No. 03-11-00113-CV

In the Court of Appeals for the Third Judicial District Austin, Texas

THOMAS SUEHS, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE TEXAS HEALTH & HUMAN SERVICES COMMISSION AND THE TEXAS HEALTH & HUMAN SERVICES COMMISSION,
Appellants,

v.

OCTAVIA GONZALEZ, ET AL.,
Appellees.

On Appeal from the
261st Judicial District Court, Travis County, Texas

BRIEF OF APPELLANTS

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ORAL ARGUMENT REQUESTED

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STATEMENT OF THE CASE

Nature of the Case:	This interlocutory appeal arises from the Commissioner's plea to the jurisdiction, which asserted that plaintiffs had not met their burden to plead a cause of action within an exception to sovereign immunity.
Trial Court:	The 261st Judicial District Court, Travis County, the Hon. Lora Livingston presiding.
Trial Court Disposition:	The trial court denied the plea. 1.CR.681; Tab A.[1]
Parties in the Court of Appeals:	Appellant: Thomas Suehs, in his official capacity as Commissioner of the Texas Health & Human Services Commission.
	Appellees: Octavia Gonzalez, *et. al.*

1. Citations to the record will appear as "__.CR.__", with the first number indicating the volume of the clerk's record, and the second the page number.

STATEMENT REGARDING ORAL ARGUMENT

This case presents a question of first impression in Texas: will the Texas courts allow an *ultra vires* lawsuit to proceed based on a statute that does not provide an individually-enforceable right to support a federal-law claim under 22 U.S.C. § 1983? This question is posed in the context of a relatively complex set of administrative rules governing supplemental nutrition benefits. Plaintiffs' argument threatens to put the Texas courts in the place of the Secretary of the United States Department of Agriculture to determine compliance with the requirements of federal law. Such interference by the Texas courts in a matter of federal-state cooperation is improper no matter how you slice it: as a political question, as an issue for which there is no remedy that will redress plaintiffs complaints, as a misconstruction of federal law, or as a violation of the exclusive-jurisdiction doctrine. Oral argument will assist the Court with both the legal issues and the regulatory framework.

ISSUES PRESENTED

The Supplemental Nutritional Assistance Program (SNAP), also known as "food stamps," is a state-administered federal program. The relevant federal statutes and rules set out the parameters of the states' responsibilities to the federal government and specifically provide a federal-law mechanism for enforcing those standards in federal court. Texas law incorporates the federal statutes and rules, by text or by reference, as part of the bargain by which it obtains benefits for Texas residents from the federal government.

1. Do plaintiffs' assertions that the Commissioner has violated the Human Resources Code and attendant administrative rules—which in turn mirror the provisions of federal law—state a viable *ultra vires* claim?

2. If plaintiffs have not stated a viable *ultra vires* claim, is this pleading defect curable?

3. Must the claims against the Commission be dismissed, because ultra vires and mandamus claims must be brought against a government official, rather than a government entity?

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v.

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Appellees.

On Appeal from the
261st Judicial District Court, Travis County, Texas

BRIEF OF APPELLANTS

TO THE HONORABLE THIRD COURT OF APPEALS:

This case is about the effect Texas's choice to accept federal funds under a federal spending-clause program in her state courts. Do the state courts provide a supplemental procedural avenue to control the food-stamp program—separate from and potentially at odds with the statutory remedial framework set up by federal law—when plaintiffs disagree with the federal government's assessment that Texas is conforming with federal law? The answer must be no. While the outcomes of particular benefit applications are subject to an administrative appellate process, determining compliance with the federal program's

systematic and procedural requirements is within the exclusive jurisdiction of the Secretary of the United States Department of Agriculture and the federal courts. The statutory language effecting Texas's acceptance of the federal program's funding does not give Texas courts additional power to impose performance requirements different from those required by the federal government. And Texas's wholesale adoption of the relevant federal administrative rules, which cannot change the terms of the federal statute, does not change this result. The statute and rules allow applicants to complain about the result of a benefits application, but systematic concerns are a matter for the executive branch, not the courts. Accordingly, there is no basis on which plaintiffs can make an *ultra vires* claim in Texas court.

STATEMENT OF FACTS

This is a case about the intersection of a federal program and the state law adopted to conform with that program's requirements. The "Supplemental Nutritional Assistance Program" program ("SNAP", formerly known as "food stamps") is a state-administered program to provide food assistance. *See* 7 U.S.C. ch. 51 ("The Food and Nutrition Act of 2008"). It is designed to "safeguard the health and well-being of the Nation's population by raising levels of nutrition among low-income households." 7 U.S.C. § 2011. Texas law incorporates the provisions of the federal act by reference, in the Human Resources Code, *see* TEX. HUM. RES. CODE ch. 33, and by direct incorporation into administrative rules adopted by the Health and Human Services Commission, *see* 1 TEX. ADMIN. CODE ch. 372.

I. Statutes and Rules

The Texas statutes and administrative rules at issue in this appeal authorize Texas's participation in the SNAP program and directly incorporate the relevant federal rules into Texas law. It is useful, therefore, to start with the federal law in order to understand Texas law.

A. The Federal Rule of Statutory Construction: *Gonzaga University v. Doe*

At one point, the procedural standards for the food-stamp program were actionable in federal court under 42 U.S.C. § 1983. *E.g., Victorian v. Miller*, 813 F.2d 718 (5th Cir. 1987) (en banc). But the United States Supreme Court has since abrogated the test under which such suits were allowed. *Gonzaga Univ. v. Doe*, 536 U.S. 273, 283 (2002) (confirming the standard articulated in *Blessing v. Freestone*, 520 U.S. 329, 340 (1997)). A statute creates such a right only by showing that (1) Congress unambiguously expressed its intent to create an individual right; and (2) even if such a right exists, the elaborate enforcement mechanisms in place do not indicate Congress's intent to preclude private enforcement through §1983. *Blessing*, 520 U.S. at 340-341.

A lawsuit addressing application of the Food and Nutrition Act's 30-day deadlines (claims that were essential identical to a portion of this lawsuit) was recently set for argument in the Fifth Circuit, before those plaintiffs non-suited their claims. *Stacy Howard v. Thomas Suehs*, 09-51063. At this time, no federal court has held that the federal statute or rules at issue in this case are actionable under §1983 under the *Gonzaga/Blessing* test.

B. The Federal Statute

States are required to submit operational plans to the Secretary of the U.S. Department of Agriculture to qualify for participation in the cooperative federal-state "supplemental nutrition assistance" program.[2] *See* 7 U.S.C. § 2020(d). These operational plans dictate how States are expected to discharge their administrative responsibilities under the Act; the procedural requirements of these plans (and accordingly the guidelines for a State's operational conduct) are specifically enumerated in 7 U.S.C. § 2020(e) and its attendant regulations.

The state agency responsible for administering the program is required to certify household eligibility for the program "in accordance with the general procedures prescribed by the Secretary in the regulations issued pursuant to [the governing statute]." *Id.* § 2020(e)(6)(A). For example, the federal statute sets out time limits for processing SNAP applications. A state must establish a plan under which "the State agency shall . . . promptly determine the eligibility of each applicant household . . . not later than thirty days following its filing of an application." *Id.* § 2020(e)(3).

Congress crafted SNAP to rely upon significant and substantial oversight by the Secretary. The Secretary is tasked with monitoring State compliance with the operational plans. If the Secretary identifies a pattern (not isolated incidents) of noncompliance, he "shall immediately inform such State agency of such failure and shall allow the State agency

2. Oversight over the program is delegated to the Food and Nutrition Service of the U.S. Department of Agriculture. 7 C.F.R. § 271.3(a).

a specified period of time for the correction of such failure." *Id.* § 2020(g). The States formulate corrective action plans in response, and work together with the Secretary to identify ways in which to improve system performance. *See, e.g.*, 7 C.F.R. §§ 275.3, 275.16, 276.5, 276.6. A State agency may avoid penalties by showing "good cause" for the failure to comply. 7 U.S.C. § 2020(g).

If the Secretary remains unsatisfied with the State's performance, he is authorized to "refer the matter to the Attorney General with a request that injunctive relief be sought." *Id.* The Secretary also has the option of "withhold[ing] from the State such funds . . . as the Secretary determines to be appropriate," subject to the State's right to challenge the Secretary's determination through administrative and judicial review. *Id.*

The Secretary provides substantial bonuses to "State agencies that show high or improved performance" in a variety of areas, including "[t]imely processed applications." 7 C.F.R. § 275.24(b)(4). In fiscal year 2008, six States were awarded bonuses in this category; the highest timeliness rate was 97.97% and the lowest receiving an award was 95.26%. See FY 2008 Food Stamp Program High Performance Bonuses. *See* FOOD AND NUTRITION SERVICE, U.S. DEP'T OF AGRIC., FY 2008 FOOD STAMP PROGRAM HIGH PERFORMANCE BONUSES ("2008 Bonuses") (Appendix, Tab F).[3] Texas has recently received notice that it will receive a bonus payment for payment accuracy and negative error rate. *See* Appendix, Tab G.

3. *available at* http://www.fns.usda.gov/snap/government/pdf/2008-chart-awards.pdf.

The Act separately provides applicants with the right to administrative review of benefits determinations. *See, e.g.*, *id.* § 2020(e)(10) (fair hearing requirements); 7 C.F.R. § 271.6 (informal complaint procedure). Federal law does not contemplate judicial review of benefits determinations made to particular individuals or households. 7 U.S.C. § 2020(e)(10).

C. Texas's Participation in the Program and the Texas Statute

Texas discharges the administration of SNAP through the Texas Health and Human Services Commission. TEX. HUM. RES. CODE §33.002(a). By statute, the Commission "shall establish policies and rules that will ensure the widest and most efficient distribution of the commodities and food stamps to those eligible to receive them." *Id.* § 33.002(c). More specifically, the Commission is required to ensure that "each region in the state complies with federal regulations." *Id.* § 33.002(d).

The Commission's rules, adopted pursuant to § 33.002(c), are found in Title I, Chapter 372 of the Texas Administrative Code. *See* 1 TEX. ADMIN. CODE ch. 372. The rules announce that they are based on the relevant federal statutes and rules, *id.* § 372.3(d), and emphasize that "[t]o the extent the regulations . . . impose federal mandates that apply to Texas, [the Commission] incorporates [those] regulations by reference," *id.* § 372.3(e). Accordingly, the administrative rules incorporate the federal standards for determining household eligibility, *id.* § 372.153, and calculating household income, *id.* § 372.408(b).

The administrative rules likewise incorporate the federal statutory timeline for processing SNAP applications. *Id.* § 372.904(b) ("For a SNAP application . . . [the

Commission] certifies or denies the application as soon as possible but not later than 30 days after the application file date . . . .”). The same applies to notification of final eligibility and renewal, *e.g.*, *id.* § 372.1001(b) (directly incorporating the various federal rules). Apart from §372.3, every Texas administrative rule at issue in this case directly incorporates the relevant federal administrative rule, by reference.

II. The Dispute

According to plaintiffs, a number of factors led to increased processing time for processing SNAP applications. *See* 1.CR.88. Plaintiffs attribute this change to various administrative changes made by the Commission, although they also credit budget cuts made by the Legislature. *Id.*

Plaintiffs brought suit seeking injunctive and mandamus relief—they did not bring a claim under 42 U.S.C. §1983. *See* 1.CR.29-32. They alleged that the SNAP program violates various statutes and rules by:

- failing to ensure the “widest” distribution of benefits, 1.CR.104-09 (discussing TEX. HUM. RES. CODE § 33.002(c)),
- incorporating formal defects into the applications for benefits and thereby failing to comport with the cognate federal rules, 1.CR.113-14 (discussing 7 C.F.R. § 273.2(b)(1)(v), (vii));
- missing the 30-day processing requirement and other formal requirements for handling applications, 1.CR.115-116 (discussing 7 C.F.R. § 273.10(g)(1)), 1.CR. 119-121 (discussing 7 C.F.R. § 274.2(b));
- operating a defective telephone system, 1.CR.117-18 (discussing 7 C.F.R. § 273.2 and § 273.13);

- failing to assist applicants in locating verification documents, 1.CR.119 (discussing 7 C.F.R. §273.2);

- failing to make benefits available to applicants seeking renewal of benefits while their renewal applications are pending, 1.CR.121-22 (discussing 7 C.F.R. § 273.14(e)); and

- violating the due-course-of-law provision based on delay in processing applications, 1.CR.122 (invoking TEX. CONST. art. I, § 17).

Plaintiffs' live petition can be summed up as an argument that funding and staffing of the SNAP program must be changed, *e.g.*, 1.CR.106 (attacking the Commission's "philosophy"), because there have been delays and confusion in the processing of some applications, 1.CR.89-104. The remedy they request is an injunction to stop violations of the law, 1.CR.123, ¶¶ 163 & 164, and attorney's fees, 1.CR.124 ¶165.

The Commissioner filed a plea to the jurisdiction arguing that none of plaintiffs' allegations described a violation of law and, as a result, plaintiffs lawsuit was an improper attempt to control a state official in the exercise of his discretion. 1.CR.149-157. The plea was denied. 1.CR.681.

STANDARD OF REVIEW

Plaintiffs seek prospective injunctive relief against a state official in his official capacity to prevent a violation of law. *E.g.*, *City of El Paso v. Heinrich*, 284 S.W.3d 366 (Tex. 2009). Their lawsuit is, therefore, subject to the jurisdictional limitations on that cause of action.[4] An *ultra vires* suit is brought (1) against a state official, (2) to enjoin illegal

4. Plaintiffs challenge the Commissioner's actions under the Human Resources Code and the attendant administrative rules, but do not challenge that statute's validity. Accordingly, this lawsuit does not fall within the exception to immunity articulated in *Texas Lottery Commissionn v. First State Bank of DeQueen*,

actions, and (3) must be dismissed if the petition does not, as a matter of law, assert an act by the defendant official that is not within his legal or statutory authority. *Combs v. City of Webster*, 311 S.W.3d 85, 94-95 (Tex. App.—Austin 2009, pet. denied). The key to the analysis is whether the petition falls within an exception to the rule that suits against defendant officials in their official capacity must be dismissed. *Franka v. Velasquez*, 332 S.W.3d 367, 382-83 & n.69 (Tex. 2011) (to bring *ultra vires* claim, plaintiff must meet pleading requirements to invoke exception to sovereign immunity); *Creedmoor-Maha Water Supply Corp. v. Tex. Comm'n on Envtl. Quality*, 307 S.W.3d 505, 514-15 (Tex. App.—Austin 2010, no pet.) (improper *ultra vires* claims are jurisdictionally barred). Statutory construction is appropriate in resolving the plea. *City of Webster*, 311 S.W.3d at 95; *see also Texans Uniting for Reform & Freedom v. Saenz*, 319 S.W.3d 914, 922-24 (Tex. App.—Austin 2010, pet. denied).

Moreover, it is appropriate to address a plea to the jurisdiction to only a portion of a plaintiff's lawsuit. *Thomas v. Long*, 207 S.W.3d 332, 338-39 (Tex. 2006). The Commissioner challenges jurisdiction over the claims for injunctive relief, not over the mandamus petition.

SUMMARY OF THE ARGUMENT

Did Texas sign on for state-court oversight of the SNAP program when it accepted federal funds? No. Federal law requires Texas to provide an administrative appeals process

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325 S.W.3d 628, 634 (Tex. 2010) (recognizing an exception to immunity for challenges to the validity of a statute).

for individuals whose benefits are denied or delayed, without the possibility of judicial review. And Texas has accepted federal law without adding additional state-created rights.

Texas's acceptance of certain federal-law requirements in return for federal funds is like a contract. To put it in contract terms, the federal government did not require Texas to subject itself to private lawsuits to determine the policies by which the SNAP program is administered in Texas. Rather, the strict requirements can be forgiven by the Secretary, who is charged with working with the States to bring them into compliance with federal law over time. Indeed, the Secretary has provided performance bonuses to States that exceed the deadlines 5% of the time—which suggests that absolute enforcement of the deadlines is not federal policy. If Texas signed on for a collaborative executive-branch process, she did not intend to expose herself to policy making through the adversarial mechanisms of the court system

The fact that plaintiffs seek to circumvent the Secretary's authority to administer the program in cooperation with the states highlights what this litigation is really about: plaintiffs want to use the *ultra vires* cause of action to give them the judicial hammer to control the SNAP program that they lost when the United States Supreme Court decided *Gonzaga University v. Doe*. But the statutes and rules mean what they say—individual applicants have no right beyond the grant or denial of their benefits, and questions regarding administration of the SNAP program as a whole are vested in the Secretary's and the federal courts' exclusive jurisdiction.

Texas law incorporates these limits as part of the contract to obtain SNAP funding. If the arrangement is in the nature of a contract, the act of breach is not illegal: breach is a valid, discretionary act to take in the course of a contractual relationship. As a result, Texas law does not directly impose any non-discretionary obligations regarding administration of the program.

ARGUMENT

I. THE RELEVANT STATUTES RESOLVE THE JURISDICTIONAL ISSUES IN THIS CASE.

Plaintiffs argued to the trial court that the Commissioner's plea had to be denied because its resolution required statutory construction. *See* 1.CR.164-65. That argument is foreclosed by precedent. When faced with a statutory or constitutional *ultra vires* claim, a court must:

> construe the statutory . . . provisions that are implicated, apply them to the facts [the plaintiff] has pled and that were not negated by evidence . . . and determine whether [the plaintiff] has alleged acts that would constitute violations of the relevant . . . statutory provisions.

Texans Uniting for Reform & Freedom, 319 S.W.3d at 920-21 (quoting *Creedmoor-Maha*, 307 S.W.3d at 516).

A. A *Heinrich* Claim Must Be Dismissed on a Plea to the Jurisdiction if the Alleged Facts, Taken as True, Will Not Violate Any Limitation on Executive-Department Discretion.

The *ultra vires* theory is limited to requests for injunctive relief to prevent violations of law, so as to prevent the courts from controlling the acts of state officials acting in their statutory or constitutional discretion. *Heinrich*, 284 S.W.3d at 372. To that end, the

jurisdictional inquiry is whether the facts alleged in the plaintiff's petition describe a violation of the statute or constitutional provision on which the plaintiff relies. *E.g.*, *Tex. Highway Comm'n v. Tex. Ass'n of Steel Imps., Inc.*, 372 S.W.2d 525, 530 (Tex. 1963) (establishing jurisdiction to enjoin execution of minute order that violated competitive bidding statute); *Short v. W.T. Carter & Bro.*, 133 Tex. 202, 217-19, 126 S.W.2d 953, 962-63 (1938) (holding that Land Commissioner could defeat jurisdiction by establishing that relevant statutes authorized his actions). This framework holds true even when the *ultra vires* claim has been couched as a request for statutory construction brought under the Uniform Declaratory Judgments Act. *See Heinrich*, 284 S.W.3d at 378 (plaintiffs sought construction of art. 6243b, §10A(b) of the Revised Civil Statutes); *Dep't of Ins. v. Reconveyance Servs., Inc.*, 306 S.W.3d 256, 257-58 (Tex. 2010) (per curiam) (plaintiffs sought construction of Insurance Code provisions). And it applies to constitutional *ultra vires* suits. *Dir. of Dep't of Agric. & Env't v. Printing Indus. Ass'n of Tex.*, 600 S.W.2d 264, 265-66 (Tex. 1980).[5]

Despite some earlier contrary precedent, this Court has recently reaffirmed application of the Supreme Court's longtime standard for assessing jurisdiction in these cases. If the facts alleged describe an *intra vires* act, the plaintiff has not pleaded an *ultra vires* act, there is no jurisdiction, and the case should be dismissed. *E.g.*, *Merritt v. Cannon*, No. 03-10-

5. Plaintiffs have incorrectly sued the Commission as well as the Commissioner. *See* 1.CR.1. The Commission, a governmental entity, is not the appropriate defendant in either an *ultra vires* or a mandamus suit. *Reconveyance*, 306 S.W.3d at 258 (*ultra vires* suits against entities must be dismissed); *Seagraves v. Green*, 116 Tex. 220, 240-41, 288 S.W. 417, 424-25 (Tex. 1926). Because the Commission is the wrong defendant, all claims against the Commission must be dismissed regardless of how the Court resolves the Commissioner's appeal.

00125-CV, 2010 WL 3377778, at *3 (Tex. App.—Austin 2010, pet. denied) (mem. op.); *McLane Co. v. Strayhorn*, 148 S.W.3d 644, 650-51 (Tex. App.—Austin 2004, pet. denied). This is because the *ultra vires* cause of action is designed only to prevent violations of law, not to direct the exercise of legitimate discretion. *E.g.*, *Creedmoor-Maha*, 307 S.W.3d at 517-18 (citing *N. Alamo Water Supply Corp. v. Tex. Dep't of Health*, 839 S.W.2d 455, 459 (Tex. App.—Austin 1992, writ denied)). The Court has unambiguously rejected the proposition that a plaintiff can establish jurisdiction with a conclusory statement that particular facts constitute a violation of statute or of the Constitution. *Id.* at 516 & n.8 (discussing *Hendee v. Dewhurst*, 228 S.W.3d 354, 368-69 (Tex. App.—Austin 2007, pet. denied)).

B. Plaintiffs' Mandamus Proceeding is a Mere Distraction in this Interlocutory Appeal, as It Must Be Resolved on Remand.

Plaintiffs have injected some confusion into this lawsuit by seeking both injunctive relief and a writ of mandamus. Because the ministerial nature of an act goes to the merits of a mandamus petition, they argue, the plea cannot be granted. *E.g.*, 1.CR.162-63.[6] But it is appropriate to resolve jurisdictional issues involving only some claims in a case in an interlocutory appeal. *Thomas*, 207 S.W.3d at 338-39. And the statutory-construction issues

6. It is worth noting that plaintiffs relied primarily on pre-*Heinrich* authority. *See* 1.CR.183-187. *Heinrich*, of course, resolved inconsistency in the case law on the procedural and substantive requirements for *ultra vires* claims. 284 S.W.3d at 373. The one post-*Heinrich* case cited, *KEM*, in fact supports the Commissioner and was decided as an appeal from a final judgment only because the trial court granted a plea to the jurisdiction. 2009 WL 181102, at *1.

undergirding plaintiffs' *ultra vires* claims must be resolved now: if there is not limitation on discretion, there is no jurisdiction. *See supra*, Part I.A.

The two mechanisms are procedurally distinct, but substantively similar.[7] A plaintiff can obtain neither remedy if he seeks to control an executive-department official in the exercise of discretion. An *ultra vires* lawsuit can be barred by sovereign immunity if improperly pleaded. *Creedmoor-Maha*, 307 S.W.3d at 515 ("the fact that a claimant purports to allege 'ultra vires' or 'unconstitutional' conduct by a state official does not alone mean that it has avoided sovereign immunity and invoked a trial court's inherent jurisdiction"). Mandamus, by contrast, which is recognized by the constitution as a general judicial power and allocated by statute among the courts,[8] is not subject to the immunity defense. *E.g., St. Louis Sw. Ry. Co. v. Tod*, 94 Tex. 632, 633, 64 S.W. 778, 778 (Tex. 1901) (orig. proceeding); *see Turner v. Pruitt*, 161 Tex. 532, 534-35, 342 S.W.2d 422, 423-24 (1961) (distinguishing

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7. History is to blame. At one time, the two remedies were complementary: the *ultra vires* cause of action provided a mechanism for preventing government action, while mandamus served as a mechanism for requiring the government to act. *Compare Cobb v. Harrington*, 144 Tex. 360, 365, 190 S.W.2d 709, 712 (1945) (suit to enjoin policy that had been ruled invalid in previous litigation) *with St. Louis S.W. Ry. Co. v. Tod*, 94 Tex. 632, 633, 64 S.W. 778, 778 (Tex. 1901) (orig. proceeding) (suit to compel secretary of state to file an amendment to a corporate charter); *see also Blum v. Lanier*, 997 S.W.2d 259, 263 (Tex. 1999) (distinguishing between an injunction preventing an election and mandamus requiring defendants to proceed with an election). That distinction does not survive *Heinrich*, however, because *Heinrich* adopts the federal standard under the *Ex Parte Young* doctrine and allows any relief, so long as it is prospective. 284 S.W.3d at 374.

8. Mandamus authority is within the supreme court's original jurisdiction, pursuant to limitations enacted by law, TEX. CONST. art. V, §3(a), and the district courts' original jurisdiction, TEX. CONST. art. V, § 8, but is granted to the courts of appeals only by statute, TEX. CONST. art. V, § 6(a). The authorizing statutes do not waive immunity, but rather reference the pre-existing mandamus power and allocate jurisdiction over various defendants among the various Texas courts. *See* TEX. GOV'T CODE § 22.221(a) (allowing courts of appeals to issue mandamus as necessary to protect their jurisdiction), (b) (allowing broader mandamus power against trial courts).

mandamus from suits to which immunity applies). At the same time, the jurisdictional question in an *ultra vires* case is the same as the substantive question in an executive-department mandamus: does the lawsuit seek to control an executive-department official in the exercise of his legitimate discretion? An *ultra vires* claim can be prosecuted only if the plaintiff describes a violation of law, *e.g.*, *W.T. Carter & Bro.*, 133 Tex. at 217-19, 126 S.W.2d at 962-63, and mandamus relief is available only when a source of law precludes the defendant official from exercising discretion to take a contrary act, *e.g.*, *Anderson v. City of Seven Points*, 806 S.W.2d 791 (Tex. 1991) ("A writ of mandamus will issue to compel a public official to perform a ministerial act."). A statutory grant of discretion cannot support an *ultra vires* claim, *McLane*, 148 S.W.3d at 650-51, and an act is ministerial when the law clearly spells out the duty to be performed with nothing left to discretion, *Depoyster v. Baker*, 89 Tex. 155, 159, 34 S.W.106, 107 (1896) (orig. proceeding).

II. THE FEDERAL STATUTES AND RULES AT ISSUE IN THIS CASE INCORPORATE FEDERAL LAW PRINCIPLES THAT FORECLOSE AN ULTRA VIRES CLAIM IN STATE COURT.

The crux of this case is that the federal statutes and rules presuppose that policy concerns regarding the administration of the SNAP system are to be resolved in a collaborative exchange between the States and the Secretary of the USDA, not in the courts. The Secretary does not require absolute compliance with the procedural requirements of the federal statute and rules, and if the Secretary chose to enforce those requirements, suit would

be in federal, not state, court. Allowing suit based on assertion that those requirements must be strictly met would undermine the Secretary's role in administering the SNAP program.

A. The Federal Statute Confers Exclusive Jurisdiction Over the Policy Questions Raised in this Lawsuit on the Secretary of the USDA.

1. Beneficiaries are entitled to benefits if they demonstrate eligibility, and eligibility determinations are not subject to judicial review.

Plaintiffs' pleadings are peppered with the implication that this lawsuit is about the deprivation of benefits in particular cases—that is why their lawsuit is structured around particular instances of delayed benefits. But the outcome of any particular benefits determination is reviewed in an administrative "fair hearing" process. 7 U.S.C. § 2020(e)(10) (fair hearing requirements); 7 C.F.R. § 271.6 (informal complaint procedure); 1 TEX. ADMIN. CODE §372.1002 (setting procedural rules for appealing decisions). The hearing officer's determination is, in turn, subject to a procedural review, but not an appeal. 1 TEX. ADMIN. CODE §357.19(f). There is no judicial review.

This right to an appeal includes a right to challenge a delay in the provision of benefits to a particular applicant. 1 TEX. ADMIN. CODE § 357.3(1)(B). Thus, to the extent that any of the named plaintiffs in this case had a problem with the time it took for them to obtain benefits, they have bypassed that statutory remedy in bringing the present lawsuit. There is no need for this type of meta-lawsuit: every applicant who has a complaint about the SNAP program could have had their concerns about their own applications vindicated outside the courts, through the administrative process.

The federal rules, moreover, create a remedy for any delay in the provision of benefits. 7 C.F.R. § 273.2(h)(4). The agency shall continue to process the delayed application and, if the household is determined eligible, and the State agency was at fault for the delay, the agency must award retroactive benefits. *Id.*

2. By contrast, enforcement provisions governing the administration of the program are within the exclusive authority of the Secretary of the USDA.

The procedural requirements for the SNAP program are a different story from the right to obtain benefits within a reasonable time. The details of program administration cannot be addressed in a §1983 lawsuit because the statute does not create a private right to any particular set of procedures—including the various deadlines and procedural-requirements on which plaintiffs base this lawsuit.

The federal statute expressly provides the Secretary of the U.S. Department of Agriculture (not state courts) with authority to correct, and even forgive, systemic violations of the SNAP provisions. 7 U.S.C. §2020(g). Moreover, it provides that the exclusive judicial remedy for such violations is a suit in federal court (not state court), brought by the United States (not private plaintiffs). *Id.* Those exclusive enforcement mechanisms demonstrate an affirmative intent not to create a private right of action for SNAP's procedural requirements.

B. The Federal Statute Could Not Have Been Written Otherwise and Still Given the Secretary of the USDA Meaningful Authority to Negotiate With the States.

1. The *Gonzaga/Blessing* test precludes judicial interference with the Secretary of the USDA's discretion to administer the SNAP program.

Section 1983 is a statutory mechanism by which federal standards can be enforced in federal or state court. A §1983 claim can be brought only if the federal statute separately creates an individually-enforceable right. *Gonzaga*, 536 U.S. at 283. A statute creates such a right only by showing that (1) Congress unambiguously expressed its intent to create an individual right; and (2) even if such a right exists, the elaborate enforcement mechanisms in place do not indicate Congress's intent to preclude private enforcement through §1983. *Blessing*, 520 U.S. at 340-341. While the second branch of the test is what is of primary importance in this case, the SNAP procedures meet neither test because the statute is not drafted to confer private rights regarding the system by which SNAP is administered. The statute requires only that the States adopt a plan of operation adopting the technical requirements imposed by federal law.

The SNAP stature is, paradigmatically, the type of regulation that does not create an individual right. *See Cuvillier v. Taylor*, 503 F.3d 397, 406 (5th Cir. 2007) ("the provisions' language does not focus on the individuals benefitted, but rather focuses entirely on the state agency and what the agency should be doing"). The time limit provisions, for example, are couched entirely in terms of the State's obligation to act, but contain no language containing

a concomitant right of any applicant to compliance with the deadlines. And not a single one of the rules on which plaintiffs rely creates a "right" or an "entitlement"—thus, to the extent an administrative rule could change a statutory requirement, the rules do not even purport to advance additional rights to individuals. *See infra*, Part IV.B.

It is the second prong of the test that controls this case: the Secretary's exclusive enforcement powers foreclose the use of §1983 to enforce SNAP procedural requirements. The federal statute expressly provides the Secretary of the U.S. Department of Agriculture (not state courts) with authority to correct, and even forgive, systemic violations of the SNAP provisions. Moreover, it provides that the exclusive judicial remedy for such violations is a suit in federal court (not state court), brought by the United States (not private plaintiffs). 7 U.S.C. § 2020(g). Those exclusive enforcement mechanisms demonstrate an affirmative intent not to create a private right of action for SNAP's procedural requirements.

2. Administration of the program is a political question.

The Secretary of the USDA has exclusive jurisdiction to determine when and how the SNAP programs requirements should be enforced, that the various statutes and rules create no mandatory obligation to support an *ultra vires* claim (or are framed as improper rule challenges)—is that, together, they form a non-justiciable political question.[9] The only real, meaningful consequence that could result from a failure to comply with federal law is

9. Justiciability can be raised for the first time on appeal in an interlocutory appeal. *Waco Indep. Sch. Dist. v. Gibson*, 22 S.W.3d 849, 851 (Tex. 2000) (addressing unpleaded justiciability arguments for the first time in interlocutory appeal).

withdrawal of federal funding. The statutes and rules govern the interaction between Texas and the federal government, not the interests of individuals seeking assistance.

Texas borrows its political-question inquiry from federal law. *See Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746, 778 (Tex. 2005) (citing *Baker v. Carr*, 369 U.S. 186 (1962)). The two core inquiries in determining whether a question is nonjusticiable are whether it demonstrates "a textually demonstrable constitutional commitment of the issue to a coordinate political department or a lack of judicially discoverable and manageable standards for resolving it." *Baker*, 369 U.S. at 217.

This lawsuit presents a purely political question on both counts. As explained above, compliance with federal law's requirements is in the hands of the Secretary of Health and Human Services. And the choice to continue participating in the program in light of the requirements of federal law is a political choice for the Texas Legislature. Because the various statutes and rules in this case vest that power in the coordinate political department of the federal government, it is improper for the Texas courts to exercise jurisdiction over them. Likewise, because there is no statutory remedy for any particular failure to comply with the various requirements, there are no judicially manageable standards for determining what "sufficiently clear" notice is or whether the phone system is "adequate." Continuation of SNAP funding is the Secretary's business, in consultation with the States. It is not the courts' concern.

3. The federal rules create an exclusive remedy for the injuries consistent with the United States Supreme Court's standard for minimum due process.

Plaintiffs' petition focuses on the stories of a number of individuals whose benefits were delayed. *See* 1.CR.89-104. But there is already a specific remedy for that injury: a fair-hearing proceeding before the Commission. *E.g.*, 7 U.S.C. § 2023(a)(13); *see also* 1 TEX. ADMIN. CODE § 372.1002 (specifying procedures for challenge to the outcome of an eligibility determination). And the rules provide a remedy: a retroactive award of benefits. 7 C.F.R. § 273.2(h)(3).

The United States Supreme Court has made clear that this type of benefits determination need not be subjected to judicial oversight. *See Goldberg v. Kelly*, 397 U.S. 254, 266-67 (1970) (where process is required, it "need not take the form of a judicial or quasi-judicial trial). In framing the SNAP program, Congress chose to require only an administrative remedy, a statutory "fair hearing," not a right to judicial review of each benefits determination, in light of the minimum process required for deprivation proceedings. 7 U.S.C. § 2023(a)(13). Congress's choice to provide only the minimum process required preserves governmental resources and keeps these cases from clogging the courts. Congress's choice to adopt the minimum procedure required by the Constitution should be respected. *See United States v. Erika, Inc.*, 456 U.S. 201, 208 (1982) (holding Congress has power to preclude judicial review of administrative determinations). That decision is a

legitimate choice not to unduly tax the federal court system for a result that will have little real value to applicants. *See id.* at 210, n.13.

4. Congress's choice to require only an administrative remedy must be construed in light of Eleventh Amendment jurisprudence.

Congress's choice to require the States to provide an administrative process without an accompanying waiver of immunity from suit, if they accept SNAP funding, is likewise informed by Eleventh Amendment jurisprudence. Congress has power to abrogate the states' immunity from suit by private plaintiffs only in federal court, and only if it expressly invokes a specific constitutional basis for doing so. *E.g.*, *Coll. Sav. Bank v. Florida Prepaid Postsecondary Educ. Bd.*, 527 U.S. 666, 670-71 (1999). The framing of the conditions for SNAP funding has no resemblance to the statutory language that would be necessary for Congress to abrogate state sovereign immunity. Indeed, the only potential lawsuit created by the federal statutes would be brought by the United States in federal court, 7 U.S.C. § 2020(g), and immunity would not apply, *United States v. Tex.*, 143 U.S. 621, 644 (1892). Federal law does not contemplate creating a basis for suit in state court. Accordingly, Texas cannot have manifested the intent to expose herself to suit in her own courts by adopting provisions of federal law. *Alden v. Maine*, 527 U.S. 706, 712-13 (1999) (Congress cannot abrogate immunity in state courts, without state consent). If the federal statute did not require a judicially-enforceable right, none can be inferred from Texas's acceptance of SNAP funding.

* * *

A federal court would construe the relevant federal statutes to foreclose private lawsuits to enforce the provisions of law about which plaintiffs complain. And there would be no need to recognize an exception to the governing legal principles, because plaintiffs have access to a remedy that cures their alleged injury—an administrative claim for retroactive benefits.

III. TEXAS LAW INCORPORATED THE FEDERAL LAW GOVERNING THE SNAP PROGRAM AND ECHOING THE FEDERAL STATUTE AND RULES, NOTHING MORE.

When Texas, in turn, accepted SNAP funding, the Texas statutes and administrative rules incorporated federal law by reference and by direct incorporation. Texas added no substantive requirements to the SNAP program. Accordingly, Texas cannot have exposed herself to broader amenability to suit in state court than Congress intended to provide in federal court.

A. When Texas Law Uses Federal Statutory Language or Directly Incorporates Federal Law into Texas Law, the Texas Law must Be Construed in Light of Relevant Federal Precedent.

This case incorporates two rules of statutory construction governing the relationship between Texas and federal law. First, when a Texas statute includes language mirroring a federal statute, adopted with the intent of conforming to a federal standard, the meaning of federal law must be taken into account in analyzing the Texas statute. *Little v. Tex. Dep't of Criminal Justice*, 148 S.W.3d 374, 381-82 (Tex. 2004). This standard applies to the relevant chapters of the Human Services Code, because those provisions are intended to bring Texas law into compliance with the federally-established prerequisites for receiving TANF

(Temporary Assistance for Needy families) and SNAP funding. Second, when a Texas statute incorporates a federal standard directly into Texas law, the federal interpretation of that provision governs. *See Tex. Parks & Wildlife Dep't v. Dearing*, 240 S.W.3d 330, 353-54 (Tex. App.—Austin 2007, pet. denied).

These two rules make sense in light of the fact that, in adopting provisions intended to mirror federal law for the purpose of obtaining federal funding, the Legislature and the relevant administrative agencies intend to comply with uniform, nation-wide federal standards. *E.g.*, *Quantum Chem. Corp. v. Toennies*, 47 S.W.3d 473, 476 (Tex. 2001). And they are consistent with the federal law governing spending-clause programs. *See supra*, Part II.B. A state takes on only the obligations outlined in the federal program for which it receives funding—any legal burden broader than the bargain on which funding is based cannot be imposed on the states through federal law. A state should not be considered to impose additional burdens on itself through its own law merely by accepting federal money.

B. More Specifically, in the Spending-Clause Context Texas Accepts Only the Express Requirements of Federal Law When it Accepts Federal Funds.

While Texas courts have not directly addressed the standard for construing a statute accepting federal funds under the spending clause, the Texas Supreme Court has provided guidance in cases involving the implied creation of a private right to suit. There is no presumption of an enforceable right in any statute, particularly when enforcement of the statute is conferred on an executive-branch official. *See Brown v. De La Cruz*, 156 S.W.3d

560, 566-67 (Tex. 2004) ("Modern legislatures may delegate enforcement to executive departments, administrative agencies, regulatory commissions, local governments and districts, as well as the criminal or civil courts; with such a myriad of tools at the Legislature's disposal, we cannot always assume that we must be the hammer."). Likewise, the Court should not presume that the Texas judiciary should be the "hammer" to enforce the SNAP guidelines. The Texas statute and rules contain nothing to indicate that Texas courts are to displace the Secretary of the USDA's role in overseeing the distribution of SNAP funds.

Texas's statutes and rules accepting SNAP funding and implementing the program must be construed in light of their substance—they constitute the acceptance of federal authority under the spending clause. Congress has authority to place conditions on the receipt of federal funding. U.S. CONST., art. I, § 8, cl. 1; *e.g.*, *Barnes v. Gorman*, 536 U.S. 181, 185-86 (2002). This transaction is "much in the nature of a contract: in return for federal funds, the [recipients] agree to comply with federally imposed conditions." *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981). Any attempt by the federal government to impose requirements on the provision of federal funding in addition to those offered and accepted by the states in the first instance is illegitimate. *E.g.*, *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 247 (1985) (concluding that a waiver of state sovereign immunity cannot be implied from the acceptance of spending-clause funds).

The strict test for establishing a private right is all the more important in the context of spending programs, such as SNAP. *E.g.*, *Cuvillier*, 503 F.3d at 406. It ensures that the States can predict the scope to which they will expose themselves to litigation by accepting federal funding. *See, e.g.*, *Gregory v. Ashcroft*, 501 U.S. 452, 464 (1991) (noting the dangers of giving "'state-displacing weight of federal law to mere congressional ambiguity'" (quoting LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW § 6-25 (2d ed. 1988) (emphasis omitted)). Because spending legislation is much in the nature of a contract, "'[t]here can, of course, be no knowing acceptance [of the terms of the putative contract] if a State is unaware of the conditions [imposed by the legislation] or is unable to ascertain what is expected of it.'" *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 640 (1999) (quoting *Halderman*, 451 U.S. at 17). This "concrete safeguard" allows States to "guard against excessive federal intrusion into state affairs and be vigilant in policing the boundaries of federal power," *id.* at 655 (Kennedy, J., dissenting)—an interest that surely arises when asking whether a State is subject to judicial supervision the food-stamp program in addition to oversight by the Secretary of the USDA.

C. Put Another Way, Application of the *Blessing/Gonzaga* Test Confirms that Exclusive Jurisdiction Over Plaintiffs' Policy Complaints Lies Outside the Texas Courts.

Apart from their spurious constitutional claim, *see infra*, Part V, plaintiffs' lawsuit is based on alleged violations of Chapter 33 of the Human Resources Code and attendant administrative rules. As explained above, these provisions echo or directly incorporate

federal law, which vests the Secretary of the USDA with exclusive administrative jurisdiction to determine compliance with federal law's requirements for the SNAP application process. *See supra,* Part II.A. The federal provisions with which they must be coordinated preclude this lawsuit under the doctrine of exclusive jurisdiction.

The doctrine of administrative exclusive jurisdiction deprives a court of jurisdiction over a determination that is confided, by statute, in an administrative body. *Thomas*, 207 S.W.3d at 340 (citing *Subaru of Am., Inc. v. David McDavid Nissan, Inc.*, 84 S.W.3d 212, 222 (Tex. 2002)). In the ordinary course of Texas law, exclusive jurisdiction prevents the courts from hearing a matter unless and until a plaintiff exhausts the administrative process. *David McDavid Nissan,* 84 S.W.3d at 221. The Secretary's power to oversee the SNAP program and remediate systemic problems is exclusive of the state courts' jurisdiction.

The same rule also applies when the law vests jurisdiction over a matter in one court, but not another. *E.g.*, *Villarreal v. Harris County*, 226 S.W.3d 537, 544 (Tex. App.—Houston [1st Dist.] 2006, no pet.) (inverse-condemnation suits must be dismissed if not filed in county court at law, in Harris County). In this case, however, federal law (which is incorporated into the federal administrative rules) provides that any suit will be brought in federal court, by the United States Attorney General. 7 U.S.C. § 2020(g). Neither an *ultra vires* nor a declaratory-judgment claim can proceed in derogation of a statutory grant of exclusive jurisdiction to another court. *MBM Fin. Corp. v. Woodlands Operating Co.*, 292 S.W.3d 660, 669 (Tex. 2009).

Federal law's remedy provisions are directly incorporated into Texas law. They confer exclusive administrative jurisdiction on the Secretary, and exclusive judicial jurisdiction to the federal courts. The Legislature and the Commission could not have anticipated, in adopting § 33.006 of the Human Resources Code and incorporating the federal rules, that they were subjecting Texas to remedial provisions *in addition* to those provided by federal law. The *ultra vires* claims in this case are a matter for the Secretary of the United States Department of Agriculture to assess, not the state courts. And the federal government does not mandate complete compliance with all the SNAP procedural rules, given that it awards performance bonuses based on timeliness to states that are late as much as 5% of the time. 2008 BONUSES, Appendix Tab F. There is no actionable basis for challenging the Commissioner's actions in state court. Accordingly, the *ultra vires* portion of this lawsuit must be dismissed.

* * *

This is a federalism case. The SNAP program entails an agreement between the State of Texas and the federal government that works like a contract. Texas agreed to certain terms with the federal government: individual complaints about benefits processing must be given an administrative appeal, but procedural and systematic concerns with the way the program operates as a whole are not subject to that review mechanism. The remedy for any structural defect in the SNAP program is in the hands of the Secretary of the United States Department of Agriculture, who is empowered to work with Texas to create a plan to

ameliorate procedural deficiencies, to forgive such deficiencies for good cause, and, as a matter of last resort, to refer such issues to the Attorney General of the United States for resolution in federal court. 7 U.S.C. § 2020(g). Treating the statutes and rules at issue in this case—all of which incorporate federal law as a result of the contract-like arrangement—as though they created an independent right to judicial enforcement outside the scope of the Food and Nutrition Act of 2008 would be to add conditions to the contract that Congress and the Legislature did not foresee and could not intend.

