CLASP
policy solutions that work for low-income people

July 5, 2011

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

Re: Proposed Regulations: SNAP Eligibility, Certification, and Employment and Training Provisions, RIN 0584–AD87

Dear Ms. Silberman:

We are writing to offer comments on USDA's proposed Supplemental Nutrition Assistance Program (SNAP) regulation which would implement eligibility, certification and employment and training provisions of the 2008 Farm Bill. CLASP seeks to improve the lives of low-income people. Our vision is an America where children grow up safe, healthy, nurtured, and prepared to succeed; where young people and adults have the skills and supports they need to fulfill their potential and to contribute to society and the economy; where jobs provide decent wages and family friendly policies; where poverty is rare; where there is justice for all; and where all people can participate equally and their communities can prosper.

We are writing in response to the notice published in the Federal Register on May 4, 2011 (Vol. 76, No. 86) regarding the SNAP Eligibility, Certification, and Employment and Training Provisions proposed rule. This rule implements many of the provisions of the Food, Conservation, and Energy Act (FCEA) of 2008, Pub. L. 110-246.

We were strong supporters of 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. In general, we are very supportive of USDA's overall approach to the FCEA provisions and our comments highlight the many areas of the proposal that we support. Nevertheless, there are several important issues that must be addressed in the final regulation. Without our recommended changes, we fear the proposed regulation would fall far short of what the legislation intended and the Administration would forego an important opportunity to improve the program for the millions of Americans who rely upon its help to meet their basic food needs.

We urge the Department to make the following changes to the proposed regulation to ensure it is fully implementing the 2008 Farm Bill expansions for which we all worked to achieve and to reinstate crucial client protections in the program. CLASP's comments focus on four major areas of interest:

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- Eliminating the cap on the dependent care deduction, reducing the chances that families will have to forego food to pay for decent and safe child care;
- Simplifying access to SNAP benefits through rules regarding telephone interviews and signatures while preserving in person options for those for whom they are more appropriate;
- Ensuring transitional SNAP benefits for families leaving cash assistance; and
- Providing employment and training services to SNAP recipients;

Eliminating the cap on the dependent care deduction

The proposed rule amends the SNAP regulations to eliminate the cap on the deduction for dependent care expenses. CLASP commends the Department of Agriculture for this proposed rule change that greatly increases access to benefits for low-income families. Lifting the cap on the dependent care deduction reflects Congressional understanding that direct and associated costs of dependent care are a major expense for working households and will support low-income families by reducing the strain on food budgets for families with significant out-of-pocket child care costs.

While we strongly support the proposed rule, our comments offered here are primarily meant to suggest areas of the rule that could be clarified to reduce confusion around the new rules for parents and ensure broadest possible access to SNAP benefits.

<u>Eliminate dependent care cap and include associated costs of care.</u>

Previously, the dependent care deduction had been capped at $175 per month per dependent ($200 for infants) for many years, well below the out-of-pocket costs that many families pay for care. The elimination of the cap on dependent care expenses is a critical improvement that will allow families to deduct actual out-of-pocket child and dependent care costs, which often comprise significant portions of their household budgets. The high costs of child care rival families' spending on food, rent, and mortgage payments; in fact, the annual cost of child care exceeds the cost of state college tuition in 40 states. For low-income families, these costs are significant, with average costs of center-based care for an infant comprising nearly half of the income of a two-person family living in poverty.[i] Moreover, few low-income families receive help with these costs; one in six children eligible for child care assistance under federal law actually receive help.[ii]

In addition to eliminating the cap on dependent care costs, the proposed rule explicitly includes transportation costs and activity fees associated with the care as allowable dependent care costs. We strongly support this proposal. Transportation can be a major expense for families who cannot find affordable care near home, especially those in rural areas where jobs are far from home and for those who must rely on public transportation. We also support the inclusion of "activity fees" in the allowable dependent care costs, which can be burdensome on low-income families with tight budgets. We suggest, however, that the Department clarify in the proposed regulation what may be included in the category of necessary activity fees, such as fees for art supplies or materials or field trips.

