

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

**FILED**  
UNITED STATES DISTRICT COURT  
ALBUQUERQUE, NEW MEXICO

AUG 27 1998

DEBRA HATTEN-GONZALES, Individually  
and on behalf of  
others similarly situated,

*R. J. Tommaso*  
CLERK

Plaintiffs,

vs.

NO. CIV 88-0385 JC/DJS  
Consolidated with: NO. CIV 88-0786 JC/DJS

WILLIAM H. JOHNSON, Secretary of  
the New Mexico Human Services Department,

Defendant.

**ORDER MODIFYING SETTLEMENT AGREEMENT**

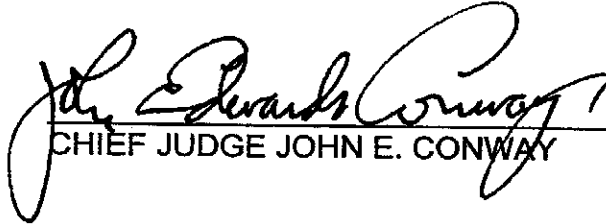
THE COURT, having reviewed the Joint Motion for Modification of the Settlement Agreement, and good cause appearing therefor,

IT IS ORDERED ADJUDGED AND DECREED that:


1. The Joint Motion for Modification of Settlement Agreement be, and the same hereby is, granted;
2. The Modified Settlement Agreement, attached hereto as Exhibit "A" and incorporated herein by this reference as though fully set forth at this point be, and the same hereby, is, approved;
3. The parties, their officers, agents, servants, employees and attorneys, and those persons in active concert with them who receive actual notice of this Order by personal service or otherwise, be and the same hereby are restrained from violating the terms, conditions and undertakings of the Modified Settlement Agreement; and

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4. The Court shall, and hereby does, retain jurisdiction over this matter to enforce the terms, conditions and undertakings of the Modified Settlement Agreement, and its Orders previously entered in this case remain in full force and effect.

  
CHIEF JUDGE JOHN E. CONWAY

AGREED AS TO FORM AND CONTENT:

  
Daniel Yohalem  
Patricia Glazek  
Jane B. Yohalem  
Attorneys for Plaintiffs

8/1/98  
Date

  
Marsha Zenderman  
Assistant General Counsel  
Attorney for Defendant

8/20/98  
Date

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

**DEBRA HATTEN-GONZALES,**  
Individually and on behalf of all  
others similarly situated,

**Plaintiffs,**

**No. CIV 88-0385 JC/DJS**

vs.

**WILLIAM H. JOHNSON, JR., Secretary**  
of the New Mexico Human  
Services Department,

**Defendant.**

**Consolidated With:**

**BETTY VALVERDE and TERRIANNE**  
**FITZWATER, Individually and on behalf**  
of all others similarly situated,

**Plaintiffs,**

**No. CIV 88-0786 JC/DJS**

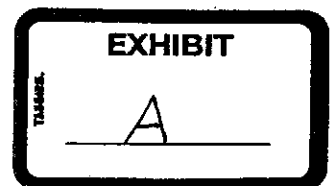
vs.

**WILLIAM H. JOHNSON, JR., Secretary**  
of the New Mexico Human  
Services Department,

**Defendant.**

**MODIFIED SETTLEMENT AGREEMENT**

These actions challenge certain practices of the New Mexico Human Services Department (HSD), Income Support Division (ISD), in processing applications for assistance under the federal Food Stamps and Medicaid programs. A plaintiff class consisting of



present and future applicants of these programs (applicants) was certified by an Order filed July 19, 1989, adopted herein by this reference.

The applicants claim that HSD violates their federally-guaranteed right to receive a prompt eligibility decision and, if eligible, benefits, by: (1) failing to inform applicants adequately of eligibility factors which must be verified, the alternate methods by which verification can be accomplished and the availability of HSD assistance in obtaining verification which is not readily available; (2) imposing inconsistent and excessive verification requirements which discourage applicants from completing the application process or result in the unlawful denial of benefits; (3) delaying the issuance of eligibility decisions and benefits beyond federal time standards; (4) failing to screen food stamp applicants routinely and adequately for emergency assistance and provide timely expedited benefits; and (5) failing to provide applicants with adequate written notice of eligibility decisions. The Class Action Complaints for Declaratory and Injunctive Relief filed March 31, 1988 and July 1, 1988, and Sections 2(a), 3, 4 and 5 of the Pre-Trial Order, filed September 27, 1989, are adopted herein by this reference.

