

July 5, 2011

Moira Johnston
Branch Chief, Program Design Branch
Program Development Division
Supplemental Nutrition Assistance Program
Food and Nutrition Service
3101 Park Center Drive, Room 810
Alexandria, VA 22302

Dear Ms. Johnston:

Following are comments from the American Public Human Services Association in response to the May 3, 2011, Notice of Proposed Rulemaking, "Supplemental Nutrition Assistance Program: Review of Major Changes in Program Design and Management Evaluation Systems." The majority of the regulation proposes to implement Section 4116 of the Food, Conservation, and Energy Act of 2008 (the Farm Bill).

We object to this proposed regulation and believe it should be rewritten. We understand that Section 4116 requires FNS to take certain steps, but overall we believe that FNS has gone well beyond its mandate under the law. If implemented as written, we believe this regulation could prevent, weaken, or at the very least delay many administrative improvements that would otherwise quickly bring a new level of efficiency, integrity, and customer service to SNAP.

The regulation addresses the business process reengineering changes and other administrative changes that many states have either already implemented or will be implementing as they cope with the greatest surge in SNAP demand and, simultaneously, the greatest reduction in state budget capacity in many years. These improvements are absolutely necessary if SNAP is to continue meeting the needs of those it serves and the demands of national policymakers and taxpayers as it confronts the new reality of shrinking resources, fewer staff, and the severe need to modernize many state information systems and other infrastructure elements. We have seen dramatic examples of how a number of states have turned around their performance and customer service through extensive overhauls of their structure and procedures. Others are just beginning the work that will be required for this transformation. Wherever states are on this continuum, many additional reengineering changes will continue to occur in the coming years and their timely success will be crucial to SNAP's future. These changes cannot succeed without the most supportive partnership possible between FNS and the states.

Section 4116 clearly gives FNS the authority only to *identify* "major changes" and to collect certain information on those changes. It does not allow FNS to prevent or otherwise impair the ability of states to implement administrative changes that otherwise meet legal and regulatory requirements. Authority exists elsewhere in SNAP statutory language for that purpose, but this is allowed only in cases where states are clearly in violation of the law. Yet based on our

observation of recent FNS actions and based on the general thrust of this proposed regulation, we are concerned that the regulation could substantially impede the progress of state administrative improvements.

In November 2009 and January 2010, for example, FNS issued directives that states may not use non-merit staff for “*any* activity that involves direct contact with applicants and participants” [emphasis added]. These rulings, which were issued without public notice and comment, go well beyond the statutory language in Section 11(e) of the Food Stamp Act, which mentions only that “certification” of households must be performed by such staff. In recent months, FNS has appeared to use this interpretation to deny or delay requests involving call center proposals and streamlined recertification procedures – requests that we understand plainly retain merit staff in their plans to oversee the certification process and the eligibility decision in compliance with the law.

Some specific concerns we have under each of the five criteria for potential review follow.

(1) Large or substantially increased numbers of low-income households that do not live in reasonable proximity to an office performing the major functions described in Section 11(e) of the Act.

Face-to-face contact in a conveniently located physical setting might be desirable for all clients but is not realistic in today’s highly constrained fiscal environment. But this does not mean that services for the vast majority of clients will necessarily suffer if staff are reduced. On the contrary, dramatic advances in automation, coupled with a growing segment of the population that is completely comfortable with electronic access to government functions and benefits, have transformed the access we have to such major systems as banking, the IRS, and even health care among many others. Further, automated interactions allow clients to choose a contact time that is best for them, and allows them to do so from their home or other location with computer access (as is the case with numerous community organizations). Some clients – those in certain rural areas or some of the elderly, for example – may not be able to take advantage of this methodology, but most can now do so and even prefer this alternative. Therefore, implementation of office closures that are accompanied by the appropriate alternative methods and technology could not only avoid negative effects but can very likely on balance *improve* access and integrity. We would add that the proposed triggers are unrealistic in many states, including a closure that would require clients to travel more than 25 miles; there are many areas where households already do not live within 25 miles of a local office.

