



NATIONAL
IMMIGRATION
LAW CENTER
www.nilc.org

LOS ANGELES
HEADQUARTERS
3435 Wilshire Boulevard
Suite 2850
Los Angeles, CA 90010
213 639-3900
fax 213 639-3911

WASHINGTON, DC
1101 14th Street, NW
Suite 410
Washington, DC 20005
202 216-0261
fax 202 216-0266

OAKLAND
405 14th Street
Suite 1400
Oakland, CA 94612
510 663-8282
fax 510 663-2028

Mr. Matthew Crispino
Program Development Division - Room 800
Food and Nutrition Service, USDA
3101 Park Center Drive
Alexandria Virginia, 22302

June 15, 2004

Re: Proposed Rule Implementing the Farm Security and Rural Investment Act of 2002

Dear Mr. Crispino:

The National Immigration Law Center is a non-profit organization dedicated to protecting and promoting the rights and opportunities of low-income immigrants. We provide technical assistance, training, and publications for community-based organizations, health care and social service providers, immigrant rights, legal, research, and government agencies. We also work with groups across the country to ensure that low-wage immigrant families can secure critical supportive services, such as food stamps. We are submitting comments on the USDA's proposed rule implementing the Farm Security and Rural Investment Act of 2002 ("Farm Bill"), as it affects access to food stamps for low-income immigrants. 69 Fed. Reg. 20,723-64 (April 16, 2004).

Congress took a significant step toward restoring food stamps for immigrants when it passed the 2002 Farm Bill. We greatly appreciate the USDA's efforts to work with immigrant organizations and state agencies to clarify the law, and to address the barriers that continue to prevent eligible families from securing essential benefits. The guidance documents published since the passage of the Farm Bill have been particularly helpful in this regard. The proposed rule also includes important provisions that should be retained. We would like to suggest a few technical clarifications, and procedures to help ensure that low-income children and their parents can secure the nutritional assistance that they need and to which they are entitled under current law.

Improving Access to Food Stamps for Children in Immigrant Families

Congress intended to remove the barriers that prevent children in immigrant families from securing food stamps. For example, in providing benefits to children regardless of their date of entry, the Farm Bill explicitly exempted them from sponsor deeming.¹ As the USDA recognized, this aim is thwarted if the sponsor's income is added to households comprised of sponsored parents and children. The proposed rules address this issue by attributing a discounted amount to the households with sponsored children. Although this is a step in the right direction, the proposed rules do not give full effect to the

¹ Under deeming, the income and resources of a sponsor are counted in determining eligibility, often rendering the immigrant ineligible as "over-income" for the program.

congressional goal of providing assistance to children, without regard to a sponsor's income.

The proposed rules add a *portion* of the sponsor's income to households with a sponsored immigrant parent and child. But adding even a portion of the sponsor's income adversely affects the child's benefits, contrary to Congress' goals.

To resolve this issue, the household should be divided into different units. In a household with a sponsored parent and two children (either sponsored immigrant or U.S. citizen children), for example, the two children should be considered separately, with only their parent's income counted in determining their eligibility. Then the sponsored parent's eligibility would be determined separately, with the sponsor's income considered. Alternatively, the sponsored immigrant could be allowed to "opt out" of the household, and be treated under the state's procedures for "PRWORA ineligible" immigrants.

The current rules also fail to provide equal treatment to households comprised of sponsored immigrants and *U.S. citizen* children. According to the Urban Institute, 85% of immigrant-headed households include at least one U.S. citizen, typically a child.² Immigrant groups across the country have expressed concerns about the food stamp rules' effect on these "mixed immigration status" families. The current rules do not provide a disregard for the U.S. citizen children with sponsored immigrant parents. In those households, *all* of the sponsor's countable income is added, reducing or even eliminating food stamp benefits for the children.³ Congress could not have intended to provide less assistance to households with U.S. citizen children. The rules should be amended to ensure that U.S. citizen children with sponsored immigrant parents receive the same level of assistance as similar households with sponsored immigrant children.

USDA should adopt the same approach for these households. If the USDA chooses not to adopt the separate assistance units method described above, it should allow the sponsored immigrants in these households to "opt out" and be treated as "PRWORA ineligibles." The more restrictive deeming rules undermine Congress' attempt to assist vulnerable groups such as children and persons with disabilities in avoiding hunger and the many developmental and health problems associated with it.

Other Sponsor Deeming Issues

The proposed rules include helpful provisions that should be retained, including the ability of sponsored immigrants to "opt out" of the assisted unit, if the family is concerned about Attorney General notification under the

² Michael Fix, Wendy Zimmermann and Jeffrey S. Passel, *Integration of Immigrant Families In the United States*, Urban Institute (July 2001).

