DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, CA 95814

July 22, 2002

REASON FOR THIS TRANSMITTAL

[ ] State Law Change
[ ] Federal Law or Regulation Change
[ ] Court Order or Settlement Agreement
[X] Clarification Requested by One or More Counties
[ ] Initiated by CDSS

ALL-COUNTY INFORMATION NOTICE I-52-02

TO: ALL COUNTY WELFARE DIRECTORS
ALL FOOD STAMP COORDINATORS

SUBJECT: FOOD STAMP QUESTIONS AND ANSWERS

REFERENCE: ACIN I-62-96, I-03-02, I-05-02; ACL 98-66, 99-64; CFL 00/01-21

The purpose of this All-County Information Notice (ACIN) is to provide counties with answers to questions regarding Food Stamp Program policy. Questions were submitted by the County Welfare Directors Association's Food Stamp Committee. The answers were submitted to the committee for review and comments before being finalized by the Food Stamp Policy Bureau. Additional questions and answers (Q&As) have been added by the bureau to provide clarification on topics that are frequently asked about by the counties. As requested by the committee, Q&As are separated and categorized for ease of reference.

If you have any questions regarding the enclosed Q&As, please contact the policy analyst assigned that area of the regulations.

Sincerely,

Original document signed by
Pat Sutherland For

GARY SWANSON, Chief
Food Stamp Branch

Attachment

OVERISSUANCES

QUESTION #1a:

Please provide further clarification on the three-year time frame for establishing an overissuance (OI) discussed in OI Q&A #1 on pages six and seven of ACIN I-03-02. For example, an IEVS report may cause a case to be referred to an investigative unit for potential fraud and OI computation. When does the three-year clock get started? Is it the date the IEVS worker refers the case to investigations or the date the investigative staff uses the information on IEVS and other verifications (from an employer for example) to calculate the OI?

ANSWER:

The three-year time frame does not begin with the date of discovery, the date the case is referred to investigations, or the date the investigative staff uses the information on IEVS and other verifications to calculate the OI. The three-year time frame begins with the date of the occurrence of the OI [Manual of Policies and Procedures (MPP) 63-801.11; ACIN I-03-02]. OI Q&A #1 in ACIN I-03-02 provides an example of how the three-year time frame works. It also explains the six-year calculation time frame.

QUESTION #1b:

A portion of an OI included in a "six-year" calculation would "occur" more than three years before the establishment of the claim. If a claim must be established within three years of the date of occurrence, how can a claim be established that includes months of OI more than three years prior to the establishment date?

ANSWER:

MPP 63-801.311(b) instructs the CWD to calculate the claim for this six-year period. The CWD would be operating within the three-year time frame as required by MPP 63-801.11 as long as one month of the OI occurs within three years of establishing the claim. Therefore, it does not matter that part of the OI occurred more than three years prior to the establishment of the claim as long as a portion of the OI occurred within the three-year time frame. As mentioned in OI Q&A #1 in ACIN I-03-02, the three-year “establishment” time frame is to ensure that timely action is taken, and the six-year “calculation” time frame is to allow a larger amount to be collected.

QUESTION #2 BACKGROUND:

63-801.231 states: “A claim shall be handled as an intentional program violation claim for an overissuance or trafficking only if an administrative disqualification hearing official or a court of appropriate jurisdiction has determined that a household member or the sponsor had committed an intentional program violation, as defined in Section 20-300.1 or if an individual accused of intentional program violation has signed either a Disqualification Consent Agreement or an Administrative Disqualification Hearing Waiver as defined in Sections 63-102(a) and (d)(6). Prior to a determination of intentional program violation the claim against the household shall be established and handled as an inadvertent household error claim.”

63-801.321 states: “For each month that a household received an overissuance due to an act of intentional program violation, the CWD shall determine the correct amount of food stamp benefits, if any, the household was entitled to receive. The amount of the intentional program violation claim shall be calculated back to the month the act of intentional program violation occurred, regardless of the length of time that elapsed until the determination of intentional program violation was made or the date the waiver of Right to an Administrative Disqualification Hearing or Disqualification Consent Agreement was signed. However, the CWD shall not include in its calculation any amount of the overissuance which occurred in a month more than six years from the date the overissuance was discovered or prior to March 1, 1979.”

