



October 17, 2011

Lizabeth Silberman  
Director, Program Development Division  
Supplemental Nutrition Assistance Program  
Food and Nutrition Service  
3101 Park Center Drive, Room 810  
Alexandria, VA 22302

Dear Ms. Silberman:

Following are the comments of the American Public Human Services Association in response to the August 18, 2011, Notice of Proposed Rulemaking, "Supplemental Nutrition Assistance Program: Major System Failures." The regulation proposes to implement Section 4133 of the Food, Conservation, and Energy Act of 2008 (the Farm Bill). These comments also incorporate input from two of APHSA's affiliate organizations, the American Association of SNAP Directors (AASD) and IT Solutions Management for Human Services (ISM).

#### **Threshold for overissued benefits**

The rule establishes the terms for FNS' determination that an automated systems state error has resulted in overissuance of benefits to a substantial number of SNAP households. The statute leaves to FNS the definition of "substantial," and FNS has set that threshold at 8 percent of the caseload over a six-month period.

We believe that the threshold should be higher than 8 percent. An error that leaves 92 percent of the caseload unaffected is not the sort of catastrophic breakdown that this provision of the law was intended to address. We do not find the comparison to the national case error rate, which FNS says it used as a comparable figure, to be relevant in this case. We do not minimize the significance of any system error that causes inaccurate issuance of benefits, but contend that relatively low levels of overissuance do not rise to the level of importance of, for example, issuance delays or system-caused underissuances. This threshold should be raised to at least 10 percent.

#### **Individual overissuance minimum**

Likewise, the individual overissuance minimum of \$21 should be set at a level more commensurate with the urgency of the conditions that should exist before these rules are brought to bear; this minimum should be raised to at least \$50. Smaller overissuance amounts can easily be incorporated into state collection processes as small agency-error claims, with little effect on the overissued households.

#### **Errors caused by personnel**

In the rule FNS holds open the possibility that human error, such as worker training, could cause a situation FNS might designate a major system error. As FNS itself states early in the Background

section, the intent of the legislative language is to focus on errors associated with automated eligibility systems. Errors caused by personnel should be excluded.

### **Lack of timely response to requests for clarification**

An exception is needed if, in developing their systems, states seek clarification from FNS but, not receiving a timely response, must proceed in a way that is contrary to the eventual interpretation received. The state should not be held accountable for any later errors FNS finds as a result of FNS delays.

### **Case sample requirements**

We have no objection to the size of the case sample FNS proposes, should one be required. However, an arbitrary three-month nationwide limit for submitting this sample is not reasonable. In the Paperwork Reduction Act section, FNS estimates that a state will need about ten staff days to construct a sample frame, and select and assign the sample, and that an additional 20 staff days would be necessary to develop the review guidance and forms. This timeline appears to be geared to state-administered states and does not factor in the coordination needed to complete the task in a county-administered state. The regulation also states that production of a data file containing case-level information and/or summary reports should not require more than 80 hours. However, this does not take into consideration the substantial number of legacy systems that were not built with sophisticated audit capabilities. Holding these legacy systems to the same standard as more modern systems is not reasonable. The time frame for submitting the sample should be flexible and should be negotiated state by state.

To summarize, a number of proposed requirements in this regulation could have a discouraging effect on the development of new systems. As states face the reality of shrinking resources and fewer staff, their information systems must employ state-of-the-art technology if they are to meet the needs of SNAP households, demands of the program's quality and timeliness mandates, and expectations of taxpayers. As discussed in the regulation, adequate testing of system changes is certainly necessary and is something every state would incorporate in its plans. However, given the urgency of modernizing systems and the systems' complexity, some degree of error is most likely inevitable. The extensive state reengineering and modernization that must take place cannot be effective without the full support of FNS for positive, incentive-based solutions for these challenges, rather than an emphasis on penalties.

We urge FNS to revise this rule in recognition that no state develops or operates its system with the intention of incorrectly issuing benefits. Truly catastrophic failures are possible and must be addressed, but the great majority of lapses in system operation can be handled in a much more collaborative and less administratively burdensome manner.

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

Sincerely,



Tracy L. Wareing  
Executive Director