

FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS

– HOUSEHOLD CERTIFICATION TRAINING –



MODULE 8
Disqualifications

Introduction:

- » The Food Distribution Program on Indian Reservations (FDPIR) is a federal program that provides USDA Foods to low-income households living on Indian reservations, in designated areas near reservations, and in the State of Oklahoma.
- » FDPIR Household Certification Training will help Indian Tribal Organization (ITO) and State agency certification workers and their supervisors successfully administer the program.
- » The training is comprised of nine modules, designed to be taken in any order. At the end of each module is a short quiz you may take to test your knowledge of the key learning points covered in the module. When you finish all nine modules, you may test your knowledge of the entire training by taking the post-test.
- » The knowledge gained in this training will help you provide the best support possible for current and potential FDPIR participants.

Acronyms Used in Module

The following acronyms appear in this module:

FDPIR – Food Distribution Program on Indian Reservations

FNS – Food and Nutrition Service

IPV – Intentional Program Violation

ITO – Indian Tribal Organization

SNAP – Supplemental Nutrition Assistance Program

USDA – United States Department of Agriculture

Learning Module 8: Disqualifications

- » Refer to FNS Handbook 501 for more information about topics covered in this module.
- » On each slide of this module, you can find the specific section in the handbook where the topic is covered in greater detail.

Learning Objectives

After completing this module, learners will:

- » Know which program violations are grounds for disqualification.
- » Be able to implement administrative procedures for intentional program violations (IPVs).
- » Be able to issue timely and compliant notices of disqualification.
- » Understand the appeal procedures for disqualifications.
- » Understand how to and in which cases to apply disqualification penalties.

Program Violations

Source: *FNS Handbook 501, Sections 5700-5740*

» The ITO/State agency must take action to disqualify individuals from participation for the following program violations:

1. Adult members of households that fail to pay an over-issuance claim will be disqualified if certain conditions are met (see FNS Handbook 501, Section 5710);
2. Individuals that are serving a disqualification from the Supplemental Nutrition Assistance Program (SNAP) for an intentional program violation, or IPV, must be disqualified from FDPIR (see FNS Handbook 501, Section 5740);
3. Individuals convicted of fraud under FDPIR in a Tribal, State, or local court must be disqualified (see FNS Handbook 501, Section 5730); and
4. Individuals found to have committed a FDPIR IPV must be disqualified from participation in FDPIR (see FNS Handbook 501, Section 5720).

Program Violations: Failure to Pay an Over-issuance Claim

Source: FNS Handbook 501, Sections 5670 and 5710

- » Over-issuance claims against households are addressed in more detail in Module 7, Claims Against Households.
- » Under the following conditions, all adult household members must be disqualified from participation if the household fails to pay a claim for USDA Foods that the household received but was not entitled to receive:
 - The amount of the claim is greater than \$125; and
 - The over-issuance is not the result of an administrative error on the part of the ITO/State agency; and
 - The household has refused to pay the claim, or previously agreed to pay according to a payment schedule, but has failed to pay the claim.

Program Violations: Failure to Pay an Over-issuance Claim (continued)

Source: FNS Handbook 501, Sections 5670 and 5710

- » If a household is disqualified for failure to pay an over-issuance claim, the disqualification will continue until the claim is paid in full.
- » The ITO/State agency may waive the disqualification, if in the opinion of the ITO/State agency the disqualification would cause undue hardship to the household.
- » Household members subject to a disqualification must be provided a notice of adverse action/notice of disqualification. The household must also be provided with an opportunity to appeal the disqualification by requesting a fair hearing.

Program Violations: SNAP Disqualification for an IPV

Source: FNS Handbook 501, Section 5740

» Any individual who has been disqualified for an IPV under SNAP is ineligible for FDPIR until the SNAP disqualification has expired.