QUESTION #2a:

Are potential Intentional Program Violation (IPV) claims exempt from the three-year time frame for establishing the overissuance?

ANSWER:

MPP 63-801.231 indicates that a potential IPV claim should be established as IHE claim until an IPV has been determined as specified in this section (i.e., by court of appropriate jurisdiction, etc.). The IHE claim must be established within the required three-year time frame. If an IPV determination is made on the IHE claim, the IPV claim would be considered appropriately established regardless of the length of time that has elapsed from the date of occurrence. If an IPV determination were not made, the county would continue to handle the claim as an IHE.

ANSWER #2a (continued):

Counties are permitted to postpone the establishment of an IHE in cases where an OI is being referred for possible legal prosecution or for administrative disqualification, and the CWD determines that such action will prejudice the case (MPP 63-801.412). In such cases, when an IPV is determined in the manner specified in MPP 63-801.231 (i.e., by court of appropriate jurisdiction, etc.), the county would follow the decision set forth by the court, etc. Because the IPV was appropriately determined, a valid claim exists regardless of the length of time that has elapsed from the date of occurrence. However, if the case is determined not to be an IPV, and no IHE had been previously established, an IHE claim could only be established if it is still within the three-year time frame. The county would not be able to go back and establish an IHE claim if it is beyond that three-year time frame.

QUESTION #2b:

Special Investigations Unit (SIU) letters are not notices of action and are not subject to state administrative hearings because no adverse action explaining the OI budget and demanding repayment has yet been taken by the county. If the county sends only an SIU letter that addresses the amount of a potential IPV, instead of sending a notice of action, would an IHE claim be considered established?

ANSWER:

A claim would only be considered established if the proper demand notices have been sent (for an IHE the county would send a DFA 377.7B with repayment agreement DFA 377.7C). If the county sends an SIU letter only, a claim would not be considered established.

QUESTION #2c:

Prior to July 2001, potential IPV overissuances that occurred over three years from the date of discovery were not addressed in a notice of action to the client with the client's appeal rights explained until the IPV was either established in court or by an ADH. Once the IPV was established, any previous IHE OI notice of action was revised to include the full overissuance amount that occurred during the IPV period. If the only overissuance was for an IPV period that occurred over three years from the date of discovery as then defined, no notice of action was initiated until the IPV was established. Would this be the same process now?

ANSWER:

If a claim is initially established as an IHE, the county must send a DFA 377.7B and repayment agreement DFA 377.7C. If such claim were later determined to be an IPV, the county would inform the client of this status change by sending the DFA 377.7F along with repayment agreement DFA 377.7G. If the county decided not to establish the claim as an IHE first, but an IPV is appropriately determined (MPP 63-801.231), the county would send the DFA 377.7F and DFA 377.7G.

QUESTION #2d:

If there is no IHE OI established because the IPV period ends more than 3 years before a potential IPV OI is calculated, how is six years from the date the IPV overissuance was discovered to be determined?

ANSWER:

MPP 63-801.321 indicates that the county is to include OIs occurring during the preceding six years. Whenever a possible IPV overissuance is suspected, whether or not the county plans to first establish an IHE, the county should calculate the amount of the overissuance at that time. The date of the calculation would serve as the date of discovery and any applicable OIs in the preceding six years would be included.

QUESTION #2 CONCLUSION:

Whenever an IPV is suspected, counties should establish an IHE claim. By doing so, counties will ensure that they will still have a valid claim in case an IPV is not proven. If a client requests and is granted a fair hearing on the IHE claim, the county is not prevented from referring the case to the local prosecuting authority for investigation and prosecution for IPV. The county is only prevented from pursuing both an ADH on a case and referring that case for prosecution if the factual issues of the case arise out of the same or related circumstances (MPP 20-300.24). If the facts of the case do not warrant prosecution, or if a case previously referred for prosecution has been declined, the case is returned to the CWD for referral action for an ADH (MPP 20-300.23).

HOUSEHOLD COMPOSITION

QUESTION #1:

If a food stamp participant or a member of a food stamp household leaves the country or state due to an emergency, is there a time limit on how long that individual or household member can be gone without the food stamp benefits being affected?