Defendant, Secretary of the New Mexico Human Services Department ("HSD Secretary"), has denied the applicants' claims and asserted that HSD's application processing practices comply with relevant federal law and regulations.

The parties desire to resolve their differences amicably through the resolution of the issues contained in this Settlement Agreement (Agreement). The parties agree to request

consideration and approval of the Agreement jointly from the Court pursuant to Fed. R.Civ. P. 23(e).

If the Agreement is approved by the Court, notice will be provided to members of the plaintiff class by posting a copy of this Agreement in the public reception area of each ISD field office, together with a notice, in English and Spanish, advising applicants of the settlement of this suit, the name, address and telephone number of counsel for the class, and their right to advise class counsel of any perceived violations of this Agreement. The Agreement and notices will remain posted throughout the pendency of this action.

To the extent that any term of this Agreement is prospective in nature, HSD agrees to continue to meet and to confer with counsel for the applicants regarding the progress made towards implementation of this Agreement's terms until each such term is finally implemented. The parties agree to make good faith efforts to resolve any differences that may arise in the course of rendering this Agreement operational. If the parties cannot resolve their differences after such negotiations, either party may seek a ruling from the Court.

This Agreement is binding on defendant HSD Secretary, his successors and agents. Once the terms of this Agreement have become fully operational and permanently incorporated into HSD's administration of the Food Stamp and Medicaid programs, the applicants will seek dismissal of these actions, with prejudice regarding only such issues actually resolved in this Agreement, from the Court. Dismissal will be requested in strict accordance with the timetables set forth in Section IV (Applicants' Review of

Implementation Procedures) of this Agreement. The Court shall have continuing jurisdiction over this matter to resolve disputes and enforce the terms of this Agreement.

An applicant's right to raise claims and defenses individually based on issues resolved herein but not yet fully implemented is specifically reserved and not impaired by this Agreement.

The payment of costs, including a reasonable attorney's fee, pursuant to 42 U.S.C. Section 1988 or any other cost- or fee-shifting statute or rule, is specifically reserved and not a part of this Agreement. Both parties agree to meet and try to resolve the cost and fee issue after entry of this Agreement. If the matter is not resolved, either party or their counsel may seek from the Court an award of costs and attorney's fees.

As the term is used in this Agreement, the "application process" begins when an application for Food Stamp or Medicaid assistance is submitted to HSD and ends when a notice of eligibility decision and, if eligible, benefits, are deposited in the mail or available through electronic transfer. The application process includes all actions taken with respect to an application including, but not limited to, providing relevant written information to applicants, screening an application, holding an application interview, verifying eligibility factors, responding to applicant requests for assistance and extensions of time, and issuing and mailing an eligibility decision and, if eligible, benefits. The word "applicant" as used in this Agreement refers to a person applying for Medicaid or Food Stamp assistance, a household or budget group member or an authorized representative.

## **I. PROMPTNESS OF ELIGIBILITY DETERMINATIONS AND BENEFITS**

HSD acknowledges that, at the time this suit was instituted, it did not maintain accurate or complete statistics on the number of assistance applications filed and the timeliness with which those applications were processed. Substantial evidence exists showing that, at the time this action was filed, HSD was not uniformly or consistently meeting the timeliness requirements. The applicants acknowledge that, since that time, HSD has made great strides in processing applications promptly, compiling statistics which more accurately reflect the timeliness of application processing and taking appropriate corrective action in an effort to insure that applicants receive benefits in a timely manner. The following terms of this Agreement are intended to resolve the remaining differences between the parties concerning the relevant application processing deadlines and the method by which the timeliness of application processing is to be determined.

1. 100% compliance with the federal application processing time standards in the Food Stamps and Medicaid programs is required. The parties recognize that random or unforeseen circumstances involving an individual worker or office may result in less than 100% compliance in any given month, but agree that systemic or programmatic barriers to 100% timeliness must be removed if and when they are identified.

2. The application processing deadlines for the Food Stamps, Medicaid for Pregnant Women and Medicaid for Needy Children programs are attached as Appendix A

to this Agreement. These variable deadlines insure that eligibility determinations are promptly made without restricting the applicants' right to supply verification of eligibility factors throughout the application processing period.

