USDA

United States Department of Agriculture

Food and Nutrition Service

3101 Park Center Drive

Alexandria, VA 22302-1500

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Subject: Food Stamp Provisions of the Farm Bill

To: Regional Administrators
Food and Nutrition Service

On June 18, 2008, Congress enacted Public Law 110-246. Attached is an implementing memorandum describing the Food Stamp provisions of Title IV of Public Law 110-246, The Food, Conservation and Energy Act of 2008 (FCEA). Regulations reflecting revisions to the Food Stamp Act made by Public Law 110-246 will be published as soon as possible. Please forward the attached memorandum to your State commissioners.

Please keep us advised of any implementation problems and advise us of which options States choose to adopt.

If you have any questions, please contact the appropriate person from the list below:

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Attachment

AN EQUAL OPPORTUNITY EMPLOYER

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Public Human Service Agency Commissioners
All States

The Food Stamp Program (FSP) was recently reauthorized as part of The Food, Conservation, and Energy Act of 2008 (FCEA) (P.L.110-246) enacted June 18, 2008. The law contains various provisions that affect food stamp eligibility, benefits, and program administration, including changes mandated by the law and those that provide additional flexibility for State agencies. All FCEA provisions related to the Food Stamp Program, are effective October 1, 2008, except for the prohibition on coupon issuance (Section 4115), which was effective upon enactment, June 18, 2008.

This letter describes the various food stamp related provisions and the implementation action required. In some cases, the provisions can be fully or partially implemented prior to final regulations being issued, while other provisions require regulations before implementation can be enforced. The provisions are grouped below by the implementation action required and listed chronologically within each group.

As with previous legislative changes to the Program, the Food and Nutrition Service (FNS) will hold States harmless for Quality Control (QC) purposes for a certain period to be determined to allow implementation. Additional details will be forthcoming, but States will be held harmless for some period following the mandated implementation date for mandatory provisions and the date of initial implementation for optional provisions.

## 2008 FCEA PROVISIONS AND EFFECTIVE DATES

### A. Provisions that States must implement on 10/1/2008

**Section 4001. RENAMING THE FOOD STAMP ACT AND PROGRAM**
This provision renames the Food Stamp Program the "Supplemental Nutrition Assistance Program," or SNAP and renames the Food Stamp Act of 1977 the Food and Nutrition Act of 2008, effective October 1, 2008. (Section 4002 makes conforming amendments). State agencies may continue to use state-specific program names.

**Section 4101. EXCLUDING CERTAIN MILITARY COMBAT PAYMENTS FROM INCOME**
This provision excludes combat-related military pay from consideration as income when determining SNAP eligibility and benefit levels if the additional pay is the result of deployment to or service in a combat zone and was not received immediately prior to serving in a combat zone. This codifies current policy for payments made under section 5 of Title 37 of the U.S. Code, which are already excluded from income, and provides the Secretary with the authority to designate other combat-related payments eligible for the exclusion.



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**Section 4102. RAISING THE STANDARD DEDUCTION**
This provision raises the minimum standard deduction for households with one to three members from $134 to $144 for Fiscal Year (FY) 2009 and indexes it to inflation starting in FY 2010. (The standard deduction remains unchanged for larger households, which already receive a larger standard deduction indexed to inflation). This provision takes effect on October 1, 2008.

**Section 4103. ELIMINATING THE DEPENDENT CARE DEDUCTION CAP**
This provision eliminates the cap on the deduction for dependent care expenses (currently $175 or $200 per month, depending on the dependent's age) and allows families eligible for the deduction to deduct the entire amount of dependent care expenses when calculating eligibility and benefit levels. The provision takes effect October 1, 2008.

