

March 27, 2016

Ms. Jane Duffield  
State Administration Branch  
Program Accountability and Administration Division  
Supplemental Nutrition Assistance Program  
Food and Nutrition Service, USDA  
3101 Park Center Drive  
Alexandria, VA 22302

Re: Comments on Interim Final Rule regarding SNAP Requirement for National Directory of New Hires Employment Verification and Annual Program Activity Reporting, RIN 0584-AE36

Dear Ms. Duffield:

Thank you for the opportunity to comment on the Interim Final Regulations implementing section 4013 of the Agricultural Act of 2014 regarding SNAP state agencies' use of the National Directory of New Hires (NDNH).

Massachusetts Law Reform Institute (MLRI) is a statewide legal advocacy and support center. Our mission is to represent low-income people, disabled people, and elders in their struggle for basic human needs. Our activities include litigation, policy analysis, research, technical assistance and public information. We pay particular attention to the SNAP program because of its critical role in reducing the hunger and food insecurity suffered by low-income households.

We submit these comments on behalf of MLRI, seven regional legal services programs throughout Massachusetts and their clients, and the Massachusetts SNAP Improvement Coalition, a coalition of more than 800 community organizations and advocates working to improve the SNAP program.

We appreciate FNS's concern in the Preamble that the NDNH not be used to deny, delay or terminate benefits to eligible households. Part I of these comments summarizes MLRI's extensive experience with the pitfalls of using new hire and quarterly wage data to determine prospective SNAP eligibility, resulting in the very denial, delay and termination of benefits to eligible households that FNS seeks to avoid. Part II points out that the final rule should, consistent with the statute, require states to request NDNH data only if, in the state's judgment, the data are relevant to determining eligibility or benefit levels at the time of certification. Part III of these comments sets forth specific recommendations for changes to the regulations that will help to address FNS's concerns regarding the use of new hire and wage data. These recommendations include:

- Applying the protections in the regulations to state agencies' optional use of NDNH wage data and state agencies' use of their state new hire and wage data, as well as the NDNH new hire data, use of which should also be a state option.
- Clarifying that – even if use of the NDNH is mandatory – state agencies are not required to match NDNH data before an application may be approved;
- Expressly stating that states may not delay a determination of eligibility at application or recertification because of delays in obtaining verification of match results;
- Expressly stating that states must independently verify the accuracy and relevancy of match results *before* contacting the household;
- Defining what is required to “independently verify” match information;
- Giving households at least 30 days to respond to a match notice before taking adverse action;
- Prohibiting states from using match information, even if verified, to deny or terminate benefits prospectively unless the match is relevant to current eligibility; and
- Expressly stating that states must assist households to obtain verification to clear up a match and may not penalize households who respond to a match notice but cannot provide particular verification.

Part III also makes specific recommendations for FNS guidance to states to reduce errors in the use of the data.

### **I. The Pitfalls of Using New Hire and Quarterly Wage Information to Determine Prospective SNAP Eligibility**

MLRI has extensive experience dealing with the adverse effects of state agency reliance on new hire and quarterly wage match data in the SNAP program. The state SNAP agency has conducted matches with the state's new hire and quarterly wage data for many years, but has struggled to find a way to use the results in a way that actually enhances program integrity. Key problems include new hire and quarterly wage information that is too often inaccurate, stale or irrelevant to SNAP eligibility and matching algorithms that produce many false positives.

In March 2014, despite previous experience with the defects in the data and the match results, the Massachusetts SNAP agency instituted an automated process for acting on alleged match discrepancies. Under this process, the state agency automatically generated a notice to the household requiring the household to provide documents to resolve the alleged discrepancy. Alleged discrepancies included an FEIN (Federal Employee Identification Number) in the new

hire or quarterly wage database that was not an exact match to the number for the household's employer in the SNAP computer system, an employment start date in the new hire or quarterly wage databases that was not an exact match to the employment start date in the SNAP computer system, and differences in the amount of wages reported by the match and the amount recorded in the SNAP file. This process brought to light a number of problems in the data and the matching process:

- **Errors in the new hire reports.** Federal law regarding the reporting of new hires gives states the option of imposing civil money penalties if the employer fails to make a timely report of a new hire. 42 U.S.C. § 653a(d). Massachusetts' regulations provide for such a penalty. See 62E Mass. Gen. Laws § 9. However, there is no penalty for incorrectly reporting that an individual was hired. Some employers therefore apparently err on the side of caution and report an individual as hired when the person applied for a job but was not hired, or the person was offered a job but never worked for wages. Errors also occur when the employer makes a mistake inputting the data. See Office of Child Support Enforcement, *Improving New Hire and Wage Data – What Can You Do?* (April 2015).

