



Food and
Nutrition
Service

Park Office
Center

3101 Park
Center Drive
Alexandria
VA 22302

SUBJECT: Cases of Severely Delayed Certification due to State
Agency Fault

DATE: April 10, 2017

TO: Regional Directors
Supplemental Nutrition Assistance Program (SNAP)
All Regions

The Food and Nutrition Service (FNS) recently became aware of the need to clarify guidance about how to calculate restoration of benefits in situations involving severely delayed application processing or recertification due to State agency fault. This memorandum clarifies the process for calculating restored benefits in cases in which the application or recertification process of an eligible household has been delayed for more than one year.

Section 11(b) of the Food and Nutrition Act of 2008 (the Act) addresses the restoration of benefits due to State agency fault in the case of improperly denied, terminated, or underissued benefits to an eligible household. The provision provides statutory authority for limiting retroactivity to one year in such cases. The one-year retroactivity limitation is repeated in sections 11(e)(11) and 14(b) of the Act. However, the Act does not state what the retroactivity period should be in the case of a delay in the processing of an application or recertification for more than one year.

The one-year retroactivity limitation in the case of improper denial, termination, or underissuance of a household's benefits is included in SNAP regulations at 7 C.F.R. 273.17(b). Although this limitation does not explicitly apply to situations involving delayed processing of applications or recertification, it does apply to benefits not received by an eligible household for more than one year.

When FNS issued regulations relating to delays in processing due to State agency fault, FNS did not anticipate a situation in which the delays could extend for over a year. Normal delays in processing are governed by 7 C.F.R. 273.2(h), which categorizes State-caused delays according to delays within the initial or second 30-day period (273.2(h)(3)) and delays beyond 60 days (273.2(h)(4)). For both categories, 273.2(h) requires restoration of benefits retroactive to the month of application.

The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

The processing delays covered in 273.2(h) only anticipate delays of a few days to a few months. FNS believes that a delay in processing an application or recertification for more than one year is such a long delay in providing benefits as to effectively change the programmatic character of the delay to an improper denial, termination, or underissuance of benefits covered in 273.17(b). Treating a processing delay of more than one year in this way aligns processing delays with the one-year retroactivity limitation in section 11(b) of the Act and 273.17(b) of SNAP regulations. A processing delay of more than 60 days, but less than 1 year, would be subject to calculation of benefits retroactive to the date of application.

FNS now clarifies that in cases of severely delayed application processing or recertification due to State agency fault (i.e., certifications delayed for more than 1 year), the restoration of benefits is limited to a period of not more than 12 months prior to the date on which the State agency is notified, or otherwise discovers that a loss to a household has occurred, in accordance with the general restoration of benefits regulations at 273.17. This holds State agencies accountable for compensating households for improperly lost benefits, while providing a time limitation on compensating households for severely delayed applications or certifications.

Please distribute this guidance to your State agencies and advise them to contact their respective FNS Regional Offices points of contact with any questions and for technical assistance. FNS Regional Offices should contact Sasha Gersten-Paal at (703) 305-2507 with any questions concerning this memorandum.

A handwritten signature in blue ink that reads "Lizbeth Silberman". The signature is fluid and cursive, with a small dot above the 'i' in "Silberman".

Lizbeth Silberman
Director
Program Development Division