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DIVISION: Temporary Assistance

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TO: Local District Commissioners, IM Directors, FS Directors,
WMS Coordinators, CAP Coordinators
FROM: Patricia A. Stevens, Deputy Commissioner, Division of Temporary
Assistance
SUBJECT: Statutory Changes to Food Stamp Alien Eligibility Rules

EFFECTIVE DATE: November 1, 1998

CONTACT PERSON: FS questions - Regional Representatives: Region I
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On June 23, 1998, President Clinton signed into law P. L. 105-85, the Agricultural Research, Extension and Education Reform Act (AREERA) of 1998. Among other provisions, this law amends the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) which specify that only certain non-citizens are potentially eligible for federal food stamps.

Effective November 1, 1998, AREERA makes the following changes to food stamp (FS) eligibility:

1. An alien whose eligibility was limited to a 5-year period will be eligible for FS for a 7-year period. This includes the "Specially" Qualified Aliens listed in Food Stamp Source Book (FSSB) Section V-B-3.2. paragraph 2.;
2. Certain Indians may be eligible for FS. These include:
 - a) American Indians born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act (8 U. S. C. 1359) apply (i.e., born in Canada and at least 50% American Indian blood); or
 - b) Individuals who are a member of an Indian tribe (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(e)). This provision covers Native Americans who are entitled to cross the United States border into Canada or Mexico and includes, among others, members of the St. Regis Band of the Mohawk in New York State.

3. An alien may be eligible for FS if that alien is lawfully residing in the U.S. and was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam War era (August 5, 1964 through May 7, 1975). The spouse or unremarried surviving spouse and unmarried dependent children of such an individual will also be eligible for FS;
4. An alien may be eligible for FS if that alien was lawfully in the U.S. on August 22, 1996 AND
 - a) was 65 years of age or older on August 22, 1996 (DOB of August 22, 1931 or earlier), OR
 - b) is under currently 18 years of age, OR
 - c) is disabled as defined by the Food Stamp Act (see FSSB section V-A-6.1 - 6.2);

To more easily identify such individuals, districts can use the following guidelines:

- i) For current FAP recipients between age 18 and 59 (DOB between 10/31/38 and 11/1/80), an "X" in the A/D indicator field indicates disability status;
- ii) For aliens in receipt of SSI who are under age 65, the receipt of SSI proves disability since persons cannot receive SSI based on age until age 65; or
- iii) For aliens in receipt of SSI who became 65 after August 22, 1996 (DOB of 8/23/31 or later), districts must determine if SSI eligibility began before their 65th birthday. If SSI eligibility began before their 65th birthday, the alien can be considered to be disabled. If SSI eligibility began after their 65th birthday, disability status must be determined independently from SSI status.

Districts Participating In FAP

As a result of AREERA, almost all aliens currently receiving benefits under FAP will become eligible for federal food stamp benefits effective November 1, 1998. Districts should therefore begin to plan for the conversion of these cases from FAP to federal FS.

Upstate districts participating in FAP will receive a list of active FAP cases during the third week of August. In order to eliminate the State and local costs associated with FAP and minimize the need for retroactive claiming adjustments, all FAP recipients who will be eligible for federal FS must be converted to federal FS by November 1.

All Districts

Since expanded eligibility is effective November 1, local districts who do not participate in FAP should suggest to applying noncitizens who are not currently eligible for FS but may be made eligible by AREERA, that they should file applications for FS on or after October 1, 1998. If they apply before this date, they may be denied eligibility.

If a household applies in October and is not eligible until November, the household must be certified for November in accordance with FSSB Section X-A-4. The same application must be used for the denial for October and the determination of eligibility for November and subsequent months.

Current active FS cases which contain ineligible aliens must be reviewed according to the provisions of AREERA at the household's request, when the case is next reviewed, or at the time of the next recertification, whichever occurs first. Restored benefits, as appropriate, must be issued back to November 1, 1998 for members of active FS households containing individuals made eligible by AREERA.

Cases that have been closed due to alien status must reapply and have their eligibility determined in accordance with these new provisions.

Systems-WMS

In order to put up a case on Upstate-WMS, a Citizenship/alien Indicator must be entered along with the Date of Entry. The current codes and edits will be modified to enable newly eligible aliens to be coded correctly.

Information about these modifications will be provided to local districts in a separate release. Until these instructions are received, districts should not process newly eligible individuals or convert FAP cases since the current edits may prevent proper coding.

Information about the FAP conversion process and coding of newly eligible aliens on NYC-WMS will be provided directly to NYC.