ANSWER:

Food stamp regulations provide, with certain exceptions, that a household shall consist of persons who live together and customarily purchase food and prepare meals together for home consumption (MPP 63-402.13). Eligibility is determined on a monthly basis and household composition is an eligibility factor. Therefore, persons included in the household for any month must live with the household and purchase and prepare meals with the household for at least part of the month (MPP 63-402.131). With regard to months when a person is not in the household at all, the person does not fit into the household definition; therefore, he or she cannot be considered a member for that month. However, any of his or her income made available to the household would be counted as income to the household (MPP 63-503.45). Similarly, any of an absent person's resources to which the household has access would be counted as resources of the household for food stamp purposes (MPP 63-501.2 and 63-503.45). Pursuant to MPP 63-505.3 and 63-505.5 households shall report changes in household composition and other relevant circumstances affecting eligibility. For additional information, please see ACIN I-05-02.

QUESTION #2:

We have a case that consists of a mother, her child, and the child's biological father. A few years ago, the mother and father were divorced. The mother got remarried and the second husband adopted the child. The mother and her second husband are now divorced and the biological father moved back into the home. MPP 63-402.142 states that separate household status cannot be granted when parents are living with their biological children. Can the biological father in this scenario be granted separate household status from the mother and the child?

ANSWER:

MPP 63-402.142 does not apply because the second husband adopted the child and the biological father does not have any legal ties to the child. If the biological father purchases and prepares together with the rest of the family, then this is one household. However, if the biological father purchases and prepares separately, and he and his ex-wife do not present themselves as husband and wife to the public, separate household can be granted per MPP 63-402.12 and MPP 63-102(s)(9).

NONCITIZEN ELIGIBILITY—EXPIRED I-551 CARDS

QUESTION #1a:

If the only documentation that a noncitizen provides is an expired I-551 card, should the county institute a SAVE verification, or should the county determine that the noncitizen is ineligible until other documentation is made available?

ANSWER:

MPP 63-300.5(e)(2) indicates that a noncitizen is ineligible only if NO adequate verification or documentation is available. Lawful permanent residents do not lose their lawful permanent resident status because their I-551 card has expired. Even if the I-551 card is expired, it is an acceptable form of documentation.

However, an expired card would represent questionable verification, at certification or recertification, and as such would fall under MPP 63-300.5(g). Therefore, the county should institute a SAVE verification for a noncitizen who shows an expired I-551 card. Benefits should not be denied based on noncitizen status if someone has presented an expired I-551 card.

QUESTION #1b:

What should the county do if a noncitizen claims that his or her I-551 card was taken away by INS because it was expired?

ANSWER:

If the noncitizen does not have any other documentation of his or her status, the noncitizen is ineligible for food stamp benefits until other documentation or verification is made available. MPP 63-300.5(e)(2)(B) indicates that if the noncitizen does not have any documentation of noncitizen status, but gives permission for the CWD to contact INS to request verification of noncitizen status, then the CWD shall contact INS. If the CWD receives verification of eligible noncitizen status, then the CWD cannot deny benefits if the noncitizen is otherwise eligible. The CWD certifies the noncitizen pending the results of the verification for up to six months from the date of the original request for verification in accordance with MPP 63-300.5(e)(2)(D)(2).

For both of the above situations (questions #1a and #1b), the CWD should also refer the client to INS for assistance in obtaining current documentation. Furthermore, MPP 63-300.5(i) provides that the CWD should offer assistance to a household that has difficulties in obtaining required documentary evidence.

DRUG AND ALCOHOL FACILITIES—SHELTER DEDUCTIONS

QUESTION #1:

Should the rent expense for a resident of a drug and alcohol facility be used as a standard shelter deduction or as a homeless shelter deduction?

ANSWER:

A temporary resident at a drug and alcohol treatment facility does not in or of itself qualify the client as homeless. The CWD must make the determination if the client meets the definition of homeless as provided in MPP 63-102(h)(2). The county would need to determine whether the client was homeless before he/she entered the treatment center or will be homeless after leaving the treatment center. If the client meets the Food Stamp Program's homeless requirements, the CWD would then use the homeless shelter deduction. If it is determined that the client is not homeless, the CWD would use the standard shelter deduction.

BUDGETING

QUESTION #1:

How should deductible expenses be determined for food stamp purposes in each of the following situations?

SITUATION 1a:

A household includes several individuals with some ineligible noncitizens and the rest eligible noncitizens or U.S. citizens. The income in the household is CalWORKs and income for one of the ineligible noncitizens. The ineligible noncitizen declares that the income is used only for personal needs, and that he or she does not pool income or contribute toward the household expenses.