NOTE: Federal SNAP regulations require disqualifications for several program violations other than IPV:

- If a FDPIR applicant has been disqualified from SNAP, the ITO/State agency must determine the reason for the disqualification by contacting the SNAP office or reviewing the SNAP disqualification letter provided to the individual.
 - If the SNAP disqualification was for a violation other than an IPV (for example, failure to comply with a SNAP work requirement), the individual may participate in FDPIR, if otherwise eligible.
- » Applicants denied participation in FDPIR because they are subject to a SNAP disqualification must be provided a notice of denial and an opportunity to appeal the denial by requesting a fair hearing.

Program Violations: Tribal, State, or Local Prosecution for Fraud

Source: *FNS Handbook 501, Section 5730*

- » Any individual that has been convicted in a Tribal, State or local court of fraud relating to his/her participation in FDPIR must be disqualified for the length of time imposed by the court.
- » If the court does not impose a disqualification period, the ITO/State agency must impose the penalty prescribed for a FDPIR IPV (12 months for the first fraud conviction; 24 months for the second fraud conviction; and permanently for the third fraud conviction).
- » Repayment for USDA Foods received fraudulently should be considered at the court hearings. However, if the court does not instruct the ITO/State agency in this matter, the ITO/State agency must establish a claim for the USDA Foods improperly received by the household.

Program Violations: Tribal, State, or Local Prosecution for Fraud (continued)

Source: FNS Handbook 501, Section 5730

- » The ITO/State agency must not delay collection of a claim while an individual or household suspected of fraud is investigated or is undergoing court procedures.
- » The ITO/State agency may, however, postpone collection of a claim if the prosecutors of the case request such a delay.
- » ITOs and State agencies must provide program participants who are subject to a disqualification with a notice of adverse action/notice of disqualification that provides them with an opportunity to appeal the disqualification by requesting a fair hearing.

Program Violations: FDPIR IPV

Source: FNS Handbook 501, Sections 5720, 5800-5850

» An IPV is considered to have occurred when a household member knowingly, willingly, and with deceitful intent:

- Makes a false or misleading statement, or misrepresents, conceals, or withholds facts in order to obtain FDPIR benefits that the household is not entitled to receive;
and/or
- Commits any act that violates a Federal statute or regulation relating to the acquisition or use of food provided under FDPIR such as selling USDA Foods.

FDPIR IPV Penalties

Source: FNS Handbook 501, Sections 5720, 5810

» Only the household member determined to have committed the FDPIR IPV will be disqualified—not the entire household. The penalty for an IPV is disqualification :

- For a period of 12 months for the first violation;
- For a period of 24 months for the second violation; and
- Permanently for the third violation.

» The ITO/State agency must also establish claims and pursue collection, as appropriate, on over-issuances related to the IPV (see FNS Handbook 501, section 5820). Claims against households are covered in more detail in Module 7, Claims Against Households.

ITO/State Agency Responsibilities for FDPIR IPV

Source: *FNS Handbook 501, Section 5820*

- » Each ITO/State agency must implement administrative disqualification procedures for FDPIR IPV that conform to FNS policy.
- » The certifier must inform households in writing of the disqualification penalties for IPV each time they apply for benefits, including recertifications. Households must also be informed that a FDIPR IPV may be referred to authorities for prosecution.

Substantiation of FDPIR IPV and Referral for Prosecution

Source: *FNS Handbook 501, Section 5820*

- » The ITO/State agency must attempt to substantiate all suspected cases of FDPIR IPV.
- » An IPV is considered to be substantiated when the ITO/State agency has clear and convincing evidence demonstrating that a household member committed one or more acts of IPV.
- » The ITO/State agency must refer all substantiated cases of FDPIR IPV to appropriate Tribal, Federal, State, or local authorities for prosecution under applicable statutes.

NOTE: An ITO/State agency that has conferred with its legal counsel and prosecutors to determine the criteria for acceptance for possible prosecution is not required to refer cases that do not meet the prosecutors' criteria.

FDPIR IPV Notice of Disqualification

Source: FNS Handbook 501, Section 5830

» The ITO/State agency must provide the household member with a notice of disqualification within 10 days of substantiating that a household member has committed a FDPIR IPV.

