

Final Rule: High Performance Bonuses for States

February 7, 2005 Federal Register/Vol. 70

Modifications

The final rule includes the following modifications. Additional information regarding these and other modifications follows.

- \$100,000 base award to each State agency identified as a winner in each category
- Double Winner- If State is both most improved and best in a category, they will receive the bonus for best and the next State in the best category will also be awarded
- Negative Error Rate- no negative error rate bonus if the State is 50 percent above the national average negative error rate
- Name Change for Payment Access Rate (PAR) to Program Access Index (PAI)
- Poverty Threshold- leaves option for using 130 percent of poverty if timely data is available
- Adjustments for SSI population in CA, FDPIR, and disaster participants when calculating level of participation

Background

This rule finalizes amendments to the Food Stamp Program (FSP) Notice of Proposed Rulemaking (NPRM) published on December 17, 2003.

Section 16(d)(2) of the Act provides that FNS must establish performance measures by regulation for FY 2005 and beyond. A new section 7 CFR 275.24 High Performance Bonuses has been established and provides the general guidelines for high performance bonuses.

Section 4120 of the Farm Security and Rural Investment Act (FSRIA) includes re-designed quality control systems, doing away with enhanced funding, changes in the QC liability system, and high performance bonuses. The QC liability system and elimination of enhanced funding will be dealt with in a separate rulemaking. This final rule addresses high performance bonuses only.

FNS will award \$48 million for each fiscal year to State agencies that show high or most improved performance. The final rules awards 30 States in 7 categories:

- Lowest and Most Improved combined error rates \$24 million
7 States with the lowest combined error rate
3 States with the most improved payment accuracy (largest percentage point increase)

- Lowest and most improved payment negative error rates \$ 6 million
4 States with the lowest negative error rates
2 States with the most improved (largest percentage point decrease)
Note: A State is not eligible for a bonus if the State's negative error rate for the fiscal year is more than 50 percent above the national average
- Highest and Most Improved program access index (PAI) \$12 million
4 States with the highest program access index (PAI)
4 States with the most improved program access index (PAI)
- Best application processing timeliness rate \$ 6 million
6 States with the highest percentage of timely processed applications.

A State cannot be awarded two bonuses in the same category. The relevant categories are payment accuracy, negative error rate, or program access. If a State is determined to be among the best and the most improved in a category, it will be awarded a bonus only for being the best.

Modification to proposed rules:

The following modifications were made to the proposed rule and are reflected in the final rule.

Section 275.24(a)(3)

Disqualified for a bonus payment

FNS modified language to provide that a State agency is not eligible for a bonus payment in a fiscal year for which it has a liability amount established as a result of an excessive payment error rate in the same year. If a State is disqualified from receiving a bonus payment and the State is not tied for a bonus, the State with the next best performance will be awarded a bonus payment.

Reasoning

FNS was asked to clarify that the only kind of liability that may render a State ineligible for a bonus is a penalty for an excessive QC payment error rate in the same year. The suggestion was to articulate that this does not include leftover QC penalties due to a failed reinvestment plan or penalties for other deficiencies in FSP operations. The commenter also noted that the proposed rule wasn't clear on what would happen if a State were disqualified from receiving a bonus.

275.24(a)(5)

Base awards to each State

Modified language to provide that FNS will award a base amount of \$100,000 to each State agency that is an identified winner in each category. FNS will divide the remaining award money among the States in each category in proportion to the size of their caseload.

Reasoning

FNS recognizes that the proposed system is somewhat biased against smaller States, especially if a State with a small caseload wins the same category as a State with a large caseload. Comments received argued that a base amount for each award would provide more of an incentive for smaller States.

275.24(a)(6)

Double winner States

FNS proposed that if a State is determined to be the best and the most improved in a category, it would only be awarded a bonus for being the most improved. The final rule modifies this. FNS has decided to award a State that is a double winner (best and most improved) the award for being the best while at the same time acknowledging that the State also achieved in the most improved category. FNS will then award a bonus to the next State in the best category as well.

