

# Memorandum

**To:** Interested People

**From:** Paula Roberts

**Date:** 3/21/01

**Re:** Final Regulations on Child Support Cooperation and Food Stamp Recipients

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The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) contains a number of provisions that affect custodial and non-custodial parents who participate in the Food Stamp Program (FSP). On December 17, 1999, the Food and Nutrition Service (FNS) of the United States Department of Agriculture issued proposed regulations governing these provisions. These proposed regulations contained a number of controversial proposals, and generated a good deal of public comment.

In response, many changes were made in the final regulations, which were issued on January 17, 2001. 66 *Fed. Reg.* 4438-4471. The regulations are effective June 1, 2001.<sup>1</sup>

This memo examines the provisions of the law and the final regulations that:

- Require states to put systems in place so that households simultaneously participating in the FSP and Temporary Assistance to Needy Families (TANF), whose TANF benefits are decreased due to the failure of a household member to meet the TANF child support cooperation requirement, will not receive an increase in their food stamp benefits.
- Allow states to reduce the food stamp benefits of households simultaneously participating in both the FSP and TANF, whose TANF benefits are decreased due to the failure of a household member to meet the TANF child support cooperation requirement.
- Permit states to disqualify individuals who have been sanctioned by the TANF program for failure to meet a child support cooperation requirement from participating in the FSP.
- Let states impose child support cooperation obligations on custodial parents who participate in the FSP.
- Allow states to impose child support cooperation obligations on noncustodial parents who participate in the FSP.

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<sup>1</sup> The original effective date was April 2, 2001, but—like many regulations issued in the final days of the Clinton Administration—the effective date was postponed by 60 days to give the new Administration a chance for review.

- Permit states to disqualify individuals who are behind in paying their child support from participating in the FSP.

## SUMMARY

For households that simultaneously participate in the FSP and TANF, states may no longer increase food stamp benefits when the household loses income due to a TANF sanction for non-cooperation with child support. States have the option to further punish the household by reducing its food stamp benefits by up to twenty five percent and/or making the non-cooperative individual ineligible to participate in the FSP (which also serves to reduce benefits).

For households with children, states now also have the option to require a responsible person in the household to meet a FSP child support cooperation requirement. If the household is participating in TANF and/or Medicaid and has either 1) met the child support cooperation requirement of either of those programs; or 2) been granted a good cause exception to the applicable cooperation requirement, it will be deemed cooperative for FSP purposes. If the household is already enrolled in the state's child support enforcement program, it will also be deemed cooperative. Thus, if the state chooses this option, the primary effect will be on FSP-only households that have not previously sought assistance in collecting child support. In this case, if the responsible person fails to cooperate in the pursuit of child support, that person is ineligible to participate in the FSP and the household's benefits will be adjusted downward.

For households containing a non-custodial parent, states now have the option to require that parent to cooperate in the establishment of paternity and payment of child support. If the non-custodial parent fails to do so, he/she is ineligible to participate in the FSP. The household's food stamp benefits will then be adjusted downward. In addition (or in the alternative), states may disqualify non-custodial parents from participating in the FSP in any month in which they are inexcusably in arrears on their support payments. In this case, the state will make a claim against the household for over issuance of benefits. The household will receive notice and hearing rights pursuant to 7 CFR Section 273.18.

## PROVISIONS THAT AFFECT HOUSEHOLDS THAT SIMULTANEOUSLY<sup>2</sup> PARTICIPATE IN BOTH TANF AND THE FSP

Applicants for and recipients of TANF-funded assistance must assign their child support rights to the state, **42 USC Section 608(a)(3)**. They must also cooperate with the state in pursuing those rights unless they can establish good cause for refusing to do so, **42 USC Section 654(29)**. In the absence of a good cause determination, failure to cooperate in pursuing child support results in a sanction. The state *must* reduce the family's TANF grant by at least 25 percent. It may impose an even greater sanction, up to and including denial of benefits to the entire family, **42 USC Section 608(a)(2)**.<sup>3</sup> Before implementation of PRWORA, the effect of a sanction was somewhat ameliorated by the FSP: because the family's cash assistance was decreased, its food stamp benefits increased. Moreover, an individual's failure to meet the TANF child support cooperation requirement had no effect on that individual's FSP eligibility. The non-cooperating individual was still FSP eligible.