IV. THE TEXAS LAW STATUTES AND RULES CITED IN PLAINTIFFS' PETITION DO NOT PROVIDE A BASIS FOR PLAINTIFFS' *ULTRA VIRES* CLAIMS.

The federal statute and rules at issue in this case do not purport to create a private right to circumscribe the government's actions with regard to SNAP application procedures; a discretionary matter to be negotiated with the USDA is not the type of non-discretionary legal mandate on which *ultra vires* claims can be based. *E.g.*, *Creedmoor-Maha*, 307 S.W.3d at 517-18 (dismissing suit alleging disagreement with policy results, rather than an *ultra vires* act by defendant). The only way for the provisions on which plaintiffs rely to serve as the basis of an *ultra vires* claim is if they do something *more* than accept federal funding and create a legal regime compatible with the federal rules. The Texas statute and rules cannot be construed to support an *ultra vires* claim, because they import only the elements of the SNAP program required to obtain federal funding into Texas law.

A. The Statute and Rules at Issue in this Case Preclude an *Ultra Vires* Claim Because They Incorporate Federal Law.[10]

The purpose of Chapter 33 and the attendant administrative rules is to comply with the federal standards for receiving SNAP funding.[11] TEX. HUM. RES. CODE § 33.0006. The Human Resources Code does not define the scope of SNAP benefits or recognize any right to them that is not encapsulated in federal law, and it leaves implementation of the program to the administrative rules adopted by the Commission.

The rules, in turn, copy or directly incorporate federal law. *See* 1 TEX. ADMIN. CODE ch. 372. The rules emphasize that their purpose is to incorporate precisely the mandates imposed by federal law in accepting SNAP funding. *Id.* § 372.3(e) ("To the extent [federal regulations] impose federal mandates that apply to Texas, [the Commission] incorporates the regulations by reference for administration of SNAP in Texas. If the regulations provide options . . the rules of this chapter . . . describe the options Texas has chosen."). Otherwise, the primary legal basis for the administrative rules is federal law. *Id.* § 372.3(d); *see also id.*

10. Preservation is not an issue. *Tex. State Bd. of Publ. Accountancy v. Bass*, No. 03-09-00251-CV, 2010 WL 5575921, at *4 n.2 (Tex. App.—Austin 2011, no pet.) (mem. op.) (holding that *ultra vires* arguments are an exception to the limited view of interlocutory appellate jurisdiction expressed in *Austin Independent School District v. Lowery*, 212 S.W.3d 827, 834 (Tex. App.—Austin 2006, pet. denied)).

11. The Code provides statutory standards for only a few procedural issues, none of which are at issue in this appeal, including the creation of programs to publicize SNAP's application requirements, TEX. HUM. RES. CODE §§ 33.0021, .012, prevent fraud, *id.* §§ 33.023, .033, and allow a hardship exception to certain application requirements, *id.* § 33.015. Plaintiffs would have a better argument for basing an ultra vires claim on these provisions, which Texas adopted *in addition* to accepting the federal requirements for SNAP funding.

§ 372.3(f) (referencing Chapter 33 of the Human Resources Code as the sole state-law basis for the rules governing the SNAP program).

The contract-like nature of the spending-clause program, *see supra*, Part III.B, explains why a failure to comply with SNAP's systematic and procedural requirements is not *ultra vires*. Breaching a contract is not illegal—it is a choice to expose oneself to the remedy imposed by the contract for the breach. *E.g.*, *Cram Roofing Co., Inc. v. Parker*, 131 S.W.3d 84, 91 (Tex. App.—San Antonio 2003, no pet.).[12] (This is why the government waives its immunity from liability when it contracts—it exposes itself to the potential liability—but must separately waive its immunity from suit—it is not exposed to the general jurisdiction—before a party can obtain contract damages. *E.g.*, *Tex. Natural Res. Conservation Comm'n v. IT-Davy*, 74 S.W.3d 849, 855-56 & 860-61 (Tex. 2002) (holding that it is unnecessary to perform the *ultra vires* analysis to determine an exception to immunity from suit, because the nature of the remedy would be the award of money damages). Moreover, as in any contract, the contracting party, in this case the Secretary acting on behalf of the federal government, has the choice to forgive the breach for the sake of the ongoing relationship. There is no imminently enforceable legal norm to apply, because the choice of how strictly to construe the SNAP program's requirements is placed

12. "While a contract may indeed have the force of law, breach of a contract is not necessarily an illegal activity. It is a civil breach of an obligation imposed by the contract." *Cram Roofing*, 131 S.W.3d at 91; *see also United States v. Blankenship*, 382 F.3d 1110, 1133-34 (11th Cir. 2004) (citing *Thyssen, Inc. v. S.S. Fortune Star*, 777 F.2d 57, 63 (2d Cir. 1985) ("[B]reaches of contract that are in fact efficient . . . should be encouraged . . . .")).

squarely in the federal executive branch, which works with the States in an ongoing process to ensure the continued provision of SNAP benefits.

B. Even Without the Overlay of Federal Law, the Plain Text of the Statutes and Rules Cited By Plaintiffs Would Not Support an *Ultra Vires* Claim.

Even if the statutory provision and rules in this case were not part of a spending-clause program, they would still not provide the basis for an *ultra vires* claim because they do not establish a judicially enforceable limitation on executive discretion. The judiciary lacks power to override the executive department's exercise of discretion granted to it by the Legislature. *See McLane Co.*, 148 S.W.3d at 651 n.6. The keystone of plaintiffs' lawsuit is a report from the State Auditor's office making a series of policy suggestions regarding implementation of the SNAP program. 1.CR.287-352; *see* 1.CR.111 ("The Auditor's report lists a number of realistic changes that could be made by HHSC to more timely and efficiently provide SNAP benefits to eligible Texans."). But the Legislature had the State Auditor's Office's recommendations before it in the last session and chose not to act on them. Plaintiffs complaints are based on a subjective preference for a particular policy outcome rather than an unambiguous limitation on executive power. The courts do not run the executive department. TEX. CONST. art. II, §1.

In short, to bring an *ultra vires* lawsuit you have to point to a limitation on official's discretion in order to get around his status as an official of the State which is, in turn, immune from most lawsuits. To do that, you have to allege an ultra vires act, *i.e.*, an act outside the official's discretion. The federal place control of the SNAP program in the

discretion of the Commissioner, with review by the Secretary. There is no role for the state courts. Because it asserts no judicially cognizable limit on official discretion, this lawsuit must be dismissed.

1. The only Texas statute cited by plaintiffs establishes no limit on discretion at all, much less a mandatory rule.

Plaintiffs cite one statute, §33.002 of the Human Resources Code, as a basis for their *ultra vires* claims. 1.CR.104-09. That provision states:

> The department shall establish policies and rules that will ensure the widest and most efficient distribution of the commodities and food stamps to those eligible to receive them.

TEX. HUM. RES. CODE §33.002(c). Plaintiffs assert that the Commission's adoption of various standards for obtaining SNAP benefits violates this statute. 1.CR.107-109 (challenging the asset test and fingerprinting requirements). But plaintiffs concede that those provisions are consistent with the Human Resources Code. 1.CR.40 (plaintiffs' exhibit conceding that changing the asset test and finger imaging requirement would require statutory changes). A policy disagreement with an administrative rule that conforms to an agency's authorizing statute is no basis for an *ultra vires* claim. *See Creedmoor-Maha*, 307 S.W.3d at 517-18 (citing *KEM Tex. Ltd. v. Tex. Dep't of Transp.*, No. 03-08-00468-CV, 2009 WL 1811102, at *5–*6 (Tex. App.—Austin 2009, no pet.) (mem. op.)).

The asset test is part of the Commission's application (which, in turn, is overseen by the federal government). *E.g.*, 1.CR.264. Nothing in federal or state law precludes this requirement. Indeed, the federal rules establish standards for performing the asset test,

7 C.F.R. § 273.8. Absent an affirmative statutory obligation not to impose an asset test, the test's existence cannot support an *ultra vires* claim.

And the finger printing allegation defeats jurisdiction over the *ultra vires* claim, on its face. Plaintiffs frankly acknowledge that they are asking the Commissioner to exercise discretion not to apply these statutory requirements. 1.CR.107 ("The Texas Legislature created this component, but [the Commission] has flexibility in implementing it."). By definition, if the Commissioner has statutory authority to apply either the asset test or the fingerprinting requirement, there can be no *ultra vires* claim.[13]

2. The timing requirements do not support jurisdiction because they are directory, not mandatory.

Plaintiffs allege that because the 30 day deadline for processing was missed in a number of cases, they are entitled to an injunction requiring generalized policy changes at the Commission. 1.CR.123 (asking that the court "grant Plaintiffs mandamus as well as temporary and permanent injunctive relief to require HHSC to develop operations, practices, and policies that comply with Texas law"). That systemic remedy would not cure any injury particular to any given untimely application—it is solely addressed to systemic questions of program performance. Even if these matters did not fall within the Secretary of the Department of Agriculture's bailiwick by incorporation of federal statute, they would

13. Moreover, because the fingerprinting test is created by Texas Administrative Rule, the sole jurisdictional mechanism to invalidate it is a suit under § 2001.038 of the Government Code, brought against the Commission rather than the Commissioner. *See Local Neon Co. v. Strayhorn*, No. 03-04-00261-CV, 2005 WL 1412171, at *1 (Tex. App.—Austin 2005, no pet.) (mem. op.).

nonetheless be an inappropriate basis for an *ultra vires* lawsuit in this case. Because the federal rules (and therefore the Texas rules) are drafted against the background presumption that these provisions are not individually enforceable, they do not contain the necessary language to create a non-discretionary obligation to act.

a. Texas law distinguishes between mandatory and directory timelines in order to avoid judicial interference with the executive branch.

Allowing a time limit to constrain the government to make changes to an entire program would allow plaintiffs to wag the policy dog using the deadline tail. Texas law recognizes this concern by distinguishing between "mandatory" and "directory" time limits. Mandatory time limits are "of the essence of the thing to be done," while directory time limits are merely "included for the purpose of promoting the proper, orderly and prompt conduct of business." *Chisholm v. Bewley Mills*, 155 Tex. 400, 403, 287 S.W.2d 943, 945 (Tex. 1956). The distinction depends upon the court's assessment of the Legislature's intent. *Id.* The word "shall" often indicates a mandatory timeline. *Id.* But the most important factor is whether the Legislature (or the administrative body adopting a rule) attaches a particular penalty to the failure to comply with the deadline imposed. *Markowsky v. Newman*, 134 Tex. 440, 448,136 S.W.2d 808, 812 (Tex. 1940); *Lewis v. Jacksonville Bldg. & Loan Ass'n*, 540 S.W.2d 307, 310 (Tex. 1976) (applying mandatory/directory analysis to administrative rule). Absence of a specific consequence "usually" means that the time limit is directory. *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 495 (Tex. 2001).

Moreover, in a situation where application of a mandatory deadline would thwart the Legislature's purpose, even language that appears to be mandatory should be construed as directory. *Barshop v. Medina County Underground Water Conservation Dist.*, 925 S.W.2d 618, 629-630 (Tex. 1996).

b. The administrative rules creating deadlines are directory.

The Texas rule provides:

> For a SNAP application . . . [the Commission] certifies or denies the application as soon as possible but not later than 30 days after the application file date.

1 TEX. ADMIN. CODE § 372.904(b).[14] A federal rule provides:

> State agencies shall provide applicants with one of the following written notices as soon as a determination is made, but no later than 30 days after the date of the initial application.

7 C.F.R. § 273.10(g)(1). Federal rules incorporated into the state rules also contemplate provision of benefits within 30 days of an eligibility determination. *Id.* §§ 273.2(g), 274.2(b) (incorporated by 1 TEX. ADMIN. CODE §372.3(d), (e)). Likewise, the Texas rules impose time limits on recertification.

> The State agency shall provide households that have filed an application by the 15th of the last month of their certification period with either a notice of eligibility or a notice of denial by the end of the current certification period if the household has complied with all recertification requirements. The State agency shall provide households that have received a notice of expiration at

14. Plaintiffs also cite the relevant explanatory handbook. *E.g.*, 1.CR.109 (discussing TEX. HEALTH & HUMAN SERVS. COMM'N, TEXAS WORKS HANDBOOK B-112 DEADLINES (Rev. 10-2, eff. Apr. 1, 2009), *available at* http://www.dads.state.tx.us/handbooks/TExasWorks/B/100/100.htm#secB-112. There is no substantive difference.

> the time of certification, and have timely reapplied, with either a notice of eligibility or a notice of denial not later than 30 days after the date of the household's initial opportunity to obtain its last allotment.

1 TEX. ADMIN. CODE § 372.3(e) (incorporating 7 C.F.R. § 273.10(g)(2)).[15]

While some of the administrative rules in question contain the word "shall," the presence of that word does not conclusively make a deadline mandatory. The rules emphasize that benefits applications are to be resolved "as soon possible." *Id.* § 372.904(b). They comport with federal law's statutory requirement that the State's plan for implementing SNAP require that applications be processed within 30 days. 7 U.S.C. § 2020(e)(3). The inclusion of the deadlines in the administrative rules ensures continued funding of the SNAP program. *See* 7 U.S.C. § 2020(e)(3) (requiring that *the plan* include a 30-day deadline). But it contains no remedy for individuals whose claims are delayed. And the Secretary of the USDA can negotiate with the States to bring them into compliance with federal law, meaning that violation of these provisions may not, in fact, be a violation of law in the first instance. Because there is no individualized remedy and treating these deadlines as mandatory would upend the policies embodied in federal and Texas law, the deadlines are not mandatory.

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15. Plaintiffs further assert that late notification of eligibility violates the Human Resource Code's requirement that such notice be sent "promptly." 1.CR.115 (citing TEX. HUM. RES. CODE §31.032(c) ("The [Commission] shall promptly notify the applicant of its final action."). And they assert that the Commission fails to provide written notice to the applicant if the application is not processed in 30 days. 1 TEX. ADMIN. CODE § 372.1001(g)(1)(iii). Neither of these deadlines is mandatory, because neither contains a remedy for failure to comply and enforcing either in a lawsuit would frustrate the policies behind both federal and Texas law.

The Commissioner's analysis of the timing provisions is bolstered by the Court's analysis in *Texas Mutual Insurance Co. v. Vista Community Medical Center, LLP*, 275 S.W.3d 538 (Tex. App.—Austin 2008, pet. denied). *Vista* addressed a statute providing that certain Medicaid reimbursement rates "'shall be reviewed and revised'" every two years. *Id.* at 552. The court concluded that the guideline was directory, not mandatory, because the Legislature included no penalty for failure to comply with the time period. *Id.* If a *statute* controlling Medicaid reimbursements is not judicially enforceable because it contains no statutory consequences for failure to comply, an *administrative rule* adopted pursuant to a statute that contains no deadlines should not be construed as a mandatory requirement.

c. Likewise, the other rules on which plaintiffs rely are directory.

The remaining challenges apply to a number of federal regulations incorporated by administrative rule: the form of the online and paper applications, 1.CR.113-14 (discussing 7 C.F.R. § 273.2(b)(1)(v), (b)(1)(vii)), failure to notify applicants what documents are required in a sufficiently clear manner, 1.CR.114-15 (discussing 7 C.F.R. § 273.2(c)(5)); failure to provide various information when benefits are denied, 1.CR.116 (discussing 7 C.F.R. § 273.10(g)(1)(ii)); operation of a "defective phone system," based on "implied" violations of several provisions, 1.CR.117-18; and failure to assist applicants in locating verification documents, 1.CR.119. Not one of these provisions grants applicants a right contingent on their violation.

The text of the rules confirms the Commissioner's understanding that they do not create individually enforceable requirements, but are rather addressed to the discretion of the Secretary of the USDA. Thus, the federal administrative rules governing notice merely provide that the Commission "shall provide the household with written notice" without specifying any resulting penalty for failure to comply with this requirement. 7 C.F.R. § 273.10(g) (setting out notification requirements for all stages of application process). The provisions governing the contents of the benefits application merely require notification of a right to receive benefits. 7 C.F.R. §§ 273.2(b)(v) & (vii). To create a separate right to timely notification, the rule would have to create a remedy for notification received untimely. *Compare e.g.*, 7 C.F.R. § 273.2(c)(1) (discussing a "Household's right to file"), *with id.* § 273.2(c)(5) (setting out an obligation to inform households of their rights, but not creating a right to timely notification).[16] Section 273.2(c) does not.[17] And as a practical

16. Plaintiffs cite 7 C.F.R. § 273.2(c)(5) as creating an obligation to give notice of the right to assistance in obtaining documents—a requirement that would at least demonstrate that households are entitled to something. *See* 1.CR.119 (discussing 7 C.F.R. § 273.2(f)(4) and 7 C.F.R. § 273.2(f)(5), referring to a requirement that state agencies assist applicants to find verification documents). But the term "assist" does not create an affirmative right to the production of every document required to obtain benefits, and the rules create no penalty adhering to the applicant for failure to comply with this requirement. At any rate, plaintiffs' lawsuit boils down to an assertion that a system-wide remedy is necessary based on a handful of anecdotal complaints, a claim that is hard to square with the Secretary of the USDA's discretion to keep Texas certified in the SNAP program even when there are delays in services.

17. It is much the same with the other rules. The rule governing notification of benefits decisions requires only that notification be sent, without creating a right to that notification. 7 C.F.R. § 273.10(g)(1) ("State agencies shall provide applicants with one of the following notices . . . ."). The recertification rule merely requires that the recertification process have certain qualities, without creating any rights for applicant households. *E.g.*, 7 C.F.R. § 273.14(b) (requiring agencies to create a "notice of expiration" form).

matter, an applicant whose benefits have been delayed can avail himself of Texas's administrative review process. 1 TEX. ADMIN. CODE §372.1002.

Because these provisions merely recite procedural requirements without creating a remedy for their violation, they are directory rather than mandatory. Moreover, violation of any of them is subject to the Secretary of Health and Human Services's exclusive jurisdiction. *See supra*, Part II.A. Failure to follow directory guidelines is not a basis for an *ultra vires* suit, especially if the matter in question is subject to exclusive jurisdiction elsewhere.[18]

3. At least some of plaintiffs' allegations cannot support an *ultra vires* claim based on the petition's text.

Read in isolation, many of the rules on which plaintiffs rely appear to create mandatory obligations. *E.g.*, 7 C.F.R. § 273.2(b)(1)(v) (setting out requirements for application form). It is only when they are read in light of federal law and the governing canons of construction that they are rendered directory, rather than mandatory.

But the analysis of some of plaintiffs' claims requires no analysis of the statutory text. Plaintiffs allege that the application is "confusing," that information that should be on the "first page" of a printed application comes unacceptably late in the online application process, 1.CR.113-14, and that the phone system just is not good enough, 1.CR.117-18

18. Moreover, plaintiffs' own pleadings do not attempt to establish any violations of administrative rule, at least for some of their "counts." Counts four and five contain no factual allegations at all, but merely seek a declaratory and injunctive relief on the bare assertion that the Commission has violated Texas law. 1.CR.119-120.

(arguing that Commission's system violates an "implied" requirement); *see also* 1.CR.108 (alleging that Commission has been "encouraged" to adopt a better phone system). Provisions that merely create a subjective standard for operating the SNAP system cannot serve as the basis of an *ultra vires* suit because they constitute a grant—rather than a limitation—of authority. *See Creedmoor-Maha*, 307 S.W.3d at 517-18. By pleading that there is no controlling statute or rule requiring the outcome they seek, plaintiffs have conceded that there is no jurisdiction over their *ultra vires* claims.

* * *

It is the plaintiff's burden to establish that jurisdiction exists in response to a State entity's plea to the jurisdiction. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993). To do so for an *ultra vires* claim, they must identify a source of law depriving the Commissioner of discretion to maintain jurisdiction over this lawsuit. *E.g.*, *Creedmoor-Maha*, 307 S.W.3d at 517-18. Plaintiffs' petition fails that test.

V. PLAINTIFFS' DUE-COURSE-OF-LAW CLAIM MUST BE DISMISSED BECAUSE THEIR ALLEGATIONS DO NOT RISE TO THE LEVEL OF A DUE-COURSE-OF-LAW CLAIM, AS A MATTER OF LAW.

Sovereign immunity does not bar properly pleaded *ultra vires* lawsuits seeking to enjoin violations of the Constitution. But to invoke this exception to immunity, a plaintiff must allege facts that, if true, would fall within the scope of the alleged constitutional claim. *E.g.*, *State v. Holland*, 221 S.W.3d 639, 643-44 (Tex. 2007). If a claim does not fall within the scope of the constitutional protection it attempts to invoke, as a matter of law, the

lawsuit should be dismissed. *Id.*; *see State v. Lueck*, 290 S.W.3d 876, 881 (Tex. 2009). A procedural due-course claim without a vested property right is not a valid claim at all and must be dismissed. *NCAA v. Yeo*, 171 S.W.3d 863, 870 (Tex. 2005) ("Accordingly, we hold that Yeo has asserted no interests protected by article I, section 19 of the Texas Constitution. The case must therefore be dismissed.").

Plaintiffs' due-course-of-law claim fails because (1) plaintiffs have no vested property interest in either an application for SNAP benefits or an application for renewal of SNAP benefits; (2) they don't seek to undo the deprivation of any right; and (3) the remedy they request makes this something other than a due-course-of-law claim.

First, any right of which plaintiffs might have been deprived is statutory. A statutory right may become vested when it is awarded as an entitlement, *e.g.*, *Goldberg v. Kelly*, 397 U.S. 254, 261-62 (1970) (already-granted welfare benefits are a vested property right for purposes of termination proceedings), but this happens only once benefits have been awarded, not before, *id.* (limiting its reasoning to situations in which there is a "deprivation" of a right). A property right becomes vested when it is created subject to a court order or has some definite, non-hypothetical existence. *E.g.*, *Butler Weldments Corp. v. Liberty Mut. Ins.*, 3 S.W.3d 654, 659-60 (Tex. App.—Austin 1999, no pet.); *S.C. San Antonio, Inc. v. Tex. Dep't of Human Servs.*, 891 S.W.2d 773, 778 (Tex. App.—Austin 1995, writ denied). Under Texas law, a first-time applicant for a benefit has no property interest in the

prospective grant of benefits. *Lee v. Tex. Workers' Comp. Comm'n*, 272 S.W.3d 806, 817 (Tex. App.—Austin 2008, no pet.).

Because a prospective applicant has not yet established his entitlement under the relevant statutory standard, he does *not yet* have a vested property right. The statutory language confirms that such rights do not vest until benefits are granted—applications can be validly denied. 7 U.S.C. § 2015 (setting out grounds for denying applications). Until the application is granted, there is merely a unilateral expectation of benefits—not an entitlement to them. *See Banks v. Block*, 700 F.2d 292, 297 (6th Cir. 1983). Moreover, benefits are granted only for a given period and must be awarded periodically. *E.g.*, 7 U.S.C. § 2012(f) (defining length of certification period); 7 C.F.R. § 273.14(a) ("No household may participate beyond the expiration of the certification period . . . without a determination of eligibility for a new period."). Because the entitlement to benefits expires on a date certain and beneficiaries must apply for a new period, there is no more of a property interest in the renewal of benefits than there is in an initial request. *E.g.*, *Jackson v. Jackson*, 857 F.2d 951, 957 (4th Cir. 1988) (concluding that applicants and reapplicants for food stamps have no property interest in benefits they have not yet been granted); *see also Hamby v. Neel*, 368 F.3d 549, 558-59 (6th Cir. 2004) (distinguishing between continuous and term entitlements).[19] By contrast, there is a requirement of pre-*termination* process. 7 U.S.C.

19. Plaintiffs rely on *Atkins v. Parker*, 472 U.S. 115 (1985), for the proposition that food stamp applicants and recipients have a vested interest in food stamp benefits because the statute creates an entitlement to those benefits, 1.CR.165. This is a gross overstatement of *Atkins*. For one thing, the language from *Atkins* on which plaintiffs rely, *see* 1.CR.165, applies only "in determining whether an individual may continue to

§ 2020(e)(10). Thus, only someone whose previously-awarded benefits are terminated before they expire on their own terms has a vested property right in SNAP benefits.

In due-course-of-law or due-process analysis, the question is whether adequate process has been provided before deprivation of a life, liberty, or property interest. But, in this case, plaintiffs do not describe a "deprivation." *E.g.*, *Univ. of Tex. Med. Sch. at Houston v. Than*, 901 S.W.2d 926, 933 (Tex. 1995). Plaintiffs do not allege that they have been ultimately denied SNAP benefits—they allege that they don't like the way SNAP benefits are administered. *E.g.*, 1.CR..122-23 (alleging that the Commission should be enjoined from policies that "discourage applicants from filing even a first application."). Mere disagreement with a policy is not a basis for arguing that a lack of process led to the improper deprivation of a right.

Nor do plaintiffs request the correct remedy. The remedy for insufficient process is more process, not a change in the substantive outcome of a proceeding or determination. *Id.* at 933-34. Once a plaintiff has obtained SNAP benefits for a given period, he has no further interest in the process by which they were granted. Thus, what plaintiffs have labeled a "due course" claim does not comport with the established jurisprudence defining the characteristics necessary to maintain such a claim.

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participate in the statutory program," 472 U.S. at 128. *Atkins* does not suggest that a beneficiary has a property right in SNAP benefits *before* he completes the application or reapplication process—awarding benefits in the first instance is different in kind from stripping them from someone who has already been awarded them.

VI. RENDITION OF JUDGMENT DISMISSING THE REQUEST FOR INJUNCTIVE RELIEF IS THE APPROPRIATE REMEDY.

The remedy following a determination of a plea to the jurisdiction depends on the nature of the pleading defect. If either the pleadings themselves or the evidence (if any) affirmatively negates jurisdiction over the claim, there is no jurisdiction. *Tex. A&M Univ. Sys. v. Koseoglu*, 233 S.W.3d 835, 839 (Tex. 2007). Whether the Court renders judgment or remands depends on whether the jurisdictional defect can be cured. *Id.*

The text of the statutes and rules involved in this case do not create a limitation on executive-department discretion and cannot, therefore, support an *ultra vires* claim. While SNAP beneficiaries have an interest in, and a right to administrative review of their own application for benefits, systemic concerns are matters related to the ongoing relationship between Texas and the federal government. This is true as a matter of spending-clause federalism: if the federal statute is drafted to avoid creating an individual right in federal court, Texas cannot, in acquiescing to that language, have intended to create an individually-enforceable right where none would otherwise exist. Likewise, a statute that places these concerns within the exclusive administrative jurisdiction of the Secretary of the United States Department of Agriculture cannot be construed to confer jurisdiction regarding these matters on the Texas courts. And the language used by Congress makes the federal Act's procedural and systemic requirements directory rather than mandatory—a choice that makes perfect sense in light of the Secretary's exclusive authority to address these issues with the states. Finally, the continued, negotiated process of obtaining and providing federal benefits

is a political question reserved to the Executive Department. There is a bright textual line between an applicant's personal interest in SNAP benefits and the procedures by which the program is administered.

Because plaintiffs' allegations all deal with the process—not the substance—of the SNAP benefits process, they can never reframe this lawsuit to state a valid *ultra vires* claim. The *ultra vires* claims (and the due-process claim) should be dismissed, and the case should be remanded for resolution of the mandamus petition.

PRAYER

The Court should render judgment dismissing plaintiffs' *ultra vires* claims and remand for disposition of the pending mandamus.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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INDEX TO APPENDIX

TAB A

Notice sent: Final Interlocutory (None) DC BK11046 PG120

Disp Parties:

Disp code: CVD / CLS

Redact pgs:

Judge LJL Clerk LAL

Cause No. D-1-GN-09-004273

OCTAVIA GONZALEZ, et al., Plaintiffs,	§	IN THE DISTRICT COURT
v.	§	345th JUDICIAL DISTRICT
THOMAS SUEHS, in his official capacity as Commissioner of the Texas Health & Human Services Commission, Defendant	§	TRAVIS COUNTY, TEXAS

Filed in The District Court of Travis County, Texas
JAN 21 2011 BP
10:4 M.
At
Amalia Rodriguez-Mendoza, Clerk

ORDER DENYING DEFENDANT'S PLEA TO THE JURISDICTION

Defendant Thomas Suehs" (the "Commissioner"), in his official capacity as Executive Commissioner of the Texas Health and Human Services Commission ("HHSC"), Plea to the Jurisdiction is before this Court. Upon full consideration of Defendant's Plea, the pleadings on file and argument of Counsel, the Court is of the opinion that the Plea should be DENIED.

IT IS THEREFORE ORDERED that Defendant's Plea to the Jurisdiction is hereby DENIED in its entirety.

SIGNED this 20th day of January, 2011.

HONORABLE LORA LIVINGSTON

LAL

001888764

Tab 1

TAB B

United States Code
Title 7

§ 2011. Congressional declaration of policy

It is declared to be the policy of Congress, in order to promote the general welfare, to safeguard the health and well-being of the Nation's population by raising levels of nutrition among low-income households. Congress finds that the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households. Congress further finds that increased utilization of food in establishing and maintaining adequate national levels of nutrition will promote the distribution in a beneficial manner of the Nation's agricultural abundance and will strengthen the Nation's agricultural economy, as well as result in more orderly marketing and distribution of foods. To alleviate such hunger and malnutrition, a supplemental nutrition assistance program is herein authorized which will permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation.

§ 2012. Definitions

As used in this chapter, the term:

(f) "Certification period" means the period for which households shall be eligible to receive benefits. The certification period shall not exceed 12 months, except that the certification period may be up to 24 months if all adult household members are elderly or disabled. A State agency shall have at least 1 contact with each certified household every 12 months. The limits specified in this subsection may be extended until the end of any transitional benefit period established under section 2020(s) of this title.

* * *

(k) "Food" means (1) any food or food product for home consumption except alcoholic beverages, tobacco, and hot foods or hot food products ready for immediate consumption other than those authorized pursuant to clauses (3), (4), (5), (7), (8), and (9) of this subsection, (2) seeds and plants for use in gardens to produce food for the personal consumption of the eligible household, (3) in the case of those persons who are sixty years of age or over or who receive supplemental security income benefits or disability or blindness payments under title I, II, X, XIV, or XVI of the Social Security Act [42 U.S.C.A. §§ 301 et seq.,401 et seq.,1201 et seq.,1351 et seq.,1381 et seq.], and their spouses, meals prepared by and served in senior citizens' centers, apartment buildings

occupied primarily by such persons, public or private nonprofit establishments (eating or otherwise) that feed such persons, private establishments that contract with the appropriate agency of the State to offer meals for such persons at concessional prices, and meals prepared for and served to residents of federally subsidized housing for the elderly, (4) in the case of persons sixty years of age or over and persons who are physically or mentally handicapped or otherwise so disabled that they are unable adequately to prepare all of their meals, meals prepared for and delivered to them (and their spouses) at their home by a public or private nonprofit organization or by a private establishment that contracts with the appropriate State agency to perform such services at concessional prices, (5) in the case of narcotics addicts or alcoholics, and their children, served by drug addiction or alcoholic treatment and rehabilitation programs, meals prepared and served under such programs, (6) in the case of certain eligible households living in Alaska, equipment for procuring food by hunting and fishing, such as nets, hooks, rods, harpoons, and knives (but not equipment for purposes of transportation, clothing, or shelter, and not firearms, ammunition, and explosives) if the Secretary determines that such households are located in an area of the State where it is extremely difficult to reach stores selling food and that such households depend to a substantial extent upon hunting and fishing for subsistence, (7) in the case of disabled or blind recipients of benefits under title I, II, X, XIV, or XVI of the Social Security Act [42 U.S.C.A. §§ 301 et seq.,401 et seq.,1201 et seq.,1351 et seq., or 1381 et seq.], or are individuals described in paragraphs (2) through (7) of subsection (j) of this section, who are residents in a public or private nonprofit group living arrangement that serves no more than sixteen residents and is certified by the appropriate State agency or agencies under regulations issued under section 1616(e) of the Social Security Act [42 U.S.C.A. § 1382e(e)] or under standards determined by the Secretary to be comparable to standards implemented by appropriate State agencies under such section, meals prepared and served under such arrangement, (8) in the case of women and children temporarily residing in public or private nonprofit shelters for battered women and children, meals prepared and served, by such shelters, and (9) in the case of households that do not reside in permanent dwellings and households that have no fixed mailing addresses, meals prepared for and served by a public or private nonprofit establishment (approved by an appropriate State or local agency) that feeds such individuals and by private establishments that contract with the appropriate agency of the State to offer meals for such individuals at concessional prices.

(l) “Supplemental nutrition assistance program” means the program operated pursuant to the provisions of this chapter.

* * *

(q) “Secretary” means the Secretary of Agriculture.

* * *

(t) “State agency” means (1) the agency of State government, including the local offices thereof, which has the responsibility for the administration of the federally aided public assistance programs within such State, and in those States where such assistance programs are operated on a decentralized basis, the term shall include the counterpart local agencies administering such programs, and (2) the tribal organization of an Indian tribe determined by the Secretary to be capable of effectively administering a food distribution program under section 2013(b) of this title or a supplemental nutrition assistance program under section 2020(d) of this title.

§ 2015. Eligibility disqualifications

(a) Additional specific conditions rendering individuals ineligible

In addition to meeting the standards of eligibility prescribed in section 2014 of this title, households and individuals who are members of eligible households must also meet and comply with the specific requirements of this section to be eligible for participation in the supplemental nutrition assistance program.

(b) Fraud and misrepresentation; disqualification penalties; ineligibility period; applicable procedures

(1) Any person who has been found by any State or Federal court or administrative agency to have intentionally (A) made a false or misleading statement, or misrepresented, concealed or withheld facts, or (B) committed any act that constitutes a violation of this chapter, the regulations issued thereunder, or any State statute, for the purpose of using, presenting, transferring, acquiring, receiving, or possessing program benefits shall, immediately upon the rendering of such determination, become ineligible for further participation in the program--

(i) for a period of 1 year upon the first occasion of any such determination;

(ii) for a period of 2 years upon--

(I) the second occasion of any such determination; or

(II) the first occasion of a finding by a Federal, State, or local court of the trading of a controlled substance (as defined in section 802 of Title 21) for benefits; and

(iii) permanently upon--

(I) the third occasion of any such determination;

(II) the second occasion of a finding by a Federal, State, or local court of the trading of a controlled substance (as defined in section 802 of Title 21) for benefits;

(III) the first occasion of a finding by a Federal, State, or local court of the trading of firearms, ammunition, or explosives for benefits; or

(IV) a conviction of an offense under subsection (b) or (c) of section 2024 of this title involving an item covered by subsection (b) or (c) of section 2024 of this title having a value of $500 or more.

During the period of such ineligibility, no household shall receive increased benefits under this chapter as the result of a member of such household having been disqualified under this subsection.

(2) Each State agency shall proceed against an individual alleged to have engaged in such activity either by way of administrative hearings, after notice and an opportunity for a hearing at the State level, or by referring such matters to appropriate authorities for civil or criminal action in a court of law.

(3) Such periods of ineligibility as are provided for in paragraph (1) of this subsection shall remain in effect, without possibility of administrative stay, unless and until the finding upon which the ineligibility is based is subsequently reversed by a court of appropriate jurisdiction, but in no event shall the period of ineligibility be subject to review.

(4) The Secretary shall prescribe such regulations as the Secretary may deem appropriate to ensure that information concerning any such determination with respect to a specific individual is forwarded to the Office of the Secretary by any appropriate State or Federal entity for the use of the Secretary in administering the provisions of this section. No State shall withhold such information from the Secretary or the Secretary's designee for any reason whatsoever.

(c) Refusal to provide necessary information

Except in a case in which a household is receiving transitional benefits during the transitional benefits period under section 2020(s) of this title, no household shall be eligible to participate in the supplemental nutrition assistance program if it refuses to cooperate in providing information to the State agency that is necessary for making a determination of its eligibility

or for completing any subsequent review of its eligibility.

(1)(A) A State agency may require certain categories of households to file periodic reports of income and household circumstances in accordance with standards prescribed by the Secretary, except that a State agency may not require periodic reporting--

(i) for periods shorter than 4 months by migrant or seasonal farmworker households;

(ii) for periods shorter than 4 months by households in which all members are homeless individuals; or

(iii) for periods shorter than 1 year by households that have no earned income and in which all adult members are elderly or disabled.

(B) Each household that is not required to file such periodic reports shall be required to report or cause to be reported to the State agency changes in income or household circumstances that the Secretary considers necessary to assure accurate eligibility and benefit determinations.

(C) A State agency may require periodic reporting on a monthly basis by households residing on a reservation only if--

(i) the State agency reinstates benefits, without requiring a new application, for any household residing on a reservation that submits a report not later than 1 month after the end of the month in which benefits would otherwise be provided;

(ii) the State agency does not delay, reduce, suspend, or terminate the allotment of a household that submits a report not later than 1 month after the end of the month in which the report is due;

(iii) on March 25, 1994, the State agency requires households residing on a reservation to file periodic reports on a monthly basis; and

(iv) the certification period for households residing on a reservation that are required to file periodic reports on a monthly basis is 2 years, unless the State demonstrates just cause to the Secretary for a shorter certification period.

(D) Frequency of reporting

(i) In general

Except as provided in subparagraphs (A) and (C), a State agency may require households that report on a periodic basis to submit reports--

(I) not less often than once each 6 months; but

(II) not more often than once each month.

(ii) Reporting by households with excess income

A household required to report less often than once each 3 months shall, notwithstanding subparagraph (B), report in a manner prescribed by the Secretary if the income of the household for any month exceeds the income standard of eligibility established under section 2014(c)(2) of this title.

(2) Any household required to file a periodic report under paragraph (1) of this subsection shall, (A) if it is eligible to participate and has filed a timely and complete report, receive its allotment, based on the reported information for a given month, within thirty days of the end of that month unless the Secretary determines that a longer period of time is necessary, (B) have available special procedures that permit the filing of the required information in the event all adult members of the household are mentally or physically handicapped or lacking in reading or writing skills to such a degree as to be unable to fill out the required forms, (C) have a reasonable period of time after the close of the month in which to file their reports on State agency designed forms, (D) be afforded prompt notice of failure to file any report timely or completely, and given a reasonable opportunity to cure that failure (with any applicable time requirements extended accordingly) and to exercise its rights under section 2020(e)(10) of this title, and (E) be provided each month (or other applicable period) with an appropriate, simple form for making the required reports of the household together with clear instructions explaining how to complete the form and the rights and responsibilities of the household under any periodic reporting system.

(3) Reports required to be filed under paragraph (1) of this subsection shall be considered complete if they contain the information relevant to eligibility and benefit determinations that is specified by the State agency. All report forms, including those related to periodic reports of circumstances, shall contain a description, in understandable terms in prominent and bold face lettering, of the appropriate civil and criminal provisions dealing with violations of this chapter including the prescribed penalties. Reports required to be filed monthly under paragraph (1) shall be the sole reporting requirement for subject matter included in such reports. In promulgating regulations implementing these reporting requirements, the Secretary shall consult with the Commissioner of Social Security and the

Secretary of Health and Human Services, and, wherever feasible, households that receive assistance under Title IV-A of the Social Security Act [42 U.S.C.A. § 601 et seq.] and that are required to file comparable reports under that Act [42 U.S.C.A. § 301 et seq.] shall be provided the opportunity to file reports at the same time for purposes of this chapter and the Social Security Act.

(4) Except as provided in paragraph (1)(C), any household that fails to submit periodic reports required by paragraph (1) shall not receive an allotment for the payment period to which the unsubmitted report applies until such report is submitted.

(5) The Secretary is authorized, upon the request of a State agency, to waive any provisions of this subsection (except the provisions of the first sentence of paragraph (1) which relate to households which are not required to file periodic reports) to the extent necessary to permit the State agency to establish periodic reporting requirements for purposes of this chapter which are similar to the periodic reporting requirements established under the State program funded under part A of Title IV of the Social Security Act (42 U.S.C. 601 et seq.) in that State.

(d) Conditions of participation

(1) Work requirements

(A) In general

No physically and mentally fit individual over the age of 15 and under the age of 60 shall be eligible to participate in the supplemental nutrition assistance program if the individual--

(i) refuses, at the time of application and every 12 months thereafter, to register for employment in a manner prescribed by the Secretary;

(ii) refuses without good cause to participate in an employment and training program established under paragraph (4), to the extent required by the State agency;

(iii) refuses without good cause to accept an offer of employment, at a site or plant not subject to a strike or lockout at the time of the refusal, at a wage not less than the higher of--

(I) the applicable Federal or State minimum wage; or

(II) 80 percent of the wage that would have governed had the minimum hourly rate

under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) been applicable to the offer of employment;

(iv) refuses without good cause to provide a State agency with sufficient information to allow the State agency to determine the employment status or the job availability of the individual;

(v) voluntarily and without good cause--

(I) quits a job; or

(II) reduces work effort and, after the reduction, the individual is working less than 30 hours per week; or

(vi) fails to comply with section 2029 of this title.

(B) Household ineligibility

If an individual who is the head of a household becomes ineligible to participate in the supplemental nutrition assistance program under subparagraph (A), the household shall, at the option of the State agency, become ineligible to participate in the supplemental nutrition assistance program for a period, determined by the State agency, that does not exceed the lesser of--

(i) the duration of the ineligibility of the individual determined under subparagraph (C); or

(ii) 180 days.

(C) Duration of ineligibility

(i) First violation

The first time that an individual becomes ineligible to participate in the supplemental nutrition assistance program under subparagraph (A), the individual shall remain ineligible until the later of--

(I) the date the individual becomes eligible under subparagraph (A);

(II) the date that is 1 month after the date the individual became ineligible; or

(III) a date determined by the State agency that is not later than 3 months after the date the individual became ineligible.

(ii) Second violation

The second time that an individual becomes ineligible to participate in the supplemental nutrition assistance program under subparagraph (A), the individual shall remain ineligible until the later of--

(I) the date the individual becomes eligible under subparagraph (A);

(II) the date that is 3 months after the date the individual became ineligible; or

(III) a date determined by the State agency that is not later than 6 months after the date the individual became ineligible.

(iii) Third or subsequent violation

The third or subsequent time that an individual becomes ineligible to participate in the supplemental nutrition assistance program under subparagraph (A), the individual shall remain ineligible until the later of--

(I) the date the individual becomes eligible under subparagraph (A);

(II) the date that is 6 months after the date the individual became ineligible;

(III) a date determined by the State agency; or

(IV) at the option of the State agency, permanently.

(D) Administration

(i) Good cause

The Secretary shall determine the meaning of good cause for the purpose of this paragraph.

(ii) Voluntary quit

The Secretary shall determine the meaning of voluntarily quitting and reducing work effort for the purpose of this paragraph.

(iii) Determination by state agency

(I) In general

Subject to subclause (II) and clauses (i) and (ii), a State agency shall determine--

(aa) the meaning of any term used in subparagraph (A);

(bb) the procedures for determining whether an individual is in compliance with a requirement under subparagraph (A); and

(cc) whether an individual is in compliance with a requirement under subparagraph (A).

(II) Not less restrictive

A State agency may not use a meaning, procedure, or determination under subclause (I) that is less restrictive on individuals receiving benefits under this chapter than a comparable meaning, procedure, or determination under a State program funded under part A of Title IV of the Social Security Act (42 U.S.C. 601 et seq.).

(iv) Strike against the government

For the purpose of subparagraph (A)(v), an employee of the Federal Government, a State, or a political subdivision of a State, who is dismissed for participating in a strike against the Federal Government, the State, or the political subdivision of the State shall be considered to have voluntarily quit without good cause.

(v) Selecting a head of household

(I) In general

For purposes of this paragraph, the State agency shall allow the household to select any adult parent of a child in the household as the head of the household if all adult household members making application under the supplemental nutrition assistance program agree to the selection.

(II) Time for making designation

A household may designate the head of the household under subclause (I) each time the household is certified for participation in the supplemental nutrition assistance program, but may not change the designation during a certification period unless there is a change in the composition of the household.

