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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20348

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The Honorable Edmund S. Muskie
Chairman, Committee on the Budget
United States Senate

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Dear Chairman Muskie:

This is in further response to your request for our opinion on the program implications of maintaining the appropriation authorization limitations for FY 1980 and FY 1981 now imposed on the food stamp program by sections 4(a) and 18 of the Food Stamp Act of 1977 (Act) title XIII of Pub. L. No. 95-113, approved September 29, 1977, section 1301, 91 Stat. 961, 979, to be codified at 7 U.S.C. §§ 2011 et seq. You were specifically concerned with the method to be used in implementing subsection 18(b) of the Act, 7 U.S.C. § 2027(b).

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Under subsection 18(b), the Secretary of the Department of Agriculture (Department) is directed to limit the value of all allotments issued to amounts not in excess of the total appropriation for the fiscal year in question. If at any time, he finds that the requirements of participating States are likely to cause him to exceed the limitation he set if the program continues at the same rate,

"* * * the Secretary shall direct State agencies to reduce the value of such allotments to be issued to households certified as eligible to participate in the food stamp program to the extent necessary to comply with the provisions of this subsection."

The question is on what basis may the reduction be accomplished.

The position of the Department is that--

"* * * a close reading of section 18(b), as well as other provisions of the Act, leads to the conclusion that any reduction should be accomplished on a pro-rata basis. Any other position would be most difficult to defend in a court or other competent tribunal.

"The first sentence of section 18(b) provides that the Secretary shall 'limit the value of those allotments issued to an amount not in excess of the appropriation

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for such fiscal year.' The second sentence, dealing with reduction if necessary, commands the Secretary to direct State agencies 'to reduce the value of such allotments' (underscoring supplied). Significantly, the statute does not speak of eliminating some allotments but of reducing the value of all allotments. Further, section 18(b) provides that the value of the allotments shall be reduced only 'to the extent necessary to comply with the provisions of this subsection.' Anything other than a pro-rata reduction would appear to go beyond this restriction.

"Moreover, the Act in detailed manner sets forth eligibility standards in sections 5 and 6, and requires that 'assistance under this program shall be furnished to all eligible households' (sec. 5(a); see also section 2, Declaration of Policy). Section 5(c) provides that the income standards of eligibility shall be the nonfarm income poverty guidelines prescribed by the Office of Management and Budget. Section 5(d) provides that household income for purposes of the food stamp program shall include all income from whatever source excluding only ten categories of items. Section 5(a) provides that in computing household income the Secretary shall allow a standard deduction of \$60.00 (subject to semi-annual adjustments based on the Consumer Price Index). Additional deductions for earned income, dependent care and excess shelter costs are also specified. Section 5(g) sets forth specific requirements for the Secretary to follow in prescribing the types and allowable amounts of financial resources an eligible household may own.

"Section 3(o) of the Act defines 'Thrifty Food Plan' and provides that 'The cost of such diet shall be the basis for uniform allotments for all households.' Section 8(a) provides that 'The value of the allotment which the State agencies shall be authorized to issue to any households certified as eligible to participate in the food stamp program shall be equal to the cost to such households of the thrifty fund [food] plan reduced by an amount equal to 30 percentum of the household's income as determined in accordance with section 5 of this Act'.

"Elimination of allotments to some eligible households, or the reduction of some allotments more than others, based on categories of eligible households or other

criteria, appears contrary to the framework of the Act and incompatible with the requirements of the Act, in the event a reduction in the value of allotments becomes necessary."

Another viewpoint was expressed by the minority counsel to the House Committee on Agriculture, in a letter to Senator Helms, member of the Committee on Agriculture, Nutrition, and Forestry. He maintains that the imposition of a pro rata reduction in allotments is not the only interpretation to be made of subsection 18(b). He states that--

"* * * I am of the opinion that section 18(b) may be subject to an interpretation that the Secretary has certain flexibility in how he may reduce food stamp allotments. One might question the viability of a legal interpretation that argues that if Congress were not to increase the authorization 'cap' for fiscal year 1980 and that reductions in allotments had to be made, it was Congress' sole intention that every food stamp recipient's allotment be reduced by a pro rata amount. One might also question whether it is reasonable to assume that a Secretary of Agriculture, who must after all implement such a reduction based on his own interpretation, would not interpret such a section if faced with that hard decision so as to effect a just and equitable result, not necessarily that calling only for an inflexible pro rata reduction.

"I submit that the pro rata interpretation of section 18(b) is not the sole, inescapable interpretation of section 18(b). I submit that another interpretation allowing flexibility for the Secretary to use existing funding for other than pro rata reductions can be argued to be reasonable, legally justifiable, and one that gives effect to the legislative intent of Congress in enacting the Food Stamp Act of 1977."

