

FISCAL POLICY INSTITUTE

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July 5, 2011

Ms. Lizbeth Silberman, Director
Program Development Division
Food and Nutrition Service
3101 Park Center Drive, Room 810
Alexandria, Virginia, 22302

Re: Proposed Regulations: SNAP Eligibility, Certification, and Employment and Training Provisions, RIN 0584–AD87

Dear Ms. Silberman:

The Fiscal Policy Institute (www.fiscalspolicy.org) is a nonpartisan research and education organization that focuses on a broad range of public policy issues that affect the quality of life and economic well-being of New York State residents. We are writing to offer comments on USDA’s proposed Supplemental Nutrition Assistance Program (SNAP) regulations implementing the eligibility, certification and employment and training provisions of the 2008 Farm Bill. We thank you for this opportunity.

On average, New York is a relatively wealthy state. For example, it has the fifth highest per capita personal income of the 50 states as estimated by the US Bureau of Economic Analysis. But New York also has a very high degree of income inequality and, for a generally prosperous state, a very high percentage of the state’s residents live below the poverty level. This makes SNAP benefits a very important safety net for many New Yorkers particularly during tough economic times.

A December 2010 report by the Fiscal Policy Institute’s Chief Economist documented the extent of New York’s income inequality and the extent to which that inequality had increased since 1980. “The richest one percent of households increased their share of all income statewide from 10 percent in 1980 to 35 percent in 2007, while in New York City the income share going to the top one percent rose from 12 percent to 44 percent over that span.”¹ So while New York is a relatively wealthy state on average, it has a large number of low and moderate income residents.

¹ Parrott, James, Fiscal Policy Institute, Press Release, *New Data: Extreme Inequality Restrains Growth for Most New Yorkers; NYC and NYS polarization trends expose economic fault line*, December 13, 2010. www.fiscalspolicy.org/FPI_Release_GrowTogetherOrPullFurtherApart.pdf. See also Parrott, James, Fiscal Policy Institute, *Grow Together or Pull Further Apart? Income Concentration Trends in New York*, p. 6. www.fiscalspolicy.org/FPI_GrowTogetherOrPullFurtherApart_20101213.pdf.

The poverty rate for New York State increased from 13.8 percent in 1980 to 14.5 percent in 2007.² This meant that an estimated 2.76 million New Yorkers were poor in 2007. In the following two years, as the Great Recession took its toll, this number increased to over 3 million people for a poverty rate close to 16 percent in 2009.³ The percent of children below the poverty level in 2009 was 20 percent statewide, and this rate was twice as high in the three largest Upstate cities: Buffalo (45.7 percent), Rochester (46.5 percent) and Syracuse (45.3 percent).⁴

With such high poverty rates in a Northeastern state with a relatively high cost of living, SNAP benefits are an important safety net for many New Yorkers. And this safety net is particularly important in bad economic times as shown by the growth in the use of SNAP benefits in recent years. The number of New Yorkers receiving SNAP benefits grew less than one percent in FY 2007 over FY 2006; but, between FY 2007 and FY 2008 when the Great Recession began, this number increased by over 8 percent. In FY 2009 compared to FY 2008, the average number of SNAP participants in New York increased by almost 19 percent; and this level of growth continued from FY 2009 to FY 2010 when the number of SNAP beneficiaries again grew by almost 19 percent.⁵

Overall, the number of New Yorkers receiving SNAP benefits grew by over 53 percent from FY 2007 to FY 2010, from 1.8 million to almost 2.76 million. Given the role that SNAP benefits play in providing essential support for New York's needy families, we welcome USDA's regulations implementing the eligibility, certification and employment and training provisions of the 2008 Farm Bill and reorganizing certain aspects of existing regulations such as reporting rules and group home requirements as well as codifying options that USDA has extended to states via waivers, such as expanded use of telephone interviews.

In general, we are very supportive of USDA's overall approach to the Food, Conservation and Energy Act (FCEA) provisions and our comments highlight the many areas of the proposal that we support. Nevertheless, there are several important changes that should be made in the final regulations. Without these changes, the regulations would fall far short of what the legislation intended and would miss important opportunities to improve the program for the millions of Americans who rely upon its help to meet their basic food needs.

² U.S. Census Bureau, Current Population Survey, Annual Social Economic Supplement, Historical Poverty Tables - People, Table 21. at www.census.gov/hhes/www/poverty/data/historical/people.html.