(vi) Change in head of household

If the head of a household leaves the household during a period in which the household is ineligible to participate in the supplemental nutrition assistance program under subparagraph (B)--

(I) the household shall, if otherwise eligible, become eligible to participate in the supplemental nutrition assistance program; and

(II) if the head of the household becomes the head of another household, the household that becomes headed by the individual shall become ineligible to participate in the supplemental nutrition assistance program for the remaining period of ineligibility.

(2) A person who otherwise would be required to comply with the requirements of paragraph (1) of this subsection shall be exempt from such requirements if he or she is (A) currently subject to and complying with a work registration requirement under Title IV of the Social Security Act, as amended (42 U.S.C. 602) or the Federal-State unemployment compensation system, in which case, failure by such person to comply with any work requirement to which such person is subject shall be the same as failure to comply with that requirement of paragraph (1); (B) a parent or other member of a household with responsibility for the care of a dependent child under age six or of an incapacitated person; (C) a bona fide student enrolled at least half time in any recognized school, training program, or institution of higher education (except that any such person enrolled in an institution of higher education shall be ineligible to participate in the supplemental nutrition assistance program unless he or she meets the requirements of subsection (e) of this section); (D) a regular participant in a drug addiction or alcoholic treatment and rehabilitation program; (E) employed a minimum of thirty hours per week or receiving weekly earnings which equal the minimum hourly rate under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(a)(1)), multiplied by thirty hours; or (F) a person between the ages of sixteen and eighteen who is not a head of a household or who is attending school, or enrolled in an employment training program, on at least a half-time basis. A State that requested a waiver to lower the age specified in subparagraph (B) and had the waiver denied by the Secretary as of August 1, 1996, may, for a period of not more than 3 years, lower the age of a dependent child that qualifies a parent

or other member of a household for an exemption under subparagraph (B) to between 1 and 6 years of age.

(3) Notwithstanding any other provision of law, a household shall not participate in the supplemental nutrition assistance program at any time that any member of such household, not exempt from the work registration requirements of paragraph (1) of this subsection, is on strike as defined in section 142(2) of Title 29, because of a labor dispute (other than a lockout) as defined in section 152(9) of Title 29: *Provided*, That a household shall not lose its eligibility to participate in the supplemental nutrition assistance program as a result of one of its members going on strike if the household was eligible immediately prior to such strike, however, such household shall not receive an increased allotment as the result of a decrease in the income of the striking member or members of the household: *Provided further*, That such ineligibility shall not apply to any household that does not contain a member on strike, if any of its members refuses to accept employment at a plant or site because of a strike or lockout.

(4) Employment and training

(A) In general

(i) Implementation

Each State agency shall implement an employment and training program designed by the State agency and approved by the Secretary for the purpose of assisting members of households participating in the supplemental nutrition assistance program in gaining skills, training, work, or experience that will increase their ability to obtain regular employment.

(ii) Statewide workforce development system

Each component of an employment and training program carried out under this paragraph shall be delivered through a statewide workforce development system, unless the component is not available locally through such a system.

(B) For purposes of this chapter, an "employment and training program" means a program that contains one or more of the following components, except that the State agency shall retain the option to apply employment requirements prescribed under this subparagraph to a program applicant at the time of application:

(i) Job search programs.

(ii) Job search training programs that include, to the extent determined appropriate by the State agency, reasonable job search training and support activities that may consist of jobs skills assessments, job finding clubs, training in techniques for employability, job placement services, or other direct training or support activities, including educational programs, determined by the State agency to expand the job search abilities or employability of those subject to the program.

(iii) Workfare programs operated under section 2029 of this title.

(iv) Programs designed to improve the employability of household members through actual work experience or training, or both, and to enable individuals employed or trained under such programs to move promptly into regular public or private employment. An employment or training experience program established under this clause shall--

(I) not provide any work that has the effect of replacing the employment of an individual not participating in the employment or training experience program; and

(II) provide the same benefits and working conditions that are provided at the job site to employees performing comparable work for comparable hours.

(v) Educational programs or activities to improve basic skills and literacy, or otherwise improve employability, including educational programs determined by the State agency to expand the job search abilities or employability of those subject to the program under this paragraph.

(vi) Programs designed to increase the self-sufficiency of recipients through self-employment, including programs that provide instruction for self-employment ventures.

(vii) Programs intended to ensure job retention by providing job retention services, if the job retention services are provided for a period of not more than 90 days after an individual who received employment and training services under this paragraph gains employment.

(viii) As approved by the Secretary or the State under regulations issued by the Secretary, other employment, educational and training programs, projects, and experiments, such as a supported work program, aimed at accomplishing the purpose of the employment and training program.

(C) The State agency may provide that participation in an employment and training program may supplement or supplant other employment-related requirements imposed on those subject to the program.

(D)(i) Each State agency may exempt from any requirement for participation in any program under this paragraph categories of household members.

(ii) Each State agency may exempt from any requirement for participation individual household members not included in any category designated as exempt under clause (i).

(iii) Any exemption of a category or individual under this subparagraph shall be periodically evaluated to determine whether the exemption continues to be valid.

(E) Each State agency shall establish requirements for participation by individuals not exempt under subparagraph (D) in one or more employment and training programs under this paragraph, including the extent to which any individual is required to participate. Such requirements may vary among participants.

(F)(i) The total hours of work in an employment and training program carried out under this paragraph required of members of a household, together with the hours of work of such members in any program carried out under section 2029 of this title, in any month collectively may not exceed a number of hours equal to the household's allotment for such month divided by the higher of the applicable State minimum wage or Federal minimum hourly rate under the Fair Labor Standards Act of 1938 [29 U.S.C.A. § 206(a)(1)].

(ii) The total hours of participation in such program required of any member of a household, individually, in any month, together with any hours worked in another program carried out under section 2029 of this title and any hours worked for compensation (in cash or in kind) in any other capacity, shall not exceed one hundred and twenty hours per month.

(iii) Any individual voluntarily electing to participate in a program under this paragraph shall not be subject to the limitations described in clauses (i) and (ii).

(G) The State agency may operate any program component under this paragraph in which individuals elect to participate.

(H) Federal funds made available to a State agency for purposes of the component authorized under subparagraph (B)(v) shall not be used to supplant non-Federal funds used for existing services and activities that promote the purposes of this component.

(I)(i) The State agency shall provide payments or reimbursements to participants in programs carried out under this paragraph, including individuals participating under subparagraph (G), for--

(I) the actual costs of transportation and other actual costs (other than dependent care costs), that are reasonably necessary and directly related to participation in the program; and

(II) the actual costs of such dependent care expenses that are determined by the State agency to be necessary for the participation of an individual in the program (other than an individual who is the caretaker relative of a dependent in a family receiving benefits under part A of Title IV of the Social Security Act (42 U.S.C. 601 et seq.) in a local area where an employment, training, or education program under Title IV of such Act [42 U.S.C.A. § 601 et seq.] is in operation), except that no such payment or reimbursement shall exceed the applicable local market rate. Individuals subject to the program under this paragraph may not be required to participate if dependent costs exceed the limit established by the State agency under this subclause or other actual costs exceed any limit established under subclause (I).

(ii) In lieu of providing reimbursements or payments for dependent care expenses under clause (i), a State agency may, at its option, arrange for dependent care through providers by the use of purchase of service contracts or vouchers or by providing vouchers to the household.

(iii) The value of any dependent care services provided for or arranged under clause (ii), or any amount received as a payment or reimbursement under clause (i), shall--

(I) not be treated as income for the purposes of any other Federal or federally assisted program that bases eligibility for, or the amount of benefits on, need; and

(II) not be claimed as an employment-related expense for the purposes of the credit provided under section 21 of Title 26.

(J) The Secretary shall promulgate guidelines that (i) enable State agencies, to the maximum extent practicable, to design and operate an employment and training program that is compatible and consistent with similar programs operated within the State, and (ii) ensure, to the maximum extent practicable, that employment and training programs are provided for Indians on reservations.

(K) Limitation on funding

Notwithstanding any other provision of this paragraph, the amount of funds a State agency uses to carry out this paragraph (including funds used to carry out subparagraph (I)) for participants who are receiving benefits under a State program funded under part A of Title IV of the Social Security Act (42 U.S.C. 601 et seq.) shall not exceed the amount of funds the State agency used in fiscal year 1995 to carry out this paragraph for participants who were receiving benefits in fiscal year 1995 under a State program funded under part A of Title IV of the Act (42 U.S.C. 601 et seq.).

(L) The Secretary shall ensure that State agencies comply with the requirements of this paragraph and section 2020(e)(19) of this title.

(M) The facilities of the State public employment offices and other State agencies and providers carrying out activities under title I of the Workforce Investment Act of 1998 [29 U.S.C.A. § 2801 et seq.] may be used to find employment and training opportunities for household members under the programs under this paragraph.

(e) Students

No individual who is a member of a household otherwise eligible to participate in the supplemental nutrition assistance program under this section shall be eligible to participate in the supplemental nutrition assistance program as a member of that or any other household if the individual is enrolled at least half-time in an institution of higher education, unless the individual--

(1) is under age 18 or is age 50 or older;

(2) is not physically or mentally fit;

(3) is assigned to or placed in an institution of higher education through or in compliance with the requirements of--

(A) a program under title I of the Workforce Investment Act of 1998 [29 U.S.C.A. § 2801 et seq.];

(B) an employment and training program under this section;

(C) a program under section 2296 of Title 19; or

(D) another program for the purpose of employment and training operated by a State or

local government, as determined to be appropriate by the Secretary;

(4) is employed a minimum of 20 hours per week or participating in a State or federally financed work study program during the regular school year;

(5) is--

(A) a parent with responsibility for the care of a dependent child under age 6; or

(B) a parent with responsibility for the care of a dependent child above the age of 5 and under the age of 12 for whom adequate child care is not available to enable the individual to attend class and satisfy the requirements of paragraph (4);

(6) is receiving benefits under a State program funded under part A of Title IV of the Social Security Act (42 U.S.C. 601 et seq.);

(7) is so enrolled as a result of participation in the work incentive program under Title IV of the Social Security Act [42 U.S.C.A. § 601 et seq.] or its successor programs; or

(8) is enrolled full-time in an institution of higher education, as determined by the institution, and is a single parent with responsibility for the care of a dependent child under age 12.

(f) Aliens

No individual who is a member of a household otherwise eligible to participate in the supplemental nutrition assistance program under this section shall be eligible to participate in the supplemental nutrition assistance program as a member of that or any other household unless he or she is (1) a resident of the United States and (2) either (A) a citizen or (B) an alien lawfully admitted for permanent residence as an immigrant as defined by sections 1101(a)(15) and 1101(a)(20) of Title 8, excluding, among others, alien visitors, tourists, diplomats, and students who enter the United States temporarily with no intention of abandoning their residence in a foreign country; or (C) an alien who entered the United States prior to June 30, 1948, or such subsequent date as is enacted by law, has continuously maintained his or her residence in the United States since then, and is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to section 1259 of Title 8; or (D) an alien who has qualified for conditional entry pursuant to sections 1157 and 1158 of Title 8; or (E) an alien who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the

public interest pursuant to section 1182(d)(5) of Title 8; or (F) an alien within the United States as to whom the Attorney General has withheld deportation pursuant to section 1231(b)(3) of Title 8. No aliens other than the ones specifically described in clauses (B) through (F) of this subsection shall be eligible to participate in the supplemental nutrition assistance program as a member of any household. The income (less, at State option, a pro rata share) and financial resources of the individual rendered ineligible to participate in the supplemental nutrition assistance program under this subsection shall be considered in determining the eligibility and the value of the allotment of the household of which such individual is a member.

(g) Residents of States which provide State supplementary payments

No individual who receives supplemental security income benefits under Title XVI of the Social Security Act [42 U.S.C.A. § 1381 et seq.], State supplementary payments described in section 1616 of such Act [42 U.S.C.A. § 1382e], or payments of the type referred to in section 212(a) of Public Law 93-66, as amended, shall be considered to be a member of a household for any month, if, for such month, such individual resides in a State which provides State supplementary payments (1) of the type described in section 1616(a) of the Social Security Act [42 U.S.C.A. § 1382e(a)] and section 212(a) of Public Law 93-66, and (2) the level of which has been found by the Commissioner of Social Security to have been specifically increased so as to include the bonus value of food stamps.

(h) Transfer of assets to qualify

No household that knowingly transfers assets for the purpose of qualifying or attempting to qualify for the supplemental nutrition assistance program shall be eligible to participate in the program for a period of up to one year from the date of discovery of the transfer.

(i) Comparable treatment for disqualification

(1) In general

If a disqualification is imposed on a member of a household for a failure of the member to perform an action required under a Federal, State, or local law relating to a means-tested public assistance program, the State agency may impose the same disqualification on the member of the household under the supplemental nutrition assistance program.

(2) Rules and procedures

If a disqualification is imposed under paragraph (1) for a failure of an individual to perform

an action required under part A of Title IV of the Social Security Act (42 U.S.C. 601 et seq.), the State agency may use the rules and procedures that apply under part A of Title IV of the Act to impose the same disqualification under the supplemental nutrition assistance program.

(3) Application after disqualification period

A member of a household disqualified under paragraph (1) may, after the disqualification period has expired, apply for benefits under this chapter and shall be treated as a new applicant, except that a prior disqualification under subsection (d) of this section shall be considered in determining eligibility.

(j) Disqualification for receipt of multiple benefits

An individual shall be ineligible to participate in the supplemental nutrition assistance program as a member of any household for a 10-year period if the individual is found by a State agency to have made, or is convicted in a Federal or State court of having made, a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple benefits simultaneously under the supplemental nutrition assistance program.

(k) Disqualification of fleeing felons

(1) In general

No member of a household who is otherwise eligible to participate in the supplemental nutrition assistance program shall be eligible to participate in the program as a member of that or any other household during any period during which the individual is--

(A) fleeing to avoid prosecution, or custody or confinement after conviction, under the law of the place from which the individual is fleeing, for a crime, or attempt to commit a crime, that is a felony under the law of the place from which the individual is fleeing or that, in the case of New Jersey, is a high misdemeanor under the law of New Jersey; or

(B) violating a condition of probation or parole imposed under a Federal or State law.

(2) Procedures

The Secretary shall--

(A) define the terms “fleeing” and “actively seeking” for purposes of this subsection; and

(B) ensure that State agencies use consistent procedures established by the Secretary that disqualify individuals whom law enforcement authorities are actively seeking for the purpose of holding criminal proceedings against the individual.

(l) Custodial parent's cooperation with child support agencies

(1) In general

At the option of a State agency, subject to paragraphs (2) and (3), no natural or adoptive parent or other individual (collectively referred to in this subsection as “the individual”) who is living with and exercising parental control over a child under the age of 18 who has an absent parent shall be eligible to participate in the supplemental nutrition assistance program unless the individual cooperates with the State agency administering the program established under part D of Title IV of the Social Security Act (42 U.S.C. 651 et seq.)--

(A) in establishing the paternity of the child (if the child is born out of wedlock); and

(B) in obtaining support for--

(i) the child; or

(ii) the individual and the child.

(2) Good cause for noncooperation

Paragraph (1) shall not apply to the individual if good cause is found for refusing to cooperate, as determined by the State agency in accordance with standards prescribed by the Secretary in consultation with the Secretary of Health and Human Services. The standards shall take into consideration circumstances under which cooperation may be against the best interests of the child.

(3) Fees

Paragraph (1) shall not require the payment of a fee or other cost for services provided under part D of Title IV of the Social Security Act (42 U.S.C. 651 et seq.).

(m) Noncustodial parent's cooperation with child support agencies

(1) In general

At the option of a State agency, subject to paragraphs (2) and (3), a putative or identified noncustodial parent of a child under the age of 18 (referred to in this subsection as "the individual") shall not be eligible to participate in the supplemental nutrition assistance program if the individual refuses to cooperate with the State agency administering the program established under part D of Title IV of the Social Security Act (42 U.S.C. 651 et seq.)--

(A) in establishing the paternity of the child (if the child is born out of wedlock); and

(B) in providing support for the child.

(2) Refusal to cooperate

(A) Guidelines

The Secretary, in consultation with the Secretary of Health and Human Services, shall develop guidelines on what constitutes a refusal to cooperate under paragraph (1).

(B) Procedures

The State agency shall develop procedures, using guidelines developed under subparagraph (A), for determining whether an individual is refusing to cooperate under paragraph (1).

(3) Fees

Paragraph (1) shall not require the payment of a fee or other cost for services provided under part D of Title IV of the Social Security Act (42 U.S.C. 651 et seq.).

(4) Privacy

The State agency shall provide safeguards to restrict the use of information collected by a State agency administering the program established under part D of Title IV of the Social Security Act (42 U.S.C. 651 et seq.) to purposes for which the information is collected.

(n) Disqualification for child support arrears

(1) In general

At the option of a State agency, no individual shall be eligible to participate in the supplemental nutrition assistance program as a member of any household during any month that the individual is delinquent in any payment due under a court order for the support of a child of the individual.

(2) Exceptions

Paragraph (1) shall not apply if--

(A) a court is allowing the individual to delay payment; or

(B) the individual is complying with a payment plan approved by a court or the State agency designated under part D of Title IV of the Social Security Act (42 U.S.C. 651 et seq.) to provide support for the child of the individual.

(o) Work requirement

(1) Definition of work program

In this subsection, the term “work program” means--

(A) a program under the title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.];

(B) a program under section 2296 of Title 19; and

(C) a program of employment and training operated or supervised by a State or political subdivision of a State that meets standards approved by the Governor of the State, including a program under subsection (d)(4) of this section, other than a job search program or a job search training program.

(2) Work requirement

Subject to the other provisions of this subsection, no individual shall be eligible to participate in the supplemental nutrition assistance program as a member of any household if, during the preceding 36-month period, the individual received supplemental nutrition assistance program benefits for not less than 3 months (consecutive or otherwise) during which the individual did not--

(A) work 20 hours or more per week, averaged monthly;

(B) participate in and comply with the requirements of a work program for 20 hours or more per week, as determined by the State agency;

(C) participate in and comply with the requirements of a program under section 2029 of this title or a comparable program established by a State or political subdivision of a State; or

(D) receive benefits pursuant to paragraph (3), (4), (5), or (6).

(3) Exception

Paragraph (2) shall not apply to an individual if the individual is--

(A) under 18 or over 50 years of age;

(B) medically certified as physically or mentally unfit for employment;

(C) a parent or other member of a household with responsibility for a dependent child;

(D) otherwise exempt under subsection (d)(2) of this section; or

(E) a pregnant woman.

(4) Waiver

(A) In general

On the request of a State agency, the Secretary may waive the applicability of paragraph (2) to any group of individuals in the State if the Secretary makes a determination that the area in which the individuals reside--

(i) has an unemployment rate of over 10 percent; or

(ii) does not have a sufficient number of jobs to provide employment for the individuals.

(B) Report

The Secretary shall report the basis for a waiver under subparagraph (A) to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(5) Subsequent eligibility

(A) Regaining eligibility

An individual denied eligibility under paragraph (2) shall regain eligibility to participate in the supplemental nutrition assistance program if, during a 30-day period, the individual--

(i) works 80 or more hours;

(ii) participates in and complies with the requirements of a work program for 80 or more hours, as determined by a State agency; or

(iii) participates in and complies with the requirements of a program under section 2029 of this title or a comparable program established by a State or political subdivision of a State.

(B) Maintaining eligibility

An individual who regains eligibility under subparagraph (A) shall remain eligible as long as the individual meets the requirements of subparagraph (A), (B), or (C) of paragraph (2).

(C) Loss of employment

(i) In general

An individual who regained eligibility under subparagraph (A) and who no longer meets the requirements of subparagraph (A), (B), or (C) of paragraph (2) 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 of subparagraph (A), (B), or (C) of paragraph (2).

(ii) Limitation

An individual shall not receive any benefits pursuant to clause (i) for more than a single 3-month period in any 36-month period.

(6) 15-percent exemption

(A) Definitions

In this paragraph:

(i) Caseload

The term "caseload" means the average monthly number of individuals receiving supplemental nutrition assistance program benefits during the 12-month period ending the preceding June 30.

(ii) Covered individual

The term "covered individual" means a member of a household that receives supplemental nutrition assistance program benefits, or an individual denied eligibility for supplemental nutrition assistance program benefits solely due to paragraph (2), who--

(I) is not eligible for an exception under paragraph (3);

(II) does not reside in an area covered by a waiver granted under paragraph (4);

(III) is not complying with subparagraph (A), (B), or (C) of paragraph (2);

(IV) is not receiving supplemental nutrition assistance program benefits during the 3 months of eligibility provided under paragraph (2); and

(V) is not receiving supplemental nutrition assistance program benefits under paragraph (5).

(B) General rule

Subject to subparagraphs (C) through (G), a State agency may provide an exemption from the requirements of paragraph (2) for covered individuals.

(C) Fiscal year 1998

Subject to subparagraphs (E) and (G), for fiscal year 1998, a State agency may provide a number of exemptions such that the average monthly number of the exemptions in effect during the fiscal year does not exceed 15 percent of the number of covered individuals in the State in fiscal year 1998, as estimated by the Secretary, based on the survey conducted to carry out section 2025(c) of this title for fiscal year 1996 and such other factors as the Secretary considers appropriate due to the timing and limitations of the survey.

(D) Subsequent fiscal years

Subject to subparagraphs (E) through (G), for fiscal year 1999 and each subsequent fiscal year, a State agency may provide a number of exemptions such that the average monthly number of the exemptions in effect during the fiscal year does not exceed 15 percent of the number of covered individuals in the State, as estimated by the Secretary under subparagraph (C), adjusted by the Secretary to reflect changes in the State's caseload and the Secretary's estimate of changes in the proportion of members of households that receive supplemental nutrition assistance program benefits covered by waivers granted under paragraph (4).

(E) Caseload adjustments

The Secretary shall adjust the number of individuals estimated for a State under subparagraph (C) or (D) during a fiscal year if the number of members of households that receive supplemental nutrition assistance program benefits in the State varies from the State's caseload by more than 10 percent, as determined by the Secretary.

(F) Exemption adjustments

During fiscal year 1999 and each subsequent fiscal year, the Secretary shall increase or decrease the number of individuals who may be granted an exemption by a State agency under this paragraph to the extent that the average monthly number of exemptions in effect in the State for the preceding fiscal year under this paragraph is lesser or greater than the average monthly number of exemptions estimated for the State agency for such preceding fiscal year under this paragraph.

(G) Reporting requirement

A State agency shall submit such reports to the Secretary as the Secretary determines are necessary to ensure compliance with this paragraph.

(7) Other program rules

Nothing in this subsection shall make an individual eligible for benefits under this chapter if the individual is not otherwise eligible for benefits under the other provisions of this chapter.

(p) Disqualification for obtaining cash by destroying food and collecting deposits

Subject to any requirements established by the Secretary, any person who has been found by a State or Federal court or administrative agency in a hearing under subsection (b) to have intentionally obtained cash by purchasing products with supplemental nutrition assistance program benefits that have containers that require return deposits, discarding the product, and returning the container for the deposit amount shall be ineligible for benefits under this chapter for such period of time as the Secretary shall prescribe by regulation.

(q) Disqualification for sale of food purchased with supplemental nutrition assistance program benefits

Subject to any requirements established by the Secretary, any person who has been found by a State or Federal court or administrative agency in a hearing under subsection (b) to have intentionally sold any food that was purchased using supplemental nutrition assistance program benefits shall be ineligible for benefits under this chapter for such period of time as the Secretary shall prescribe by regulation.

§ 2020. Administration

(a) State responsibility

(1) In general

The State agency of each participating State shall have responsibility for certifying applicant households and issuing EBT cards.

(2) Local administration

The responsibility of the agency of the State government shall not be affected by whether the program is operated on a State-administered or county-administered basis, as provided under section 2012(t)(1) of this title.

(3) Records

(A) In general

Each State agency shall keep such records as may be necessary to determine whether the program is being conducted in compliance with this chapter (including regulations issued under this chapter).

(B) Inspection and audit

Records described in subparagraph (A) shall--

(i) be available for inspection and audit at any reasonable time;

(ii) subject to subsection (e)(8), be available for review in any action filed by a household to enforce any provision of this chapter (including regulations issued under this chapter); and

(iii) be preserved for such period of not less than 3 years as may be specified in regulations.

(4) Review of major changes in program design

(A) In general

The Secretary shall develop standards for identifying major changes in the operations of a State agency, including--

(i) large or substantially-increased numbers of low-income households that do not live in reasonable proximity to an office performing the major functions described in subsection (e);

(ii) substantial increases in reliance on automated systems for the performance of responsibilities previously performed by personnel described in subsection (e)(6)(B);

(iii) changes that potentially increase the difficulty of reporting information under subsection (e) or section 2015(c) of this title; and

(iv) changes that may disproportionately increase the burdens on any of the types of households described in subsection (e)(2)(A).

(B) Notification

If a State agency implements a major change in operations, the State agency shall--

(i) notify the Secretary; and

(ii) collect such information as the Secretary shall require to identify and correct any adverse effects on program integrity or access, including access by any of the types of households described in subsection (e)(2)(A).

(b) Correction of improper denials and underissuances

When a State agency learns, through its own reviews under section 2025 of this title or other reviews, or through other sources, that it has improperly denied, terminated, or underissued benefits to an eligible household, the State agency shall promptly restore any improperly denied benefits to the extent required by subsection (e)(11) of this section and section 2023(b) of this title, and shall take other steps to prevent a recurrence of such errors where such error was caused by the application of State agency practices, rules or procedures inconsistent with the requirements of this chapter or with regulations or policies of the Secretary issued under the authority of this chapter.

(c) Civil rights compliance

(1) In general

In the certification of applicant households for the supplemental nutrition assistance program, there shall be no discrimination by reason of race, sex, religious creed, national origin, or political affiliation.

(2) Relation to other laws

The administration of the program by a State agency shall be consistent with the rights of households under the following laws (including implementing regulations):

(A) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.).

(B) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(C) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(D) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(d) Plan of operation by State agency; approval by Secretary; Indians

The State agency (as defined in section 2012(t)(1) of this title) of each State desiring to participate in the supplemental nutrition assistance program shall submit for approval a plan of operation specifying the manner in which such program will be conducted within the State in every political subdivision. The Secretary may not, as a part of the approval process for a plan of operation, require a State to submit for prior approval by the Secretary the State agency instructions to staff, interpretations of existing policy, State agency methods of administration, forms used by the State agency, or any materials, documents, memoranda, bulletins, or other matter, unless the State determines that the materials, documents, memoranda, bulletins, or other matter alter or amend the State plan of operation or conflict with the rights and levels of benefits to which a household is entitled. In the case of all or part of an Indian reservation, the State agency as defined in section 2012(t)(1) of this title shall be responsible for conducting such program on such reservation unless the Secretary determines that the State agency (as defined in section 2012(t)(1) of this title) is failing, subsequent to August 31, 1964, properly to administer such program on such reservation in accordance with the purposes of this chapter and further determines that the State agency as defined in section 2012(t)(2) of this title is capable of effectively and efficiently conducting such program, in light of the distance of the reservation from State agency-operated certification and issuance centers, the previous experience of such tribal organization in the operation of programs authorized under the Indian Self-Determination Act (25 U.S.C. 450) and similar Acts of Congress, the tribal organization's management and fiscal capabilities, and the adequacy of measures taken by the tribal organization to ensure that there shall be no discrimination in the operation of the program on the basis of race, color, sex, or national origin, in which event such State agency shall be responsible for conducting such program and submitting for approval a plan of operation specifying the manner in which such program will be conducted. The Secretary, upon the request of a tribal organization, shall provide the designees of such organization with appropriate training and technical assistance to enable them to qualify as expeditiously as possible as a State agency pursuant to section 2012(t)(2) of this title. A State agency, as defined in section 2012(t)(1) of this title, before it submits its plan of operation to the Secretary for the administration of the supplemental nutrition assistance program on all or part of an Indian reservation, shall consult in good faith with the tribal organization about that portion of the State's plan of operation pertaining to the implementation of the program for members of the tribe, and shall implement the program in a manner that is responsive to the needs of the Indians on the reservation as determined by ongoing consultation with the tribal organization.

(e) Requisites of State plan of operation

The State plan of operation required under subsection (d) of this section shall provide, among such other provisions as may be required by regulation--

(1) that the State agency shall--

(A) at the option of the State agency, inform low-income households about the availability, eligibility requirements, application procedures, and benefits of the supplemental nutrition assistance program; and

(B) comply with regulations of the Secretary requiring the use of appropriate bilingual personnel and printed material in the administration of the program in those portions of political subdivisions in the State in which a substantial number of members of low-income households speak a language other than English;

(2)(A) that the State agency shall establish procedures governing the operation of supplemental nutrition assistance program offices that the State agency determines best serve households in the State, including households with special needs, such as households with elderly or disabled members, households in rural areas with low-income members, homeless individuals, households residing on reservations, and households in areas in which a substantial number of members of low-income households speak a language other than English.

(B) In carrying out subparagraph (A), a State agency--

(i) shall provide timely, accurate, and fair service to applicants for, and participants in, the supplemental nutrition assistance program;

(ii)(I) shall develop an application containing the information necessary to comply with this chapter; and

(II) if the State agency maintains a website for the State agency, shall make the application available on the website in each language in which the State agency makes a printed application available;

(iii) shall permit an applicant household to apply to participate in the program on the same day that the household first contacts a supplemental nutrition assistance program office in person during office hours;

(iv) shall consider an application that contains the name, address, and signature of the applicant to be filed on the date the applicant submits the application;

(v) shall require that an adult representative of each applicant household certify in writing, under penalty of perjury, that--

(I) the information contained in the application is true; and

(II) all members of the household are citizens or are aliens eligible to receive supplemental nutrition assistance program benefits under section 2015(f) of this title;

(vi) shall provide a method of certifying and issuing benefits to eligible homeless individuals, to ensure that participation in the supplemental nutrition assistance program is limited to eligible households; and

(vii) may establish operating procedures that vary for local supplemental nutrition assistance program offices to reflect regional and local differences within the State.

(C) Electronic and automated systems

(i) In general

Nothing in this chapter shall prohibit the use of signatures provided and maintained electronically, storage of records using automated retrieval systems only, or any other feature of a State agency's application system that does not rely exclusively on the collection and retention of paper applications or other records.

(ii) State option for telephonic signature

A State agency may establish a system by which an applicant household may sign an application through a recorded verbal assent over the telephone.

(iii) Requirements

A system established under clause (ii) shall--

(I) record for future reference the verbal assent of the household member and the information to which assent was given;

(II) include effective safeguards against impersonation, identity theft, and invasions

of privacy;

(III) not deny or interfere with the right of the household to apply in writing;

(IV) promptly provide to the household member a written copy of the completed application, with instructions for a simple procedure for correcting any errors or omissions;

(V) comply with paragraph (1)(B);

(VI) satisfy all requirements for a signature on an application under this chapter and other laws applicable to the supplemental nutrition assistance program, with the date on which the household member provides verbal assent considered as the date of application for all purposes; and

(VII) comply with such other standards as the Secretary may establish.

(D) The signature of any adult under this paragraph shall be considered sufficient to comply with any provision of Federal law requiring a household member to sign an application or statement;

(3) that the State agency shall thereafter promptly determine the eligibility of each applicant household by way of verification of income other than that determined to be excluded by section 2014(d) of this title (in part through the use of the information, if any, obtained under section 2025(e) of this title), household size (in any case such size is questionable), and such other eligibility factors as the Secretary determines to be necessary to implement sections 2014 and 2015 of this title, although the State agency may verify prior to certification, whether questionable or not, the size of any applicant household and such other eligibility factors as the State agency determines are necessary, so as to complete certification of and provide an allotment retroactive to the period of application to any eligible household not later than thirty days following its filing of an application, and that the State agency shall provide each applicant household, at the time of application, a clear written statement explaining what acts the household must perform to cooperate in obtaining verification and otherwise completing the application process;

(4) that the State agency shall insure that each participating household receive a notice of expiration of its certification prior to the start of the last month of its certification period advising the household that it must submit a new application in order to renew its eligibility for a new certification period and, further, that each such household which seeks to be certified another time or more times thereafter by filing an application for such

recertification no later than fifteen days prior to the day upon which its existing certification period expires shall, if found to be still eligible, receive its allotment no later than one month after the receipt of the last allotment issued to it pursuant to its prior certification, but if such household is found to be ineligible or to be eligible for a smaller allotment during the new certification period it shall not continue to participate and receive benefits on the basis authorized for the preceding certification period even if it makes a timely request for a fair hearing pursuant to paragraph (10) of this subsection: *Provided*, That the timeliness standards for submitting the notice of expiration and filing an application for recertification may be modified by the Secretary in light of sections 2014(f)(2) and 2015(c) of this title if administratively necessary;

(5) the specific standards to be used in determining the eligibility of applicant households which shall be in accordance with sections 2014 and 2015 of this title and shall include no additional requirements imposed by the State agency;

(6) that--

(A) the State agency shall undertake the certification of applicant households in accordance with the general procedures prescribed by the Secretary in the regulations issued pursuant to this chapter; and

(B) the State agency personnel utilized in undertaking such certification shall be employed in accordance with the current standards for a Merit System of Personnel Administration or any standards later prescribed by the Office of Personnel Management pursuant to section 4728 of Title 42 modifying or superseding such standards relating to the establishment and maintenance of personnel standards on a merit basis;

(7) that an applicant household may be represented in the certification process and that an eligible household may be represented in benefit issuance or food purchase by a person other than a member of the household so long as that person has been clearly designated as the representative of that household for that purpose by the head of the household or the spouse of the head, and, where the certification process is concerned, the representative is an adult who is sufficiently aware of relevant household circumstances, except that the Secretary may restrict the number of households which may be represented by an individual and otherwise establish criteria and verification standards for representation under this paragraph;

(8) safeguards which prohibit the use or disclosure of information obtained from applicant households, except that--

(A) the safeguards shall permit--

(i) the disclosure of such information to persons directly connected with the administration or enforcement of the provisions of this chapter, regulations issued pursuant to this chapter, Federal assistance programs, or federally-assisted State programs; and

(ii) the subsequent use of the information by persons described in clause (i) only for such administration or enforcement;

(B) the safeguards shall not prevent the use or disclosure of such information to the Comptroller General of the United States for audit and examination authorized by any other provision of law;

(C) notwithstanding any other provision of law, all information obtained under this chapter from an applicant household shall be made available, upon request, to local, State or Federal law enforcement officials for the purpose of investigating an alleged violation of this chapter or any regulation issued under this chapter;

(D) the safeguards shall not prevent the use by, or disclosure of such information, to agencies of the Federal Government (including the United States Postal Service) for purposes of collecting the amount of an overissuance of benefits, as determined under section 2022(b) of this title, from Federal pay (including salaries and pensions) as authorized pursuant to section 5514 of Title 5 or a Federal income tax refund as authorized by section 3720A of Title 31;

(E) notwithstanding any other provision of law, the address, social security number, and, if available, photograph of any member of a household shall be made available, on request, to any Federal, State, or local law enforcement officer if the officer furnishes the State agency with the name of the member and notifies the agency that--

(i) the member--

(I) is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime (or attempt to commit a crime) that, under the law of the place the member is fleeing, is a felony (or, in the case of New Jersey, a high misdemeanor), or is violating a condition of probation or parole imposed under Federal or State law; or

(II) has information that is necessary for the officer to conduct an official duty related to subclause (I);

(ii) locating or apprehending the member is an official duty; and

(iii) the request is being made in the proper exercise of an official duty; and

(F) the safeguards shall not prevent compliance with paragraph (15) or (18)(B) or subsection (u);

(9) that the State agency shall--

(A) provide benefits no later than 7 days after the date of application to any household which--

(i)(I) has gross income that is less than $150 per month; or

(II) is a destitute migrant or a seasonal farmworker household in accordance with the regulations governing such households in effect July 1, 1982; and

(ii) has liquid resources that do not exceed $100;

(B) provide benefits no later than 7 days after the date of application to any household that has a combined gross income and liquid resources that is less than the monthly rent, or mortgage, and utilities of the household; and

(C) to the extent practicable, verify the income and liquid resources of a household referred to in subparagraph (A) or (B) prior to issuance of benefits to the household;

(10) for the granting of a fair hearing and a prompt determination thereafter to any household aggrieved by the action of the State agency under any provision of its plan of operation as it affects the participation of such household in the supplemental nutrition assistance program or by a claim against the household for an overissuance: *Provided*, That any household which timely requests such a fair hearing after receiving individual notice of agency action reducing or terminating its benefits within the household's certification period shall continue to participate and receive benefits on the basis authorized immediately prior to the notice of adverse action until such time as the fair hearing is completed and an adverse decision rendered or until such time as the household's certification period terminates, whichever occurs earlier, except that in any case in which the State agency receives from the household a written statement containing information that clearly requires a reduction or termination of the household's benefits, the State agency may act immediately to reduce or terminate the household's benefits and may provide notice of its

action to the household as late as the date on which the action becomes effective. At the option of a State, at any time prior to a fair hearing determination under this paragraph, a household may withdraw, orally or in writing, a request by the household for the fair hearing. If the withdrawal request is an oral request, the State agency shall provide a written notice to the household confirming the withdrawal request and providing the household with an opportunity to request a hearing;

(11) upon receipt of a request from a household, for the prompt restoration in the form of benefits to a household of any allotment or portion thereof which has been wrongfully denied or terminated, except that allotments shall not be restored for any period of time more than one year prior to the date the State agency receives a request for such restoration from a household or the State agency is notified or otherwise discovers that a loss to a household has occurred;

(12) for the submission of such reports and other information as from time to time may be required by the Secretary;

(13) for indicators of expected performance in the administration of the program;

(14) that the State agency shall specify a plan of operation for providing supplemental nutrition assistance program benefits for households that are victims of a disaster; that such plan shall include, but not be limited to, procedures for informing the public about the disaster program and how to apply for its benefits, coordination with Federal and private disaster relief agencies and local government officials, application procedures to reduce hardship and inconvenience and deter fraud, and instruction of caseworkers in procedures for implementing and operating the disaster program;

(15) notwithstanding paragraph (8) of this subsection, for the immediate reporting to the Immigration and Naturalization Service by the State agency of a determination by personnel responsible for the certification or recertification of households that any member of a household is ineligible to receive supplemental nutrition assistance program benefits because that member is present in the United States in violation of the Immigration and Nationality Act [8 U.S.C.A. § 1101 et seq.];

(16) at the option of the State agency, for the establishment and operation of an automatic data processing and information retrieval system that meets such conditions as the Secretary may prescribe and that is designed to provide efficient and effective administration of the supplemental nutrition assistance program;

(17) at the option of the State agency, that information may be requested and exchanged

for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1137 of the Social Security Act [42 U.S.C.A. § 1320b-7] and that any additional information available from agencies administering State unemployment compensation laws under the provisions of section 303(d) of the Social Security Act [42 U.S.C.A. § 503(d)] may be requested and utilized by the State agency described in section 2012(t)(1) of this title to the extent permitted under the provisions of section 303(d) of the Social Security Act;

(18) that the State agency shall establish a system and take action on a periodic basis--

(A) to verify and otherwise ensure that an individual does not receive benefits in more than 1 jurisdiction within the State; and

(B) to verify and otherwise ensure that an individual who is placed under detention in a Federal, State, or local penal, correctional, or other detention facility for more than 30 days shall not be eligible to participate in the supplemental nutrition assistance program as a member of any household, except that--

(i) the Secretary may determine that extraordinary circumstances make it impracticable for the State agency to obtain information necessary to discontinue inclusion of the individual; and

(ii) a State agency that obtains information collected under section 1611(e)(1)(I)(i)(I) of the Social Security Act (42 U.S.C. 1382(e)(1)(I)(i)(I)) pursuant to section 1611(e)(1)(I)(ii)(II) of that Act (42 U.S.C. 1382(e)(1)(I)(ii)(II)), or under another program determined by the Secretary to be comparable to the program carried out under that section, shall be considered in compliance with this subparagraph.

(19) the plans of the State agency for carrying out employment and training programs under section 2015(d)(4) of this title, including the nature and extent of such programs, the geographic areas and households to be covered under such program, and the basis, including any cost information, for exemptions of categories and individuals and for the choice of employment and training program components reflected in the plans;

(20) in a project area in which 5,000 or more households participate in the supplemental nutrition assistance program, for the establishment and operation of a unit for the detection of fraud in the supplemental nutrition assistance program, including the investigation, and assistance in the prosecution, of such fraud;

(21) at the option of the State, for procedures necessary to obtain payment of uncollected

overissuance of benefits from unemployment compensation pursuant to section 2022(c) of this title;

(22) the guidelines the State agency uses in carrying out section 2015(i) of this title; and

(23) if a State elects to carry out a Simplified Supplemental Nutrition Assistance Program under section 2035 of this title, the plans of the State agency for operating the program, including--

(A) the rules and procedures to be followed by the State agency to determine supplemental nutrition assistance program benefits;

(B) how the State agency will address the needs of households that experience high shelter costs in relation to the incomes of the households; and

(C) a description of the method by which the State agency will carry out a quality control system under section 2025(c) of this title.

(f) Repealed. Pub.L. 111-296, Title II, § 241(b)(2), Dec. 13, 2010, 124 Stat. 3236

(g) State noncompliance; correction of failures

If the Secretary determines, upon information received by the Secretary, investigation initiated by the Secretary, or investigation that the Secretary shall initiate upon receiving sufficient information evidencing a pattern of lack of compliance by a State agency of a type specified in this subsection, that in the administration of the supplemental nutrition assistance program there is a failure by a State agency without good cause to comply with any of the provisions of this chapter, the regulations issued pursuant to this chapter, the State plan of operation submitted pursuant to subsection (d) of this section, the State plan for automated data processing submitted pursuant to subsection (o)(2) of this section, or the requirements established pursuant to section 2032 of this title the Secretary shall immediately inform such State agency of such failure and shall allow the State agency a specified period of time for the correction of such failure. If the State agency does not correct such failure within that specified period, the Secretary may refer the matter to the Attorney General with a request that injunctive relief be sought to require compliance forthwith by the State agency and, upon suit by the Attorney General in an appropriate district court of the United States having jurisdiction of the geographic area in which the State agency is located and a showing that noncompliance has occurred, appropriate injunctive relief shall issue, and, whether or not the Secretary refers such matter to the Attorney General, the Secretary shall proceed to withhold from the State such funds authorized under sections 2025(a), 2025(c), and 2025(g) of this

title as the Secretary determines to be appropriate, subject to administrative and judicial review under section 2023 of this title.

(h) Deposit by State to cover fraudulently or negligently issued benefits

If the Secretary determines that there has been negligence or fraud on the part of the State agency in the certification of applicant households, the State shall, upon request of the Secretary, deposit into the Treasury of the United States, a sum equal to the face value of any benefits issued as a result of such negligence or fraud.

(i) Application and denial procedures

(1) Application procedures

Notwithstanding any other provision of law, households in which all members are applicants for or recipients of supplemental security income shall be informed of the availability of benefits under the supplemental nutrition assistance program and be assisted in making a simple application to participate in such program at the social security office and be certified for eligibility utilizing information contained in files of the Social Security Administration.

(2) Denial and termination

Except in a case of disqualification as a penalty for failure to comply with a public assistance program rule or regulation, no household shall have its application to participate in the supplemental nutrition assistance program denied nor its benefits under the supplemental nutrition assistance program terminated solely on the basis that its application to participate has been denied or its benefits have been terminated under any of the programs carried out under the statutes specified in the second sentence of section 2014(a) of this title and without a separate determination by the State agency that the household fails to satisfy the eligibility requirements for participation in the supplemental nutrition assistance program.

(j) Notice of availability of benefits and applications; revision of memorandum of understanding

(1) Any individual who is an applicant for or recipient of supplemental security income or social security benefits (under regulations prescribed by the Secretary in conjunction with the Commissioner of Social Security) shall be informed of the availability of benefits under the supplemental nutrition assistance program and informed of the availability of a simple

application to participate in such program at the social security office.

(2) The Secretary and the Commissioner of Social Security shall revise the memorandum of understanding in effect on December 23, 1985, regarding services to be provided in social security offices under this subsection and subsection (i) of this section, in a manner to ensure that--

(A) applicants for and recipients of social security benefits are adequately notified in social security offices that assistance may be available to them under this chapter;

(B) applications for assistance under this chapter from households in which all members are applicants for or recipients of supplemental security income will be forwarded immediately to the State agency in an efficient and timely manner; and

(C) the Commissioner of Social Security receives from the Secretary reimbursement for costs incurred to provide such services.