*Jose Ramos (a real person, not his real name) received SNAP benefits for himself, his wife Carmen and their two children. Carmen worked for a small restaurant about 30 hours a week. Jose is disabled. They have two children. In April 2014, the state agency sent Mr. Ramos a notice saying he had to provide 4 weeks of paystubs or a letter of termination from Super Duck Tours regarding his wife's employment there. The Ramoses had never heard of Super Duck Tours.*

*While Mr. and Mrs. Ramos were trying to figure out how to deal with the Super Duck Tours notice, which the state agency was never able to explain, the state agency sent them another notice directing them to provide 4 weeks of paystubs or a letter of termination from Not Your Average Joe's. Mrs. Ramos at first did not recognize that employer either but eventually remembered that it was one of the many restaurants where she had sought work in an effort to increase her hours. The hours available at Not Your Average Joe's conflicted with the job she already had and she had never worked there. She had no idea how to get verification from Not Your Average Joe's that she never worked there, and of course could not get the paystubs or letter of termination required by the notice. The family's difficulties were further complicated because Mr. and Mrs. Ramos do not speak English. Eventually they reached a legal services advocate who made numerous calls to the state agency but could not persuade the case manager or supervisor that the notice was in error. The advocate finally secured a letter from Not Your Average Joe's stating, "She never work any hours therefore she was never paid any wages."*

- **Other erroneous report of discrepancies.** In some cases, the match reported alleged discrepancies when there was no discrepancy.

*Leandro Molina (a real person, not his real name) worked as an interpreter for a small company on a very part-time basis. He was paid by direct deposit and did*

*not get pay stubs. He applied for SNAP in June 2014 to supplement his very low wages. Because he did not have pay stubs, the state agency verified his income through a collateral contact with his employer and included the verified income in the calculation of his benefits. Nevertheless, two months later, in August 2014, the SNAP state agency sent him a notice saying he had to provide 4 weeks of paystubs or a letter of termination from the same employer; 10 days after that the state agency sent him a termination notice. Mr. Molina did not understand why he was being asked to verify income he had already verified that had not changed. He still did not have paystubs to send. He was able to get the problem fixed and his benefits continued. But in November 2014, the state agency sent him yet another notice requiring him to provide 4 weeks of paystubs or a letter of termination for the same employer, even though his earnings were still on record, had not changed by more than the state's threshold of \$100 a month, and were still being counted in determining the amount of his SNAP benefits. Mr. Molina again requested that the state agency contact his employer, but the state agency terminated his benefits anyhow. Within three days of the closing, Mr. Molina provided the agency with a statement from his employer listing his earnings for the previous three months and repeatedly tried to call the agency assistance line to get his case reopened. After several months of this, he gave up. At the urging of a social worker at his housing development, he reapplied for SNAP in June of 2015, but the state agency again denied him because of allegedly insufficient documentation to clear up the prior wage match. It took more than a month for the housing development social worker to persuade the state agency to approve his benefits.*

We do not know why the match reported a discrepancy in Mr. Molina's case since the income that was already being counted was never less and was sometimes more than the state reported in the match notices. In other cases we have seen the match reported supposed discrepancies because of slight differences in the employer name reported by the household and the employer name in the state wage record. We have also seen cases where the alleged discrepancy occurred because the employer reported the wages under a different business name from the one known to the household.

Other discrepancies occurred because – in an apparent effort to increase the relevancy of the match – Massachusetts programmed the match to report a hit whenever there was a difference between the FEIN for the employer in the state wage database and the FEIN for the employer in the SNAP record for the household. (This was apparently intended to help the agency exclude reports of employers that the household had already reported). However, many if not most employed SNAP applicants and recipients (like most of the general population) do not know their employer's FEIN and providing one's employer's FEIN is not required to establish SNAP eligibility. The state agency therefore required case managers to look up and input FEINs for the household's employer. If the case manager entered the wrong number, or no number, the system would report a discrepancy – and require the household to clear up the discrepancy – even though the household had not provided any discrepant information.

- **Reports of discrepancies not relevant to SNAP eligibility.**

- **Stale reports.** SNAP households' jobs are often not stable. New hire matches and quarterly wage matches do not provide real time information. SNAP eligibility is based on monthly current and prospective income, but new hire and quarterly wage data are not current. States must require employers to report new hires to the state within 20 days of the hire or semi-monthly, 42 U.S.C. § 653a(b)(2), but it may take another 10 business days for the new hire report to be processed by the state, submitted to the NDNH, and posted to the NDNH. See Administration for Children and Families, Office of Child Support Enforcement, *National Directory of New Hires: Guide for Data Submission* (Jan. 28, 2015). Employers must submit quarterly wage reports to the State Wage Information Collection Agency (SWICA) on the last day of the month following the end of the quarter, 45 C.F.R. § 205.51(c); the state must submit the quarterly wage data to the NDNH by the end of the fourth month following the end of the quarter. 45 C.F.R. § 303.108.

Thus, the NDNH new hire data may be 30 days out of date, and the state and NDNH quarterly wage data are even less timely. Households who apply for SNAP after a job terminates may correctly report no countable income, but the match may report that they were hired for a job or that wages were paid at some point in the past. In Massachusetts, applicants were sent chasing after verification that the job terminated, including in cases where they worked for the employer months or years previously or worked only for a day or two.