3. If HSD lawfully enacts a state-established time standard of 45 days for processing applications in the Medicaid for Pregnant Women or Medicaid for Needy Children programs, the corresponding application processing deadlines contained in Appendix B will supersede those found in Appendix A.

4. By July 1, 1991, HSD will revise or supplement its method of determining the rate at which Food Stamp and Medicaid applications are timely processed in each month as follows:

- a. determine whether an application is timely processed in accordance with the time standards contained in Appendix B (Appendix C if applicable);
- b. insure that the date of application is accurately entered into HSD's computerized Integrated Delivery System (ISD2) by HSD staff;
- c. include the mailing date of an eligibility determination notice and, if eligible, benefits, as the final day of the application processing time standard;
- d. determine whether any delay beyond the applicable application processing time standard is caused by HSD or by the applicant, and consider as untimely those applications in which delay is caused by HSD;
- e. insure that, in determining district- and state-wide timeliness rates, the



timeliness rate of each field office considered in the analysis is weighted according to the number of applications processed in that office.

- f. determine, on an office-by-office basis, the percentage of denied applicants whose denials are based on a failure to verify an eligibility factor, a refusal to cooperate with the application process or a failure to keep an interview appointment (1) before the end of the applicable time standard; and (2) at the end of the applicable time standard.
- g. determine, on an office-by-office basis, the number of food stamp applicants whose circumstances (as entered into the ISD2 system) appear to meet the criteria for receiving expedited food stamps and who did not receive timely expedited food stamps.

5. HSD will continue to provide timeliness data compilations to each ISD field office on a monthly basis and require corrective action as needed to insure compliance with the time standards.

## **II. APPLICATION PROCESSING PRACTICES**

Both HSD and the applicants recognize that uniformity in office application processing practices is necessary to guarantee that each applicant will be provided with a fair and equal opportunity to participate in the Food Stamp and Medicaid programs consistent with the goal of assisting all eligible individuals to qualify.

HSD agrees to standardize the application process by implementing and maintaining uniform office practices throughout the state and by providing applicants with written information in standardized formats which is comprehensive, accurate and easy to understand.

Every pamphlet, letter, form or checklist referred to below will be prepared in a format which has been agreed upon by the parties and will be written at no more than a sixth grade reading level, to be reviewed and certified by a literacy expert. HSD will expend up to \$3000 to retain the services of a literacy expert for this purpose. HSD will take all steps necessary to ensure the full and timely financing of this expenditure including, if necessary, submission of appropriate budget requests to the legislature.

The procedures and practices described below will be fully implemented by December 31, 1990, contingent upon the literacy expert's review of the written materials to be developed.

1. **PROGRAM PAMPHLETS** Pamphlets explaining the various assistance programs for which an applicant may apply will be available in the public reception area of each ISD field office.

2. **FLOW CHART** Each ISD field office will display a flow chart acceptable to the parties in the public reception area. The flow chart will display to the applicant how the application process works.

3. **SCREENING IN PERSON** Every applicant will retain the opportunity to meet

with an HSD employee on the same day an application is submitted. The employee will review the application, assist the applicant in completing the application if it is incomplete or assistance is otherwise necessary, and will assist in identifying the assistance programs for which the applicant is interested in applying.

The employee will screen food stamp applicants for expedited food stamp eligibility, using a standard form, and stamp the application as appropriate. If expedited food stamps are denied, the applicant will be informed of the right to request an informal conference, to be held within 2 days of the request unless the household asks for a later date.

The employee will provide the applicant with a standard form which identifies the eligibility factors for each assistance program and the various methods by which each factor may be verified or established. A copy of the form will be retained in the case file. The employee will explain why the information is needed, how to obtain the information and offer to help the applicant obtain the information.

The employee will schedule an application interview for the applicant to be held within 10 working days of the date the application was submitted, which is, to the extent possible, convenient for both the applicant and the office. The employee will provide the applicant with a written Appointment Letter which will include notice of the date, time and place of the appointment, the name and telephone number of the eligibility worker assigned to the application, the consequences of missing an appointment, how to reschedule an appointment, the possibility of a waiver of the office (Medicaid) or face-to-face interview (food stamps)

and that another responsible person may attend the interview with the applicant or in the applicant's place.