State agencies must apply the new provision to all new applicants beginning on October 1, 2008. For current recipients, FNS encourages State agencies to apply the new provision to all ongoing households as soon as possible on or after October 1, 2008. State agencies should notify potentially eligible households of the availability of the increase in the dependent care expense deduction. FNS understands that States have various ways of applying the current dependent care cap. In some States, the Eligibility Worker (EW) enters the full amount of the expense into an electronic data system and the system calculates the amount of the deduction. In other States, the EW enters the amount of the deductible expense up to the amount of the cap. In States where the full amount of the expense is known to the data system, States may implement the provision for ongoing households as a mass change. In other States, EWs may apply the provision whenever they need to enter the case file, or at the household's next redetermination, whichever is sooner. In any event, if the case file shows that the household had verified dependent care expenses in excess of the cap, the State agency must restore benefits starting with the October 2008 issuance.

**Section 4104(a). INDEXING ASSET LIMIT**
The provision adjusts the current food stamp asset limits ($2,000 for most households and $3,000 for households with elderly or disabled members) by indexing the limits to inflation, rounded down to the nearest $250 beginning October 1, 2008. Each adjustment is based on the unrounded amount for the prior 12-month period.

**Section 4104(b). EXCLUDING EDUCATION AND RETIREMENT ACCOUNTS FROM RESOURCES**
The provision excludes all tax-preferred education accounts (e.g., 529s) and retirement accounts (e.g., IRAs), from countable resources in determining SNAP eligibility. It excludes any funds in a plan, contract, or account, described in sections 401(a), 403(a), 403(b), 408, 408A, 457(b), and 501(c)(18) of the Internal Revenue Code of 1986 and the value of funds in a Federal Thrift Savings Plan account as provided for in 5 U.S.C. 8439. It also provides for the exclusion of any successor retirement accounts that are exempt from Federal taxes.



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**Section 4107. INCREASING THE MINIMUM BENEFIT**
This provision increases the minimum benefit for 1- and 2-person households from $10 to 8 percent of the cost of the maximum SNAP allotment for a household containing 1 member. This maximum may vary for outlying States based on the applicable maximum allotment. Since the maximum SNAP allotment is indexed to inflation, the minimum benefit will increase with annual increases in the maximum allotment.

**Section 4113. CLARIFICATION OF SPLIT ISSUANCE**
This provision provides that State agencies must issue monthly benefit allotments to individuals in one lump sum unless a benefit correction is necessary. State agencies may issue monthly benefits on different days of the month for different households.

**Section 4114. ACCRUAL OF BENEFITS**
This provision requires State agencies to establish a procedure for recovering electronic benefits from a household's account due to inactivity. State agencies may choose to move benefits off-line if the account has not been accessed within 6 months. If benefits are moved off-line, State agencies must notify households and make benefits available within 48 hours of a household's request. This provision also requires State agencies to expunge benefits that have not been accessed by a household after a period of 12 months. As of October 1, 2008, State agencies that currently move benefits off-line after less than 6 months of inactivity will need to adapt their procedure to comply with this provision. Furthermore, as of October 1, 2008, waivers previously provided to allow State agencies to provide off-line notification during initial training or at recertification and waivers to allow State agencies to expunge benefits after 9 months of inactivity will no longer be valid.

**Section 4115 (a). ISSUANCE AND USE OF PROGRAM BENEFITS**
This provision prohibits State agencies from issuing paper coupons as of the date of enactment, June 18, 2008. This provision also de-obligates paper coupons as legal tender one year from this date. Therefore, food stamp coupons may no longer be redeemed at stores after June17, 2009. In addition, the provision requires that Electronic Benefit Transfer (EBT) cards be the sole method of benefit delivery as of June 18, 2009.

This provision also prohibits vendors from charging interchange fees to retailers for EBT transactions. Interchange fees are currently paid for credit and debit card transactions in the commercial environment, but not for food stamp EBT transactions. Interchange fees are paid by retailers to card issuers (the banks that sponsor the credit or debit cards). The rates are set by the card associations (e.g. MasterCard or Visa) and are based on a combination of factors including amount of transaction, total volume and type of business. Issuers then pay fees to the card associations. This provision ensures that such fees are not applied to future EBT transactions. Finally, this provision updates the Statute with more current EBT terminology.