³ Reducing the food stamp allocation of unsponsored family members based on a sponsor's income also violates the terms of the affidavit of support, which in no way obligates the sponsor to provide for other family members.

“indigence” exemption, and a provision encouraging states to ensure that the immigrant consents to any information sharing with the Attorney General or the sponsor.

The current rules specify that sponsored immigrants are ineligible for food stamps until they provide information or verification necessary for sponsor deeming. However, the rules also provide that if a sponsored immigrant does not cooperate, “other adult members of the alien’s household are responsible for providing the information and verification . . .” This provision, which is inconsistent with other food stamp rules, should be deleted. If an individual fails to provide his or her SSN or immigration status, for example, the individual is treated as ineligible, and the other members of the household are not required to provide this information in order to retain their eligibility for food stamps. The same principle should apply in cases where immigrants do not provide information about their sponsor.

Advocates across the country report on the difficulty of securing information about sponsors. Requests for information about a sponsor’s income and resources chill participation in the program. The affidavits of support are notoriously unavailable. In many cases, neither the sponsor nor the SAVE system has ready access to the affidavit, and in some cases, the sponsor refuses to cooperate in providing income information or is no longer in contact with the immigrant. Where an immigrant is exempt from deeming, such requests are not relevant in determining eligibility. Requiring immigrants to solicit this information from abusive, uncooperative, or otherwise unavailable sponsors undermines the very goal of these exemptions: to provide nutrition assistance to immigrants who would go hungry (or be subject to abuse) without such assistance. Consistent with USDA’s January 2003 guidance,⁴ the final rules should instruct states not to require immigrants to provide sponsor information in cases where it is irrelevant to eligibility.

If the immigrant can provide the affidavit of support, but does not have current income information from the sponsor, state agencies should rely on the affidavit as evidence of the sponsor’s income. The immigrant or sponsor should be allowed to rebut this presumption with evidence of current income. If the immigrant and sponsor are cooperating in providing income information but don’t have access to the affidavit of support, consistent with other verification rules (such as proving 40 quarters of work history), agencies should provide benefits pending verification of the affidavit. Section 5 of the Food Stamp Act, 7 U.S.C. §2014(i)(2)(C)(i), should be read to require applicants who choose to participate but do not meet an exemption from deeming to provide information that is actually or reasonably available to them.

⁴ USDA, “Non-Citizen Requirements in the Food Stamp Program” (January 2003)(Section III), available at www.fns.usda.gov/fsp/rules/Legislation/pdfs/Non_Citizen_Guidance.pdf.

Sponsor Liability

Concern about sponsor liability already prevents eligible immigrants from seeking critical assistance,⁵ and threatens to undermine the goals of the food stamp restoration. The USDA has provided helpful guidance on sponsor liability, clarifying that sponsors receiving food stamps are not liable for food stamps used by sponsored immigrants. The guidance also reminded state agencies that choose to pursue sponsors that they cannot keep any portion of the reimbursement collected and will not be subject to quality control errors related to reimbursement actions. In the absence of an explicit state agency commitment not to pursue sponsors, however, concerns persist about whether securing assistance will harm an immigrant's relatives. The statute's discretionary provisions leave room for the USDA to adopt regulations that limit this deterrent effect. The sponsor liability provision states that actions *may* be brought against the sponsor pursuant to the affidavit of support. 8 U.S.C. §1183a(b)(2)(A). This language provides flexibility for agencies to consider a range of equitable factors when regulating in this area.

There are particularly strong reasons to ensure that children are not penalized by the sponsor liability rules. The Farm bill provided food stamps to children, and exempted them from the sponsor deeming rules. It also exempted children's food stamps from the list of federal means-tested public benefits in Section 403 of the 1996 welfare law, to which the current affidavit of support refers in defining which benefits are subject to reimbursement. The food stamp restoration for children would be thwarted if concerns about sponsor liability prevented parents from seeking this assistance. We urge the USDA to adopt regulations that send a clear message that children are eligible for and can secure nutrition assistance without worrying about sponsor liability. The USDA should specify that agencies may not pursue reimbursement from sponsors for food stamps provided to immigrant children.

Clarification of Exemption for Sponsors Receiving Food Stamps

Food stamp rules make clear that agencies cannot request reimbursement from a sponsor who is participating in the food stamp program. However, the rules do not clarify whether a sponsor who leaves the program can be required to reimburse the agency for benefits received during the period when the sponsor was participating in the program. The USDA guidance issued in January 2003 clarified that a sponsor is not liable for benefits received by a sponsored immigrant during a month that the sponsor is participating in the food stamp program. The rules should be amended to include this clarification.

