

## Frequently Asked Questions on FDPIR Household Eligibility

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### Who Can Participate in FDPIR

1. Can someone who is not a tribal member participate in FDPIR, if he or she is living on the reservation?

**Response:** Yes. All low-income families and individuals living on a reservation can participate in FDPIR, if they meet the eligibility criteria. See **Indian Tribal Household Status**, below, regarding the rules for approved service areas off the reservation or in Oklahoma.

2. Can a person who is not a United States citizen participate in FDPIR?

**Response:** Yes, at the option of the ITO/State agency. The ITO/State agency may opt to serve or not serve non U.S. citizens or unqualified aliens (see section 4211 of FNS Handbook 510). The ITO's/State agency's decision regarding this option must be included in the Plan of Operation and/or in the ITO's/State agency's written guidance.

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### Application Processing

1. What is a complete application?

**Response:** An application is considered complete for filing purposes if it contains the applicant's name, address, and is signed by a responsible household member or an authorized representative (see sections 3120 and 3330 of FNS Handbook 501). Additional household information (such as the names of all household members and the household's income and resources) is necessary to certify a household, and must be obtained at the certification interview.

**2. What action should be taken on an incomplete application received by mail if the household cannot be reached?**

**Response:** All applicant households, or their authorized representatives, must have an interview with a certifier prior to certification (see section 3600 of FNS Handbook 501). If an application is incomplete and the household cannot be reached for an interview to complete the application, no further action can be taken on the application (see section 3330 of FNS Handbook 501).

**3. How do you handle an application when you can't determine a household's eligibility within seven working days of the date of application due to lack of verification?**

**Response:** If the necessary verifications cannot be completed within the seven day application processing standard, you must certify the household for one month's benefits if the application is complete and it appears that the household is eligible. No further FDPIR food distribution can be made without completing the required verification (see sections 3320 and 5101 of FNS Handbook 501).

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**Household Composition**

**1. If children leave the household to visit their grandparents during school break, can the parents still claim the children as part of the household while they are away?**

**Response:** Household members can still be considered part of the household during temporary absences, e.g., vacations and visits with relatives (see section 3401 of FNS Handbook 501). FNS does not define "temporary," so the ITO/State agency may apply its own reasonable definition. This definition must be included in the Plan of Operation and/or in the ITO's/State agency's written guidance.

**2. Three children (under age 10) have been placed in their aunt's home by the County Social Services office. The aunt receives benefits under the Supplemental Nutrition Assistance Program (SNAP) (formerly known as the Food Stamp Program). Can the children be considered a separate household for FDPIR?**

**Response:** No. The children must participate with the aunt as one household (see section 3400 of the FNS Handbook 501). The aunt must either add the children to her SNAP case, or close her SNAP case and apply for FDPIR with the children.

**3. If the only adult in a three-person household is disqualified from FDPIR, can the children still participate?**

**Response:** Yes. If the only adult in the household is disqualified from FDPIR, the children can participate with an authorized representative acting as the head of

household (see section 3431 of FNS Handbook 501). If no other adult is available who can act as the authorized representative, the disqualified adult can act as the authorized representative for the household (sections 3431 and 3432 of FNS Handbook 501). However, the disqualified adult is not considered a household member for the purpose of determining benefits.

**4. What are the procedures for handling a ward of the court that is placed with a family?**

**Response:** A ward of the court that is placed with a family would be treated the same as a foster child (see section 3415 of FNS Handbook 501). Payments made by the Tribe or a State agency to the family for the care of the minor would be counted as income, if the minor is counted as a FDPIR household member. The payments may be excluded if the minor is not counted as a FDPIR household member.

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**Indian Tribal Household Status**

**1. A mother and two children live off-reservation in an area served by FDPIR. The children are enrolled members of a federally-recognized Tribe, but the mother isn't. Can the mother participate with the children in FDPIR?**

**Response:** Yes. For households living off-reservation (or in Oklahoma) in an approved FDPIR service area, at least one member of the household must be a member of a federally-recognized Tribe (see section 4212 of FNS Handbook 501).