Upon request, the employee will provide a standard form on which the applicant may request a waiver of the face-to-face interview (food stamps) or of the office interview (Medicaid) or designate an authorized representative.

4. **SCREENING BY MAIL** If an applicant mails in the application, or is unwilling or unable to be screened in person, HSD will screen the application for all programs and for expedited food stamp eligibility upon receipt. An Appointment Letter and Verification Checklist (with appropriate boxes marked) will be mailed to the applicant on the same day the application is received.

5. **APPLICATION INTERVIEW** At the application interview, an eligibility worker will advise the applicant of any eligibility factors which have previously been established through documents in HSD's possession and which are not subject to change, including U.S. citizenship, permanent residency, birth date, relationship and social security enumeration. The worker will not require further verification of any eligibility factors already so established.

The worker will then review with the applicant information received from government data systems (BENDIX, HPWX, WDX, SDX and IEVS). The worker will not require further verification of such information unless it is disputed by the applicant or the information is otherwise questionable as defined in ISD Reg. No. 163.

The worker will make copies of verification documents brought to the interview by the applicant and provide a receipt for the documents.

The worker will advise the applicant of any eligibility factors which must still be verified and the methods by which verification can be accomplished. The worker will explore with the applicant what verification documents are "readily available" to the applicant and request those documents first. If an eligibility factor cannot be established through readily available documents, the worker will advise the applicant that verification may occur through the use of collateral contacts (that is, the oral statements of third parties) or a home visit. The worker will offer to assist the applicant in obtaining needed verification if the circumstances indicate that the verification may be difficult for the applicant to obtain. If the offer to assist is accepted, the worker will provide such assistance.

The worker will provide the applicant with a written list, on a standard form, of the specific verification documents the applicant and worker believe are readily available and will establish one or more outstanding eligibility factors.

**6. TELEPHONE CALLS** Each office worker will accept telephone calls throughout the working hours unless the worker is conducting an interview, attending a meeting, or otherwise unavailable. If the worker is unavailable for a telephone call, the receptionist or unit clerk will take as detailed a message as the client wishes to convey and will provide a copy of this message to the eligibility worker and the eligibility worker's supervisor. The eligibility worker supervisor will periodically conduct a random check to see if telephone

calls are returned.

7. **DOCUMENT RECEIPTS** Every ISD field office will provide applicants with receipts for verification documents provided subsequent to the interview and retain case file or office copies for at least six months.

8. **TELEPHONE MESSAGES AND WRITTEN NOTES** Every ISD field office will retain telephone messages and written notes from applicants in the case files or in a telephone log book for at least six months.

9. **QUESTIONNAIRES** Applicants will not be required to complete questionnaires seeking information which is unnecessary to determine eligibility and benefit amounts, such as the identity of household members for the last two years, household member's work history for the last two years, and a list of every debt owed by the household.

10. **ELIGIBILITY FACTORS NOT SUBJECT TO CHANGE** An eligibility worker will not require verification of eligibility factors that were previously verified and are not subject to change. (Examples: relationship, birth, U.S. permanent residency or citizenship).

11. **GOVERNMENT DATA SYSTEMS (SCANS)** An eligibility worker will not ask for additional proof of any information available through government data systems, such as unemployment compensation information, unless it is disputed by the applicant or the information is otherwise questionable as defined in ISD Reg. No. 163.

12. **VERIFICATION OF A NEGATIVE STATEMENT** An eligibility worker will

not require verification of a "negative" statement unless the statement is or becomes questionable as defined by ISD Reg. No. 163 and one or more specific methods of verifying the statement is readily available. A negative statement is a statement by an applicant that something does not exist or occur, such as a statement that the household or family has no income, no child support payment, no contact with the absent parent, no vehicle, no bank account or no place to live.

**13. PROVIDING ASSISTANCE** To the extent possible, an eligibility worker will offer to assist an applicant in obtaining verification of an eligibility factor when verification is difficult for the applicant to obtain. Difficulty in obtaining verification may arise as a result of such circumstances as an applicant's limited ability to read, speak or understand the English language, mental impairments, physical illness, disability, handicap, lack of funds, lack of transportation or a lack of knowledge about how to obtain a document. Assistance by the worker includes explaining written information orally in the applicant's language, providing an interpreter, providing an address or telephone number of a person or agency, making telephone or written inquiries, allowing an applicant to use the telephone, locating a document, instructing an applicant in obtaining a document, requesting a document on behalf of an applicant or contacting a collateral contact. The assistance offered and provided is based on the particular needs of the applicant and the worker's ability to address those needs.