(k) Use of post offices

Subject to the approval of the President, post offices in all or part of the State may provide, on request by the State agency, supplemental nutrition assistance program benefits to eligible households.

(l) Special financial audit review of high participation States

Whenever the ratio of a State's average supplemental nutrition assistance program participation in any quarter of a fiscal year to the State's total population in that quarter (estimated on the basis of the latest available population estimates as provided by the Department of Commerce, Bureau of the Census, Series P-25, Current Population Reports (or its successor series)) exceeds 60 per centum, the Office of the Inspector General of the Department of Agriculture shall immediately schedule a financial audit review of a sample of project areas within that State. Any financial audit review subsequent to the first such review, required under the preceding sentence, shall be conducted at the option of the Office of the Inspector General.

(m) Alaskan fee agents; use and services

The Secretary shall provide for the use of fee agents in rural Alaska. As used in this subsection “fee agent” means a paid agent who, although not a State employee, is authorized by the State to make applications available to low-income households, assist in the

completion of applications, conduct required interviews, secure required verification, forward completed applications and supporting documentation to the State agency, and provide other services as required by the State agency. Such services shall not include making final decisions on household eligibility or benefit levels.

(n) Verification by State agencies

The Secretary shall require State agencies to conduct verification and implement other measures where necessary, but no less often than annually, to assure that an individual does not receive both benefits and benefits or payments referred to in section 2015(g) of this title or both benefits and assistance provided in lieu of benefits under section 2026(b)(1) of this title.

(o) Data processing systems; model plan; comprehensive automation and computerization; State plans; evaluation and report to Congress; corrective measures by State; time for implementation

(1) The Secretary shall develop, after consultation with, and with the assistance of, an advisory group of State agencies appointed by the Secretary without regard to the provisions of the Federal Advisory Committee Act, a model plan for the comprehensive automation of data processing and computerization of information systems under the supplemental nutrition assistance program. The plan shall be developed and made available for public comment through publication of the proposed plan in the Federal Register not later than October 1, 1986. The Secretary shall complete the plan, taking into consideration public comments received, not later than February 1, 1987. The elements of the plan may include intake procedures, eligibility determinations and calculation of benefits, verification procedures, coordination with related Federal and State programs, the issuance of benefits, reconciliation procedures, the generation of notices, and program reporting. In developing the plan, the Secretary shall take into account automated data processing and information systems already in existence in States and shall provide for consistency with such systems.

(2) Not later than October 1, 1987, each State agency shall develop and submit to the Secretary for approval a plan for the use of an automated data processing and information retrieval system to administer the supplemental nutrition assistance program in such State. The State plan shall take into consideration the model plan developed by the Secretary under paragraph (1) and shall provide time frames for completion of various phases of the State plan. If a State agency already has a sufficient automated data processing and information retrieval system, the State plan may, subject to the Secretary's approval, reflect the existing State system.

(3) Not later than April 1, 1988, the Secretary shall prepare and submit to Congress an evaluation of the degree and sufficiency of each State's automated data processing and computerized information systems for the administration of the supplemental nutrition assistance program, including State plans submitted under paragraph (2). Such report shall include an analysis of additional steps needed for States to achieve effective and cost-efficient data processing and information systems. The Secretary, thereafter, shall periodically update such report.

(4) Based on the Secretary's findings in such report submitted under paragraph (3), the Secretary may require a State agency, as necessary to rectify identified shortcomings in the administration of the supplemental nutrition assistance program in the State, except where such direction would displace State initiatives already under way, to take specified steps to automate data processing systems or computerize information systems for the administration of the supplemental nutrition assistance program in the State if the Secretary finds that, in the absence of such systems, there will be program accountability or integrity problems that will substantially affect the administration of the supplemental nutrition assistance program in the State.

(5)(A) Subject to subparagraph (B), in the case of a plan for an automated data processing and information retrieval system submitted by a State agency to the Secretary under paragraph (2), such State agency shall--

(i) commence implementation of its plan not later than October 1, 1988; and

(ii) meet the time frames set forth in the plan.

(B) The Secretary shall extend a deadline imposed under subparagraph (A) to the extent the Secretary deems appropriate based on the Secretary's finding of a good faith effort of a State agency to implement its plan in accordance with subparagraph (A).

(p) State verification option

Notwithstanding any other provision of law, in carrying out the supplemental nutrition assistance program, a State agency shall not be required to use an income and eligibility or an immigration status verification system established under section 1137 of the Social Security Act (42 U.S.C. 1320b-7).

(q) Denial of benefits for prisoners

The Secretary shall assist States, to the maximum extent practicable, in implementing a

system to conduct computer matches or other systems to prevent prisoners described in subsection (e)(18)(B) of this section from participating in the supplemental nutrition assistance program as a member of any household.

(r) Denial of benefits for deceased individuals

Each State agency shall--

(1) enter into a cooperative arrangement with the Commissioner of Social Security, pursuant to the authority of the Commissioner under section 205(r)(3) of the Social Security Act (42 U.S.C. 405(r)(3)), to obtain information on individuals who are deceased; and

(2) use the information to verify and otherwise ensure that benefits are not issued to individuals who are deceased.

(s) Transitional benefits option

(1) In general

A State agency may provide transitional supplemental nutrition assistance program benefits--

(A) to a household that ceases to receive cash assistance under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.); or

(B) at the option of the State, to a household with children that ceases to receive cash assistance under a State-funded public assistance program.

(2) Transitional benefits period

Under paragraph (1), a household may receive transitional supplemental nutrition assistance program benefits for a period of not more than 5 months after the date on which cash assistance is terminated.

(3) Amount of benefits

During the transitional benefits period under paragraph (2), a household shall receive an amount of supplemental nutrition assistance program benefits equal to the allotment received in the month immediately preceding the date on which cash assistance was

terminated, adjusted for the change in household income as a result of--

(A) the termination of cash assistance; and

(B) at the option of the State agency, information from another program in which the household participates.

(4) Determination of future eligibility

In the final month of the transitional benefits period under paragraph (2), the State agency may--

(A) require the household to cooperate in a recertification of eligibility; and

(B) initiate a new certification period for the household without regard to whether the preceding certification period has expired.

(5) Limitation

A household shall not be eligible for transitional benefits under this subsection if the household--

(A) loses eligibility under section 2015 of this title;

(B) is sanctioned for a failure to perform an action required by Federal, State, or local law relating to a cash assistance program described in paragraph (1); or

(C) is a member of any other category of households designated by the State agency as ineligible for transitional benefits.

(6) Applications for recertification

(A) In general

A household receiving transitional benefits under this subsection may apply for recertification at any time during the transitional benefits period under paragraph (2).

(B) Determination of allotment

If a household applies for recertification under subparagraph (A), the allotment of the

household for all subsequent months shall be determined without regard to this subsection.

(t) Grants for simple application and eligibility determination systems and improved access to benefits

(1) In general

Subject to the availability of appropriations under section 2027(a) of this title, for each fiscal year, the Secretary shall use not more than $5,000,000 of funds made available under section 2027(a)(1) of this title to make grants to pay 100 percent of the costs of eligible entities approved by the Secretary to carry out projects to develop and implement--

(A) simple supplemental nutrition assistance program application and eligibility determination systems; or

(B) measures to improve access to supplemental nutrition assistance program benefits by eligible households.

(2) Types of projects

A project under paragraph (1) may consist of--

(A) coordinating application and eligibility determination processes, including verification practices, under the supplemental nutrition assistance program and other Federal, State, and local assistance programs;

(B) establishing methods for applying for benefits and determining eligibility that--

(i) more extensively use--

(I) communications by telephone; and

(II) electronic alternatives such as the Internet; or

(ii) otherwise improve the administrative infrastructure used in processing applications and determining eligibility;

(C) developing procedures, training materials, and other resources aimed at reducing barriers to participation and reaching eligible households;

(D) improving methods for informing and enrolling eligible households; or

(E) carrying out such other activities as the Secretary determines to be appropriate.

(3) Limitation

A grant under this subsection shall not be made for the ongoing cost of carrying out any project.

(4) Eligible entities

To be eligible to receive a grant under this subsection, an entity shall be--

(A) a State agency administering the supplemental nutrition assistance program;

(B) a State or local government;

(C) an agency providing health or welfare services;

(D) a public health or educational entity; or

(E) a private nonprofit entity such as a community-based organization, food bank, or other emergency feeding organization.

(5) Selection of eligible entities

The Secretary--

(A) shall develop criteria for the selection of eligible entities to receive grants under this subsection; and

(B) may give preference to any eligible entity that consists of a partnership between a governmental entity and a nongovernmental entity.

(u) Agreement for direct certification and cooperation

(1) In general

Each State agency shall enter into an agreement with the State agency administering the

school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

(2) Contents

The agreement shall establish procedures that ensure that--

(A) any child receiving benefits under this chapter shall be certified as eligible for free lunches under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and free breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), without further application; and

(B) each State agency shall cooperate in carrying out paragraphs (3)(F) and (4) of section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)).

TAB C

Code of Federal Regulations
Title7

§ 271.3 Delegations to FNS for administration.

(a) Delegation. Within the Department, FNS acts on behalf of the Department in the administration of the Food Stamp Program with the exception of those functions, which may be delegated to other agencies within the Department. The right is reserved at any time to withdraw, modify, or amend any delegation of authority. When authority is delegated to FNS, the responsibilities may be carried out by the Administrator or by another official of FNS, or by State agencies with respect to claims against households, as designated.

(b) Claims settlement. FNS shall have the power to determine the amount of and to settle and adjust any claim arising under the provisions of the act or this subchapter, and to compromise or deny all or part of any claim.

(c) Demonstration authority. FNS is authorized to undertake demonstration projects which test new methods designed to improve program administration and benefit delivery. FNS is authorized to initiate program research and evaluation efforts for the purposes of improving and assessing program administration and effectiveness. The procedure for initiating and conducting these projects is established in part 282.

§ 271.6 Complaint procedure.

(a) State agency responsibility--

(1) General scope. The State agency shall maintain a system of its choosing for handling program complaints filed by participants, potential participants, or other concerned individuals or groups. This shall not include complaints alleging discrimination on the basis of race, sex, age, religious creed, national origin, political beliefs or disability; such complaints shall be handled in accordance with § 272.6. This procedure also need not include complaints that can be pursued through a fair hearing. Complaints regarding such areas as processing standards and service to participants and potential participants would generally be handled under this complaint procedure.

(2) Minimum requirements. The State agency shall follow up on complaints, resolve complaints and take corrective action where warranted, and respond to the complainant on the State agency's disposition of the complaint. The State agency shall make information on the complaint system and how to file a complaint available to participants,

potential participants and other interested persons. The State agency may make the information available through written materials or posters at certification offices or other appropriate means.

(3) Complaint analysis. The State agency shall maintain records of complaints received and their disposition, and shall review records at least annually to assess whether patterns of problems may be present in local offices, project areas, or throughout the State. The results of this review shall be provided to the Performance Reporting System coordinator for appropriate action, and for inclusion, if appropriate, in the State Corrective Action Plan in accordance with § 275.16 of this chapter. The information provided to the Performance Reporting System Coordinator shall include the identification, if any, of potential or actual patterns of deficiencies in local offices, project areas, or throughout the State, and any identification of causes of these problems.

(4) Monitoring. FNS shall monitor State compliance with these requirements through the Performance Reporting System.
* * *

§ 273.2 Office operations and application processing.

(a) Operation of food stamp offices and processing of applications--

(1) Office operations. State agencies must establish procedures governing the operation of food stamp offices that the State agency determines best serve households in the State, including households with special needs, such as, but not limited to, households with elderly or disabled members, households in rural areas with low-income members, homeless individuals, households residing on reservations, households with adult members who are not proficient in English, and households with earned income (working households). The State agency must provide timely, accurate, and fair service to applicants for, and participants in, the Food Stamp Program. The State agency cannot, as a condition of eligibility, impose additional application or application processing requirements. The State agency must have a procedure for informing persons who wish to apply for food stamps about the application process and their rights and responsibilities. The State agency must base food stamp eligibility solely on the criteria contained in the Act and this part.

(2) Application processing. The application process includes filing and completing an application form, being interviewed, and having certain information verified. The State agency must act promptly on all applications and provide food stamp benefits retroactive to the month of application to those households that have completed the application process and have been determined eligible. The State agency must make expedited service available to households in immediate need. Specific responsibilities of households

and State agencies in the application process are detailed below.

(b) Food Stamp application form--

(1) Content. Each application form shall contain:

(i) In prominent and boldface lettering and understandable terms a statement that the information provided by the applicant in connection with the application for food stamp benefits will be subject to verification by Federal, State and local officials to determine if such information is factual; that if any information is incorrect, food stamps may be denied to the applicant; and that the applicant may be subject to criminal prosecution for knowingly providing incorrect information;

(ii) In prominent and boldface lettering and understandable terms a description of the civil and criminal provisions and penalties for violations of the Food Stamp Act;

(iii) A statement to be signed by one adult household member which certifies, under penalty of perjury, the truth of the information contained in the application, including the information concerning citizenship and alien status of the members applying for benefits;

(iv) A place on the front page of the application where the applicant can write his/her name, address, and signature.

(v) In plain and prominent language on or near the front page of the application, notification of the household's right to immediately file the application as long as it contains the applicant's name and address and the signature of a responsible household member or the household's authorized representative. Regardless of the type of system the State agency uses (paper or electronic), it must provide a means for households to immediately begin the application process with name, address and signature;

(vi) In plain and prominent language on or near the front page of the application, a description of the expedited service provisions described in paragraph (i) of this section;

(vii) In plain and prominent language on or near the front page of the application, notification that benefits are provided from the date of application; and

(viii) The following nondiscrimination statement on the application itself even if the State agency uses a joint application form:

“In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, religion, political beliefs, or disability.

“To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.”; and

(ix) For multi-program applications, contain language which clearly affords applicants the option of answering only those questions relevant to the program or programs for which they are applying.

(2) Income and eligibility verification system (IEVS). If the State agency chooses to use IEVS in accordance with paragraph (f)(9) of this section, it must notify all applicants for food stamp benefits at the time of application and at each recertification through a written statement on or provided with the application form that information available through IEVS will be requested, used and may be verified through collateral contact when discrepancies are found by the State agency, and that such information may affect the household's eligibility and level of benefits. The regulations at § 273.2(f)(4)(ii) govern the use of collateral contacts. The State agency must also notify all applicants on the application form that the alien status of applicant household members may be subject to verification by INS through the submission of information from the application to INS, and that the submitted information received from INS may affect the household's eligibility and level of benefits.

(3) Jointly processed cases. If a State agency has a procedure that allows applicants to apply for the food stamp program and another program at the same time, the State agency shall notify applicants that they may file a joint application for more than one program or they may file a separate application for food stamps independent of their application for benefits from any other program. All food stamp applications, regardless of whether they are joint applications or separate applications, must be processed for food stamp purposes in accordance with food stamp procedural, timeliness, notice, and fair hearing requirements. No household shall have its food stamp benefits denied solely on the basis that its application to participate in another program has been denied or its benefits under another program have been terminated without a separate determination by the State agency that the household failed to satisfy a food stamp eligibility requirement. Households that file a joint application for food stamps and another program and are denied benefits for the other program shall not be required to resubmit the joint application or to file another application for food stamps but shall have its food stamp eligibility determined based on the joint application in accordance with the food stamp processing time frames from the date the joint application was initially accepted by the State agency.

(4) Privacy Act statement. As a State agency, you must notify all households applying and being recertified for food stamp benefits of the following:

(i) The collection of this information, including the social security number (SSN) of each household member, is authorized under the Food Stamp Act of 1977, as amended, 7 U.S.C. 2011-2036. The information will be used to determine whether your household is eligible or continues to be eligible to participate in the Food Stamp Program. We will verify this information through computer matching programs. This information will also be used to monitor compliance with program regulations and for program management.

(ii) This information may be disclosed to other Federal and State agencies for official examination, and to law enforcement officials for the purpose of apprehending persons fleeing to avoid the law.

(iii) If a food stamp claim arises against your household, the information on this application, including all SSNs, may be referred to Federal and State agencies, as well as private claims collection agencies, for claims collection action.

(iv) Providing the requested information, including the SSN of each household member, is voluntary. However, failure to provide an SSN will result in the denial of food stamp benefits to each individual failing to provide an SSN. Any SSNs provided will be used and disclosed in the same manner as SSNs of eligible household members.

(c) Filing an application--

(1) Household's right to file. Households must file food stamp applications by submitting the forms to the food stamp office either in person, through an authorized representative, by fax or other electronic transmission, by mail, or by completing an on-line electronic application. The State agency must provide households that complete an on-line electronic application in person at the food stamp office the opportunity to review the information that has been recorded electronically and must provide them with a copy of that information for their records. Applications signed through the use of electronic signature techniques or applications containing a handwritten signature and then transmitted by fax or other electronic transmission are acceptable. State agencies must document the date the application was filed by recording the date of receipt at the food stamp office. When a resident of an institution is jointly applying for SSI and food stamps prior to leaving the institution, the filing date of the application that the State agency must record is the date of release of the applicant from the institution. The length of time a State agency has to deliver benefits is calculated from the date the application is filed in the food stamp office designated by the State agency to accept the household's application, except when a resident of a public institution is jointly applying for SSI and food stamps prior to his/her release from an institution in accordance with § 273.1(e)(2).

Residents of public institutions who apply for food stamps prior to their release from the institution shall be certified in accordance with § 273.2(g)(1) or § 273.2(i)(3)(i), as appropriate. Each household has the right to file an application form on the same day it contacts the food stamp office during office hours. The household shall be advised that it does not have to be interviewed before filing the application and may file an incomplete application form as long as the form contains the applicant's name and address, and is signed by a responsible member of the household or the household's authorized representative. State agencies shall document the date the application was filed by recording on the application the date it was received by the food stamp office. When a resident of an institution is jointly applying for SSI and food stamps prior to leaving the institution, the filing date of the application to be recorded by the State agency on the food stamp application is the date of release of the applicant from the institution.

(2) Contacting the food stamp office.

(i) State agencies shall encourage households to file an application form the same day the household or its representative contacts the food stamp office in person or by telephone and expresses interest in obtaining food stamp assistance or expresses concerns which indicate food insecurity. If the State agency attempts to discourage households from applying for cash assistance, it shall make clear that the disadvantages and requirements of applying for cash assistance do not apply to food stamps. In addition, it shall encourage applicants to continue with their application for food stamps. The State agency shall inform households that receiving food stamps will have no bearing on any other program's time limits that may apply to the household. If a household contacting the food stamp office by telephone does not wish to come to the appropriate office to file the application that same day and instead prefers receiving an application through the mail, the State agency shall mail an application form to the household on the same day the telephone request is received. An application shall also be mailed on the same day a written request for food assistance is received.

(ii) Where a project area has designated certification offices to serve specific geographic areas, households may contact an office other than the one designated to service the area in which they reside. When a household contacts the wrong certification office within a project area in person or by telephone, the certification office shall, in addition to meeting other requirements in paragraph (c)(2)(i) of this section, give the household the address and telephone number of the appropriate office. The certification office shall also offer to forward the household's application to the appropriate office that same day if the household has completed enough information on the application to file or forward it the next day by any means that ensures the application arrives at the application office the day it is forwarded. The household shall be informed that its application will not be considered filed and the processing standards shall not begin until the application is received by the appropriate office. If the household has mailed its application to the

wrong office within a project area, the certification office shall mail the application to the appropriate office on the same day, or forward it the next day by any means that ensures the application arrives at the application office the day it is forwarded.

(iii) In State agencies that elect to have Statewide residency, as provided in § 273.3, the application processing timeframes begin when the application is filed in any food stamp office in the State.

(3) Availability of the application form. The State agency shall make application forms readily accessible to potentially eligible households. The State agency shall also provide an application form to anyone who requests the form. If the State agency maintains a Web page, it must make the application available on the Web page in each language in which the State agency makes a printed application available. The State agency must provide on the Web page the addresses and phone numbers of all State food stamp offices and a statement that the household should return the application form to its nearest local office. The applications must be accessible to persons with disabilities in accordance with Section 504 of the Rehabilitation Act of 1973, Public Law 93-112, as amended by the Rehabilitation Act Amendments of 1974, Public Law 93-516, 29 U.S.C. 794. Regardless of the type of system the State agency uses (paper or electronic), the State agency must provide a means for applicants to immediately begin the application process with name, address and signature.

(4) Notice of right to file. The State agency shall post signs in the certification office which explain the application processing standards and the right to file an application on the day of initial contact. The State agency shall include similar information about same day filing on the application form.

(5) Notice of Required Verification. The State agency shall provide each household at the time of application for certification and recertification with a notice that informs the household of the verification requirements the household must meet as part of the application process. The notice shall also inform the household of the State agency's responsibility to assist the household in obtaining required verification provided the household is cooperating with the State agency as specified in (d)(1) of this section. The notice shall be written in clear and simple language and shall meet the bilingual requirements designated in § 272.4(b) of this chapter. At a minimum, the notice shall contain examples of the types of documents the household should provide and explain the period of time the documents should cover.

(6) Withdrawing application. The household may voluntarily withdraw its application at any time prior to the determination of eligibility. The State agency shall document in the case file the reason for withdrawal, if any was stated by the household, and that contact was made with the household to confirm the withdrawal. The household shall be advised

of its right to reapply at any time subsequent to a withdrawal.

(d) Household cooperation.

(1) To determine eligibility, the application form must be completed and signed, the household or its authorized representative must be interviewed, and certain information on the application must be verified. If the household refuses to cooperate with the State agency in completing this process, the application shall be denied at the time of refusal. For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process. For example, to be denied for refusal to cooperate, a household must refuse to be interviewed not merely failing to appear for the interview. If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be denied, and the agency shall provide assistance required by paragraph (c)(5) of this section. The household shall also be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility, including reviews generated by reported changes and applications for recertification. Once denied or terminated for refusal to cooperate, the household may reapply but shall not be determined eligible until it cooperates with the State agency. The State agency shall not determine the household to be ineligible when a person outside of the household fails to cooperate with a request for verification. The State agency shall not consider individuals identified as nonhousehold members under § 273.1(b)(2) as individuals outside the household.

(2) Cooperation with QC Reviewer. In addition, the household shall be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility as a part of a quality control review. If a household is terminated for refusal to cooperate with a quality control reviewer, in accordance with § 275.3(c)(5) and 275.12(g)(1)(ii) of this chapter, the household may reapply, but shall not be determined eligible until it cooperates with the quality control reviewer. If a household terminated for refusal to cooperate with a State quality control reviewer reapplies after 125 days from the end of the annual review period, the household shall not be determined ineligible for its refusal to cooperate with a State quality control reviewer during the completed review period, but must provide verification in accordance with paragraph (f)(1)(ix) of this section. If a household terminated for refusal to cooperate with a Federal quality control reviewer reapplies after nine months from the end of the annual review period, the household shall not be determined ineligible for its refusal to cooperate with a Federal quality control reviewer during the completed review period, but must provide verification in accordance with paragraph (f)(1)(ix) of this section. In the event that one or more household members no longer resides with a household terminated for refusal to cooperate, the penalty for refusal to cooperate will attach to household of the person(s) who refused to cooperate. If the State agency is unable to determine which household member(s) refused to

cooperate, the State agency shall determine the household to which the penalty shall apply.

(e) Interviews.

(1) Except for households certified for longer than 12 months, and except as provided in paragraph (e)(2) of this section, households must have a face-to-face interview with an eligibility worker at initial certification and at least once every 12 months thereafter. State agencies may not require households to report for an in-office interview during their certification period, though they may request households to do so. For example, State agencies may not require households to report en masse for an in-office interview during their certification periods simply to review their case files, or for any other reason. Interviews may be conducted at the food stamp office or other mutually acceptable location, including a household's residence. If the interview will be conducted at the household's residence, it must be scheduled in advance with the household. If a household in which all adult members are elderly or disabled is certified for 24 months in accordance with § 273.10(f)(1), or a household residing on a reservation is required to submit monthly reports and is certified for 24 months in accordance with § 273.10(f)(2), a face-to-face interview is not required during the certification period. The individual interviewed may be the head of household, spouse, any other responsible member of the household, or an authorized representative. The applicant may bring any person he or she chooses to the interview. The interviewer must not simply review the information that appears on the application, but must explore and resolve with the household unclear and incomplete information. The interviewer must advise households of their rights and responsibilities during the interview, including the appropriate application processing standard and the households' responsibility to report changes. The interviewer must advise households that are also applying for or receiving PA benefits that time limits and other requirements that apply to the receipt of PA benefits do not apply to the receipt of food stamp benefits, and that households which cease receiving PA benefits because they have reached a time limit, have begun working, or for other reasons, may still qualify for food stamp benefits. The interviewer must conduct the interview as an official and confidential discussion of household circumstances. The State agency must protect the applicant's right to privacy during the interview. Facilities must be adequate to preserve the privacy and confidentiality of the interview.

(2) The State agency must notify the applicant that it will waive the face-to-face interview required in paragraph (e)(1) of this section in favor of a telephone interview on a case-by-case basis because of household hardship situations as determined by the State agency. These hardship conditions include, but are not limited to: Illness, transportation difficulties, care of a household member, hardships due to residency in a rural area, prolonged severe weather, or work or training hours which prevent the household from participating in an in-office interview. The State agency must document the case file to

show when a waiver was granted because of a hardship. The State agency may opt to waive the face-to-face interview in favor of a telephone interview for all households which have no earned income and all members of the household are elderly or disabled. Regardless of any approved waivers, the State agency must grant a face-to-face interview to any household which requests one. The State agency has the option of conducting a telephone interview or a home visit that is scheduled in advance with the household if the office interview is waived.

(i) Waiver of the face-to-face interview does not exempt the household from the verification requirements, although special procedures may be used to permit the household to provide verification and thus obtain its benefits in a timely manner, such as substituting a collateral contact in cases where documentary verification would normally be provided.

(ii) Waiver of the face-to-face interview may not affect the length of the household's certification period.

(3) The State agency must schedule an interview for all applicant households who are not interviewed on the day they submit their applications. To the extent practicable, the State agency must schedule the interview to accommodate the needs of groups with special circumstances, including working households. The State agency must schedule all interviews as promptly as possible to insure eligible households receive an opportunity to participate within 30 days after the application is filed. The State agency must notify each household that misses its interview appointment that it missed the scheduled interview and that the household is responsible for rescheduling a missed interview. If the household contacts the State agency within the 30 day application processing period, the State agency must schedule a second interview. The State agency may not deny a household's application prior to the 30th day after application if the household fails to appear for the first scheduled interview. If the household requests a second interview during the 30-day application processing period and is determined eligible, the State agency must issue prorated benefits from the date of application.

(f) Verification. Verification is the use of documentation or a contact with a third party to confirm the accuracy of statements or information. The State agency must give households at least 10 days to provide required verification. Paragraph (i)(4) of this section contains verification procedures for expedited service cases.

(1) Mandatory verification. State agencies shall verify the following information prior to certification for households initially applying:

(i) Gross nonexempt income. Gross nonexempt income shall be verified for all households prior to certification. However, where all attempts to verify the income have

been unsuccessful because the person or organization providing the income has failed to cooperate with the household and the State agency, and all other sources of verification are unavailable, the eligibility worker shall determine an amount to be used for certification purposes based on the best available information.

(ii) Alien eligibility.

(A) The State agency must verify the eligible status of applicant aliens. If an alien does not wish the State agency to contact INS to verify his or her immigration status, the State agency must give the household the option of withdrawing its application or participating without that member. The Department of Justice (DOJ) Interim Guidance On Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Interim Guidance) (62 FR 61344, November 17, 1997) contains information on acceptable documents and INS codes. State agencies should use the Interim Guidance until DOJ publishes a final rule on this issue. Thereafter, State agencies should consult both the Interim Guidance and the DOJ final rule. Where the Interim Guidance and the DOJ final rule conflict, the latter should control the verification of alien eligibility. As provided in § 273.4, the following information may also be relevant to the eligibility of some aliens: date of admission or date status was granted; military connection; battered status; if the alien was lawfully residing in the United States on August 22, 1996; membership in certain Indian tribes; if the person was age 65 or older on August 22, 1996; if a lawful permanent resident can be credited with 40 qualifying quarters of covered work and if any Federal means-tested public benefits were received in any quarter after December 31, 1996; or if the alien was a member of certain Hmong or Highland Laotian tribes during a certain period of time or is the spouse or unmarried dependent of such a person. The State agency must also verify these factors, if applicable to the alien's eligibility. The SSA Quarters of Coverage History System (QCHS) is available for purposes of verifying whether a lawful permanent resident has earned or can receive credit for a total of 40 qualifying quarters. However, the QCHS may not show all qualifying quarters. For instance, SSA records do not show current year earnings and in some cases the last year's earnings, depending on the time of request. Also, in some cases, an applicant may have work from uncovered employment that is not documented by SSA, but is countable toward the 40 quarters test. In both these cases, the individual, rather than SSA, would need to provide the evidence needed to verify the quarters.

(B) An alien is ineligible until acceptable documentation is provided unless:

(1) The State agency has submitted a copy of a document provided by the household to INS for verification. Pending such verification, the State agency cannot delay, deny, reduce or terminate the individual's eligibility for benefits on

the basis of the individual's immigration status; or

(2) The applicant or the State agency has submitted a request to SSA for information regarding the number of quarters of work that can be credited to the individual, SSA has responded that the individual has fewer than 40 quarters, and the individual provides documentation from SSA that SSA is conducting an investigation to determine if more quarters can be credited. If SSA indicates that the number of qualifying quarters that can be credited is under investigation, the State agency must certify the individual pending the results of the investigation for up to 6 months from the date of the original determination of insufficient quarters; or

(3) The applicant or the State agency has submitted a request to a Federal agency for verification of information which bears on the individual's eligible alien status. The State agency must certify the individual pending the results of the investigation for up to 6 months from the date of the original request for verification.

(C) The State agency must provide alien applicants with a reasonable opportunity to submit acceptable documentation of their eligible alien status as of the 30th day following the date of application. A reasonable opportunity must be at least 10 days from the date of the State agency's request for an acceptable document. When the State agency fails to provide an alien applicant with a reasonable opportunity as of the 30th day following the date of application, the State agency must provide the household with benefits no later than 30 days following the date of application, provided the household is otherwise eligible.

(iii) Utility expenses. The State agency shall verify a household's utility expenses if the household wishes to claim expenses in excess of the State agency's utility standard and the expense would actually result in a deduction. If the household's actual utility expenses cannot be verified before the 30 days allowed to process the application expire, the State agency shall use the standard utility allowance, provided the household is entitled to use the standard as specified in § 273.9(d). If the household wishes to claim expenses for an unoccupied home, the State agency shall verify the household's actual utility expenses for the unoccupied home in every case and shall not use the standard utility allowance.

(iv) Medical expenses. The amount of any medical expenses (including the amount of reimbursements) deductible under § 273.9(d)(3) shall be verified prior to initial certification. Verification of other factors, such as the allowability of services provided or the eligibility of the person incurring the cost, shall be required if questionable.

(v) Social security numbers. The State agency shall verify the social security number(s)

(SSN) reported by the household by submitting them to the Social Security Administration (SSA) for verification according to procedures established by SSA. The State agency shall not delay the certification for or issuance of benefits to an otherwise eligible household solely to verify the SSN of a household member. Once an SSN has been verified, the State agency shall make a permanent annotation to its file to prevent the unnecessary reverification of the SSN in the future. The State agency shall accept as verified an SSN which has been verified by another program participating in the IEVS described in § 272.8. If an individual is unable to provide an SSN or does not have an SSN, the State agency shall require the individual to submit Form SS-5, Application for a Social Security Number, to the SSA in accordance with procedures in § 273.6. A completed SSA Form 2853 shall be considered proof of application for an SSN for a newborn infant.

(vi) Residency. The residency requirements of § 273.3 shall be verified except in unusual cases (such as homeless households, some migrant farmworker households, or households newly arrived in a project area) where verification of residency cannot reasonably be accomplished. Verification of residency should be accomplished to the extent possible in conjunction with the verification of other information such as, but not limited to, rent and mortgage payments, utility expenses, and identity. If verification cannot be accomplished in conjunction with the verification of other information, then the State agency shall use a collateral contact or other readily available documentary evidence. Documents used to verify other factors of eligibility should normally suffice to verify residency as well. Any documents or collateral contact which reasonably establish the applicant's residency must be accepted and no requirement for a specific type of verification may be imposed. No durational residency requirement shall be established.

(vii) Identity. The identity of the person making application shall be verified. Where an authorized representative applies on behalf of a household, the identity of both the authorized representative and the head of household shall be verified. Identity may be verified through readily available documentary evidence, or if this is unavailable, through a collateral contact. Examples of acceptable documentary evidence which the applicant may provide include, but are not limited to, a driver's license, a work or school ID, an ID for health benefits or for another assistance or social services program, a voter registration card, wage stubs, or a birth certificate. Any documents which reasonably establish the applicant's identity must be accepted, and no requirement for a specific type of document, such as a birth certificate, may be imposed.

(viii) Disability.

(A) The State agency shall verify disability as defined in § 271.2 as follows:

(1) For individuals to be considered disabled under paragraphs (2), (3) and (4) of the definition, the household shall provide proof that the disabled individual is receiving benefits under titles I, II, X, XIV or XVI of the Social Security Act.

(2) For individuals to be considered disabled under paragraph (6) of the definition, the household must present a statement from the Veterans Administration (VA) which clearly indicates that the disabled individual is receiving VA disability benefits for a service-connected or non-service-connected disability and that the disability is rated as total or paid at the total rate by VA.

(3) For individuals to be considered disabled under paragraphs (7) and (8) of the definition, proof by the household that the disabled individual is receiving VA disability benefits is sufficient verification of disability.

(4) For individuals to be considered disabled under paragraphs (5) and (9) of the definition, the State agency shall use the Social Security Administration's (SSA) most current list of disabilities considered permanent under the Social Security Act for verifying disability. If it is obvious to the caseworker that the individual has one of the listed disabilities, the household shall be considered to have verified disability. If disability is not obvious to the caseworker, the household shall provide a statement from a physician or licensed or certified psychologist certifying that the individual has one of the nonobvious disabilities listed as the means for verifying disability under paragraphs (5) and (9) of the definition.

(5) For individuals to be considered disabled under paragraph (10) of the definition, the household shall provide proof that the individual receives a Railroad Retirement disability annuity from the Railroad Retirement Board and has been determined to qualify for Medicare.

(6) For individuals to be considered disabled under paragraph (11) of the definition, the household shall provide proof that the individual receives interim assistance benefits pending the receipt of Supplemental Security Income; or disability-related medical assistance under title XIX of the SSA; or disability-based State general assistance benefits. The State agency shall verify that the eligibility to receive these benefits is based upon disability or blindness criteria which are at least as stringent as those used under title XVI of the Social

Security Act.

(B) For disability determinations which must be made relevant to the provisions of § 273.1(a)(2)(ii), the State agency shall use the SSA's most current list of disabilities as the initial step for verifying if an individual has a disability considered permanent under the Social Security Act. However, only those individuals who suffer from one of the disabilities mentioned in the SSA list who are unable to purchase and prepare meals because of such disability shall be considered disabled for the purpose of this provision. If it is obvious to the caseworker that the individual is unable to purchase and prepare meals because he/she suffers from a severe physical or mental disability, the individual shall be considered disabled for the purpose of the provision even if the disability is not specifically mentioned on the SSA list. If the disability is not obvious to the caseworker, he/she shall verify the disability by requiring a statement from a physician or licensed or certified psychologist certifying that the individual (in the physician's/psychologist's opinion) is unable to purchase and prepare meals because he/she suffers from one of the nonobvious disabilities mentioned in the SSA list or is unable to purchase meals because he/she suffers from some other severe, permanent physical or mental disease or nondisease-related disability. The elderly and disabled individual (or his/her authorized representative) shall be responsible for obtaining the cooperation of the individuals with whom he/she resides in providing the necessary income information about the others to the State agency for purposes of this provision.

(ix) State agencies shall verify all factors of eligibility for households who have been terminated for refusal to cooperate with a State quality control reviewer, and reapply after 95 days from the end of the annual review period. State agencies shall verify all factors of eligibility for households who have been terminated for refusal to cooperate with a Federal quality control reviewer and reapply after seven months from the end of the annual review period.

(x) Household composition. State agencies shall verify factors affecting the composition of a household, if questionable. Individuals who claim to be a separate household from those with whom they reside shall be responsible for proving that they are a separate household to the satisfaction of the State agency. Individuals who claim to be a separate household from those with whom they reside based on the various age and disability factors for determining separateness shall be responsible for proving a claim of separateness (at the State agency's request) in accordance with the provisions of § 273.2(f)(1)(viii).

(xi) Students. If a person claims to be physically or mentally unfit for purposes of the student exemption contained in § 273.5(b)(2) and the unfitness is not evident to the State agency, verification may be required. Appropriate verification may consist of receipt of

temporary or permanent disability benefits issued by governmental or private sources, or of a statement from a physician or licensed or certified psychologist.

(xii) Legal obligation and actual child support payments. The State agency shall obtain verification of the household's legal obligation to pay child support, the amount of the obligation, and the monthly amount of child support the household actually pays. Documents that are accepted as verification of the household's legal obligation to pay child support shall not be accepted as verification of the household's actual monthly child support payments. State agencies may and are strongly encouraged to obtain information regarding a household member's child support obligation and payments from Child Support Enforcement (CSE) automated data files. For households that pay their child support exclusively through their State CSE agency, the State agency may use information provided by that agency in determining a household's legal obligation to pay child support, the amount of its obligation and amount the household has actually paid. A household would not have to provide additional verification unless it disagrees with the data presented by the State CSE agency. Before the State agency may use the CSE agency's information, the household must sign a statement authorizing release of the household's child support payment records to the State agency. State agencies that choose to rely on information provided by their State CSE agency in accordance with this paragraph (f)(1)(xii) must specify in their State plan of operation that they have selected this option. The State agency shall give the household an opportunity to resolve any discrepancy between household verification and CSE records in accordance with paragraph (f)(9) of this section.

(xiii) [Reserved]

(xiv) Additional verification for able-bodied adults subject to the time limit.

(A) Hours worked. For individuals subject to the food stamp time limit of § 273.24 who are satisfying the work requirement by working, by combining work and participation in a work program, or by participating in a work or workfare program that is not operated or supervised by the State agency, the individuals' work hours shall be verified.

(B) Countable months in another state. For individuals subject to the food stamp time limit of § 273.24, the State agency must verify the number of countable months (as defined in § 273.24(b)(1)) an individual has used in another State if there is an indication that the individual participated in that State. The normal processing standards of 7 CFR 273.2(g) apply. The State agency may accept another State agency's assertion as to the number of countable months an individual has used in another State.

(2) Verification of questionable information.

(i) The State agency shall verify, prior to certification of the household, all other factors of eligibility which the State agency determines are questionable and affect the household's eligibility and benefit level. The State agency shall establish guidelines to be followed in determining what shall be considered questionable information. These guidelines shall not prescribe verification based on race, religion, ethnic background, or national origin. These guidelines shall not target groups such as migrant farmworkers or American Indians for more intensive verification under this provision.

(ii) If a member's citizenship or status as a non-citizen national is questionable, the State agency must verify the member's citizenship or non-citizen national status in accordance with attachment 4 of the DOJ Interim Guidance. After DOJ issues final rules, State agencies should consult both the Interim Guidance and the final rule. Where the Interim Guidance and the DOJ final rule conflict, the latter should control the eligibility determination. The State agency must accept participation in another program as acceptable verification if verification of citizenship or non-citizen national status was obtained for that program. If the household cannot obtain the forms of verification suggested in attachment 4 of the DOJ Interim Guidance and the household can provide a reasonable explanation as to why verification is not available, the State agency must accept a signed statement, under penalty of perjury, from a third party indicating a reasonable basis for personal knowledge that the member in question is a U.S. citizen or non-citizen national. The signed statement must contain a warning of the penalties for helping someone commit fraud. Absent verification or third party attestation of U.S. citizenship or non-citizen national status, the member whose citizenship or non-citizen national status is in question is ineligible to participate until the issue is resolved. The member whose citizenship or non-citizen national status is in question will have his or her income and resources considered available to any remaining household members as set forth in § 273.11(c).

(3) State agency options. In addition to the verification required in paragraphs (f)(1) and (f)(2) of this section, the State agency may elect to mandate verification of any other factor which affects household eligibility or allotment level, including household size where not questionable. Such verification may be required Statewide or throughout a project area, but shall not be imposed on a selective, case-by-case basis on particular households.

(i) The State agency may establish its own standards for the use of verification, provided that, at a minimum, all questionable factors are verified in accordance with paragraph (f)(2) of this section and that such standards do not allow for inadvertent discrimination. For example, no standard may be applied which prescribes variances in verification based

on race, religion, ethnic background or national origin, nor may a State standard target groups such as migrant farmworkers or American Indians for more intensive verification than other households. The options specified in this paragraph, shall not apply in those offices of the Social Security Administration (SSA) which, in accordance with paragraph (k) of this section, provide for the food stamp certification of households containing recipients of Supplemental Security Income (SSI) and social security benefits. The State agency, however, may negotiate with those SSA offices with regard to mandating verification of these options.

(ii) If a State agency opts to verify a deductible expense and obtaining the verification may delay the household's certification, the State agency shall advise the household that its eligibility and benefit level may be determined without providing a deduction for the claimed but unverified expense. This provision also applies to the allowance of medical expenses as specified in paragraph (f)(1)(iv) of this section. Shelter costs would be computed without including the unverified components. The standard utility allowance shall be used if the household is entitled to claim it and has not verified higher actual costs. If the expense cannot be verified within 30 days of the date of application, the State agency shall determine the household's eligibility and benefit level without providing a deduction of the unverified expense. If the household subsequently provides the missing verification, the State agency shall redetermine the household's benefits, and provide increased benefits, if any, in accordance with the timeliness standards in § 273.12 on reported changes. If the expense could not be verified within the 30-day processing standard because the State agency failed to allow the household sufficient time, as defined in paragraph (h)(1) of this section, to verify the expense, the household shall be entitled to the restoration of benefits retroactive to the month of application, provided that the missing verification is supplied in accordance with paragraph (h)(3) of this section. If the household would be ineligible unless the expense is allowed, the household's application shall be handled as provided in paragraph (h) of this section.

(4) Sources of verification--

(i) Documentary evidence. State agencies shall use documentary evidence as the primary source of verification for all items except residency and household size. These items may be verified either through readily available documentary evidence or through a collateral contact, without a requirement being imposed that documentary evidence must be the primary source of verification. Documentary evidence consists of a written confirmation of a household's circumstances. Examples of documentary evidence include wage stubs, rent receipts, and utility bills. Although documentary evidence shall be the primary source of verification, acceptable verification shall not be limited to any single type of document and may be obtained through the household or other source. Whenever documentary evidence cannot be obtained or is insufficient to make a firm determination of eligibility or benefit level, the eligibility worker may require collateral contacts or home visits. For

example, documentary evidence may be considered insufficient when the household presents pay stubs which do not represent an accurate picture of the household's income (such as out-dated pay stubs) or identification papers that appear to be falsified.

(ii) Collateral contacts. A collateral contact is an oral confirmation of a household's circumstances by a person outside of the household. The collateral contact may be made either in person or over the telephone. The State agency may select a collateral contact if the household fails to designate one or designates one which is unacceptable to the State agency. Examples of acceptable collateral contacts may include employers, landlords, social service agencies, migrant service agencies, and neighbors of the household who can be expected to provide accurate third-party verification. When talking with collateral contacts, State agencies should disclose only the information that is absolutely necessary to get the information being sought. State agencies should avoid disclosing that the household has applied for food stamps, nor should they disclose any information supplied by the household, especially information that is protected by § 273.1(c), or suggest that the household is suspected of any wrong doing.

(iii) Home visits. Home visits may be used as verification only when documentary evidence is insufficient to make a firm determination of eligibility or benefit level, or cannot be obtained, and the home visit is scheduled in advance with the household. Home visits are to be used on a case-by-case basis where the supplied documentation is insufficient. Simply because a household fits a profile of an error-prone household does not constitute lack of verification. State agencies shall assist households in obtaining sufficient verification in accordance with paragraph (c)(5) of this section.