**2. A mother and two children live in Oklahoma and the mother is the only household member who is an enrolled member of a federally-recognized Tribe. The mother is disqualified from SNAP for her first intentional program violation. Consequently, the mother is ineligible to participate in FDPIR for one year. Can the children participate in FDPIR?**

**Response:** Yes. Since the mother is an enrolled member of a federally-recognized Tribe, the status of the household as an Indian Tribal Household does not change as a result of the mother's disqualification, as long as the mother continues to live with the children. The mother's income and resources shall be counted in accordance with section 4731 of FNS Handbook 501, but she is not included as a household member in determining the level of benefits the household shall receive.

**3. If the father in a 4-person family is deployed, and he is the only household member that is an enrolled member of a federally-recognized Tribe, does the household lose its status as an Indian Tribal Household?**

**Response:** The household would retain its status as an Indian Tribal Household during the father's deployment. Any income contributed to the household by the deployed father would be counted as household income, but the father would not be included as a household member in determining the level of benefits the household shall receive (i.e., the household would be a 3-person household while the father is deployed).

4. **NEW!** Gloria is considered a “descendent” by her tribe because she does not qualify as an enrolled member of the tribe based on her degree of blood. She is eligible for certain tribal services and benefits, but not all. Would Gloria’s status as a “descendent” qualify her household to be considered an Indian Tribal Household under FDPIR?

**Response:** Regulations at 7 CFR 253.2 define Indian Tribal Household as “...a household in which at least one household member is recognized as a tribal member by any Indian tribe...”

It is the right of each tribal government to set the criteria for tribal recognition in regards to FDPIR eligibility. For example, the tribal government may pass a tribal ordinance stating that all “descendents” (or those of a certain degree of blood) are recognized as tribal members for FDPIR eligibility purposes only. If Gloria’s tribal government passed such an ordinance, she would be considered a “recognized tribal member” for FDPIR eligibility purposes and her household would be considered an Indian Tribal Household in accordance with 7 CFR 253.2.

If Gloria’s tribal government does not pass a tribal ordinance that defines the criteria for tribal recognition in regards to FDPIR eligibility, it is assumed that tribal recognition is limited to enrolled tribal members in meeting the requirement at 7 CFR 253.2 for Indian Tribal Households. Therefore, Gloria’s household would not qualify as an Indian Tribal Household since she is a “descendent” and not an enrolled member of her tribe.

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### **Determining Income**

1. **When converting weekly or biweekly income to a monthly amount, why are the conversion factors of 4.3 and 2.15 used?**

**Response:** The conversion factors of 4.3 for weekly paychecks and 2.15 for bi-weekly paychecks account for the fact that all months do not have the same number of paydays. For example, if an individual is paid every Friday, there are seven months in calendar year 2010 in which the individual would receive four paychecks and five months in which the individual would receive five paychecks. The 4.3 conversion factor accounts for the fluctuation in the number of paychecks received each month. The 4.3 and 2.15 conversion factors are used in other programs, such as SNAP, where monthly household income is determined.

2. **When converting weekly or biweekly income to a monthly amount, can you use the household’s exact amount of income rather than using the conversion factors of 4.3 or 2.15?**

**Response:** Yes. Per section 4621 of FNS Handbook 501, you may use the exact amount of income if you can anticipate it for each month of the certification period. However, because most workers receive their paycheck on a set day of the week/month, you must account for those months in which the household receives an extra paycheck due to variations in the calendar. For example, Mr. Smith is a salaried employee and receives the same amount of income every Friday. In most months Mr.

Smith receives four paychecks each month. The certifier may total the amount of weekly gross income and use that amount without using the 4.3 conversion factor. However, in calendar year 2010, the following months have five Fridays: January, April, July, October, and December. The certifier must account for these calendar variations when determining the household's eligibility and assigning certification periods. So, if a fifth paycheck would make Mr. Smith's household ineligible, the household would be ineligible for January, eligible for February-March, ineligible in April, eligible for May-June, ineligible for July, eligible for August-September, ineligible for October, eligible for November, and ineligible for December.