NOTE: A notice must be issued to the individual even if the individual is not currently eligible or participating in the program.

» The notice must conform to the requirements for notices of adverse action and provide the household member to be disqualified with an opportunity to appeal the disqualification by requesting a fair hearing.

» The notice must allow an advance notice period of at least 10 days from the date the notice was mailed.

Disqualification Appeal Procedures

Source: FNS Handbook 501, Section 5840

- » A household member may appeal a disqualification by requesting a fair hearing.
- » The fair hearing procedures are discussed in more detail in Module 9, Fair Hearings.
- » If a household member requests a fair hearing, the notification of the date, time and location of a fair hearing must also include a statement that the Tribal, Federal, State, or local government may prosecute the household member in a civil or criminal court action, and that a claim may be issued for any USDA Foods that were improperly issued to the household.

Fair Hearing Decision on Disqualification

Source: FNS Handbook 501, Sections 5580-5582, 5840

- » The decision by an ITO/State level fair hearing official is binding on the ITO/State agency.
- » Within 10 days of the date that the fair hearing decision is issued, the ITO/State agency must issue a notice to the household advising it of the decision.
- » The notice must include:
 - The reason(s) for the decision;
 - The time period the disqualification will be in effect;
 - Whether the household's benefits will change or if the household is no longer eligible as a result of the disqualification; and
 - The household's right to pursue judicial review.

Fair Hearing Decision on Disqualification (continued)

Source: FNS Handbook 501, Sections 5580-5582, 5840

- » The fair hearing is the final administrative appeal process available to household members subject to a disqualification.
- » A household that wishes to appeal a fair hearing decision that upheld a disqualification may pursue judicial review in a court having appropriate jurisdiction.

Application of the Disqualification Penalty

Source: FNS Handbook 501, Section 5850

When a Fair Hearing Was Not Requested by the Household:

» If the household member did not request a fair hearing, the disqualification must begin with the next scheduled distribution of USDA Foods that follows the expiration of the advance notice period of the notice of adverse action/notice of disqualification.

Case Study 1 Scenario:

A household member receives a notice of adverse action/disqualification that states that the IPV disqualification will be effective the next scheduled distribution of USDA Foods that follows the expiration of the advance notice period. The advance notice period expires on May 1. The household member does not request a fair hearing. This is the first IPV conviction for the household member.

The household comes in to pick up its May issuance on May 5. Will the household be eligible to pick up its USDA Foods?

Case Study 1 Solution:

No. Since this is the household's first scheduled distribution following the expiration of the advance notice period, the household member's 12-month disqualification begins in May.

Case Study 2 Scenario:

A household member receives a notice of adverse action/disqualification that states that the IPV disqualification will be effective the next scheduled distribution of USDA Foods that follows the expiration of the advance notice period. The advance notice period expires on May 15. The household member does not request a fair hearing. This is the first IPV conviction for the household member.

The household picks up its May issuance on May 2, prior to the expiration of the advance notice period.

When will the household's 12-month disqualification begin?

Case Study 2 Solution:

June. The household was issued USDA Foods in May prior to the expiration of the advance notice period. Therefore, the household member's 12-month disqualification does not begin until June.

Application of the Disqualification Penalty (continued)

Source: FNS Handbook 501, Section 5850

When a Fair Hearing Was Requested by the Household:

» If the household member requested a fair hearing and the disqualification was upheld by the fair hearing official, the disqualification must begin with the next scheduled distribution of USDA Foods that follows the date the hearing decision is issued.

Case Study 3 Scenario:

On April 9, a household receives a notice of IPV disqualification for one of its members.

The household member requests a fair hearing. The household member requests a fair hearing. The fair hearing is held and a decision is issued on May 1. The fair hearing decision upholds the disqualification. The decision upholds the disqualification. This is the first IPV conviction for the household member.