(iv) Discrepancies. Where unverified information from a source other than the household contradicts statements made by the household, the household shall be afforded a reasonable opportunity to resolve the discrepancy prior to a determination of eligibility or benefits. The State agency may, if it chooses, verify the information directly and contact the household only if such direct verification efforts are unsuccessful. If the unverified information is received through the IEVS, as specified in § 272.8, the State agency may obtain verification from a third party as specified in paragraph (f)(9)(v) of this section.

(v) Homeless households. Homeless households claiming actual shelter expenses or those with extremely low shelter costs may provide verification of their shelter expenses to qualify for the homeless shelter deduction if the State agency has such a deduction. If a homeless household has difficulty in obtaining traditional types of verification of shelter costs, the caseworker shall use prudent judgment in determining if the verification obtained is adequate. For example, if a homeless individual claims to have incurred shelter costs for several nights and the costs are comparable to costs typically incurred by homeless people for shelter, the caseworker may decide to accept this information as

adequate information and not require further verification.

(5) Responsibility of obtaining verification.

(i) The household has primary responsibility for providing documentary evidence to support statements on the application and to resolve any questionable information. The State agency must assist the household in obtaining this verification provided the household is cooperating with the State agency as specified under paragraph (d)(1) of this section. Households may supply documentary evidence in person, through the mail, by facsimile or other electronic device, or through an authorized representative. The State agency must not require the household to present verification in person at the food stamp office. The State agency must accept any reasonable documentary evidence provided by the household and must be primarily concerned with how adequately the verification proves the statements on the application.

(ii) Whenever documentary evidence is insufficient to make a firm determination of eligibility or benefit level, or cannot be obtained, the State agency may require a collateral contact or a home visit in accordance with paragraph (f)(4) of this section. The State agency, generally, shall rely on the household to provide the name of any collateral contact. The household may request assistance in designating a collateral contact. The State agency is not required to use a collateral contact designated by the household if the collateral contact cannot be expected to provide an accurate third-party verification. When the collateral contact designated by the household is unacceptable, the State agency shall either designate another collateral contact, ask the household to designate another collateral contact or to provide an alternative form of verification, or substitute a home visit. The State agency is responsible for obtaining verification from acceptable collateral contacts.

(6) Documentation. Case files must be documented to support eligibility, ineligibility, and benefit level determinations. Documentation shall be in sufficient detail to permit a reviewer to determine the reasonableness and accuracy of the determination.

(7) State Data Exchange and Beneficiary Data Exchange. The State agency may verify SSI benefits through the State Data Exchange (SDX), and Social Security benefit information through the Beneficiary Data Exchange (BENDEX), or through verification provided by the household. The State agency may use SDX and BENDEX data to verify other food stamp eligibility criteria. The State agency may access SDX and BENDEX data without release statements from households, provided the State agency makes the appropriate data request to SSA and executes the necessary data exchange agreements with SSA. The household shall be given an opportunity to verify the information from another source if the SDX or BENDEX information is contradictory to the information provided by the household or is unavailable. Determination of the household's eligibility

and benefit level shall not be delayed past the application processing time standards of paragraph (g) of this section if SDX or BENDEX data is unavailable.

(8) Verification subsequent to initial certification.

(i) Recertification--

(A) At recertification the State agency shall verify a change in income if the source has changed or the amount has changed by more than $50. Previously unreported medical expenses, actual utility expenses and total recurring medical expenses which have changed by more than $25 shall also be verified at recertification. The State agency shall not verify income if the source has not changed and if the amount is unchanged or has changed by $50 or less, unless the information is incomplete, inaccurate, inconsistent or outdated. The State agency shall also not verify total medical expenses, or actual utility expenses claimed by households which are unchanged or have changed by $25 or less, unless the information is incomplete, inaccurate, inconsistent or outdated. For households eligible for the child support deduction or exclusion, the State agency may use information provided by the State CSE agency in determining the household's legal obligation to pay child support, the amount of its obligation and amounts the household has actually paid if the household pays its child support exclusively through its State CSE agency and has signed a statement authorizing release of its child support payment records to the State agency. A household would not have to provide any additional verification unless they disagreed with the information provided by the State CSE agency. State agencies that choose to use information provided by their State CSE agency in accordance with this paragraph (f)(8)(i)(A) must specify in their State plan of operation that they have selected this option. For all other households eligible for the child support deduction or exclusion, the State agency shall require the household to verify any changes in the legal obligation to pay child support, the obligated amount, and the amount of legally obligated child support a household member pays to a nonhousehold member. The State agency shall verify reportedly unchanged child support information only if the information is incomplete, inaccurate, inconsistent or outdated.

(B) Newly obtained social security numbers shall be verified at recertification in accordance with verification procedures outlined in § 273.2(f)(1)(v).

(C) For individuals subject to the food stamp time limit of § 273.24 who are satisfying the work requirement by working, by combining work and participation in a work program, or by participating in a work program that is not operated or supervised by the State agency, the individuals' work hours shall be verified.

(D) Other information which has changed may be verified at recertification.

Unchanged information shall not be verified unless the information is incomplete, inaccurate, inconsistent or outdated. Verification under this paragraph shall be subject to the same verification procedures as apply during initial verification.

(ii) Changes. Changes reported during the certification period shall be subject to the same verification procedures as apply at initial certification, except that the State agency shall not verify changes in income if the source has not changed and if the amount has changed by $50 or less, unless the information is incomplete, inaccurate, inconsistent or outdated. The State agency shall also not verify total medical expenses or actual utility expenses which are unchanged or have changed by $25 or less, unless the information is incomplete, inaccurate, inconsistent or outdated.

(9) Optional use of IEVS.

(i) The State agency may obtain information through IEVS in accordance with procedures specified in § 272.8 of this chapter and use it to verify the eligibility and benefit levels of applicants and participating households.

(ii) The State agency may access data through the IEVS provided the disclosure safeguards and data exchange agreements required by part 272 are satisfied.

(iii) The State agency shall take action, including proper notices to households, to terminate, deny, or reduce benefits based on information obtain through the IEVS which is considered verified upon receipt. This information is social security and SSI benefit information obtained from SSA, and TANF benefit information and UIB information obtained from the agencies administering those programs. If the State agency has information that the IEVS-obtained information about a particular household is questionable, this information shall be considered unverified upon receipt and the State agency shall take action as specified in paragraph (f)(9)(iv) of this section.

(iv) Except as noted in this paragraph, prior to taking action to terminate, deny, or reduce benefits based on information obtained through the IEVS which is considered unverified upon receipt, State agencies shall independently verify the information. Such unverified information is unearned income information from IRS, wage information from SSA and SWICAs, and questionable IEVS information discussed in paragraph (f)(9)(iii) of this section. Independent verification shall include verification of the amount of the asset or income involved, whether the household actually has or had access to such asset or income such that it would be countable income or resources for food stamp purposes, and the period during which such access occurred. Except with respect to unearned income information from IRS, if a State agency has information which indicates that independent verification is not needed, such verification is not required.

(v) The State agency shall obtain independent verification of unverified information obtained from IEVS by means of contacting the household and/or the appropriate income, resource or benefit source. If the State agency chooses to contact the household, it must do so in writing, informing the household of the information which it has received, and requesting that the household respond within 10 days. If the household fails to respond in a timely manner, the State agency shall send it a notice of adverse action as specified in § 273.13. The State agency may contact the appropriate source by the means best suited to the situation. When the household or appropriate source provides the independent verification, the State agency shall properly notify the household of the action it intends to take and provide the household with an opportunity to request a fair hearing prior to any adverse action.

(10) Optional use of SAVE. Households are required to submit documents to verify the immigration status of applicant aliens. State agencies that verify the validity of such documents through the INS SAVE system in accordance with § 272.11 of this chapter must use the following procedures:

(i) The State agency shall provide an applicant alien with a reasonable opportunity to submit acceptable documentation of their eligible alien status prior to the 30th day following the date of application. A reasonable opportunity shall be at least 10 days from the date of the State agency's request for an acceptable document. An alien who has been given a reasonable opportunity to submit acceptable documentation and has not done so as of the 30th day following the date of application shall not be certified for benefits until acceptable documentation has been submitted. However, if the 10-day reasonable opportunity period provided by the State agency does not lapse before the 30th day following the date of application, the State agency shall provide the household with benefits no later than 30 days following the date of application Provided the household is otherwise eligible.

(ii) The written consent of the alien applicant shall not be required as a condition for the State agency to contact INS to verify the validity of documentation.

(iii) State agencies which access the ASVI database through an automated access shall also submit INS Form G-845, with an attached photocopy of the alien's document, to INS whenever the initial automated access does not confirm the validity of the alien's documentation or a significant discrepancy exists between the data provided by the ASVI and the information provided by the applicant. Pending such responses from either the ASVI or INS Form G-845, the State agency shall not delay, deny, reduce, or terminate the alien's eligibility for benefits on the basis of the individual's alien status.

(iv) If the State agency determines, after complying with the requirements of this section, that the alien is not in an eligible alien status, the State agency shall take action, including

proper notices to the household, to terminate, deny or reduce benefits. The State agency shall provide households the opportunity to request a fair hearing under § 273.15 prior to any adverse action.

(v) The use of SAVE shall be documented in the casefile or other agency records. When the State agency is waiting for a response from SAVE, agency records shall contain either a notation showing the date of the State agency's transmission or a copy of the INS Form G-845 sent to INS. Once the SAVE response is received, agency records shall show documentation of the ASVI Query Verification Number or contain a copy of the INS-annotated Form G-845. Whenever the response from automated access to the ASVI directs the eligibility worker to initiate secondary verification, agency records shall show documentation of the ASVI Query Verification Number and contain a copy of the INS Form G-845.

(g) Normal processing standard--

(1) Thirty-day processing. The State agency shall provide eligible households that complete the initial application process an opportunity to participate (as defined in § 274.2(b)) as soon as possible, but no later than 30 calendar days following the date the application was filed, except for residents of public institutions who apply jointly for SSI and food stamp benefits prior to release from the institution in accordance with § 273.1(e)(2). An application is filed the day the appropriate food stamp office receives an application containing the applicant's name and address, which is signed by either a responsible member of the household or the household's authorized representative. Households entitled to expedited processing are specified in paragraph (i) of this section. For residents of public institutions who apply for food stamps prior to their release from the institution in accordance with § 273.1(e)(2), the State agency shall provide an opportunity to participate as soon as possible, but not later than 30 calendar days from the date of release of the applicant from the institution.

(2) Combined allotments. Households which apply for initial month benefits (as described in § 273.10(a)) after the 15th of the month, are processed under normal processing timeframes, have completed the application process within 30 days of the date of application, and have been determined eligible to receive benefits for the initial month of application and the next subsequent month, may be issued a combined allotment at State agency option which includes prorated benefits for the month of application and benefits for the first full month of participation. The benefits shall be issued in accordance with § 274.2(c) of this chapter.

(3) Denying the application. Households that are found to be ineligible shall be sent a notice of denial as soon as possible but not later than 30 days following the date the application was filed. If the household has failed to appear for a scheduled interview and

has made no subsequent contact with the State agency to express interest in pursuing the application, the State agency shall send the household a notice of denial on the 30th day following the date of application. The household must file a new application if it wishes to participate in the program. In cases where the State agency was able to conduct an interview and request all of the necessary verification on the same day the application was filed, and no subsequent requests for verification have been made, the State agency may also deny the application on the 30th day if the State agency provided assistance to the household in obtaining verification as specified in paragraph (f)(5) of this section, but the household failed to provide the requested verification.

(h) Delays in processing. If the State agency does not determine a household's eligibility and provide an opportunity to participate within 30 days following the date the application was filed, the State agency shall take the following action:

(1) Determining cause. The State agency shall first determine the cause of the delay using the following criteria:

(i) A delay shall be considered the fault of the household if the household has failed to complete the application process even though the State agency has taken all the action it is required to take to assist the household. The State agency must have taken the following actions before a delay can be considered the fault of the household:

(A) For households that have failed to complete the application form, the State agency must have offered, or attempted to offer, assistance in its completion.

(B) If one or more members of the household have failed to register for work, as required in § 273.7, the State agency must have informed the household of the need to register for work, determined if the household members are exempt from work registration, and given the household at least 10 days from the date of notification to register these members.

(C) In cases where verification is incomplete, the State agency must have provided the household with a statement of required verification and offered to assist the household in obtaining required verification and allowed the household sufficient time to provide the missing verification. Sufficient time shall be at least 10 days from the date of the State agency's initial request for the particular verification that was missing.

(D) For households that have failed to appear for an interview, the State agency must notify the household that it missed the scheduled interview and that the household is responsible for rescheduling a missed interview. If the household contacts the State agency within the 30 day processing period, the State agency must schedule a second

interview. If the household fails to schedule a second interview, or the subsequent interview is postponed at the household's request or cannot otherwise be rescheduled until after the 20th day but before the 30th day following the date the application was filed, the household must appear for the interview, bring verification, and register members for work by the 30th day; otherwise, the delay shall be the fault of the household. If the household has failed to appear for the first interview, fails to schedule a second interview, and/or the subsequent interview is postponed at the household's request until after the 30th day following the date the application was filed, the delay shall be the fault of the household. If the household has missed both scheduled interviews and requests another interview, any delay shall be the fault of the household.

(ii) Delays that are the fault of the State agency include, but are not limited to, those cases where the State agency failed to take the actions described in paragraphs (h)(1)(i)(A) through (D) of this section.

(2) Delays caused by the household.

(i) If by the 30th day the State agency cannot take any further action on the application due to the fault of the household, the household shall lose its entitlement to benefits for the month of application. However, the State agency shall give the household an additional 30 days to take the required action, except that, if verification is lacking, the State agency has the option of holding the application pending for only 30 days following the date of the initial request for the particular verification that was missing.

(A) The State agency has the option of sending the household either a notice of denial or a notice of pending status on the 30th day. The option chosen may vary from one project area to another, provided the same procedures apply to all households within a project area. However, if a notice of denial is sent and the household takes the required action within 60 days following the date the application was filed, the State agency shall reopen the case without requiring a new application. No further action by the State agency is required after the notice of denial or pending status is sent if the household failed to take the required action within 60 days following the date the application was filed, or if the State agency chooses the option of holding the application pending for only 30 days following the date of the initial request for the particular verification that was missing, and the household fails to provide the necessary verification by this 30th day.

(B) State agencies may include in the notice a request that the household report all changes in circumstances since it filed its application. The information that must be contained on the notice of denial or pending status is explained in § 273.10(g)(1)(ii) and (iii).

(ii) If the household was at fault for the delay in the first 30-day period, but is found to be eligible during the second 30-day period, the State agency shall provide benefits only from the month following the month of application. The household is not entitled to benefits for the month of application when the delay was the fault of the household.

(3) Delays caused by the State agency.

(i) Whenever a delay in the initial 30-day period is the fault of the State agency, the State agency shall take immediate corrective action. Except as specified in §§ 273.2(f)(1)(ii)(F) and 273.2(f)(10)(i), the State agency shall not deny the application if it caused the delay, but shall instead notify the household by the 30th day following the date the application was filed that its application is being held pending. The State agency shall also notify the household of any action it must take to complete the application process. If verification is lacking the State agency has the option of holding the application pending for only 30 days following the date of the initial request for the particular verification that was missing.

(ii) If the household is found to be eligible during the second 30-day period, the household shall be entitled to benefits retroactive to the month of application. If, however, the household is found to be ineligible, the State agency shall deny the application.

(4) Delays beyond 60 days.

(i) If the State agency is at fault for not completing the application process by the end of the second 30-day period, and the case file is otherwise complete, the State agency shall continue to process the original application until an eligibility determination is reached. If the household is determined eligible, and the State agency was at fault for the delay in the initial 30 days, the household shall receive benefits retroactive to the month of application. However, if the initial delay was the household's fault, the household shall receive benefits retroactive only to the month following the month of application. The State agency may use the original application to determine the household's eligibility in the months following the 60-day period, or it may require the household to file a new application.

(ii) If the State agency is at fault for not completing the application process by the end of the second 30-day period, but the case file is not complete enough to reach an eligibility determination, the State agency may continue to process the original application, or deny the case and notify the household to file a new application. If the case is denied, the household shall also be advised of its possible entitlement to benefits lost as a result of State agency caused delays in accordance with § 273.17. If the State agency was also at

fault for the delay in the initial 30 days, the amount of benefits lost would be calculated from the month of application. If, however, the household was at fault for the initial delay, the amount of benefits lost would be calculated from the month following the month of application.

(iii) If the household is at fault for not completing the application process by the end of the second 30-day period, the State agency shall deny the application and require the household to file a new application if it wishes to participate. If however, the State agency has chosen the option of holding the application pending only until 30 days following the date of the initial request for the particular verification that was missing, and verification is not received by that 30th day, the State agency may immediately close the application. A notice of denial need not be sent if the notice of pending status informed the household that it would have to file a new application if verification was not received within 30 days of the initial request. The household shall not be entitled to any lost benefits, even if the delay in the initial 30 days was the fault of the State agency.

(i) Expedited service--

(1) Entitlement to expedited service. The following households are entitled to expedited service:

(i) Households with less than $150 in monthly gross income, as computed in § 273.10 provided their liquid resources (i.e., cash on hand, checking or savings accounts, savings certificates, and lump sum payments as specified in § 273.9(c)(8)) do not exceed $100;

(ii) Migrant or seasonal farmworker households who are destitute as defined in § 273.10(e)(3) provided their liquid resources (i.e., cash on hand, checking or savings accounts, savings certificates, and lump sum payments as specified in § 273.9(c)(8)) do not exceed $100;

(iii) Households whose combined monthly gross income and liquid resources are less than the household's monthly rent or mortgage, and utilities (including entitlement to a SUA, as appropriate, in accordance with § 273.9(d)).

(2) Identifying households needing expedited service. The State agency's application procedures shall be designed to identify households eligible for expedited service at the time the household requests assistance. For example, a receptionist, volunteer, or other employee shall be responsible for screening applications as they are filed or as individuals come in to apply.

(3) Processing standards. All households receiving expedited service, except those receiving it during months in which allotments are suspended or cancelled, shall have

their cases processed in accordance with the following provisions. Those households receiving expedited service during suspensions or cancellations shall have their cases processed in accordance with the provisions of § 271.7(e)(2).

(i) General. For households entitled to expedited service, the State agency shall make available to the recipient coupons or an ATP card not later than the seventh calendar day following the date an application was filed. For a resident of a public institution who applies for benefits prior to his/her release from the institution in accordance with § 273.1(e)(2) and who is entitled to expedited service, the date of filing of his/her food stamp application is the date of release of the applicant from the institution. Whatever system a State agency uses to ensure meeting this delivery standard shall be designed to allow a reasonable opportunity for redemption of ATPs no later than the seventh calendar day following the day the application was filed.

(ii) Drug addicts and alcoholics, group living arrangement facilities. For residents of drug addiction or alcoholic treatment and rehabilitation centers and residents of group living arrangements who are entitled to expedited service, the State agency shall make available to the recipient coupons or an ATP card not later than the 7 calendar days following the date an application was filed.

(iii) Out-of-office interviews. If a household is entitled to expedited service and is also entitled to a waiver of the office interview, the State agency shall conduct the interview (unless the household cannot be reached) and complete the application process within the expedited service standards. The first day of this count is the calendar day following application filing. If the State agency conducts a telephone interview and must mail the application to the household for signature, the mailing time involved will not be calculated in the expedited service standards. Mailing time shall only include the days the application is in the mail to and from the household and the days the application is in the household's possession pending signature and mailing.

(iv) Late determinations. If the prescreening required in paragraph (i)(2) of this section fails to identify a household as being entitled to expedited service and the State agency subsequently discovers that the household is entitled to expedited service, the State agency shall provide expedited service to households within the processing standards described in paragraphs (i)(3)(i) and (ii) of this section, except that the processing standard shall be calculated from the date the State agency discovers the household is entitled to expedited service.

(v) Residents of shelters for battered women and children. Residents of shelters for battered women and children who are otherwise entitled to expedited service shall be handled in accordance with the time limits in paragraph (i)(3)(i) of this section.

(4) Special procedures for expediting service. The State agency shall use the following procedures when expediting certification and issuance:

(i) In order to expedite the certification process, the State agency shall use the following procedures:

(A) In all cases, the applicant's identity (i.e., the identity of the person making the application) shall be verified through a collateral contact or readily available documentary evidence as specified in paragraph (f)(1) of this section.

(B) All reasonable efforts shall be made to verify within the expedited processing standards, the household's residency in accordance with § 273.2(f)(1)(vi), income statement (including a statement that the household has no income), liquid resources and all other factors required by § 273.2(f), through collateral contacts or readily available documentary evidence. However, benefits shall not be delayed beyond the delivery standards prescribed in paragraph (i)(3) of this section, solely because these eligibility factors have not been verified.

State agencies also may verify factors other than identity, residency, and income provided that verification can be accomplished within expedited processing standards. State agencies should attempt to obtain as much additional verification as possible during the interview, but should not delay the certification of households entitled to expedited service for the full timeframes specified in paragraph (i)(3) of this section when the State agency has determined it is unlikely that other verification can be obtained within these timeframes. Households entitled to expedited service will be asked to furnish a social security number for each person applying for benefits or apply for one for each person applying for benefits before the second full month of participation. Those household members unable to provide the required SSN's or who do not have one prior to the second full month of participation shall be allowed to continue to participate only if they satisfy the good cause requirements with respect to SSN's specified in § 273.6(d), except that households with a newborn may have up to 6 months following the month the baby was born to supply an SSN or proof of an application for an SSN for the newborn in accordance with § 273.6(b)(4). The State agency may attempt to register other household members but shall postpone the registration of other household members if it cannot be accomplished within the expedited service timeframes. With regard to the work registration requirements specified in § 273.7, the State agency shall, at a minimum, require the applicant to register (unless exempt or unless the household has designated an authorized representative to apply on its behalf in accordance with § 273.1(f). The State agency may attempt registration of other household members by requesting that the applicant complete the work registration forms for other household members to the best of his or her ability. The State agency may also attempt to accomplish work registration for other household members in a timely manner through other means, such as calling the

household. The State agency may attempt to verify questionable work registration exemptions, but such verification shall be postponed if the expedited service timeframes cannot be met.

(ii) Once an acceptable collateral contact has been designated, the State agency shall promptly contact the collateral contact, in accordance with the provisions of paragraph (f)(4)(ii) of this section. Although the household has the primary responsibility for providing other types of verification, the State agency shall assist the household in promptly obtaining the necessary verification.

(iii) Households that are certified on an expedited basis and have provided all necessary verification required in paragraph (f) of this section prior to certification shall be assigned normal certification periods. If verification was postponed, the State agency may certify these households for the month of application (the month of application and the subsequent month for those households applying after the 15th of the month) or, at the State agency's option, may assign normal certification periods to those households whose circumstances would otherwise warrant longer certification periods. State agencies, at their option, may request any household eligible for expedited service which applies after the 15th of the month and is certified for the month of application and the subsequent month only to submit a second application (at the time of the initial certification) if the household's verification is postponed.

(A) For households applying on or before the 15th of the month, the State agency may assign a one-month certification period or assign a normal certification period. Satisfaction of the verification requirements may be postponed until the second month of participation. If a one-month certification period is assigned, the notice of eligibility may be combined with the notice of expiration or a separate notice may be sent. The notice of eligibility must explain that the household has to satisfy all verification requirements that were postponed. For subsequent months, the household must reapply and satisfy all verification requirements which were postponed or be certified under normal processing standards. If the household does not satisfy the postponed verification requirements and does not appear for the interview, the State agency does not need to contact the household again.

(B) For households applying after the 15th of the month, the State agency may assign a 2-month certification period or a normal certification period of no more than 12 months. Verification may be postponed until the third month of participation, if necessary, to meet the expedited timeframe. If a two-month certification period is assigned, the notice of eligibility may be combined with the notice of expiration or a separate notice may be sent. The notice of eligibility must explain that the household is obligated to satisfy the verification requirements that were postponed. For subsequent months, the household must reapply and satisfy the verification

requirements which were postponed or be certified under normal processing standards. If the household does not satisfy the postponed verification requirements and does not attend the interview, the State agency does not need to contact the household again. When a certification period of longer than 2 months is assigned and verification is postponed, households must be sent a notice of eligibility advising that no benefits for the third month will be issued until the postponed verification requirements are satisfied. The notice must also advise the household that if the verification process results in changes in the household's eligibility or level of benefits, the State agency will act on those changes without advance notice of adverse action.

(C) Households which apply for initial benefits (as described in § 273.10(a)) after the 15th of the month, are entitled to expedited service, have completed the application process, and have been determined eligible to receive benefits for the initial month and the next subsequent month, shall receive a combined allotment consisting of prorated benefits for the initial month of application and benefits for the first full month of participation within the expedited service timeframe. If necessary, verification shall be postponed to meet the expedited timeframe. The benefits shall be issued in accordance with § 274.2(c) of this chapter.

(D) The provisions of paragraph (i)(4)(iii)(C) of this section do not apply to households which have been determined ineligible to receive benefits for the month of application or the following month, or to households which have not satisfied the postponed verification requirements. However, households eligible for expedited service may receive benefits for the initial month and next subsequent month under the verification standards of paragraph (i)(4) of this section.

(E) If the State agency chooses to exercise the option to require a second application in accordance with paragraph (i)(4)(iii) of this section and receives the application before the third month, it shall not deny the application but hold it pending until the third month. The State agency will issue the third month's benefits within 5 working days from receipt of the necessary verification information but not before the first day of the month. If the postponed verification requirements are not completed before the end of the third month, the State agency shall terminate the household's participation and shall issue no further benefits.

(iv) There is no limit to the number of times a household can be certified under expedited procedures, as long as prior to each expedited certification, the household either completes the verification requirements that were postponed at the last expedited certification or was certified under normal processing standards since the last expedited certification. The provisions of this section shall not apply at recertification if a household reapplies before the end of its current certification period.

(v) Households requesting, but not entitled to, expedited service shall have their applications processed according to normal standards.

(j) PA, GA and categorically eligible households. The State agency must notify households applying for public assistance (PA) of their right to apply for food stamp benefits at the same time and must allow them to apply for food stamp benefits at the same time they apply for PA benefits. The State agency must also notify such households that time limits or other requirements that apply to the receipt of PA benefits do not apply to the receipt of food stamp benefits, and that households which cease receiving PA benefits because they have reached a time limit, have begun working, or for other reasons, may still qualify for food stamp benefits. If the State agency attempts to discourage households from applying for cash assistance, it shall make clear that the disadvantages and requirements of applying for cash assistance do not apply to food stamps. In addition, it shall encourage applicants to continue with their application for food stamps. The State agency shall inform households that receiving food stamps will have no bearing on any other program's time limits that may apply to the household. The State agency may process the applications of such households in accordance with the requirements of paragraph (j)(1) of this section, and the State agency must base their eligibility solely on food stamp eligibility criteria unless the household is categorically eligible, as provided in paragraph (j)(2) of this section. If a State has a single Statewide GA application form, households in which all members are included in a State or local GA grant may have their application for food stamps included in the GA application form. State agencies may use the joint application processing procedures described in paragraph (j)(1) of this section for GA recipients in accordance with paragraph (j)(3) of this section. The State agency must base eligibility of jointly processed GA households solely on food stamp eligibility criteria unless the household is categorically eligible as provided in paragraph (j)(4) of this section. The State agency must base the benefit levels of all households solely on food stamp criteria. The State agency must certify jointly processed and categorically eligible households in accordance with food stamp procedural, timeliness, and notice requirements, including the 7-day expedited service provisions of paragraph (i) of this section and normal 30-day application processing standards of paragraph (g) of this section. Individuals authorized to receive PA, SSI, or GA benefits but who have not yet received payment are considered recipients of benefits from those programs. In addition, individuals are considered recipients of PA, SSI, or GA if their PA, SSI, or GA benefits are suspended or recouped. Individuals entitled to PA, SSI, or GA benefits but who are not paid such benefits because the grant is less than a minimum benefit are also considered recipients. The State agency may not consider as recipients those individuals not receiving GA, PA, or SSI benefits who are entitled to Medicaid only.

(1) Applicant PA households.

(i) If a joint PA/food stamp application is used, the application may contain all the information necessary to determine a household's food stamp eligibility and level of benefits. Information relevant only to food stamp eligibility must be contained in the PA form or must be an attachment to it. The joint PA/food stamp application must clearly indicate that the household is providing information for both programs, is subject to the criminal penalties of both programs for making false statements, and waives the notice of adverse action as specified in paragraph (j)(1)(iv) of this section.

(ii) The State agency may conduct a single interview at initial application for both public assistance and food stamp purposes. A household's eligibility for food stamp out-of-office interview provisions in paragraph (e)(2) of this section does not relieve the household of any responsibility for a face-to-face interview to be certified for PA.

(iii) For households applying for both PA and food stamps, the State agency must follow the verification procedures described in paragraphs (f)(1) through (f)(8) of this section for those factors of eligibility which are needed solely for purposes of determining the household's eligibility for food stamps. For those factors of eligibility which are needed to determine both PA eligibility and food stamp eligibility, the State agency may use the PA verification rules. However, if the household has provided the State agency sufficient verification to meet the verification requirements of paragraphs (f)(1) through (f)(8) of this section, but has failed to provide sufficient verification to meet the PA verification rules, the State agency may not use such failure as a basis for denying the household's food stamp application or failing to comply with processing requirements of paragraph (g) of this section. Under these circumstances, the State agency must process the household's food stamp application and determine eligibility based on its compliance with the requirements of paragraphs (f)(1) through (f)(8) of this section.

(iv) In order to determine if a household will be eligible due to its status as a recipient PA/SSI household, the State agency may temporarily postpone, within the 30-day processing standard, the food stamp eligibility determination if the household is not entitled to expedited service and appears to be categorically eligible. However, the State agency shall postpone denying a potentially categorically eligible household until the 30th day in case the household is determined eligible to receive PA benefits. Once the PA application is approved, the household is to be considered categorically eligible if it meets all the criteria concerning categorical eligibility in § 273.2(j)(2). If the State agency can anticipate the amount and the date of receipt of the initial PA payment, but the payment will not be received until a subsequent month, the State agency shall vary the household's food stamp benefit level according to the anticipated receipt of the payment and notify the household. Portions of initial PA payments intended to retroactively cover a previous month shall be disregarded as lump sum payments under § 273.9(c)(8). If the amount or

date of receipt of the initial PA payment cannot be reasonably anticipated at the time of the food stamp eligibility determination, the PA payments shall be handled as a change in circumstances. However, the State agency is not required to send a notice of adverse action if the receipt of the PA grant reduces, suspends or terminates the household's food stamp benefits, provided the household is notified in advance that its benefits may be reduced, suspended, or terminated when the grant is received. The case may be terminated if the household is not categorically eligible in accordance with § 273.12(c). The State agency shall ensure that the denied application of a potentially categorically eligible household is easily retrievable. For a household filing a joint application for food stamps and PA benefits or a household that has a PA application pending and is denied food stamps but is later determined eligible to receive PA benefits and is otherwise categorically eligible, the State agency shall provide benefits using the original application and any other pertinent information occurring subsequent to that application. Except for residents of public institutions who apply jointly for SSI and food stamp benefits prior to their release from a public institution in accordance with § 273.1(e)(2), benefits shall be paid from the beginning of the period for which PA or SSI benefits are paid, the original food stamp application date, or December 23, 1985 whichever is later. Residents of public institutions who apply jointly for SSI and food stamp benefits prior to their release from the institution shall be paid benefits from the date of their release from the institution. In situations where the State agency must update and reevaluate the original application of a denied case, the State agency shall not reinterview the household, but shall use any available information to update the application. The State agency shall then contact the household by phone or mail to explain and confirm changes made by the State agency and to determine if other changes in household circumstances have occurred. If any information obtained from the household differs from that which the State agency obtained from available information or the household provided additional changes in information, the State agency shall arrange for the household or it authorized representative to initial all changes, re-sign and date the updated application and provide necessary verification. In no event can benefits be provided prior to the date of the original food stamp application filed on or after December 23, 1985. Any household that is determined to be eligible to receive PA benefits for a period of time within the 30-day food stamp processing time, shall be provided food stamp benefits back to the date of the food stamp application. However, in no event shall food stamp benefits be paid for a month for which such household is ineligible for receipt of any PA benefits for the month, unless the household is eligible for food stamp benefits and an NPA case. Benefits shall be prorated in accordance with § 273.10(a)(1)(ii) and (e)(2)(ii)(B). Household that file joint applications that are found categorically eligible after being denied NPA food stamps shall have their benefits for the initial month prorated from the date from which the PA benefits are payable, or the date of the original food stamp application, whichever is later. The State agency shall act on reevaluating the original application either at the household's request or when it becomes otherwise aware of the household's PA and/or SSI eligibility. The household shall be informed on the notice of denial required by §

273.10(g)(1)(ii) to notify the State agency if its PA or SSI benefits are approved.

(v) The State agency may not require households which file a joint PA/food stamp application and whose PA applications are denied to file new food stamp applications. Rather, the State agency must determine or continue their food stamp eligibility on the basis of the original applications filed jointly for PA and food stamp purposes. In addition, the State agency must use any other documented information obtained subsequent to the application which may have been used in the PA determination and which is relevant to food stamp eligibility or level of benefits.

(2) Categorically eligible PA and SSI households.

(i) The following households are categorically eligible for food stamps unless the entire household is institutionalized as defined in § 273.1(e) or disqualified for any reason from receiving food stamps.

(A) Any household (except those listed in paragraph (j)(2)(vii) of this section) in which all members receive or are authorized to receive cash through a PA program funded in full or in part with Federal money under Title IV-A or with State money counted for maintenance of effort (MOE) purposes under Title IV-A;

(B) Any household (except those listed in paragraph (j)(2)(vii) of this section) in which all members receive or are authorized to receive non-cash or in-kind benefits or services from a program that is more than 50 percent funded with State money counted for MOE purposes under Title IV-A or Federal money under Title IV-A and that is designed to forward purposes one and two of the TANF block grant, as set forth in Section 401 of P.L. 104-193.

(C) Any household (except those listed in paragraph (j)(2)(vii) of this section) in which all members receive or are authorized to receive non-cash or in-kind benefits or services from a program that is more than 50 percent funded with State money counted for MOE purposes under Title IV-A or Federal money under Title IV-A and that is designed to further purposes three and four of the TANF block grant, as set forth in Section 401 of P.L. 104-193, and requires participants to have a gross monthly income at or below 200 percent of the Federal poverty level.

(D) Any household in which all members receive or are authorized to receive SSI benefits, except that residents of public institutions who apply jointly for SSI and food stamp benefits prior to their release from the institution in accordance with § 273.1(e)(2), are not categorically eligible upon a finding by SSA of potential SSI eligibility prior to such release. The State agency must consider the individuals categorically eligible at such time as SSA makes a final SSI eligibility and the

institution has released the individual.

(E) Any household in which all members receive or are authorized to receive PA and/or SSI benefits in accordance with paragraphs (j)(2)(i)(A) through (j)(2)(i)(D) of this section.

(ii) The State agency, at its option, may extend categorical eligibility to the following households only if doing so will further the purposes of the Food Stamp Act:

(A) Any household (except those listed in paragraph (j)(2)(vii) of this section) in which all members receive or are authorized to receive non-cash or in-kind services from a program that is less than 50 percent funded with State money counted for MOE purposes under Title IV-A or Federal money under Title IV-A and that is designed to further purposes one and two of the TANF block grant, as set forth in Section 401 of P.L. 104-193. States must inform FNS of the TANF services under this paragraph that they are determining to confer categorical eligibility.

(B) Subject to FNS approval, any household (except those listed in paragraph (j)(2)(vii) of this section) in which all members receive or are authorized to receive non-cash or in-kind services from a program that is less than 50 percent funded with State money counted for MOE purposes under Title IV-A or Federal money under Title IV-A and that is designed to further purposes three and four of the TANF block grant, as set forth in Section 401 of P.L 104-193, and requires participants to have a gross monthly income at or below 200 percent of the Federal poverty level.

(iii) Any household in which one member receives or is authorized to receive benefits according to paragraphs (j)(2)(i)(B), (j)(2)(i)(C), (j)(2)(ii)(A) and (j)(2)(ii)(B), of this section and the State agency determines that the whole household benefits.

(iv) For purposes of paragraphs (j)(2)(i), (j)(2)(ii), and (j)(2)(iii) of this section, "authorized to receive" means that an individual has been determined eligible for benefits and has been notified of this determination, even if the benefits have been authorized but not received, authorized but not accessed, suspended or recouped, or not paid because they are less than a minimum amount.

(v) The eligibility factors which are deemed for food stamp eligibility without the verification required in paragraph (f) of this section because of PA/SSI status are the resource, gross and net income limits; social security number information, sponsored alien information, and residency. However, the State agency must collect and verify factors relating to benefit determination that are not collected and verified by the other program if these factors are required to be verified under paragraph (f) of this section. If any of the following factors are questionable, the State agency must verify, in accordance

with paragraph (f) of this section, that the household which is considered categorically eligible:

(A) Contains only members that are PA or SSI recipients as defined in the introductory paragraph (j) of this section;

(B) Meets the household definition in § 273.1(a);

(C) Includes all persons who purchase and prepare food together in one food stamp household regardless of whether or not they are separate units for PA or SSI purposes; and

(D) Includes no persons who have been disqualified as provided for in paragraph (j)(2)(vi) of this section.

(vi) Households subject to retrospective budgeting that have been suspended for PA purposes as provided for in Temporary Assistance for Needy Families (TANF) regulations, or that receive zero benefits shall continue to be considered as authorized to receive benefits from the appropriate agency. Categorical eligibility shall be assumed at recertification in the absence of a timely PA redetermination. If a recertified household is subsequently terminated from PA benefits, the procedures in § 273.12(f)(3), (4), and (5) shall be followed, as appropriate.

(vii) Under no circumstances shall any household be considered categorically eligible if:

(A) Any member of that household is disqualified for an intentional Program violation in accordance with § 273.16 or for failure to comply with monthly reporting requirements in accordance with § 273.21;

(B) The entire household is disqualified because one or more of its members failed to comply with workfare in accordance with § 273.22; or

(C) The head of the household is disqualified for failure to comply with the work requirements in accordance with § 273.7.

(D) Any member of that household is ineligible under § 273.11(m) by virtue of a conviction for a drug-related felony.

(viii) These households are subject to all food stamp eligibility and benefits provisions (including the provisions of § 273.11(c)) and cannot be reinstated in the Program on the basis of categorical eligibility provisions.

(ix) No person shall be included as a member in any household which is otherwise categorically eligible if that person is:

(A) An ineligible alien as defined in § 273.4;

(B) Ineligible under the student provisions in § 273.5;

(C) An SSI recipient in a cash-out State as defined in § 273.20; or

(D) Institutionalized in a nonexempt facility as defined in § 273.1(e).

(E) Ineligible because of failure to comply with a work requirement of § 273.7.

(x) For the purposes of work registration, the exemptions in § 273.7(b) shall be applied to individuals in categorically eligible households. Any such individual who is not exempt from work registration is subject to the other work requirements in § 273.7.

(xi) When determining eligibility for a categorically eligible household all provisions of this subchapter except for those listed below shall apply:

(A) Section 273.8 except for the last sentence of paragraph (a).

(B) Section 273.9(a) except for the fourth sentence in the introductory paragraph.

(C) Section 273.10(a)(1)(i).

(D) Section 273.10(b).

(E) Section 273.10(c) for the purposes of eligibility.

(3) Applicant GA households.

(i) State agencies may use the joint application processing procedures in paragraph (j)(1) of this section for GA households, except for the effective date of categorical eligibility, when the criteria in paragraphs (j)(3)(i)(A) and (B) of this section are met. Benefits for GA households that are categorically eligible, as provided in paragraph (j)(4) of this section, shall be provided from the date of the original food stamp application, the beginning of the period for which GA benefits are authorized, or the effective date of State GA categorical eligibility (February 1, 1991) or local GA categorical eligibility (August 1, 1992), whichever is later:

(A) The State agency administers a GA program which uses formalized application procedures and eligibility criteria that test levels of income and resources; and,

(B) Administration of the GA program is integrated with the administration of the PA or food stamp programs, in that the same eligibility workers process applications for GA benefits and PA or food stamp benefits.

(ii) State agencies in which different eligibility workers process applications for GA benefits and PA or food stamp benefits, but procedures otherwise meet the criteria in paragraph (j)(3)(i) of this section may, with FNS approval, jointly process GA and food stamp applications. If approved, State agencies shall adhere to the joint application processing procedures in paragraph (j)(1) of this section, except for the effective date of categorical eligibility for GA households. Benefits shall be provided GA households that are categorically eligible, as provided in paragraph (j)(4) of this section, from the date of the original food stamp application, the beginning of the period for which GA benefits are authorized, or the effective date of State GA categorical eligibility (February 1, 1992) or local GA categorical eligibility (August 1, 1992), whichever is later.

(4) Categorically eligible GA households. Households in which each member receives benefits from a State or local GA program which meets the criteria for conferring categorical eligibility in paragraph (j)(4)(i) of this section shall be categorically eligible for food stamps unless the individual or household is ineligible as specified in paragraph (j)(4)(iv) and (j)(4)(v) of this section.

(i) Certification of qualifying programs. Recipients of benefits from programs that meet the criteria in paragraphs (j)(4)(i)(A) through (j)(4(i)(C) of this section shall be considered categorically eligible to receive benefits from the Food Stamp Program. If a program does not meet all of these criteria, the State agency may submit a program description to the appropriate FNS regional office for a determination. The description should contain, at a minimum, the type of assistance provided, the income eligibility standard, and the period for which the assistance is provided.

(A) The program must have income standards which do not exceed the gross income eligibility standard in § 273.9(a)(1). The rules of the GA program apply in determining countable income.

(B) The program must provide GA benefits as defined in § 271.2 of this part.

(C) The program must provide benefits which are not limited to one-time emergency assistance.

(ii) Verification requirements. In determining whether a household is categorically eligible, the State agency shall verify that each member receives PA benefits, SSI, or GA from a program that meets the criteria in paragraph (j)(4)(i) section or that has been certified by FNS as an appropriate program and that it includes no individuals who have been disqualified as provided in paragraph (j)(4)(iv) or (j)(2)(v) of this section. The State agency shall also verify household composition if it is questionable, in accordance with § 273.2(f), in order to determine that the household meets the definition of a household in § 273.1(a).

(iii) Deemed eligibility factors. When determining eligibility for a categorically eligible household, all Food Stamp Program requirements apply except the following:

(A) Resources. None of the provisions of § 273.8 apply to categorically eligible households except the second sentence of § 273.8(a) pertaining to categorical eligibility and § 273.8(i) concerning transfer of resources. The provision in § 273.10(b) regarding resources available the time of the interview does not apply to categorically eligible households.

(B) Gross and net income limits. None of the provisions in § 273.9(a) relating to income eligibility standards apply to categorically eligible households, except the fourth sentence pertaining to categorical eligibility. The provisions in §§ 273.10(a)(1)(i) and 273.10(c) relating to the income eligibility determination also do not apply to categorically eligible households.

(C) Zero benefit households. All eligible households of one or two persons must be provided the minimum benefit, as required by § 273.10(e)(2)(ii)(C).

(D) Residency.

(E) Sponsored alien information.

(iv) Ineligible household members. No person shall be included as a member of an otherwise categorically eligible household if that person is:

(A) An ineligible alien, as defined in § 273.4;

(B) An ineligible student, as defined in § 273.5;

(C) Disqualified for failure to provide or apply for an SSN, as required by § 273.6;

(D) A household member, not the head of household, disqualified for failure to comply with a work requirement of § 273.7;

(E) Disqualified for intentional program violation, as required by § 273.16;

(F) An SSI recipient in a cash-out State, as defined in § 273.20; or

(G) An individual who is institutionalized in a nonexempt facility, as defined in § 273.1(e).

(v) Ineligible households. A household shall not be considered categorically eligible if:

(A) It refuses to cooperate in providing information to the State agency that is necessary for making a determination of its eligibility or for completing any subsequent review of its eligibility, as described in § 273.2(d) and § 273.21(m)(1)(ii);

(B) The household is disqualified because the head of household fails to comply with a work requirement of § 273.7;

(C) The household is ineligible under the striker provisions of § 273.1(g); or

(D) The household is ineligible because it knowingly transferred resources for the purpose of qualifying or attempting to qualify for the Program, as provided in § 273.8(i).