³ U.S. Census Bureau, Current Population Survey, Annual Social Economic Supplement, Historical Poverty Tables - People, Table 21. *Number of Poor and Poverty Rate, by State: 1980 to 2009*. www.census.gov/hhes/www/poverty/data/historical/people.html.

⁴ U.S. Census Bureau, American Community Survey, Table GCT1704. *Percent of Children Under 18 Years Below Poverty Level in the Past 12 Months (For Whom Poverty Status is Determined)*. http://factfinder.census.gov/servlet/GCTTable?_bm=y&-context=gct&-ds_name=ACS_2009_1YR_G00_&-mt_name=ACS_2009_1YR_G00_GCT1704_ST7&-CONTEXT=gct&-tree_id=309&-geo_id=04000US36&-format=ST-7&-lang=en.

⁵ U.S. Department of Agriculture, Food and Nutrition Service, Supplemental Nutrition Assistance Program: Average Monthly Participation (Persons). www.fns.usda.gov/pd/15SNAPpartPP.htm.

Dependent Care Deduction: 7 CFR §273.9(d)(4)

- The lifting of the cap on dependent care costs that can be deducted from SNAP household budgets was an important victory for low-income families. We strongly support this change in policy and the inclusion of transportation and activity fees as deductible costs. Including those costs will ensure that the deduction more fully reflects a household's total dependent care costs.
- We urge the Department to make the following improvement so that families may take full advantage of this critical deduction. The Department should:
 - Explicitly allow the deduction for households with an individual looking for work;
 - Adopt a final rule that does not restrict the definition of a dependent through age or unclear terms such as “incapacity”;
 - Urge states to use reasonable verification policies;
 - Make clear that the deduction is allowable for those receiving subsidies; and
 - Clarify that the deduction is allowable for payments made to non-household family members.

Telephonic Signature: 7 C.F.R. §§273.2(b) & (c).

- We strongly support the Department's decision to accept other forms of non-verbal assent, including gestured or visual signatures, as valid signatures for SNAP applications. In addition, we appreciate the Department's decision to include specific requirements for various types of signatures and non-paper applications.
- With the expansion of client access provided by the acceptance of non-verbal forms of assent and non-paper applications, the Department must make sure that longstanding key client protections are not overlooked. The final regulations should:
 - Provide all applicants with a copy of their completed application whether they complete a paper application in the office or an online application from their home. An alternative would be to provide applicants with a copy of the information they provided to the state which will be used to determine the applicants' eligibility for and amount of benefits.
 - Clarify that in giving households the opportunity to review the information in the application that:
 - The failure of a household to return the form does not bring any sanction or termination of benefits.
 - The failure of a household to correct information will not create an inference of willful misrepresentation that can be used against the client in an Intentional Program Violation (IPV).
 - All applications (paper or electronic) must be processed under the normal 7 or 30 day processing standard for SNAP applications even if the household fails to return the copy of the completed application.
 - Delete the mandate for a signature on periodic reports. The preamble states that the proposed signature changes “would apply to applications submitted at initial certification and recertification and to reports submitted under the client periodic reporting systems, allowed by SNAP regulations (monthly, quarterly, or simplified reporting systems).” Periodic reports are for households to update the

agency of any changes to their circumstances, nothing in the statute requires that households sign periodic report forms to stay in compliance with program requirements and the regulations should not impose this additional requirement.

Telephone Interviews: 7 C.F.R. §273.2(e)(2) & 7 C.F.R. §273.14(b)(3)

- Although not required by the Farm Bill changes, we support the Department's decision to codify the beneficial and wide use of telephone interviews in lieu of face-to-face interviews.

We fear, however, that in its reorganization of this section of the regulations that the Department has inadvertently dropped certain households' right to a telephone interview. This problem should be corrected so that households with hardships should continue to have a right to a telephone interview.

- We encourage USDA to continue to work with states to reduce the requirement for interviews where other methods of contact suffice. For example, an interview may be superfluous at recertification for senior and disabled households when those households return a complete form and the state could otherwise approve the case except for the interview. Households should not be denied or terminated, however, without being offered an interview.
- Moreover, it is critical that households who need extra assistance completing the process be able to obtain it.
 - The final regulation language must be clear that a household can receive a face-to-face interview if requested. Although telephone interviews provide benefits for some households, this is not true for *all* households and no household should be denied the right to receive face-to-face assistance.
 - The final regulations should clearly state that when telephone interviews are used the state agency must make them accessible to all households, including but not limited to households with limited English proficiency and individuals with disabilities.