**3. What is the best way to handle households with earned income that fluctuates from week to week?**

**Response:** Many individuals do not receive a fixed salary, but earn an hourly wage or are paid for piece-work, and their weekly or biweekly wages may fluctuate. If the wages do not fluctuate significantly, you may use the "normal" amount of income that the individual expects to receive to determine the household's monthly income (see section 4611B of FNS Handbook 501). You would apply the 4.3 conversion factor to the normal weekly amount, or the 2.15 conversion factor to the normal biweekly amount to determine the monthly gross earned income.

If the household's wages fluctuate on a regular basis, you may average the income (see section 4622 of FNS Handbook 501). You would apply the 4.3 conversion factor to the averaged weekly amount, or the 2.15 conversion factor to the averaged biweekly amount to determine the monthly gross earned income.

**4. A truck driver receives travel per diem, which is included in his gross pay. Should the per diem amount be counted as income?**

**Response:** No. The per diem represents a reimbursement for travel expenses. Reimbursements are excluded as income (see section 4546 of FNS Handbook 501).

**5. If a household brings in a letter from Social Services saying that foster care payments are not counted as income, can FDPIR exclude the income?**

**Response:** Foster care payments are counted as unearned income under FDPIR if the foster child is counted as a household member in determining benefits (see sections 3415 and 4530 of FNS Handbook 501). Other federal assistance programs and the Internal Revenue Service may not count foster care as income for the purposes of determining program eligibility or for computing tax liability. This may be the result of specific legislative authority under these programs to exclude the foster care payments as income. That legislative authority does not apply to FDPIR.

**6. If an individual's wages are garnished for child support (under a court order), do you still count the individual's monthly gross income for determining eligibility?**

**Response:** Yes. See section 4542.1 of FNS Handbook 501. You would count the full amount of the individual's gross monthly earned income in calculating the household's

net monthly income. The individual must provide the court order as verification, in order to qualify for the child support deduction.

## **7. How do you handle stocks, bonds, and savings bonds?**

**Response:** The value of stocks, bonds and savings bonds and other readily negotiable and accessible certificates are counted as resources to the household (see section 4420 of FNS Handbook 501), similar to a savings or checking account.

## **8. How is treaty income handled?**

**Response:** “Treaty income” may mean different things to different people, because this income can take many forms. It can mean funds provided by the federal government to tribes in fulfillment of treaty obligations or for the extraction of tribal natural resources — a percentage of which may be distributed as per capita among the tribe's membership. It can also mean funds distributed to an individual American Indian for mineral lease income on property that is held in trust by the United States or compensation for lands taken in connection with governmental projects.

Based on treaties and other legal documents (including court judgments), laws have been enacted to specify that certain funds are to be excluded as income and/or a resource in determining eligibility for any Federal or federally assisted means-tested program. Below is a partial list of these funds that are excluded by law:

- Income derived from certain sub-marginal land (including mineral rights) held in trust by the United States (Public Law 94-114).
- Up to \$2,000 per year of income received by individuals American Indians derived from leases or other uses of individually-owned trust or restricted land (Public Law 103-66).
- Claims Commission Settlement Funds, including, for example, the Seneca Nation Settlement Act of 1990 (Public Law 101-503), the Maine Indian Claims Settlement Act of 1980 (Public Law 96-420), and the Michigan Indian Land Claims Settlement Act (Public Law 105-143).
- Up to \$2,000 per year per individual of cash payments (including cash dividends on stock received from a Native Corporation) under the Alaska Native Claims Settlement Act (ANCSA). Also, stock, including stock issued or distributed by a Native Corporation as a dividend or distribution on stock (Public Law 100-241).
- Per capita payments to members of the Red Lake Band of Chippewa Indians from the proceeds of the sale of timber and lumber on the Red Lake Reservation (Public Law 85-794).
- Payments made to members of the Standing Rock Sioux Tribe and the Three Affiliated Tribes (Ft. Berthold Indian Reservation) under the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102-575).

FNS will maintain a list of funds provided to Tribes or individual American Indians that are excluded by law as income and/or a resource for FDPIR. This list is posted on the FDPIR website at: [http://www.fns.usda.gov/fdd/programs/fdpi/fdpi\\_guidance.htm](http://www.fns.usda.gov/fdd/programs/fdpi/fdpi_guidance.htm).

