



April 24, 2003

**SUBJECT:** Food Stamp Program Cooperation with Fraud Investigations  
**TO:** Program Directors  
All Regions

We are writing to resolve a concern that has arisen in response to an earlier memorandum on household cooperation with fraud investigations. In a March 4, 2002, memorandum to all regional Food Stamp Directors, we addressed concerns over a provision in the Noncitizen Eligibility and Certification Provisions of Public Law 104-193 final rule that prevented State agencies from terminating recipients who fail to appear for an in-office interview during their certification periods, including Intentional Program Violation (IPV) investigation interviews. We noted that households that failed to cooperate with an IPV investigation could still be penalized under current rules if, as part of the IPV investigation, the State agency sends the household a Request for Contact (RFC) and the household fails to respond to it. We also noted that although the State agency could not require the household to attend a meeting with fraud investigators, it could suggest in the RFC that such a meeting might be in the best interest of the household. We noted that households might be more willing to have a face-to-face meeting with an IPV investigator than face closure of their case for failure to respond to an RFC.

After a further review of this matter, and upon advice of our legal counsel, we have reconsidered our position on the use of the RFC to facilitate household cooperation with fraud investigations. We have decided that the RFC may only be issued by State eligibility workers and only when the State agency learns of a change in the household's circumstances that calls into question the household's continued eligibility for the program or its current level of benefits. The RFC may not be issued as an attempt to require an individual to meet with, or supply information to, a fraud investigator. Threatening to terminate the individual/household for failure to respond to an RFC, when the response involves communicating with a fraud investigator, circumvents the right to remain silent pursuant 7 CFR 273.16(e)(2)(iii) & (f)(1)(ii)(B).

Also, under the IPV rules, an individual does not face termination if the accused fails to attend an administrative disqualification hearing (ADH), nor is the individual determined guilty of the IPV for failure to appear at the ADH unless the State is able to successfully argue its case before the hearing official. Thus, it would be inappropriate to terminate the individual for failure to cooperate in an investigation when there is no such required adverse consequence if the individual does not participate in his/her own ADH.

Finally, consistent with policy memoranda of March 28, 2001 and June 4, 2001 concerning the Head of Household as Individual Responsible for Intentional Program Violations, only the individual(s) directly involved in the IPV may be held responsible. No additional household members may be disqualified unless there is convincing evidence of their complicity in the prohibited acts. Thus again it would be inappropriate to terminate the entire household for failure of an individual to cooperate in an investigation of that individual.

Contact with the individual prior to initiation of a disqualification procedure is not required by the Food Stamp Program regulations. Investigators having sufficient evidence of an individual's guilt may schedule an ADH, properly notify the individual, and proceed with a disqualification action without any intervening communication with the client. Or, having determined that an ADH is appropriate, the investigator may offer the individual the opportunity to forego the ADH by signing a waiver.

Nevertheless, contacting the individual prior to initiating a formal procedure affords the individual the opportunity to explain away questionable circumstances and avoid the necessity of further action. It also provides the investigator an opportunity to gather further evidence if obtained from the individual voluntarily. To this end, investigators may request but not require individuals to attend meetings to discuss investigators' suspicions. Further, they may ask individuals to discuss the issues over the telephone or respond in writing. If the individual fails or refuses to respond to any such request, the investigator, having otherwise completed his/her investigation and having sufficient evidence, may proceed with an ADH action to disqualify the individual. In no event, however, may the individual or the household be threatened with the possibility of termination for non-cooperation.

If a State agency has terminated the participation of an individual for failure to cooperate with a fraud investigation, the State agency should reinstate the individual in the food stamp household. If an entire household has been terminated, the State agency should advise the household to submit a new food stamp application.

/s/ Arthur Foley  
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Director  
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/s/ Lou Pastura  
Lou Pastura  
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