

May 6, 2005

SUBJECT: Impact of the Defense of Marriage Act on Food Stamp Program Eligibility

TO: All Regional Directors  
Food Stamp Program

This memorandum is intended to address the impact of State laws that permit same sex marriages on Food Stamp Program eligibility requirements. Several states are currently considering legislation to legalize marriage between same sex partners, have court orders legalizing these marriages, or have passed legislation to allow civil unions between same sex partners. Therefore, questions have come up regarding how to define the term "spouse" when making eligibility determinations.

Section 3(i)(2) of the Food Stamp Act requires that, in determining household status and benefit levels, spouses who live together shall be considered to purchase their food and prepare their meals together even if they do not do so. The Food Stamp Act does not, however, define the term "spouse."

The Defense of Marriage Act (DOMA), 1 U.S.C. 7, corrects that omission by defining marriage, for purposes of any "Act of Congress, or any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States," as being a legal union between one man and one woman as husband and wife. The DOMA also defines the term spouse as a person of the opposite sex who is a husband or wife.

Under the Food Stamp Act, same sex married partners cannot be considered spouses. Therefore, the presumption that applicants who are spouses purchase and prepare meals together does not apply. Such individuals could, of course, be considered households under Section 3(i)(1)(B) if they "live together and customarily purchase food and prepare meals together for home consumption."

The question of civil unions, as opposed to marriage between same sex partners, is not quite as clear but only due to a lack of clarity regarding whether these individuals would be considered spouses. As with same sex marriages, even if these individuals are considered spouses under state law, they may not be considered such for purposes of the Food Stamp Program if they do not meet the definition of spouse under Defense of Marriage Act. Therefore, the presumption of purchasing food and preparing meals together would not apply. Although the presumption of purchasing food and preparing meals together would not apply, these individuals could be considered households under the Food Stamp Act if they purchase and prepare meals together.

If FNS staff have any questions regarding this memo, they should contact Susan Burgess at (703) 305-2437. If State agency officials have questions, they should contact the FNS regional office for their area.

/s/

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Director  
Program Development Division