PRWORA changed this. Now:

- If a household loses some or all of its TANF benefits for failure to meet a child support cooperation requirement, then the FSP benefits of that household *cannot be increased* to take into account this loss in income, **7 USC Section 2017(d)(1)**.
- If a household loses some or all of its TANF benefits for failure to meet a child support cooperation requirement, then the FSP benefits of that household *may be decreased* by up to twenty-five percent (25%). **Id.**
- If an individual is disqualified from participating in TANF for failure to cooperate with the child support program, that individual may also be disqualified from participating in the FSP, **7 USC Section 2015(i)**. This is referred to as a “comparable disqualification.”

The final regulations discussing each of these changes are described below.

### 1. Regulations Implementing the Mandatory Ban on Increasing the FSP Benefits of a Household Subject to a TANF Non-Cooperation Sanction

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<sup>2</sup> For purposes of this set of provisions, the household must be participating in both TANF and the FSP at the time the non-cooperation occurs. If the family is participating in TANF, but not the FSP at the time of the non-cooperation, and later applies for FSP benefits, those benefits must be calculated based on the household's income. See, 66 Fed. Reg. 4445 (January 17, 2001). See also, **7 CFR Section 273.11(k)(2)** For this reason, advocates might want to advise families facing a TANF sanction for non-cooperation to withdraw from the FSP before the TANF sanction is imposed and then reapply for food stamps after the sanction is in place.

<sup>3</sup> At this time, about one-third of the states have chosen to implement the 25% sanction, one-third have adopted a higher amount and/or have a gradually escalating reduction in benefits depending on how long the non-cooperation lasts, and one-third make the entire family ineligible for TANF assistance. For a state-by-state breakdown, see, VICKITURETSKY, STATE CHILD SUPPORT COOPERATION AND GOOD CAUSE: A PRELIMINARY LOOK AT STATE POLICIES (CLASP Publications, 1998) available at [www.clasp.org](http://www.clasp.org)

The regulations clearly state that if a household's TANF<sup>4</sup> benefits are reduced for refusal to cooperate with child support enforcement activities, its food stamp allotment cannot be increased, **7 CFR Section 273.11(j)**. "Reduced" is defined as "decreased, suspended or terminated". **Id.** Thus, whichever of the possible sanctions the state imposes on non-cooperating TANF families (25% reduction, somewhat larger reduction, termination from TANF eligibility), if those families also participate in the FSP, their food stamp benefits cannot be increased.

Responsibility for discovering that a family has been sanctioned by the TANF agency rests with the food stamp agency. The household is not responsible for informing the food stamp agency that it has been sanctioned, **7 CFR Section 273.11(j)(1)**. In this regard, the FSP agency must make a good faith effort to obtain information from the TANF agency. **Id.**

Exactly how to prevent an increase in benefits is up to the state, **7 CFR Section 273.11(j)(3)**. The state can coordinate the TANF sanction with the ban on increasing FSP benefits. This includes using the same budgeting procedures and using combined notices and hearings, **7 CFR Section 273.11(j)(4)**.

Within the parameters of normal food stamp change processing and notice procedures, the prohibition on increasing benefits applies for the duration of the TANF sanction and should be concurrent with (and not exceed) the time period in which the TANF sanction applies, **7 CFR Section 273.11(j)(2)**. However, there are a number of qualifications on this:

- If the FSP agency can no longer determine the amount of the TANF reduction, then it may terminate the ban on increasing food stamp benefits, **7 CFR Section 273.11(j)(2)**.
- If the TANF sanction is still in effect at the end of one year, the FSP agency must review the case to determine whether the ban on increasing food stamp benefits is still appropriate. Thereafter, it must continue to review such cases at least annually and may discontinue the ban on increases in food stamp benefits at any time, **7 CFR Section 273.11(j)(2)**.
- Once the FSP agency becomes aware that the sanctioned individual is ineligible for TANF for a reason other than non-cooperation with the child support program or has left the TANF program, the ban on increasing benefits must be lifted, **7 CFR Section 273.11(j)(5)**.
- If changes unrelated to cooperation occur in the non-cooperating person's household, then the household's benefits must be adjusted, **7 CFR Section 273.11(j)(8)**.
- If the sanctioned individual leaves the household, the ban on adjusting the household's food stamp benefits ceases. However, the ban then becomes applicable to any new household the sanctioned individual enters if that household is in the same state. If the non-cooperative individual moves out of state, the prohibition on increasing benefits to that person's household ends, **7 CFR Section 273.11(j)(6)**.

