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United States  
Department of  
Agriculture

Food and  
Nutrition  
Service

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**SUBJECT:** Merit Staff Questions and Answers  
Supplemental Nutrition Assistance Program (SNAP)

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

Under Secretary Kevin Concannon sent a letter to all State SNAP Commissioners on November 20, 2009 setting forth the Department's concern that outsourcing functions of the SNAP intake and application process has resulted in more complex and cumbersome enrollment procedures that have not furthered the mission of the program. Additional guidance intended to identify those areas of program administration that require review and approval from FNS as a condition of Federal financial participation (FFP) was issued on January 22, 2010.

Section 11(e)(6) of the Food and Nutrition Act of 2008 (Act) and 7 CFR 272.4(a)(2) restricts SNAP certification interviews and final decision on eligibility determination to State merit system personnel. The January 2010 guidance memo further restricts tasks that involve any client contact to merit system personnel. The guidance requires States to seek approval from the Food and Nutrition Service (FNS) to use non-merit system personnel to interact with clients in a restricted capacity that is compliant with the Act, such as providing clients application assistance or case status information, in order to ensure continued Federal Financial Participation (FFP) support.

A number of States and Regional Offices have approached FNS with further questions about the use of non-merit staff in the SNAP application and recertification process. These questions primarily revolved around the use of temporary non-merit staff and staff funded with non-SNAP funds. The following Questions and Answers are meant to further clarify questions raised by States and Regional Offices and also expand upon prior guidance.

Please do not hesitate to contact Moira Johnston at 703-305-2515 should you have any additional questions or concerns.

Sincerely,

Lizbeth Silberman  
Director  
Program Development Division

## Questions and Answers

Continued questions and answers from the January 22, 2010 memo "Federal Support for Enrollment and Application Processing Costs"

**Question 1:** The January 22, 2010 memo states that the Food and Nutrition Act (the Act) provides that only merit staff can perform certification activities. Can you provide the citation and the exact wording of the Act?

**Answer 1:** Section 11(e)(6) of the Act provides that "the State agency personnel utilized in undertaking such certification shall be employed in accordance with the current standards for a Merit System of Personnel Administration or any standards later prescribed by the Office of Personnel Management pursuant to section 208 of the Intergovernmental Personnel Act of 1970 [(42 U.S.C.4728)] modifying or superseding such standards relating to the establishment and maintenance of personnel standards on a merit basis."

**Question 2:** Can you provide clarification on what it means to be employed in accordance with standards for a Merit System of Personnel Administration?

**Answer 2:** As a condition of eligibility to participate in many Federal grant-aid programs (such as the Supplemental Nutrition Assistance Program (SNAP)), State and local governments must develop a merit system of personnel for personnel engaged in administration of the Federal grant-aid program. While each State or local government agency has its own merit personnel system with unique characteristics, they are all guided by a set of six broad merit principles outlined in the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728 and 42 U.S.C. 4728). The principals cover recruiting, compensation, training, retention, equal employment opportunity and guidance on political activity. Specific questions about a particular State's merit personnel system should be directed to the State or local government agency responsible for establishing the Merit System of Personnel.

### **Merit vs Non-Merit**

**Question 3:** Can a State use non-merit staff to perform tasks reserved for merit staff, such as interviews and certifications?

**Answer 3:** No. An employee who is not classified as merit staff cannot perform tasks reserved for merit staff, such as interviews and certifications. The State may request a demonstration project waiver under section 17 of the Act to allow non-merit staff to perform tasks traditionally performed by merit staff, such as interviews and certifications, but it is unlikely that such a waiver request would be approved by the Food and Nutrition Service (FNS).

**Question 4:** Can a State use non-merit staff to perform non-interview/certification tasks involving client contact, such as application assistance?

**Answer 4:** Sometimes. Non-merit staff cannot perform activities involving client contact, such as application assistance, without prior approval by FNS to determine if Federal financial support is warranted.

**Question 5:** Can a State use non-merit staff to perform activities that do not require client contact, such as data entry, typing, data matching, document scanning and ancillary support?