(vi) Combination households. Households consisting entirely of recipients of PA, SSI and/or GA from a program that meets the requirements of § 273.2(j)(4)(i) shall be categorically eligible in accordance with the provisions for paragraphs (j)(2)(iii) and (j)(2)(v) of this section for members receiving PA and SSI or provisions of paragraphs (j)(4)(iv) and (v) of this section for members receiving GA.

(5) Households with some PA or GA recipients. State agencies that use the joint application processing procedures in paragraphs (j)(1) and (j)(3) of this section may apply these procedures to a food stamp applicant household in which some, but not all, members are in the PA/GA filing unit, except for procedures concerning categorical eligibility. If the State agency decides not to use the joint application procedures for these households, the households shall file separate applications for PA/GA and food stamp benefits. This decision shall not be made on a case-by-case basis, but shall be applied uniformly to all households of this type in a project area.

(k) SSI households. For purposes of this paragraph, SSI is defined as Federal SSI payments made under title XVI of the Social Security Act, federally administered optional supplementary payments under section 1616 of that Act, or federally administered mandatory supplementary payments made under section 212(a) of Pub.L. 93-66. Except in cashout

States (§ 273.20), households which have not applied for food stamps in the thirty preceding days, and which do not have applications pending, may apply and be certified for food stamp benefits in accordance with the procedures described in § 273.2(k)(1)(i) or § 273.2(k)(1)(ii) and with the notice, procedural and timeliness requirements of the Food Stamp Act of 1977 and its implementing regulations. Households applying simultaneously for SSI and food stamps shall be subject to food stamp eligibility criteria, and benefit levels shall be based solely on food stamp eligibility criteria until the household is considered categorically eligible. However, households in which all members are either PA or SSI recipients or authorized to receive PA or SSI benefits (as discussed in § 273.2(j)) shall be food stamp eligible based on their PA/SSI status as provided for in § 273.2(j)(1)(iv) and (j)(2). Households denied NPA food stamps that have an SSI application pending shall be informed on the notice of denial of the possibility of categorical eligibility if they become SSI recipients. The State agency shall make an eligibility determination based on information provided by SSA or by the household.

(1) Initial application and eligibility determination. At each SSA office, the State agency shall either arrange for SSA to complete and forward food stamp applications, or the State agency shall outstation State food stamp eligibility workers at the SSA Offices with SSA's concurrence, based upon an agreement negotiated between the State agency and the SSA.

(i) If the State agency arranges with the SSA to complete and forward food stamp applications the following actions shall be taken:

(A) Whenever a member of a household consisting only of SSI applicants or recipients transacts business at an SSA office, the SSA shall inform the household of:

(1) Its right to apply for food stamps at the SSA office without going to the food stamp office; and

(2) Its right to apply at a food stamp office if it chooses to do so.

(B) The SSA will accept and complete food stamp applications received at the SSA Office from SSI households and forward them, within one working day after receipt of a signed application, to a designated office of the State agency. SSA shall also forward to the State agency a transmittal form which will be approved by SSA and FNS. The SSA will use the national food stamp application form for joint processing. State agencies may substitute a State food stamp application, provided that prior approval is received from both FNS and SSA. SSA shall approve, deny, or comment upon FNS-approved State food stamp applications within thirty days of their submission to SSA.

(C) SSA will accept and complete food stamp applications from SSI households received by SSA staff in contact stations. SSA will forward all food stamp applications from SSI households to the designated food stamp office.

(D) The SSA staff shall complete joint SSI and food stamp applications for residents of public institutions in accordance with § 273.1(e)(2).

(E) The State agency shall designate an address for the SSA to forward food stamp applications and accompanying information to the State agency for eligibility determination. Applications and accompanying information must be forwarded to the agreed upon address in accordance with the time standards contained in § 273.2(k)(1)(i)(B).

(F) Except for applications taken in accordance with paragraph (k)(1)(i)(D) of this section, the State agency shall make an eligibility determination and issue food stamp benefits to eligible SSI households within 30 days following the date the application was received by the SSA. Applications shall be considered filed for normal processing purposes when the signed application is received by SSA. The expedited processing time standards shall begin on the date the State agency receives a food stamp application. The State agency shall make an eligibility determination and issue food stamp benefits to a resident of a public institution who applies jointly for SSI and food stamps within 30 days following the date of the applicant's release from the institution. Expedited processing time standards for an applicant who has applied for food stamps and SSI prior to release shall also begin on the date of the applicant's release from the institution in accordance with § 273.2(i)(3)(i). SSA shall notify the State agency of the date of release of the applicant from the institution. If, for any reason, the State agency is not notified on a timely basis of the applicant's release date, the State agency shall restore benefits in accordance with § 273.17 to such applicant back to the date of release. Food stamp applications and supporting documentation sent to an incorrect food stamp office shall be sent to the correct office, by the State agency, within one working day of their receipt in accordance with § 273.2(c)(2)(ii).

(G) Households in which all members are applying for or participating in SSI will not be required to see a State eligibility worker, or otherwise be subjected to an additional State interview. The food stamp application will be processed by the State agency. The State agency shall not contact the household further in order to obtain information for certification for food stamp benefits unless: the application is improperly completed; mandatory verification required by § 273.2(f)(1) is missing; or, the State agency determines that certain information on the application is questionable. In no event would the applicant be required to appear at the food stamp office to finalize the eligibility determination. Further contact made in accordance with this paragraph shall

not constitute a second food stamp certification interview.

(H) SSA shall refer non-SSI households to the correct food stamp office. The State agencies shall process those applications in accordance with the procedures noted in § 273.2. Applications from such households shall be considered filed on the date the signed application is taken at the correct State agency office, and the normal and expedited processing time standards shall begin on that date.

(I) The SSA shall prescreen all applications for entitlement to expedited services on the day the application is received at the SSA office and shall mark “Expedited Processing” on the first page of all households' applications that appear to be entitled to such processing. The SSA will inform households which appear to meet the criteria for expedited service that benefits may be issued a few days sooner if the household applies directly at the food stamp office. The household may take the application from SSA to the food stamp office for screening, an interview, and processing of the application. This provision does not apply to applications described in paragraph (k)(1)(i)(D) of this section.

(J) The State agency shall prescreen all applications received from the SSA for entitlement to expedited service on the day the application is received at the correct food stamp office. All SSI households entitled to expedited service shall be certified in accordance with § 273.2(i) except that the expedited processing time standard shall begin on the date the application is received at the correct State agency office, unless the applicant is a resident of a public institution as described in § 273.1(e)(2).

(K) The State agency shall develop and implement a method to determine if members of SSI households whose applications are forwarded by the SSA are already participating in the Food Stamp Program directly through the State agency.

(L) If SSA takes an SSI application or redetermination on the telephone from a member of a pure SSI household, a food stamp application shall also be completed during the telephone interview. In these cases, the food stamp application shall be mailed to the claimant for signature for return to the SSA office or to the State agency. SSA shall then forward any food stamp applications it receives to the State agency. The State agency may not require the household to be interviewed again in the food stamp office. The State agency shall not contact the household further in order to obtain information for certification for food stamp benefits except in accordance with § 273.2(k)(1)(i)(F).

(M) To SSI recipients redetermined for SSI by mail, the SSA shall send a stuffer informing them of their right to file a food stamp application at the SSA office (if they are members of a pure SSI household) or at their local food stamp office, and their

right to an out-of-office food stamp interview to be performed by the State agency if the household is unable to appoint an authorized representative.

(N) Section 272.4 bilingual requirements shall not apply to the Social Security Administration.

(O) State agencies shall provide and SSA shall distribute an information sheet or brochure to all households processed under this paragraph. This material shall inform the household of the following: The address and telephone number of the household's correct food stamp office, the remaining actions to be taken in the application process, and a statement that a household should be notified of the food stamp determinations within thirty days and can contact the food stamp office if it receives no notification within thirty days, or has other questions or problems. It shall also include the client's rights and responsibilities (including fair hearings, authorized representatives, out-of-office interviews, reporting changes and timely reapplication), information on how and where to obtain coupons, and how to use coupons (including the commodities clients may purchase with coupons).

(P) As part of the SSA-State agency joint food stamp processing agreement, States may negotiate, on behalf of project areas, to have SSA provide initial eligibility and payment data where the local area is unable to access accurate and timely data through the State's SDX. However, in negotiating such agreements, SSA may challenge a State's determination that it does not have the computer capability to use SDX data. If SSA, FNS, and the State are unable to resolve this matter, and SSA determines that a State does have the capability to provide accurate and timely SDX data to the food stamp project area, SSA is not required to provide alternate means of transmitting initial SSI eligibility and payment data.

(ii) If the State agency chooses to outstation eligibility workers at SSA offices, with SSA's concurrence, the following actions shall be completed.

(A) SSA will provide adequate space for State food stamp eligibility workers in SSA offices.

(B) The State agency shall have at least one outstationed worker on duty at all time periods during which households will be referred for food stamp application processing. In most cases this would require the availability of an outstationed worker throughout normal SSA business hours.

(C) The following households shall be entitled to file food stamp applications with, and be interviewed by an outstationed eligibility worker:

(1) Households containing an applicant for or recipient of SSI;

(2) Households which do not have an applicant for or recipient of SSI, but which contain an applicant for or recipient of benefits under title II of the Social Security Act, if the State agency and SSA have an agreement to allow the processing of such households at SSA offices.

(D) Households shall be interviewed for food stamps on the day of application unless there is insufficient time to conduct an interview. The State agency shall arrange for the outstationed worker to interview applicants as soon as possible.

(E) The State agency shall not refuse to provide service to persons served by the SSA office because they do not reside in the county or project area in which the SSA office is located, provided, however, that they reside within the jurisdictions served by the SSA office and the State agency. The State agency is not required to process the applications of persons who are not residing within the SSA office jurisdiction but who do reside within the State agency's jurisdiction, other than to forward the forms to the correct food stamp offices.

(F) The State agency may permit the eligibility worker outstationed at the SSA to determine the eligibility of households, or may require that completed applications be forwarded elsewhere for the eligibility determination.

(G) Applications from households entitled to joint processing through an outstationed eligibility worker shall be considered filed on the date they are submitted to that worker. Both the normal and expedited service time standards shall begin on that date.

(H) Households not entitled to joint processing shall be entitled to obtain and submit applications at the SSA office. The outstationed eligibility worker need not process these applications except to forward them to the correct food stamp office where they shall be considered filed upon receipt (any activities beyond acceptance and referral of the application would require SSA concurrence). Both the normal and expedited service time standards shall begin on that date.

(iii) Regardless of whether the State agency or SSA conducts the food stamp interview, the following actions shall be taken:

(A) Verification.

(1) The State agency shall ensure that information required by § 273.2(f) is verified prior to certification for households initially applying. Households entitled to expedited certification services shall be processed in accordance with § 273.2(i).

(2) The State agency has the option of verifying SSI benefit payments through the State Data Exchange (SDX), the Beneficiary Data Exchange (BENDEX) and/or through verification provided by the household.

(3) State agencies may verify other information through SDX and BENDEX but only to the extent permitted by data exchange agreements with SSA. Information verified through SDX or BENDEX shall not be reverified unless it is questionable. Households shall be given the opportunity to provide verification from another source if all necessary information is not available on the SDX or the BENDEX, or if the SDX/BENDEX information is contradictory to other household information.

(B) Certification period.

(1) State agencies shall certify households under these procedures for up to twelve months, according to the standards in § 273.10(f), except for State agencies which must assign the initial certification period to coincide with adjustments to the SSI benefit amount as designated in § 273.10(f)(3)(iii).

(2) In cases jointly processed in which the SSI determination results in denial, and the State agency believes that food stamp eligibility or benefit levels may be affected, the State agency shall send the household a notice of expiration advising that the certification period will expire the end of the month following the month in which the notice is sent and that it must reapply if it wishes to continue to participate. The notice shall also explain that its certification period is expiring because of changes in circumstances which may affect food stamp eligibility or benefit levels and that the household may be entitled to an out-of-office interview, in accordance with § 273.2(e)(2).

(C) Changes in circumstances.

(1) Households shall report changes in accordance with the requirements in § 273.12. The State agency shall process changes in accordance with § 273.12.

(2) Within ten days of learning of the determination of the application for SSI through SDX, the household, advisement from SSA where SSA agrees to do so for households processed under § 273.2(k)(1)(i), or from any other source, the State agency shall take required action in accordance with § 273.12. State agencies are encouraged to monitor the results of the SSI determination through SDX and BENDEX to the extent practical.

(3) The State agency shall process adjustments to SSI cases resulting from mass changes, in accordance with provisions of § 273.12(e).

(D) SSI households applying at the food stamp office. The State agency shall allow SSI households to submit food stamp applications to local food stamp offices rather than through the SSA if the household chooses. In such cases all verification, including that pertaining to SSI program benefits, shall be provided by the household, by SDX or BENDEX, or obtained by the State agency rather than being provided by the SSA.

(E) Restoration of lost benefits. The State agency shall restore to the household benefits which were lost whenever the loss was caused by an error by the State agency or by the Social Security Administration through joint processing. Such an error shall include, but not be limited to, the loss of an applicant's food stamp application after it has been filed with SSA or with a State agency's outstationed worker. Lost benefits shall be restored in accordance with § 273.17.

(2) Recertification.

(i) The State agency shall complete the application process and approve or deny timely applications for recertification in accordance with § 273.14 of the food stamp regulations. A face-to-face interview shall be waived if requested by a household consisting entirely of SSI participants unable to appoint an authorized representative. The State agency shall provide SSI households with a notice of expiration in accordance with § 273.14(b), except that such notification shall inform households consisting entirely of SSI recipients that they are entitled to a waiver of a face-to-face interview if the household is unable to appoint an authorized representative.

(ii) Households shall be entitled to make a timely application (in accordance with § 273.14(b)(3)) for food stamp recertification at an SSA office under the following conditions.

(A) In SSA offices where § 273.2(k)(1)(i) is in effect, SSA shall accept the application of a pure SSI household and forward the completed application,

transmittal form and any available verification to the designated food stamp office. Where SSA accepts and refers the application in such situations, the household shall not be required to appear at a second office interview, although the State agency may conduct an out-of-office interview, if necessary.

(B) In SSA offices where § 273.2(k)(1)(ii) is in effect, the outstationed worker shall accept the application and interview the recipient and the State agency shall process the application according to § 273.14.

(l) Households applying for or receiving social security benefits. An applicant for or recipient of social security benefits under title II of the Social Security Act shall be informed at the SSA office of the availability of benefits under the Food Stamp Program and the availability of a Food Stamp Program application at the SSA office. The SSA office is not required to accept applications and conduct interviews for title II applicants/recipients in the manner prescribed in § 273.2(k) for SSI applicants/recipients unless the State agency has chosen to outstation eligibility workers at the SSA office and has an agreement with SSA to allow the processing of such households at SSA offices. In these cases, processing shall be in accordance with § 273.2(k)(1)(ii).

(m) Households where not all members are applying for or receiving SSI. An applicant for or recipient of SSI shall be informed at the SSA office of the availability of benefits under the Food Stamp Program and the availability of a food stamp application at the SSA office. The SSA office is not required to accept applications or to conduct interviews for SSI applicants or recipients who are not members of households in which all are SSI applicants or recipients unless the State agency has chosen to outstation eligibility workers at the SSA office. In this case, processing shall be in accordance with § 273.2(k)(1)(ii).

(n) Authorized representatives. Representatives may be authorized to act on behalf of a household in the application process, in obtaining food stamp benefits, and in using food stamp benefits.

(1) Application processing and reporting. The State agency shall inform applicants and prospective applicants that indicate that they may have difficulty completing the application process, that a nonhousehold member may be designated as the authorized representative for application processing purposes. The household member or the authorized representative may complete work registration forms for those household members required to register for work. The authorized representative designated for application processing purposes may also carry out household responsibilities during the certification period, such as reporting changes in the household's income or other household circumstances in accordance with § 273.12(a) and § 273.21. Except for those situations in which a drug and alcohol treatment center or other group living arrangement acts as the authorized representative, the State agency must inform the household that the

household will be held liable for any overissuance that results from erroneous information given by the authorized representative.

(i) A nonhousehold member may be designated as an authorized representative for the application process provided that the person is an adult who is sufficiently aware of relevant household circumstances and the authorized representative designation has been made in writing by the head of the household, the spouse, or another responsible member of the household. Paragraph (n)(4) of this section contains further restrictions on who can be designated an authorized representative.

(ii) Residents of drug or alcohol treatment centers must apply and be certified through the use of authorized representatives in accordance with § 273.11(e). Residents of group living arrangements have the option to apply and be certified through the use of authorized representatives in accordance with § 273.11(f).

(2) Obtaining food stamp benefits. An authorized representative may be designated to obtain benefits. Even if the household is able to obtain benefits, it should be encouraged to name an authorized representative for obtaining benefits in case of illness or other circumstances which might result in an inability to obtain benefits. The name of the authorized representative must be recorded in the household's case record and on the food stamp identification (ID) card, as provided in § 274.10(a)(1) of this chapter. The authorized representative for obtaining benefits may or may not be the same individual designated as an authorized representative for the application process or for meeting reporting requirements during the certification period. The State agency must develop a system by which a household may designate an emergency authorized representative in accordance with § 274.10(c) of this chapter to obtain the household's benefits for a particular month.

(3) Using benefits. A household may allow any household member or nonmember to use its ID card and benefits to purchase food or meals, if authorized, for the household. Drug or alcohol treatment centers and group living arrangements which act as authorized representatives for residents of the facilities must use food stamp benefits for food prepared and served to those residents participating in the Food Stamp Program (except when residents leave the facility as provided in § 273.11(e) and (f)).

(4) Restrictions on designations of authorized representatives.

(i) The State agency must restrict the use of authorized representatives for purposes of application processing and obtaining food stamp benefits as follows:

(A) State agency employees who are involved in the certification or issuance processes and retailers who are authorized to accept food stamp benefits may not act

as authorized representatives without the specific written approval of a designated State agency official and only if that official determines that no one else is available to serve as an authorized representative.

(B) An individual disqualified for an intentional Program violation cannot act as an authorized representative during the disqualification period, unless the State agency has determined that no one else is available to serve as an authorized representative. The State agency must separately determine whether the individual is needed to apply on behalf of the household, or to obtain benefits on behalf of the household.

(C) If a State agency has determined that an authorized representative has knowingly provided false information about household circumstances or has made improper use of coupons, it may disqualify that person from being an authorized representative for up to one year. The State agency must send written notification to the affected household(s) and the authorized representative 30 days prior to the date of disqualification. The notification must specify the reason for the proposed action and the household's right to request a fair hearing. This provision is not applicable in the case of drug and alcoholic treatment centers and those group homes which act as authorized representatives for their residents. However, drug and alcohol treatment centers and the heads of group living arrangements that act as authorized representatives for their residents, and which intentionally misrepresent households circumstances, may be prosecuted under applicable Federal and State statutes for their acts.

(D) Homeless meal providers, as defined in § 271.2 of this chapter, may not act as authorized representatives for homeless food stamp recipients.

(ii) In order to prevent abuse of the program, the State agency may set a limit on the number of households an authorized representative may represent.

(iii) In the event employers, such as those that employ migrant or seasonal farmworkers, are designated as authorized representatives or that a single authorized representative has access to a large number of authorization documents or coupons, the State agency should exercise caution to assure that each household has freely requested the assistance of the authorized representative, the household's circumstances are correctly represented, the household is receiving the correct amount of benefits and that the authorized representative is properly using the benefits.

§ 273.8 Resource eligibility standards.

(a) Uniform standards. The State agency shall apply the uniform national resource standards of eligibility to all applicant households, including those households in which members are recipients of federally aided public assistance, general assistance, or supplemental security income. Households which are categorically eligible as defined in § 273.2(j)(2) or 273.2(j)(4) do not have to meet the resource limits or definitions in this section.

(b) Maximum allowable resources. The maximum allowable resources, including both liquid and nonliquid assets, of all members of the household shall not exceed $2,000 for the household, except that, for households including one or more disabled members or a member or members age 60 or over, such resources shall not exceed $3,000.

(c) Definition of resources. In determining the resources of a household, the following shall be included and documented by the State agency in sufficient detail to permit verification:

(1) Liquid resources, such as cash on hand, money in checking or savings accounts, savings certificates, stocks or bonds, lump sum payments as specified in § 273.9(c)(8), funds held in individual retirement accounts (IRA's), and funds held in Keogh plans which do not involve the household member in a contractual relationship with individuals who are not household members. In counting resources of households with IRA's or includable Keogh plans, the State agency shall include the total cash value of the account or plan minus the amount of the penalty (if any) that would be exacted for the early withdrawal of the entire amount in the account or plan; and

(2) Nonliquid resources, personal property, licensed and unlicensed vehicles, buildings, land, recreational properties, and any other property, provided that these resources are not specifically excluded under paragraph (e) of this section. The value of nonexempt resources, except for licensed vehicles as specified in paragraph (f) of this section, shall be its equity value. The equity value is the fair market value less encumbrances.

(3) For a household containing a sponsored alien, the State agency must deem the resources of the sponsor and the sponsor's spouse in accordance with § 273.4(c)(2).

(d) Jointly owned resources. Resources owned jointly by separate households shall be considered available in their entirety to each household, unless it can be demonstrated by the applicant household that such resources are inaccessible to that household. If the household can demonstrate that it has access to only a portion of the resource, the value of that portion of the resource shall be counted toward the household's resource level. The resource shall be considered totally inaccessible to the household if the resource cannot practically be subdivided and the household's access to the value of the resource is dependent on the agreement of a joint owner who refuses to comply. For the purpose of this provision,

ineligible aliens or disqualified individuals residing with the household shall be considered household members. Resources shall be considered inaccessible to persons residing in shelters for battered women and children, as defined in § 271.2, if

(1) The resources are jointly owned by such persons and by members of their former household; and

(2) The shelter resident's access to the value of the resources is dependent on the agreement of a joint owner who still resides in the former household.

(e) Exclusions from resources. In determining the resources of a household, only the following shall be excluded:

(1) The home and surrounding property which is not separated from the home by intervening property owned by others. Public rights of way, such as roads which run through the surrounding property and separate it from the home, will not affect the exemption of the property. The home and surrounding property shall remain exempt when temporarily unoccupied for reasons of employment, training for future employment, illness, or uninhabitability caused by casualty or natural disaster, if the household intends to return. Households that currently do not own a home, but own or are purchasing a lot on which they intend to build or are building a permanent home, shall receive an exclusion for the value of the lot and, if it is partially completed, for the home.

(2) Household goods, personal effects, the cash value of life insurance policies, one burial plot per household member, and the value of one bona fide funeral agreement per household member, provided that the agreement does not exceed $1,500 in equity value, in which event the value above $1,500 is counted. The cash value of pension plans or funds shall be excluded, except that Keogh plans which involve no contractual relationship with individuals who are not household members and individual retirement accounts (IRA's) shall not be excluded under this paragraph.

(3)(i) Licensed vehicles that meet the following conditions:

(A) Used for income-producing purposes such as, but not limited to, a taxi, truck, or fishing boat, or a vehicle used for deliveries, to call on clients or customers, or required by the terms of employment. Licensed vehicles that have previously been used by a self-employed household member engaged in farming but are no longer used in farming because the household member has terminated his/her self-employment from farming must continue to be excluded as a resource for one year from the date the household member terminated his/her self-employment farming;

(B) Annually producing income consistent with its fair market value, even if used only on a seasonal basis;

(C) Necessary for long-distance travel, other than daily commuting, that is essential to the employment of a household member (or ineligible alien or disqualified person whose resources are being considered available to the household)--for example, the vehicle of a traveling sales person or a migrant farm worker following the work stream;

(D) Used as the household's home and, therefore, excluded under paragraph (e)(1) of this section;

(E) Necessary to transport a physically disabled household member (or physically disabled ineligible alien or physically disabled disqualified person whose resources are being considered available to the household) regardless of the purpose of such transportation (limited to one vehicle per physically disabled household member). The vehicle need not have special equipment or be used primarily by or for the transportation of the physically disabled household member; or

(F) Necessary to carry fuel for heating or water for home use when the transported fuel or water is anticipated to be the primary source of fuel or water for the household during the certification period. Households must receive this resource exclusion without having to meet any additional tests concerning the nature, capabilities, or other uses of the vehicle. Households must not be required to furnish documentation, as mandated by § 273.2(f)(4), unless the exclusion of the vehicle is questionable. If the basis for exclusion of the vehicle is questionable, the State agency may require documentation from the household, in accordance with § 273.2(f)(4).

(G) The value of the vehicle is inaccessible, in accordance with paragraph (e)(18) of this section, because its sale would produce an estimated return of not more than $1,500.

(ii) On those Indian reservations that do not require vehicles driven by tribal members to be licensed, such vehicles must be treated as licensed vehicles for the purpose of this exclusion.

(iii) The exclusions in paragraphs (e)(3)(i)(A) through (e)(3)(i)(C) of this section will apply when the vehicle is not in use because of temporary unemployment, such as when a taxi driver is ill and cannot work, or when a fishing boat is frozen in and cannot be used.

(4) Property which annually produces income consistent with its fair market value, even if only used on a seasonal basis. Such property shall include rental homes and vacation homes.

(5) Property, such as farm land, or work related equipment, such as the tools of a tradesman or the machinery of a farmer, which is essential to the employment or self-employment of a household member. Property essential to the self-employment of a household member engaged in farming shall continue to be excluded for one year from the date the household member terminates his/her self-employment from farming.

(6) Installment contracts for the sale of land or buildings if the contract or agreement is producing income consistent with its fair market value. The exclusion shall also apply to the value of the property sold under the installment contract, or held as security in exchange for a purchase price consistent with the fair market value of that property.

(7) Any governmental payments which are designated for the restoration of a home damaged in a disaster, if the household is subject to a legal sanction if the funds are not used as intended; for example, payments made by the Department of Housing and Urban Development through the individual and family grant program or disaster loans or grants made by the Small Business Administration.

(8) Resources having a cash value which is not accessible to the household, such as but not limited to, irrevocable trust funds, security deposits on rental property or utilities, property in probate, and real property which the household is making a good faith effort to sell at a reasonable price and which has not been sold. The State agency may verify that the property is for sale and that the household has not declined a reasonable offer. Verification may be obtained through a collateral contact or documentation, such as an advertisement for public sale in a newspaper of general circulation or a listing with a real estate broker. Any funds in a trust or transferred to a trust, and the income produced by that trust to the extent it is not available to the household, shall be considered inaccessible to the household if:

(i) The trust arrangement is not likely to cease during the certification period and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period;

(ii) The trustee administering the funds is either:

(A) A court, or an institution, corporation, or organization which is not under the direction or ownership of any household member, or (B) an individual appointed by the court who has court imposed limitations placed on his/her use of the funds which meet the requirements of this paragraph;

(iii) Trust investments made on behalf of the trust do not directly involve or assist any business or corporation under the control, direction, or influence of a household member; and

(iv) The funds held in irrevocable trust are either:

(A) Established from the household's own funds, if the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of any person named by the household creating the trust, or (B) established from non-household funds by a nonhousehold member.

(9) Resources, such as those of students or self-employed persons, which have been prorated as income. The treatment of student income as explained in § 273.10(c) and the treatment of self-employment income is explained in § 273.11(a).

(10) Indian lands held jointly with the Tribe, or land that can be sold only with the approval of the Department of the Interior's Bureau of Indian Affairs; and

(11) Resources which are excluded for food stamp purposes by express provision of Federal statute.

(12) Earned income tax credits shall be excluded as follows:

(i) A Federal earned income tax credit received either as a lump sum or as payments under section 3507 of the Internal Revenue Code for the month of receipt and the following month for the individual and that individual's spouse.

(ii) Any Federal, State or local earned income tax credit received by any household member shall be excluded for 12 months, provided the household was participating in the Food Stamp Program at the time of receipt of the earned income tax credit and provided the household participates continuously during that 12-month period. Breaks in participation of one month or less due to administrative reasons, such as delayed recertification or missing or late monthly reports, shall not be considered as nonparticipation in determining the 12-month exclusion.

(13) Where an exclusion applies because of use of a resource by or for a household member, the exclusion shall also apply when the resource is being used by or for an ineligible alien or disqualified person whose resources are being counted as part of the household's resources. For example, work related equipment essential to the employment of an ineligible alien or disqualified person shall be excluded (in accordance with paragraph (e)(5) of this section), as shall one burial plot per ineligible alien or

disqualified household member (in accordance with paragraph (e)(2) of this section).

(14) Energy assistance payments or allowances excluded as income under § 273.9(c)(11).

(15) Non-liquid asset(s) against which a lien has been placed as a result of taking out a business loan and the household is prohibited by the security or lien agreement with the lien holder (creditor) from selling the asset(s).

(16) Property, real or personal, to the extent that it is directly related to the maintenance or use of a vehicle excluded under paragraphs (e)(3)(i)(A), (e)(3)(i)(B) or (e)(3)(i)(C) of this section. Only that portion of real property determined necessary for maintenance or use is excludable under this provision. For example, a household which owns a produce truck to earn its livelihood may be prohibited from parking the truck in a residential area. The household may own a 100-acre field and use a quarter-acre of the field to park and/or service the truck. Only the value of the quarter-acre would be excludable under this provision, not the entire 100-acre field.

(17) The resources of a household member who receives SSI or PA benefits. A household member is considered a recipient of these benefits if the benefits have been authorized but not received, if the benefits are suspended or recouped, or if the benefits are not paid because they are less than a minimum amount. For purposes of this paragraph (e)(17), if an individual receives non-cash or in-kind services from a program specified in §§ 273.2(j)(2)(i)(B), 273.2(j)(2)(i)(C), 273.2(j)(2)(ii)(A), or 273.2(j)(2)(ii)(B), the State agency must determine whether the individual or the household benefits from the assistance provided, in accordance with § 273.2(j)(2)(iii). Individuals entitled to Medicaid benefits only are not considered recipients of SSI or PA.

(18) The State agency must develop clear and uniform standards for identifying kinds of resources that, as a practical matter, the household is unable to sell for any significant return because the household's interest is relatively slight or the costs of selling the household's interest would be relatively great. The State agency must so identify a resource if its sale or other disposition is unlikely to produce any significant amount of funds for the support of the household or the cost of selling the resource would be relatively great. This provision does not apply to financial instruments such as stocks, bonds, and negotiable financial instruments. The determination of whether any part of the value of a vehicle is included as a resource must be made in accordance with the provisions of paragraphs (e)(3) and (f) of this section. The State agency may require verification of the value of a resource to be excluded if the information provided by the household is questionable. The State agencies must use the following definitions in developing these standards:

(i) “Significant return” means any return, after estimating costs of sale or disposition, and taking into account the ownership interest of the household, that the State agency determines are more than $1,500; and

(ii) “Any significant amount of funds” means funds amounting to more than $1,500.

(19) At State agency option, any resources that the State agency excludes when determining eligibility or benefits for TANF cash assistance, as defined by 45 CFR 260.31 (a)(1) and (a)(2), or medical assistance under Section 1931 of the SSA. Resource exclusions under TANF and Section 1931 programs that do not evaluate the financial circumstances of adults in the household and programs grandfathered under Section 404(a)(2) of the SSA shall not be excluded under this paragraph (e)(19). Additionally, licensed vehicles not excluded under Section 5(g)(2)(C) or (D) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2014(g)(2)(C) or (D)), cash on hand, amounts in any account in a financial institution that are readily available to the household including money in checking or savings accounts, savings certificates, stocks, or bonds shall also not be excluded. The term “readily available” applies to resources that the owner can simply withdraw from a financial institution. State agencies may exclude deposits in individual development accounts (IDAs). A State agency that chooses to exclude resources under this paragraph (e)(19) must specify in its State plan of operation that it has selected this option and provide a description of the resources that are being excluded.

(f) Determining the value of non-excluded vehicles.

(1) The State agency must:

(i) Individually evaluate the fair market value of each licensed vehicle that is not excluded under paragraph (e)(3) of this section;

(ii) Count in full toward the household's resource level, regardless of any encumbrances on the vehicle, that portion of the fair market value that exceeds $4,650 beginning October 1, 1996;

(iii) Evaluate such licensed vehicles as well as all unlicensed vehicles for their equity value (fair market value less encumbrances), unless specifically exempt from the equity value test; and

(iv) Count as a resource only the greater of the two amounts if the vehicle has a countable fair market value of more than $4,650 after October 1, 1996, and also has a countable equity value.

(2) Only the following vehicles are exempt from the equity value test outlined in paragraph (f)(1)(iii) of this section:

(i) Vehicles excluded under paragraph (e)(3)(i) of this section;

(ii) One licensed vehicle per adult household member (or an ineligible alien or disqualified household member whose resources are being considered available to household), regardless of the use of the vehicle; and

(iii) Any other vehicle a household member under age 18 (or an ineligible alien or disqualified household member under age 18 whose resources are being considered available to household) drives to commute to and from employment, or to and from training or education which is preparatory to employment, or to seek employment. This equity exclusion applies during temporary periods of unemployment to a vehicle which a household member under age 18 customarily drives to commute to and from employment.

(3) State agencies will be responsible for establishing methodologies for determining the fair market value of vehicles. In establishing such methodologies, the State agency must not increase the basic value of a vehicle by adding the value of low mileage or other factors such as optional equipment or special apparatus for the handicapped. Any household that claims that the State agency's determination of the value of its vehicle(s) is not accurate must be given the opportunity to acquire verification of the true value of the vehicle from a reliable source.

(4) A State agency may substitute for the vehicle evaluation provisions in paragraphs (f)(1) through (f)(3) of this section the vehicle evaluation provisions of a program in that State that uses TANF or State or local funds to meet TANF maintenance of effort requirements and provides benefits that meet the definition of “assistance” according to TANF regulations at 45 CFR 260.31, where doing so results in a lower attribution of resources to the household. States electing this option must:

(i) Apply the substituted TANF vehicle rules to all food stamp households in the State, whether or not they receive or are eligible to receive TANF assistance of any kind;

(ii) Exclude from household resources any vehicles excluded by either the substituted TANF vehicle rules or the food stamp vehicle rules at paragraphs (e)(3), (e)(5), (e)(11) and (f) of this section;

(iii) Apply either the substituted TANF rules or the food stamp vehicle rules to each of a household's vehicles in turn, using whichever set of rules produces the lower attribution of resources to the household;

(iv) Apply any vehicle exclusions allowed by their TANF vehicle rules to the vehicles with the highest values; and

(v) Exclude any vehicle owned by any household in the State if it selects TANF vehicle rules that exclude all vehicles completely or contain no resource provisions at all.

(g) Handling of excluded funds. Excluded funds that are kept in a separate account, and that are not commingled in an account with nonexcluded funds, shall retain their resource exclusion for an unlimited period of time. The resources of students and self-employment households which are excluded as provided in paragraph (e)(9) of this section and are commingled in an account with nonexcluded funds shall retain their exclusion for the period of time over which they have been prorated as income. All other excluded moneys which are commingled in an account with nonexcluded funds shall retain their exemption for six months from the date they are commingled. After six months from the date of commingling, all funds in the commingled account shall be counted as a resource.

(h) Transfer of resources.

(1) At the time of application, households shall be asked to provide information regarding any resources which any household member (or ineligible alien or disqualified person whose resources are being considered available to the household) had transferred within the 3-month period immediately preceding the date of application. Households which have transferred resources knowingly for the purpose of qualifying or attempting to qualify for food stamp benefits shall be disqualified from participation in the program for up to 1 year from the date of the discovery of the transfer. This disqualification period shall be applied if the resources are transferred knowingly in the 3-month period prior to application or if they are transferred knowingly after the household is determined eligible for benefits. An example of the latter would be assets which the household acquires after being certified and which are then transferred to prevent the household from exceeding the maximum resource limit.

(2) Eligibility for the program will not be affected by the following transfers:

(i) Resources which would not otherwise affect eligibility, for example, resources consisting of excluded personal property such as furniture or of money that, when added to other nonexempt household resources, totaled less at the time of the transfer than the allowable resource limits;

(ii) Resources which are sold or traded at, or near, fair market value;

(iii) Resources which are transferred between members of the same household (including ineligible aliens or disqualified persons whose resources are being considered available to the household); and

(iv) Resources which are transferred for reasons other than qualifying or attempting to qualify for food stamp benefits, for example, a parent placing funds into an educational trust fund described in paragraph (e)(9) of this section.

(3) In the event the State agency establishes that an applicant household knowingly transferred resources for the purpose of qualifying or attempting to qualify for food stamp benefits, the household shall be sent a notice of denial explaining the reason for and length of the disqualification. The period of disqualification shall begin in the month of application. If the household is participating at the time of the discovery of the transfer, a notice of adverse action explaining the reason for and length of the disqualification shall be sent. The period of disqualification shall be made effective with the first allotment to be issued after the notice of adverse action period has expired, unless the household has requested a fair hearing and continued benefits.

(4) The length of the disqualification period shall be based on the amount by which nonexempt transferred resources, when added to other countable resources, exceeds the allowable resource limits. The following chart will be used to determine the period of disqualification.

Amount in excess of the resource limit	Period of disqualification (months)
$0 to 249.99	1
250 to 999.99	3
1,000 to 2999.99	6
3,000 to 4,999.99	9
5,000 or more	12

(i) Resources of non-household members.

(1) The resources of non-household members, as defined in § 273.1(b)(7)(i) and (ii), must be handled as outlined in § 273.11(d).

(2) The resources of non-household members, as defined in § 273.1(b)(7)(iii) through (vi), must be handled as outlined in § 273.11(c) and (d), as appropriate.

§ 273.10 Determining household eligibility and benefit levels.

(a) Month of application--

(1) Determination of eligibility and benefit levels.

(i) A household's eligibility shall be determined for the month of application by considering the household's circumstances for the entire month of application. Most households will have the eligibility determination based on circumstances for the entire calendar month in which the household filed its application. However, State agencies may, with the prior approval of FNS, use a fiscal month if the State agency determines that it is more efficient and satisfies FNS that the accounting procedures fully comply with certification and issuance requirements contained in these regulations. A State agency may elect to use either a standard fiscal month for all households, such as from the 15th of one calendar month to the 15th of the next calendar month, or a fiscal month that will vary for each household depending on the date an individual files an application for the Program. Applicant households consisting of residents of a public institution who apply jointly for SSI and food stamps prior to release from the public institution in accordance with § 273.1(e)(2) will have their eligibility determined for the month in which the applicant household was released from the institution.

(ii) A household's benefit level for the initial months of certification shall be based on the day of the month it applies for benefits and the household shall receive benefits from the date of application to the end of the month unless the applicant household consists of residents of a public institution. For households which apply for SSI prior to their release from a public institution in accordance with § 273.1(e)(2), the benefit level for the initial month of certification shall be based on the date of the month the household is released from the institution and the household shall receive benefits from the date of the household's release from the institution to the end of the month. As used in this section, the term “initial month” means the first month for which the household is certified for participation in the Food Stamp Program following any period during which the household was not certified for participation, except for migrant and seasonal farmworker households. In the case of migrant and seasonal farmworker households, the term “initial month” means the first month for which the household is certified for participation in the Food Stamp Program following any period of more than 1 month during which the household was not certified for participation. Recertification shall be processed in accordance with § 273.10(a)(2). The State agency shall prorate a household's benefits according to one of the two following options:

(A) The State agency shall use a standard 30-day calendar or fiscal month. A household applying on the 31st of a month will be treated as though it applied on the 30th of the month.

(B) The State agency shall prorate benefits over the exact length of a particular calendar or fiscal month.

(iii) To determine the amount of the prorated allotment, the State agency shall use either the appropriate Food Stamp Allotment Proration Table provided by FNS or whichever of the following formulae is appropriate:

(A) For State agencies which use a standard 30-day calendar or fiscal month the formula is as follows, keeping in mind that the date of application for someone applying on the 31st of a month is the 30th:

$$\text{full month's benefits} \times \frac{(31 - \text{date of application})}{30} = \text{allotment}$$

(B) For State agencies which use the exact number of days in a month, the formula is:

$$\text{full month's benefits} \times \frac{(\text{number of days in month} + 1 - \text{date of application})}{\text{number of days in month}} = \text{allotment}$$

(C) If after using the appropriate formula the result ends in 1 through 99 cents, the State agency shall round the product down to the nearest lower whole dollar. If the computation results in an allotment of less than $10, then no issuance shall be made for the initial month.

(2) Application for recertification. Eligibility for recertification shall be determined based on circumstances anticipated for the certification period starting the month following the expiration of the current certification period. The level of benefits for recertifications shall be based on the same anticipated circumstances, except an application after the household's certification period has expired, that ap for retrospectively budgeted households which shall be recertified in accordance with § 273.21(f)(2). If a household,

other than a migrant or seasonal farmworker household, submits plication shall be considered an initial application and benefits for that month shall be prorated in accordance with paragraph (a)(1)(ii) of this section. If a household's failure to timely apply for recertification was due to an error of the State agency and therefore there was a break in participation, the State agency shall follow the procedures in § 273.14(e). In addition, if the household submits an application for recertification prior to the end of its certification period but is found ineligible for the first month following the end of the certification period, then the first month of any subsequent participation shall be considered an initial month. Conversely, if the household submits an application for recertification prior to the end of its certification period and is found eligible for the first month following the end of the certification period, then that month shall not be an initial month.

(3) Anticipated changes. Because of anticipated changes, a household may be eligible for the month of application, but ineligible in the subsequent month. The household shall be entitled to benefits for the month of application even if the processing of its application results in the benefits being issued in the subsequent month. Similarly, a household may be ineligible for the month of application, but eligible in the subsequent month due to anticipated changes in circumstances. Even though denied for the month of application, the household does not have to reapply in the subsequent month. The same application shall be used for the denial for the month of application and the determination of eligibility for subsequent months, within the timeliness standards in § 273.2.

(4) Changes in allotment levels. As a result of anticipating changes, the household's allotment for the month of application may differ from its allotment in subsequent months. The State agency shall establish a certification period for the longest possible period over which changes in the household's circumstances can be reasonably anticipated. The household's allotment shall vary month to month within the certification period to reflect changes anticipated at the time of certification, unless the household elects the averaging techniques in paragraphs (c)(3) and (d)(3) of this section.

(b) Determining resources. Available resources at the time the household is interviewed shall be used to determine the household's eligibility.

(c) Determining income--

(1) Anticipating income.

(i) For the purpose of determining the household's eligibility and level of benefits, the State agency shall take into account the income already received by the household during the certification period and any anticipated income the household and the State agency are reasonably certain will be received during the remainder of the certification period.

If the amount of income that will be received, or when it will be received, is uncertain, that portion of the household's income that is uncertain shall not be counted by the State agency. For example, a household anticipating income from a new source, such as a new job or recently applied for public assistance benefits, may be uncertain as to the timing and amount of the initial payment. These moneys shall not be anticipated by the State agency unless there is reasonable certainty concerning the month in which the payment will be received and in what amount. If the exact amount of the income is not known, that portion of it which can be anticipated with reasonable certainty shall be considered as income. In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, the household may elect to income average. Households shall be advised to report all changes in gross monthly income as required by § 273.12.

(ii) Income received during the past 30 days shall be used as an indicator of the income that is and will be available to the household during the certification period. However, the State agency shall not use past income as an indicator of income anticipated for the certification period if changes in income have occurred or can be anticipated. If income fluctuates to the extent that a 30-day period alone cannot provide an accurate indication of anticipated income, the State agency and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income. Similarly, if the household's income fluctuates seasonally, it may be appropriate to use the most recent season comparable to the certification period, rather than the last 30 days, as one indicator of anticipated income. The State agency shall exercise particular caution in using income from a past season as an indicator of income for the certification period. In many cases of seasonally fluctuating income, the income also fluctuates from one season in one year to the same season in the next year. However, in no event shall the State agency automatically attribute to the household the amounts of any past income. The State agency shall not use past income as an indicator of anticipated income when changes in income have occurred or can be anticipated during the certification period.

(2) Income only in month received.