Reasoning

Proposed rule was to award State for the Most Improved. One commenter suggested that it be for the best and not the most improved. Another commenter suggested that FNS award the State in the category in which it would receive the higher bonus. FNS is committed to awarding both high and improved performance and believes that the amount of the bonus award is secondary to the recognition a State receives. Final rule will award bonus to the State for Best, while acknowledging that the State was also Most Improved.

Innovation

In the preamble FNS solicited comments on whether or not to include ‘innovation’ as a measure of high performance. Two comments were received suggesting FNS create a category for innovation. FNS has concluded that a determination of innovation would be too subjective and has not included this in the final rule.

273.24(a)(7)(b)(2)(ii)

Threshold For Improved Negative Error Rate

Though the FSRIA did not provide a restriction, FNS has decided to take a moderate position on this issue and provide that States that are more than 50 percent above the national average negative error rate may not receive a bonus in this category regardless of improvement.

Reasoning

Several comments opposed awarding States when their negative error rates were above the national average. FNS views these performance bonuses as incentives for States to improve, while also recognizing that if a State has an excessively high negative error rate, even after improvement, then it should not be rewarded.

273.24(b)(3)

Name Change, Program Access Index (PAI),

FNS has changed Participant Access Rate to Program Access Index (PAI). FNS reiterates in the preamble that the PAI is the ratio of participants to persons with incomes below 125 percent of poverty, not eligible individuals.

The official State participation rate is the ratio of participants to eligibles. This measure will now be referred to as the Program Access Index.

Reasoning

FNS recognizes that there is confusion between the Participant Access Rate (PAR) and the official Participation Rate, and believes that part of the confusion is due to the similar names. In an attempt to distinguish this performance bonus measure from the official participation rate, FNS has changed the term Participant Access Rate (PAR) to Program Access Index (PAI). By changing this to an index, FNS believes it will be clearer that it is relating a pair of numbers that are similar but do not have the same properties of a rate.

Poverty Threshold

273.24(b)(3)

Amended the language to provide that FNS reserves the right to use the number of people below 130 percent of poverty, rather than 125 percent of poverty, should the data be available in a timely manner. Any such substitution would apply to all States.

Reasoning

One commenter suggested that FNS not preclude using the 130 percent of poverty data, should that information become available in time to calculate the PAI. FNS agrees that the final regulation should allow flexibility in improving the PAI calculation because of new and better data, and has amended the language.

Adjustments, SSI in CA, Food Distribution Program on Indian Reservations (FDPIR), Disaster Assistance

274.24(b)(3)(iii)

To calculate the PAI, FNS will make adjustments for the SSI population in California, FDPIR participants, and for people who received food stamp disaster assistance.

Disaster Assistance-FNS will use annual counts of participants minus new participants certified under special disaster program rules by State, averaged over the calendar year. Only those disaster assistance recipients who are new to the FSP will be subtracted.

SSI in California- FNS will exclude this population from the denominator of the PAI

FDPIR- FNS will exclude this population from the denominator of the PAI

Reasoning

The proposed language recommended reducing the number of persons below 125% of poverty in CA by the percentage who received SSI in the previous year. FNS also proposed to add to the number of food stamp participants the number of FDPIR participants, using data averaged over a calendar year.

FNS agrees with comments received that suggested the same adjustment approach should be used for both the SSI population in CA, as well as FDPIR participants. As the number of FDPIR and CA SSI persons offers no information on the effectiveness of State food stamp agency operations, FNS believes it is preferable to exclude these populations from the denominator.

With regard to Disaster assistance, as the assistance is approved in limited circumstances and operates under special rules that differ from regular FSP, FNS will subtract those recipients who are new to the FSP (not existing participants who receive disaster replacements).

Application Processing Timeliness

275.24(b)(4)

FNS will verify the QC application processing data for any State that is in contention for a bonus.

Reasoning

One commenter cautioned that since the QC data collection instrument is new, States would be unfamiliar with it, and would, therefore, have many questions and may not report the data in the same way. FNS considered using the FNS-366 form, but wanted to have a mechanism for validating these numbers. QC provides that mechanism.