

SUBJECT: Questions and Answers on Implementing a Mini-Simplified Food Stamp Program to Replace Food Stamp Work Requirements with TANF Work Requirements

TO: Food Stamp Program Directors
All Regions

Attached for immediate distribution to your respective State agencies are questions and answers on implementing a mini-Simplified Food Stamp Program (mini-SFSP) to replace Food Stamp Program (FSP) work requirements with those under the Temporary Assistance for Needy Families (TANF) Program.

On June 29, 2006, the Department of Health and Human Services (DHHS) issued regulations that define the activities that are countable toward TANF work participation rate requirements. Since the minimum wage protections of the Fair Labor Standards Act (FLSA) apply to TANF recipients, State agencies cannot require recipients to participate in unpaid “work” activities, i.e., community service or work experience, at an hourly rate less than minimum wage. However, many State agencies will not be able to offer unpaid work activities for a sufficient number of hours to meet the TANF 20-hour core activity requirement. The rule addresses this situation by allowing State agencies to “deem” any family that participates for the maximum hours allowed under the minimum wage requirements of the FLSA as having satisfied the required number of hours in core activities. The maximum hours permissible under the FLSA must be based on both the value of the TANF assistance unit’s benefits and the household’s food stamp benefits.

Although the preamble to the TANF regulation indicated that State agencies need to implement a FSP workfare program and conform TANF and FSP exemption policies under a mini-SFSP, we have determined that this is not necessary. By aligning FSP and TANF work requirements in a mini-SFSP, TANF work experience or community service programs can serve in place of the FSP workfare program.

The attached questions and answers will clarify the most important aspects of the mini-SFSP. In addition, for State agencies that desire to pursue this alternative, we have attached a notification letter template that simplifies mini-SFSP implementation.

If you have any questions, contact Micheal Atwell at 703-305-2449.

Arthur T. Foley
Director
Program Development Division

Attachments

The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

Questions and Answers on Implementing a Mini-Simplified Food Stamp Program

Q1: *What is a mini-Simplified Food Stamp Program?*

A: A Simplified Food Stamp Program (SFSP) is an option that allows State agencies to implement the rules and procedures established under its Temporary Assistance for Needy Families (TANF) Program or Food stamp Program (FSP) rules and procedures, or both. A mini-Simplified Food Stamp Program (mini-SFSP) is a subset of the broader SFSP authority and allows a State agency to replace its TANF or FSP work-related rules with the other program's rules. These rule changes are limited to households receiving both TANF and food stamps.

Q2: *What if my State agency wants only to combine food stamp benefits with TANF benefits to take advantage of the new TANF rule that allows State agencies to “deem” those families who work the maximum number of hours permitted under Fair Labor Standard Act (FLSA) rules as meeting the 20-hour core activity requirement, even if they fall short of that number of hours?*

A: A State agency may combine food stamp and TANF benefits by notifying the Food and Nutrition Service (FNS) of its intent to implement a mini-SFSP under which it will determine TANF/FSP household work requirements using TANF rules. FNS understands that once State agencies exercise this authority, they may apply the deeming provision described in the Administration on Children and Families (ACF) interim rule published June 29, 2006.

Q3: *Does a State agency have to assign TANF recipients to food stamp workfare?*

A: No. Although the preamble to the TANF interim final rule indicates that State agencies would need to adopt the FSP workfare program under a mini-SFSP, we do not believe this is necessary. Upon further consideration, and after discussions with ACF, it is our understanding that, by participating in TANF work experience or community service programs, TANF/FSP households may have the value of their food stamps combined with the value of their TANF benefits, allowing State agencies to count any family that participates for the maximum hours allowed under the minimum wage requirements of the FLSA as having satisfied the required number of hours in TANF core activities.

Q4: *Does a State agency have to change FSP age exemption criteria to deem in TANF?*

A: No. When a State agency aligns FSP work requirements with TANF work requirements under a mini-SFSP, it can require a TANF/FSP household member responsible for the care of a child under age 6 to participate.

