



Cumulative PRWORA Q's and A's on Food Stamp Fraud, Disqualifications, and Recipient Claims

Current as of January 29, 1998

(Note to readers: This file contains answers to questions to provisions of PRWORA generally concerned with intentional program violation (fraud)-related disqualifications and food stamp recipient claims. Specifically, the sections of PRWORA covered by this file are: 809 (as related to calculating a claim); 813; 814; 820; 839; and 844.

I. Section 809 Earned Income Deduction

(1) The earned income deduction is not allowed when determining an overissuance due to intentional or inadvertent failure of a household to report earned income in a timely manner. Does this provision apply only to present or future overissuances or can it also be applied to claims with overissuance months prior to August 22, 1996? (Nov 1996)

This procedure applies to any overissuance established subsequent to State agency implementation of this new provision. This includes overissuances which occurred prior to August 22, 1996.

(2) If a household reports one source of earned income, but fails to report a second source of earned income, is the 20 percent deduction disallowed for all the earned income, or just the unreported earned income? (Dec 1996)

State agencies should apply the same rules for IHE claims that are currently found in 273.18(c)(2)(ii) for calculating IPV claims with earned income. The 20 percent earned income deduction would not be allowed for the source of income that was not reported.

II. General Questions Relating to the Intentional Program Violation (IPV) Related Disqualification Provisions (Sections 813, 814, and 820)

(1) How are State agencies required to inform recipients about the new disqualification rules? (Nov 1996)

While the publishing of the law provides adequate notice, we encourage State agencies to provide notice either on the application, as an attachment to the application, or some other means which provides notification to the general public.

(2) If the rest of the household applies for benefits, how should that State agency handle the income/resources of an individual who is disqualified under these provisions? (Nov 1996)

The income/resources would be handled in accordance with the procedures currently in 7 CFR 273.11(c).

(3) How should individuals disqualified under these provisions be tracked? (Nov 1996)

The disqualifications under provisions 813, 814 and 820 should be tracked through the Disqualified Recipient Subsystem (DRS). Please refer to part VIII of this file for answers directly related to DRS. The non-IPV related disqualifications will be tracked by each State agency that imposes the disqualification.

(4) Should the new and increased penalties apply to all administrative disqualification hearings, court hearings, etc., held subsequent the enactment of the law (regardless of when the actual offense occurred) or only to those cases in which the actual offense occurred subsequent to State agency implementation of the new legislation? (original answer Dec 1996; corrected in Jan 1997; the correction is shown below)

The nature of this issue dictates that it be addressed in a regulation rather than as part of a question and answer package. As a result, State agencies may use their own discretion as to whether the new and increased penalties should apply to offenses that occurred prior to State agency implementation of the new legislation. However, our preference is that State agencies apply the penalties in effect at the time of the offense.

III. Section 813 Doubled Penalties for Violating Program Rules

(1) What is meant by a "violation?" as it pertains to section 813 (Nov 1996)

The term "violation" means any incident determined to be an IPV as described in 7 CFR 273.16.

IV. Section 814 Disqualification of Convicted Individuals for Trafficking \$500

(1) Can the dollar amount of the offenses be cumulative? (Nov 1996)

The dollar amounts can be cumulative if the case is prosecuted as one IPV.

V. Section 820 Ten Year Disqualification for Duplicate Participation

(1) How is "found" defined relative to this provision? (Nov 1996)

The actual provision states that, for this disqualification, the individual needs to be "found by a State agency to have made, or is convicted in a Federal or State court, of having made, a fraudulent" In addition to a court conviction, a State agency "finding" in this case would be an ADH hearing decision, ADH waiver or a disqualification consent agreement.

(2) What kind of verification is FNS going to require on the part of the State agency? (Nov 1996)

The State agency would be responsible for maintaining the same types of verification that are currently required for all IPV-related disqualifications.