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<sup>4</sup> TANF qualifies as a "public assistance program" whose participants are subject to this section. See **7 CFR Sections 273.11(j)(1) and 271.2**.

These regulations provide some protections to sanctioned households. Of particular importance is the annual review to determine if the FSP sanction should be terminated even if the TANF sanction continues. However, unless the state's food stamp and TANF programs have good computer interface, many of the factors that would trigger an upward adjustment in the household's food stamp benefits will not be brought to the attention of the FSP. Household members and their advocates will have to bring status changes to the attention of FSP officials rather than relying on the officials themselves to become aware of such changes.

## **2. Regulations Implementing the Option to Decrease FSP Benefits by Up to Twenty-five Percent**

In addition to refusing to increase a household's food stamp benefits, a state may opt to reduce those benefits by up to 25 percent if the household's TANF grant has been reduced due to an obligated person's failure to cooperate with the child support agency, **7 CFR Section 273.11(j)(1)**. If the state takes this option, it must so indicate in its State Plan of Operations, **7 CFR Section 273.11(j)(9)**.

To calculate the reduction, the food stamp agency must determine what the household's food stamp allotment would be based on its actual TANF benefits. This allotment can then be reduced by up to 25 percent of that amount, **7 CFR Section 273.11(j)(1)**.<sup>5</sup> However, if changes unrelated to cooperation occur in the non-cooperating person's household, then the household's benefits must be adjusted accordingly, **7 CFR Section 273.11(j)(8)**. Finally, if it is later determined that the TANF sanction was in error, full benefits must be restored and up to 12 months of lost benefits may be sought, **7 CFR Section 273.11(j)(7)**.<sup>6</sup>

To assess the potential impact on households if a state elects this option, an example is useful. Assume a household consists of a mother and two children. The family's TANF benefit is \$400 per month and they receive \$ 240 per month in food stamps, for a total income of \$640 per month. For non-cooperation with a child support cooperation obligation, the state imposes a 25 percent TANF grant reduction. If the mother is found to be non-cooperative, then the TANF grant will drop to \$300. Under the mandatory no-increase-in-benefits provision discussed above, food stamp benefits will not be adjusted to take this loss of income into account so they stay at \$240. If the state adopts the optional benefit-reduction provision, it must use the actual TANF grant of \$300 to calculate food stamp benefits. If the family would receive \$280 in food stamps with this income, up to a \$70 reduction (25% x \$280) can be imposed. Then, the household's TANF benefit will be \$300 per month and its food stamps will be worth \$170 (\$240 - \$70). The net loss of household income for non-cooperation is then \$170 per month (\$640 - \$470).

## **3. Regulations Implementing the Comparable Disqualification Provision**

As noted above, if an obligated individual fails to meet a TANF child support cooperation obligation, that individual may be disqualified from participating in the TANF program. Under **7 CFR Section 273.11(k)**, the state can also disqualify the non-cooperating individual from

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<sup>5</sup> Note that, if application of this provision would result in an increase in the household's benefits, then the mandatory provision discussed above applies, and the benefit cannot be increased, 7 CFR Section 273.11(j).

<sup>6</sup> In this process, the provisions regarding restoration of lost benefits found at of 7 CFR Section 273.17 would apply.

participating in the FSP.<sup>7</sup> The comparable disqualification may be imposed *in addition to* or *in lieu* of the optional benefit reduction described above, **7 CFR Section 273.11(k)(10)**.

As with the benefit reduction sanction, it is the responsibility of the food stamp agency to obtain information about the TANF disqualification. The affected individual is not required to report her/his TANF disqualification to the FSP, **7 CFR Section 273.11(k)**.

If a state chooses this option, it must so indicate in an attachment to its FSP state plan, **7 CFR Section 272.2(d)(1)(xiii)**. It must also describe its comparable disqualification policy in its state Plan of Operation, **7 CFR Section 273.11(k)(11)**.