Subsection 18(b) of the 1977 Act is modeled, in part, on subsection 16(b) of the Food Stamp Act of 1964, 7 U.S.C. § 2025(b) (1976). That subsection read as follows:

"(b) In any fiscal year, the Secretary shall limit the value of those coupons issued which is in excess of the value of coupons for which households are charged, to an amount which is not in excess of the portion of the appropriation for such fiscal year which is transferred to the separate account under

the provisions of subsection (a) of this section. If in any fiscal year the Secretary finds that the requirements of participating States will exceed the limitation set forth herein, the Secretary shall direct State agencies to reduce the amount of such coupons to be issued to participating households to the extent necessary to comply with the provisions of this subsection."

Since the program was adequately funded in the past, we were informally advised that the Department was never required to direct State agencies to reduce the amount of coupons issued to participating households. Therefore, it does not have any practical experience in implementing the above provision.

Subsection 16(b), which was in an earlier version of the bill (H. R. 7940) to amend the Food Stamp Act of 1964, was deleted by the House Committee on Agriculture because under subsection 16(b)--

"* * * if the funds are not transferred to the separate account in advance, the Secretary, pursuant to section 16(b), would be forced to halt the issuance of bonus food stamps by the states (he could continue to allow them to issue food stamps in the exact value of the charges collected for such stamps) or else, as provided by the second sentence of section 16(b), "direct State agencies to reduce the amount of such coupons to be issued to participating households to the extent necessary to comply with the provisions of this subsection.'" H. Rep. No. 95-464, 95th Cong., 1st Sess., 415 (1977).

Subsequently, subsection 18(b) was adopted in Conference. The House Conference Report, H. Rep. No. 95-599, 95th Cong., 1st Sess., 203 (1977), does not provide any insight on the mechanics of implementing subsection 18(b).

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As the House Agriculture Committee minority counsel points out in his letter, subsection 18(b), in and of itself, is not restrictive. That subsection does not specifically say that reductions in allotments must be made on a pro rata basis. As he points out, our Office has generally held that where an appropriation act is not specifically directive, it is assumed that the Congress intended the agency to have flexibility in carrying out the statutory purposes. But subsection 18(b) is not part of an appropriation act. It is part of permanent substantive legislation, the Food Stamp Act of 1977, which among other purposes, makes extensive amendments to the existing food stamp program. Subsection 18(b) must therefore be read in context.

Read as a whole, the Act is quite restrictive. While it is true, as the minority counsel states, that the legislative history of the Act "is replete with expressions of concern for the poor, the elderly, and the disabled," these concerns are reflected in the intricate income standards and eligibility criteria of sections 5 and 6. Once a household is determined to be eligible for an allotment on the basis of uniform national standards, the Department is required to furnish such a household with assistance if it applies for participation under the program. (Section 5(a).) This is one reason that the necessary reduction cannot be accomplished by eliminating one category of otherwise eligible participants altogether.

If reduction were possible other than on a pro rata basis, it might be possible to, in effect, eliminate one category of participants by providing only nominal support--thus complying with section 5(a) in a literal sense but indirectly thwarting its intent. The Act makes no distinction between households composed of students, strikers, the disabled or the elderly. The eligibility standards set forth in sections 5 and 6 of the Act are based solely on the income and financial resources of households. The "limited purchasing power of low-income households" and the "hunger and malnutrition among members of such households" is the Act's primary concern. 7 U. S. C. § 2011.

The most persuasive argument in favor of a pro rata reduction is the language of sections 8(a) and 3(o) of the Act. Section 8(a) sets forth the formula that is to be used in determining the value of allotments that may be issued to eligible households as follows--

"The value of the allotment which State agencies shall be authorized to issue to any households certified as eligible in the food stamp program shall be equal to the cost to such households of the thrifty food plan reduced by an amount equal to 30 per centum of the household's income, as determined in accordance with section 5 of the Act * * *."

The "thrifty food plan" is defined in section 3(o) as:

"* * * the diet required to feed a family of four persons consisting of a man and a woman twenty through fifty-four, a child six through eight, and a child nine through eleven years of age, determined in accordance with the Secretary's calculations. The cost of such diet shall be the basis for uniform allotments for all households regardless of their actual composition * * *."

It is clear that permissible variations, based on income considerations, have already been included in the formula.

Further, under section 3(o), the Act provides that the cost of the "thrifty food plan" diet "shall be the basis for uniform allotments for all households regardless of their actual composition." (Emphasis added.) In our view, this language dictates the basis for any determination of "value." Allowing the Department flexibility to reduce the value of allotments on any other basis would defeat the purposes of the sections discussed above. Thus, we agree with the Department of Agriculture that allowing reductions in allotments under subsection 18(b) on other than a pro rata basis would be contrary to the framework of the Act.

We trust that this answers your questions satisfactorily.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General
of the United States