



United States
Department of
Agriculture

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Food and
Nutrition
Service

3101 Park
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Alexandria, VA
22302-1500

SUBJECT: Questions and Answers on Certification Issues from the 2008 Farm Bill -- #2

TO: All Regional Directors
Food Stamp Program

Attached are additional questions and answers in response to issues raised by States on the Food Stamp Program provisions of the Food, Conservation, and Energy Act of 2008 (P.L. 110-246) (FCEA).

Please direct any questions to the appropriate Regional contact in the Certification Policy Branch.

A handwritten signature in black ink, appearing to read "Arthur T. Foley" with a stylized flourish and the initials "FOL" written below it.

Arthur T. Foley
Director
Program Development Division

Attachments

Attachment 1

Questions and Answers on Certification Policy Provisions of the Food, Conservation, and Energy Act of 2008 (P.L. 100-246) (FCEA) -- #2

Section 4103 – Dependent Care Cap Removal

1. **Question:** May State agencies allow the cost of transportation connected with dependent care costs incurred by households?

Answer: State agencies have addressed the issue in different ways in their policy guidance. To establish a consistent policy, FNS intends to establish a national policy via rulemaking. States may make reasonable interpretations of the regulations until those rules are issued.

Section 4104 – Asset Indexation, Education and Retirement Accounts

2. **Question:** Does the legislation exclude retirement accounts from consideration as resources?

Answer: Yes. Several specific types of retirement plans, contracts and accounts are excluded. These include:

- 1) 401(a) plans, which are commonly referred to as “tax qualified plans” or “tax qualified retirement plans,” and which may include qualified cash or deferral arrangements (so called “section 401(k) plans).”
- 2) 403(a) plans which are similar to 401(a) plans but are funded through annuity insurance;
- 3) 403(b) plans which are retirement plans for certain employees of public schools and tax-exempt organizations or ministers;
- 4) 408 accounts which are traditional Individual Retirement Accounts and Annuities (IRAs);
- 5) 408A plans which are Roth IRAs where qualified distributions are tax-free;

6) Eligible 457(b) plans which are deferred compensation plans established by state and local governments and other tax-exempt employers that are non-governmental;

7) 501(c)(18) trusts that were created before June 25, 1959 for union members who make contributions to their retirement plan;

8) A plan under Section 8439 of Title 5 USC which is the Federal Thrift Savings Plan -- a 401(k)-type plan offered by the federal government to its employees; and

9) Other retirement programs or accounts 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.

See attached chart (Attachment 2).

Section 4105 – Expansion of Simplified Reporting

3. Question: What is the policy for putting able-bodied adults without dependents (ABAWDs) on simplified reporting; did the FCEA make any changes to current reporting requirements for ABAWDs?

Answer: The FCEA did not affect policy with regard to placing ABAWDs on simplified reporting (SR). Under the regulations, State agencies may place ABAWDs on SR. However, ABAWDs that are not otherwise exempted must file a report when they stop working an average of 80 hours per month. See 7 CFR 273.12(a)(1)(viii). ABAWDs that are exempted from this reporting requirement include those that are living in an area with an FNS-approved ABAWD waiver, are covered under the 15 percent State exemption, or are otherwise individually exempted from work requirements. To maximize the number of ABAWDs that can be placed on SR, State agencies may want to consider certifying them for 4 months and use available 15 percent ABAWD exemptions to cover any instances of non-compliance. If an ABAWD subject to the additional reporting requirement fails to report when work hours fall below the required average of 80 hours per month, the State agency may assign the appropriate number of exemptions to the case retroactively when the noncompliance is discovered. If the ABAWD is not working at the next redetermination or is not otherwise exempt, he/she would be ineligible for future benefits.

Section 4106 – Transitional Benefits

- 4. Question:** A food stamp household received the Transitional Benefit Alternative (TBA) when it ceased to receive Temporary Assistance to Needy Families (TANF) cash assistance. May the same household receive TBA again when it ceases to receive a state-funded cash transitional benefit that is paid for a period of time after the TANF case closes?

Answer: Yes, if the household meets certain requirements. First, the household must cease to receive TANF as defined in the food stamp regulations (see 7 CFR 273.2(j)(2)(i)(A)). Second, the State agency's state-funded transitional benefit must be cash assistance under a state-funded public assistance program for households with children. If these requirements are met, the household is eligible to receive TBA when it ceases to receive TANF, and again when the household is no longer receiving the state-funded transitional assistance.

- 5. Question:** Are households participating in the following State programs eligible for TBA:

- State-funded general assistance benefits (families with or without children)?
- County-funded assistance programs?
- State-funded refugee cases?

Answer: The Implementation Guidance, issued July 3, 2008, explained that Section 4106 of the FCEA allows State agencies to provide transitional food stamp benefits to households with children that cease to receive cash assistance under a State-funded public assistance program. Therefore, only households with children that participated in State-funded programs would be eligible for transitional food stamp benefits. The amendment to section 11(s) of the Food and Nutrition Act does not authorize TBA for households ceasing to receive county-funded assistance programs. See also the definition of "State" at 7 CFR 271.2.

Section 4119 – Telephonic Signature

- 6. Question:** Will States be eligible to receive Federal funding for the development of telephonic signature systems?

Answer: Administrative matching funds available to States may be used for the purpose of developing State telephonic signature systems. The FCEA did not authorize any additional funding for these projects.

7. **Question:** Will FNS identify and share information on the States that choose to implement this option?

Answer: Yes. FNS will share information about State development of telephonic signature systems either through the PartnerWeb or more informally during conferences or meetings with State agency representatives.

8. **Question:** Can this telephonic signature be used with an on-line application, telephone application, or recertification?

Answer: Yes. However, the State agency needs to distinguish between recorded signatures and other electronic means of capturing an applicant's signature. State agencies that intend to develop a telephonic signature system must adhere to the implementing guidance issued on July 3, 2008. As stated in Q&A #1, other means of electronically recording assent are possible.

9. **Question:** Can the telephonic signature be used for change reports or is it limited to applications?

Answer: Use of telephonic signature is limited to filing applications for food stamp benefits. The regulations do not require change reports to be signed or even to be in writing (see 7 CFR 273.12(b)(1) and (b)(3)).

Section 4301 -- Evaluation of Direct Certification of School-Aged Children for NSLP Meals

10. **Question:** What is the SNAP agency's role in this? Which State agency (Education or SNAP) will be tasked with assessing effectiveness of Direct Certification?

Answer: Section 4301 tasks USDA with preparing a report to Congress. FNS does not anticipate any extra work on the part of SNAP agencies because the information required has already been provided.

Attachment 2

**Questions and Answers on Certification Policy Provisions of the Food, Conservation,
and Energy Act of 2008 (P.L. 100-246) (FCEA) -- #2**

Summary Of Tax-Preferred Saving Vehicles
Treatment For Food Stamp Purposes

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.

Attachment 2

Summary Of Tax-Preferred Saving Vehicles
Treatment For Food Stamp Purposes

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.

Attachment 2

Summary Of Tax-Preferred Saving Vehicles
Treatment For Food Stamp Purposes

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.