



October 17, 2011

Angela Kline
Program Development Division
Supplemental Nutrition Assistance Program
Food and Nutrition Service
3101 Park Center Drive, Room 812
Alexandria, VA 22302

Dear Ms. Kline:

Following are comments from the American Public Human Services Association in response to the August 19, 2011, Notice of Proposed Rulemaking, "Clarification of Eligibility of Fleeing Felons." These comments also incorporate input from APHSA's affiliate the American Association of SNAP Directors.

In the preamble discussion FNS provides a summary of the history of fleeing felon provisions as they pertain to the Supplemental Security Income program, as well as SNAP. The settlement agreement in the case of *Martinez v. Astrue* has set the direction of the policy for SSI, and has had the effect of narrowing the application of the policy to three categories of offense. While choosing not to adopt a similar policy for SNAP because of its reading of the intent of the Food, Conservation, and Energy Act of 2008 (the farm bill), FNS seeks the opinion of commenters as to whether it should follow the *Martinez* settlement.

In our view the *Martinez* agreement provides a clearly workable option that FNS should allow. Since the policies for both SSI and SNAP are based on similar original provisions of the Personal Responsibility and Work Opportunity Reconciliation Act, establishment of a SNAP policy similar to that of SSI, based on *Martinez*, would be an entirely reasonable course of action. A number of states have already implemented the *Martinez* approach, or plan to, and they should be allowed to do so. These states find that the proposed FNS rule would entail the complexity of a time-consuming series of steps that must be taken for disqualification of each individual, and in addition includes criteria that cannot be known with objective certainty. For example, only the person in question can finally verify whether he or she was aware of the warrant, and he has an obvious incentive to state otherwise. Likewise, if there is question as to whether action has been taken to avoid the warrant, it seems unlikely that a SNAP applicant or recipient who understands the implication of his admission will make a statement to that effect regardless of his prior actions. The states following *Martinez* see shortcomings in a policy whose application may hinge on client "confession." The *Martinez* rule would set a simple and objectively enforceable policy based on presentation of a felony arrest warrant by a law enforcement officer.

On the other hand, other states find that their systems and procedures have allowed them to already implement a policy similar to that proposed by FNS with this rule, and those states should likewise be allowed to keep this policy in place. FNS should permit states to adopt either approach based on their needs and administrative structures.

Finally, we agree with the FNS decision to leave transitional benefits unchanged even though the household contains a fleeing felon. In what appears to be a direct conflict between two clear statutory provisions, a choice in favor of the household and the state agency (in that a change need not be made in the benefit level) seems preferable, particularly since its effect will be temporary.

Thank you for the opportunity to comment. If you have any questions, please contact Larry Goolsby, lgoolsby@aphsa.org, (202) 682-0100 ext. 239.

Sincerely,

A handwritten signature in black ink that reads "Tracy L. Wareing". The signature is written in a cursive style with a large initial 'T'.

Tracy L. Wareing
Executive Director