An applicant has the right to refuse an offer of assistance.

**14. READY AVAILABILITY OF VERIFICATION** An eligibility worker will base requests for verification of eligibility factors on the ready availability of such verification through discussions with the applicant. A “readily available” document is one which can be obtained by the applicant within 5 working days at no cost to the applicant.

**15. USE OF DOCUMENT FOR MORE THAN ONE ELIGIBILITY FACTOR**  
An eligibility worker will use a document to establish more than one eligibility factor or deductible expense to the extent possible. For example:

- a. A driver’s license may establish identity, residency, birth date and social security number.
- b. A child’s birth certificate may establish age, citizenship, maternity and paternity.
- c. A rental lease may establish residency, rent payments, utility costs and household composition.
- d. A divorce or legal separation decree may establish deprivation of parental support due to absence from the home, maternity, paternity and the age and citizenship of children.

**16. ONLY NECESSARY VERIFICATION** An eligibility worker will request only those verification documents which are necessary to establish eligibility and benefit amounts for the assistance program(s) for which the applicant has applied. For example:

- a. The worker will not require the applicant to verify a social security number



through a social security card or other document if the applicant reports the number to the worker and the number is consistent with information obtained through government data systems.

- b. The worker will not require the current address of an absent spouse, parent or child or former household member to determine eligibility unless the information already received is questionable and the applicant has the information. However, the address of the absent parent may be required as part of the applicant's obligation to cooperate with child support establishment and collection efforts.
- c. The worker will not request verification of the current market or taxable value of a home when it is established that the applicant lives in the home and owns or is buying the home. However, verification of property taxes paid for a home may be necessary to determine an excess shelter cost deduction (food stamps) or the appropriate shelter standard.
- d. The worker may request verification of school attendance of a child under the age of 18 years (16 years in counties which participate in the WIN or Project Forward programs) only as necessary to establish specific eligibility factors and if the applicant agrees to this method of verification.
- e. The worker will not require the applicant to have a permanent residence address.
- f. The worker will not request a marriage certificate, unless the applicant agrees

to provide this document to establish a specific eligibility factor.

**17. ADDITIONAL PROOF** An eligibility worker will not request additional proof if sufficient reliable proof of an eligibility factor has already been obtained. For example:

- a. The worker will not request further verification of household composition beyond the client's statement unless the information is questionable as defined by ISD Reg. No. 165.8.
- b. The worker will not request contact with or a statement from an employer if pay stubs are adequate, or adequate data is obtained from government data systems.
- c. The worker will not request contact with or a statement from the applicant's landlord if a current rental lease or rent receipts are provided or the information can be verified in another way.

**18. UNRELIABLE DOCUMENT** An eligibility worker will not reject a verification document unless its reliability is called into question and documented pursuant to ISD Reg. No. 163.

**19. NEED FOR COLLATERAL CONTACT** No eligibility worker will routinely request a written or oral statement from a collateral contact. A collateral contact is a person with knowledge of one or more of the applicant's circumstances who is not a member of the household or budget group. The worker will request information from a collateral contact

only when documentary evidence of an eligibility factor is not readily available, is inadequate or questionable. The worker will document the need for a collateral contact in the case file.

**20. ACCEPTABLE COLLATERAL CONTACT** No eligibility worker will conclude that a collateral contact is unreliable solely because the contact is related to the applicant or is a public assistance client. The worker will accept oral or written statement from a collateral contact designated by the applicant unless the reliability of the contact is reasonably questioned and documented in the case file.

**21. METHOD OF OBTAINING INFORMATION FROM A COLLATERAL CONTACT** No eligibility worker will require that information from a collateral contact will be supplied by one particular method, such as in writing or by telephone. The worker will not require a collateral contact to have a telephone.

