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# United States Senate

COMMITTEE ON  
AGRICULTURE, NUTRITION, AND FORESTRY

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The Honorable Mike Johanns  
Secretary of Agriculture  
United States Department of Agriculture  
200-A Jamie L. Whitten Building  
Washington, DC 20250

Dear Secretary Johanns:

I am writing to you to express my deep concern regarding the plan of the state of Texas to outsource and privatize large portions of its Food Stamp Program operations by turning over significant control and operational responsibility to a for-profit contractor. Not only does the Texas plan contravene federal statutes governing the Food Stamp Program, but it also threatens to waste federal dollars and disrupt or deny service to many of the more than 2.4 million Texans currently receiving or eligible for benefits through the Food Stamp Program – especially seniors, rural residents and persons with disabilities. In addition, the plan lacks appropriate evaluation criteria and may undermine integrity in the Food Stamp Program. The following sections of this letter describe my concerns in more detail and demonstrate why USDA should not approve the plan submitted by Texas.

## **A. Texas Privatization Proposal Conflicts with Federal Food Stamp Law**

At the end of June, despite the lack of approval from USDA, Texas entered into a contract with a private contractor to operate major portions of its Food Stamp Program. One of the main components of this plan is to close numerous local Food Stamp Program offices and instead shift a substantial share of responsibility for eligibility determination to several large Food Stamp Program call centers operated by the private contractor. By assigning responsibility for key aspects of the eligibility determination process to non-governmental personnel, the Texas proposal is in direct conflict with federal statutes governing the Food Stamp Program. The basic requirement of section 11(e)(6)(B) of the Food Stamp Act is that “merit systems personnel” must determine who may or may not participate in the program, which requires working with the client to prepare an application and gather verification. This requirement ensures adequate oversight of and financial accountability for this 100-percent federally financed benefit. In order to shift a share of this process from merit systems personnel to private contractors, the state of Texas is required to seek a waiver from USDA. By failing to seek such a waiver, the state of Texas openly disregarded federal law.

The Honorable Mike Johanns  
August 23, 2005  
Page two

In addition, federal regulations governing standards for allowable food stamp administrative costs, as detailed in Appendix A of 7 C.F.R. 277, clearly specify that states must obtain approval from the federal government prior to entering into a contract of this magnitude. This requirement of prior approval applies to a number of contracted services included in the Texas plan, including professional services and automated data systems. These rules were established to ensure that federal funds are spent in accordance with federal law and regulations, as well as to prevent a state from pressuring USDA into granting approval for ill-conceived projects because the state has already committed itself to such endeavors. The requirements of Appendix A of 7 C.F.R. 277 clearly apply to the Texas contract, and hence, by failing to adhere to these requirements, Texas has violated federal law.

I am aware that USDA, in its communications with the state of Texas, has been very clear about the need for Texas to receive federal approval of the contract before moving forward with its implementation. It is also my understanding that USDA has serious concerns with the Texas plan and has questioned whether the new system will indeed save money, maintain access to services and ensure program integrity, and that USDA has asked Texas to address these concerns before proceeding. I commend USDA for raising these concerns and expect that USDA will meet its obligation to withhold federal Food Stamp Program administrative funds from the state of Texas until you receive adequate assurances, thus far not provided, that the Texas plan conforms to federal law. Because failure to follow the law will likely result in litigation against the state of Texas, and perhaps against USDA as well, the Department's oversight of these matters is particularly crucial.

The statutory requirements for food stamp administration are written into the law for specific reasons. These requirements cannot be unilaterally disregarded by a state, nor should they be readily waived by USDA. The Texas plan to depart from the statutorily prescribed procedures and safeguards threatens a number of specific and serious harms to proper administration of the program and to persons who may wrongfully be denied food stamp benefits. It also invites litigation by parties seeking to enforce the obligations of Texas under the federal food stamp statute and regulations.

#### **B. Texas Privatization Proposal Threatens Client Access to Food Stamp Benefits**

In addition to disregarding federal food stamp law, the Texas proposal to privatize nearly half of the Food Stamp Program's operations fails to comprehend and address the potential impact on program operations and the ability of eligible persons to obtain food stamp benefits following such program changes. Under its proposal, the state of Texas is expected to shut down 100 existing food stamp offices and provide alternative access to the program through the internet and through several large call centers to be operated and managed by a private contractor.

The intent of this shift away from in-person interviews toward telephone and internet access is purportedly to maximize program efficiency, but the ultimate impact of the plan remains to be seen and raises many questions. Clearly, sacrificing program access and vital services, and thereby allowing many people to be denied or to lose food benefits – in the hope of untested efficiency gains – is a trade-off that USDA should not condone. For example, current program rules governing filing dates and the process for dealing with incomplete applications are designed to ensure that families in need of assistance who are unable to complete the application process get the help that they need on a timely basis. These protections, however, are designed around a system where most families apply for benefits in an office setting. If Texas chooses to eliminate office access, and essentially force large portions of the eligible population to apply for assistance over the telephone, it is essential that Texas address how it will guarantee prompt processing of applications and put in place procedures for appropriately addressing the filing and processing of incomplete applications. Because the Texas plan fails to anticipate these challenges large numbers of eligible individuals are likely to lose food stamp benefits. There are several specific problems with the plan.