(3) Does this provision apply in the case of an individual making false statements about the identity or residence of anyone on the application identified as part of the household or does it only apply when the individual makes a false statement about themselves and/or the entire household? For example, a father applied for benefits for himself and his two children. However, his children do not live with him and they (the children) receive food stamps in another household. Is the father ineligible for 10 years for misrepresenting his children's residency? (Dec 1996)

The 10 year penalty would not apply in this situation because the individual who committed the IPV did not misrepresent his identity or place of residence. Technically, he was only participating once. Therefore, the individual would be subject to the 12 month disqualification (assuming it is a first offense) if there is a finding of IPV. If the individual was included in both FSP households then the 10 year penalty would apply if there is a finding of IPV.

(4) Does the ten year penalty apply to the following scenario? (July 1997)

Client applies and states that his/her household has just moved from another area (could be within the state or out-of-state). The client states the correct name and current address in the new locale. The agency does a duplicate participation check and finds that the client has a case or was included in another case in his/her prior location (computer check in State or contacted another State agency). The client failed to report the move to the agency at his/her former address.

The ten year disqualification would not apply in this instance because the individual did not make a fraudulent statement with respect to residency in order to receive multiple benefits. The ten year penalty would apply if recertification comes up at the previous address and the client attempts to also participate at that location.

(5) An individual receives a ten year disqualification for duplicate participation. It is his/her first offense. While serving this penalty, he/she has been found to have committed a second IPV. Since it is the second IPV, this would carry a two year disqualification. When, if ever, will the individual serve the two year disqualification? (July 1997)

The provisions of the Garcia v. Concannon and Espy court order, issued on October 4, 1995, disallowing the postponement of future disqualification penalties applies in this case. The two disqualification periods should run concurrently.

VI. Section 837 Exchange of Law Enforcement Information

(1) Does this provision pertain to ex-household members and members with closed cases as well as current household members? (Dec 1996)

This provision applies to both past and current household members.

VII. Section 844 Collection of Overissuances Questions Related to Administrative Error Claims

(1) Under the new law, State agencies can automatically collect an agency error claim through allotment reduction. Does this provision apply to claims already established or just newly established claims? (Nov 1996)

The new provision applies to both newly and already established agency error claims. For existing claims, the State agency should first provide notice prior to beginning allotment reduction on existing claims.

(2) Can a State agency change the demand letter to accommodate the changes brought about by this provision? For example, the new law gives the State agency (and not the household) the choice for selecting the method of repayment. (Nov 1996)

The State agency should change the demand letter because it cannot comply with the requirements of the new law without doing so. The State agency should generally follow the current regulations at §273.18(d) for the demand letter unless they directly conflict with the Act.

(3) Does this provision mean that we can collect all agency errors without the permission of the household? For example if a State agency establishes a claim on 9/10/96 because the state agency failed to enter income for the period April-June 1996, can the State agency reduce the household's October 1996 allotment automatically? (Nov 1996)

Yes, permission is not needed. However, a demand letter (or notification of claim) must initially be sent to the household informing it that a claim exists, how it will be collected and its right to a fair hearing on the amount of the agency error claim.

(4) When can a State agency begin to recoup on agency errors? (Nov 1996)

The State agency can begin the recoupment subsequent to the household being notified via a demand letter which outlines the State agency's intentions. This applies to both current as well as new claims.

(5) Does this section have any impact on 20 day involuntary recoupment for inadvertent household error claims (IHE) or 10 day involuntary recoupment for IPV claims? (Dec 1996)

The 20 day and 10 day referred to the amount of time that a household had to decide how it wanted to repay a claim. With the enactment of PRWORA, this requirement was eliminated when the household repayment choice option was removed. Regulations addressing this issue are being drafted. In the interim, it is up to the State agency as to whether it gives the household any type of choice. Please note, however, that if State agencies do not give households a choice (most likely in cases of recoupment), they still must provide a demand letter and notice of adverse action prior to beginning recoupment.

(6) Section 844 addresses State agencies demonstrating cost effectiveness. What options are available for State agencies to determine cost effectiveness during the claim establishment and collection process? (Dec 1996)

FNS will address this issue via a proposed rule. In the interim, State agencies may request a waiver for not establishing or collecting claims greater than \$35. Waivers requesting a threshold for less than \$100 may be approved at the Regional level. Waivers for a larger amount must be forwarded to headquarters for consideration. (Note to readers: This answer is superseded by a claims implementation memo issued in April 1997. This memorandum increased the waiver threshold to \$125 for claims for nonparticipating households.)