**22. FAILURE OF COLLATERAL CONTACT TO PROVIDE INFORMATION** No eligibility worker will deny or delay an eligibility decision solely because of the failure of a collateral contact to provide information. The worker will decide the applicant's eligibility and benefit amounts based on all readily available information. If income cannot be verified because a third party providing the information fails to cooperate, and all other sources of verification are unavailable, the worker will determine amount of income based on the best available information (food stamps).

**23. ACCEPTING AN APPLICANT'S SWORN STATEMENT** If the applicant has an immediate need for assistance, the eligibility worker will accept an applicant's sworn

statement to verify one or more eligibility factors when there is a reasonable explanation why documentary verification or a collateral contact is not readily available to establish the factors and the applicant's statement does not contradict other information received by the employee. In such instances, the worker may require additional verification within a reasonable time after approval and authorization of assistance. An applicant who objects to such an additional request for information will have the right to request and receive a fair hearing.

**24. DETERMINING QUESTIONABLE INFORMATION** An eligibility worker will determine the existence of questionable information by strict adherence to existing policy found at ISD Reg. No. 163. The worker will document the existence of questionable information in the case file.

**25. NOTICE OF QUESTIONABLE, INCOMPLETE OR INADEQUATE INFORMATION** Upon receiving information which is questionable, incomplete or inadequate and needed to determine an applicant's eligibility or benefit amount, an eligibility worker will promptly write the applicant a letter in a standard format, advising the applicant of the receipt of the information, why it is questionable, incomplete or inadequate, the additional information which must be provided, the alternative methods of providing the information, the deadline for supplying the information (10 working days or the end of the applicable application processing time period, whichever is later), that the applicant will be allowed an extension of time to supply the information if requested, that the applicant should contact the worker if an extension is desired, that the applicant may discuss with the worker

whether any other readily available verification is acceptable, that the worker is available to assist the applicant if the information is not readily available and that a failure to supply the needed information or contact the worker by the deadline may result in a delay, a denial of eligibility or a reduction in the amount of benefits.

**26. APPLICANT'S RIGHT TO SUPPLY VERIFICATION** HSD will allow an applicant the full application processing time period applicable to each program or 10 working days, whichever is later, to submit verification. The worker will allow an applicant at least 10 working days from the date an applicant is notified in writing of the existence of questionable, inadequate or incomplete information to explain, resolve or supplement the information. If written notification is mailed to the applicant, 3 additional days will be added to the 10-day period so that delivery of the notice by mail is completed.

**27. APPLICANT'S RIGHT TO EXTENSION OF TIME** An eligibility worker will routinely grant one or more 10-day extensions of time, up to 30 days beyond the application processing deadline, to an applicant who timely requests an extension for the purpose of supplying verification. Such an extension of time is "good cause" for delaying an eligibility decision and will not affect timeliness rates so long as the worker has acted promptly and the reason for delay is documented in the case file before the end of the processing period.

**28. CAUSE OF DELAY IN MAKING ELIGIBILITY DECISION** When the system of issuing delay notices is revised, HSD will determine whether there is "good cause"

for any delay in making an eligibility decision. The employee will not find "good cause" for a delay which is caused by a collateral contact (food stamps), administrative inconvenience, worker absence or a large caseload. The employee will find "good cause" for a delay which is caused by an applicant's request for an extension of time to supply verification.

**29. FAILURE TO PROVIDE READILY AVAILABLE VERIFICATION** If an applicant fails to provide readily available verification, does not require or has refused assistance and has not requested an extension of time, an eligibility worker will nevertheless, to the extent possible, make a need-based eligibility decision. If the outstanding verification is needed to decide the eligibility of a household or family member, the worker will deny that member and make a need-based eligibility decision for the remaining members. When no need-based eligibility decision for any household or family member is possible, the worker will deny the entire household or family for failure to verify.

**30. FAILURE TO VERIFY DEDUCTIBLE EXPENSES** An eligibility worker will not deny an application solely because the applicant failed to verify expenses which may be deducted from income or resources, including child care costs, medical bills, loans on vehicles, rent, mortgage payments and utility costs. If deductible expenses are not verified, the worker will determine eligibility and benefit amounts based on those factors which have been verified.

**31. QUALITY CONTROL STANDARD OF REVIEW** Because this is a Court-approved settlement and HSD has agreed to enforce all of its federal regulatory

requirements governing the application process, Quality Control will conduct reviews in accordance with the Court order.