The household comes in to pick up its May issuance on May 5. Will the household be eligible to pick up USDA Foods for this household member?

Case Study 3 Solution:

No. This is the household's next scheduled distribution that follows the date the hearing decision was issued, so the household member's 12-month disqualification begins in May.

Case Study 4 Scenario:

On April 9, a household receives a notice of IPV disqualification for one of its members.

The household member requests a fair hearing. The fair hearing is held and a decision is issued on May 15. The fair hearing decision upholds the disqualification. This is the first IPV conviction for the household member.

The household picks up its May issuance on May 5.

When does the household member's 12-month disqualification begin?

Case Study 4 Solution:

June. Because the household picked up the May issuance on May 5, the household member's 12-month disqualification will begin in June, the next scheduled distribution that follows the date the hearing decision was issued.

Application of Disqualification Penalty (continued)

Source: FNS Handbook 501, Section 5850

- » The ITO/State agency must apply the appropriate disqualification period.
 - For a FDPIR IPV - the disqualification period is 12 months for first violation, 24 months for second violation, or permanent disqualification for third violation;
 - For a SNAP IPV – the disqualification period is until the SNAP disqualification expires;
 - Failure to Pay a FDPIR Claim by a household – the disqualification period will last until the claim is paid or terminated;
 - FDPIR Fraud Conviction of a household member – the disqualification period specified by the court, or the appropriate FDPIR IPV disqualification period if the court did not specify a disqualification period.

Application of Disqualification Penalty (continued)

Source: FNS Handbook 501, Section 5850

- » Once a disqualification has begun, it must continue uninterrupted for the duration of the penalty period (for example, 12 months for the first FDPIR IPV).
- » Changes in the eligibility of the household of the disqualified member will not interrupt or shorten the disqualification period.
- » The same act of IPV continued over a period of time can not be separated so that more than one penalty can be imposed.

Case Study 5 Scenario:

A household intentionally fails to report that a household member left the household, resulting in an over-issuance of benefits for 5 months.

How many separate penalties will apply to this household?

Case Study 5 Solution:

One. Although the violation occurred over a period of 5 months, only one penalty will apply to this single act of IPV.

Court Orders

Source: *FNS Handbook 501, Section 5850*

» If the case was referred for Tribal, Federal, State, or local prosecution and the court of appropriate jurisdiction imposed a disqualification penalty, the ITO/State agency must follow the court order.

Conclusion:

Violations

» ITOs and State agencies must take action to disqualify individuals from participation for the following violations:

- Failure of adult household members to pay an over-issuance claim;
- Disqualification from SNAP for an IPV;
- Conviction of fraud under FDPIR in a Tribal, State, or local court; and
- Committing a FDPIR IPV.

» Individuals subject to a disqualification must be provided a notice of adverse action/notice of disqualification and an opportunity to appeal the disqualification by requesting a fair hearing.

Conclusion (continued):

Failure to Pay an Over-issuance Claim

- » The disqualification will continue until the claim is paid in full or terminated.
- » Over-issuance claims against households are covered in more detail in Module 7.

SNAP Disqualification for an IPV

- » The FDPIR disqualification will continue until the SNAP IPV disqualification has expired.
- » The certifier must determine that the SNAP disqualification was for an IPV since SNAP imposes disqualifications for several program violations other than IPV.

Tribal, State or Local Prosecution for Fraud under FDPIR

- » The disqualification will continue for the period of time imposed by the court.
- » If the court does not impose a penalty period, the ITO or State agency must impose the penalty prescribed for a FDPIR IPV.

Conclusion (continued):

FDPIR IPV

- » If an individual commits a FDPIR IPV, the household member, not the entire household will be disqualified.
- » ITOs and State agencies must attempt to substantiate all suspected cases of FDPIR IPV and must refer all substantiated cases to appropriate Tribal, Federal, State, or local authorities for prosecution.
- » Within 10 days of substantiating a FDPIR IPV, the ITO or State agency must provide the household member with a notice of disqualification.
- » The disqualification penalties are:
 - 12 months for the first violation;
 - 24 months for the second violation; and
 - Permanent disqualification for the third violation
- » The ITO and State agency must also establish claims and pursue collection, as appropriate, on over-issuances related to the IPV.