(7) The answer to question (1) above states that, for existing agency error claims, the State agency should provide notice prior to beginning allotment reduction on existing claims. Can a debtor ask for a fair hearing on this collection action? If so, is there a required minimum time frame for the household to request a fair hearing? (July 1997)

The household can request a fair hearing only on matters such as the amount to be recouped and whether the claim has already been collected. The household already had the opportunity to request a fair hearing on the existence of the claim.

The 90-day time frame (as per 7 CFR 273.15(g)) for requesting a fair hearing still applies. However, this does not mean that a State agency needs to wait 90 days before beginning allotment reduction if a household does not request a fair hearing.

(8) If the State agency has obtained a civil judgment on an administrative error claim, do they need to re-notice the claim in order to submit it for Federal tax refund offset (FTROP)? (July 1997)

The individual would only need to be sent the required 60 day notice for submission to FTROP.

VIII. Section 844 Collection of Overissuances Questions Related to Collections via Offset of Unemployment Collection Benefits (UCB)

(1) In addition to the 35% retention rate for IHE collections via UCB intercept, to what degree is this collection methodology affected by PRWORA? (Dec 1996)

Collection via UCB for IPV's has been part of FNS regulations since 1990. PRWORA expanded it to include all claims (as it did for all other collection methods). As of now, there are no plans to mandate this collection method.

(2) If FTROP is considered the collection method of last resort, how will UCB play into this? (Dec 1996)

If the State agency is unable or decides not to collect via UCB, then the claim should be submitted for FTROP. This is no different than if a State agency is unable to recoup, receive installment payments, etc.

(3) What is the frequency (i.e. annually, quarterly or monthly) that State agencies should be matching claim data with the State's Department of Labor? (Dec 1996)

This is up to each State agency. FNS currently has no plans to regulate this area.

(4) In what manner will benefits be withheld, i.e., will recoupment rules be applied, or will rules for offsetting restored benefits apply? (Dec 1996)

FNS has no plans to regulate this area. It is up to each State agency and the terms of the agreement reached with the affected individual. In the absence of an agreement it depends on the terms of the writ, order, summons, or similar process from a court of competent jurisdiction.

(5) Will individuals have appeal rights for this action similar to FTROP? (Dec 1996)

FNS considers UCB collection to be simply another State-level collection methodology. There is no federal requirement for special appeal rights regarding this method. However, note that unless a specific court action authorizes this collection method, the individual will have agreed to repay by this method.

(6) If a State agency does not to implement UCB collections, can it still participate in FTROP and Federal salary offset? (Dec 1996)

Yes.

(7) The current regulations require that State agencies include an amendment to their State plan to conduct UCB intercept. Is this still required under PRWORA? (Dec 1996)

FNS is planning to completely revamp the requirements of the State Plans and it is uncertain whether UCB will continue to be part of it.

(8) Does a State agency need to request a waiver if it decides that it is not cost effective to use the offset of UCB as a collection methodology? (July 1997)

A State agency will not need a waiver if it decides not to implement this collection methodology. FNS is not mandating nationwide use of this collection method because, unlike FTROP and recoupment, the procedure is State-specific and may not be cost effective to implement in some State agencies. Section 13(c)(3) of the amended Food Stamp Act of 1977 allows for this collection methodology to be utilized only through either a voluntary agreement or a court order. As such, FNS is leaving it up to each State agency to determine whether UCB collections are cost effective to implement and pursue.

(9) Must a State amend State law to allow this type of collection? (July 1997)

This concern stems from a November 7, 1996, Department of Labor Notice published in the Federal Register containing draft language for changes necessary in State UCB laws to accommodate UCB offsets for food stamp recipient claims. As noted in number (1) above, FNS is leaving it up to each individual State agency to determine whether this collection method is cost effective to pursue. If a State agency determines that UCB collections are cost effective and wishes to utilize this collection methodology, then the State agency should contact the Department of Labor if there are questions regarding the applicability of the November 7, 1996, Notice. Conversely, this Notice would not apply to those State agencies which will not be utilizing this collection method.

(10) Are there any implementation time frames? (July 1997)

There are no required implementation time frames for those State agencies that wish to use this collection methodology.