Reorganization of Periodic Reporting: 7 C.F.R. § 273.12

- The Department's decision to reorganize the sections of the regulations pertaining to reporting rules was not required by the Farm Bill. While we appreciate the Department's efforts to make this section of the rules more transparent, we are deeply disappointed that the agency did not use this as an opportunity to provide basic client protections to all versions of periodic reporting (monthly, quarterly or semi-annually) that have long existed for monthly reporting – listed primarily under 7 CFR 273.21 (f)(h) and (j), especially those that require assisting households having difficulty with the forms and procedures when late/incomplete reports are submitted.
- The proposed rule imposes reporting changes in simplified reporting that are not required under statute, adding further complexity and client barriers to the program. Simplified reporting aims to reduce unnecessary paperwork burdens, and does so, in part, by limiting required interim reporting to income that exceeds the gross income limit. In particular, a change in ABAWD work hours should not be a mandatory change report; it be treated as all other changes. Nothing in the statute requires this additional report and there is no reason to apply additional burdens on this group.

- When households report a change that did not have to be reported, their benefits should not be threatened. The statute allows states to act on the information, request verification or in some cases delay action. The use of Request For Contact (RFC) procedures, with its automatic termination of the household for failure to respond, should be limited to required reports and circumstances in which there is legitimate concern that a household has not reported income over 130 percent of poverty.

Excluding Retirement and Education Accounts: 7 C.F.R. § 273.8(e)(2)(i) and § 273.8(e)(20)

- We agree with the Department’s proposed rule for excluding tax-preferred retirement and education savings accounts from SNAP resource determinations.
- To maximize use of both exclusions, we urge the Department to issue guidance on how to identify on account statements or tax forms the types of accounts that are excludable. These accounts are authorized under federal tax law and USDA is best positioned to help provide detailed guidance to states on how to identify and verify these types of accounts.

Employment and Training Funding for Job Retention Services: 7 C.F.R. § 273.7(e)(1)(viii)

- We fully support extending SNAP employment and training (E&T) services to SNAP participants who have begun working and the proposed regulations do a good job of adding this component to a state’s E&T program.
- There are several ways in which the proposed regulations can improve states’ ability to serve new workers:
 - Allow states to identify when the 90 days of services start;
 - Explicitly include child care and transportation costs in the listing of allowable expenses; and
 - Allow states to serve former SNAP participants within the 90 day limit.

Military Combat Pay: 7 C.F.R. §273.9(c)(20)

- We strongly support the exclusion of a military “combat pay” from income for SNAP purposes and believe this is an important policy that helps many low-income military families receive food assistance.
- The Department should provide clear guidance on what constitutes “special pay” so that caseworkers can accurately identify families eligible for the exclusion. The exclusion relates to federal policy with respect to military personnel and USDA is best positioned to provide detailed guidance to states on this matter.

Standard Deduction and Minimum Benefit Adjustments: 7 C.F.R. § 273.9(d)(1)(iii) and 7 C.F.R. § 273.12

- We applaud the straightforward proposed rule that will help household SNAP benefits keep pace with inflation.
- We urge USDA to ensure that states with Combined Application Projects and all waivers with specialized benefit calculations provide for annual adjustments on a timely basis.

Option to Average Student Work Hours: 7 C.F.R. § 273.5 (b)(5).

- We strongly agree with the policy to allow states to average student work hours over the course of a month.

- Because of the episodic nature of student employment, we believe states should be able to average student work hours over the course of an academic period like a semester or trimester.

Transitional Benefit Allowance: 7 C.F.R. §§273.26 – 273.32

- We support the decision to allow participants of State-funded cash assistance programs (SFCA) to be eligible to receive transitional SNAP benefits when they are no longer connected to the cash assistance program.
- The purpose of TBA is to keep former TANF recipients connected to SNAP benefits with less administrative hassle and paperwork. We urge the Department to make the following changes to poor policy.
 - Clarify that TBA is available for households leaving cash assistance whether it is funded with TANF funds, MOE funds, or state funds that do not count towards MOE.
 - Clarify that households that were under partial sanctions in TANF and did not leave TANF *due* to the sanction are eligible to receive TBA.
 - Make clear that states may only adjust a household's TBA because of *income* information that they learn about from another program or to prevent a former household member from receiving duplicative benefits. The regulation at 7 C.F.R. §273.27(a)(1) allows states to adjust benefits to account for any changes in household circumstances that it learns from another state or federal mean-tested assistance program in which the household participated. The final regulation should be revised to correctly reflect that under this option states may adjust TBA only for changes in income or to prevent duplicative benefits upon the application of a former TBA household member.

Thank you for your consideration of these comments.

Sincerely,

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