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United States
Department of
Agriculture

Food and
Nutrition
Service

3101 Park
Center Drive

Alexandria, VA
22302-1500

SUBJECT: Supplemental Nutrition Assistance Program (SNAP); Excluding \$25
Unemployment Compensation Payments from Income and Resources

TO: All Regional Directors
Supplemental Nutrition Assistance Program

Introduction

A recently enacted law changes the treatment of the \$25 supplemental weekly Unemployment Compensation payment authorized by the American Recovery and Reinvestment Act of 2009 (ARRA) authorized.

Background

Division B, Title II of ARRA is the "Assistance for Unemployed Workers and Struggling Families Act". Section 2002 gave States the option of increasing their Unemployment Compensation payments by \$25 a week (a copy of this provision is attached). The Food and Nutrition Service (FNS) issued guidance on March 18, 2009 stating that a State SNAP agency must count this \$25 weekly amount as income in determining eligibility and benefits. This statement is no longer correct because the law has changed.

On November 6, 2009 President Obama signed the Worker, Homeownership, and Business Assistance Act of 2009. Section 8 of that act (a copy of which is also attached) requires SNAP to exclude these \$25 payments from all calculations of resources and income. Each State agency must contact its State's Unemployment Compensation agency to determine whether the residents of that State are receiving the additional \$25 per week. If so, the State SNAP agency must take the following actions.

Resources

The SNAP regulations at 7 CFR 273.8(e)(11) provide that any resource excluded by provision of a Federal statute is excluded in determining resources. Therefore, State agencies must exclude the additional \$25 weekly in Unemployment Compensation payments in the calculation of a household's resources.

Income

SNAP regulations at 7 CFR 273.9(c)(10) prevent any income excluded by any other Federal statute from consideration as income for the purposes of determining benefits and eligibility for SNAP. Therefore, State agencies must exclude this \$25 weekly amount in the calculation of gross and net income.

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Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

Implementation

This policy was effective on November 6, 2009. All decisions about eligibility and benefits for all months beginning with the entire month of November, 2009 must exclude the weekly \$25 in unemployment compensation from resources and income.

Restoring Lost Benefits

If a participating household's November, 2009 (or subsequent) benefits include the additional \$25 per week as income, the State agency must re-calculate the benefits and restore any that are lost. Although the State agencies are not responsible for the under-issuances, they should follow the regulations about restoring lost benefits at 7 CFR 273.17. State agencies should examine their records to identify all households in this situation.

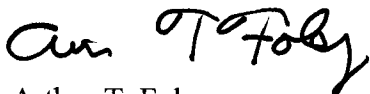
It is also possible that a State agency may have denied an application or terminated a household's participation solely because the State agency counted the \$25 weekly payment. If possible, a State agency should examine their records to identify such a household, re-open the household's application, certify the household if the household is still eligible, and restore any lost benefits back to November, 2009. The State agency should also consider notifying the general public about this change in policy, and the possibility of restored benefits, through a poster in local offices, a notice on the State agency's web site, or through other means.

Quality Control

FNS will publish specific instructions about Quality Control's active and negative reviews at a later time.

Conclusion

For further information about this policy, a State agency should contact their regional office. FNS's regional offices should raise questions about resources to the Program Design Branch and questions about income to the Certification Policy Branch.



Arthur T. Foley

Director

Program Development Division

Attachments

Attachment One

Section 2002 of ARRA (the Assistance for Unemployed Workers and Struggling Families Act)

SEC. 2002. INCREASE IN UNEMPLOYMENT COMPENSATION BENEFITS.

- (a) **FEDERAL-STATE AGREEMENTS.**—Any State which desires to do so may enter into and participate in an agreement under this section with the Secretary of Labor (hereinafter in this section referred to as the “Secretary”). Any State which is a party to an agreement under this section may, upon providing 30 days’ written notice to the Secretary, terminate such agreement.
- (b) **PROVISIONS OF AGREEMENT.**—
- (1) **ADDITIONAL COMPENSATION.**—Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents’ allowances) payable for any week shall be equal to the amount determined under the State law (before the application of this paragraph) plus an additional \$25.
- (2) **ALLOWABLE METHODS OF PAYMENT.**—Any additional compensation provided for in accordance with paragraph (1) shall be payable either—
- (A) as an amount which is paid at the same time and in the same manner as any regular compensation otherwise payable for the week involved; or
- (B) at the option of the State, by payments which are made separately from, but on the same weekly basis as, any regular compensation otherwise payable.
- (c) **NONREDUCTION RULE.**—An agreement under this section shall not apply (or shall cease to apply) with respect to a State upon a determination by the Secretary that the method governing the computation of regular compensation under the State law of that State has been modified in a manner such that—
- (1) the average weekly benefit amount of regular compensation which will be payable during the period of the agreement (determined disregarding any additional amounts attributable to the modification described in subsection (b)(1)) will be less than

(d) PAYMENTS TO STATES.—

(1) IN GENERAL.—

(A) FULL REIMBURSEMENT.—There shall be paid to each State which has entered into an agreement under this section an amount equal to 100 percent of—

- (i) the total amount of additional compensation (as described in subsection (b)(1)) paid to individuals by the State pursuant to such agreement; and
- (ii) any additional administrative expenses incurred by the State by reason of such agreement (as determined by the Secretary).