## 9. How do you calculate student income?

**Response:** (See sections 4640 and 4710-4711 of FNS Handbook 501)

Step 1: Add together all the non-excluded student income (e.g., educational loans with deferred repayment, scholarships, grants, Veteran's educational benefits, work study earnings, etc.), including money provided by relatives and other individuals outside the household. (Note: Student assistance provided under Title IV of the Higher Education Act and Bureau of Indian Affairs Student Assistance Programs are excluded by law [see section 4543 of FNS Handbook 501])

Step 2: Subtract the amount used for specific educational expenses (i.e., tuition and mandatory fees, educational supplies and books, education-related transportation, and miscellaneous educational expenses). Do not subtract normal living expenses.

Step 3: Divide the result of Step 2, above, by the number of months the student assistance is intended to cover (often a semester) to determine the net monthly educational income.

## 10. How do you determine net monthly self-employment income?

**Response:** (See sections 4640 and 4720-4727 of FNS Handbook 501)

A. If last year's Internal Revenue Service (IRS) tax return is available:

Step 1: Calculate self-employment income by using the FDPIR Self-Employment Worksheet (attached):

- For farming and ranching income – refer to IRS Schedule F
- For small business income – refer to IRS Schedule C
- For income from rental property – refer to IRS Schedule E
- For rental income from farm property – refer to IRS Form 4835

Step 2: Divide the result of Step 1 above by the number of months the income is intended to cover (e.g., 12 months for annual; 3 months for summer employment; etc.) to determine the total monthly self-employment income.

B. If last year's IRS tax return is not available, the client must document gross self-employment income and expenses:

Step 1: Determine gross self-employment income.

Step 2: Subtract allowable costs of doing business. (Note: Depreciation is not an allowable cost for FDPIR.)

Step 3: Divide the result of Step 2, above, by the number of months the income is intended to cover (e.g., 12 months for annual; 3 months for summer employment; etc.) to determine the total monthly self-employment income.

## **Zero Income Households**

### **1. How do you handle households that report zero income each month?**

**Response:** You must ask the household how it covers the cost of certain necessities (e.g., housing, clothing, laundry, transportation, toiletries and other personal items, etc.). It is recommended that certifiers use a zero-income form to document the household's claim of zero income.

### **2. How long should zero income households be certified?**

**Response:** In determining the length of certification periods, each household's unique circumstances must be considered. However, in general, households reporting zero income should be assigned a one-month certification period (see section 5112 of FNS Handbook 501). Most households would not be able to sustain themselves very long without any income. However, in rare instances, a household reporting zero income may be assigned a longer certification period if its circumstances are verified to be stable. Certifiers should refer zero income households to other available services (e.g., Temporary Assistance to Needy Families, Supplemental Security Income, General Assistance, Veterans Administration, etc.), as appropriate.

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## **Income Deductions**

### **1. A client has \$50 deducted from his paychecks to pay overdue/back child support. Can he get the child support deduction?**

**Response:** Yes. He would be entitled to a child support deduction for the monthly amount he pays in child support. Appropriate documentation (including the court order) is needed to verify the child support payments (see sections 3539 and 4553 of FNS Handbook 501).

### **2. If a client is required by a court order to carry health insurance for his children, in addition to paying a set amount of child support each month, can the medical insurance be included in the child support deduction?**

**Response:** Yes. Child support may cover such areas as health care, education, recreation, clothing, and other specific needs of a child. A child support deduction may be granted to a non-custodial parent for court ordered health insurance payments for the children named in the order. If the health insurance policy includes other household members, an income deduction can only be granted for the portion of the insurance premium assigned to the children named in the court order.

### **3. Why don't unemployment benefits, worker's compensation, and gambling payments get the 20 percent earned income deduction when people are required to pay income tax on these monies?**

**Response:** The 20 percent income deduction is applied to earned income. Unemployment benefits, worker's compensation, and gambling payments are not



earned income. The 20 percent earned income deduction is intended to cover certain employment related expenses, such as commuting costs, tools, union dues, uniforms and other special clothing, in addition to taxes and other withholdings.