ANSWER:

When one ineligible noncitizen has income, count all ineligible noncitizens in the proration of deductible expenses in accordance with MPP 63-502.374(a)(2). In other words, if one ineligible noncitizen has income, the proration of expenses is done automatically regardless of whether or not he or she contributes or pools income. You do not do a “contribution test” for income proration. This proration does not apply to the standard utility allowance (SUA).*

SITUATION 1b:

A household includes several individuals with some ineligible noncitizens and the rest eligible noncitizens or U.S. citizens. The income to the household is CalWORKs and income for one of the ineligible noncitizens. The ineligible noncitizen declares he or she contributes a flat amount to household expenses.

ANSWER:

When one ineligible noncitizen has income, count all ineligible noncitizens in the proration of expenses in accordance with MPP 63-502.374(a)(2) regardless of whether the ineligible noncitizen pays part, a flat amount, or all of the deductible expenses. Even if an ineligible noncitizen makes a fixed or flat rate contribution to a deductible expense, the known amount is not deducted and the expense must be prorated. [63-502.372(b), 63-502.373, and 63-502.374]. This proration does not apply to the SUA.*

SITUATION 1c:

A household includes several individuals with some ineligible noncitizens and the rest eligible noncitizens or U.S. citizens. The only income in the household is earned income for one of the ineligible noncitizens. The ineligible noncitizen declares he or she pays all the shelter expenses.

ANSWER:

When one ineligible noncitizen has income, count all ineligible noncitizens in the proration of expenses in accordance with MPP 63-502.374(a)(2). In the above situation, you would only prorate the deductible expenses based on the fact that at least one of the ineligible noncitizens has income. This proration does not apply to the SUA.*

SITUATION 1d:

A household includes several individuals with some ineligible noncitizens and the rest eligible noncitizens or U.S. citizens. The income in the household is CalWORKs, an ineligible noncitizen's earned income, and unearned income for another ineligible noncitizen. The ineligible noncitizen with the earned income declares he or she pools income with the eligible household members. The ineligible noncitizen with the unearned income declares he or she does not pool income or contribute towards the household expenses.

ANSWER:

When one ineligible noncitizen has income, count all ineligible noncitizens in the proration of expenses in accordance with MPP 63-502.374(a)(2). In the above situation, once it is determined that one ineligible noncitizen has income, the proration of expenses is done automatically. You do not do a "contribution test" for income proration. This proration does not apply to the SUA.*

SITUATION 1e:

A household includes several individuals with some ineligible noncitizens and the rest eligible noncitizens or U.S. citizens. The income to the household is CalWORKs that is paid to one of the ineligible noncitizens on behalf of citizen children.

ANSWER:

In order to be calculated into the proration of deductible expenses, the ineligible noncitizen must have income. If the ineligible noncitizen were acting solely as an agent or payee for another household member, he or she would not be calculated into the proration because that income would not be considered his or hers per MPP 63-502.372(b)(2).

QUESTION #2:

How do you calculate the combined and federal-only budgets for income and shelter costs in the following situations?

SITUATION #2a:

The food stamp (FS) household consists of 5 eligible members.

- CFAP mother receives CalWORKs grant.
- CFAP father, who is also welfare to work sanctioned, has earnings of $800.
- Three federally eligible children receive CalWORKs grant.
- The CalWORKs grant of $876 is the amount before the CFAP father was welfare to work sanctioned.
- Rent is $500.

ANSWER:

The combined FS budget computes the FS benefit amount for the entire household (both federal and CFAP household members). This is the FS allotment that should be issued to the household. CFAP household members are not excluded members of the FS household; they are part of the combined FS household. The only instance in which they would be considered “excluded” is when determining the federal share of cost for a combined household.

The federal FS budget is ONLY used to determine the federal and state share of the combined allotment. The federal FS budget computes the FS benefit amount for the federal food stamp household members only. The CFAP share of the combined allotment is determined by subtracting the federal benefit amount from the combined benefit amount.