A comparable disqualification can only be applied to the non-cooperating individual. This is true even if the TANF program has disqualified the entire household from TANF participation, **7 CFR Section 273.11(k)(5)**. If an individual is disqualified, his/her income and resources must be prorated in determining the eligibility and benefits of the rest of the household members, **7 CFR Section 273.11(k)(8)**.

The state may use the TANF agency's rules and procedures to impose the FSP disqualification, **7 CFR Section 273.11(k)(4)**. To the extent allowed by normal food stamp processing times and notice requirements, the food stamp disqualification period should be concurrent with the TANF disqualification period, **7 CFR Section 273.11(k)(6)**. However:

- If the TANF sanction is still in effect at the end of one year, the FSP agency must review the case to determine whether the individual's disqualification is still appropriate. Thereafter, it must continue to review such cases at least annually and may discontinue the individual's disqualification at any time, **7 CFR Section 273.11(k)(6)**.
- Once the FSP agency becomes aware that the disqualified individual is ineligible for TANF or for some other reason the TANF case has been closed, the FSP disqualification must be ended, **7 CFR Section 273.11(k)(3)**.
- When the TANF disqualification period expires, the disqualified individual may apply for food stamp benefits and should be treated as a new applicant or new household member, **7 CFR Section 273.11(k)(9)**.

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It is not clear how big an impact these provisions will have. Given the drop in TANF rolls, it is certainly true that the number of households simultaneously receiving food stamps and TANF is down dramatically since 1996 and this decreases the universe of potentially affected individuals. Even if the number of potentially affected households is small, however, the impact of these rules on individual families is great. This is especially true if states choose to implement one or both of the optional provisions.

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<sup>7</sup> This option can only be taken by a state which has chosen to penalize non-cooperating TANF participants with a TANF disqualification. States that have chosen a different penalty for non-cooperation with TANF (see note 2 *supra*), have no comparable disqualification to impose.

For that reason, food stamp advocates might want to join forces with the TANF and domestic violence communities to address any problems with the TANF child support cooperation requirement. The fewer TANF families sanctioned for non-cooperation, the fewer potentially affected by a FSP sanction. This effort should involve a review of the state's definition of cooperation, the standards for a good cause exception, and the elements necessary to prove a good cause case. It may also be important to review how TANF participants are informed about their cooperation obligation and what procedures are in place to quickly resolve problems so that a non-compliant family avoids a sanction or has the sanction lifted immediately upon compliance. Addressing those issues will help limit the number of households facing both TANF and FSP sanctions.

### **PROVISIONS THAT AFFECT CUSTODIAL PARENT HOUSEHOLDS**

In the past, the FSP did not contain a child support cooperation requirement. PRWORA changes this. It allows the states to impose child support cooperation obligations on custodial parents and guardians whose households receive Food Stamps, **7 USC Section 2015(i)**. If a state<sup>8</sup> chooses this option:

- Natural or adoptive parents, as well as formal and informal guardians<sup>9</sup>, whose households contain a child under the age of 18 who has an absent parent, can be required to cooperate with the state child support enforcement program to establish paternity (if that is an issue) and to obtain alimony and/or child support.
- Child support services must be provided free of cost.<sup>10</sup>
- The state must provide a “good cause” exception to the child support cooperation requirement.
- A parent/guardian who fails to cooperate without good cause is ineligible for food stamps.

A state does not need to impose a child support cooperation requirement on FSP households. Even if it chooses to do so, it can limit the requirement to a subset of persons. It can impose the requirement on 1) just natural/adoptive parents; 2) natural/adoptive parents and other relatives (e.g. grandparents, aunts, uncles) living with and exercising control over a child; and 4) natural/adoptive parents, other

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<sup>8</sup> To date, seven states have done so. These states are Idaho, Kansas, Maine, Michigan, Mississippi, Ohio and Wisconsin.

<sup>9</sup> The statute allows imposition of the cooperation requirements on any “individual exercising parental control over a child under the age of 18 who has an absent parent”. This is broad enough to cover a brother, sister, godparent or friend who has assumed informal custody as well as an individual who has obtained legal guardianship of a child.

