



MAR 9 2009

United States
Department of
Agriculture

Food and
Nutrition
Service

3101 Park
Center Drive

Alexandria, VA
22302-1500

SUBJECT: Exclusion of Retirement Accounts from Consideration as a Resource

TO: Peggy Fouts
Regional Director
Southeast Region

This is to confirm a conversation you had with Moira Johnston of my staff on March 5 concerning retirement accounts excluded as a resource under the Food and Nutrition Act (the Act) of 2008.

The Act, as amended by the 2008 Farm Bill, excludes any funds in a plan, contract, or account described in the following sections of the IRS code from consideration as a resource when determining eligibility for Supplemental Nutrition Assistance Program (SNAP) benefits: sections 401(a), 403(a), 403(b), 408, 408A, 457(b), and 501(c)(18). In addition it excludes the value of funds in a Federal Thrift Savings Plan account as provided in section 8439 of title 5, United States Code.

For further information regarding the types of accounts that are excluded, please see the attached chart that lists the IRS codes identified in the Act, the type of account that is described in the sections of the IRS code, and a brief description of the account. All the accounts listed in the chart are expressly excluded from consideration as a resource by the Act.

It has come to our attention that there is some confusion about the chart that was included in a question and answer document issued by the National office on August 29, 2008, concerning section 4104 of the Farm Bill, titled, *Summary of Tax-Preferred Savings Vehicles Treatment for Food Stamp Purpose*. This document can be found at the following website: <http://www.fns.usda.gov/snap/rules/Memo/08/082908.pdf>

You indicated that some States interpreted the words "tax-preferred" in the title of the chart to mean that the State agency had to make a further determination whether the account was "tax-preferred" before it could be excluded as a resource for SNAP purposes. This is incorrect. The State must simply determine if the applicant's account is on the list of excluded accounts or not.

The reference to "tax-preferred" in the title of the chart is simply a way to identify these accounts as receiving preferential treatment by the IRS. They have tax advantages that other types of accounts do not. The accounts listed on the attached chart are all tax-preferred – some are tax-deferred as well – but in the end all of them are expressly excluded as a resource by statute.

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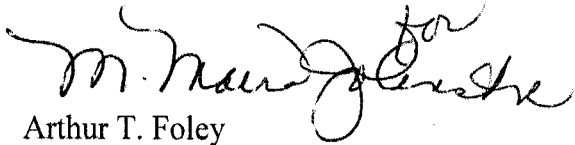
Peggy Fouts
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For your information, following is a link to the informational memo that the National office sent out concerning implementation of the Farm Bill:

<http://www.fns.usda.gov/snap/rules/Memo/08/070308.pdf>

I have also attached a copy of section 5(g)(7) of the Act, exclusion of retirement accounts from allowable financial resources.

Please work with your State agencies to ensure that this policy is implemented correctly. For further assistance, please contact Moira Johnston at 703-305-2515.

A handwritten signature in cursive script, appearing to read "M. Johnston" with a large flourish at the end.

Arthur T. Foley
Director
Program Development Division
Supplemental Nutrition Assistance Program

Attachment 1
Accounts Excluded from Consideration as a Resource by the Act.

Authorized	Plan/Account	What Is It?
Section 401 IRS Code	Traditional Defined-Benefit Plan	Employer-based retirement plan that promises retirees a certain benefit upon retirement, regardless of investment performance.
Section 401(a) IRS Code	Cash Balance Plan	Employer-based "hybrid" plan that combines features of defined benefit and defined contribution plans. Each employee is allocated a hypothetical account, but account balances accrue at a specified rate, rather than depending on investment performance.
Section 401(a) IRS Code	Employee Stock Ownership Plan	Similar to a profit-sharing plan that must be primarily invested in the employer's stock and under which distributed benefits must be offered in the form of the employer's stock.
Section 401(a) IRS Code	Keogh Plan	"Informal" term for retirement plans available to self-employed people.
Section 401(a) IRS Code	Money Purchase Pension Plan	Employer-based defined contribution plan under which annual contributions are fixed by a set formula.
Section 401(a) IRS Code	Profit-Sharing Plan	Employer-based defined contribution plan under which employer contributions may, but need not be, linked to profits. Usually refers to non-matching employer contributions.
Section 401(a) IRS Code	Simple 401(k)	401(k)-type plans available only to small businesses: exempt from certain restrictions and subject to some limitations on employer contributions.
Section 401(a) IRS Code	401(k)	Defined contribution plan that allows employees to defer receiving compensation in order to have the amount contributed to the plan. Commonly referred to as a "cash or deferred arrangement" (CODA). Some 401(k) plans allow after-tax Roth 401(k) contributions.
Section 403(a) IRS Code	403(a)	Plans that are similar to 401(a) plans but are funded through annuity insurance
Section 403(b) IRS Code	403(b)	Tax-sheltered annuity or custodial account plan offered by tax-exempt section 501(c) organizations or public schools. Many are funded by employee contributions that resemble 401(k)s.
Section 408 IRS Code	IRA	Vehicle for tax-deferred retirement savings controlled by individuals rather than employers.
Section 408(p) IRS Code	Simple retirement account IRA	Employer-based IRA (to which employers and employees contribute) available only to small businesses.
Section 408(k) IRS Code	Simplified Employee Pension Plan (SEP)	Employer-sponsored plan available only to small businesses; allows employer to contribute to employee accounts that function as IRAs and are subject mostly to IRA rules. Generally ceased to apply in 1996.
Section 408A IRS Code	Roth IRA	Same as IRA, except that qualified distributions are tax exempt.
Section 457(b) IRS Code	Eligible 457(b) Plan	Funded plan offered by state and local governments or unfunded plan offered by nonprofit organizations.
Section 501(c)(18)	501(c)18 Plan	Plan offered mostly by unions. Had to be set by June 1959 and are now largely obsolete.
Section 8439 of Title 5 USC	Federal Thrift Savings Plan	Plan offered by the federal government to its employees.

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.

Section 5(g)(7) of the Act

(7) EXCLUSION OF RETIREMENT ACCOUNTS FROM ALLOWABLE FINANCIAL RESOURCES.—

(A) MANDATORY EXCLUSIONS.—The Secretary shall exclude from financial resources under this subsection the value of - i) 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 in section 8439 of title 5, United States Code; and (ii) any retirement program or account included in any successor or similar provision that may be enacted and determined to be exempt from tax under the Internal Revenue Code of 1986.

(B) DISCRETIONARY EXCLUSIONS.—The Secretary may exclude from financial resources under this subsection the value of any other retirement plans, contracts, or accounts (as determined by the Secretary).