Q5: *Is there an advantage to aligning food stamp age exemption criteria with TANF criteria?*

A: For the purpose of the deeming provision, a State agency gains no advantage by aligning food stamp and TANF age exemption criteria. However, to maintain consistency in the application of food stamp sanctions for failure to comply with TANF work requirements, a State agency may opt to align FSP age exemptions with those in TANF. Then, in the case of a TANF sanction the State agency can apply a food stamp disqualification to a non–complying household member responsible for the care of a child under 6 who would otherwise remain exempt. If a State agency chooses this procedure it should, when it notifies FNS that it intends to implement a mini–SFSP, make clear that it also intends to adopt its TANF rule relating to the exemption of caretakers of children under 6 years old.

Q6: *How do food stamp sanctions work for households who fail to meet their TANF/FSP work requirement under a mini–SFSP?*

A: The adoption of a mini-SFSP does not change existing sanction policies, unless FSP age exemption criteria are aligned with TANF criteria. In accordance with 7 CFR 273.7(f)(7), a household member exempt from FSP work requirements because he/she is subject to a TANF work requirement and who fails to meet that requirement must be sanctioned in accordance with FSP disqualification procedures—unless he or she meets another FSP exemption criterion. The State agency must apply the mandatory minimum disqualification period on the household member and, if the sanctioned member is the head of the food stamp household, it may apply the optional whole household disqualification, if it has chosen that option.

If the household member meets another exemption criterion, he/she is not subject to FSP disqualification. However, under the comparable disqualification provisions of 7 CFR 273.7(f)(7)(iv), the State agency may impose its TANF disqualification on the individual household member. For example, in a State in which the State agency chose not to align its TANF/FSP age exemption criteria, a household member responsible for the care of a child under 6 is sanctioned by TANF for a failure to comply. Although the individual remains exempt from FSP sanction, the State agency has the option of applying the identical TANF disqualification on the individual.

Q7: *Does the Riverside rule of not increasing benefits apply under a mini-SFSP?*

A: Yes. The provision at 7 CFR 273.11(j), the so–called Riverside rule, prohibits FSP benefits from increasing when a household faces a decrease in their TANF benefit because of a sanction, will still apply under a mini-SFSP. There are no changes to this provision, or the 25 percent penalty, as described in 273.11 (j).

Q8: *Can mixed households participate in a mini-SFSP?*

A: Yes. Mixed households can participate in a mini-SFSP if a State agency elects to include them. However, the rules at 7 CFR 273.25(b) governing mixed households in a SFSP do not apply in these limited cases. Note that non-TANF household members are not subject to mini-SFSP requirements.

Q9: *What is the definition of a TANF case? Do expanded categorical eligibility households qualify?*

A: For purposes of the FSP, a TANF case is one in which assistance unit members receive benefits under a State program funded under part A of title IV of the Social Security Act designed to meet the members' ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses). For purposes of a mini-SFSP, it is one which is subject to TANF work requirements. For further information, consult your regional ACF office.

Q10: *Recap the FNS approval procedure for State agencies wanting to set up a mini-SFSP—paperwork to be completed; how long approval takes; what ongoing reports and oversight are necessary?*

A: In order to implement a mini-SFSP, State agencies must submit to their regional FNS office a notification letter indicating what they plan to do very specifically. FNS has drafted, and included in this package, a sample letter than can be used. In that letter, State agencies should indicate if their plan applies to pure TANF/FSP households or mixed households. They should describe their sanction policy and work obligation rules to be used in a mini-SFSP. FNS intends to review and accept these letters very quickly—ideally within two weeks of receipt at headquarters. State agencies that opt to include mixed households in a mini-SFSP do not have to provide periodic reports ensuring that these households are not losing food stamp benefits. Since a mini-SFSP addressed in this guidance has no impact on benefit levels, these additional reports are not necessary and can be withheld.

