portion of the wages paid by the employer should be treated, but this will be addressed in regulations. In the meantime, if the unsubsidized wages are excluded from income, the earned income deduction would not apply because deductions cannot be given for excluded income.

However, if the unsubsidized wages are considered as income, the 20% earned income deduction would apply to the unsubsidized wages. For example, if a recipient would normally receive \$350 in public assistance and \$277 in food stamp benefits, these amounts are combined by the State agency into a \$627 wage subsidy paid to the employer. When the employee receives a monthly check from the employer for \$713 as payment for hours worked, \$627 of the check represents the subsidized portion and \$86 represents the unsubsidized portion. An earned income deduction of 20% is applied to the \$86 (-\$17) resulting in the counting of \$69 of earned income. If the state elects this option, then it must adjust the wage subsidy in the following month to reflect the counting of the food stamp allotment.

Q. What other conditions apply to jobs provided under work supplementation or support programs?

A. These job positions must comply with the Fair Labor Standards Act. Additionally, recipients must receive the same benefits (sick and personal leave, health coverage, workmen's compensation, etc.) as similarly situated co-workers who are not participating in work supplementation or support.

Q. Will States that select a work supplementation program be required to increase food stamp benefits to compensate for sales tax?

A. States are not required to increase food stamp benefits to compensate for sales tax, but may do so at State option using State funds.

Q. Are recipients participating in work supplementation programs required to meet other work requirements?

A. No. As long as a recipient is participating in a work supplementation or support program, the recipient is not required to meet other work requirements.

Q. What is the employer's role in a work supplementation program?

A. An employer receives a cash subsidy for each participant in a work supplementation or support program which is intended to subsidize wages. In return, the employer must treat the participant the same as other similarly situated

unsubsidized employees by providing the same benefits and wages. The Department expects that the employer will agree to offer the participant a regular unsubsidized position at the end of the subsidy program, if the participant meets all expectations and presents no reason for dismissal. The employer must maintain records to account for Food Stamp funds that are received and disbursed.

Q. Can an employer hire wage supplemented or supported participants to replace current employees who are not part of the program?

A. No. PRWORA mandates that wage supplemented or supported participants not displace other non wage supplemented or supported employees currently working for the employer. Additionally, the wage supplemented worker must not be working for the employer prior to participation in the program.

Q. How does the employer receive the cash subsidy?

A. The employer will receive the cash subsidy from the State. States must establish procedures to cover the payment of the subsidy and ensure accountability.

Q. Are there different reporting requirements for States that implement work supplementation or support programs?

A. Yes. States will be required to report the amount of benefits contributed to employers as a wage subsidy on the FNS-388, State Issuance and Participation Estimates; FNS-388A, Participation and Issuance by Project Area; FNS-46, Issuance Reconciliation Report; and SF-269, Addendum Financial Status Report. States are also required to report administrative costs associated with work supplementation or support programs on the FNS-366A, Budget Projection and SF-269 Financial Status Report. Special codes will be assigned for reporting purposes.

Q. Are optional work supplementation or support programs required to have an evaluation component?

A. No. Unlike current work supplementation or support demonstration projects, optional work supplementation or support programs under PRWORA are not required to have an evaluation component. However, States will be required to specify how public assistance recipients in the proposed work supplementation or support program will be moved from subsidized work to non-subsidized work within a specified period of time and show how the goal of self sufficiency will be met.

Q. Is there a cost neutrality requirement attached to work supplementation or support programs?

A. Unlike demonstration projects, there is no cost neutrality requirement attached to optional work supplementation or support programs under PRWORA. However, optional work supplementation or support programs will be required to be efficient and effective in the use of FSP funds by limiting the amount of time recipients can participate in subsidized jobs and by moving recipients as quickly as possible from subsidized to unsubsidized employment.

Q. Work supplementation or support demonstration projects conducted under Section 17(b) of the Food Stamp Act were excluded from Quality Control. Will optional work supplementation or support programs be reviewed for payment accuracy?

A. Until regulations are issued to address this question, Quality Control will code these cases as not subject to review.

Q. Will States that select the work supplementation or support program option be required to increase benefits to compensate for sales tax on food?

A. Section 849 of P.L. 104-193 does not specify that States are required to increase benefits to compensate for sales tax on food under the work supplementation option, but other provisions of the law will still apply (i.e., section 8(b) of the Food Stamp Act of 1977, as amended, specifies that the value of food stamp benefits not be considered income for the purposes of Federal, State, or local taxes, and that benefits shall not be decreased due to such purposes).

Q. How does a State exercise its option to operate work supplementation?

A. In accordance with section 849 of Public Law 104-193, States now have the option to implement a wage supplementation program, as determined by the Secretary. FNS headquarters will accept notification and plans from States electing to operate a work supplementation program. FNS headquarters will review submissions to determine that States' plans are consistent with the specific provisions of the wage supplementation option and the law. Additionally, FNS is in the process of establishing standards for incorporation in regulations.

