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United States
Department of
Agriculture

Food and
Nutrition
Service

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SUBJECT: Clarification of FCEA Certification Provisions
Questions and Answers #1

TO: Regional Directors
Food Stamp Program
All Regions

Attached are questions and answers in response to issues raised by States during nationwide teleconferences on the Food Stamp Program provisions of the Food, Conservation, and Energy Act of 2008 (P.L. 110-246) (FCEA), which was enacted on June 18, 2008.

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

Arthur T. Foley
Director
Program Development Division

Attachment

AN EQUAL OPPORTUNITY

Thursday, July

The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

Questions on Certification Policy Provisions of the Food, Conservation, and Energy Act of 2008 (P.L. 110-246) (FCEA).

Section 4103 – Dependent Care Cap Removal

1. Question: Will it be necessary to verify child care expenses?

Answer: The change in dependent care cost deduction has not resulted in a change in the current verification requirements for dependent care costs. Therefore, child care expenses must be verified if questionable or in all cases, as a State agency option, as provided in 7 CFR 273.2(f)(2) and 273.2(f)(3), respectively.

2. Question: Do State agencies have the option of removing the cap for all households at their next scheduled review?

Answer: FCEA entitles persons to an uncapped dependent care deduction on October 1, 2008. State agencies must ensure that all new cases will receive the full dependent care deduction for which they are eligible by this date. This will probably require systems changes to remove the current caps. Similarly, State agencies with the capability of completing the change for all households via a mass change must do so for the October 2008 issuance. Other State agencies that do not have this capability may implement the un-capped deduction for ongoing cases on a case-by-case basis, at the first opportunity to enter the case file (i.e., to record information or changes or at the next redetermination). Any participating household with dependent care costs in excess of the cap that have been verified in the case file must receive restored benefits back to the October issuance.

3. Question: Does this policy apply to all dependent care, or just child care?

Answer: The removal of the cap on the deduction for dependent care costs does not change the dependents to whom the deduction applies, as specified in section 5(e)(3) of the Food and Nutrition Act of 2008 and 7 CFR 273.9(d)(4). The amendment removes the caps of \$200 per month for dependent children under 2 years of age and \$175 per month for all other dependents. It applies to out-of-pocket dependent care costs that are not already being reimbursed, not just to child care costs. If dependent care costs are already being paid for by a third party, there is not a deductible expense.

4. Question: Is there a relationship between un-capping the deduction and FSET reimbursements?

Answer: There is no relationship between Section 4103, Eliminating the Dependent Care Deduction Cap, and reimbursements for dependent care in the Employment and Training Program. However, it should be noted that the requirement that expenses paid for under section 6(d)(4) of the Food Stamp Act (reimbursement for dependent care costs necessary for participation in employment and training programs) will remain in effect under the new law after October 1, 2008.

5. Question: May a State agency un-cap the deduction for all approvals that occur in September, even if that would un-cap a household's deduction for September?

Answer: No, the change in the law is not effective until October 1, 2008.

Section 4105 – Expansion of Simplified Reporting

6. Question: Under the revised policy, when will elderly disabled households need to report that their income exceeds the gross income limit?

Answer: Simplified Reporting (SR) policy for households with gross income above this threshold was established in August 2002 and December 2001 and implementation of the FCEA provision should be based on this precedent. Effective October 1, 2008, SR requirements for households with no earned income in which all adult members are elderly or disabled persons are as follows:

At initial application or recertification, such households with gross income over the gross income limit (but not the net income limit) have no further Federal reporting requirement until they must recertify or file an interim report at the 12-month interval, whichever comes first. Such households with income at or below the gross income limit must file a report if their income goes over the gross income limit. Once the State agency acts on the reported change and the household remains eligible, there is no further Federal reporting requirement until they must be recertified, or must file the interim report at the 12-month interval.

This policy will also apply to households with no earned income and in which all adult household members are elderly or disabled that are transitioned from Change Reporting (CR) to SR through a mass change or an individualized case action.

7. Question: Does this provision require a State agency to change its method of contacting CR households certified for 24 months under 7 CFR 273.10(f)(1)?

Answer: Yes. State agencies will need to ensure that households that are transitioned to SR understand what they must report and have the correct forms to use. The requirements for the interim report under SR are set forth at 7 CFR 273.12(a)(1)(vii).

8. Question: May elderly/disabled households with earnings be certified for 12 months without requiring an interim report at 6 months?

Answer: No. Households with earnings must have a review every six months; this may consist of either a redetermination at 6 months or an interim report at the 6 month interval of a 12-month certification period. The FCEA did not change this current policy.

9. Question: If a State agency has a waiver to act on all changes, what must the State agency do to add a group of households the FCEA has added?

Answer: The State agency will need to submit a waiver modification request.

Section 4107 – Increasing the Minimum Benefit

10. Question: Will the increase in the minimum benefit change the prohibition of issuing benefits less than \$10 for the initial month of certification, as required in 7 CFR 273.10(e)(2)(ii)(B)?

Answer: No. This regulatory provision originates from the Food Stamp Act at Section 8(c)(1), which was not amended by FCEA.

Section 4119 – State Option for Telephonic Signature

11. Question: Has any State agency opted to utilize a recorded verbal assent as a telephonic signature?

Answer: One State agency has expressed interest in this option in the past, but no State agency has opted to implement this provision.

12. Question: Does a PIN constitute a valid signature?

Answer: Section 4119 sets forth requirements for recorded verbal assents over the telephone. The law does not preclude other approaches to electronic assent that are not verbal, as already authorized under 7 CFR 273.2(c)(1). For example, a telephonic system could require the applicant to enter a passcode to enter the system and require pressing a key to indicate that the applicant has signed the application. The key is that the State's legal counsel must agree that the method used to indicate that the application is signed constitutes a legal signature in State law.