⁵ In a survey of 312 health care providers and agencies serving California immigrants, concerns about being required to repay benefits arose with surprising frequency, cited by 73% of respondents as "often" or "very often" a barrier for their clients in seeking public benefits. The report describes a woman with breast cancer who avoided seeking treatment because she feared that her sponsor would be charged, an elderly woman who chose not to purchase prescribed medicines, and other families who avoid critical public programs based on concerns about their sponsors. (California Immigrant Welfare Collaborative, Health Care Barriers Survey, 2003). Our office receives similar reports from social service agencies across the country.

Victims of Trafficking

The proposed rules also should be amended to clarify that trafficking victims and their derivative beneficiaries are eligible for food stamps. As explained in USDA's guidance issued in January 2003, the Victims of Trafficking and Violence Protection Act of 2000 established a category of non-citizens who are eligible for federal benefits to the same extent as refugees.⁶ More recently, the Trafficking Victims Protection Reauthorization Act of 2003 provided that a trafficking victim's derivative beneficiaries can secure the same federal benefits.⁷

Section 273.4 should be amended by inserting a new paragraph (5):

(5) *An individual who:*

- (i) *Has been determined to be a victim of trafficking by the U.S. Department of Health and Human Services;*
- (ii) *Is the spouse, child, parent, or minor sibling of a victim of trafficking who is under 21 years of age;*
- (iii) *Is the spouse or child of a victim of trafficking who is 21 years of age or older.*

In addition, 7 C.F.R. § 273.2(f)(1)(ii)(A) should be amended by adding, “if the person is a victim of trafficking” after the phrase “battered status.”

The U.S. Department of Health and Human Services (HHS) guidance clarifies that trafficking victims need only provide a letter from HHS certifying (for adults) or determining (for children) that the applicant is a trafficking victim, and that agencies must not require verification of immigration status or use the SAVE system to verify the eligibility of trafficking victims.⁸ The HHS guidance also notes that trafficking victims may not be eligible for regular SSNs, and that agencies should assist them in obtaining a non-work SSN. The USDA rules should include a reference to the HHS guidance, and should reiterate these points in the preamble.

The lack of automatic eligibility for an SSN makes it difficult for trafficking victims and certain other “qualified” immigrants to meet the Food Stamp Program's SSN requirement. Trafficking victims and their derivative beneficiaries are not necessarily authorized to work in the United States, and may not be able to obtain a regular Social Security Number (SSN). Similarly, some battered immigrants and Cuban or Haitian entrants who are eligible for food stamps may not have an SSN. Although immigrants who are eligible for federal benefits may be able to obtain a “non-work” SSN from the Social Security Administration (SSA), the procedures are not well understood by eligibility workers.

⁶ Pub. L. No. 106-386 §107 (Oct. 28, 2000)(codified at 22 USC §7105).

⁷ Pub. L. No. 108-193, §4(a)(2)(Dec. 19, 2003).

⁸ Office of Refugee Resettlement State Letter SL01-13, May 3, 2001. Because this guidance was written before the enactment of the Trafficking Victims Protection Reauthorization Act, it does not reflect the extension of eligibility to the trafficking victim's derivative beneficiaries.

FNS should amend the rules to provide guidance to state agencies on the proper handling of these cases. The following section, 7 C.F.R. § 273.6(b)(2)(iii) should be added:

(iii) If the individual is a victim of trafficking in persons, a battered immigrant, or a Cuban or Haitian entrant, and is not authorized to work in the United States, the State agency must document verification of the age and identity of the immigrant and provide a letter from agency, as required by SSA, that is dated and on letterhead stationery that identifies the immigrant, states that the immigrant meets all of the requirements to receive Food Stamps except for an SSN, explains that an SSN is required as a condition to receive Food Stamps under 7 C.F.R. 273.6, and provides the name and telephone number of an official to contact so that the information provided may be verified.

The preamble to the regulations should confirm that an otherwise eligible immigrant must be certified while seeking an SSN, regardless of whether and when the SSN is provided by SSA.

Five years in “Qualified” Immigrant Status

The preamble to the proposed rules clarifies that immigrants who reside in the U.S. in qualified immigrant status for five years are eligible for food stamps, regardless of when or in what status they entered the U.S. The preamble also clarifies that immigrants who leave the country, lose their qualified immigrant status and re-enter the U.S. can count all of the time that they reside in qualified status; the time periods do not need to be consecutive. These clarifications are helpful.