Conclusion (continued):

Fair Hearing

- » A household member may appeal a disqualification by requesting a fair hearing.
- » The decision by an ITO or State agency fair hearing official is binding on the ITO or State agency.
- » The ITO or State agency must issue a notice to the household of the fair hearing decision within 10 days the decision is made.
- » A household willing to appeal a fair hearing decision may pursue judicial review.

Conclusion (continued):

Application of the Disqualification Penalty

- » If the household member did not request a fair hearing, the disqualification must begin with the next scheduled distribution of USDA Foods that follows the expiration of the advance notice period of the notice of adverse action/notice of disqualification.
- » If the household member requested a fair hearing and the disqualification was upheld by the fair hearing official, the disqualification must begin with the next scheduled distribution of USDA Foods that follows the date the hearing decision is issued.
- » Once a disqualification has begun, it must continue uninterrupted for the duration of the penalty period.
- » Changes in the eligibility of the household of the disqualified member will not interrupt or shorten the disqualification period.
- » The same act of IPV continued over a period of time cannot be separated so that more than one penalty can be imposed.

Module 8 Quiz

Instructions:

The following quiz will test your knowledge of disqualifications.

1. Which of the following household members are NOT subject to a disqualification under FDPIR ?

- A. An individual who committed an IPV under SNAP**
- B. A child in a household that failed to pay an over-issuance claim**
- C. An individual convicted in a Tribal, State, or local court of fraud related to participation in FDPIR**
- D. An individual who committed an IPV under FDPIR**

2. True or False? If the adult members of a household are disqualified for failure to pay an over-issuance claim, they may begin receiving FDPIR benefits once part of the claim is paid.

A. True

B. False

3. True or False? If a household has been disqualified from SNAP for any reason, it must also be disqualified from FDPIR.

A. True

B. False

4. A household member is convicted of fraud related to participation in FDPIR. This is his second conviction. The court did not impose a disqualification period. What penalty must the ITO or State agency prescribe?

- A. 6 month disqualification**
- B. 12 month disqualification**
- C. 24 month disqualification**
- D. Permanent disqualification**

5. The head of household is found to have committed an IPV under FDPIR. Is the entire household disqualified?

A. Yes

B. No

6. True or False? If an ITO or State agency suspects a FDPIR IPV, it must immediately refer the case to the appropriate Tribal, Federal, State, or local authorities for prosecution.

A. True

B. False

7. When must the ITO/State agency notify the household of the decision that was issued during a fair hearing?

- A. Within 7 days of the date the fair hearing decision was issued**
- B. Within 2 days of the date the fair hearing decision was issued**
- C. Within 5 days of the date the fair hearing decision was issued**
- D. Within 10 days of the date the fair hearing decision was issued**

8. On August 11, a household received a notice of disqualification. The household requested a fair hearing and continuation of benefits. The household received its September issuance on September 2. The fair hearing decision upholding the disqualification is sent to the household on September 18. When will the disqualification begin?

- A. August 11**
- B. September 3**
- C. October 1**
- D. September 18**

9. A household member is disqualified for 12 months for a FDPIR IPV, but loses her job six months after the disqualification period began. Can she begin receiving FDPIR benefits again before the 12-month disqualification period has expired.

A. Yes

- » *If user selects this option, display: “You are incorrect. Changes in the eligibility of the household of the disqualified member will not interrupt or shorten the disqualification period.”*

B. No

- » *If user selects this option, display: “You are correct! Changes in the eligibility of the household of the disqualified member will not interrupt or shorten the disqualification period.”*

10. If a household fails to report a change in income, resulting in an over-issuance for 8 months, how many separate penalties will apply to this household?

A. 1

B. 3

C. 5

D. 8