(i) Income anticipated during the certification period shall be counted as income only in the month it is expected to be received, unless the income is averaged. Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the State agency shall convert the income to a monthly amount by multiplying weekly amounts by 4.3 and biweekly amounts by 2.15, use the State Agency's PA conversion standard, or use the exact monthly figure if it can be anticipated for each month of the certification period. Nonrecurring lump-sum payments shall be counted as a resource starting in the month received and shall not be counted as income.

(ii) Wages held at the request of the employee shall be considered income to the household in the month the wages would otherwise have been paid by the employer.

However, wages held by the employer as a general practice, even if in violation of law, shall not be counted as income to the household, unless the household anticipates that it will ask for and receive an advance, or that it will receive income from wages that were previously held by the employer as a general practice and that were, therefore, not previously counted as income by the State agency. Advances on wages shall count as income in the month received only if reasonably anticipated as defined in paragraph (c)(1) of this section.

(iii) Households receiving income on a recurring monthly or semimonthly basis shall not have their monthly income varied merely because of changes in mailing cycles or pay dates or because weekends or holidays cause additional payments to be received in a month.

(3) Income averaging.

(i) Income may be averaged in accordance with methods established by the State agency to be applied Statewide for categories of households. When averaging income, the State agency shall use the household's anticipation of monthly income fluctuations over the certification period. An average must be recalculated at recertification and in response to changes in income, in accordance with § 273.12(c), and the State agency shall inform the household of the amount of income used to calculate the allotment. Conversion of income received weekly or biweekly in accordance with paragraph (c)(2) of this section does not constitute averaging.

(ii) Households which, by contract or self-employment, derive their annual income in a period of time shorter than 1 year shall have that income averaged over a 12-month period, provided the income from the contract is not received on an hourly or piecework basis. These households may include school employees, sharecroppers, farmers, and other self-employed households. However, these provisions do not apply to migrant or seasonal farmworkers. The procedures for averaging self-employed income are described in § 273.11. Contract income which is not the household's annual income and is not paid on an hourly or piecework basis shall be prorated over the period the income is intended to cover.

(iii) Earned and unearned educational income, after allowable exclusions, shall be averaged over the period which it is intended to cover. Income shall be counted either in the month it is received, or in the month the household anticipates receiving it or receiving the first installment payment, although it is still prorated over the period it is intended to cover.

(d) Determining deductions. Deductible expenses include only certain dependent care, shelter, medical and, at State agency option, child support costs as described in § 273.9.

(1) Disallowed expenses.

(i) Any expense, in whole or part, covered by educational income which has been excluded pursuant to the provisions of § 273.9(c)(3) shall not be deductible. For example, the portion of rent covered by excluded vendor payments shall not be calculated as part of the household's shelter cost. In addition an expense which is covered by an excluded vendor payment that has been converted to a direct cash payment under the approval of a federally authorized demonstration project as specified under § 273.9(c)(1) shall not be deductible. However, that portion of an allowable medical expense which is not reimbursable shall be included as part of the household's medical expenses. If the household reports an allowable medical expense at the time of certification but cannot provide verification at that time, and if the amount of the expense cannot be reasonably anticipated based upon available information about the recipient's medical condition and public or private medical insurance coverage, the household shall have the nonreimbursable portion of the medical expense considered at the time the amount of the expense or reimbursement is reported and verified. A dependent care expense which is reimbursed or paid for by the Job Opportunities and Basic Skills Training (JOBS) program under title IV-F of the Social Security Act (42 U.S.C. 681) or the Transitionl Child Care (TCC) program shall not be deductible. A utility expense which is reimbursed or paid by an excluded payment, including HUD or FmHA utility reimbursements, shall not be deducible.

(ii) Expenses shall only be deductible if the service is provided by someone outside of the household and the household makes a money payment for the service. For example, a dependent care deduction shall not be allowed if another household member provides the care, or compensation for the care is provided in the form of an inkind benefit, such as food.

(2) Billed expenses. Except as provided in paragraph (d)(3) of this section a deduction shall be allowed only in the month the expense is billed or otherwise becomes due, regardless of when the household intends to pay the expense. For example, rent which is due each month shall be included in the household's shelter costs, even if the household has not yet paid the expense. Amounts carried forward from past billing periods are non deductible, even if included with the most recent billing and actually paid by the household. In any event, a particular expense may only be deducted once.

(3) Averaging expenses. Households may elect to have fluctuating expenses averaged. Households may also elect to have expenses which are billed less often than monthly averaged forward over the interval between scheduled billings, or, if there is no scheduled interval, averaged forward over the period the expense is intended to cover. For example, if a household receives a single bill in February which covers a 3-month supply of fuel

oil, the bill may be averaged over February, March, and April. The household may elect to have one-time only expenses averaged over the entire certification period in which they are billed. Households reporting one-time only medical expenses during their certification period may elect to have a one-time deduction or to have the expense averaged over the remaining months of their certification period. Averaging would begin the month the change would become effective. For households certified for 24 months that have one-time medical expenses, the State agency must use the following procedure. In averaging any one-time medical expense incurred by a household during the first 12 months, the State agency must give the household the option of deducting the expense for one month, averaging the expense over the remainder of the first 12 months of the certification period, or averaging the expense over the remaining months in the certification period. One-time expenses reported after the 12th month of the certification period will be deducted in one month or averaged over the remaining months in the certification period, at the household's option.

(4) Anticipating expenses. The State agency shall calculate a household's expenses based on the expenses the household expects to be billed for during the certification period. Anticipation of the expense shall be based on the most recent month's bills, unless the household is reasonably certain a change will occur. When the household is not claiming the utility standard, the State agency may anticipate changes during the certification period based on last year's bills from the same period updated by overall price increases; or, if only the most recent bill is available, utility cost increases or decreases over the months of the certification period may be based on utility company estimates for the type of dwelling and utilities used by the household. The State agency shall not average past expenses, such as utility bills for the last several months, as a method of anticipating utility costs for the certification period. At certification and recertification, the household shall report and verify all medical expenses. The household's monthly medical deduction for the certification period shall be based on the information reported and verified by the household, and any anticipated changes in the household's medical expenses that can be reasonably expected to occur during the certification period based on available information about the recipient's medical condition, public or private insurance coverage, and current verified medical expenses. The household shall not be required to file reports about its medical expenses during the certification period. If the household voluntarily reports a change in its medical expenses, the State agency shall verify the change in accordance with § 273.2(f)(8)(ii) if the change would increase the household's allotment. The State agency has the option of either requiring verification prior to acting on the change, or requiring the verification prior to the second normal monthly allotment after the change is reported. In the case of a reported change that would decrease the household's allotment, or make the household ineligible, the State agency shall act on the change without requiring verification, though verification which is required by § 273.2(f)(8) shall be obtained prior to the household's recertification. If a child in the household reaches his or her second birthday during the certification period, the $200

maximum dependent care deduction defined in § 273.9(d)(4) shall be adjusted in accordance with this section not later than the household's next regularly scheduled recertification.

(5) Conversion of deductions. The income conversion procedures in (c)(2) of this section shall also apply to expenses billed on a weekly or biweekly basis.

(6) Energy Assistance Payments. Except for payments made under the Low Income Energy Assistance Act of 1981, the State agency shall prorate energy assistance payments as provided for in § 273.9(d) over the entire heating or cooling season the payment is intended to cover.

(7) Households which contain a member who is a disabled SSI recipient in accordance with paragraphs (2), (3), (4) or (5) of the definition of a disabled member in § 271.2 or households which contain a member who is a recipient of SSI benefits and the household is determined within the 30-day processing standard to be categorically eligible (as discussed in § 273.2(j)) or determined to be eligible as an NPA household and later becomes a categorically eligible household, shall be entitled to the excess medical deduction of § 273.9(d)(3) and the uncapped excess shelter expense deduction of § 273.9(d)(5) for the period for which the SSI recipient is authorized to receive SSI benefits or the date of the food stamp application, whichever is later, if the household incurs such expenses. Households, which contain an SSI recipient as discussed in this paragraph, which are determined ineligible as an NPA household and later become categorically eligible and entitled to restored benefits in accordance with § 273.2(j)(1)(iv), shall receive restored benefits using the medical and excess shelter expense deductions from the beginning of the period for which SSI benefits are paid, the original food stamp application date or December 23, 1985, whichever is later, if the household incurs such expenses.

(8) Optional child support deduction. If the State agency opts to provide households with an income deduction rather than an income exclusion for legally obligated child support payments in accordance with § 273.9(d)(5), the State agency may budget such payments in accordance with paragraphs (d)(2) through (d)(5) of this section, or retrospectively, in accordance with § 273.21(b) and § 273.21(f)(2), regardless of the budgeting system used for the household's other circumstances.

(e) Calculating net income and benefit levels--

(1) Net monthly income.

(i) To determine a household's net monthly income, the State agency shall:

(A) Add the gross monthly income earned by all household members and the total monthly unearned income of all household members, minus income exclusions, to determine the household's total gross income. Net losses from the self-employment income of a farmer shall be offset in accordance with § 273.11(a)(2)(iii).

(B) Multiply the total gross monthly earned income by 20 percent and subtract that amount from the total gross income; or multiply the total gross monthly earned income by 80 percent and add that to the total monthly unearned income, minus income exclusions. If the State agency has chosen to treat legally obligated child support payments as an income exclusion in accordance with § 273.9(c)(17), multiply the excluded earnings used to pay child support by 20 percent and subtract that amount from the total gross monthly income.

(C) Subtract the standard deduction.

(D) If the household is entitled to an excess medical deduction as provided in § 273.9(d)(3), determine if total medical expenses exceed $35. If so, subtract that portion which exceeds $35.

(E) Subtract allowable monthly dependent care expenses, if any, up to a maximum amount as specified under § 273.9(d)(4) for each dependent.

(F) If the State agency has chosen to treat legally obligated child support payments as a deduction rather than an exclusion in accordance with § 273.9(d)(5), subtract allowable monthly child support payments in accordance with § 273.9(d)(5).

(G) Subtract the homeless shelter deduction, if any, up to the maximum of $143.

(H) Total the allowable shelter expenses to determine shelter costs, unless a deduction has been subtracted in accordance with paragraph (e)(1)(i)(G) of this section. Subtract from total shelter costs 50 percent of the household's monthly income after all the above deductions have been subtracted. The remaining amount, if any, is the excess shelter cost. If there is no excess shelter cost, the net monthly income has been determined. If there is excess shelter cost, compute the shelter deduction according to paragraph (e)(1)(i)(I) of this section.

(I) Subtract the excess shelter cost up to the maximum amount allowed for the area (unless the household is entitled to the full amount of its excess shelter expenses) from the household's monthly income after all other applicable deductions. Households not subject to a capped shelter expense shall have the full amount exceeding 50 percent of their net income subtracted. The household's net monthly income has been determined.

(ii) In calculating net monthly income, the State agency shall use one of the following two procedures:

(A) Round down each income and allotment calculation that ends in 1 through 49 cents and round up each calculation that ends in 50 through 99 cents; or

(B) Apply the rounding procedure that is currently in effect for the State's Temporary Assistance for Needy Families (TANF) program. If the State TANF program includes the cents in income calculations, the State agency may use the same procedures for food stamp income calculations. Whichever procedure is used, the State agency may elect to include the cents associated with each individual shelter cost in the computation of the shelter deduction and round the final shelter deduction amount. Likewise, the State agency may elect to include the cents associated with each individual medical cost in the computation of the medical deduction and round the final medical deduction amount.

(2) Eligibility and benefits.

(i)(A) Households which contain an elderly or disabled member as defined in § 271.2, shall have their net income, as calculated in paragraph (e)(1) of this section (except for households considered destitute in accordance with paragraph (e)(3) of this section), compared to the monthly income eligibility standards defined in § 273.9(a)(2) for the appropriate household size to determine eligibility for the month.

(B) In addition to meeting the net income eligibility standards, households which do not contain an elderly or disabled member shall have their gross income, as calculated in accordance with paragraph (e)(1)(i)(A) of this section, compared to the gross monthly income standards defined in § 273.9(a)(1) for the appropriate household size to determine eligibility for the month.

(C) For households considered destitute in accordance with paragraph (e)(3) of this section, the State agency shall determine a household's eligibility by computing its gross and net income according to paragraph (e)(3) of this section, and comparing, as appropriate, the gross and/or net income to the corresponding income eligibility standard in accordance with § 273.9(a)(1) or (2).

(D) If a household contains a member who is fifty-nine years old on the date of application, but who will become sixty before the end of the month of application, the State agency shall determine the household's eligibility in accordance with paragraph (e)(2)(i)(A) of this section.

(E) If a household contains a student whose income is excluded in accordance with § 273.9(c)(7) and the student becomes 18 during the month of application, the State agency shall exclude the student's earnings in the month of application and count the student's earnings in the following month. If the student becomes 18 during the certification period, the student's income shall be excluded until the month following the month in which the student turns 18.

(ii)(A) Except as provided in paragraphs (a)(1), (e)(2)(iii) and (e)(2)(vi) of this section, the household's monthly allotment shall be equal to the maximum food stamp allotment for the household's size reduced by 30 percent of the household's net monthly income as calculated in paragraph (e)(1) of this section. If 30 percent of the household's net income ends in cents, the State agency shall round in one of the following ways:

(1) The State agency shall round the 30 percent of net income up to the nearest higher dollar; or

(2) The State agency shall not round the 30 percent of net income at all. Instead, after subtracting the 30 percent of net income from the appropriate Thrifty Food Plan, the State agency shall round the allotment down to the nearest lower dollar.

(B) If the calculation of benefits in accordance with paragraph (e)(2)(ii)(A) of this section for an initial month would yield an allotment of less than $10 for the household, no benefits shall be issued to the household for the initial month.

(C) Except during an initial month, all eligible one- and two-person households shall receive minimum monthly allotments equal to the minimum benefit and all eligible households with three or more members which are entitled to $1, $3, and $5 allotments shall receive allotments, of $2, $4, and $6, respectively, to correspond with current coupon book determinations.

(iii) For an eligible household with three or more members which is entitled to no benefits (except because of the proration requirements of paragraph (a)(1) and the provision precluding issuances of less than $10 in an initial month of paragraph (e)(2)(ii)(B)) of this section:

(A) The State agency shall deny the household's application on the grounds that its net income exceeds the level at which benefits are issued; or

(B) The State agency shall certify the household but suspend its participation, subject to the following conditions:

(1) The State agency shall inform the suspended household, in writing, of its suspended status, and of its rights and responsibilities while it is in that status.

(2) The State agency shall set the household's change reporting requirements and the manner in which those changes will be reported and processed.

(3) The State agency shall specify which changes shall entitle the household to have its status converted from suspension to issuance, and which changes shall require the household to reapply for participation.

(4) The household shall retain the right to submit a new application while it is suspended.

(5) The State agency shall convert a household from suspension to issuance status, without requiring an additional certification interview, and issue its initial allotment, within ten days of the date the household reports the change.

(6) The State agency shall prorate the household's benefits, in the first month after the suspension period, from the date the household reports a change, in accordance with paragraph (a)(1) of this section.

(7) The State agency may delay the work registration of the household's members until the household is determined to be entitled to benefits.

(iv) For those eligible households which are entitled to no benefits in their initial month of application, in accordance with paragraph (a)(1) or (e)(2)(ii)(B) of this section, but are entitled to benefits in subsequent months, the State agency shall certify the households beginning with the month of application.

(v) When a household's circumstances change and it becomes entitled to a different income eligibility standard, the State agency shall apply the different standard at the next recertification or whenever the State agency changes the household's eligibility, benefit level or certification period, whichever occurs first.

(vi) During a month when a reduction, suspension or cancellation of allotments has been ordered pursuant to the provisions of § 271.7, eligible households shall have their benefits calculated as follows:

(A) If a benefit reduction is ordered, State agencies shall reduce the maximum food stamp allotment amounts for each household size by the percentage ordered in the Department's notice on benefit reductions. State agencies shall multiply the maximum food stamp allotment amounts by the percentage specified in the FNS notice; if the

result ends in 1 through 99 cents, round the result up to the nearest higher dollar; and subtract the result from the normal maximum food stamp allotment amount. In calculating benefit levels for eligible households, State agencies would follow the procedures detailed in paragraph (e)(2)(ii) of this section and substitute the reduced maximum food stamp allotment amounts for the normal maximum food stamp allotment amounts.

(B) Except as provided in paragraphs (a)(1), (e)(2)(ii)(B), and (e)(2)(vi)(C) of this section, one- and two-person households shall be provided with at least the minimum benefit.

(C) In the event that the national reduction in benefits is 90 percent or more of the benefits projected to be issued for the affected month, the provision for a minimum benefit for households with one or two members only may be disregarded and all households may have their benefits lowered by reducing maximum food stamp allotment amounts by the percentage specified by the Department. The benefit reduction notice issued by the Department to effectuate a benefit reduction will specify whether minimum benefits for households with one or two members only are to be provided to households.

(D) If the action in effect is a suspension or cancellation, eligible households shall have their allotment levels calculated according to the procedures in paragraph (e)(2)(ii) of this section. However, the allotments shall not be issued for the month the suspension or cancellation is in effect. The provision for the minimum benefit for households with one or two members only shall be disregarded and all households shall have their benefits suspended or cancelled for the designated month.

(E) In the event of a suspension or cancellation, or a reduction exceeding 90 percent of the affected month's projected issuance, all households, including one and two-person households, shall have their benefits suspended, cancelled or reduced by the percentage specified by FNS.

(3) Destitute households. Migrant or seasonal farmworker households may have little or no income at the time of application and may be in need of immediate food assistance, even though they receive income at some other time during the month of application. The following procedures shall be used to determine when migrant or seasonal farmworker households in these circumstances may be considered destitute and, therefore, entitled to expedited service and special income calculation procedures. Households other than migrant or seasonal farmworker households shall not be classified as destitute.

(i) Households whose only income for the month of application was received prior to the date of application, and was from a terminated source, shall be considered destitute households and shall be provided expedited service.

(A) If income is received on a monthly or more frequent basis, it shall be considered as coming from a terminated source, if it will not be received again from the same source during the balance of the month of application or during the following month.

(B) If income is normally received less often than monthly, the nonreceipt of income from the same source in the balance of the month of application or in the following month is inappropriate to determine whether or not the income is terminated. For example, if income is received on a quarterly basis (e.g., on January 1, April 1, July 1, and October 1), and the household applies in mid-January, the income should not be considered as coming from a terminated source merely because no further payments will be received in the balance of January or in February. The test for whether or not this household's income is terminated is whether the income is anticipated to be received in April. Therefore, for households that normally receive income less often than monthly, the income shall be considered as coming from a terminated source if it will not be received in the month in which the next payment would normally be received.

(ii) Households whose only income for the month of application is from a new source shall be considered destitute and shall be provided expedited service if income of more than $25 from the new source will not be received by the 10th calendar day after the date of application.

(A) Income which is normally received on a monthly or more frequent basis shall be considered to be from a new source if income of more than $25 has not been received from that source within 30 days prior to the date the application was filed.

(B) If income is normally received less often than monthly, it shall be considered to be from a new source if income of more than $25 was not received within the last normal interval between payments. For example, if a household applies in early January and is expecting to be paid every 3 months, starting in late January, the income shall be considered to be from a new source if no income of more than $25 was received from the source during October or since that time.

(iii) Households may receive both income from a terminated source prior to the date of application, and income from a new source after the date of application, and still be considered destitute if they receive no other income in the month of application and income of more than $25 from the new source will not be received by the 10th day after the date of application.

(iv) Destitute households shall have their eligibility and level of benefits calculated for the month of application by considering only income which is received between the first of the month and the date of application. Any income from a new source that is anticipated after the day of application shall be disregarded.

(v) Some employers provide travel advances to cover the travel costs of new employees who must journey to the location of their new employment. To the extent that these payments are excluded as reimbursements, receipt of travel advances will not affect the determination of when a household is destitute. However, if the travel advance is by written contract an advance of wages that will be subtracted from wages later earned by the employee, rather than a reimbursement, the wage advance shall count as income. In addition, the receipt of a wage advance for travel costs of a new employee shall not affect the determination of whether subsequent payments from the employer are from a new source of income, nor whether a household shall be considered destitute. For example, if a household applies on May 10, has received a $50 advance for travel from its new employer on May 1 which by written contract is an advance on wages, but will not receive any other wages from the employer until May 30, the household shall be considered destitute. The May 30 payment shall be disregarded, but the wage advance received prior to the date of application shall be counted as income.

(vi) A household member who changes jobs but continues to work for the same employer shall be considered as still receiving income from the same source. A migrant farmworker's source of income shall be considered to be the grower for whom the migrant is working at a particular point in time, and not the crew chief. A migrant who travels with the same crew chief but moves from one grower to another shall be considered to have moved from a terminated income source to a new source.

(vii) The above procedures shall apply at initial application and at recertification, but only for the first month of each certification period. At recertification, income from a new source shall be disregarded in the first month of the new certification period if income of more than $25 will not be received from this new source by the 10th calendar day after the date of the household's normal issuance cycle.

(4) Thrifty Food Plan (TFP) and Maximum Food Stamp Allotments.

(i) Maximum food stamp allotment level. Maximum food stamp allotments shall be based on the TFP as defined in § 271.2, and they shall be uniform by household size throughout the 48 contiguous States and the District of Columbia. The TFP for Hawaii shall be the TFP for the 48 States and DC adjusted for the price of food in Honolulu. The TFPs for urban, rural I, and rural II parts of Alaska shall be the TFP for the 48 States and DC adjusted by the price of food in Anchorage and further adjusted for urban, rural I, and

rural II Alaska as defined in § 272.7(c). The TFPs for Guam and the Virgin Islands shall be adjusted for changes in the cost of food in the 48 States and DC, provided that the cost of these TFPs may not exceed the cost of the highest TFP for the 50 States. The TFP amounts and maximum allotments in each area are adjusted annually and will be prescribed in a table posted on the FNS web site, at www.fns.usda.gov/fsp.

(ii) Adjustment. Effective October 1, 1996, the maximum food stamp allotments must be based on 100% of the cost of the TFP as defined in § 271.2 of this chapter for the preceding June, rounded to the nearest lower dollar increment, except that on October 1, 1996, the allotments may not fall below those in effect on September 30, 1996.

(f) Certification periods. The State agency must certify each eligible household for a definite period of time. State agencies must assign the longest certification period possible based on the predictability of the household's circumstances. The first month of the certification period will be the first month for which the household is eligible to participate. The certification period cannot exceed 12 months except to accommodate a household's transitional benefit period and as specified in paragraphs (f)(1) and (f)(2) of this section.

(1) Households in which all adult members are elderly or disabled. The State agency may certify for up to 24 months households in which all adult members are elderly or disabled. The State agency must have at least one contact with each household every 12 months. The State agency may use any method it chooses for this contact.

(2) Households residing on a reservation. The State agency must certify for 24 months those households residing on a reservation which it requires to submit monthly reports in accordance with § 273.21, unless the State agency obtains a waiver from FNS. In the waiver request the State agency must include justification for a shorter period and input from the affected Indian tribal organization(s). When households move off the reservation, the State agency must either continue their certification periods until they would normally expire or shorten the certification periods in accordance with paragraph (f)(4) of this section.

(3) Certification period length. The State agency should assign each household the longest certification period possible, consistent with its circumstances.

(i) Households should be assigned certification periods of at least 6 months, unless the household's circumstances are unstable or the household contains an ABAWD.

(ii) Households with unstable circumstances, such as households with zero net income, and households with an ABAWD member should be assigned certification periods consistent with their circumstances, but generally no less than 3 months.

(iii) Households may be assigned 1- or 2-month certification periods when it appears likely that the household will become ineligible for food stamps in the near future.

(4) Shortening certification periods. The State agency may not end a household's certification period earlier than its assigned termination date, unless the State agency receives information that the household has become ineligible, the household has not complied with the requirements of § 273.12(c)(3), or the State agency must shorten the household's certification period to comply with the requirements of § 273.12(a)(5). Loss of public assistance or a change in employment status is not sufficient in and of itself to meet the criteria necessary for shortening the certification period. The State agency must close the household's case or adjust the household's benefit amount in accordance with § 273.12(c)(1) or (c)(2) in response to reported changes. The State agency must issue a notice of adverse action as provided in § 273.13 to shorten a participating household's certification period in connection with imposing the simplified reporting requirement. The State agency may not use the Notice of Expiration to shorten a certification period, except that the State agency must use the Notice of Expiration to shorten a household's certification period when the household is receiving transitional benefits under Subpart H, has not reached the maximum allowable number of months in its certification period during the transitional period, and the State agency has chosen to recertify the household in accordance with § 273.28(b). If the transition period results in a shortening of the household's certification period, the State agency shall not issue a household a notice of adverse action but shall specify in the transitional notice required under § 273.29 that the household must be recertified when it reaches the end of the transitional benefit period or if it returns to TANF during the transitional period.

(5) Lengthening certification periods. State agencies may lengthen a household's current certification period once it is established, as long as the total months of the certification period do not exceed 24 months for households in which all adult members are elderly or disabled, or 12 months for other households. If the State agency extends a household's certification period, it must advise the household of the new certification ending date with a notice containing the same information as the notice of eligibility set forth in paragraph (g)(1)(i)(A) of this section.

(g) Certification notices to households.

(1) Initial applications. State agencies shall provide applicants with one of the following written notices as soon as a determination is made, but no later than 30 days after the date of the initial application:

(i) Notice of eligibility.

(A) If an application is approved, the State agency shall provide the household with written notice of the amount of the allotment and the beginning and ending dates of the certification period. The household shall also be advised of variations in the benefit level based on changes anticipated at the time of certification. If the initial allotment contains benefits for both the month of application and the current month's benefits, the notice shall explain that the initial allotment includes more than 1 month's benefits, and shall indicate the monthly allotment amount for the remainder of the certification period. The notice shall also advise the household of its right to a fair hearing, the telephone number of the food stamp office (a toll-free number or a number where collect calls will be accepted for households outside the local calling area), and, if possible, the name of the person to contact for additional information. If there is an individual or organization available that provides free legal representation, the notice shall also advise the household of the availability of the services. The State agency may also include in the notice a reminder of the household's obligation to report changes in circumstance and of the need to reapply for continued participation at the end of the certification period. Other information which would be useful to the household may also be included.

(B) In cases where a household's application is approved on an expedited basis without verification, as provided in § 273.2(i), the notice shall explain that the household must provide the verification which was waived. If the State agency has elected to assign a longer certification period to some households certified on an expedited basis, the notice shall also explain the special conditions of the longer certification period, as specified in § 273.2(i), and the consequences of failure to provide the postponed verification.

(C) For households provided a notice of expiration at the time of certification, as required in § 273.14(b), the notice of eligibility may be combined with the notice of expiration or separate notices may be sent.

(ii) Notice of denial. If the application is denied, the State agency shall provide the household with written notice explaining the basis for the denial, the household's right to request a fair hearing, the telephone number of the food stamp office (a toll-free number or a number where collect calls will be accepted for households outside the local calling area), and, if possible, the name of the person to contact for additional information. If there is an individual or organization available that provides free legal representation, the notice shall also advise the household of the availability of the service. A household which is potentially categorically eligible but whose food stamp application is denied shall be asked to inform the State agency if it is approved to receive PA and/or SSI benefits or benefits from a State or local GA program. In cases where the State

agency has elected to use a notice of denial when a delay was caused by the household's failure to take action to complete the application process, as provided in § 273.2(h)(2), the notice of denial shall also explain: The action that the household must take to reactivate the application; that the case will be reopened without a new application if action is taken within 30 days of the date the notice of denial was mailed; and that the household must submit a new application if, at the end of the 30-day period, the household has not taken the needed action and wishes to participate in the program. If the State agency chooses the option specified in § 273.2(h)(2) of reopening the application in cases where verification is lacking only if household provides verification within 30 days of the date of the initial request for verification, the State agency shall include on the notice of denial the date by which the household must provide the missing verification.

(iii) Notice of pending status. If the application is to be held pending because some action by the State is necessary to complete the application process, as specified in § 273.2(h)(2), or the State agency has elected to pend all cases regardless of the reason for delay, the State agency shall provide the household with a written notice which informs the household that its application has not been completed and is being processed. If some action by the household is also needed to complete the application process, the notice shall also explain what action the household must take and that its application will be denied if the household fails to take the required action within 60 days of the date the application was filed. If the State agency chooses the option specified in § 273.2(h)(2) and (3) of holding the application pending in cases where verification is lacking only until 30 days following the date verification was initially requested, the State agency shall include on the notice of pending status the date by which the household must provide the missing verification.

(2) Applications for recertification. The State agency shall provide households that have filed an application by the 15th of the last month of their certification period with either a notice of eligibility or a notice of denial by the end of the current certification period if the household has complied with all recertification requirements. The State agency shall provide households that have received a notice of expiration at the time of certification, and have timely reapplied, with either a notice of eligibility or a notice of denial not later than 30 days after the date of the household's initial opportunity to obtain its last allotment.

§ 273.13 Notice of adverse action.

(a) Use of notice. Prior to any action to reduce or terminate a household's benefits within the certification period, the State agency shall, except as provided in paragraph (b) of this section, provide the household timely and adequate advance notice before the adverse action

is taken.

(1) The notice of adverse action shall be considered timely if the advance notice period conforms to that period of time defined by the State agency as an adequate notice period for its public assistance caseload, provided that the period includes at least 10 days from the date the notice is mailed to the date upon which the action becomes effective. Also, if the adverse notice period ends on a weekend or holiday, and a request for a fair hearing and continuation of benefits is received the day after the weekend or holiday, the State agency shall consider the request timely received.

(2) The notice of adverse action shall be considered adequate if it explains in easily understandable language: The proposed action; the reason for the proposed action; the household's right to request a fair hearing; the telephone number of the food stamp office (toll-free number or a number where collect calls will be accepted for households outside the local calling area) and, if possible, the name of the person to contact for additional information; the availability of continued benefits; and the liability of the household for any overissuances received while awaiting a fair hearing if the hearing official's decision is adverse to the household. If there is an individual or organization available that provides free legal representation, the notice shall also advise the household of the availability of the service.

(3) The State agency may notify a household that its benefits will be reduced or terminated, no later than the date the household receives, or would have received, its allotment, if the following conditions are met:

(i) The household reports the information which results in the reduction or termination.

(ii) The reported information is in writing and signed by the household.

(iii) The State agency can determine the household's allotment or ineligibility based solely on the information provided by the household as required in paragraph (a)(3)(ii) of this section.

(iv) The household retains its right to a fair hearing as allowed in § 273.15.

(v) The household retains its right to continued benefits if the fair hearing is requested within the time period set by the State agency in accordance with § 273.13(a)(1).

(vi) The State agency continues the household's previous benefit level, if required, within five working days of the household's request for a fair hearing.

(4) The State agency shall notify a household that its benefits will be reduced if an EBT

system-error has occurred during the redemption process resulting in an out-of-balance settlement condition. This notification shall be made no later than the date the action is initiated against the household account. The State agency shall adjust the benefit in accordance with § 274.12 of this chapter.

(b) Exemptions from notice. Individual notices of adverse action shall not be provided when:

(1) The State initiates a mass change as described in § 273.12(e).

(2) The State agency determines, based on reliable information, that all members of a household have died.

(3) The State agency determines, based on reliable information, that the household has moved from the project area.

(4) The household has been receiving an increased allotment to restore lost benefits, the restoration is complete, and the household was previously notified in writing of when the increased allotment would terminate.

(5) The household's allotment varies from month to month within the certification period to take into account changes which were anticipated at the time of certification, and the household was so notified at the time of certification.

(6) The household jointly applied for PA/GA and food stamp benefits and has been receiving food stamp benefits pending the approval of the PA/GA grant and was notified at the time of certification that food stamp benefits would be reduced upon approval of the PA/GA grant.

(7) A household member is disqualified for intentional Program violation, in accordance with § 273.16, or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member. The notice requirements for individuals or households affected by intentional Program violation disqualifications are explained in § 273.16.

(8) The State agency has elected to assign a longer certification period to a household certified on an expedited basis and for whom verification was postponed, provided the household has received written notice that the receipt of benefits beyond the month of application is contingent on its providing the verification which was initially postponed and that the State agency may act on the verified information without further notice as provided in § 273.2(i)(4).

(9) The State agency must change the household's benefits back to the original benefit

level as required in § 273.12(c)(1)(iii).

(10) Converting a household from cash and/or food stamp coupon repayment to benefit reduction as a result of failure to make agreed upon repayment as discussed in § 273.18.

(11) The State agency is terminating the eligibility of a resident of a drug or alcoholic treatment center or a group living arrangement if the facility loses either its certification from the appropriate agency or agencies of the State (as defined in § 271.2) or has its status as an authorized representative suspended due to FNS disqualifying it as a retailer. However, residents of group living arrangements applying on their own behalf are still eligible to participate.

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

(13) The State agency determines, based on reliable information, that the household will not be residing in the project area and, therefore, will be unable to obtain its next allotment. The State agency shall inform the household of its termination no later than its next scheduled issuance date. While the State agency may inform the household before its next issuance date, the State agency shall not delay terminating the household's participation in order to provide advance notice.

(14) The State agency initiates recoupment of a claim as specified in § 273.18(g)(4) against a household which has previously received a notice of adverse action with respect to such claim.

(c) Optional notice. The State agency may, at its option, send the household an adequate notice as provided in paragraph (b)(3) of this section when the household's address is unknown and mail directed to it has been returned by the post office indicating no known forwarding address.

§ 273.14 Recertification.

(a) General. No household may participate beyond the expiration of the certification period assigned in accordance with § 273.10(f) without a determination of eligibility for a new

period. The State agency must establish procedures for notifying households of expiration dates, providing application forms, scheduling interviews, and recertifying eligible households prior to the expiration of certification periods. Households must apply for recertification and comply with interview and verification requirements.

(b) Recertification process--

(1) Notice of expiration.

(i) The State agency shall provide households certified for one month or certified in the second month of a two-month certification period a notice of expiration (NOE) at the time of certification. The State agency shall provide other households the NOE before the first day of the last month of the certification period, but not before the first day of the next-to-the-last month. Jointly processed PA and GA households need not receive a separate food stamp notice if they are recertified for food stamps at the same time as their PA or GA redetermination.

(ii) Each State agency shall develop a NOE. The NOE must contain the following:

(A) The date the certification period expires;

(B) The date by which a household must submit an application for recertification in order to receive uninterrupted benefits;

(C) The consequences of failure to apply for recertification in a timely manner;

(D) Notice of the right to receive an application form upon request and to have it accepted as long as it contains a signature and a legible name and address;

(E) Information on alternative submission methods available to households which cannot come into the certification office or do not have an authorized representative and how to exercise these options;

(F) The address of the office where the application must be filed;

(G) The household's right to request a fair hearing if the recertification is denied or if the household objects to the benefit issuance;

(H) Notice that any household consisting only of Supplemental Security Income (SSI) applicants or recipients is entitled to apply for food stamp recertification at an office of the Social Security Administration;

(I) Notice that failure to attend an interview may result in delay or denial of benefits; and

(J) Notice that the household is responsible for rescheduling a missed interview and for providing required verification information.

(iii) To expedite the recertification process, State agencies are encouraged to send a recertification form, an interview appointment letter that allows for either in-person or telephone interviews, and a statement of needed verification required by § 273.2(c)(5) with the NOE.

(2) Application. The State agency must develop an application to be used by households when applying for recertification. It may be the same as the initial application, a simplified version, a monthly reporting form, or other method such as annotating changes on the initial application form. A new household signature and date is required at the time of application for recertification. The recertification process can only be used for those households which apply for recertification prior to the end of their current certification period, except for delayed applications as specified in paragraph (e)(3) of this section. The process, at a minimum, must elicit from the household sufficient information that, when added to information already contained in the casefile, will ensure an accurate determination of eligibility and benefits. The State agency must notify the applicant of information which is specified in § 273.2(b)(2), and provide the household with a notice of required verification as specified in § 273.2(c)(5).

(3) Interview.

(i) As part of the recertification process, the State agency must conduct a face-to-face interview with a member of the household or its authorized representative at least once every 12 months for households certified for 12 months or less. The provisions of § 273.2(e) also apply to interviews for recertification. The State agency may choose not to interview the household at interim recertifications within the 12-month period. The requirement for a face-to-face interview once every 12 months may be waived in accordance with § 273.2(e)(2).

(ii) If a household receives PA/GA and will be recertified for food stamps more than once in a 12-month period, the State agency may choose to conduct a face-to-face interview with that household only once during that period. At any other recertification during that year period, the State agency may interview the household by telephone, conduct a home visit, or recertify the household by mail.

(iii) State agencies shall schedule interviews so that the household has at least 10 days after the interview in which to provide verification before the certification period expires.

If a household misses its scheduled interview, the State agency shall send the household a Notice of Missed Interview that may be combined with the notice of denial. If a household misses its scheduled interview and requests another interview, the State agency shall schedule a second interview.

(4) Verification. Information provided by the household shall be verified in accordance with § 273.2(f)(8)(i). The State agency shall provide the household a notice of required verification as provided in § 273.2(c)(5) and notify the household of the date by which the verification requirements must be satisfied. The household must be allowed a minimum of 10 days to provide required verification information. Any household whose eligibility is not determined by the end of its current certification period due to the time period allowed for submitting any missing verification shall receive an opportunity to participate, if eligible, within 5 working days after the household submits the missing verification and benefits cannot be prorated.

(c) Timely application for recertification.

(1) Households reporting required changes in circumstances that are certified for one month or certified in the second month of a two-month certification period shall have 15 days from the date the NOE is received to file a timely application for recertification.

(2) Other households reporting required changes in circumstances that submit applications by the 15th day of the last month of the certification period shall be considered to have made a timely application for recertification.

(3) For monthly reporting households, the filing deadline shall be either the 15th of the last month of the certification period or the normal date for filing a monthly report, at the State agency's option. The option chosen must be uniformly applied to the State agency's entire monthly reporting caseload.

(4) For households consisting only of SSI applicants or recipients who apply for food stamp recertification at SSA offices in accordance with § 273.2(k)(1), an application shall be considered filed for normal processing purposes when the signed application is received by the SSA.

(d) Timely processing.

(1) Households that were certified for one month or certified for two months in the second month of the certification period and have met all required application procedures shall be notified of their eligibility or ineligibility. Eligible households shall be provided an opportunity to receive benefits no later than 30 calendar days after the date the household received its last allotment.

(2) Other households that have met all application requirements shall be notified of their eligibility or ineligibility by the end of their current certification period. In addition, the State agency shall provide households that are determined eligible an opportunity to participate by the household's normal issuance cycle in the month following the end of its current certification period.

(e) Delayed processing.

(1) If an eligible household files an application before the end of the certification period but the recertification process cannot be completed within 30 days after the date of application because of State agency fault, the State agency must continue to process the case and provide a full month's allotment for the first month of the new certification period. The State agency shall determine cause for any delay in processing a recertification application in accordance with the provisions of § 273.3(h)(1).

(2) If a household files an application before the end of the certification period, but fails to take a required action, the State agency may deny the case at that time, at the end of the certification period, or at the end of 30 days. Notwithstanding the State's right to issue a denial prior to the end of the certification period, the household has 30 days after the end of the certification period to complete the process and have its application be treated as an application for recertification. If the household takes the required action before the end of the certification period, the State agency must reopen the case and provide a full month's benefits for the initial month of the new certification period. If the household takes the required action after the end of the certification period but within 30 days after the end of the certification period, the State agency shall reopen the case and provide benefits retroactive to the date the household takes the required action. The State agency shall determine cause for any delay in processing a recertification application in accordance with the provisions of § 273.3(h)(1).

(3) If a household files an application within 30 days after the end of the certification period, the application shall be considered an application for recertification; however, benefits must be prorated in accordance with § 273.10(a). If a household's application for recertification is delayed beyond the first of the month of what would have been its new certification period through the fault of the State agency, the household's benefits for the new certification period shall be prorated based on the date of the new application, and the State agency shall provide restored benefits to the household back to the date the household's certification period should have begun had the State agency not erred and the household been able to apply timely.

(f) Expedited service. A State agency is not required to apply the expedited service provisions of § 273.2(i) at recertification if the household applies for recertification before the end of its current certification period.

§ 274.2 Providing benefits to participants.

(a) General. Each State agency is responsible for the timely and accurate issuance of benefits to certified eligible households, including EBT system compliance with the expedited service benefit delivery standard and the normal application processing standards, as prescribed by these regulations. Those households located in rural areas or comprised of elderly or disabled members who have difficulty reaching issuance offices, and households which do not reside in a permanent dwelling or of a fixed mailing address shall be given assistance in obtaining an EBT card. State agencies shall assist these households by arranging for the mailing of EBT cards to them, by assisting them in finding authorized representatives who can act on their behalf, or by using other appropriate means.

(b) Availability of benefits. All newly certified households, except those that are given expedited service, shall be given an opportunity to participate no later than 30 calendar days following the date the application was filed. An opportunity to participate consists of providing households with an active EBT card and PIN, and benefits that have been posted to the household's EBT account and are available for spending. State agencies, utilizing a centralized mailing system, must mail EBT cards and PINs, if applicable, in time to assure that the benefits can be spent after they are received but before the 30-day standard expires. A household has not been provided an opportunity to participate within the 30-day standard if the EBT card or PIN is mailed on the 29th or 30th day. For households entitled to expedited service, the State agency shall make benefits available to the household not later than the seventh calendar day following the date of application. State agencies which issue EBT cards by mail shall, at a minimum, use first class mail and sturdy nonforwarding envelopes or packages to send EBT cards to households.

(c) Combined allotments. For those households which are to receive a combined allotment, the State agency shall provide the benefits for both months as an aggregate (combined) allotment, or as two separate allotments, made available at the same time, in accordance with the timeframes specified in § 273.2 of this chapter.

(d) Ongoing households. State agencies shall establish an availability date for household access to their benefits and inform households of this date. All households shall be placed on an issuance schedule so that they receive their benefits on or about the same date each month. The date upon which a household receives its initial allotment after certification need not be the date that the household must receive its subsequent allotments.

(1) State agencies may stagger issuance throughout the month, or for a shorter period. When staggering benefit delivery, however, State agencies shall not allow more than 40 days to elapse between the issuance of any two allotments provided to a household participating longer than two consecutive, complete months. Regardless of the issuance schedule used, the State agency shall adhere to the reporting requirements specified in § 274.4.

(2) Upon the request of the Tribal organization that exercises governmental jurisdiction over a reservation, the State agency shall stagger the issuance of benefits for eligible households located on reservations for at least 15 days each month.

(3) When a participating household is transferred from one issuance system or procedure to another issuance system or procedure, the State agency shall not permit more than 40 days to elapse between the last issuance under the previous system or procedure, and the first issuance under the new system or procedure. The 40-day requirement does not apply to instances in which actions by recipients, such as failure to submit a monthly report, disrupt benefits. Transfers include, but are not limited to, households being moved into or out of a staggered issuance procedure and households on a fluctuating schedule within a staggered system. If the State agency determines that more than 40 days may elapse between issuances, the State agency shall divide the new issuance into two parts, with one part being issued within the 40-day period, and the second part, or supplemental issuance, being issued on the household's established issuance date in the new system or procedure. The supplemental issuance cannot provide the household more benefits than the household is entitled to receive.

(4) Notwithstanding the above provisions, in months in which benefits have been suspended under the provisions of § 271.7 of this chapter, State agencies may stagger issuance to certified households following the end of the suspension. In such situations, State agencies may, at their option, stagger issuance from the date issuance resumes through the end of the month or over a five-day period following the resumption of issuance, even if this results in benefits being issued after the end of the month in which the suspension occurred.

(e) Household training. The State agency shall provide training to each household prior to implementation and as needed during ongoing operation of the EBT system. Training functions for an EBT system may be incorporated into certification procedures. At a minimum, the household training shall include:

(1) Content which will familiarize each household with the provisions of paragraphs (e) through (h) of this section and § 274.6 and § 274.7;

(2) Notification to the household of the procedures for manual transactions and re-presentation as described in § 274.8(d);

(3) The appropriate utilization and security of the PIN;

(4) Each household's responsibilities for reporting loss or damage to the EBT card and who to report them to, both during and outside business hours. Information on a 24 hour hotline telephone number shall be provided to each household during training;

(5) Written materials and/or other information, including the specific rights to benefits in an EBT system, shall be provided as prescribed under 7 CFR 272.4(b) for bilingual households and for households with disabilities. This shall include the statement of non-discrimination found in Departmental Regulation 4300-3 (available from USDA, Office of Civil Rights, Room 326-W, Whitten Building, Washington, DC 20250). Written materials shall be prepared at an educational reading level suitable for SNAP households;

(6) Information on the signs or other appropriate indicators located in checkout lanes that enable the household to identify lanes equipped to accept EBT cards.