<sup>10</sup> However, there is an inconsistency in the child support and food stamp statutes in this regard. Compare 42 USC Sections 654(6)(D) and (E) with 7 USC Section 2015(i)(3).

relatives, and non-relatives (e.g., godparents, friends) who are caring for a child, **7 CFR Section 273.11(o)(1)**.<sup>11</sup>

If a state opts to impose a FSP child support cooperation requirement, it must notify FNS through an attachment to its FSP State Plan. The attachment must indicate the option selected, the guidelines to be used, and any good cause criteria that will be used to grant exceptions, **7 CFR Section 272.2(d)(1)(xiii)**. The state must also provide written notice of the obligation to individuals subject to it both at the time they apply for food stamps and at reapplication for continued benefits, **7 CFR Section 273.11(o)(1)(i)**. These written notices must also inform obligated individuals of the good cause exception to the cooperation requirement and how to apply for a good cause determination, **7 CFR Section 273.11(o)(2)**.<sup>12</sup>

If the household is also participating in TANF or Medicaid, and the TANF or Medicaid agency has found the obligated person to be cooperative (or has granted the individual a good cause exception to the cooperation requirement), then that determination governs. The FSP must consider the obligated person to be cooperating for food stamp purposes, **7 CFR Section 273.11(o)(1)(iii)**. Likewise, if the obligated person is already participating in the child support program on a voluntary basis, that person is deemed to be cooperating for FSP purposes, **id.**

If the obligated person is not already in the child support program as a volunteer, or as a participant in TANF or Medicaid, then the Food Stamp agency is responsible for referring that individual to the child support agency, **7 CFR Section 273.11(o)(1)(ii)**. If an individual makes a good cause claim, then, before referral, the FSP agency must resolve that claim.<sup>13</sup> A good cause claim must be granted if:

- The individual meets the standard used by the state's TANF program in determining whether an individual has good cause for failing to cooperate with the child support program, **7 CFR Section 273.11(o)(2)(i)(A)**; or
- Cooperation would make it difficult for an individual to escape domestic violence, unfairly penalize an individual who has been subjected to domestic violence<sup>14</sup>, or subject an individual to risk of further domestic violence, **7 CFR Section 273.11(o)(2)(i)(B)**; or

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<sup>11</sup> This is a major change from the proposed regulations, which limited states to a choice between no cooperation requirement and one which applied to all relatives and non-relatives with whom a child lives.

<sup>12</sup> Note that the requirements that individuals be informed of their obligation and told what they must do to be deemed cooperative or claim a good cause exception were added to the final regulations as a result of the public comment process.

<sup>13</sup> However, before making a final determination, that agency must give the child support or TANF agency (whichever makes good cause determinations in TANF/Medicaid cases) an opportunity to comment on the proposed determination and must take that agency's comments into account, **7 CFR Section 273.11(o)(2)(iii)**.

<sup>14</sup> "Domestic violence" is defined to mean that the individual or child would be subject to physical acts that result in, or are threatened to result in, physical injury to the individual; sexual abuse; sexual activity involving a dependent child; being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities; threats of or attempts at physical or sexual abuse; mental abuse; or neglect or deprivation of medical care. **7 CFR Section 273.11(o)(2)(i)(B)**.



- The individual meets other criteria developed by the Food Stamp program in consultation with the TANF or child support agency (whichever makes good cause determinations in TANF/Medicaid cases), **7 CFR Section 273.11(o)(2)(i)(C)**.

The claim will have to be corroborated. However, the food stamp agency can use the same corroboration standard as is used by the TANF or child support agency (whichever makes the good cause determination in other cases), **7CFR Section 273.11(o)(2)(ii)(A)**. In some states, this means a simple declaration will do; in others, extensive proof may be required. In any case, the evidence must verify the claim, **7 CFR Section 273.11(o)(2)(ii)(B)**.

Processing the claim should not hold up the household’s assistance. The 30-day processing standards apply and the agency should not delay, discontinue or deny assistance pending determination of a good cause claim, **7 CFR Section 273.11(o)(2)(iv)**.

Individuals who do not make a good cause claim, and those whose claims are rejected, will be referred to the state’s child support agency, **7 CFR Section 273.11(o)(1)(ii)**. Referred individuals will not be required to pay any fees or costs for child support services, **7 CFR Section 273.11(o)(4)**. They must cooperate with the child support agency in establishing paternity (if needed). These individuals must also cooperate in establishing, modifying, or enforcing child or (in appropriate cases) spousal support orders, **7 CFR Section 273.11(o)(1)(iv)**. If the child support agency finds that an individual is not cooperating, it will notify the individual and the food stamp agency, **7 CFR Section 273.o(1)(v)**.