Q11: *Could you please clarify how the mini simplified food stamp option applies to State-funded benefits? For example, we understand that FLSA rules allow states to add the food stamp benefit and the TANF benefit together and divide that amount by the minimum wage to determine the number of hours a client may be required to work.*

A: For FSP purposes, if the case has a work obligation **and** its assistance is funded under Federal or State MOE funds, then it can be incorporated into a mini-SFSP. If one of these standards is not met (either the case has no obligation to work or it is funded by State funds) then the case cannot be included in a mini-SFSP. As for what qualifies as State funding versus State MOE funding, consult your regional ACF office.

Questions and Answers on Implementing a Mini-Simplified Food Stamp Program (continued)

Q12: *Does the provision apply to both the Federal and State portion of the cash benefit?*

A: Consult your regional ACF office.

Q13: *As we understand it, on the TANF side, there is no relationship between a recipient's hours being deemed as meeting the core work hour requirement and that same recipient actually being involved in a FSP workfare program since the activities that this deeming requirement applies to are Community Service and Work Experience Activities. If this is the case and a State wants to use this provision for community service recipients only, would in fact a State actually have to have recipients in the newly created workfare program?*

A: No. As stated in our response to question 3, above, it is not necessary for State agencies to adopt a FSP workfare program. A mini-SFSP allows State agencies to align their food stamp work requirements with their TANF work requirements. Thus, TANF work experience or community service programs are acceptable activities in which TANF/FSP households may have the value of their food stamps combined with the value of their TANF benefits.

Q14: *What if a FSP household contains a TANF unit and a non-TANF unit? Does all of the FSP benefit count toward the maximum hours the TANF unit can work under the Fair Labor Standards Act?*

A: According to FSP regulations at 7 CFR 273.7(e)(3)(ii), the maximum monthly number of hours all members of a food stamp household may participate collectively in a work program, e.g., workfare or work experience, equals the household's monthly food stamp benefit divided by the higher of the Federal or applicable State minimum wage. Thus, the number of hours a non-TANF unit household member participates in a food stamp work activity should not be counted for TANF purposes.

Q15: *Where can we obtain information about the Simplified Food Stamp Program?*

A: 7 CFR 273.25 contains the rules governing a SFSP.

NOTE: If State agencies plan to adopt the work age exemptions for TANF/FSP households in this mini-SFSP, it must indicate its intention in this letter.

Regional Food Stamp Director
ADDRESS

Dear _____:

We are writing to notify the Food and Nutrition Service of our intent to implement a mini-Simplified Food Stamp Program (mini-SFSP). The mini-SFSP option allows us to replace Food Stamp Program (FSP) work rules with work rules from our Temporary Assistance to Needy Families (TANF) program. This will permit us to include the value of food stamps in determining maximum hours of work under TANF.

New rules from the Administration on Children and Families (ACF) allow States to “deem” families who work the maximum number of hours permitted under Fair Labor Standard Act (FLSA) minimum wage rules, but still fall short of the 20-hour core activity requirement, as having met that requirement. The mini-SFSP will allow us to count the value of food stamps and then “deem” any hours that fall short of the standard and the TANF work experience or community service program can serve in place of the FSP workfare program.

Specifically our mini-SFSP will do two things. First we are replacing the FSP work requirement with the TANF workfare requirement. This means that we will replace our FSP work obligation rules with that of our TANF work obligation rules which results in joint TANF/FSP households being required to meet their TANF work obligation (i.e. it will become their FSP obligation). Secondly, we will combine the FSP and TANF benefit together when calculating the maximum number of hours that a TANF/FSP household can work while meeting the conditions established by the Department of Labor’s interpretation of the FLSA.

We understand that SFSP programs must be cost neutral according to Section 26 of the Food Stamp Act. Because our program only replaces the FSP workfare obligation with the TANF work experience obligation, there is no impact on federal costs.

