

6.3 NOTICE OF ACTION RESULTING FROM A REDETERMINATION OR CASE MAINTENANCE ACTIVITY

Two (2) forms are basic to client notification of a change in benefits, whether this change occurs at redetermination, or as a result of a case maintenance activity. These are the ES-NL-B and the ES-NL-C.

The ES-NL-B is used to notify the client of an increase in benefits, of action taken resulting in no benefit change, and, in very few instances, of a decrease or case closure.

The ES-NL-C is used to notify the client of case closure or a decrease in benefits when advance notice is required.

Closely involved in the determination of whether an ES-NL-B or an ES-NL-C is used is the ES-NL-5, Waiver of 13-Days Advance Notice. In addition to these forms, the ES-6 Notice of Information Needed, and the ES-10, Appointment Letter, may be used for client notification. The use of each of these forms is detailed below.

A. ES-6, NOTICE OF INFORMATION NEEDED; ES-6A, SPENDDOWN EXPLANATION

If, at redetermination, or the time of any other change in client circumstances, it becomes clear that **additional** information or verification is needed, the ES-6 is used to notify the client in writing of the needed information and the date by which the information must be received. The ES-6A is used in addition to the ES-6 when it is necessary to explain the spenddown process to the client.

1. Case Maintenance For All Programs

The date entered must be no earlier than 10 days from the date the ES-6 is completed.

If the client fails, without good cause, to provide the information by the established date, an ES-NL-C must be sent to notify the client of the failure and the resulting case action.

2. Food Stamp Redeterminations

The date entered must be at least 10 days from the date of the ES-6. If the information is not available by the date indicated, and the client has not contacted the Worker, the **AG** is closed or the deduction disallowed. The client must be notified of the denial or disallowance **of a deduction** by form ES-NL-B. Benefits must not be continued beyond the certification period, unless a redetermination is completed and the client remains eligible. **See Section 1.4.S.**

3. WV WORKS And Medicaid Redeterminations

The date entered must be no earlier than 10 days from the date the ES-6 is completed.

If the client fails, without good cause, to provide the information by the established date, an ES-NL-C must be sent to notify the client of the failure and the resulting case action.

B. WHAT CONSTITUTES AN ADVERSE ACTION

An ES-NL-C is used for client notification of all adverse actions except those specified in 6.3,C,2. In this case, an ES-NL-B is used. Adverse actions are defined as follows.

FOOD STAMP BENEFITS	WV WORKS	MEDICAID
<p>AG closure</p> <p>Decrease in Food Stamp benefit amount</p> <p>Shortened certification period</p> <p>NOTE: The following are not adverse actions, but do require client notification:</p> <ul style="list-style-type: none"> - When the benefit amount does not increase following an SSI check reduction for repayment of an error caused by the client's intentional misrepresentation. - When the benefit amount does not increase following a reduction, suspension or termination of a federal, State or local means-tested welfare or public assistance program due to the client's failure to comply with the program's requirements. This includes a reduction in WV WORKS benefits due to a sanction. 	<p>AG closure, including closure due to imposition of the 3rd or subsequent sanction</p> <p>Reduction in the benefit amount including reductions due to imposition of the 1st or 2nd sanction.</p> <p>Removal of an individual from the AG, when the benefit amount decreases</p> <p>NOTE: A special notice letter is required to impose a sanction based on failure to comply with the PRC. See item E below.</p>	<p>AG closure</p> <p>Removal of an individual from the AG</p>

NOTE: When an ES-NL-C is sent to a Food Stamp AG that contains an ABAWD, form OFS-ABAWD-1 must be attached. This applies to all counties, both **ILC's** as well as NILC's.

NOTE: Client notification must be sent even when the only recipient in the **AG** dies.

C. ES-NL-B

NOTE: The ES-NL-B must always be used with **the** Pre-Hearing Conference **and/or Fair Hearing** request form, **DFA-FH-1** and the appropriate computation forms.

The ES-NL-B is used to notify a client of:

1. An Increase In Benefits:

The recipient must be notified in writing any time there is an increase in benefits. The notification must be received by the client prior to or at the same time he receives the increase.