First, moving from face-to-face interviews to the internet and call centers could cause many eligible persons to be denied or to lose food stamp benefits. At special risk are low-income elderly persons and individuals with disabilities, many of whom are likely unable to apply for benefits using the internet or telephone. These were precisely the people whom the Rehabilitation Act and the Americans with Disabilities Act were enacted to protect. Many cases under section 504 of the Rehabilitation Act and the ADA turn on the availability of reasonable alternative means of administering a program that would better accommodate persons with disabilities. In any litigation that might arise under the Texas plan, the reasonable accommodation that plaintiffs would presumably seek is a return to the longstanding in-person application process now used in Texas (which is also current practice in every other state).

Second, it is not at all apparent that the proposed call centers will have sufficient staff to handle the intake and eligibility determination workload. As you know, the Texas Food Stamp Program eligibility workforce has already been significantly reduced in recent years. Shifting a substantial portion of the workload to a small number of private workers, many of whom are likely to have little experience with the Food Stamp Program's rules, will likely further exacerbate the challenge of handling the vast volume of work.

Third, Texas' plan to move forward with such dramatic changes in program operations so quickly, without an opportunity to work out problems on a smaller scale before statewide implementation, is an invitation to disaster. The transition period proposed by the state is extremely condensed, with full management by the private contractor expected to be complete within nine months. In several states, rapid implementation of far less ambitious changes in Food Stamp Program operations has led to both severe access problems and massive error rate increases. You are, no doubt, aware of the major problems that recently occurred in Colorado

when it adopted a new and untested management information system. The problems and lessons learned from the Colorado experience suggest that even greater caution is necessary in Texas.

In the past, major changes to the Food Stamp Program, such as the implementation of electronic benefit transfer, have been accomplished thoughtfully over the course of several years. Similar caution and deliberation is critical in the case of Texas, but is almost entirely lacking in the Texas plan. Should such problems arise, the Department's failure to require the usual phased implementation could subject it, as well as Texas, to suit.

If a Texas plan is to be approved, it must be modified to phase in the project over time, carefully evaluating each step of the process and making modifications as necessary before the project reaches full statewide operation. A carefully phased implementation will also make it easier, should it be necessary, to end the project entirely if the system fails to live up to its stated expectations. Texas's plan to dismantle its administrative staff based on untested promises leaves the state – and hundreds of thousands of vulnerable people – literally without a safety net.

#### **C. Texas Privatization Proposal Threatens to Undermine Program Integrity**

The Texas privatization proposal also seriously threatens to undermine the integrity of the Food Stamp Program. Under Food Stamp Program rules, Congress requires the state of Texas to carry out two critical oversight functions: (1) collecting data on how accurately the program is determining eligibility and issuing benefits, and (2) conducting an annual evaluation of program management. However, because under the Texas proposal significant aspects of Food Stamp Program operations will be carried out by a private contractor, it is not clear how these oversight functions will be achieved or carried out. Absent a strong oversight plan, it is likely that turning over program operations to a private contractor will undermine program integrity and ongoing quality control efforts. Improving the integrity of the Food Stamp Program has been a major priority for both Congress and USDA in recent years. As a result, Food Stamp Program error rates are at their lowest levels in program history. USDA must not approve any proposal that has the potential to reverse progress in program integrity, such as the Texas privatization proposal – especially in a state with one of the largest food stamp caseloads in the country.

#### **D. Texas Privatization Proposal Lacks Proper Evaluation Criteria**

The Texas privatization proposal fails to explain how the project would be evaluated to determine whether it is successful. This is a critical failing. No state has thus far privatized any significant portion of Food Stamp Program eligibility determinations. The success or failure of the Texas plan thus has implications not just for Texas but for the Food Stamp Program nationally. It is completely unacceptable for Texas to be allowed to proceed without a well-designed evaluation that compares the operation of a privately administered program to the existing program in the state. This evaluation will also be critical in setting standards for

The Honorable Mike Johanns  
August 23, 2005  
Page five

determining whether in the future other states that may wish to pursue program management changes have taken sufficient care in formulating their own proposals.

**E. Summary - Texas Privatization Plan Should Not Be Approved in Current Form**

In sum, the Texas proposal is a radical one which is inconsistent with Congress' design of the Food Stamp Program and puts federal funds at risk. It is clear that the privatization proposal put forth by Texas thus far -- because it conflicts with federal food stamp law, because it threatens to deny Food Stamp Program benefits to eligible persons, because it is likely to undermine Food Stamp Program integrity, and because it lacks proper evaluation criteria -- should not be approved by USDA. I echo the serious concerns that USDA has already raised regarding the Texas privatization proposal and expect you to continue your inquiries in accordance with federal law.

I urge you to prohibit Texas from moving forward with the privatization plan until you are certain that the numerous deficiencies in the plan have been corrected and request that you respond to my concerns in writing as rapidly as you are able to do so.

Sincerely yours,



Tom Harkin  
Ranking Democratic Member