The ultimate decision about whether an individual has cooperated will be made by the food stamp agency, **7 CFR Section 273.11(o)(3)**. If the agency finds that an individual has not cooperated without good cause, it will declare the individual ineligible for food stamps.<sup>15</sup> The household will then receive a notice of adverse action in compliance with **7 CFR Section 273.11(c)(4)**.

The individual will remain ineligible until he/she cooperates with the child support agency. The FSP agency must have procedures in place to re-qualify the individual, **7 CFR Section 273.11(o)(5)**. In the meantime, the individual’s family will continue to receive benefits as only the non-cooperating individual can be sanctioned. However, the sanctioned individual’s assets and a pro-rata share of his/her income will be used to determine the size of the household’s benefits, **7 CFR Section 273.11(o)(3)**.

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Advocates whose states are considering this option might suggest that the state first consider the merits of a campaign to voluntarily enroll any FSP custodial parents not already participating in the child support enforcement program in that program. If offered free services, parents not using the program because they cannot afford the fees/costs might enroll. That will leave a small number of FSP households not in the child support system voluntarily or due to participation in TANF or Medicaid. Then the state might consider the number of households that still remain outside the child

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<sup>15</sup> Note that the regulation states that the food stamp agency is responsible for determining that an individual has “not cooperated without good cause”. This implies that the individual must have a chance to assert a good cause claim before the food stamp agency makes a determination of non-cooperation. So, even if an initial good cause claim is turned down, the individual should have the opportunity to assert it again before being sanctioned.

support program, the likelihood that these household's have a good cause claim, and the relative cost of administering a FSP child support cooperation requirement for these households. The small size of the affected population may not justify the administrative cost of a non-voluntary program.

If the state still wishes to proceed, then it might consider narrowing the effected households to those containing natural/adoptive parents. Other relatives and non-relatives might have little useful information about the non-custodial parents of children in their households. Without basic information (e.g., a social security number) for a missing parent, it is unlikely that the child support program will be able to establish and enforce a support obligation. Adding these potentially unproductive cases to the state child support system could drain resources. It could also affect the state's ability to fully collect federal funding for its child support program.<sup>16</sup>

If the state still wants to proceed, advocates might also try to affect the development of the state's good cause criteria. The regulations provide a lot of latitude for developing policies that protect domestic violence victims and others with good reason to wish to avoid the child support system.

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<sup>16</sup> The federal government provides 66% of the basic cost of state child support programs. It also provides the state with incentive payments based on program performance. If a state's child support caseload contains a lot of unproductive cases, it cannot maximize these incentive payments. See, **42 USC Section 658a**.

## PROVISIONS THAT AFFECT NONCUSTODIAL PARENT HOUSEHOLDS<sup>17</sup>

Before PRWORA, non-custodial parents' cooperation or non-cooperation with the child support program had no effect on their eligibility to receive food stamps. However, under PRWORA, states can choose<sup>18</sup> to deny food stamp benefits to non-custodial parents who refuse to cooperate with the state child support agency in establishing paternity and providing support for their children, **7 USC Section 2015(m)(1)** (hereafter the "cooperation provision"). To facilitate implementation of this option, the statute authorizes the Secretary of Agriculture to consult with the Secretary of HHS to develop guidelines on what constitutes a refusal to cooperate. The FSP agency is to use these guidelines to develop procedures for determining when an individual has failed to cooperate, **7 USC Section 2015(m)(2)**. The FSP agency is also responsible for developing safeguards to restrict the use of information collected by the child support agency to the purposes for which it is collected, **7 USC Section 2015(m)(4)**.

The statute does not provide a "good cause" exception to the non-custodial parents' cooperation obligation. Moreover, the statutes are not clear on whether non-custodial parents who are subject to a cooperation obligation can be required to pay for child support services.<sup>19</sup>

Before PRWORA, there was also no requirement that non-custodial parents in the FSP actually pay the support that they owe. PRWORA changes this and allows states to disqualify individuals from FSP participation during any month in which they are in arrears on their court-ordered child support payments. An exemption is provided if the court has allowed the individual to delay payment or the individual has worked out a payment plan with the court or the child support agency and is meeting his/her obligations under that plan, **7 USC Section 2015(n)** (hereafter the "arrears provision").