We also recommend clarifying that the "costs of care" given by an individual care provider or care facility are not limited to a standard and fixed monthly fee paid to a provider, but rather encompass additional required expenses such as application and registration fees. These one-time or annual fees required by child care providers can be significant for cash-strapped families. Given Congressional intent to take a “broad view of what constitutes a dependent care cost,”[iii] we urge the Department to clarify that such fees constitute actual costs of care.

<u>Explicitly allow the deduction for households with an individual looking for work.</u>

The Act permits a dependent care deduction “when necessary for a household member to accept or continue employment,” and the proposed regulation at section 273.9(d)(4) repeats the same language. The Department notes in the preamble to the proposed rules that they “propose to restore language to that section [273.9(d)(4)] that permits households to deduct dependent care costs if a household member needs care for a dependent in order to seek employment.” Therefore, the proposed regulation should clearly and unambiguously state that someone looking for work may deduct dependent care costs. Parents need reliable child care in order to look for and secure employment. Parents may also need to pay for child care to hold onto a slot while between jobs, to ensure that care is available as soon as new employment is secured. Given that there are many steps in the hiring process prior to accepting employment that preclude caring for dependents, including visiting job sites and attending interviews, the proposed language should explicitly state that the dependent care deduction is allowable for households with individuals looking for work.

<u>Use reasonable verification policies.</u>

Consistent with an increasing number of states’ practices, the rules should establish a presumption that the dependent care costs the household reports are valid unless the state agency finds them questionable in a particular case. In other words, to promote utilization of this important work support for families with out-of-pocket costs, dependent care costs should no longer be verifiable across-the-board as a state option under 7 C.F.R. § 273.2(f)(3), although they would remain verifiable if questionable under 7 C.F.R. § 273.2(f)(2). This step will help prevent unnecessary verification requirements for households simply because they are claiming a deduction in excess of the old cap.

<u>Make clear that the deduction is available for those receiving child care subsidies.</u>

The rule also should make clear that, even if a household receives child care assistance or other financial scholarships for dependent care, any co-payment required of the household is still deductible. These co-payments can often be significant—states require most families receiving child care assistance to contribute toward the cost of care, and the co-payment can range from 1 to 11 percent of household income depending on the state and the income of the family.[iv]

In cases where states require verification, the Department should encourage states to provide deductions for these expenses using matches against the co-payment records of state subsidy programs.

<u>Make clear that the deduction is allowable for payments made to non-household family members.</u>

To address a persistent source of confusion, the rule should specify that care is compensable even if provided by a relative as long as that person is not receiving SNAP benefits as part of the same household as the child or dependent adult receiving care.

Telephonic Interviews and Signatures

The proposed regulations include a number of provisions regarding telephonic interviews and signatures, which reduce the need for clients to make trips to SNAP offices and can improve administrative efficiency.

Allow choice of interview format

We strongly support the Department's decision to codify the beneficial and widespread use of telephone interviews in lieu of face-to-face interviews and to no longer require waivers for this practice. We fear, however, that in its reorganization of this section of the regulations that the Department has inadvertently dropped certain households' right to a telephone interview. This problem should be corrected so that households for whom in-person interviews present hardships should continue to have a right to a telephone interview even if the state has not chosen this option (either in general or for this specific population.)

The final regulation language must also be clear that a household can receive a face-to-face interview if requested. Although telephone interviews provide benefits for some households, this is not true for *all* households and no household should be denied the right to receive face-to-face assistance. The regulations should clearly state that when telephone interviews are used the state agency must make them accessible to all households, including but not limited to households with limited English proficiency and individuals with disabilities.