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**Section 4122. FUNDING OF EMPLOYMENT AND TRAINING PROGRAMS**
This provision makes Employment and Training (E&T) funding allocations to States available for fifteen (15) months rather than until expended.

**B. Optional provisions that States may implement on 10/01/2008**

**Section 4105. STATE OPTION TO EXPAND SIMPLIFIED REPORTING**
This provision allows States to place all households on simplified reporting by eliminating the prohibition on periodic reporting for elderly, disabled, homeless and migrant households. This provision allows these households to participate for 12 months with only minimal change reporting requirements. Under the current regulations, the maximum certification period for migrants and homeless is 12 months, and for households in which all adult members are either elderly or disabled and have no earnings is 24 months.

Under the provision, State agencies may require the entire caseload to be under simplified reporting. However, FNS cautions that households containing Able Bodied Adults Without Dependents (ABAWDS) have an additional reporting requirement. ABAWDS must report whenever their hours of work drop below 80 hours per month unless the ABAWD resides in a waived area or is covered by an individual (15%) exemption.

**Section 4106. TRANSITIONAL BENEFITS OPTION**
This provision allows State agencies to provide transitional food stamp benefits to households that cease to receive cash assistance under a State-funded public assistance program. Currently, States may provide transitional food stamp benefits only to families that cease to receive Temporary Assistance for Needy Families (TANF) funded assistance programs. This would extend the existing transitional benefit option to households with children that receive non-TANF, State-funded cash assistance.

**Section 4108. STATE OPTION FOR EMPLOYMENT, TRAINING, AND JOB RETENTION**
This provision permits the use of E&T funds for job retention services for up to 90 days after individuals who received E&T services gain employment. As with any E&T activity, State agencies may use their 100 percent Federal E&T grants to administer job retention services. Costs incurred by the State agency in connection with participant expenses (i.e., dependent care, transportation, or other expenses reasonably necessary and directly related to job retention) must be shared equally between the State agency and the Federal government. Additionally, State agencies intending to provide job retention services must include an addendum to their FY 2009 State E&T plans describing services they plan to provide, the length of time they plan to provide them, to whom they plan to provide them, and how much Federal funding, both 100 percent and 50 percent, they anticipate they will need.



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**Section 4119. STATE OPTION FOR TELEPHONIC SIGNATURE**
This provision allows States to establish a system by which an applicant may sign an application through a recorded verbal assent over the telephone. The system must record the verbal assent, include effective safeguards against impersonation, identity theft and invasions of privacy, not interfere with the right to apply in writing, and make the date of application the date of the verbal assent. The State agency must send a written application to the household with instructions for correcting any errors and should require that the applicant sign and return the written application. This procedure is a necessary protection to assure that the applicant has assented to the information on the application and his or her rights and responsibilities.

### C. Provisions that are not to be implemented until Federal Rulemaking occurs

**Section 4112. TECHNICAL CLARIFICATION REGARDING ELIGIBILITY**
This provision requires the Secretary to define the term "fleeing" and "actively seeking," to ensure that State agencies use consistent procedures to disqualify individuals whom law enforcement authorities are actively seeking for the purpose of holding criminal proceedings against the individual. Regulations on this provision are forthcoming.

**Section 4116. REVIEW OF MAJOR CHANGES IN PROGRAM DESIGN**
This provision requires the United States Department of Agriculture (USDA) to develop standards for identifying major changes in the operations of State agencies and requires States to notify USDA upon implementing a major change in operations and collect any information required by USDA.

**Section 4121. PRESERVATION OF ACCESS AND PAYMENT ACCURACY**
This provision adds plans for proper testing to the list of criteria USDA must apply when deciding whether to approve Federal funding for new State automated systems. The provision for pilot projects in limited areas for major systems changes needs to await final rules.