- **Alleged discrepancies in change reporting cases below state's reporting threshold.** Massachusetts' rules require change reporting households to report changes of more than \$100 a month. However, neither the new hire reports nor the quarterly wage reports include monthly income information. The match nevertheless reported discrepancies where the allegedly discrepant amount was less than \$300 per quarter (or less than \$100 a month on average) and in some cases was less than \$100 for the quarter or an average of less than \$33 a month.

*MaryAnn Sherman (a real person, not her real name), a SNAP recipient, is 71 years old. She suffers from a number of severe medical impairments that prevent her from working. In October 2013 a film company asked residents of her senior housing development to be extras in a film. Ms. Sherman was filmed for part of one day (she sat in a chair and pretended to read a newspaper) and was paid \$206. Six months later the state agency sent her a notice requiring her to provide 4 weeks of paystubs or a letter of termination from the film company in California. The notice gave an address for the film company but no contact person or phone number. A few days later, the state agency sent Ms. Sherman a termination notice. Ms. Sherman had no idea how to contact the film company and could get no information from the state agency about what to do. She wrote a letter explaining her situation, and, with help of counsel, filed a legal challenge to the termination. Her benefits were not terminated, but the stress caused a flare-up*

*of Ms. Sherman's fibromyalgia and her doctor prescribed anti-anxiety medication.*

Developmentally disabled group home residents were also told to provide 4 pay weeks of paystubs or a letter of termination after they did one-day or very short-term jobs such as holding a sign advertising a seasonal tax preparer or a store closing.

In other cases, elderly SNAP recipients who worked for a day or two as election workers received notices saying they had to provide 4 weeks of paystubs or a letter of termination. Election workers reported feeling that the government was penalizing them for performing a civic duty.

*Jack Coakley, age 65, who has used a wheelchair for most of his life, worked as an election worker for two days for the City of Boston, earning a total of \$155. The state SNAP agency sent him a letter requiring that he provide four weeks of paystubs or a letter of termination from the City. When he could not get through to the state's SNAP assistance line he went to Boston City Hall, where an employee faxed his information to the SNAP agency. Nevertheless, the SNAP agency terminated his SNAP benefits, claiming that it did not receive the fax from the City. Mr. Coakley had to go back to City Hall and get the same information re-faxed before the state agency would reopen his case. While his case was closed, Mr. Coakley scraped by eating soup he bought on sale. "It was very tough getting by and very frustrating when you try to contact someone and never get an answer," he said. "It leaves you aggravated." See Boston Globe press [here](#).*

- **Inconsistency with simplified reporting principles.** Simplified reporting requires households to report increases between required reports only if the increase puts total household income over the gross income test. The goal is to reduce burdens on the state agency and on households, including households whose incomes fluctuate. When Massachusetts initially implemented its automated system in March 2014, the system reported alleged discrepancies below the reporting threshold for simplified reporting households during periods when they were only required to report if total income exceeded the gross income limit, and the system then automatically generated a verification notice to the household requiring the household to provide 4 weeks of paystubs or a letter of termination from the alleged employer. Beginning in July 2014 the state suppressed automated issuance of the verification notice for simplified reporting cases until the interim report or recertification. In March 2015, the state agency temporarily suspended the automated issuance of a request for verification whenever the match reported an alleged discrepancy. However, the SNAP agency computer system was programmed to prevent positive case action – at application, reapplication, interim report, or recertification – unless the case manager resolved the outstanding match. Moreover, agency workers were told they could not resolve the match unless the household supplied a document clearing up the match. Reviewing recent outstanding matches during an application or

recertification interview is not unreasonable if the agency worker is required to accept the household's oral statement – unless questionable – that the employment has ended or other explanation for the alleged discrepancy, but that was not the procedure in Massachusetts.

Requiring households to clear up stale or erroneous new hire or quarterly wage discrepancies by obtaining documents from a previous employer (or alleged employer) in order for benefits to be approved at the time of an interim report or recertification effectively penalizes households for working and for having fluctuating income between reports and thereby undermines the essential principle of simplified reporting.

- **Income of students under age 18, college work study, and other income that is not countable.** Income of a student under the age of 18 is not countable for SNAP. Other income may also be noncountable, including stipends paid to seniors in certain community service programs and federal work study for college students. Households are not required to report or verify employment or earnings that are not countable. See, e.g., 7 C.F.R. § 273.2(f) (requiring verification of nonexempt income). However, employers must report these jobs to the state in their new hire and quarterly wage reports. Because the household's SNAP record does not reflect receipt of the noncountable income, it shows up as a match discrepancy with the state's new hire and quarterly wage databases. (Although income of children under age 18 is not included in the NDNH, it is reported to state new hire databases. We discuss it here as background to our recommendation that FNS issue guidance regarding the state's use of their own new hire or wage data.)