In the space provided, the Worker must indicate the name, address and telephone number of local agencies or organizations which provide legal services without charge. **See Appendix A for a listing of Legal Aid offices.**

An increase in benefits is defined below for each program **and** the following information must be contained on the ES-NL-B when an increase in benefits occurs.

a. Food Stamps **Benefits**

An increase in benefit amount requires that the notice include the present benefit amount and the increased benefit amount ("Your Food Stamp **benefit amount** is being increased from \$100 to \$120"), the date that the increase is effective, the reason for the increase, the Manual section on which the change is based, and any other action taken.

b. WV WORKS

An increase in the benefit amount or the addition of another person to the AG, when the benefit amount increases, requires that the notice include the present benefit amount and the increased benefit amount ("Your WV WORKS **benefit** is being increased from **\$262** to **\$301**"), the date that the

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increase is effective, the reason for the increase, the Manual section on which the change is based, and any other action taken.

c. Medicaid

The addition of an individual to the Medicaid AG requires that the notice include the name of the individual being added, the date that the change is effective, the reason for the change, the Manual section on which the change is based, and any other action taken.

2. Adverse Actions Not Requiring Advance Notice

All other adverse actions require 13 days advance notice, and, thus, require use of the ES-NL-C. The following actions do not require advance notice:

- A mass change is initiated, such as the annual updates of Food Stamp allotments or deductions, the annual RSDI/SSI updates, a change in the WV WORKS payment levels, a change in the Medically Needy Income Levels.
- For Food Stamp **benefits** only, when the benefit is terminated or reduced as a result of a redetermination.
- When the client has signed an **DFA-NL-5** to waive his right to 13-days advance notice.

Form **DFA-NL-5**, "Waiver of Advance Notice," is used when the information, which results in an adverse action, is undisputed by the recipient, he agrees with the action to be taken on his case and understands that he is entitled to receive benefits, if the 13-day advance notice requirement is not waived. The waiver allows **DHHR** to make the change, without application of the 13-day advance notice requirement.

EXAMPLE: Sam moves from Food Stamp **AG 1** to Food Stamp **AG 2** on June 20th and reports this the same day. His removal from **AG 1** is an adverse action requiring 13 days notice. He cannot be included in **AG 2** for July because he will still be included in **AG 1**. However, **AG 1** signs an **DFA-NL-5 to waive** the right to advance notice. He can be removed from **AG 1 and included in AG 2 effective July.**

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The form must be completed in a face-to-face interview only. It is completed in duplicate and must be signed by **an adult AG member**. The original is given to the recipient, and the copy is filed in the case record.

Under no circumstances are blank **DFA-NL-5**'s to be signed and used at a later date. It is always the client's option to sign or not to sign the form.

If the proposed adverse action normally requires an ES-NL-C, but the client signs an **DFA-NL-5**, the Worker sends an ES-NL-B instead of an ES-NL-C.

NOTE: When an ES-NL-B is used to notify the client of an adverse action, and the client requests a Hearing or Pre-Hearing Conference, benefits are not continued or reinstated pending a decision.

In the space provided, the Worker must indicate the name, address and telephone number of local agencies or organizations which provide legal services without charge.

The following **items a, b and c** indicate the information which must be contained on the ES-NL-B, when it is used as a notice of adverse action.

NOTE: If the closure is due to excessive assets, the notification letter must specify the asset limit and the total value counted for all the client's assets. **For Worker completed letters only**, the letter must contain the following statement: "You may request a detailed accounting of the asset calculations used by the Department. If you so request, this will be mailed to you within five (5) working days of receipt of your request. You may request this in writing, by phone or in person." **RAPIDS provides a detailed asset calculation with all notices of decision.**

a. Food Stamp **Benefits**

The notice must include the fact that the Food Stamp **AG** is closed or the **benefit amount** has decreased, the date that the action becomes effective, the reason for the action, the Manual section on which the decision is based, and any other action that is taken.

NOTE: If the Food Stamp benefits decrease only because of an increase in the WV WORKS payment, the Worker must complete two separate notices, to be mailed on the same day. The ES-NL-B

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is used to notify the client of the increase in the **benefit** amount. The ES-NL-C is used to notify the client of the decrease in Food Stamp benefits. The **DFA-FH-1** is attached to the ES-NL-B and the ES-NL-C. Appropriate computation forms must also be attached.

b. WV WORKS

The notice must include the fact that the **benefit** is being stopped or reduced, the date the action is effective, the reason for the action, the Manual section on which the decision is based, and any other action taken.

c. Medicaid

The notice must include the specific action being taken, the date that the action is effective, the reason for the action, the Manual section on which the decision is based, and any other action taken.
The following must be included as appropriate:

Closure: The fact that the Medicaid **AG** is being closed.

Removal of an individual from the Medicaid **AG**: The name of the individual being removed.

Change to a spenddown **AG**: The fact that the eligibility status has changed, reason for and the effective date of the change, beginning and ending dates of the new POC.

