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and Community Prosperity

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Ms. Lizbeth Silbermann
Director
Program Development Division
FNS
3101 Park Center Drive, Room 810
Alexandria, VA 22302

Re: Proposed Rules: SNAP Eligibility, Certification, Employment & Training, RIN 0584-AD87

Dear Ms. Silbermann:

We are writing to offer comments on USDA's proposed Supplemental Nutrition Assistance Program (SNAP) regulation which would implement eligibility and resource limit provisions of the 2008 Farm Bill. Woodstock Institute is a leading nonprofit research and policy organization in the areas of fair lending, wealth creation, and financial systems reform. We work locally and nationally to create a financial system in which lower-wealth persons and communities of color can safely borrow, save, and build wealth so that they can achieve economic security and community prosperity. In Illinois, we worked with the Illinois Asset Building Group to support adoption of categorical eligibility for SNAP and other improvements to asset rules in public benefit programs.

We support the investments in and improvements to SNAP in the 2008 Farm Bill and welcome USDA's detailed proposal on how states will implement these aspects of the law. One of the most significant SNAP provisions of the statute and proposed rules *promotes savings by no longer counting tax-preferred retirement accounts and education accounts toward the resource limit*. We are very supportive of this provision but there are a few important issues that must be addressed in the final regulation.

Excluding Retirement Accounts

Section 4104 (b) of the FCEA excluded certain tax-preferred retirement accounts from countable resources when determining eligibility for SNAP. Recognizing the importance of building household assets in creating financial security, Congress sought to encourage savings through retirement accounts by disregarding these accounts when determining a household's need for food assistance. Then-Chairman of the Senate Committee on Agriculture, Nutrition and Forestry, Senator Harkin, explicitly highlighted the importance of resources to low-income households:

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“Many agree that it is counterproductive to discourage savings by forcing people to liquidate their retirement savings or other financial assets when they lose their jobs and need to turn to food assistance to feed their families. Policymakers from across the political spectrum agree that asset development is important to helping low-income Americans make a permanent transition out of poverty as well as avoiding it in their later years This bill ensures that all retirement accounts are excluded from a household’s financial assets when determining whether or not they are eligible for food assistance.”¹

The statute mandates that contracts, plans and accounts described in specific Internal Revenue Code (I.R.C.) sections, including future versions, be excluded from resources. Additionally, the statute gives the Secretary the authority to exclude other retirement accounts, plans and contracts. Nothing in the language limits this authority to entities described in the listed I.R.C. sections, or indeed in the I.R.C. at all.

Recommendations

We strongly support the proposed regulation, as it largely implements the statutory provision as written, but wish to raise a technical issue and suggestion for implementation. The statute clearly states that any “plan, contract or account” that falls within a listed section of the I.R.C. is excluded from the resource test. It specifies retirement savings vehicles under section 408A of the I.R.C. in this listing. The regulations (and preamble) refer to “408A plans” rather than any retirement vehicle created under the section as a whole, implying that other 408A accounts (or contracts, if they exist in this form) are not exempted. This is the only instance where the regulation narrows the language of the statute. Households may have no need, other than this provision concerning SNAP eligibility, to understand whether their retirement savings is treated as a 408A plan or a 408A account, and may thus fail to document that the savings can be excluded from the resource test. We recommend that the final regulations consistently refer to the full range of savings vehicles defined in the I.R.C. in order to limit confusion for households that may not be fully aware of the tax code’s treatment of their retirement savings.

While we fully support the intent of the provision — excluding all retirement accounts with a federal tax preference — we are concerned that caseworkers and households alike may not know how to identify and verify which savings accounts are tax-deferred under the listing in federal regulations. We fear that without detailed guidance, caseworkers may improperly deny eligible households. To improve the likelihood that eligible households receive the full benefit of this important change, we strongly encourage the Department to provide operational level guidance on how to determine whether a financial account, plan or contract is excluded under the law due to a federal tax preference. The chart the Department attached to the August 29, 2008 Questions and Answers on Certification Issues from the 2008 Farm Bill was an important first step in helping identify the types of retirement savings that are excluded under each section of the I.R.C. For eligibility workers and households, however, there is little additional guidance on how such savings can be readily identified. In many cases, to be able to exclude the account, plan or contract, a household will need to provide paperwork showing that a particular account is, in fact, one characterized by an appropriate I.R.C. section.