*Carla Lafferty (a real person, not her real name) is a disabled mother with a teenage son. She relies on SNAP to supplement her SSI and Social Security disability benefits. Her 17-year-old son is a full-time student who also works after school and on weekends to get spending money and to learn skills he can use to get a job after he graduates and eventually have his own business. Beginning in April 2014, the state agency sent Ms. Lafferty multiple notices requiring that she verify her son's income (which she did) and six closing notices. In September 2014, her benefits were terminated. Even though she was very sick, she got a friend to drive her to the nearest SNAP office and waited two hours to see a worker, but could not get her benefits reinstated. A legal services advocate intervened and succeeding in getting Ms. Lafferty's benefits reinstated. However, it took another five months and repeated calls from the advocate to stop the state agency from continuing to threaten to close Ms. Lafferty's case because of her son's earnings.*

- **Caseload churning, drop in caseload.** Between March 2014 and April 2015 about 50,000 SNAP cases in Massachusetts closed because of a wage match. In April and May of 2015, FNS conducted a survey of Massachusetts SNAP closings pursuant to new hire and wage matches. FNS determined that 16,324 Massachusetts SNAP cases that closed in the months of November 2014, December 2014, and January 2015 had been sent a wage

match notice within 60 days before the closing. FNS reviewed the case records for a random sample of 46 of those cases. According to the FNS review of the case records, for at least 18 of the 46 cases (39 percent), the closings were in error because the household submitted verification timely, the match was for income already on record, the client never worked at the company listed on the match, the client had previously submitted verification about the employer, or for combination of these reasons.

In at least 6 of the 46 cases (13 percent) reviewed by FNS the household responded to the state agency by the 10- to 12-day deadline listed on the request for contact, but the household's benefits were still terminated because of the outstanding match.

Thirteen of the 18 cases that FNS determined were improperly closed were subsequently reopened. The process of closing and reopening these cases was a waste of worker time. It also caused a great deal of distress to households. Ms. Lafferty says:

*When we did not get SNAP in September, my son asked me if he should stop working so we would be able to get food stamps and buy food. DTA discouraged him from working hard to improve his future. I told my son he does not need to stop working and that it is my responsibility to feed our family. I applied for SNAP so I could buy the two of us the food we need to survive. I do not know if I can continue relying on this lifeline – and encourage my son to keep working and better his future – with the threat of our SNAP ending constantly hanging over my head. DTA knows my son's age. They know he is in high school because I have told them time and time again. But this nightmare keeps repeating. Dealing with this issue over and over has been stressful and traumatizing. It has made my health worse. I fear DTA is hurting a lot of people that have not been able to get to an advocate and have, like me, not been able to feed their families even after doing everything right.*

Many of the cases that were improperly closed did not reopen. According to the FNS review, at least 5 of the 18 wage match cases (28 percent) that were improperly closed were still closed four or five months later when FNS reviewed the case. These closings were contributed to the steep drop in the Massachusetts SNAP caseload between March 2014 and April 2015, a decline of nearly 53,000 households. An analysis by the Public Consulting Group, a consultant hired by the state agency to assess the agency's Business Process Redesign Initiative, concluded that much of the caseload decline was attributable to the state's handling of supposedly discrepant wage matches. Advocates continue to see SNAP households who were unable to clear up an alleged match discrepancy to the satisfaction of the state agency and simply gave up, thereby missing out on many months of SNAP food assistance for which they were eligible.

- **Food and Nutrition Service concerns about Massachusetts' use of the new hire and wage data.** On May 5, 2015, the Northeast Regional Office of the federal Food and Nutrition Service (FNS) sent a letter to the Secretary of the Massachusetts Executive Office of Health and Human Services, the state secretariat that oversees the state SNAP agency. The letter stated, among other things, that prior to March 20, 2015, the state



SNAP agency sent improper requests for contact, “including violations related to 7 C.F.R. § 273.12(c)(3),” to households for whom it had had received discrepant wage information without first reviewing the case “to determine whether the information was already known to the State, or whether it would impact the household’s eligibility or benefit level or was otherwise questionable.” With respect to the temporary suspension of the automated issuance of the request for contact, the letter stated, “Unfortunately, FNS understands that the automated request has simply been shifted to [state SNAP agency] workers who have not been properly trained and may be sending the notice without review or attempted contact with the household for clarifying information. The result is a continuation of improper requests for verification and case closures.”

The FNS letter identified a number of other problems at the state SNAP agency relevant to the ability of SNAP households to resolve wage match issues. These include: a) insufficient statewide telephone assistance line capacity, resulting in long hold times and callers being disconnected; b) insufficient staff resources to process applications, verifications, interim reports and recertifications on time resulting in improper denials and terminations; c) inconsistent application of policies and procedures by state agency workers; and d) large numbers of closed cases that become active again putting an additional burden on staff and households.

**II. The final rule should, consistent with the statute, require states to request NDNH data only if, in the state’s judgment, the data are relevant to determining eligibility or benefit levels at the time of certification.**

**Section 4013 of the 2014 Farm Bill** provides “that the State agency shall request wage data directly from the National Directory of New Hires established under section 453(i) of the Social Security Act ([42 U.S.C. § 653\(i\)](#)) relevant to determining eligibility to receive supplemental nutrition assistance program benefits and determining the correct amount of those benefits at the time of certification.” 7 U.S.C. § 2020(e)(24).