3. Changes Not Affecting The Benefit Level

a. Food Stamp **Benefits** Only

The following are not adverse actions, but do require client notification:

- When the **benefit amount** does not increase following an SSI check reduction for repayment of an error caused by the client's misrepresentation
- When the **benefit amount** does not increase following a reduction, suspension or termination of a federal, State or local means-tested welfare or public assistance program due to the client's failure to comply with the program's requirements. **This includes WV WORKS sanctions.**

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When used to notify the client of these actions, the ES-NL-B must specify that Food Stamp benefits would normally increase following a reduction in income, but that, due to the fact that the client caused these reductions by his own actions, benefits will not increase. The Worker must also indicate which agency made the determination of the client's failure to comply.

b. All Programs, Including Food Stamp **Benefits**

The client must be notified of all changes made, even when the benefit level is not affected, such as a transfer to another county or a change in payee. When used for this purpose, specific information about what the change is, the date the change is effective, the reason for the change, the Manual section on which the change is based, **and** any other action **taken must be included on the form**.

EXAMPLE: "You have reported that you moved to Kanawha County. Your case has been transferred to the Kanawha County office effective August 1, 2005 which is located at: 4190 W. Washington Street, Charleston. Your new Worker is: Angelica Smith."

D. ES-NL-C

NOTE: The ES-NL-C must always be used with **the** Pre-Hearing Conference **and/or Fair Hearing** request form, **DFA-FH-1**, and the appropriate computation forms.

Instructions for completion of the ES-NL-B **in item C,2 above** also apply to the ES-NL-C.

NOTE: If the Food Stamp **benefit amount** is reduced or terminated within the certification period because a member is disqualified, the reason for the disqualification, the eligibility and benefit level of the remaining **AG** members and the action the **AG** must take to end the disqualification, if applicable, must be shown on the form. For persons sanctioned due to a Food Stamp Employment and Training (FSE&T) violation, the notice must specify the particular violation and the proposed penalty period.

The ES-NL-C is used to notify a client of an adverse action in situations requiring a 13-day advance notice period as described below.

1. Situations Requiring Advance Notice

A client must receive advance notice in all situations involving adverse actions except those described in Section 6.3, C,2. The advance notice **requirement is** that notification be **mailed to the** client at least 13 days prior to the first day of the month in which the benefits are affected. **The date on the notice must be the date it is mailed.**

2. Timing Of Worker Action

- a. Beginning and Ending of **the** Advance Notice Period

The 13-day advance notice period begins **with** the date shown on the notification letter. It ends after **the 13th** calendar day **has** elapsed.

EXAMPLE: An ES-NL-C is dated **and mailed on** October **18th**. The 13-day advance notice period begins October **18th**. The 13-day advance notice period ends at the close of the business day on October **31st**. **The action is effective** no earlier than November **1st**.

If the 13-day notice period ends on a weekend or holiday, the action is taken on the first subsequent work day.

NOTE: The **date on the notice must be the date it is mailed.**

- b. Date Adverse Action May be Taken

- (1) When Advance Notice Period Expires Before the First of the Following Month

Usually the Worker will take the action **in RAPIDS before** the 13-day advance notice **begins to be effective the day after the 13-day advance notice period ends.**

EXAMPLE: **The client reports a change that requires advance notice. The Worker makes the change in RAPIDS on October 9th. An ES-NL-C is dated and mailed by RAPIDS on** October **10th**. The 13-day advance notice period starts **on** October **10th** and ends October **22nd**. Since the advance notice period ends before November **1st**, the **change is effective November 1st.**

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- (2) When Advance Notice Period Expires the First of the Following Month or Later

If the 13-day advance notice period does not expire until the first day of the following month or later, the **change is not effective until the month following the end of the 13-day advance notice period.**

EXAMPLE: An ES-NL-C is dated **and mailed on** December 27th. The 13-day advance notice period expires January 8th. The change **is** effective for February. The client is eligible to receive January benefits **at the previous level.**

- (3) Fair Hearing Request After Receipt of ES-NL-C

- (a) Requested Within Advance Notice Period

When the client requests a Pre-Hearing Conference **or a Fair** Hearing within the 13-day advance notice period, benefits **that** were previously stopped or reduced at the time the ES-NL-C was issued, are reinstated or restored immediately, whether or not the client requests reinstatement. If the client specifically requests benefits not be reinstated, verbally, by checking the appropriate section of the **DFA-FH-1** or in some other written manner, no reinstatement action will be taken.