(B) TERMS OF PAYMENTS.—Sums payable to any State by reason of such State's having an agreement under this section shall be payable, either in advance or by way of reimbursement (as determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this section for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

(2) CERTIFICATIONS.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section.

(3) APPROPRIATION.—There are appropriated from the general fund of the Treasury, without fiscal year limitation, such sums as may be necessary for purposes of this subsection.

(e) APPLICABILITY.—

(1) IN GENERAL.—An agreement entered into under this section shall apply to weeks of unemployment—

(A) beginning after the date on which such agreement is entered into; and

(B) ending before January 1, 2010.

(2) TRANSITION RULE FOR INDIVIDUALS REMAINING ENTITLED TO REGULAR COMPENSATION AS OF JANUARY 1, 2010.—In the case of any individual who, as of the date specified in paragraph (1)(B), has not yet exhausted all rights to regular compensation under the State law of a State with respect to a benefit year that began before such date, additional compensation (as described in

subsection (b)(1)) shall continue to be payable to such individual for any week beginning on or after such date for which the individual is otherwise eligible for regular compensation with respect to such benefit year.

(3) **TERMINATION.**—Notwithstanding any other provision of this subsection, no additional compensation (as described in subsection (b)(1)) shall be payable for any week beginning after June 30, 2010.

(f) **FRAUD AND OVERPAYMENTS.**—The provisions of section 4005 of the Supplemental Appropriations Act, 2008 (Public Law 110– 252; 122 Stat. 2356) shall apply with respect to additional compensation (as described in subsection (b)(1)) to the same extent and in the same manner as in the case of emergency unemployment compensation.

(g) **APPLICATION TO OTHER UNEMPLOYMENT BENEFITS.**—

(1) **IN GENERAL.**—Each agreement under this section shall include provisions to provide that the purposes of the preceding provisions of this section shall be applied with respect to unemployment benefits described in subsection (i)(3) to the same extent and in the same manner as if those benefits were regular compensation.

(2) **ELIGIBILITY AND TERMINATION RULES.**—Additional compensation (as described in subsection (b)(1))—

(A) shall not be payable, pursuant to this subsection, with respect to any unemployment benefits described in subsection (i)(3) for any week beginning on or after the date specified in subsection (e)(1)(B), except in the case of an individual who was eligible to receive additional compensation (as so described) in connection with any regular compensation or any unemployment benefits described in subsection (i)(3) for any period of unemployment ending before such date; and

(B) shall in no event be payable for any week beginning after the date specified in subsection (e)(3).

(h) **DISREGARD OF ADDITIONAL COMPENSATION FOR PURPOSES OF MEDICAID AND SCHIP.**—The monthly equivalent of any additional compensation paid under this section shall be disregarded in considering the amount of income of an individual for any purposes under title XIX and title XXI of the Social Security Act.

(i) **DEFINITIONS.**—For purposes of this section—

(1) the terms “compensation”, “regular compensation”, “benefit year”, “State”, “State agency”, “State law”, and “week” have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note);

(2) the term “emergency unemployment compensation” means emergency unemployment compensation under title IV of the Supplemental Appropriations Act, 2008 (Public Law 110– 252; 122 Stat. 2353); and

(3) any reference to unemployment benefits described in this paragraph shall be considered to refer to—

(A) extended compensation (as defined by section 205 of the Federal-State Extended Unemployment Compensation Act of 1970); and

(B) unemployment compensation (as defined by section 85(b) of the Internal Revenue Code of 1986) provided under any program administered by a State under an agreement with the Secretary.

Attachment Two

Section 8 of the Worker, Homeownership, and Business Assistance Act of 2009

The monthly equivalent of any additional compensation paid by reason of section 2002 of the Assistance for Unemployed Workers and Struggling Families Act, as contained in Public Law 111-5 (26 U.S.C. 3304 note; 123 Stat. 438) shall be disregarded after the date of the enactment of this Act in considering the amount of income and assets of an individual for purposes of determining such individual's eligibility for, or amount of, benefits under the Supplemental Nutrition Assistance Program (SNAP).



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Subject: Supplemental Nutrition Assistance Program (SNAP) – Excluding the Special \$25 Weekly Unemployment Compensation Payment – Questions and Answers

To: All Regional Directors
Supplemental Nutrition Assistance Program (SNAP)

This memorandum transmits the first set of Questions and Answers that the Program Development Division has received about excluding the special weekly \$25 Unemployment Compensation payments.