The National Directory of New Hires, as stated in the Preamble to the Interim Final Rule, 81 Fed. Reg. at 4159-60, is a repository of state new hire, quarterly wage and unemployment insurance data. The NDNH was created to help state child support agencies locate non-custodial parents and enforce orders against them.

The NDNH may be a useful tool for child support agencies. As the experience in Massachusetts demonstrates, however, new hire and wage data are not generally “relevant” to determining eligibility or benefits for SNAP prospectively. Moreover, the data are not generally available “at the time of certification.” Since the statute only requires the state agency to request NDNH information that is “relevant” to the eligibility and benefits determination at the time of certification, states should have the option not to request the information if the state reasonably decides that it is not relevant to the eligibility or benefits determination, or, even if potentially relevant, is not useful or available at the time of certification. If it chooses, FNS could require the states to explain a decision not to request the NDNH data.

The NDNH Farm Bill provision must be read together with other provisions in the statute, including the requirement of “timely, accurate and fair service,” 7 U.S.C. § 2020(e)(2)(B)(i), and the overriding statutory goal of making sure that federal funds are used “efficiently and effectively.” See 7 C.F.R. § 276.1(a)(4); see also 7 U.S.C. § 2025(g) (Secretary authorized to pay cost sharing for computerization if the Secretary for systems determined “likely to provide more efficient and effective administration of the supplemental nutrition assistance program”). Requiring states to obtain and pay for NDNH data and requiring the federal government to pay half of the costs is not consistent with the goals of accurate and fair service or efficient and effective administration if the state reasonably determines that the data are not sufficiently “relevant” to the eligibility or benefits determination at certification.

***Recommendation: The regulations should therefore provide that the state is required to request the NDNH data only if the state determines that the data are relevant to determining eligibility or benefits at certification. The requirement that all states enter into a computer matching agreement with HHS to “request” NDNH data should be deleted.***

### **III. The Regulations Should Be Modified So that Matching of NDNH or Other New Hire or Wage Data Does not Cause Erroneous Delay, Denial or Termination of Benefits to Eligible Households.**

Because the NDNH is a repository of state reports, errors in the state reports, such as those that occurred in Massachusetts, also occur in other states: the NDNH therefore contains both accurate and inaccurate data from 50 states. See Office of Child Support Enforcement, *Improving New Hire and Wage Data – What Can You Do?* (April 2015). This may be a less serious problem when the NDNH is used – as originally intended – by state child support agencies to locate noncustodial parents in order to establish and enforce child support orders. If the new hire or wage report is in error, the state child support agency may waste resources and contact employers unnecessarily in an effort to locate the noncustodial parent, but neither the parents, nor the child are in a worse position because of the error. If a support order has been established before the child support agency receives the new hire or wage report, the child support agency may notify the identified employer to withhold wages. However, if the new hire or wage report was in error, the employer cannot withhold wages so again neither the parents nor the child are in a worse position because of the error.

As the experience in Massachusetts demonstrates, using new hire or wage data to attempt to verify prospective eligibility for SNAP benefits may indeed have severe adverse consequences. The Interim Final Regulations address some of these adverse consequences but fail to address others.

- **The protections in the regulations should apply to states’ optional use of NDNH wage data and state new hire and wage data, as well as the NDNH new hire data.**

The NDNH new hire and wage data and state new hire and wage data are problematic in similar ways. The protections in the regulations should therefore apply equally to new hire and

wage data whether the state agency obtains the data from the NDNH or from its own state databases.

***Recommendation: The protections in the regulations should explicitly apply to the use of match data obtained by matching with the NDNH new hire and wage data and the state new hire and wage databases.***

- **The regulations should allow, but not require, states to use NDNH or state new hire or wage data to determine eligibility retrospectively.** As the Interim Final Regulations recognize, proposed 7 C.F.R. § 272.16(c)(6), despite its inaccuracies, the NDNH data may be a useful tool for states to establish and collect claims. State new hire and wage data may be similarly useful. When the data are used *retrospectively*, the limitations of the data are less problematic. For example, the state can determine that a new hire report is not relevant to eligibility when a subsequent quarterly wage report shows that the individual earned less than the reporting threshold or was no longer working at the time of application or recertification. Similarly, a new hire report or a wage report may help the state determine when an individual began employment and the approximate amount of wages paid. When the data are used to help the state establish and collect claims there is less risk that a needy and eligible household will be denied prospective SNAP benefits because of the state agency's processes. ***It is therefore reasonable for the Interim Final Regulations to allow states to use the NDNH data retrospectively to establish and collect claims. 7 C.F.R. § 272.16(c)(6).***
- **FNS should clarify that – even if FNS mandates use of the NDNH – states are *not* required to match NDNH data before an application may be approved.** Under the statute, the state agency is required to request NDNH data “relevant to determining eligibility . . . at the time of certification.” FNS guidance recognizes that the match with NDNH new hire data may occur only once a month. See Questions and Answers for Implementation of Farm Bill Section 4013 National Directory of New Hires, Q-13 (June 6, 2014). The Interim Final Regulations require states to match NDNH new hire data “at the time of application and recertification.” 7 C.F.R. § 272.16(c)(1). As stated above, we think that the regulations should not require the state to request data which may not be relevant. In any event, however, the regulations should be clear that the state may not wait to approve an application until the NDNH match is conducted because doing so will inevitably delay the issuance of SNAP benefits for households who greatly need the food the program is supposed to help them buy.