No change is made in **AG** status or benefit levels having to do with the current issue until a final decision is made as a result of a Pre-Hearing Conference **or Fair Hearing.**

Other changes may occur during the Hearing process. If this happens, the client must receive proper notification of these other changes. If the client does not request a Pre-Hearing Conference **or a Fair Hearing** on these subsequent changes, the changes are made, even though the first change is in Pre-Hearing Conference **or Hearing** status. If the client does request a Pre-Hearing Conference **or a Fair Hearing** on the subsequent changes, the Worker must:

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(i) Pre-Hearing Conference is Requested:

- Hold Pre-Hearing Conference; and
- If the issue is not resolved, contact the Hearings Officer to see if all issues can be dealt with in one Hearing; and
- Continue benefits at the current level until the subsequent changes are resolved.
- The Pre-Hearing Conference decision will be final unless the client continues with a Fair Hearing.

(ii) Fair Hearing Only is Requested:

- Contact the Hearings Officer to see if all issues can be dealt with in one Hearing, and
- Continue benefits at the current level until the subsequent changes are dealt with in a Hearing.

If the Department is upheld in the Hearing, the previously proposed action is taken without further notice to the client **and** benefits in excess of the amount of entitlement, which were received after the month in which the ES-NL-C was received, are subject to repayment requirements. For this reason, the client may return such benefits, or request that his **benefits be stopped** or reduced, while awaiting the outcome of the Pre-Hearing Conference **or Fair Hearing**. When this occurs, the Worker takes the adverse action and sends the client an ES-NL-B, confirming his request.

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EXCEPTION: Food Stamp Program only: If the **client** did not **complete a redetermination**, benefits are not reinstated or continued. Benefits will be continued or reinstated only after the client **completes a redetermination**. If the Food Stamp certification period ends prior to the decision of the Hearings Officer, or prior to the Pre-Hearing Conference decision, the client is not entitled to benefits at the previous level or continued benefits.

- (b) Requested After Advance Notice Period, but within 90 Days of the Effective Date of the Action.

Benefits are not reinstated or restored pending the Fair Hearing or Pre-Hearing Conference decision after expiration of the 13-day advance notice period.

E. OFS-WVW-NL-1

NOTE: The OFS-WVW-NL-1 must always be used with **the** Pre-Hearing Conference **and/or a Fair Hearing** request form, **DFA-FH-1**, and the appropriate computation forms.

The OFS-WVW-NL-1 is used only for WV WORKS and only when the imposition of a sanction for failure to adhere to the terms of the PRC is involved.

Instructions for completion of the ES-NL-B (See item C above) also apply to completion of the OFS-WVW-NL-1. In addition, there is space for the Worker to schedule a Good Cause Interview. The interview must be scheduled for a date that allows the client to attend the interview and to comply with the PRC requirements before the advance notice period expires.

All other policies and procedures that normally apply to the ES-NL-C apply to the use of the OFS-WVW-NL-1. **See item D above.**

F. **DFA-FH-1, PRE-HEARING CONFERENCE AND/OR FAIR HEARING REQUEST FORM**

The DFA-FH-1 is used to request a Pre-Hearing Conference and/or Fair Hearing and must be used when an ES-NL-A, ES-NL-B, ES-NL-C or OFS-WVW-NL-1 is used.

If more than one notification letter is sent at the same time, the **DFA-FH-1** must be sent with each notification letter.

EXAMPLE: The client experiences a change which increases his **WV WORKS benefit** amount. His Food Stamp benefits decrease, solely due to the increase in the **WV WORKS** check. The Worker prepares an ES-NL-B to address the increase in **WV WORKS** and attaches form **DFA-FH-1**. In addition, the Worker completes an ES-NL-C to address the decrease in Food Stamp benefits and **also** attaches a **DFA-FH-1**.

G. **DFA-10, APPOINTMENT LETTER**

The **DFA-10** is used to notify the recipient of the time and place of an appointment. These appointments are usually scheduled for redeterminations. However, the form can be used to notify the client of an appointment when a face-to-face contact is indicated for a case maintenance activity.

If the client fails to keep the appointment, the Worker must send an ES-NL-C prior to **AG** closure, except for closures resulting from failure to **complete** a Food Stamp redetermination. An ES-NL-B is used in this situation.

For Food Stamp **AG's**, the **DFA-10** serves as the first notification of the end of the certification period. Therefore, the ES-FS-3 must always accompany the form.

When Worker completed, the **DFA-10** is completed in duplicate with a copy filed in the case record.