Avoid imposing additional hurdles to benefits

We agree that clients should have the right to review the information in their completed application and to make corrections as needed. This right should apply to all applicants, regardless of the means by which they apply for benefits. However, in giving clients this opportunity, it is important that an additional hurdle to benefits not be imposed. FNS should clarify that:

- The failure of a household to return the form should not result in any sanction or termination of benefits.
- The failure of a household to correct information should not create an inference of willful misrepresentation that can be used against the client in an Intentional Program Violation (IPV).
- All applications (paper or electronic) must be processed under the normal 7 or 30 day processing standard for SNAP applications even if the household fails to return the copy of the completed application.
- These provisions do not create a requirement for signatures on forms that would not otherwise have to be signed.

Similarly, when states use periodic reporting at a less frequent interval than monthly, or simplified reporting, this choice should not remove any client protections that would apply otherwise.

Transitional Benefits

We strongly support the decision to allow participants of State-funded cash assistance programs (SFCA) to be eligible to receive transitional SNAP benefits when they are no longer connected to the cash assistance program. For reasons having to do with the requirements of the TANF program, an increasing number of states are choosing to serve a portion of their cash assistance recipients with funds that are neither from the TANF block grant nor claimed towards the TANF maintenance of effort (MOE) requirement. Congress appropriately recognized that families should not be denied transitional SNAP benefits because of state choices regarding the funding of these programs, and we generally support USDA's implementation of this provision.

We are, however, deeply disappointed that USDA did not use this opportunity to address the serious flaws in the underlying Transitional Benefits Alternative (TBA) option codified under the prior Administration. We strongly encourage the Department to use this opportunity to correct these problems.

The rule at 7 C.F.R. §273.26(d) lists the households that are not eligible to receive TBA. Since the agency has not proposed a change and this list is the same list from the final rule issued January 2010, we want to raise our concern that there may be some confusion regarding states' ability to extend transitional benefits to two (or three) specific types of households and urge USDA to make the following clarifications.

<u>Clarify that exits from TANF *cash assistance* are what triggers TBA.</u>

The statute allows transitional SNAP benefits for a SNAP household that "ceases to receive cash assistance under a State program funded under Part A of title IV of the Social Security Act."[1] In many places the proposed regulation instead refers only to households "leaving TANF" and (now with the new law change) a State-funded cash assistance program or "whose participation is ending." This shorthand of "leaving TANF" could be misleading and confusing. States fund a broad range of programs and services using TANF block grant funds and state funds that count toward the TANF MOE requirements. Cash assistance is just one of the types of benefits that TANF or TANF-MOE funds make available to families that also received SNAP. Particularly in light of the Department's clarifications of categorical eligibility policy in 1999 and 2000, many states continue to provide TANF-funded benefits to households leaving cash assistance. The final regulation should clarify that the exit must be from cash assistance for both TANF and state-funded benefits. It would be useful to add some preamble discussion specifying that, consistent with the language of the statute and the rule, receipt of non-cash TANF or State-funded benefits is no obstacle to receiving transitional SNAP benefits and that the cessation of such benefits does not entitle a household to transitional SNAP benefits.

[1] See 7 U.S.C. §2020(s)(1).

A second issue for clarification is that TBA is now available for households leaving cash assistance whether this assistance is funded with TANF funds, MOE funds, or state funds that do not count towards MOE. It needs to be clear that the exclusion for local funded programs does not extend to those cash assistance programs that have some county/local contributions for a state-funded program. Several states — for example, California and Colorado — require a county share in their cash assistance programs, including both state and TANF-funded programs. The addition of county funds to state funds (and in some cases, federal TANF funds) does not give rise to this exclusion which is intended only if the program is solely funded with county or local dollars.

Clarify that families in partial sanction status at exit, or leaving due to an incomplete eligibility review may receive TBA

The Food and Nutrition Act precludes states from extending transitional SNAP benefits to households that lose TANF cash assistance or State-funded cash assistance due to sanction. The statute does not, however, exclude families that may be in partial sanction status when leaving TANF or SFCA but do not exit from TANF due to the sanction. The proposed regulation at 7 C.F.R. §273.26(d)(1) appropriately excludes households from transitional SNAP when "the household is leaving TANF due to a TANF sanction or the household is leaving the SFCA program due to a SFCA program sanction." Approximately 40 states have sanction policies that terminate TANF cash assistance because of noncompliance under some circumstances, but it is also common for states to reduce the TANF benefit (for example, by removing the adult from the unit for a number of months) rather than to close the case entirely. The final regulation should clarify that when a household is under a partial sanction but is still receiving TANF for some members, the household may receive transitional SNAP benefits if the cash assistance ends for another reason.