***Recommendation: If the regulations (contrary to our recommendation in Part II) require the state to request data regardless of whether the state determines that the data are relevant, the regulations should clarify that the state must include new applicants in the match within a reasonable time after application, but that the state should not wait for the match results to determine eligibility or approve the application.***

- **The regulations should expressly prohibit states from delaying a determination of eligibility at application or recertification because of delays in obtaining verification of match results.** The Interim Final Regulations, in an effort to protect households from

match errors, require states to verify match hits, send notice to the household of the match results, and provide an opportunity for the household to respond before taking adverse action. 7 C.F.R. § 272.16(c). Current FNS guidance recognizes that matching with NDNH new hire information and verifying the information could take 45 days or more. See Questions and Answers for Implementation of Farm Bill Section 4013, Q-13. The guidance advised states that applications and recertifications should not be delayed while the state agency does the match and verifies the results. *Id.* at A-13. The Preamble to the Interim Final Regulations makes the same point: “Should there be a delay in the State agency’s ability to verify the NDNH new hire match results within the required application processing timeline, the State agency is expected to continue processing the application without the requested documentation verifying the information.” 81 Fed. Reg. at 4160. This is a critical matter that should be explicitly addressed in the regulations. States are already having difficulty processing applications and recertifications on time. FNS requires states to deny or terminate benefits if the application or recertification is not timely processed, even when the delay is caused by the state. As a result, households who have fully complied with application or recertification requirements suffer denials, terminations and delays in receipt of the SNAP benefits for which they are eligible.

***Recommendation: The regulations should expressly state that the state may not delay determination of eligibility at application or recertification based on new hire or wage match hits because of delays in obtaining verification. It should be clear that the state should not wait the 7 or 30 days allowed for processing the application or recertification pending receipt or verification of match information as long as there is no information that the household is ineligible.***

- **FNS should clarify that states are required to verify the match accuracy and relevancy before contacting the household and that states may not use match information alone to deny, reduce or terminate current benefits unless the match information has been verified through another source without contacting the household.** The Interim Final Regulations require states to conduct “independent verification of match hits to determine their accuracy.” 7 C.F.R. § 272.16(c)(3). This requirement follows the requirement in the Privacy Act, 5 U.S.C. § 552a(p), which the Interim Final Regulations appropriately cross-reference. However, the regulations are not clear that that the independent verification must precede the state’s notice to the household and do not specify what the state must do to verify the match.

The requirement of independent verification is similar to requirements in longstanding FNS regulations that state agencies verify match results before taking adverse action. Thus, under 7 C.F.R. § 272.8(c), state agency action on information about a household received from the state entity that maintains wage information shall include “[r]eview of the information and comparison of it to case record information.” Under 7 C.F.R. § 273.2(f)(9)(iv), “prior to taking action to terminate, deny, or reduce benefits” based on information from an income and eligibility verification system (IEVS), “State agencies shall independently verify the information.” “Independent verification shall include verification of the amount of the asset or income involved, whether the household actually has or had access to such asset or income such that it would be countable income

or resources for food stamp purposes, and the period during which such access occurred.” *Id.* Similarly, under 7 C.F.R. § 273.12(c)(3), and under proposed 7 C.F.R. § 273.12(b)(8)(vii), (c)(8)(vi), (d)(8)(vii), 76 Fed. Reg. 25414, 25449, 25452, 25456 (May 4, 2011), the state agency must pursue clarification and verification when it obtains during the certification period “unclear information” about “changes in a household’s circumstances” from which it “cannot readily determine the effect of the change on the household’s benefit amount.” The state agency may clarify the information through a “collateral contact” with the employer or other source. 7 C.F.R. §§ 272.8(c)(1)(ii), 7 C.F.R. 273.2(b)(2), 273.2(f)(4)(i)-(ii), 273.2(f)(9)(v) (“State agency may contact the appropriate source by the means best suited to the situation”).

Despite these regulations, the Massachusetts state agency did not take steps to verify the match information independently before contacting households. Instead, the agency purported to meet the “independent verification” requirement by sending notice to the household and requiring the household to prove that the match results were not correct or were not relevant. Even after a household contacted the state agency in response to a match notice, case managers and supervisors often refused to assist households by doing a collateral contact with the purported employer or otherwise independently verifying the accuracy and relevancy of the information. Thus, the agency closed about 50,000 cases following a new hire or wage match without verifying that the match accurately reflected a discrepancy that was relevant to current eligibility.