ANSWER #2a (continued)

Per ACL 98-66, dated September 1, 1998, "CWDs are to use existing budgeting procedures for calculating food stamp benefits to be issued to eligible households. However, the income and deductible expenses of CFAP noncitizen household members shall be excluded when determining the federal share of cost for combined (state and federal) households." Therefore, in determining how much of the income and shelter cost in the above situation is to be used in the combined and federal-only budgets, the calculation is done as follows (proration does not apply to the SUA*):

Income:

COMBINED FS BUDGET	$800 (CFAP father's earnings) + $876 CalWORKs grant prior to the CFAP father's welfare to work sanction (CFAP mother, CFAP father, and 3 federally eligible) = $1676	**$1676** to be used in the Combined FS budget
FEDERAL FS BUDGET	$876 divided by 5 (CFAP mother, CFAP father, and 3 federally eligible children) = $175.20 per person X 3 (federally eligible children) = $525.60 **Note:** None of the CFAP income is counted in the Federal FS budget.	**$525.60** federally eligible members' income to the Federal FS budget

Rent:

COMBINED FS BUDGET	$500 (Household's total rent amount)	**$500** rent amount to be used in the Combined FS budget
FEDERAL FS BUDGET	$500 divided by 5 (CFAP mother, CFAP father, and 3 federally eligible children) = $100 per person X 3 (3 federally eligible children) = $300 **Note:** If an ineligible noncitizen or CFAP eligible has income, all ineligible noncitizens/CFAP eligible persons of that household are counted in the proration.	**$300** rent amount to be used in the Federal FS budget

SITUATION #2b:

FS household consists of five eligible members.

- CFAP eligible mother, also welfare to work sanctioned, has no other income.
- CFAP eligible father, also welfare to work sanctioned, has no other income.
- Three federally eligible children receive CalWORKs grant.
- The CalWORKs grant prior to the CFAP persons' welfare to work sanction is $876. CFAP mother is the payee of the CalWORKs grant.
- Rent is $500.

ANSWER:

Income:

COMBINED FS BUDGET	$876 CalWORKs grant prior to sanction (CFAP father, CFAP mother, and 3 federally eligible children)	**$876** CalWORKs income to the Combined FS budget
FEDERAL FS BUDGET	$876 divided by 5 (CFAP mother, CFAP father, and 3 federally eligible children) = $175.20 per person X 3 (federally eligible children) =$525.60 **Note:** When a person is work sanctioned but meets a food stamp work requirement exemption, the household continues to receive the same amount in food stamp benefits. While the sanctioned persons are removed from the AU, they are still part of the food stamp household. Hence, the CalWORKs grant amount of $876 (amount prior to the work sanction) would be prorated among the CalWORKs recipients. The pro rata share is then multiplied by the number of federally eligible persons to come up with the federal share.	**$525.60** income to the Federal FS budget

ANSWER #2b (continued)

Rent:

COMBINED FS BUDGET	$500 (Household's total rent amount)	**$500** rent amount to be used in the combined budget
FEDERAL FS BUDGET	$500 (Household's total rent) **Note:** If an ineligible noncitizen has income, all ineligible noncitizens of that household, including CFAP eligible persons, are counted in the proration of a housing expense. In this case, since neither of the CFAP eligible persons has income, the rent expense would not be prorated.	**$500** rent amount to be in Federal FS budget

QUESTION #3:

How are income and shelter expense budgeted in the combined and federal-only budgets in the following situation?

SITUATION #3:

FS household consists of two eligible members.

- CFAP eligible mother has earned income of $500.
- Undocumented father has no income and does not contribute toward expenses.
- Undocumented child has no income.
- Citizen child.
- Rent is $400.

ANSWER:

Income:

COMBINED FS BUDGET	$500 (CFAP eligible mother's income)	**$500** income to the Combined FS budget
FEDERAL FS BUDGET	$0 **Note:** CFAP person's income is not counted in the Federal FS budget.	**$0** income to the Federal FS budget

Rent:

COMBINED FS BUDGET	$400 (household's total rent amount)	**$400** rent amount to the Combined FS budget
FEDERAL FS BUDGET	$400 divided by 4 (CFAP eligible mother, 2 undocumented persons, and Citizen child) = $100 per person X 1 (Citizen child) = $100 **Note:** The proration is done in this case because the CFAP person has income.	**$100** rent amount to the Federal FS budget

*SUA BUDGETING:

The proration examples provided in the budgeting Q&As in this ACIN do NOT apply to the SUA. An ACL discussing the treatment of the SUA will be released by the Food Stamp Policy Bureau soon.