(7) Disclosure information regarding adjustments and a household's rights to notice, fair hearings, and provisional credits. The disclosure must also state where to call to dispute an adjustment and request a fair hearing.

(f) Personal Identification Number (PIN). The State agency shall permit SNAP households to select their PIN. PIN assignment procedures shall be permitted in accordance with industry standards as long as PIN selection is available to clients if they so desire and clients are informed of this option.

(g) Adjustments.

(1) The State agency may make adjustments to benefits posted to household accounts after the posting process is complete but prior to the availability date for household access in the event benefits are erroneously posted.

(2) A State agency shall make adjustments to an account to correct an auditable, out-of-balance settlement condition that occurs during the redemption process as a result of a system error. A system error is defined as an error resulting from a malfunction at any point in the redemption process: from the system host computer, to the switch, to the third party processors, to a store's host computer or POS device. These adjustments may occur after the availability date and may result in either a debit or credit to the household.

(i) Client-initiated adjustments. The State agency must act on all requests for adjustments made by client households within 90 calendar days of the error transaction. The State agency has 10 business days from the date the household notifies it of the error to investigate and reach a decision on an adjustment and move funds into the client account. This timeframe also applies if the State agency or entity other than the household discovers a system error that requires a credit adjustment to the household. Business days are defined as calendar days other than Saturdays, Sundays, and Federal holidays.

(ii) Retailer-initiated adjustments. The State agency must act upon all adjustments to debit a household's account no later than 10 business days from the date the error occurred, by placing a hold on the adjustment balance in the household's account. If there are insufficient benefits to cover the entire adjustment, a hold shall be placed on any remaining balance that exists, with the difference being subject to availability only in the next future month. The household shall be given, at a minimum, adequate notice in accordance with § 273.13 of this chapter. The notice must be sent at the time the initial hold is attempted on the household's current month's remaining balance, clearly state the full adjustment amount, and advise the household that any amount still owed is subject to collection from the household's next future month's benefits.

(A) The household shall have 90 days from the date of the notice to request a fair hearing.

(B) Should the household dispute the adjustment and request a hearing within 10 days of the notice, a provisional credit must be made to the household's account by releasing the hold on the adjustment balance within 48 hours of the request by the household, pending resolution of the fair hearing. If no request for a hearing is made within 10 days of the notice, the hold is released on the adjustment balance, and this amount is credited to the retailer's account. If there are insufficient funds available in the current month to cover the full adjustment amount, the hold may be maintained and settled at one time after the next month's benefits become available.

(3) The appropriate management controls and procedures for accessing benefit accounts after the posting shall be instituted to ensure that no unauthorized adjustments are made in accordance with paragraph (h)(3) of this section.

(h) Stale account handling. Stale benefit accounts are those Program benefit accounts which are not accessed for three months or longer.

(1) If EBT accounts are inactive for 3 months or longer, the State agency may store such benefits offline.

(i) Benefits stored off-line shall be made available upon reapplication or re-contact by the household;

(ii) The State agency shall attempt to notify the household of this action before storage of the benefits off-line and describe the steps necessary to bring the benefits back on-line;

(2) The State agency shall expunge benefits that have not been accessed by the household after a period of one year. Issuance reports shall reflect the adjustment to the State agency issuance totals to comply with monthly issuance reporting requirements prescribed under § 274.4.

(3) Procedures shall be established to permit the appropriate managers to adjust benefits that have already been posted to a benefit account prior to the household accessing the account; or, after an account has become dormant. The procedures shall also be applicable to removing stale accounts for off-line storage of benefits or when the benefits are expunged. Whenever benefits are expunged or stored off-line, the State agency shall document the date, amount of the benefits and storage location in the household case file.

§ 275.3 Federal monitoring.

The Food and Nutrition Service shall conduct the review described in this section to determine whether a State agency is operating the Food Stamp Program and the Performance Reporting System in accordance with program requirements. The Federal reviewer may consolidate the scheduling and conduction of these reviews to reduce the frequency of entry into the State agency. FNS regional offices will conduct additional reviews to examine State agency and project area operations, as considered necessary to determine compliance with program requirements. FNS shall notify the State agency of any deficiencies detected in program or system operations. Any deficiencies detected in program or system operations which do not necessitate long range analytical and evaluative measures for corrective action development shall be immediately corrected by the State agency. Within 60 days of receipt of the findings of each review established below, State agencies shall develop corrective action addressing all other deficiencies detected in either program or system operations and shall ensure that the State agency's own corrective action plan is amended and that FNS is provided this information at the time of the next formal semiannual update to the State agency's Corrective Action Plan, as required in § 275.17.

(a) Reviews of State Agency's Administration/Operation of the Food Stamp Program. FNS shall conduct an annual review of certain functions performed at the State agency level in the administration/operation of the program. FNS will designate specific areas required to be reviewed each fiscal year.

(b) Reviews of State Agency's Management Evaluation System. FNS will review each State agency's management evaluation system on a biennial basis; however, FNS may review a State agency's management evaluation system on a more frequent basis if a regular review reveals serious deficiencies in the ME system. The ME review will include but not be limited to a determination of whether or not the State agency is complying with FNS regulations, an assessment of the State agency's methods and procedures for conducting ME reviews, and an assessment of the data collected by the State agency in conducting the reviews.

(c) Validation of State Agency error rates. FNS shall validate each State agency's payment error rate, as described in § 275.23(c), during each annual quality control review period. Federal validation reviews shall be conducted by reviewing against the Food Stamp Act and the regulations, taking into account any FNS-authorized waivers to deviate from specific regulatory provisions. FNS shall validate each State agency's reported negative error rate. Any deficiencies detected in a State agency's QC system shall be included in the State agency's corrective action plan. The findings of validation reviews shall be used as outlined in § 275.23(d)(4).

(1) Payment error rate. The validation review of each State agency's payment error rate shall consist of the following actions:

(i) FNS will select a subsample of a State agency's completed active cases, as follows:

(A) For State agencies that determine their active sample sizes in accordance with § 275.11(b)(1)(ii), the Federal review sample for completed active cases is determined as follows:

Average monthly reviewable caseload (N)	Federal subsample target (n')
31,489 and over	n'=400
10,001 to 31,488	n'=.011634 N+33.66
10,000 and under	n'=150

(B) For State agencies that determine their active sample sizes in accordance with § 275.11(b)(1)(iii), the Federal review sample for completed active cases is determined as follows:

Average monthly reviewable caseload (N)	Federal subsample target (n')

60,000 and over	n'=400
10,001 to 59,999	n'=.005 N+100
10,000 and under	n'=150

(C) In the above formula, n' is the minimum number of Federal review sample cases which must be selected when conducting a validation review, except that FNS may select a lower number of sample cases if:

(1) The State agency does not report a change in sampling procedures associated with a revision in its required sample size within 10 days of effecting the change; and/or

(2) The State agency does not complete the number of case reviews specified in its approved sampling plan.

(D) The reduction in the number of Federal cases selected will be equal to the number of cases that would have been selected had the Federal sampling interval been applied to the State agency's shortfall in its required sample size. This number may not be exact due to random starts and rounding.

(E) In the above formula, N is the State agency's minimum active case sample size as determined in accordance with § 275.11(b)(1).

(ii) FNS Regional Offices will conduct case record reviews to the extent necessary to determine the accuracy of the State agency's findings using the household's certification records and the State agency's QC records as the basis of determination. The FNS Regional Office may choose to verify any aspects of a State agency's QC findings through telephone interviews with participants or collateral contacts. In addition, the FNS Regional Office may choose to conduct field investigations to the extent necessary.

(iii) Upon the request of a State agency, the appropriate FNS Regional Office will assist the State agency in completing active cases reported as not completed due to household refusal to cooperate.

(iv) FNS will also review the State agency's sampling procedures, estimation procedures, and the State agency's system for data management to ensure compliance with § 275.11 and § 275.12.

(v) FNS validation reviews of the State agency's active sample cases will be conducted on an ongoing basis as the State agency reports the findings for individual cases and supplies the necessary case records. FNS will begin the remainder of each State agency's validation review as soon as possible after the State agency has supplied the necessary information regarding its sample and review activity.

(2) Underissuance error rate. The validation review of each State agency's underissuance error rate shall occur as a result of the Federal validation of the State agency's payment error rate as outlined in paragraph (c)(1) of this section.

(3) Negative case error rate. The validation review of each State agency's negative case error rate shall consist of the following actions:

(i) FNS will select a subsample of a State agency's completed negative cases, as follows:

Average monthly reviewable negative caseload (N)	Federal subsample target (n')
5,000 and over	n'=160
501 to 4,999	n'=.0188 N+65.7
Under 500	n'=75

(A) In the above formula, n' is the minimum number of Federal review sample cases which must be selected when conducting a validation review, except that FNS may select a lower number of sample cases if:

(1) The State agency does not report a change in sampling procedures associated with a revision in its required sample size within 10 days of effecting the change; and/or

(2) The State agency does not complete the number of case reviews specified in its approved sampling plan.

(B) The reduction in the number of Federal cases selected will be equal to the number of cases that would have been selected had the Federal sampling interval been applied to the State agency's shortfall in its required sample size. This number may not be exact due to random starts and rounding.

(C) In the above formula, N is the State agency's minimum negative case sample size as determined in accordance with § 275.11(b)(2).

(ii) FNS Regional Offices will conduct case record reviews to the extent necessary to determine whether the household case record contained sufficient documentation to justify the State agency's QC findings of the correctness of the State agency's decision to deny, suspend or terminate a household's participation.

(iii) FNS will also review each State agency's negative case sampling and review procedures against the provisions of §§ 275.11 and 275.13.

(iv) FNS will begin each State agency's negative sample case validation review as soon as possible after the State agency has supplied the necessary information, including case records and information regarding its sample and review activity.

(4) Arbitration.

(i) Whenever the State agency disagrees with the FNS regional office concerning individual QC case findings and the appropriateness of actions taken to dispose of an individual case, the State agency may request that the dispute be arbitrated on a case-by-case basis by an FNS Arbitrator, subject to the following limitations.

(A) The State agency may only request arbitration when the State agency's and FNS regional office's findings or disposition of an individual QC case disagree.

(B) The arbitration review shall be limited to the point(s) within the Federal findings or disposition that the State agency disputes. However, if the arbitrator in the course of the review discovers a mathematical error in the computational sheet, the arbitration shall correct the error while calculating the allotment.

(ii) The FNS Arbitrator(s) shall be an individual or individuals who are not directly involved in the validation effort.

(iii) With the exception of the restrictions contained in paragraph (c)(4)(iii), for an arbitration request to be considered, it must be received by the appropriate FNS regional office within 20 calendar days of the date of receipt by the State agency of the regional office case findings. In the event the last day of this time period falls on a Saturday, Sunday, or Federal or State holiday, the period shall run to the end of the next work day. The State agency shall be restricted in its eligibility to request arbitration of an individual case if that case was not disposed of and the findings reported in accordance with the timeframes specified in § 275.21(b)(2). For each day late that a case was disposed of and the findings reported, the State agency shall have one less day to request arbitration of the case.

(iv) When the State agency requests arbitration, it shall submit all required documentation to the appropriate FNS regional office addressed to the attention of the FNS Arbitrator. The FNS regional office QC staff may submit an explanation of the Federal position regarding a case to the FNS Arbitrator.

(A) A complete request is one that contains all information necessary for the arbitrator to render an accurate, timely decision.

(B) If the State agency's request is not complete the arbitrator shall make a decision based solely on the available documents.

(v) The FNS Arbitrator shall have 20 calendar days from the date of receipt of a State agency's request for arbitration to review the case and make a decision.

(5) Household cooperation. Households are required to cooperate with Federal QC reviewers. Refusal to cooperate shall result in termination of the household's eligibility. The Federal reviewer shall follow the procedures in § 275.12(g)(1)(ii) in order to determine whether a household is refusing to cooperate with the Federal QC reviewer. If the Federal reviewer determines that the household has refused to cooperate, as opposed to failed to cooperate, the household shall be reported to the State agency for termination of eligibility.

(d) Assessment of Corrective Action.

(1) FNS will conduct will conduct a comprehensive annual assessment of a State agency's corrective action process by compiling all information relative to that State agency's corrective action efforts, including the State agency's system for data analysis and evaluation. The purpose of this assessment and review is to determine if: identified deficiencies are analyzed in terms of causes and magnitude and are properly included in either the State or Project Area/Management Unit corrective action plan; the State agency is implementing corrective actions according to the appropriate plan; target completion dates for reduction or elimination of deficiencies are being met; and, corrective actions are effective. In addition, FNS will examine the State agency's corrective action monitoring and evaluative efforts. The assessment of corrective action will be conducted at the State agency, project area, and local level offices, as necessary.

(2) In addition, FNS will conduct on-site reviews of selected corrective actions as frequently as considered necessary to ensure that State agencies are implementing proposed corrective actions within the timeframes specified in the State agency and/or Project Area/Management Unit corrective action plans and to determine the effectiveness of the corrective action. The on-site reviews will provide State agencies and FNS with

a mechanism for early detection of problems in the corrective action process to minimize losses to the program, participants, or potential participants.

§ 275.16 Corrective action planning.

(a) Corrective action planning is the process by which State agencies shall determine appropriate actions to reduce substantially or eliminate deficiencies in program operations and provide responsive service to eligible households.

(b) The State agency and project area(s)/management unit(s), as appropriate, shall implement corrective action on all identified deficiencies. Deficiencies requiring action by the State agency or the combined efforts of the State agency and the project area(s)/management unit(s) in the planning, development, and implementation of corrective action are those which:

(1) Result from a payment error rate of 6 percent or greater (actions to correct errors in individual cases, however, shall not be submitted as part of the State agency's corrective action plan);

(2) Are the causes of other errors/deficiencies detected through quality control, including error rates of 1 percent or more in negative cases (actions to correct errors in individual cases, however, shall not be submitted as part of the State agency's corrective action plan);

(3) Are identified by FNS reviews, GAO audits, contract audits, or USDA audits or investigations at the State agency or project area level (except deficiencies in isolated cases as indicated by FNS); and,

(4) Result from 5 percent or more of the State agency's QC sample being coded “not complete” as defined in § 275.12(g)(1) of this part. This standard shall apply separately to both active and negative samples.

(5) Result in underissuances, improper denials, improper suspensions, improper termination, or improper systemic suspension of benefits to eligible households where such errors are caused by State agency rules, practices, or procedures.

(6) [Redesignated as subsection (b)(5) by 75 FR 33438]

(c) The State agency shall ensure that appropriate corrective action is taken on all deficiencies including each case found to be in error by quality control reviews and those deficiencies requiring corrective action only at the project area level. Moreover, when a substantial number of deficiencies are identified which require State agency level and/or

project area/management unit corrective action, the State agency and/or project area/management unit shall establish an order of priority to ensure that the most serious deficiencies are addressed immediately and corrected as soon as possible. Primary factors to be considered when determining the most serious deficiencies are:

(1) Magnitude of the deficiency as defined in § 275.15(c)(3) of this part;

(2) Geographic extent of the deficiency (e.g., Statewide/project area or management unit);

(3) Anticipated results of corrective actions; and

(4) High probability of errors occurring as identified through all management evaluation sources.

(d) In planning corrective action, the State agency shall coordinate actions in the areas of data analysis, policy development, quality control, program evaluation, operations, administrative cost management, civil rights, and training to develop appropriate and effective corrective action measures.

§ 275.24 High performance bonuses.

(a) General rule.

(1) FNS will award bonuses totaling $48 million for each fiscal year to State agencies that show high or improved performance in accordance with the performance measures under paragraph (b) of this section.

(2) FNS will award the bonuses no later than September 30th of the fiscal year following the performance measurement year.

(3) A State agency is not eligible for a bonus payment in any fiscal year for which it has a liability amount established as a result of an excessive payment error rate in the same year. If a State is disqualified from receiving a bonus payment under this paragraph (a)(3), and the State is not tied for a bonus, the State with the next best performance will be awarded a bonus payment.

(4) The determination whether, and in what amount, to award a performance bonus payment is not subject to administrative or judicial review.

(5) In determining the amount of the award, FNS will first award a base amount of $100,000 to each State agency that is an identified winner in each category. Subsequently, FNS will divide the remaining money among the States in each category (see paragraph

(b) of this section) in proportion to the size of their caseloads (the average number of households per month for the fiscal year for which performance is measured).

(6) A State cannot be awarded two bonuses in the same category; the relevant categories are payment accuracy (which is outlined in paragraph (b)(1) of this section), negative error rate (which is outlined in paragraph (b)(2) of this section), or program access index (which is outlined in paragraph (b)(3) of this section). If a State is determined to be among the best and the most improved in a category, it will be awarded a bonus only for being the best. The next State in the best category will be awarded a bonus as being among the best States.

(7) Where there is a tie to the fourth decimal point for the categories outlined in paragraphs (b)(1) through (b)(4) of this section, FNS will add the additional State(s) into the category and the money will be divided among all the States in accordance with paragraph (a)(5) of this section.

(b) Performance measures. FNS will measure performance by and base awards on the following categories of performance measures:

(1) Payment accuracy. FNS will divide $24 million among the 10 States with the lowest and the most improved combined payment error rates as specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(i) Excellence in payment accuracy. FNS will provide bonuses to the 7 States with the lowest combined payment error rates based on the validated quality control payment error rates for the performance measurement year as determined in accordance with this part.

(ii) Most improved in payment accuracy. FNS will provide bonuses to the 3 States with the largest percentage point decrease in their combined payment error rates based on the comparison of the validated quality control payment error rates for the performance measurement year and the previous fiscal year, as determined in accordance with this part.

(2) Negative error rate. FNS will divide $6 million among the 6 States with the lowest and the most improved negative error rates as specified in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(i) Lowest negative error rate. FNS will provide bonuses to the 4 States with the lowest negative error rates based on the validated quality control negative error rates for the performance year as determined in accordance with this part.

(ii) Most improved negative error rate. FNS will provide bonuses to the 2 States with the largest percentage point decrease in their negative error rates, based on the comparison of the performance measurement year's validated quality control negative error rates with those of the previous fiscal year, as determined in accordance with this part. A State agency is not eligible for a bonus under this criterion if the State's negative error rate for the fiscal year is more than 50 percent above the national average.

(3) Program access index (PAI). FNS will divide $12 million among the 8 States with the highest and the most improved level of participation as specified in paragraphs (b)(3)(i) through (b)(3)(iii) of this section. The PAI is the ratio of participants to persons with incomes below 125 percent of poverty, as calculated in accordance with paragraph (b)(3)(iii) of this section (the PAI was formerly known as the participant access rate (PAR)).

(i) High program access index. FNS will provide bonuses to the 4 States with the highest PAI as determined in accordance with paragraph (b)(3)(iii) of this section.

(ii) Most improved program access index. FNS will provide bonuses to the 4 States with the most improved PAI as determined in accordance with paragraph (b)(3)(iii) of this section.

(iii) Data. For the number of participants (numerator), FNS will use the administrative annual counts of participants minus new participants certified under special disaster program rules by State averaged over the calendar year. For the number of people below 125 percent of poverty (denominator), FNS will use the Census Bureau's March Supplement to the Current Population Survey's (CPS) count of people below 125 percent of poverty for the same calendar year. FNS will reduce the count in each State where a Food Distribution Program on Indian Reservations (FDPIR) program is operated by the administrative counts of the number of individuals who participate in this program averaged over the calendar year. FNS will reduce the count in California by the Census Bureau's percentage of people below 125% of poverty in California who received Supplemental Security Income in the previous year. FNS reserves the right to use data from the American Community Survey (ACS) in lieu of the CPS, and to use the count of people below 130 percent of poverty, should these data become available in a timely fashion and prove more accurate. Such a substitution would apply to all States.

(4) Application processing timeliness. FNS will divide $6 million among the 6 States with the highest percentage of timely processed applications.

(i) Data. FNS will use quality control data to determine each State's rate of application processing timeliness.

(ii) Timely processed applications. A timely processed application is one that provides an eligible applicant the "opportunity to participate" as defined in § 274.2 of this chapter, within thirty days for normal processing or 7 days for expedited processing. New applications that are processed outside of this standard are untimely for this measure, except for applications that are properly pended in accordance with § 273.2(h)(2) of this chapter because verification is incomplete and the State agency has taken all the actions described in § 273.2(h)(1)(i)(C) of this chapter. Such applications will not be included in this measure. Applications that are denied will not be included in this measure.

(iii) Evaluation of applications. Only applications that were filed on or after the beginning of the performance measurement (fiscal) year will be evaluated under this measure.

§ 276.5 Injunctive relief.

(a) General. If FNS determines that a State agency has failed to comply with the Food Stamp Act, the regulations issued pursuant to the Act, or the FNS-approved State Plan of Operations, the Secretary may seek injunctive relief against the State agency to require compliance. The Secretary may request injunctive relief concurrently with negligence billings and sanctions against State agencies affecting administrative funds.

(b) Requesting injunctive relief. Prior to seeking injunctive relief to require compliance, FNS shall notify the State agency of the determination of noncompliance and provide the State agency with a specific period of time to correct the deficiency. The Secretary shall have the discretion to determine the time periods State agencies will have to correct deficiencies. If the State agency does not correct the failure within the specified time period and the Department decides to seek injunctive relief, the Secretary shall refer the matter to the Attorney General with a request that injunctive relief be sought to require compliance.

§ 276.6 Good cause.

(a) When a State agency has failed to comply with provisions of the Act, the regulations issued pursuant to the Act, or the FNS-approved State Plan of Operation, and, thus, is subject to the suspension/disallowance and injunctive relief provisions in §§ 276.4 and 276.5, FNS may determine that the State had good cause for the noncompliance. FNS shall evaluate good cause in these situations on a case-by-case basis, based on any one of the following criteria:

(1) Natural disasters or civil disorders that adversely affect Program operations;

(2) Strikes by State agency staff;

(3) Change in the Food Stamp Program or other Federal or State programs that result in a substantial adverse impact upon a State agency's management of the Program; and

(4) Any other circumstances in which FNS determines good cause to exist.

(b) If FNS determines that food cause existed for a State agency's failure to comply with required provisions and standards, FNS shall not suspend or disallow administrative funds nor seek injunctive relief to compel compliance with the provisions and standards.

TAB D

Texas Human Resources Code

§ 31.032. Investigation and Determination of Eligibility

(a) On receipt of an application for assistance authorized by this chapter, the department shall investigate and record the applicant's circumstances in order to ascertain the facts supporting the application and to obtain other information it may require.

(b) After completing its investigation, the department shall determine whether the applicant is eligible for the assistance, the type and amount of assistance, the date on which the assistance shall begin, and the manner in which payments shall be made.

(c) The department shall promptly notify the applicant of its final action.

(d) In determining whether an applicant is eligible for assistance, the department shall exclude from the applicant's available resources:

(1) $1,000 for the applicant's household, including a household in which there is a person with a disability or a person who is at least 60 years of age; and

(2) the fair market value of the applicant's ownership interest in a motor vehicle, but not more than the amount determined according to the following schedule:

(A) $4,550 on or after September 1, 1995, but before October 1, 1995;

(B) $4,600 on or after October 1, 1995, but before October 1, 1996;

(C) $5,000 on or after October 1, 1996, but before October 1, 1997; and

(D) $5,000 plus or minus an amount to be determined annually beginning on October 1, 1997, to reflect changes in the new car component of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics.

(e) If federal regulations governing the maximum allowable resources under the food stamp program, 7 CFR Part 273, are revised, the department shall adjust the standards that determine available resources under Subsection (d) to reflect those revisions.

§ 33.0006. Operation of Food Stamp Program

The Health and Human Services Commission operates the food stamp program.

§ 33.002. Distribution of Commodities and Food Stamps

(a) The department is responsible for the distribution of commodities and food stamps allocated to the department by the federal government.

(b) The department may enter into agreements with federal agencies that are required as a prerequisite to the allocation of the commodities or food stamps. The department may enter into agreements with eleemosynary institutions, schools, and other eligible agencies and recipients of the commodities and food stamps. The department administering the distribution of federal surplus commodities and other resources may cooperate with a municipality or county as necessary to properly administer that distribution.

(c) The department shall establish policies and rules that will ensure the widest and most efficient distribution of the commodities and food stamps to those eligible to receive them.

(d) The department shall continually monitor the expedited issuance of food stamp benefits to ensure that each region in the state complies with federal regulations and that those households eligible for expedited issuance are identified, processed, and certified within the timeframes prescribed within the federal regulations. As soon as practicable after the end of each fiscal year, the department shall report to the Governor's Office of Budget and Planning, the Legislative Budget Board, the state auditor, and the department's board members regarding its monitoring of expedited issuance and the degree of compliance with federal regulations on a region-by-region basis. The department shall notify members of the legislature and the standing committees of the senate and house of representatives having primary jurisdiction over the department of the filing of the report.

(e) The department shall screen all applicants for expedited issuance on a priority basis within one working day. Applicants who meet the federal criteria for expedited issuance and have an immediate need for food assistance shall receive either a manual Authorization-to-Purchase card or the immediate issuance of food stamp coupons within one working day.

(f) The department shall conspicuously post in each local food stamp office a notice of the availability of and procedure for applying for expedited issuance.

(g) The department may, within federal limits, modify the one-day screening and service delivery requirements prescribed by Subsection (e) if the department determines that the modification is necessary to reduce fraud in the food stamp program.

§ 33.0021. Application Information

(a) The department shall develop general informational materials that contain eligibility guidelines for benefits under this chapter and that clearly and simply explain the process for applying for benefits, as well as indicate the availability of expedited food stamps, the existence of toll-free telephone hotlines, and the existence of a procedure in each region to handle complaints. These informational materials shall be nonpromotional in nature.

(b) The materials must contain a list of the specific items necessary to verify an application.

(c) The department shall distribute the materials to community action agencies, legal services offices, and emergency food programs and other programs likely to have contact with potential applicants.

§ 33.0022. Fraud Prevention in Food Stamp Program

(a) The electronic benefits transfer (EBT) system operator and installer shall report to the department and the United States Department of Agriculture suspicious activity relating to a retailer's participation in the food stamp program, including:

(1) a noticeable absence of staple food products;

(2) a low supply of staple food products in relation to other items in the retailer's inventory; or

(3) improper food stamp redemption.

(b) The department shall compare a retailer's food stamp sales volume with the retailer's total food sales to determine whether the retailer is eligible to receive free point-of-sale terminals.

(c) At least once each fiscal quarter, the department shall provide any information reported under Subsection (a) to the Public Assistance Fraud Oversight Task Force.

(d) In this section, “retailer” means a business approved for participation in the food stamp program.

§ 33.0023. Food Stamp Information Matching System

(a) To detect and prevent fraud in the food stamp program, the department, through the use of a computerized matching system, shall compare at least semiannually department information relating to food stamp transactions and redemptions by recipients of food stamps

and retailers with information obtained from the comptroller and other appropriate state agencies relating to those recipients and retailers.

(b) The department, the comptroller, and the appropriate agencies shall take all necessary measures to protect the confidentiality of information provided under this section, in compliance with all existing state and federal privacy guidelines.

(c) In this section, “retailer” means a business approved for participation in the food stamp program.

§ 33.015. Initial Establishment and Recertification of Eligibility for Certain Persons

(a) In administering the food stamp program, the department shall, except as provided by Subsection (c), allow a person to comply with initial eligibility requirements, including any initial interview, and with subsequent periodic eligibility recertification requirements by telephone instead of through a personal appearance at department offices if:

(1) the person and each member of the person's household have no earned income and are elderly or disabled; or

(2) the person is subject to a hardship, as determined by the department.

(b) For purposes of Subsection (a)(2), a hardship includes a situation in which a person is prevented from personally appearing at department offices because the person is:

(1) subject to a work or training schedule;

(2) subject to transportation difficulties;

(3) subject to other difficulties arising from the person's residency in a rural area;

(4) subject to prolonged severe weather;

(5) ill; or

(6) needed to care for a member of the person's household.

(c) The department may require a person described by Subsection (a) to personally appear at department offices to establish initial eligibility or to comply with periodic eligibility recertification requirements if the department considers a personal appearance necessary to:

(1) protect the integrity of the food stamp program; or

(2) prevent an adverse determination regarding the person's eligibility that would be less likely to occur if the person made a personal appearance.

(d) A person described by Subsection (a) may elect to personally appear at department offices to establish initial eligibility or to comply with periodic eligibility recertification requirements.

(e) The department shall require a person exempted under this section from making a personal appearance at department offices to provide verification of the person's entitlement to the exemption on initial eligibility certification and on each subsequent periodic eligibility recertification. If the person does not provide verification and the department considers the verification necessary to protect the integrity of the food stamp program, the department shall initiate a fraud referral to the department's office of inspector general.

TAB E

Texas Administrative Code
Title 1

§ 372.3. Legal Basis

(a) For the TANF Program, the federal law basis is:

(1) Title IV of the Social Security Act (42 U.S.C. § 601 et seq.); and

(2) the federal regulations in 45 CFR, Parts 260 through 265.

(b) To the extent the regulations described in subsection (a) of this section impose federal mandates that apply to Texas, HHSC incorporates the regulations by reference for administration of TANF in Texas. If the regulations provide options from which Texas may choose, or if Texas is granted a waiver from a federal mandate, the rules of this chapter and other applicable state administrative rules and policy describe the options Texas has chosen and the waivers Texas has been granted.

(c) For the TANF Program, the state law basis is:

(1) the Texas Human Resources Code, Chapter 31, which authorizes the Texas Health and Human Services Commission (HHSC) to administer the TANF Program in Texas;

(2) the Texas Human Resources Code, Chapter 34, which authorizes HHSC to administer the TANF State Program; and

(3) the rules of this chapter, as well as other applicable HHSC rules.

(d) For SNAP, the federal law basis is:

(1) 7 U.S.C. § 2011 et seq.; and

(2) the federal regulations in 7 CFR, Parts 271 through 283.

(e) To the extent the regulations described in subsection (d) of this section impose federal mandates that apply to Texas, HHSC incorporates the regulations by reference for administration of SNAP in Texas. If the regulations provide options from which Texas may choose, or if Texas is granted a waiver from a federal mandate, the rules of this chapter and other applicable state administrative rules and policy describe the options Texas has chosen and the waivers Texas has been granted.

(f) For SNAP, the state law basis is:

(1) the Texas Human Resources Code, Chapter 33, which authorizes HHSC to administer SNAP in Texas; and

(2) the rules of this chapter, as well as other applicable HHSC rules.

(g) The Texas Workforce Commission provides TANF and SNAP employment and hiring activities and support services as described in Title 40 of the Texas Administrative Code, Chapter 811 (relating to Choices) and Chapter 813 (relating to Supplemental Nutrition Assistance Program Employment and Training).

§ 372.153. Determining SNAP Household Eligibility

To determine eligibility for SNAP benefits of each of the following various types of households, the Texas Health and Human Services Commission follows the federal regulation or regulations in 7 CFR indicated in the following table:

Figure: 1 TAC §372.153

Type of household:	**Section(s) in 7 CFR:**
Households with boarders	273.11(b)
Households with persons disqualified from receiving SNAP benefits	273.11(c)
Migrant and seasonal farm workers	273.10(e)(3)
People in group living arrangements	273.11(f)
Residents of shelters for battered women	273.11(g)
Students	273.5
Households with people on strike	273.1(e)
People receiving TANF or SSI benefits	273.2(j)(2)
People who are homeless	273.11(h) 278.1(i)
People who are elderly or disabled	273.1(b)(2) 273.1(b)(7)(vi) 273.9(a) 273.9(d)(3) 273.9(d)(6)(ii)
Residents of alcoholic and narcotic treatment centers	273.11(e)

§ 372.408. Determining Income Eligibility

(a) In the TANF Program, the Texas Health and Human Services Commission (HHSC) determines income eligibility by applying the following tests:

(1) Budgetary needs test. The first income eligibility test for TANF applicants, the budgetary needs test applies to households that have not received TANF benefits during the four months before the application month. HHSC determines the applicable budgetary needs amount from the table in paragraph (2) of this subsection, based on the persons in the certified group and whether the household includes a second parent. A household passes this test if the total income under § 372.403 of this division (relating to Determining Whose Income Counts in TANF) does not exceed the budgetary needs amount.

(2) Recognizable needs test. The second income eligibility test for TANF applicants, the recognizable needs test applies to the continuing income eligibility of TANF recipients. HHSC determines the applicable recognizable needs amount from the following table, based on the persons in the certified group and whether the household includes a second parent. A household passes this test if the total income under § 372.403 of this division, minus all applicable deductions in § 372.409 of this division (relating to Allowable Deductions from Countable Income in TANF), is equal to or less than the recognizable needs amount.

Figure: 1 TAC §372.408(a)(2)

NUMBER IN CERTIFIED GROUP	NO CARETAKER IN CERTIFIED GROUP		CARETAKER IN CERTIFIED GROUP		CARETAKER AND SECOND PARENT	
	Budgetary Needs	Recognizable Needs	Budgetary Needs	Recognizable Needs	Budgetary Needs	Recognizable Needs
1	256	64	313	78*	---	---
2	369	92	650	163	498	125*
3	518	130	751	188	824	206
4	617	154	903	226	925	231
5	793	198	1003	251	1073	268
6	856	214	1153	288	1176	294
7	1068	267	1252	313	1319	330
8	1173	293	1425	356	1422	356
9	1346	337	1528	382	1595	399
10	1450	363	1701	425	1698	425
11	1623	406	1804	451	1871	468
12	1726	432	1977	494	1975	494
13	1899	475	2080	520	2147	537
14	2003	501	2253	563	2251	563
15	2174	544	2356	589	2423	606
Per each additional member	173	43	173	43	173	43
*Caretaker only in certified group - a child as described in §372.102(b)(1)(B) or (C) of this subchapter (relating to Caretaker)						

(b) In SNAP, HHSC follows 7 CFR § 273.9 and § 273.10 to determine income eligibility.

§ 372.904. Application Processing Time Frame

(a) For a TANF application, the Texas Health and Human Services Commission (HHSC) certifies or denies the application by the 45th day after the application file date explained in § 372.903 of this division (relating to Application File Date), unless the household is subject to a one-month period of demonstrating cooperation as explained in § 372.1155(d) of this chapter (relating to Consequence for Noncooperation with Personal Responsibility Agreement Requirements), in which case the application processing period is extended by the time period for demonstrating cooperation.

(b) For a SNAP application, except in the case of an expedited application as described in § 372.956 of this subchapter (relating to Expedited SNAP Application Process), HHSC certifies or denies the application as soon as possible but not later than 30 days after the application file date explained in § 372.903 of this division. If the 30th day is not a workday, then the processing period ends on the last previous workday.

(c) The first day of the application processing period is the day after the application file date, except as described in subsection (d) of this section.

(d) In SNAP, if an applicant resides in an institution and is also applying for Supplemental Security Income, the first day of the application processing period is the day the applicant is released from the institution, if the day is after the application file date.

§ 372.1001. Notification of Final Eligibility Decision

(a) In the TANF Program, the Texas Health and Human Services Commission (HHSC) notifies TANF applicants in writing of HHSC's final eligibility decision. The written notice informs the applicant or recipient of the right to request a hearing to appeal the eligibility determination.

(b) In SNAP, HHSC provides notice:

(1) to SNAP applicant households as explained in 7 CFR § 273.10(g)(1);

(2) related to recertification as explained in 7 CFR § 273.10(g)(2); and

(3) related to returned or undeliverable mail as explained in 7 CFR § 273.13(c).

§ 372.1002. Appeal of Eligibility Decision

TANF and SNAP households may appeal Texas Health and Human Services Commission (HHSC) decisions as provided by HHSC's fair hearing rules in Chapter 357 of this title (relating to Hearings).

TAB F

FY 2008 FOOD STAMP PROGRAM HIGH PERFORMANCE BONUSES

BEST PAYMENT ACCURACY		
State	Payment Error Rate (PER)	Bonus Amount
Florida	0.85	$7,179,612
South Dakota	1.00	$348,590
Georgia	2.50	$4,062,236
Mississippi	2.64	$1,889.234
North Carolina	2.65	$4,078,374
Wyoming	2.69	$190,780
Nebraska	2.75	$594,360
Virgin Islands	3.22	$147,801
National Average	5.01	

MOST IMPROVED PAYMENT ACCURACY				
State	FY 2007 PER	FY2008 PER	Change	Bonus Amount
Georgia	8.13	2.50	-5.63	See best above
Ohio	9.17	4.29	-4.88	$5,100,407
Delaware	9.36	5.52	-3.84	$408,606
Total				$24,000,000

BEST NEGATIVE ERROR RATE		
State	Rate	Bonus Amount
Nebraska	0.00	$744,700
South Dakota	0.47	$424,182
Idaho	0.72	$605,479
New Hampshire	1.44	$486,756
National Average	10.96	

MOST IMPROVED NEGATIVE ERROR RATE				
State	FY 2007	FY2008	Change	Bonus Amount
Oklahoma	11.22	4.71	-6.51	$2,284,606
Colorado	12.46	7.25	-5.21	$1,454,277
Total				$6,000,000

BEST PROGRAM ACCESS INDEX		
State	Rate	Bonus Amount
Missouri	90.0	$2,580,379
District of Columbia	79.6	$476,947
Tennessee	74.7	$3,342,208
Oregon	73.5	$2,021,483

MOST IMPROVED PROGRAM ACCESS INDEX				
State	FY 2007	FY2008	Change	Bonus Amount
Maryland	53.93	63.88	9.95	$1,420,511
Delaware	57.06	66.99	9.93	$356,813
Wisconsin	48.84	58.57	9.73	1,528,075
Alaska	63.21	72.94	9.73	$273,584
Total				$12,000,000

BEST APPLICATION PROCESSING TIMELINESS RATE		
State	Rate	Bonus Amount
Montana	97.97	$292,908
Massachusetts	97.65	$1,548,018
Virgin Islands	95.83	$127,370
Louisiana	95.70	$1,865,726
District of Columbia	95.41	$359,358
Missouri	95.26	$1,806,620
Total		$6,000,000

Sanction States for FY 2008 include Maine, West Virginia, and New Mexico

TAB G

USDA

United States Department of Agriculture

Office of the Secretary
Washington, D.C. 20250

The Honorable Rick Perry
Governor of Texas
State Insurance Building
1100 San Jacinto
Austin, Texas 78701

JUN 16 2011

Dear Governor Perry:

Today the Department of Agriculture (USDA) released the official Supplemental Nutrition Assistance Program (SNAP) overpayment, underpayment, payment error, and negative error rates for Fiscal Year (FY) 2010 under the quality control (QC) provisions of section 16(c) of the Food and Nutrition Act of 2008 (the Act).

Texas' QC error rates for FY 2010 are:

Overpayment Rate	1.54 percent
Underpayment Rate	0.59 percent
Payment Error Rate	2.13 percent
Validated Negative Error Rate	6.44 percent

Your payment error rate consists of the sum of two components: the overpayment rate and the underpayment rate. Overpayments reflect benefits issued over the amount that a household is entitled to receive while underpayments reflect benefits that a household is entitled to but did not receive. The overpayment error rate and the underpayment error rate may not add up to the exact payment error rate due to rounding. The national performance measure (national average payment error rate) for FY 2010 is 3.81 percent.

The negative error rate measures the correctness of a State agency's action to deny an application or suspend or terminate the benefits of a participating household. The rate also measures whether a State agency correctly determined a household's eligibility in terms of the State's compliance with Federal procedural requirements. The national average negative error rate for FY 2010 is 8.43 percent.

I would like to congratulate you for your achievement in obtaining both a payment error rate and a negative error rate that are below the national average in both categories. This reflects a strong commitment on your part to the proper administration of SNAP.

Statutory authorities regarding liability determination due to excessive payment error rates have been delegated by the Secretary of Agriculture to the Under Secretary for Food, Nutrition, and Consumer Services (FNCS). Under the Act, a 2-year liability system is in place. Under this system, a liability amount shall be established when, for the second or subsequent consecutive

fiscal year, FNCS determines that there is a 95 percent statistical probability that a State's payment error rate exceeds 105 percent of the national performance measure for payment error rates.

For FY 2008, FNCS determined that there was a 95 percent statistical probability that Texas' payment error rate of 7.11 percent exceeded 105 percent of the national performance measure for FY 2008. You were notified on June 26, 2009, that FY 2008 was the first year of two possible consecutive years of excessive payment error rates. For FY 2009, the FNCS determined that there was also a 95 percent statistical probability that Texas' payment error rate of 6.90 percent exceeded 105 percent of the national performance measure for FY 2009. Therefore Texas was notified on June 24, 2010, that this was the second consecutive year that Texas exceeded 105 percent of the national performance measure and a liability amount of $3,959,213.00 was established for your State agency for FY 2009. Fifty percent of that amount, $1,979,606.50, was placed at-risk for repayment if there was a 95 percent statistical probability that Texas' error rate again exceeded 105 percent of the national performance measure for FY 2010.

I am pleased to inform you that your State agency falls within the tolerance level for FY 2010 and, as such, the FY 2009 at-risk money does not need to be paid and is no longer a potential liability for Texas. In addition, no liability amount is being established for FY 2010 and FY 2010 will not count as a first year for your State agency in determining liability status for next year.

In accordance with the settlement agreement signed October 14, 2010, USDA waived the amount designated for new investment, $1,979,606.50. In exchange for waiving the new investment amount, Texas agreed to implement a series of State program improvements. The requirement to complete the planned program improvements continues in force in accordance with the settlement agreement signed by Texas on October 14, 2010.

Section 16(d)(2)(B) of the Act authorizes the Secretary to award $48 million in bonuses to State agencies that demonstrate high or improved performance in administering SNAP. Beyond payment accuracy and negative error rates, FNCS identified two other areas of performance for FY 2010 on which awards are based: highest and most improved program access index and highest percent of timely processed applications. The performance bonus awards for program access and timely processed applications will be announced at a later date.

At this time, USDA is also announcing the recipients of the payment accuracy and negative error rate bonus payments for FY 2010. I am pleased to announce that Texas will receive a SNAP High Performance Bonus in the amount of $6,243,012.00. Texas is among the States with the lowest payment error rate during FY 2010. Texas' payment error rate is 2.13 percent. I also wish to commend Texas for being one of the States with the most improved payment error rate during FY 2010. Texas' payment error rate improved from 6.90 percent in FY 2009 to 2.13 percent in FY 2010, a 4.77 percentage point decrease. In accordance with regulations, when a State is determined to be among the best and the most improved in a category, it will be awarded a bonus only for being the best. The payment error measure directly relates to one of FNCS' overarching goals: improving program integrity.

Texas did not qualify for an award for the lowest or most improved negative error rate. The negative error rate bonus payment directly relates to another one of FNCS' overarching goals: improving customer service. Please contact your Food and Nutrition Service regional office for a list of award winners and your State's relative ranking in this performance measure.

I personally want to commend you for your achievement and encourage you to continue your efforts to improve program integrity and the overall administration of SNAP and appreciate the State's efforts and success in payment accuracy for SNAP recipients. Proper administration of this important nutrition assistance program results in public confidence as we work together to provide services to needy Americans.

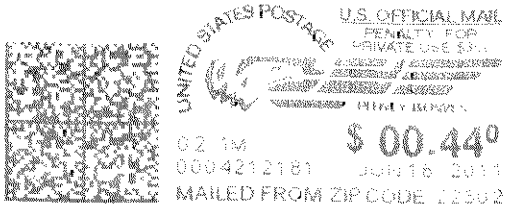
Sincerely,

Kevin W. Concannon
Under Secretary
Food, Nutrition, and Consumer Services

cc: Commissioner

U. DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

OFFICIAL BUSINESS



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JUN 20 2011

OFFICE OF THE
HHS EXECUTIVE COMMISSIONER

20

The Honorable Thomas Suehs
Executive Commissioner
Texas Health and Human Services Commission
Commissioner Office MC: BH-1000
Austin, TX 78711-3247

78711+3247