***Recommendation: The regulations should clarify that the state agency must independently verify the match information before the agency sends notice to the household regarding the match results and that the state agency may not use match information alone to deny, reduce or terminate current benefits unless the match information has been verified through another source without contacting the household. Similar changes should be made to the proposed Reporting Requirements regulations, 7 C.F.R. § 273.12(b)(8)(vii), (c)(8)(vi), (d)(8)(vii).***

***Recommendation: These regulations and the Reporting Requirements regulations should also specify that independent verification includes but is not limited to (a) review of the household’s SNAP record to determine whether the employment at issue was previously reported, (b) review to determine whether the income at issue is noncountable, (c) review to determine whether the alleged discrepancy is within the state’s reporting threshold, (d) review to determine whether there is a reasonable explanation for the alleged discrepancy, for example, an employer who operates under different names, and (e) contact with the employer or Equifax to verify the match information.***

- **The regulations should specify that states must give households at least 30 days to respond to a match notice before taking adverse action.** The Interim Final Regulations do not specify how much time the state must give the household before taking action to deny, reduce or terminate benefits based on match information. In our experience, the

usual 10-day period for a household response is not enough time. Ten days' advance notice may have been sufficient many years ago but is no longer sufficient now that SNAP households in many states do not have an assigned case manager whom they have met in person; now that many states have reduced the number of SNAP offices, making it harder for applicants and recipients to get to the local office; now that state agencies have adopted statewide phone systems that too often lack sufficient capacity to deal with the volume of calls; and now that many states direct households to mail documents to a centralized processing unit rather than bring them to the local SNAP office. Many of these problems were identified by FNS in its May 5, 2015 letter to officials in Massachusetts. Ten days' advance notice is particularly insufficient where the household is being required to get documentation from a third party who may be located in another state. Allowing more time for households to respond to the match will reduce the number of erroneous denials and terminations.

***Recommendation: The regulations should provide that the state must give households 30 days' advance notice before taking adverse action based on a match. Similar changes should be made to the proposed Reporting Requirements regulations, 7 C.F.R. § 273.12(b)(8)(vii), (c)(8)(vi), (d)(8)(vii).***

- **The regulations should be clear that the state may not use match information, even if verified, to deny, reduce or terminate current benefits unless the match information is relevant to current eligibility.** In Massachusetts, we saw many instances where the state denied or terminated SNAP based on information that was not timely. For example, Massachusetts sent MaryAnn Sherman a match notice and a denial notice in April 2014 based on a one-time payment that the notice stated was received five months previously. (The notice erroneously listed a start date of October 2012, 18 months previously). We saw many other cases where the match information was months or years old. The state agency took the position that it could properly terminate benefits prospectively when a household failed to provide the verification the state required, even if that verification was not relevant to current eligibility.

Our recommended limitation on the use of the match information is fully consistent with the statute. The statute requires the state to request NDNH wage data "relevant to determining eligibility to receive supplemental nutrition assistance program benefits and determining the correct amount of those benefits." 7 U.S.C. § 2020(e)(24). Even if FNS believes that the statute mandates that states obtain, pay for, and use NDNH data to determine eligibility and benefits, the statute certainly does not say that the state must use the match data to determine *prospective* eligibility and benefits. Since use of match data to determine prospective eligibility is fraught with error, the regulations should expressly state that match data alone cannot be so used. The state would have the option – but would not be required – to verify the information, for example through Equifax or a collateral contact with the employer. If the state can determine the household's current wages without contacting the household, it should be allowed to use the information to determine prospective eligibility and benefits if it chooses to do so, provided it sends a request for contact and gives the household an opportunity to respond before taking adverse action.

*Recommendation: The regulations should clarify that where the match information is relevant only to past eligibility the state may use it in appropriate cases to seek recovery of an overpayment and in some cases to disqualify the household but may not otherwise deny, reduce or terminate benefits. Similar changes should be made to the proposed Reporting Requirements regulations, 7 C.F.R. § 273.12(b)(8)(vii), (c)(8)(vi), (d)(8)(vii).*

- **The regulations should provide that the state agency has a duty to assist households to obtain required verification to clear up a match and that the state agency is prohibited from penalizing households who are unable to obtain specific verification.** Federal regulations require the state SNAP agency to assist households in obtaining required verifications. 7 C.F.R. §§ 273.2(c)(5), 273.2(f)(5). “If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be denied, and the agency shall provide assistance required by paragraph (c)(5) of this section.” 7 C.F.R. § 273.2(d)(1). In keeping with the remedial purposes of the Act, households may be terminated for failure to respond to a legitimate request for contact or for refusing to provide information, see 7 C.F.R. § 273.12(c)(3)(i)-(ii), and 7 C.F.R. § 273.2(f)(9)(v), but should not be terminated when they respond but are unable to provide the requested information.