The proposed regulation at 7 C.F.R. §273.26(d)(vi) should be clear that states may provide transitional SNAP benefits to families that lose TANF because they do not successfully complete an eligibility review. As drafted, the proposed rule could be interpreted to prohibit states from extending transitional SNAP benefits to households that do not complete the TANF redetermination process. Under current policy, FNS has made it clear that transitional benefits may be extended to household where the TANF redetermination is due at the same time as the SNAP recertification and the household does not complete the TANF eligibility review.[2] The regulation should make clear that, because a state has the option to determine a household with a common TANF and SNAP review date ineligible for TANF for failing to complete the eligibility review before determining the household ineligible for SNAP, the state may still extend transitional benefits to such a household. Extending transitional SNAP benefits to these households provides a very clear signal that SNAP is available as a work support and that their SNAP eligibility is not dependent on participating in TANF. We recommend that the Department clarify in the final regulation that 7 C.F.R. §273.26(d)(vi) does not apply to households whose TANF/SFCA and SNAP certification periods end at the same time.

Clarify the circumstances under which states may adjust TBA amounts

[2] See Question 4115-2 from FNS's first set of Q&As issued on May 19, 2009.

FNS should make clear that states may only adjust a household's TBA because of *income* information that they learn about from another program or to prevent a former household member from receiving duplicative benefits. The regulation at 7 C.F.R. §273.27(a)(1) allows states to adjust benefits to account for any changes in household circumstances that it learns from another state or federal mean-tested assistance program in which the household participated. The final regulation should be revised to correctly reflect that under this option states may adjust TBA only for changes in income or to prevent duplicative benefits upon the application of a former TBA household member.

<u>Make clear that re-applications for TANF benefits may be considered SNAP applications</u>

During the transitional benefit period, households can reapply for SNAP under two circumstances: to have their SNAP benefits adjusted because of a change in their circumstances, or as part of a reapplication for TANF benefits. The current regulation is very strong on the procedures for the first case but falls short on the second. Many households leaving TANF cash assistance reapply for TANF before the five-month transitional period is completed. Studies conducted in the late 1990s found that between 10 to 25 percent of TANF leavers returned to TANF within six months.[3] The current regulations appear to require states to wait for TANF applications to be approved before redetermining SNAP eligibility if the client is within the TBA period. This is burdensome on both households and states; it is far simpler to collect the information needed to determine SNAP eligibility at the same time that the TANF application is reviewed.

Within the thirty days, the state would determine the household's SNAP eligibility using information from the new application. While decisions on the two programs are pending, the household would continue to receive transitional SNAP benefits. If the TANF application is denied, for procedural or substantive reasons, the case should continue in SNAP based on the new application, or in transitional SNAP, until the end of the transitional period if that amount is higher. If TANF is approved, the state would adjust the SNAP benefit at that time to take into account the TANF income and all other circumstances that were gathered in the reapplication process, consistent with 7 C.F.R. § 273.2(j)(1)(iv).

Employment and Training Services for SNAP Recipients

Section 4108 of the FCEA amends 7 U.S.C. § 2015(d)(4) to permit the use of Employment and Training (E&T) funds for job retention services for up to 90 days for an individual who found work after receiving other services under the state E&T program. We fully support extending SNAP E&T services to SNAP participants who have begun working and the proposed regulations do a good job of adding this component to a state's E&T program.

[3] Furthermore, these studies generally consider a family to have left TANF only after two complete months of not receiving TANF. This definition was adopted for research purposes precisely because of the large number of cases that are closed for procedural reasons and are reopened before the end of the second month. See The Urban Institute, *Final Synthesis Report of Findings from ASPE "Leavers" Grants*, November 2001 at http://aspe.hhs.gov/hsp/leavers99/synthesis02/index.htm.