¹ 154 Cong. Rec. S4750 (daily ed. May 22, 2008), available at: <http://www.gpo.gov/fdsys/pkg/CREC-2008-05-22/pdf/CREC-2008-05-22-pt1-PgS4743-3.pdf>.

The Department should work together with the IRS to develop guidelines for how workers can identify tax preferred retirement accounts that meet IRS requirements under the specified sections of the I.R.C. Individual states should not have to conduct this research on federal tax treatment of retirement accounts independently. As a federal agency, the Department is best situated to assist states in how to operationalize this provision given that the rules flow from the intersection of two federal statutes. Since eligibility workers are required to assist households in obtaining necessary verifications, this will help households identify the information they need to claim a particular account should be excluded. Relying on a federally determined list or procedure of identifying an account as excludable will reduce errors as well as state agencies' anxieties about fully implementing this provision.

Excluding Education Accounts

Education savings accounts are an important resource for individuals seeking to improve their children's education and job opportunities. Congress recognized that including these accounts in determining eligibility for SNAP discouraged savings and destabilized vulnerable families and sought to ensure that families were not forced to liquidate these accounts when they needed food assistance after losing a job or other source of income. The FCEA included a provision which excludes education savings accounts from assets to ensure that low-income households who save for their children's education do not lose those savings if they find themselves in need of temporary food assistance.

Similar to the provision excluding tax-preferred retirement accounts, the proposed rule excludes all tax-preferred education savings accounts from resources. There are currently two types of education savings accounts that receive tax-preferred status:

- Qualified tuition programs in section 529 of the I.R.C., which allow owners to contribute to an account or directly prepay for a student's education costs.
- Coverdell Education Savings Accounts in section 530 of the I.R.C., which are similar to individual retirement accounts but pay a student's education expenses.

While the statute and proposed regulations give the Secretary the discretion to exclude other education accounts, contracts or programs, it does not mandate the exclusion of any future tax-preferred education account included in these I.R.C. sections. Yet, the rationale for exempting similarly-treated accounts is the same as for those currently exempted. Indeed, the FCEA mandated the exclusion of *future* types of retirement accounts determined to be tax-exempt under the same provisions as *currently* mandated by the FCEA. We urge the Secretary to exercise the discretion granted to amend the regulation to explicitly exclude any future education accounts housed in these sections of the I.R.C.

The proposed regulations adequately implement the provision excluding tax-preferred education accounts. We fear, however, that without further implementation guidance on how to identify a tax preferred education savings vehicle that the provision may never reach its full potential.

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Recommendations

Eligibility workers may find this provision, like the exclusion of tax-preferred retirement accounts, to be confusing to apply without further guidance on how to identify excluded education accounts. Because there is a wide variety of education savings instruments, with different account statements, it may be difficult to identify the tax status of a particular account. The Department should issue guidance outlining the process by which eligibility workers may identify an education savings account that must be excluded under this provision. While a chart similar to the retirement account chart included in the August 29, 2008 Questions and Answers on Certification Issues from the 2008 Farm Bill -- #2, would be helpful, more information on how to identify the tax status on an account statement is necessary.² Relying on a federally determined list or way of identifying an account as excludable will reduce errors as well as state agencies' anxieties about fully implementing this provision.

Thank you for your consideration.

Sincerely,



Dory Rand
President

DR/bab

² For example, <http://www.savingforcollege.com> lists every state's 529 plans, as well as many Coverall ESA providers. States may have similar resources identifying education savings options that could be made available to eligibility workers.