**4. If a State pays the Medicare Part B premium on behalf of an individual, can the household get the income deduction for the Medicare Part B premium?**

**Response:** No. The household cannot get an income deduction for an expense that is paid by someone else. That is why the certifier must verify that the household paid the Medicare Part B premium. This can be done by verifying the benefit statement received by beneficiaries at the beginning of the calendar year. Also, some individuals pay the premium directly to Medicare on a quarterly basis. Their premium payments can be verified through canceled checks, money order receipts, and other similar documentation. (See sections 3539 and 4554 of FNS Handbook 501).

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**Income Verification**

**1. When verifying wages, how many earning statements must the certifier ask the household to provide?**

**Response:** The certifier must ask the household to provide as many earning statements as necessary to accurately determine a household's circumstances. For household members that are currently employed, the certifier must document the case file with earning statements covering the most recent four weeks (see section 3531 of FNS Handbook 501). However, the certifier may need to review earning statements for a longer period of time to accurately determine how much earned income the household is expected to receive each month. For example, for households with fluctuating earned income, the wages received in the most recent four weeks may not be representative of the earnings the household receives on a normal basis. Therefore, the certifier must request earning statements beyond the most recent four weeks to better determine the household's earnings history.

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**Reporting Changes**

**1. A household member receives an insurance settlement of \$10,000 after the household picks up its commodities for May. How do you handle this?**

**Response:** Generally, if a household receives income after picking up its commodities, no action must be taken in regard to the benefits issued that month. The issuance is still valid because the income was not received in time for the household to report it, and the ITO/State agency to take action prior to the issuance. However, the receipt of income may impact the household's eligibility for future issuances.

In this case, the household should have reported the change within 10 days of receiving the insurance settlement (see section 5141 of FNS Handbook 501). The May issuance

would not be affected since the payment was not received in time for the household to report the change and for the ITO/State agency to take action prior to the May issuance.

Also, the \$10,000 insurance settlement would be considered a nonrecurring lump-sum payment that would be excluded as income in the month received. Nonrecurring lump-sum payments are counted as a resource in the month received, and thereafter as long the funds remain available to the household (see section 4549D of FNS Handbook 501). Therefore, when the certifier receives the household's change report that it received the insurance settlement, the certifier must explore with the household whether any of the \$10,000 will be available to the household for the month of June. If the household is expected to be over the resource limit for the month of June, it would be ineligible for benefits in June. The household's ineligibility would continue until its resources fell below the resource limit.

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### **Intentional Program Violations and Other Disqualifications**

#### **1. Are households eligible for FDPIR if they are disqualified from SNAP for not meeting work requirements?**

**Response:** Yes. FDPIR rules at 7 CFR 253.6(a)(iii) state that a person disqualified from SNAP for fraud under 7 CFR 273.16 is not eligible for FDPIR until the disqualification period has ended. Failure to meet a SNAP work requirement is not considered fraud. SNAP disqualifies individuals for many different reasons. If an FDPIR applicant does not know why he or she was disqualified from SNAP, you should ask to see the disqualification notice or contact the local SNAP office to determine if the disqualification was for an intentional program violation.

#### **2. Who is responsible for issuing a claim if a household participated in FDPIR and SNAP in the same month?**

**Response:** The agency that completed the last certification action is the agency responsible for issuing a claim against a household that participated in FDPIR and SNAP (but not Disaster SNAP) in the same month. For example, a household was certified under FDPIR in January 2010 for 6 months. In April 2010, the household applied for SNAP without closing its FDPIR case and was certified for SNAP for 6 months beginning May 2010. The household participated in both FDPIR and SNAP for the months of May and June 2010. The SNAP office that certified the household would be responsible for issuing a claim against the household, because it failed to contact the ITO to determine whether the household was participating in FDPIR prior to certifying the household for SNAP.