The proposed regulation implements the new provision by adding 7 C.F.R. § 273.7(e)(1)(viii) to the list of employment and training components a state may provide. The regulatory definition is comprehensive enough to allow states to address local and emerging needs, including coaching, connecting participants with other support services, initial job-related expenses such as uniforms, required tools and equipment and licensing or bonding fees. States may offer job retention services to households leaving SNAP up to the 90 day limit. We deeply appreciate and strongly support the clarification that refusal to accept job retention services does not render a household ineligible or lead to any sanction. The Department should maintain this language in the final rule.

<u>Allow states to identify when the 90 days of services start</u>

The regulations do not clearly identify when a SNAP participant may become eligible for job retention services. The FCEA authorizes services that may be provided after an individual "gains employment" while the regulation uses the term "secure employment." But it is not clear whether this is the day a job offer is accepted, the day the individual reports the information to the SNAP office, the first day of work, or some other time. Depending upon the post-employment services program design, any of these times may be appropriate. States should have the flexibility to identify the point at which job retention services become available. We urge the Department to clarify that states may define "when an individual secures employment."

<u>Clarify the availability of retention services for those leaving SNAP</u>

We agree with the Department's interpretation that the statute now clearly authorizes states to provide job retention services for participants leaving SNAP, but does not limit the circumstances under which the individual may leave the program and be eligible for services. Congress did not limit job retention services to those who found employment through E&T participation. The statute simply requires that an individual had participated in E&T while on SNAP. The preamble language, however, may give the false impression that job retention services are limited to those losing benefits as a result of increased earnings, as opposed to other reasons for leaving SNAP. In particular, a newly employed individual may assume that he or she is no longer eligible, and fail to return verification forms, and therefore have the SNAP case officially closed for reasons other than income.

<u>Explicitly include child care and transportation costs as retention services</u>

We recommend that the Department explicitly include in the final preamble or future guidance transportation and child care as allowable expenses that can be reimbursed through the E&T program. The August 29, 2008 Questions and Answers on Certification Issues from the 2008 Farm Bill on this provision listed transportation and child care as allowable expenses, but the proposed regulation and preamble do not. For many individuals, these expenses are the most significant barrier to employment, just as they remain a significant barrier to participation in E&T programs. An individual's ability to pay for transportation and child care is unlikely to change until after a first paycheck is deposited, which could be over a month after the start of work. The Department should encourage states to use these funds to support individuals on the verge of successful employment by paying for their upfront child care costs (such as a deposit and first month's payment) or a monthly bus pass. To deny states this option would defeat the intent of the work provisions.

Expand option to average student work hours

SNAP has special rules that apply to students in post-secondary education. We strongly agree with the policy to allow states to average student work hours over the course of a month, as multiple states are currently doing under waiver authority. This will provide states with an additional option to improve administrative efficiency and improve access for eligible students. Because of the episodic nature of student employment, we believe states should be able to average student work hours over the course of an academic period like a semester or trimester. For example, students who work on campus, such as in the library or dining hall, may have reduced hours during semester breaks. Other students may work full-time during breaks, but have sharply reduced hours during class sessions.

Thank you for your consideration of our comments.

[i] National Association of Child Care Resource & Referral Agencies, *Parents and The High Cost of Child Care: 2010 Update*, 2010, http://www.naccrra.org/publications/naccrra-publications/parents-and-the-high-cost-of-child-care.php.
[ii] ASPE Staff, *Estimates of Child Care Eligibility and Receipt for Fiscal Year 2006*, ASPE, 2010, http://aspe.hhs.gov/hsp/10/cc-eligibility/ib.shtml.
[iii] 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.
[iv] Office of Child Care, U.S. Department of Health and Human Services, *FFY 2009 CCDF Data Tables (Preliminary Estimates)*, http://www.acf.hhs.gov/programs/ccb/data/ccdf_data/09acf800_preliminary/table17.htm.