### 1. Regulations Implementing the Cooperation Provision

The regulations begin by defining a non-custodial parent to be a putative or identified parent who does not live with his or her child who is under the age of 18, **7 CFR Section 273.11(p)**.

A state may choose to deny food stamps to such an individual if that individual refuses to cooperate with the state's child support enforcement program in establishing paternity or providing support, **7 CFR Section 273.11(p)(1)**. If a state takes this option, it must inform FNS through an attachment to its FSP State Plan. The attachment must indicate that the state has selected this option, describe the guidelines it will use, and include a description of the safeguards the agency will use to restrict the use of information collected in implementing the option, **7 CFR Section 272.2(d)(1)(xiii)**. See, also **7 CFR Section 273.11(p)(5)**. The state must also:

- Give written notice of the cooperation obligation to individuals who are subject to it at both initial application and periodic reapplication for continued benefits, **7 CFR Section 273.11(p)(1)(i)**.
- Refer appropriate individuals to the state child support agency, **7 CFR Section 273.11(p)(1)(iii)**.

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<sup>17</sup> Note that the provisions discussed below apply only to child support obligations. If an individual is subject to a spousal support order—not a child support order—these provisions do not apply.

<sup>18</sup> To date three states have chosen to implement this option. They are Maine, Mississippi and Wisconsin.

<sup>19</sup> Compare 42 USC Section 654(6) with 7 USC Section 2015(m)(3).

- Provide services at no cost, **7 CFR Section 273.11(p)(4)**.

If an individual subject to this cooperation requirement is receiving TANF or Medicaid, and has been determined to be cooperating with that program (or has been granted a good cause exception), then the FSP agency must deem that individual to be cooperating for food stamp purposes as well, **7 CFR Section 273.11(p)(1)(ii)**. Similarly, if a non-custodial parent is already voluntarily participating in the state's child support program, he or she will be deemed cooperative for FSP purposes.<sup>20</sup>

Other individuals must cooperate *in good faith* with the child support agency. **7 CFR Section 273.11(p)(1)(iv)** (emphasis added). If a problem arises, there is a two-step process to resolve it. Initially, the child support agency will determine that an individual is not cooperating in good faith. When it makes such a determination, it will notify the individual and the FSP agency of this determination and the reason for it, **7 CFR Section 273.11(p)(1)(v)**. Then, the FSP agency will determine whether the non-cooperation constitutes a "refusal to cooperate." In making this determination, the FSP agency will distinguish between an unwillingness to cooperate and an inability to cooperate, **7 CFR Section 273.11(p)(2)**. If the FSP agency finds the individual unwilling to cooperate, it must disqualify him/her from participation in the FSP. The household will then receive a notice of adverse action in compliance with **7 CFR Section 273.11(c)(4)**.

The disqualification will last until it is determined that the individual is cooperating with the child support agency. The FSP agency must have procedures in place to re-qualify an individual once cooperation occurs, **7 CFR Section 273.11(p)(6)**. In the meantime, the rest of the individual's household will continue to receive benefits. In determining the amount of benefits, the disqualified individual's resources and a pro rata share of his/her income will be deemed available to the household, **7 CFR Section 273.11(p)(3)**.

## 2. Regulations Implementing the Arrears Provision

As noted above, the law now allows states to refuse food stamps to individuals who are inexcusably in arrears on their child support obligations, **7 USC Section (n)**. The regulations begin by restating the essence of the statute. Like the statute, the regulations limit the disqualification to those in arrears on their court-ordered<sup>21</sup> obligations. However, they allow states to limit application of the provision to non-custodial parents rather than applying it to all parents, **7 CFR Section 273.11(q)(1)**.<sup>22</sup>

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<sup>20</sup> Some parents split custody; that is some of the children live with one parent and the rest live with the other parent. Both parents are custodial parents to some children and non-custodial parents to others. As custodial parents, they might receive TANF/Medicaid for the children in their care and thus already be meeting a cooperation requirement.

<sup>21</sup> Note that there must be a court order. Many state use administrative processes to set child support orders in IVD cases. If the order has been set pursuant to administrative processes, the state cannot use this sanction against an individual receiving food stamps.