(11) If the State food stamp agency does not wish to enter into an agreement with the State unemployment compensation agency to reimburse all costs incurred in intercept activities does this mean the activity does not need to be performed? (July 1997)

Please refer to the answer to question (1) above. FNS does not plan to issue any specific guidance on the cost reimbursement arrangements between State food stamp and State unemployment compensation agencies.

(12) Must the UCB offset procedures follow section 13 of the amended Food Stamp Act of 1977 if these procedures are initiated by an agency which is different from the agency responsible for administering the Food Stamp Program? (July 1997)

Any agency which is collecting food stamp debts must follow the guidelines found in section 13 of the amended Food Stamp Act of 1977.

(13) Is it possible for offsets against UCB to occur when the household is already paying its claim (e.g. the household is participating and the claim is being recouped)? (July 1997)

We would discourage this activity unless the household has volunteered to have its claim collected under more than one methodology. When Congress retained the limit (10 percent) on the amount to be recouped from a participating household, Congress sent a clear message that it did not want households who are participating in the Program to endure a larger financial hardship.

(14) Section 13(c)(3)(A) of the amended Food Stamp Act of 1977 states that a State agency may collect a claim by entering into an agreement with the individual. Does having language contained in the food stamp and unemployment compensation benefits applications indicating that a standard percentage of future UCB may be offset to apply to an existing food stamp claim suffice under this section of the Act? (July 1997)

Unless there is a court order, the fact that an agreement is to be made implies that a household has the right to make a fully informed decision regarding whether to have the claim collected via the offset of UCB. Either by making this a condition of eligibility (by adding it to the application form) or even by having the household decide at the time of application whether to use this collection methodology to pay off a future claim does not afford the household the right to make a fully informed decision. As such, the proposal by the State agency does not meet the requirements of the Act.

IV. Questions Specifically Related to the Claim Retention Rate

(1) Has the automated system been changed to accept FCS-209 reports with the new retention rates? (Nov 1996)

Yes. The Food Stamp Program Integrated Information System has been modified to accept the new retention rates. Fourth quarter FY 1996 FCS-209 reports,

Status of Claims Against Households, are to be entered into the system using the new rates.

(2) What kinds of unemployment compensation collections qualify for the 35 percent retention rate? (Nov 1996)

The 35 percent retention rate applies to any collection of an IPV or an inadvertent household error (IHE) claim received by the State agency as a result of an offset from unemployment compensation (UC) otherwise payable to an individual who was an adult member of the household at the time of the overissuance. The offset may be based on either (1) an agreement with the individual authorizing the withholding of a specified amount from UC (and authorizing the payment of same to the State welfare agency) or (2) a court order (or other court process) which requires such withholding of UC from the individual and payment of UC to the State agency.

(3) In the event of a change in category, is the retention rate of a claim based on the category of the claim at the time the payment is received or the new category? (Nov 1996)

In the event of a change in category, the retention rate is based on the new (correct) category, not the claim category at the time of the collection. Thus, if a change in category is made, the State agency would transfer all previous collections to the new category (on line 19, the transfer line of the FCS-209) and claim the retention rate for the new (correct) category on all previous collections, while giving back the retention under the old category on those same collections. For FCS-209 reporting, State agencies are to use only the new rates for the entire fourth quarter FY 1996.

The date of collection is used to determine whether the old rates or the new rates apply to a particular collection for the adjustment request, but not which claim category should be used.

(4) Should all changes in category be dealt with before requesting the upward adjustment under the old rates? (Nov 1996)

The FY 1996 adjustment request for the old rates is based on claims activity reported on the FY 1996 fourth quarter FCS-209 report. For the adjustment request under the old rates, States are to include in the retention calculation all activity (including claim category changes, collection adjustments, and refunds) that was reported on the FY 1996 fourth quarter FCS-209 report and that involved collections prior to August 22, 1996. If an adjustment for the old rates is requested, all changes reported on the fourth quarter FCS-209 involving collections prior to August 22, 1996 must be included in the retention calculation.