**Answer 5:** Yes. States can use non-merit staff to perform activities that do not require client contact, such as data entry, typing, data matching, and document scanning. In addition, State agencies can use non-merit staff for ancillary support services such as building security, maintenance, and technology support. This does not require prior approval by FNS.

### Temporary Employees

**Question 6:** Can a State use **temporary** employees who are classified as merit staff to perform interview and certification activities or tasks involving client contact?

**Answer 6:** Yes. If a State classifies an employee as merit staff, regardless if the employee is temporary, they can perform interview and certification activities or tasks involving client contact without submitting a demonstration waiver or receiving prior approval from FNS.

**Question 7:** Can a State agency use **non-merit temporary staff**, whether hired by a State agency or a for-profit staffing agency, to perform tasks reserved for merit staff, such as interviews and certifications, supervised by merit staff in a county office?

**Answer 7:** No. See **Answer 3** above.

**Question 8:** Can a State agency use **non-merit temporary staff**, whether hired by a State agency or a for-profit staffing agency, to perform tasks traditionally performed by merit staff, such as interviews and certifications, if these temporary staff are funded through TANF funds?

**Answer 8:** No. See **Answer 3** above.

### **TANF/SNAP Recipient Staff**

**Question 9:** Can staff who are **TANF or SNAP recipients** be considered merit system employees and therefore perform tasks reserved for merit staff, such as interviews and certifications? Is there a difference if they are hired by the State or through a for-profit staffing agency?

**Answer 9:** It is up to the State to determine whether these individuals are merit staff regardless of the hiring authority. If the employee is classified as merit staff, see **Answer 6**. If the employee is not classified as merit staff, see **Answer 3**.

### **Retired Eligibility Workers**

**Question 10:** Can **retired State agency** staff be considered merit system employees and therefore perform tasks reserved for merit staff, such as interviews and certifications? Is there a difference if they are hired by the State or through a for-profit staffing agency?

**Answer 10:** It is up to the State to determine whether these individuals are merit staff regardless of the hiring authority. If the employee is classified as merit staff, see **Answer 6**. If the employee is not classified as merit staff, see **Answer 3**.

### **Additional Questions**

**Question 11:** What does FNS suggest State agencies do to manage case-loads during increased volume when States have time-limited funds thus inhibiting their ability to hire permanent merit staff employees?

**Answer 11:** State agencies may take full advantage of hiring non-merit temporary staff to perform activities that do not involve client contact, such as data entry, typing, data matching, and document scanning, to free up the time of merit staff who handle all tasks involving client contact. States can seek prior approval from FNS to allow non-merit temporary staff to perform limited client contact tasks, such as application assistance, that do not include interview and certification activities.

**Question 12:** Can the Regional Office (RO) approve a State's request to use temporary non-merit staff in a restricted capacity that is compliant with the Act and guidance?

**Answer 12:** Yes. The RO is responsible for approving the use of temporary non-merit staff in a restricted capacity that is compliant with the Act and guidance. These tasks

include application assistance, case status or document collection. RO's should only approve the use of non-merit staff for a limited time-period sufficient to address the needs of the States.

**Question 13:** How are Community Based Organizations (CBO's) affected by the January 2010 guidance?

**Answer 13:** The January 2010 guidance does not affect CBO's. CBO's can still assist State agencies in a restricted capacity such as providing application assistance or assisting with document collection. FNS does not need to approve the use of CBO staff to perform these functions.

**Question 14:** What action could FNS take against a State that uses non-merit system staff to perform to perform tasks reserved for merit staff, such as interviews and certifications, what action could FNS take?

**Answer 14:** If a State agency continues to allow non-merit staff to perform tasks traditionally performed by merit staff such as interviews and certifications, without prior approval, FNS could disallow Federal Financial Participation (FFP) money pursuant to 7 CFR 277.16(b). Other alternatives include, but are not limited to, requesting the Attorney General seek injunctive relief against the State in pursuant of section 11(g) Act. Please see the January 22, 2010 guidance memo titled "Federal Support for Enrollment and Application Processing Costs" for more information.