

§ 273.4 Citizenship and alien status.

(a) *Citizens and eligible aliens.* State agencies shall prohibit participation in the program by any person who is not a resident of the United States and one of the following:

- (1) A United States citizen.
- (2) An alien lawfully admitted for permanent residence as an immigrant as defined in sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act. However, an alien lawfully admitted for permanent residence pursuant to section 245A of the Immigration and Nationality Act must be eligible as specified in paragraph (a)(8) of this section.
- (3) An alien who entered the United States prior to January 1, 1972 or some later date as required by law, and has continuously maintained residency in the United States since then, and is not ineligible for citizenship, but is considered to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to section 249 of the Immigration and Nationality Act.
- (4) An alien who is qualified for entry pursuant to section 207 or 208 of the Immigration and Nationality Act.
- (5) An alien granted asylum through an exercise of discretion by the Attorney General pursuant to section 208 of the Immigration and Nationality Act.
- (6) An alien lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest pursuant to section 212(d)(5) of the Immigration and Nationality Act, or as a result of a grant of parole by the Attorney General.
- (7) An alien living within the United States for whom the Attorney General has withheld deportation pursuant to section 243 of the Immigration and Nationality Act.
- (8) An alien who is defined as aged, blind or disabled in accordance with section 1614(a)(1) of the Social Security Act and is considered to be lawfully admitted for temporary or permanent residence pursuant to section 245A(b)(1) of the Immigration and Nationality Act. Such aliens may obtain lawful permanent resident status under section 245(b)(1) of the Immigration and

Nationality Act no earlier than November 7, 1988.

(9) An alien who is, as of June 1, 1987, or thereafter, a special agricultural worker and lawfully admitted for temporary residence in accordance with section 210(a) of the Immigration and Nationality Act.

(b) *Ineligible aliens.* Aliens other than those described in paragraph (a) of this section shall not be eligible to participate. This includes, but is not limited to, alien visitors, tourists, diplomats and students who enter the United States temporarily with no intention of abandoning their residence in a foreign country.

(c) *Income and resources.* The income and resources of an ineligible alien shall be handled as outlined in § 273.11(c)(2).

(d) *Awaiting verification.* If verification of eligible alien status as required by § 273.2(f) is not provided on a timely basis, the eligibility of the remaining household members shall be determined. The income and resources of the individual whose alien status is unverified shall be handled as outlined in § 273.11(c) and considered available in determining the eligibility of the remaining household members. If verification of eligible alien status is subsequently received, the State agency shall act on the information as a reported change in household membership in accordance with timeliness standards in § 273.12.

(e) *Reporting illegal aliens.* (1) The State agency shall immediately inform the local INS office whenever personnel responsible for the certification or recertification of households determine that any member of a household is ineligible to receive food stamps because the member is present in the United States in violation of the Immigration and Nationality Act.

(2) When a household indicates inability or unwillingness to provide documentation of alien status for any household member, that member should be classified as an ineligible alien. When a person indicates inability or unwillingness to provide documentation of alien status, that person should be classified as an ineligible alien. In such cases the State agency

shall not continue efforts to obtain that documentation.

[Amdt. 189, 47 FR 17763, Apr. 23, 1982, as amended by Amdt. 269, 51 FR 10785, Mar. 28, 1986; 52 FR 20058, May 29, 1987; 52 FR 22888, June 16, 1987; 53 FR 6558, Mar. 2, 1988; 56 FR 63596, Dec. 4, 1991; Amdt. 364, 61 FR 54317, Oct. 17, 1996]

§ 273.5 Students.

(a) *Applicability.* An individual who is enrolled at least half-time in an institution of higher education shall be ineligible to participate in the Food Stamp Program unless the individual qualifies for one of the exemptions contained in paragraph (b) of this section. An individual is considered to be enrolled in an institution of higher education if the individual is enrolled in a business, technical, trade, or vocational school that normally requires a high school diploma or equivalency certificate for enrollment in the curriculum or if the individual is enrolled in a regular curriculum at a college or university that offers degree programs regardless of whether a high school diploma is required.

(b) *Student Exemptions.* To be eligible for the program, a student as defined in paragraph (a) of the section must meet at least one of the following criteria.

(1) Be age 17 or younger or age 50 or older;

(2) Be physically or mentally unfit;

(3) Be receiving Aid to Families with Dependent Children under Title IV of the Social Security Act;

(4) Be enrolled as a result of participation in the Job Opportunities and Basic Skills program under Title IV of the Social Security Act or its successor program;

(5) Be employed for a minimum of 20 hours per week and be paid for such employment or, if self-employed, be employed for a minimum of 20 hours per week and receiving weekly earnings at least equal to the Federal minimum wage multiplied by 20 hours;

(6) Be participating in a State or federally financed work study program during the regular school year.

(i) To qualify under this provision, the student must be approved for work study at the time of application for food stamps, the work study must be approved for the school term, and the

student must anticipate actually working during that time. The exemption shall begin with the month in which the school term begins or the month work study is approved, whichever is later. Once begun, the exemption shall continue until the end of the month in which the school term ends, or it becomes known that the student has refused an assignment.

(ii) The exemption shall not continue between terms when there is a break of a full month or longer unless the student is participating in work study during the break.

(7) Be participating in an on-the-job training program. A person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the employer;

(8) Be responsible for the care of a dependent household member under the age of 6;

(9) Be responsible for the care of a dependent household member who has reached the age of 6 but is under age 12 when the State agency has determined that adequate child care is not available to enable the student to attend class and comply with the work requirements of paragraph (b)(5) or (b)(6) of this section;

(10) Be a single parent enrolled in an institution of higher education on a full-time basis (as determined by the institution) and be responsible for the care of a dependent child under age 12.

(i) This provision applies in those situations where only one natural, adoptive or stepparent (regardless of marital status) is in the same food stamp household as the child.

(ii) If no natural, adoptive or stepparent is in the same food stamp household as the child, another full-time student in the same food stamp household as the child may qualify for eligible student status under this provision if he or she has parental control over the child and is not living with his or her spouse.

(11) Be assigned to or placed in an institution of higher education through or in compliance with the requirements of one of the programs identified in paragraphs (b)(11)(i) through (b)(11)(iv) of this section. Self-initiated placements during the period of time the