The data collection mandates that this criterion, and others in the regulation, could trigger would largely duplicate existing information that FNS has – including participation (which the quality control system identifies by demographic category), timeliness, and errors. FNS is also continuously gathering large volumes of information through other existing means, such as the management evaluation system and the increasingly frequent audits and reviews that states report are taking place. States themselves also continuously monitor program performance, and are fully committed to assuring that both existing and new systems operate with the proper level of customer service and program integrity. Finally, much of the data in question will be a normal part of any APD request in any event. We also note that the potential requirement for county-

level impact data will be particularly difficult to implement, and that caseload sizes in many counties are low enough that the validity of data will be highly questionable. These facts bring into serious question the need for the extensive new data collection steps contemplated here.

(2) Substantial increases in reliance on automated systems for the performance of responsibilities previously performed by personnel described in Section 11(e)(6)(B) of the Act.

Many of the points above apply here as well. Well-trained and supported staff are necessary and proper for many functions in the public health and human services field. States have taken great pride over the years in hiring qualified staff, training them properly, requiring high standards of performance from them, and keeping them updated in their respective fields of expertise. But with the evolution of both family functioning and business process tools in recent years, the need for such staff has grown more intensive in such fields as mental health and child welfare but has diminished in providing income assistance. As discussed under item 1 above, the revolution in automation now allows much of the work formerly done by staff to be performed as well, and often better, by the proper information systems processes. States have already implemented a number of systems with fewer personnel where service is equal or superior to the prior system.

(3) Changes that potentially increase the difficulty of reporting information under Section 11(e) or Section 6(c) of the Act.

Discussion under this criterion appears to assume that changes such as call centers will almost by definition jeopardize customer service and access. On page 24825, FNS states that “any change” of this nature will be considered major because of this potential. Again, this contradicts the experience of many state systems that have dramatically improved client service and access by the use of call centers. The test here should not simply be whether reporting methods are changed but whether they move toward a system that is demonstrably better.

(4) The establishment of a contract to use non-merit pay staff to perform functions previously performed by merit personnel described in Section 11(e)(6)(B) of the Act.

The regulation’s preamble signals a strong predisposition here, as elsewhere, that certain reengineering proposals will have negative consequences even before they are evaluated. On pages 24825-26, you write that “... non-merit pay staff would be interacting directly with households, which [would] have the potential of increasing the burden on households applying for and participating in SNAP. In addition, FNS has determined that use of non-merit pay staff in these functions can have a detrimental impact on the efficient and effective operation of the program ...” This statement is not documented but is presumably based on the problems encountered in two states some years ago where non-merit staff were used but where it is not clear that those problems derived solely or even primarily from the pay status of the staff employed. The particular business processes employed, a possible lack of adequate training and oversight, or some combination of these or other factors could also explain the problems encountered. Consequently, future proposals involving non-merit staff cannot be automatically classified as problematic without considering the many other factors that would be part of such a proposal, particularly such staff’s exact duties, what supervision and training they would receive, the precise role merit staff would continue to play in the final eligibility determination, and the

information system and business process tools that would be available to them. While the statute names this criterion as one that FNS can examine, it does not allow the agency to prejudge the impact of using non-merit staff.

(5) Significant reductions in the number of State or local staff involved in the certification of SNAP households.

Again, the proposed regulation appears to assume the effect of staff reductions can be known in advance: "... almost any decrease has the potential of adversely affecting operations ..." (page 24826). This proposal ignores scenarios in which staff reductions could be accompanied by well-known efficiency measures such as adoption of broader categorical eligibility rules, the six-month reporting option, or the implementation of an efficient new method of using electronic tools for verification of income. To cite one obvious example, some years ago Florida cut its staff nearly in half, which on its face would seem to be an alarming instance of this criterion. Yet through the wise use of automation, community partnerships, and other tools, Florida now leads the nation in payment accuracy and is held up by FNS as an outstanding model of business process reengineering.