### **III. NOTICE OF ELIGIBILITY DECISIONS AND DELAYS**

The parties agree that every applicant is entitled to an eligibility decision written in terms comprehensible to the applicant which, among other things, is dated as of the date of mailing, sets forth the specific regulation(s) on which the decision is based and contains a detailed individualized explanation of the reasons supporting the decision, including mathematical calculations used by the agency if the decision is based on applicant income or resources.

The parties further agree that food stamp denial notices based on a failure to provide verification of an eligibility factor or to complete the application process must include the facts giving rise to the denial, the action required of the applicant to remedy the denial and the fact that if the required action is taken within 60 days following application and the applicant is found eligible, benefits will be provided beginning in the month following the month of application without reapplication.

Finally, the parties agree that notices to applicants of a delay in receiving an eligibility decision must specify the party who is causing the delay, the reason(s) for the delay, the deadline for any action the applicant must take to remedy the delay and the consequences for failing to take the required action.

HSD agrees to provide eligibility decisions and delay notices to applicants as set forth below. The applicants agree to extend any time limit for implementing notice relief, subject to Court approval, so long as HSD makes diligent efforts to achieve implementation, the applicants are kept informed of HSD's progress, and the delay is beyond HSD's control. Any delay in implementation must be related to a specific action or inaction and HSD will make every effort to remedy the delay as quickly as possible.

1. By July 1, 1991, HSD will correct the date at the top of the notices to reflect the date of mailing of the notices.

2. By July 1, 1991, HSD will provide Medicaid and Food Stamp eligibility decisions to applicants at the reading comprehension level and with the degree of specificity represented by the notices approved by the court in Ortiz v. Eichler, C.A. No. 84-16 MMS (D. Del., April 21, 1989) (Final Form of Action Regarding Individual Eligibility or Benefit Amount Under the AFDC, Medicaid, Food Stamp and General Assistance Programs), adopted herein by this reference ("Delaware notices").

3. If HSD adopts the Delaware notices, the parties will confer in good faith on revisions to adapt them for use in New Mexico, supplement or change them as needed, and revise the specific notices which inform applicants that benefits will be denied due to a missed interview, failure to cooperate or failure to verify a program eligibility factor (Delaware Notices, Nos. 13.0 and 17.0).

4. If HSD intends to adopt or develop eligibility decision notices other than the



Delaware notices, the parties will confer in good faith to agree upon the form, content and reading comprehension level of each notice.

5. By July 1, 1991, HSD will revise its system of providing eligibility delay notices to applicants to insure that applicants are adequately informed, at a sixth grade reading comprehension level, of (a) the reason for delay, (b) the party who caused the delay, © what action, if any, the applicant must take to remedy the delay, (d) the time period within which the applicant must take the action and (e) the consequences of not taking the action.

6. By July 1, 1991, HSD's food stamp denial notices based on an applicant's failure to verify an eligibility factor or to complete the application process even though HSD has taken all required actions to assist the household will include, at a sixth grade reading comprehension level, the following information: (a) identify the verification the applicant failed to provide or the action the applicant failed to complete; (b) state that the eligibility worker took all necessary steps to assist the applicant; © identify the action that must be taken to verify the eligibility factor or complete the process; (d) state that, if the required action is taken within 60 days following the date the application was filed, the case will be reopened without requiring a new application; and (e) state that, if applicant is found eligible, benefits will be provided in the month following the month of application.

#### **IV. APPLICANTS' REVIEW OF IMPLEMENTATION PROCEDURES**

The parties agree that applicants are entitled to review the implementation of this

Agreement to determine if its terms, conditions and undertakings are implemented in a timely and correct fashion. The parties agree to the following review procedures and timetables:

1. The review of implementation procedures will commence six months after this agreement is approved by the Court and will be completed by the end of the second annual quarter following full implementation of the terms, conditions and undertakings of this Agreement, subject to the timetable regarding Section II of this Agreement set forth in the following paragraph. Within 30 days of completion of the review of implementation procedures, the applicants will request from the Court dismissal with prejudice of all such issues actually resolved by this Agreement.