*Recommendation: The regulations should expressly state that the state agency must assist the household to obtain verification to resolve a match and that the state may not deny, terminate, or reduce benefits or assess an overpayment against households who respond to a notice but are unable to provide specific verification or otherwise do not refuse to cooperate.*

### **FNS Should Issue Guidance on Best Practices Regarding Use of the NDNH and State New Hire and Quarterly Wage information**

- **Model notices.** The match notices in Massachusetts were headed “DOR Employment Verification Notice” but none of the SNAP households we spoke with knew that “DOR” is the state revenue agency that maintains the state new hire and quarterly wage information. The notices stated: “Below is a list of verifications you need to give us in order to determine if you can continue to receive assistance with DTA [the state SNAP agency]. **You must submit these verifications to DTA, PO Box 4406, Taunton, MA 02780-0420 by [date].** If you do not give the required verifications, your case may be denied or closed.” Under the heading “What You Need to Prove” the notices stated that “DTA has received information that you or a member of your household may be employed at:” and then listed an employer name, an address, an FEIN, a dollar amount (except in the case of new hire matches, where no dollar amount was listed), and a “Start” date (which usually had no connection to the date the employment allegedly began). The form also had a field labeled “End” which was usually blank. Under the heading “Examples of Proofs You May Provide” the Notices stated, “You must provide verification of your current income. You must provide the pay stubs received for the most

recent four weeks worked or a letter from the employer with this information. If no longer employed, you must provide a letter with your date of termination.”

MLRI spoke with many SNAP recipients who were baffled by this notice. Although the state agency said to us that households could provide information other than paystubs or a letter of termination, many households with which we spoke thought that they had to provide 4 weeks' paystubs or a letter of termination, as the notice seemed to state, even when that verification did not exist or could not be obtained by the household. Advocates and households who managed to reach a worker were frequently not given the option of providing other verification or authorizing a collateral contact. The notice did not state that benefits would not be terminated if the household responded to the notice and did not refuse to cooperate. The notice gave a number for the state agency but did not say that the state agency would provide help getting the required verification.

In Massachusetts, when the state Medicaid agency receives wage information that is inconsistent with what the household reported, the Medicaid agency sends the household a “job update form” that has check boxes that allow the individual to check a box explaining that the individual is indeed working at that job, when the job began and the wages; that the job has ended and when; that the individual is no longer working at that job; that the individual never worked at that job; or that the individual is working at a different job. It would be helpful to states and would reduce problems for households if FNS provided states with a model notice with check boxes for the usual explanations as to why the information is not correct or not relevant as well as an offer to provide assistance and a reminder that the household must respond to avoid termination or denial even if the household does not have documents regarding the alleged employment.

- **Limiting use of the state's new hire and quarterly wage data for children under age 18.** In Massachusetts, the parents of students who participated in a city youth employment program got match notices requiring them to verify the student's “wages,” even though the students' stipends were not countable. Some state agency case managers and supervisors then required the parents to provide proof of the wages and/or proof of school attendance before they would treat the payments as noncountable. The director of a youth employment program was swamped with requests for verification. One mother of four teenagers got multiple demands for verification of the amount of the stipends and school attendance for each of her children. Some of the teens said that they no longer wanted to be in the youth program because their participation was jeopardizing the family's benefits. Carla Lafferty's son asked if he should stop his after school job.

FNS could help states avoid the problems that occurred in Massachusetts with respect to wage matches for children by recommending that states not use the state's new hire or quarterly wage date for individuals under age 18 unless the state knows that the individual is not a student.

We appreciate that FNS has attempted to meet its obligation to implement the statute in a way that minimizes the potential negative impacts of using flawed data and flawed matching



programs to determine eligibility for SNAP benefits. We also thank the Massachusetts SNAP agency for recognizing that its previous data matching practices resulted in improper delays and denials of benefits and must be substantially changed to avoid harming vulnerable and eligible households.

As discussed above, we think that the final rule should, consistent with the statute, require states to request NDNH data only if, in the state's judgment, the data are relevant to determining eligibility or benefit levels at certification. We also recommend, based on our experience, that the adverse effects of this type of data matching can be further reduced by issuing guidance on best practices and by revising the regulations to be more specific that –

- (1)        The protections in the regulations should apply to state agencies use of state new hire and quarterly wage data, not just the NDNH;
- (2)        Even if use of the NDNH is mandatory, states are not required to match NDNH data before an application may be approved;
- (3)        States may not delay a determination of eligibility at application or recertification because of delays in obtaining verification of match results;
- (4)        States must independently verify the accuracy and relevancy of match results *before* contacting the household;
- (5)        Independent verification includes review to determine whether the income was in fact reported, or is noncountable; whether the discrepancy is below the agency's reporting threshold; whether there is a reasonable explanation for the alleged discrepancy such as an employer operating under different names; and a collateral contact with the employer if the discrepancy cannot otherwise be cleared;
- (6)        States must give households at least 30 days to respond to a match notice before taking adverse action;
- (7)        States may not use match information, even if verified, to reduce or terminate benefits unless the match is relevant to current eligibility;
- (8)        States must assist households to obtain verification to clear up a match and may not penalize households who respond to match notice but cannot provide particular verification.

Thank you very much for your consideration of these comments.

Very truly yours,

A handwritten signature in blue ink that reads "Deborah Harris". The signature is written in a cursive, flowing style.

Deborah Harris  
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