<sup>22</sup> This option is important to reunited families. For example, a family separates and, during the separation, the non-custodial parent falls into arrears on his support payments. The family then reunites so that neither parent is a non-custodial parent. If the state limits the sanction to non-custodial parents, then each member of the reunited household (including the former non-custodial parent) will be able to participate in the FSP even if arrears are still owed from the period of separation. If the state applies its sanction policy to all parents, then it could disqualify the former non-custodial parent from participating in the FSP due to the fact that he still owes arrears.

If a state chooses this option, it must indicate this to FNS through an attachment to the state's FSP State plan. The attachment must indicate the option chosen and the guidelines to be used, **7 CFR Section 272.2(d)(1)(xiii)**. However, unlike the regulations governing the cooperation provision discussed above, the regulations governing the arrears provision do not require states to notify affected individuals that the state has chosen this option. Thus, it is not clear that affected individuals will be aware of the potential disqualification for falling behind in their child support payments until they are actually disqualified.

As in the statute, exceptions are provided in cases where the court has allowed the individual to delay payment, and in cases where the individual is complying with a court/agency sanctioned payment plan, **7 CFR Sections 273.11(q)(2)(i) & (ii)**. The regulations go beyond the statute, however, and also allow an exception to be granted if the FSP agency determines that the individual has good cause for non-support, **7 CFR Section 273.11(q)(2)(iii)**.

If the FSP agency determines that an individual does not qualify for an exception, and therefore should be disqualified from FSP participation for one or more past months for non-payment of support, it will notify his/her household by sending a demand letter.<sup>23</sup> The letter will inform the household the amount owed, the reason for the claim, and how the claim may be paid, **7 CFR Section 273.11(q)(4)**.

Since the disqualification applies only to the erring individual, the household remains eligible for food stamps. The erring individual's resources and a pro rata share of his/her income will be counted as available to the household, **7 CFR Section 273.11(q)(3)**. The demand letter must tell the household this and inform them of the adjusted amount of income, resources and deductible expenses that will be used to calculate the household's benefit, **7 CFR Section 273.11(q)(4)**.

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In regards to the payment of support, the distinction between the cooperation provision and the arrears provision is not entirely clear. If a state opts to implement the cooperation provision, as a *policy* matter, it would appear to be redundant to opt for the arrears provision as well. However, as amplified by the regulations, there are some *practical* distinctions between the two that are worth addressing.

The *cooperation* provision has the virtue of being limited to non-custodial parents. Reunited families would not be covered by this provision. However, the same result could be achieved by limiting the *arrears* provision to non-custodial parents and the state does have the option to do this.<sup>24</sup>

Another virtue of the *cooperation* provision is that the regulations require states that take this option to notify non-custodial parents of their obligation both at application and at re-certification. The *arrears* regulations do not require notification to parents so they may not be aware of the potential sanction until it is actually imposed. If a state is interested in the *arrears* sanction, it should consider

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<sup>23</sup> Note that child support is in "arrears" only if unpaid during the month it is owed. So, while support might be owed on October 1<sup>st</sup>, it will not officially be in arrears until November 1<sup>st</sup>. Thus, the state cannot disqualify the non-custodial parent from the FSP during October. It can only determine in November (or later) that he/she was ineligible in October. States electing this option will have to treat these cases as over issuance problems and provide the family with all the procedural due process applicable in over issuance situations.

<sup>24</sup> See note 21, *supra*.

going beyond the regulations and providing notice to applicants/recipients that the state has taken this option.

A virtue of the *arrears* approach is that the regulations contemplate that the state will develop criteria for granting some individuals a “good cause” exception for non-support. Advocates might want to stress the importance of including an “ability to pay” (both at the time the arrears accrued or at the present time) criterion here. In addition, a “good cause” exception might be granted when the state’s child support records are inadequate to document the amount owed and when the parent was unable to pay because the whereabouts of the child were unknown. If the state is more interested in the *cooperation* approach, then similar protections might be built into the criteria for distinguishing inability to cooperate from unwillingness to cooperate.

In short, there is a good deal of work to be done to be sure that, if states choose to implement one of the optional child support cooperation provisions, low-income custodial and non-custodial parents are treated fairly.