In addition, the final rules should clarify that: 1) when qualified immigrant status is granted retroactively, the retroactive time counts toward the five-year requirement; 2) the five years need not be consecutive (as specified in the preamble); and 3) temporary absences from the United States do not terminate or interrupt the individual's period of U.S. residency, unless the person intends to abandon such residency.⁹

To reflect these changes, proposed paragraph (a)(5)(ii)(K) of §273.4 should be amended by adding the following: *“Temporary absences from the United States of less than 6 months, with no intention of abandoning U.S. residency, do not terminate or interrupt the individual's period of U.S. residency. If the resident is absent for more than 6 months, the agency shall presume that U.S. residency was interrupted unless the immigrant presents evidence of his or her intent to resume U.S. residency. In determining whether an immigrant with an interrupted period of U.S. residency has*

⁹ This policy is consistent with the Social Security Administration's rules in the Supplemental Security Income program. See SSA's Program Operations Manual System (POMS) SI 00502.142(B)(2)(a) at <http://policy.ssa.gov/poms.nsf/lnx/0500502142>.

resided in the United States for 5 years, the agency shall consider all months of residency in the United States, including any months of residence before the interruption.”

Spouses and Children of Veterans

Congress exempted lawfully residing immigrant veterans and active duty military, and their spouses and children, from the immigrant restrictions on food stamps and certain other federal benefits. Congress clearly did not intend to impose these restrictions on the spouses and children of *U.S. citizen* veterans and active duty military personnel. However, we understand that USDA interprets Section 402 of the 1996 federal welfare law to apply only to the spouses and children of *immigrant* veterans and active duty military personnel. To be consistent with congressional intent, Section 402(a)(2)(C)(iii)’s reference to the “individual described in clauses (i) or (ii)” should be read to refer to the person’s veteran or military status, not to his or her immigration status. Such a construction would avoid an absurd result, as well as a potential constitutional challenge to a policy that treats U.S. citizen-headed households less well than similarly situated immigrant-headed households.

To conform to congressional intent, 7 C.F.R. § 273(a)(5)(ii)(G)(3) should be amended by replacing the term “person” with “U.S. citizen, national or lawfully residing immigrant.”

Other Issues that Affect Immigrant Families

A few other provisions in the rules concerning households with ineligible members would disproportionately harm immigrant families.

Standard Deduction

Section 4103 of the Farm bill adjusted the standard deduction to reflect household size. Instead of a uniform amount throughout the country, the standard deduction was designated at 8.31 percent of the current poverty income guidelines for the given household size, except that: The standard deduction cannot fall below the level in effect before the Farm Bill’s enactment (\$134 in the 48 states). This means that, at first, the standard deduction will increase only for households of five or more people. As the poverty income guidelines rise to the point where 8.31 percent exceeds \$134 for smaller households, the standard deductions in those households will also rise. And, the standard deduction for households larger than six persons will be equal to the standard deduction for a household of six. A six-person household’s standard deduction will not rise when another family member joins the household.

The proposed rule raises a significant issue for immigrant households with ineligible household members. The Department proposes to disregard the presence in the household of any member who is ineligible for food stamps, in computing the size of the standard deduction. This is inappropriate. Section 3(i) of the Food Stamp Act, 7 U.S.C. §2012(i), defines a “household” in terms

of food purchasing and preparation patterns, family relationships, and living arrangements. A person who meets those criteria is a member of the household whether or not she is eligible to receive food stamps. The Department has no reason to deny households with ineligible members the full standard deduction appropriate to their household size. The provision reflects the fact that larger households have larger costs. This is true whether or not the household includes ineligible members (such as lawful permanent residents during their first five years in the U.S.).

The USDA counts the resources and income from ineligible household members to ensure that the household does not receive an *increase* in food stamps as a result of the disqualification. That is not an issue here. The reduction in the thrifty food plan for a household when a member is ineligible is always far greater than the adjustment of the standard deduction to reflect the member's presence in the household. Denying the full standard deduction to eligible households (reflecting the full costs of maintaining their households) unfairly reduces their food stamps.

Standard Utility Allowance.

Congress intended to simplify the application of the Standard Utility Allowance (SUA) and make it easier to extend the SUA to more households, eliminating the need to provide verification of utility information. It asks for input on whether the SUA should be pro-rated for households with ineligible members. **We urge the USDA not to prorate the SUA for households with ineligible members.** Utility costs do not depend on how many members of a family are eligible for food stamps. Discounting the existence of ineligible household members unfairly harms the eligible household members. Allowing the full SUA is a simpler policy, which provides higher benefits to households that are receiving a lower food stamp grant because some of their members are, for example, ineligible immigrants.

Thank you for this opportunity to provide input and for your continuing commitment to serving immigrant families. We hope that these comments are helpful. Please do not hesitate to contact me at 510-663-8282, ext. 307, if you have any questions.

Respectfully,

Tanya Broder
Staff Attorney