We also understand that we may not use any Federal Food Stamp E&T Program funds to serve TANF/food stamp recipients. Section 6(d)(4)(K) of the Food Stamp Act provides that the amount of Federal E&T funds a State agency uses to provide services to participants who receive benefits from a State program funded under title IV-A of the Social Security Act (42 U.S.C. 601 et seq.) is limited to the amount of Federal E&T funds the State agency expended in fiscal year 1995 to provide services to title IV-A recipients.

Your timely consideration of our request is appreciated. Contact _____ if you have any questions about our plans.

Sincerely,

August 25, 2006

SUBJECT: FSP – Farm Bill Questions and Answers – Set No. 5

TO: All Regional Food Stamp Program Directors

Attached is the fifth set of questions and answers in response to issues raised by States since the issuance of our four earlier sets of questions and answers, clarifying the certification provisions of the Farm Security and Rural Investment Act of 2002, Public Law 107-171, (Farm Bill), which was enacted on May 13, 2002.

Please direct any questions to the contact for your Regional Office in the Certification Policy Branch.

/s/ Patrick Waldron for

Arthur T. Foley
Director
Program Development Division
Food Stamp Program

Simplified Reporting and Changes:

Question 4109-26: When a household reports new income, does the State deal with the possibility of a new household member?

Answer: Yes. As part of its normal handling of the new information the State would determine whose income it was, whether the income should be counted, and if benefits are affected. In making these determinations the State would inevitably learn whether the income belongs to a new member of the household.

Question 4109-27: It is our understanding that any income that belongs to the new household member would not be countable for the original FS household; therefore the household would not be required to report the income. Is our understanding correct?

Answer: No, this understanding is not correct. When Simplified Reporting was first implemented some States suggested addressing the issue of the income of new household members by providing the household a chart with the gross income limit of various household sizes. FNS expects households to report when their income exceeds the gross income limits for the household size; however, we do not expect households to know who is a household member and who is not. This is the job of the eligibility worker. Accordingly, we said that the better approach would be to provide the household with the gross income limit for the current household size. Households should be advised to total up the income at the end of the month. If new individuals are present, their income must be included. If individuals have left, their income is not included. If the income of all those present exceeds the original reporting amount, then the household has a duty to report. It is the State agency's responsibility to determine:

- If the new individual is a household member (taking into account that some individuals may require special treatment under 7 CFR 273.11); and
- If the income countable, determine the new household size and new reporting threshold, if the household remains eligible; and
- If the new individual is not a household member, then there's no action for the State agency to take.

There was never any stated or implied policy that the income of new individuals would not be considered until the next redetermination.

Question 4109-28: What if the income of the new household member isn't countable? What would the State do when the income has been reported?

Answer: Because the State agency is aware that the income that has been reported is from a new household member, the State must act because the addition of the new household member would result in an increase in the food stamp household's benefits.

Question 4109-29: What if a Simplified Reporting food stamp household moves into another household that has income? Would a Simplified Reporting household have to report if the household's income exceeds the 130 percent threshold?

Answer: Yes. Of course, if the State agency finds that the two households are purchasing and preparing meals separately and that there are no mandatory household members to add to the current food stamp household, no action would be taken.

Question 4109-30: We have a State agency that received a wage match that a household member was working and the income exceeded the 130 percent threshold. The State has a waiver to act on all changes. The State agency subsequently discovered that the household member who had been working had moved out of the home and hadn't started working until after he had moved. What, if anything, should the household have reported in this case?

Answer: Nothing. Households under Simplified Reporting have no obligation to report the income of those individuals who are no longer part of the household, even if the former household member is still technically receiving benefits. Also, Simplified Reporting households do not have to report changes in household composition. In this case, because the State agency has a waiver to act on all changes, it would remove the household member who no longer lived in the home.

Question 4109-31: We have a case where the client got married and didn't report it. The husband's income would have put the household over the 130 percent gross income for the original household size. Since the client is not obligated to report the new household member, can we require the client to report the new household member's income?

Answer: Yes. See Question/Answer 4109-27 above.