#### **3. What do you do when you determine that a household failed to report that a child left the household four months ago?**

**Response:** If you determine that a household failed to report a change in household composition, you need to take several actions (see section 5153 of FNS Handbook 501):

- 1) Revise the benefit determination to reflect the change in household composition. You should also review other eligibility criteria with the household to insure that all information is current;
- 2) Issue a claim for overissued benefits (see sections 5600-5670 of FNS Handbook 501); and
- 3) Pursue an Intentional Program Violation disqualification (see sections 5800-5850 of FNS Handbook 501) if you are able to substantiate the violation.

For the Claim Determination:

Step 1: Determine if a claim is warranted (see section 5610 of FNS Handbook 501).

Step 2: If a claim is warranted, calculate the amount of the overissuance (see section 5640 of FNS Handbook 501).

Step 2: If the amount of the overissuance is more than \$125, issue a demand letter (section 5650 of FNS Handbook 501). If the amount is \$125 or less, a claim does not have to be established.

Step 3: After the first demand letter is issued, the ITO/State agency may suspend a claim if appropriate (see section 5660 of FNS Handbook 501). However, if a household misrepresented its circumstances, a claim cannot be suspended.

Step 4: The ITO must send two additional demand letters, 30 days apart.

Step 5: If the household refuses to pay the claim, the household shall be disqualified (see section 5670 of FNS Handbook 501). The disqualification continues until the claim is paid. The ITO/State agency may waive the disqualification if it would cause undue hardship to the household. The claim remains active if the disqualification is waived.

For the Intentional Program Violation (IPV):

Step 1: Document the file to show how you substantiated the IPV (e.g., the client admitted to you that she intentionally did not report the change in household composition).

Step 2: Within 10 days of substantiating the IPV, issue a notice of disqualification against the individual. The notice must comply with the requirements for notices of adverse action at section 5163 of FNS Handbook 501.

Step 3: If the individual requests a fair hearing, proceed with the fair hearing.

Step 4: If the individual does not request a fair hearing, implement the disqualification (12 months for first violation; 24 months for second violation; permanent for third violation). The disqualification must begin with the first regular distribution following the end of the advance notice period allowed by the adverse action notice. The disqualification will continue uninterrupted for the duration of the penalty period (even if the remaining household members leave FDPIR).

## FDPIR and SNAP Income Eligibility Criteria

### **1. Does SNAP determine eligibility based on gross income, whereas FDPIR uses net income?**

**Response:** SNAP uses two income tests to determine household eligibility for households without elderly and disabled members. The first test looks strictly at a household's total monthly gross income. If the household's total monthly gross income is above the gross income test limit, the household is determined ineligible. For example, a one-person household that has more than \$1,174 in gross monthly income would be ineligible under SNAP. This first test is intended to save time and resources by "weeding out" households that appear to have excess income; however, no income calculation is conducted.

If the SNAP household's gross monthly income is below the gross income test limit, then the certifier conducts a second test—the net income test. The household's net monthly income is determined by taking the household's total monthly gross income and subtracting all allowable income deductions.

FDPIR does not use the first test—the gross income test. FDPIR only uses the second test—the net income test. Under FDPIR, the household's net monthly income is determined by taking the household's total monthly gross income and subtracting all allowable income deductions.

### **2. Do SNAP and FDPIR use the same income guidelines?**

**Response:** Yes. SNAP and FDPIR both use 100 percent of the Federal Poverty Guidelines for the net income test. However, SNAP uses 130 percent of the Federal Poverty Guidelines for the gross income test to "weed out" households that are considered over income. FDPIR does not use the gross income test.

### **3. Does FDPIR have a standard deduction like SNAP?**

**Response:** Yes. SNAP and FDPIR use the same standard deduction. However, under SNAP it is applied as an income deduction and subtracted from the household's gross monthly income. Under FDPIR, the standard deduction is added to the net income standards to save time in the income eligibility determination. For example, the SNAP standard deduction for a 4-person household is \$153. Under FDPIR the \$153 is added to the income standard as shown in the example below:

	<u>SNAP Net Income Standard</u>	<u>FDPIR Net Income Standard</u>
4-person household	\$1,838	\$1,991 (\$1,838 + \$153)

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