



August 11, 2022

Food Assistance Change Transmittal No. 90

TO: All Food Assistance Manual Holders

FROM: Matt Damschroder, Director
Ohio Department of Job and Family Services

SUBJECT: **Pandemic-Caused Overpayments**

Background:

Federal rules require States to seek repayment of all Supplemental Nutrition Assistance Payments (SNAP) overpayments regardless of whether they are agency caused, inadvertent household errors or intentional program violations (benefits obtained fraudulently). States are also accountable for being below the 6% payment accuracy rate. However, the United States Department of Agriculture, Food and Nutrition Services (FNS) did not establish rates for Federal Fiscal Year (FFY) 2020 and 2021 as a result of the challenges presented by the response to COVID-19. This effectively provided States with a reprieve from the potential errors that occurred.

FNS issued a memo in November 2021, stating the following regarding overpayment claims for SNAP households:

In response to the COVID-19 Public Health Emergency, State agencies had to navigate newly enacted legislation while identifying ways to innovate and implement new program options and initiatives, such as emergency allotments, a variety of SNAP waivers, and online SNAP purchasing. At the same time, State agencies were inundated with a significant increase in applications as many households found themselves with increased food insecurity due to the pandemic. There were also many changes to other programs, such as Unemployment Insurance, that had an impact on SNAP eligibility, benefit levels and operations. States made great efforts to deliver the same level of service while implementing new and challenging social distancing measures, resulting in the closing of local offices, and the increased demand on call centers. The confluence of these challenges, and others, resulted in unique circumstances that likely caused over- and under-issuances of benefits to some households.

The memo then allowed for States to apply for a waiver of establishing pandemic-caused overpayment claims and identified other options for existing claims. ***The waiver excludes claims due to fraud or an intentional program violation, claims as a result of a quality control review, and Pandemic Electronic Benefits (P-EBT) overpayments.***

FNS did not specifically define what makes a claim “pandemic-caused” recognizing that in many cases the over-issuances were the result of pandemic-related challenges which were not necessarily the fault of States, applicants, or participating households. However, to be covered by the waiver, the overpayment must have begun during the Federal public health emergency (PHE). FNS asked states to define pandemic-caused overpayments in their waiver requests. The Ohio Department of Job and Family Services (ODJFS) applied for this waiver for Ohio and was approved.

New Policy:

Ohio’s approved waiver defines all agency caused overpayments that occurred as a result of an action or inaction between March 1, 2020 through July 31, 2022 as pandemic-caused. Additionally, the approved waiver gives county agencies discretion to determine whether an inadvertent household error is pandemic-caused if the overpayment began between March 1, 2020 through July 31, 2022.

Effective the date this letter is published, the following applies to agency caused and inadvertent household error overpayments:

- County agencies **are not** to establish any new claims for **any** overpayment that began as result of an agency error (action or lack of action) from March 1, 2020 through July 31,2022.
- County agencies **may** determine an inadvertent household error was pandemic-caused and not establish a claim. At a minimum, the error must have occurred between March 1, 2020 through July 31, 2022, but counties may establish additional pandemic-caused criteria beyond simply using the specified timeframe.
 - County agencies may also consider the following factors as contributing to pandemic-caused overpayments: implementing new programs; temporary changes in certification and re-certification procedures due to federal waivers; changes to the Unemployment Insurance programs and changing federal guidance on when to count the income; challenges in shifting to remote work and the broader COVID-19 context.
 - County agencies may determine other pandemic related circumstances. For example, a county agency may consider an overpayment was pandemic related if it did not do an interview (opting into the no interview waiver) and the client was not provided the reporting requirements and then they failed to report an increase in income.

Additional Considerations:

Federal rule (7 CFR 273.18(e)(8)(ii)) allows States to terminate and write off a claim without a waiver. A county agency **may** terminate and write off an existing claim if:

- Implementation of procedural requirements was an unintentional contributing factor that led to the overpayment;

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- The collection of the claim may cause undue economic hardship on the household; or
- It is impractical to accurately establish a claim amount or reasonably collect the funds due to the unique circumstances of responding to the COVID-19 Public Health Emergency.

A county agency *may* also compromise a claim or portion of a claim when the county agency determines that the household's economic circumstances dictate that the claim will not be paid in three years. This is currently permitted under 7 CFR 273.18(e)(7) regardless of a waiver.

ODJFS encourages county agencies to review established overpayment claims to determine if they are pandemic-caused and whether these claims should be terminated, written off or compromised. This includes claims that have already been established based on actions or inactions between March 1, 2020 through July 31, 2022 before the waiver. County agencies cannot reissue benefits for or refund any portion of claims already repaid/collected. Additionally, to ensure consistency among workers in your county, it is recommended that county agencies develop an internal policy or process regarding when the county will or will not pursue establishing a pandemic-caused IHE claim and/or terminating, writing off or compromising an existing pandemic-caused claim. Journal notes are to clearly document the circumstances, pursuant to this FACT, supporting why a claim was established or not established as well as the circumstances supporting why a claim was terminated, written off or compromised.