Section 850 - Waiver Authority

Q. The expanded waiver authority permits approval of waivers that would reduce benefits by no more than 20 percent for no more than 5 percent of the affected households. How will these parameters be determined and what will be the monitoring obligations?

A. Congress has granted the Secretary the authority to approve projects that would reduce benefits. However, for projects that reduce benefits by more than 20 percent for 5 percent of the affected households, Congress has established limits on both the scope (no more than 15 percent of the State's caseload) and the duration (5 years) of the demonstration. The initial analysis as to the degree that a demonstration project will reduce benefits will be conducted by FNS headquarters. All demonstration projects will continue to be approved at the national office FNS headquarters.

FNS does not anticipate additional State monitoring beyond that normally required under the evaluation and cost-neutrality provisions of the Waiver Terms and Conditions. Also, there is currently no expectation of increasing the role of FNS' regional offices in regard to monitoring.

Q. The waiver language speaks to an evaluation requirement. However, many waivers do not really require an evaluation. As waivers become "routine" will evaluation remain a requirement?

A. In general, welfare reform demonstration projects propose hypotheses that can only be substantiated through an evaluation. Additionally, the statute requires the Department to attach an evaluation component to welfare reform demonstration projects.

Q. If a provision of P. L. 104-193 conflicts with a waiver previously granted under a welfare reform demonstration project, is the waiver still valid?

A. The Waiver Terms and Conditions for the welfare reform demonstration projects contain the following statement: "If Federal or State statutes or regulations that would have a major effect on the design and impact of this demonstration are enacted, the Department and the State will reassess the overall demonstration and develop a mutually agreed-upon strategy for dealing with the demonstration in the context of such changes. If such a mutually agreed-upon strategy cannot be developed, the Department reserves the right, in its sole discretion, to withdraw any or all waivers at such time (s) as the department determines."

In the coming months, FNS will assess each welfare reform demonstration project that contains Food Stamp Program waivers and will work with State agencies to develop a strategy that best meets the overall goals and needs of States as they move forward their plans to implement TANF. States are encouraged to contact FNS with specific questions pertaining to their waivers.

Section 851 - Response to Waivers

Q. Does the requirement that FNS respond to waiver requests within 60 days apply to all waivers?

A. It only applies to demonstration project waivers authorized under Section 17 of the Food Stamp Act.

Q. Currently, the FNS national office reviews and makes decisions on all demonstration waivers. Is it expected that this authority will be delegated to FNS' regional offices?

A. At this time, FNS' national office does not anticipate delegating demonstration project waiver review and approval authority. This authority will remain at the national office.

Section 852 - Employment Initiatives Program

Q. What States qualify for the Employment Initiative Program (cash-out) option and what data source was used to determine their qualification?

A. States in which at least 50% of the food stamp caseload in the summer of 1993 also received AFDC can under the law provide certain households with cash in lieu of food stamps. These States are: Alaska, California, Connecticut, District of Columbia, Massachusetts, Michigan, Minnesota, New Jersey, West Virginia and Wisconsin. The data source used to identify qualifying States was the Summer 1993 - Characteristics of Food Stamp Household report (USDA-FCS-Office of Analysis and Evaluation).

Section 854 - Simplified Food Stamp Program

Q. Define what is a political subdivision. County? Region? Local office?

A. Definitions will be developed for inclusion in guidelines and regulations.

Q. Will FNS review TANF to determine that the State's SFSP is also meeting the TANF?

A. SFSPs may employ TANF rules and procedures, FSP rules and procedures or a combination of both. FNS will need some familiarity with a State's TANF program to ensure that any non-food stamp provision is a TANF provision. Specific guidance will be developed in regulations.

Q. Can the State get waivers to their SFSP?

A. No. The new legislation specifically prohibits the Department from waiving the requirements of the SFSP.

Q. Is there a requirement regarding the length of time the States can operate under a SFSP?

A. There is no time limit specified in the law.

Q. After implementing a SFSP, will the State agency (SA) be allowed to opt out of the SFSP?

A. The law does not include a restriction to States opting out of the SFSP after approval. The law does, however, allow the Department to terminate a SFSP For a SA's failure to carry out a required corrective action and prohibit the agency from operating future SFSPs.

Q. What role will the SFSP contractor have in assisting USDA and States?

A. In September, 1996, FNS awarded a contract to Mathematica Policy Research, Inc. (MPR) to provide technical assistance to States interested in developing an SFSP. The objective of this assistance is to provide States with sufficient data for understanding the probable effects of design choices on SFSP participants and program costs prior to submitting an SFSP proposal to FNS. These services are provided at no cost to State agencies. However, money from the fiscal year 1998 appropriation is currently not available to support this activity for States which have not already entered into an agreement with FNS. States will be notified if funds become available.

Q. Is the SFSP contract issue tied in any way to privatization of the Food Stamp Program?

A. No, as stated above, the primary purpose of the contract is to provide technical assistance both to SAs and FNS.

Q. Will households under the new TANF program be categorically eligible for benefits under the Simplified Food Stamp Program?