**Section 4131. ELIGIBILITY DISQUALIFICATION**
This provision allows disqualification of a person who has been found by a court or administrative agency to have (1) intentionally obtained cash by purchasing products with SNAP benefits that have containers requiring return deposits, discarding the product, and returning the container for the deposit amount, or (2) intentionally sold food purchased using SNAP benefits. The disqualification period must be prescribed by regulation.

**Section 4132. CIVIL PENALTIES AND DISQUALIFICATION OF RETAIL FOOD STORES AND WHOLESALE FOOD CONCERNS**
This provision allows USDA both to assess a civil penalty and to disqualify a retail or wholesale food store authorized to participate in SNAP, and eliminates the minimum disqualification period. As a condition of reinstatement, a store that has been previously disqualified or assessed a penalty may be required to furnish a bond for 5 years to cover the value of benefits that the store may accept in the future. This provision limits the



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retention of such a bond to a 5 year period. The provision also allows USDA, in certain cases, to suspend a retail store or wholesale food concern from processing benefits pending administrative action to disqualify the store.

**Section 4133. MAJOR SYSTEMS FAILURES**
This provision allows USDA to prohibit State agencies from collecting claims from a household and to assert a claim against a State in cases of major systemic error resulting in substantial overpayments. It allows for administrative and judicial review and alternative methods of collection if the State fails to make a payment. This section supplements rather than supplants existing USDA authorities.

### D. Provisions that require FNS action only

**Section 4141. PILOT PROJECTS TO EVALUATE HEALTH AND NUTRITION PROMOTION IN THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM**
This provision authorizes USDA to carry out pilot projects to develop, test and evaluate methods of using the SNAP program to improve the dietary and health status of households eligible for or participating in SNAP and to reduce overweight and obesity. It provides $20 million in mandatory funding for a project to test point-of-purchase incentives for healthful foods (to be made available on October 1, 2008, to remain available until expended), and authorizes appropriations for other projects. It requires the Secretary to submit an annual report to Congress on the status of each pilot and the results of the evaluations as well as to broadly disseminate the evaluation results.

**Section 4142. STUDY ON COMPARABLE ACCESS TO SUPPLEMENTAL NUTRITION ASSISTANCE FOR PUERTO RICO**
This provision requires the USDA to carry out a study of the feasibility and effects of including Puerto Rico as a State for SNAP purposes in lieu of providing a block grant. It requires the Secretary to submit a report within 2 years of enactment of the FCEA.

### E. Provisions that require no new State action; however, Federal Rulemaking will occur

**Section 4111. NUTRITION EDUCATION**
This provision clarifies the legal basis and requirements for nutrition education in the SNAP. It provides that States may elect to provide nutrition education services to persons who are eligible for SNAP. These States must submit a plan that identifies the use of funding and complies with USDA guidance and regulations. It provides that the costs of nutrition education are reimbursable to the same extent as other SNAP administrative costs.



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**Section 4117. CIVIL RIGHTS COMPLIANCE**
This provision clarifies that four major civil rights laws (the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and Title VI of the Civil Rights Act of 1964) apply to all aspects of SNAP. The Food Stamp Program is already subject to these laws.

**Section 4118. CODIFICATION OF ACCESS RULES**
This provision requires States to comply with USDA rules requiring bilingual personnel and material in areas in which a substantial number of low income household members speak a language other than English. The substance of the rules is not affected by this provision.

**Section 4120. PRIVACY PROTECTIONS**
This provision requires States to establish safeguards that would limit the disclosure of information obtained from households to persons directly connected with the administration or enforcement of 1) the Food and Nutrition Act, 2) related regulations, 3) Federal assistance programs, or 4) Federally-assisted State programs, and limit the subsequent use of the information to the administration and enforcement of these programs.



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