2. In March 1991, counsel for applicants will review 40 HSD initial application case files for the Food Stamps and Medicaid programs, selected by a random state-wide sample, to determine the extent of HSD's compliance with the terms, conditions and undertakings of Section II (Application Processing Practices) of this Agreement. If HSD is fully complying with those terms, conditions and undertakings, plaintiffs will, within 30 days, request from the Court dismissal with prejudice of the issues resolved by Section II of this Agreement. If HSD is not fully complying with those terms, conditions and undertakings, in June 1991, counsel for applicants will review another 40 HSD initial application case files for the Food Stamps and Medicaid programs, selected by random state-wide sample. If HSD is fully complying with those terms, conditions and undertakings, plaintiffs will, within 30 days, request from the Court dismissal with prejudice of the issues

resolved by Section II this Agreement.

3. Every six months during the implementation review process, HSD will provide the following statistical data summaries relating to the Food Stamp program and Medical Assistance Programs for Women and Children (MAWC) for each month of the time period under review: (a) the number and type of applications filed, by office, (b) office, district and state-wide timeliness rates for each program and for expedited food stamps; © average caseload levels, by office; (d) average caseload comparisons, by office; (e) the number of food stamp applicants who appear eligible for expedited services but did not receive timely emergency food stamps, by office; and (f) the approval, withdrawal, procedural denial and need-based denial rates for each program, by office.

4. At or near the time the statistical data summaries identified in paragraph 3 of this Section are provided, HSD will supply counsel for applicants with a copy of the listing of every computer program used to process, analyze or interpret the data only if the program is new or an altered version of a program presently in use.

5. Every six months during the implementation review process, HSD will provide counsel for applicants with a list of the dates, locations and types of monitoring activity conducted in New Mexico by the United States Department of Health and Human Services (HHS), HHS' Health Care Financing Administration (HCFA) and the United States Department of Agriculture's Food and Nutrition Service (FNS) during the time period under review.

6. Within three weeks of receiving the information identified in paragraphs 3 through 5 of this Section, counsel for applicants may request access, for inspection and copying, to the following information relating to the time period under review: (a) specific corrective action plans; (b) specific management evaluations or other documents evidencing monitoring activity by a federal agency; and © a computerized data tape for one specific month from which the statistical data summaries identified in paragraph 3 of this Section were compiled.

7. After counsel for applicants has received and evaluated all of the information requested pursuant to paragraph 6 of this Section, the parties will meet and confer in good faith to try to resolve any: (a) alleged inadequacies in the quality and promptness of the application process; (b) changes in the process or in the content or use of designated standard form documents proposed by HSD; and (c) other dispute or issue involving the rights, duties or undertakings contained in this Agreement.

8. Either party may request a conference at any other time in writing for the purpose of resolving problems and concerns which may arise between the parties.

9. Prior to the expiration of the implementation review process, the parties will agree upon any revisions to or supplementations of ISD regulations which are necessary to conform the regulations to the terms of this Agreement.

10. HSD will not make changes in the application processing practices or the use of standard form documents adopted pursuant to this Agreement without providing counsel

for applicants with at least one month's advance notice and an opportunity for a conference on the matter, unless emergency implementation of a regulation must be accomplished before thirty days elapses, but in no event may any term of this Agreement be modified or revoked unless required by changes in the federal law or regulations.

11. For purposes of this Agreement, full compliance or full implementation means that HSD has completed, enacted and is operating pursuant to all the terms, conditions and undertakings of this Agreement.

#### **V. COMPLETE AND FINAL AGREEMENT**

This Agreement, although prospective in nature, represents the complete and final agreement between the parties on the issues raised in these actions. No modifications to this Agreement may be made without the written consent of the parties and the approval of the Court.

AGREED AS TO FORM AND CONTENT:  
(telephonically)

Daniel Yohalem (by me)

Daniel Yohalem  
Patricia Glazek  
Jane B. Yohalem

Date 8/21/98

Attorney for Plaintiffs

Marsha Zenderman

Marsha Zenderman  
Assistant General Counsel

Date 8/21/98

Attorney for Defendant

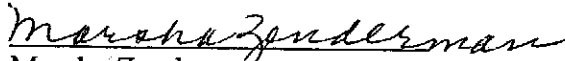
CERTIFICATE OF SERVICE

I declare under penalty of perjury that I mailed a copy of the foregoing Order Modifying Settlement Agreement to the following counsel of record on August 21, 1998.

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