The proposed rule could also have an unusually severe impact on locally administered offices; if the 5 percent trigger is applied to them as well, some are so small that they might have to report the elimination of a single employee or even reductions in one employee's hours.

Given the years of experience so many states have now had with a variety of reengineering and other administrative improvements and given the scope of the fiscal crisis, we urge you to rewrite this regulation based instead on a proactive and supportive approach to these critical issues. Rather than set up so many circumstances, with such low thresholds, that could trigger reporting and scrutiny, FNS should impose these requirements *only* when it is clear that a state's plan has a high probability of causing significant and immediate negative consequences. Elements of this alternative approach should include the following:

- State administrative improvement plans substantially similar to any plans now successfully in operation should not trigger any new requirements for reporting and review. Similarly, improvement plans not yet used in the SNAP environment but that have a successful track record in other, comparable governmental or nongovernmental settings should also have a presumption of success with SNAP. Finally, FNS should mount a vigorous effort with other federal agencies to identify and promote multi-program solutions to the issues we have raised; with rare exceptions, SNAP is only a part of reengineering efforts and is often not the largest partner at that.
- FNS should use the extensive data already collected in SNAP except in the most unusual circumstances. Even then, FNS should make judgments in an expeditious manner rather than relying on traditional, lengthy evaluations. Judgments should be made using objective observations and conclusions employing readily available data and feedback from state administrators, clients, and other stakeholders. The magnitude of changes triggering review should also be greatly diminished; our information is that states are planning a much greater number of administrative changes than the burden section of the

regulation contemplates, and federal reviews of so many changes would be a highly misdirected use of scarce federal and state staff resources.

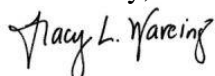
- FNS should proactively encourage and assist states to quickly implement successful reengineering changes, particularly those that link multiple programs. This should be accomplished through an ongoing state-federal work group that is continuously identifying new innovations; making available a catalog of “off-the-shelf” reengineering packages; greatly simplifying and accelerating the process of granting administrative waivers; and supporting the reengineering process through enhanced financial assistance. FNS has at its disposal several funds that could be redirected, at least in substantial part, to supporting reengineering projects including the Program Participation grants, outreach grants, and bonuses for high performance. FNS can also help projects to qualify for awards through the Administration’s Partnership Fund for Program Integrity Innovation.

Such an approach would be far more in keeping with the letter and the spirit of President Obama’s February 28, 2011, executive memorandum on flexibility. The memorandum directs a broad federal effort to encourage and promote administrative efficiency and greater flexibility where it will yield improved outcomes at lower cost, and to establish better processes for cross-agency and cross-government collaboration. Much of this regulation appears at odds with the kinds of improvements the President is requiring.

The President’s approach also properly focuses federal attention and resources on program *outcomes*, not the *means* to those outcomes. It is well established that successful administration of SNAP and other assistance programs depends on states’ flexibility to use a variety of administrative processes reflecting their individual needs, structures, and client populations. States are accountable for successful outcomes in SNAP and other health and human service programs, but must have the ability to choose a variety of administrative pathways toward that end.

The importance of how the federal government and the states proceed on administrative reengineering cannot be overstated. This regulation as written could substantially hamper the ability and willingness of states to undertake the kinds of extensive business process reforms that will be more and more necessary in the coming years – reforms that are critical and immediate necessities if the entire public human service enterprise is to continue performing as it must in the new fiscal environment. This regulation must be replaced with a very different approach – one that provides proactive assistance, objective judgments of state conditions and needs, and a recognition that much of our work in SNAP has now permanently and dramatically changed. We would be pleased to meet with FNS leadership to discuss these issues and seek common ground as we all work to make SNAP as effective and manageable as possible. Please contact Larry Goolsby at (202) 682-0100 ext. 239, lgoolsby@aphsa.org, with any questions.

Sincerely,



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