On November 19, 2009, the Program Development Division issued a memorandum to inform you that SNAP must exclude the \$25 weekly Unemployment Compensation Payments that States make under Section 2002 of the American Recovery and Reinvestment Act of 2009 (ARRA). That memorandum and these questions and answers supersede the policy that appears in the memorandum dated March 18, 2009, Additional Questions and Answers, Question and Answer 2.

Your offices have sent questions and comments about this new policy; we appreciate the hard work that the regional offices and State SNAP agencies are doing to implement this policy as quickly and as efficiently as possible.

SNAP Quality Control's review procedures for this exclusion will appear in a forthcoming memorandum from the Program Accountability and Administration Division.

Attached are the first questions and answers. If you receive others, please send them to the Program Design Branch and the Certification Policy Branch, so that we may include them in a later set.

Arthur T. Foley
Director
Program Development Division

Attachment

AN EQUAL OPPORTUNITY EMPLOYER

Supplemental Nutrition Assistance Program (SNAP) and the American Recovery and Reinvestment Act of 2009 (ARRA) Special \$25 Unemployment Compensation Payments

Making These Payments

Question 1. How long will State Unemployment Compensation agencies make these payments?

Answer. As of November 30, 2009, States will make these payments until June 30, 2010. A State SNAP agency should confirm this with their State's Unemployment Compensation agency.

Question 2. Do all State Unemployment Compensation agencies make these payments?

Answer. All but Guam. According to the website of the United States Department of Labor (<http://www.dol.gov/opa/media/press/eta/ETA20090196.htm>), all the States, the District of Columbia, and the Virgin Islands have agreed to make these payments; Guam does not pay Unemployment Compensation. However, each State SNAP agency should confirm this with their State's Unemployment Compensation agency.

Question 3. Is this \$25 special payment also known as Federal Additional Compensation (FAC)?

Answer. Yes.

Excluding These Payments

Question 4. Will SNAP's exclusion last as long as State Unemployment Compensation agencies make these payments?

Answer. Yes.

Question 5. May a State SNAP agency assume that \$108 (\$25 a week, converted) of all Unemployment Compensation checks is excluded income?

Answer. No. For two reasons. First, while the excluded income is \$25 per week, the converted amount will depend upon each State SNAP agency's conversion factor and whether the State SNAP agency converts weekly income or uses month-by-month exact monthly figure (please see 7 CFR 273.10(c)(2)).

Second, conversion is only acceptable when a household receives a full month's income. So for example, if a household begins to receive weekly Unemployment Compensation after the first week of the month, the State SNAP agency would not convert the weekly \$25 payment for that month. Instead, they would add up the number of actual \$25 payments and exclude the total of those \$25 payments for that month.

Implementing This Exclusion

Question 6. When must a State SNAP agency implement this change in SNAP policy?

Answer. As soon as possible. FNS sympathizes with the State SNAP agencies, who must re-program computers, inform and train the staff in local offices, and provide necessary materials. However, this exclusion is now in effect and our clients are entitled under the law to an accurate monthly SNAP benefit. Therefore, State SNAP agencies must act as quickly as possible.

Question 7. Why do the exclusion and the resulting restoration extend back to November 1, 2009, when the Worker, Homeownership, and Business Assistance Act (WHBA), went into effect on November 6, 2009?

Answer. We chose to extend the exclusion back to November 1, 2009, for administrative simplicity. It is easier to instruct everyone to exclude all of the checks in a full month. This is especially true for resources, since SNAP determines eligibility for an entire month, not day by day. Also, dating the exclusion from November 6 could make a household ineligible simply because they applied before that date, while they would have been eligible had they waited to apply.

Restoring Lost Benefits

Question 8. Must State agencies restore benefits to a household whose payment was not excluded after November 1, 2009?

Answer. Yes. WHBA, which excludes these special payments, went into effect when President Obama signed it, November 6, 2009. As of that date, the \$25 weekly payments became excluded income for SNAP. Therefore, on that date, eligible households became entitled to SNAP benefits that did not count the special payments.

Question 9. In the November 19, 2009 memorandum, under the heading Restoring Lost Benefits, this phrase appears in the first paragraph: “Although the State agencies are not responsible for the under-issuances”. What is the significance of this phrase?

Answer. The regulations about restored benefits (at 7 CFR 273.17(a)(1)) begin with this sentence: “The State agency shall restore to households benefits which were lost whenever the loss was caused by an error by the State agency or by an administrative disqualification for intentional Program violation which was subsequently reversed as specified in paragraph (e) of this section, or if there is a statement elsewhere in the regulations specifically stating that the household is entitled to restoration of lost benefits.”

The significance of the phrase in the memorandum was simply to clarify that State agencies must restore lost benefits in this situation, even though the restoration is not based on a State agency’s error or a reversed disqualification.