(5) The retention rate for IHE unemployment compensation (UC) collections is based on net IHE-UC collections. In a refund situation in which recent collections included UC and non-UC collections, how are State agencies to determine which collection was refunded in order to determine net UC collections? (Dec 1996)

Because IHE UC collections have a higher retention rate than other IHE collections, refunds of IHE UC collections must now be tracked in order to net IHE UC collections for any adjustment request. The general refund rule is that if a particular collection was made in error, it is that collection that would be refunded to the extent necessary to correct the error. In the case of an overcollection in which the collection exceeded the outstanding balance, it is the last collection(s) that was in error and that would be refunded in reverse order (last collection refunded first) up to the amount of the overcollection. For retention purposes, State agencies will need to determine whether the refund involves the returning of an IHE UC collection.

(6) May a State agency prorate fourth quarter collections in order to claim the highest retention for collections prior to August 22, 1996, in its adjustment request? (Dec 1996)

If a State agency's system is not programmed to break out collections prior to August 22, 1996, the State agency may prorate fourth quarter collections for its adjustment request. However, it must also make some adjustment to compensate for refunds based on State agency experience. The State agency in its adjustment request should indicate that the calculation was based on prorating the data. States may prorate the data as follows based on the 4th quarter FCS-209, Status of Claims Against Households:

- a. Line 21A of FCS-209 (total IPV collections) times 57% (percent of days through Aug 21) times the old IPV 50% retention rate.
- b. Line 21B (total IHE collections) times 57% (percent of days through August 21) times the old IHE 25% rate;
- c. Line 21A times 43% (percent of days from Aug 22 through end of quarter) times the new IPV 35% retention rate;
- d. Line 21B times 43% times the new IHE 20% rate;
- e. Sum of steps 1 through 4, above, representing total allowed retention;
- f. Line 24, actual claimed retention from fourth quarter FCS-209;
- g. Subtract step 6 from step 5, above. This is the amount of additional retention requested.

X. General DRS Related Questions

(Note to readers: The Disqualified Recipient Subsystem or DRS is the mechanism used to track IPV-related disqualifications nationwide. This is needed to ensure that individuals disqualified for committing an IPV in one State may not relocate and participate in another State. DRS is also used determine the length of subsequent disqualifications.)

(1) What Sections of PRWORA will State agencies be required to implement using DRS? (Nov 1996)

State agencies will be required to implement Section 813, *Doubled Penalties for Violating Food Stamp Program Requirements*, Section 814, *Disqualification of Convicted Individuals*, and Section 820, *Disqualification for Receipt of Multiple Food Stamp Benefits*.

(2) What will State agencies have to do to implement these three provisions of the new law on DRS? (Nov 1996)

For Sections 813 and 814, State agencies need only be aware of the new penalties and code appropriately. State agencies will now enter 12 months in the *Penalty Length* field for an individual's first IPV, 24 months for a second IPV, and 99 (the DRS code for permanent disqualification) for a conviction on a trafficking offense involving \$500 or more.

For Section 820, a new DRS code, 97, representing a 10-year disqualification for an individual determined to have received multiple benefits, will be used.

(3) Why is a new code for Section 820 necessary? (Nov 1996)

Currently, the DRS *Penalty Length* field permits a maximum of a two-digit entry. The penalty for receipt of multiple benefits, 120 months, has three digits. To permit State agencies to implement this provision immediately, FNS decided to designate a new two-digit code rather than require DRS and State system changes. Such changes could not have been implemented for many months.

(4) Can you summarize the current coding structure for the DRS *Penalty Length* field? (Nov 1996)

For disqualifications up to 96 months, the actual number of months in the disqualification period is to be used. For any disqualifications involving more than 96 months the following codes apply:

Permanent disqualifications continue to be coded 99;

Disqualifications over 99 months, less than permanent, and excluding 120 months are to be coded 98 (the code for "other"); and

Ten year (120 month) disqualifications are coded 97.

(5) Should State agencies still use the new DRS code 97 in the event a court assigns a penalty other than the prescribed ten years for receipt of multiple benefits? (Nov 1996)

No. State agencies should use, consistent with the court-assigned penalty, one of the three other options: the actual number of months; code 98 for other; or code 99 for permanent.

(6) When will DRS be ready to accept the new penalty codes? (Nov 1996)

DRS will accept the new codes now.