A. The legislation does not alter the categorically eligible (CE) status of TANF households under the regular FS program. Under a SFSP, pure TANF households would be CE for the SFSP unless USDA determines that households with income above 130% of the poverty guidelines are eligible for the State's Title IV-A program.

Q. What guidelines will be used in approving mixed households in a State's SFSP?

A. Guidelines and regulations are currently being developed. However, in the interim the statute speaks to the FSP's authority and requirements.

Q. Will approval/denial of a SFSP be at the national or regional level?

A. Approval will be at the national level.

Q. What methodology will be used to determine if a State's proposed SFSP will/will not increase Federal costs for any fiscal year?

A. The methodology will be developed by the contractor. However, in the interim FNS headquarters will work with States to ascertain the Federal costs of a SFSP.

Q. Will the SFSP approval process be conducted on an annual basis?

A. This is to be determined. However, the legislation requires cost neutrality to be determined annually.

Section 911 - Fraud Under Means-tested Welfare and Public Assistance Programs

Q. Section 829 applies to situations where the household has intentionally or unintentionally failed to take a required action and 911 applies to situations where the other agency has determined that a household committed fraud, correct?

A. Yes, that is correct.

(General)

Q. Under the welfare reform law, individuals may be disqualified or become ineligible for a number of reasons. How should their income and resources be treated?

A. We do not plan to answer further questions until the regulations have been published. In the interim, State agencies should use their best judgment as to whether to count any or all of the income and resources of such individuals. We will either address this in the regulations or allow State flexibility in this area. Note that the income of an alien that was ineligible under the Food Stamp Act prior to the recent legislation must be counted in whole or in part and that all of the resources of such alien must be counted.

Q. Does FNS plan to assist States with the coordination of Sections 819 on comparable disqualifications, 829 on the prohibition against increasing food stamp benefits for failure to comply with another assistance program, and 911 regarding no increase as the result of fraud in a welfare or public assistance program, or are States supposed to develop their own plans?

A. For now States should develop their own plans for coordination. This may be addressed in the regulations.

Q. What will be the impact of the new legislation on existing court suits to which FNS was a party or on which FNS has oversight? For example, a court suit required FNS to monitor 5-day expedited service. With this requirement changing to 7 days, would that now be the standard against which States would be monitored?

A. In the case of expedited service, the new standard of 7 days was effective upon enactment for new applicants and that will be the standard on which States will be monitored. Court orders based on provisions in the law that have subsequently been amended are no longer valid.

Current as of 4/24/98

Additional Questions and Answers on Certification Issues in PRWORA

The following guidance was recently provided by the Food and Nutrition Service (FNS) National office to FNS Regional offices to help provide guidance to State agencies to help them implement the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) and subsequent legislation. **This list of additional Q&As will be included in the cumulative list of Q&As when we update that list again.**

Questions and Answers on Able-Bodied Adults Without Dependents and Workfare

Q1. Can a State agency require applicants to participate in workfare?

A1. Yes, State agencies can require applicants to participate in workfare. Section 817 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) expanded the existing State agency option to apply E&T requirements to applicants (previously limited to job search). This means that State agencies can require FSP applicants to participate in and comply with any component they offer in their E&T program for an initial period beginning at the time of application.

Q2. Since there is no coupon allotment for applicant households, and since the number of workfare hours for a household in a month cannot exceed the number of hours that result by dividing the allotment by the higher of either the Federal or applicable State minimum wage, how should a State agency decide the correct number of applicant workfare hours?

A2. This will be addressed in regulations. In the interim, State agencies may use their discretion in establishing participation hours. When assigning applicant households to workfare slots, State agencies can either prospectively determine individual household allotments or they can use a range of estimated food stamp allotments and corresponding hours based on typical ABAWD cases. However, the maximum number of hours associated with any work activity may not exceed the statutory cap of 30 hours weekly. Additionally, State agencies may not delay the determination of a household's eligibility for benefits or the issuance of benefits to an otherwise eligible household pending completion of an applicant workfare assignment as long as the applicant is satisfactorily participating in the assignment.

Q3. An ABAWD has already used his first three months and has not yet "regained" his eligibility for his second three months when he applies for food stamps. At application, he is assigned a workfare slot and within the 30 day time frame he "regains his eligibility" participating and complying with workfare. If the State agency determines he is otherwise eligible, does the State agency give him benefits back to the date of application or back to the date he completes the cure?

A3. The allotment must correspond to the number of hours of the workfare obligation. The Food Stamp Act is clear that food stamps are compensation for work performed in a workfare program. Therefore, if an individual participates and complies with a workfare program prior to determination of eligibility, and the workfare obligation is based on the allotment prorated to the date of application, then the allotment issued must be prorated back to this date.

Q4. An ABAWD has already used his first three months and has not yet "regained" his eligibility for his second three months when he applies for food stamps. In this situation, the ABAWD "regains his eligibility" by working 80 hours or participating and complying with a work program 80 hours in the 30 day period following application, does the State agency give him benefits back to the date of application or back to the date he completes the cure?

A4. This will either be addressed in regulations or State agencies will be allowed flexibility in this area. In the interim, State agencies should use their best discretion.

