



November 13, 2012

Julie Brewer, Chief
Policy and Program Development Branch
Child Nutrition Division
Food and Nutrition Service
United States Department of Agriculture
3101 Park Center Drive, Room 640
Alexandria, Virginia 22302–1594

Dear Ms. Brewer:

The School Nutrition Association (SNA) appreciates the opportunity to submit these comments regarding the proposed rule entitled “Independent Review of Applications Required by the Healthy, Hunger-Free Kids Act of 2010”, as published in the Federal Register on September 13, 2012.

SNA members applaud the Department for its efforts to improve the integrity of the school meal program, and share in this goal. We recognize that this proposed rule is a result of the legislative mandate included in Sec. 304 of the Healthy, Hunger-Free Kids Act (HHFKA), several of our members have advised us that they have both general and specific concerns that are the basis of these comments. While we agree with the goal of Sec. 304, the implementation of these requirements is more difficult and costly than might have been understood when the legislation was adopted.

SNA members are constantly working to reduce error rates in school meal programs, and have had success. We agree with Under Secretary Concannon’s testimony on this subject earlier this year before the House Agriculture Appropriations Subcommittee that the cost of errors is based on the Access, Participation, Eligibility, and Certification (APEC) study done in 2005-2006, and that a number of steps have been taken to tighten up eligibility as a result of HHFKA. He also told the Subcommittee that USDA was reprogramming funds to do another study this coming year. We respectfully suggest that it may be prudent to have these updated results before moving to implement the proposed rule.

General Comments

Several SNA members are concerned that any new additional regulatory requirements would be a difficult and distracting burden while they are implementing the most significant changes in school meal standards in a generation. They also question how they will obtain the additional resources that would likely be required to implement the proposed rule. An elaboration of some general concerns follows.



Timing of Implementation

Local Education Agencies (LEAs) are working to implement the changes required for School Year (SY) 2012-2013 by the revised school meal pattern. Several LEAs have told SNA that they have had to spend more time than anticipated to develop menus; secure product; educate students, parents and school administrators about the new meal pattern; and work to encourage the acceptance of the new food items. Given that the breakfast pattern will change in SY 2013-2014 and there may be similar increased workloads as the new breakfast pattern is implemented, LEAs believe that the start date for these secondary reviews should keep in mind the other changes LEAs are being required to implement.

Integration with Other Anticipated Changes

State agencies and LEAs know that there are likely to be additional changes associated with the implementation of the new 3-year cycle for Coordinated Review Efforts (CREs) beginning with SY 2013-2014, as required by Sec. 207 of HHFKA, "Reporting and Notification of School Performance". No guidance or training has yet been provided, but is expected in the coming months. LEAs question how the secondary reviews required by this proposed rule may be integrated with the revised CRE requirements. Phasing in secondary reviews as part of the CREs would, in SNA's view, be a prudent course of action.

Cost and Staffing

Several SNA members have told us that the secondary reviews will be costly and require additional staffing at a time when many LEAs are striving to reduce costs and manage with reduced staffing. Some of the support previously provided with state and local resources are no longer available, so independent reviewers from other state and local government agencies may not be readily available, nor are financial resources to hire private reviewers. While we agree with the goal of preserving the integrity of school meal applications, cost considerations are, understandably, paramount. As a consequence, some LEAs are seriously concerned that they may not be able to fully comply with the proposed requirements through no fault of their own, or at the expense of meal service to students.

Specific Comments

Who May Be Subject to Review

The proposed rule may well require more LEAs be subject to second reviews than is currently the case. Review thresholds are being modified compared with current standards. For example, the proposed rule at § 245.11(b)(1)(ii) provides that "All local educational agencies at risk for a follow-up



administrative review under § 210.18(i)(3)(i) because they claim between 5–10 percent of the free and reduced price lunches incorrectly for the review period due to errors of certification, benefit issuance or updating of eligibility status.” However, § 210.18(i)(3)(i)(C) sets a review standard “...if 10 percent or more...are claimed incorrectly.” The proposed rule also requires for Provision 2 and Provision 3 operators that “All local educational agencies that are establishing a new base year in the following school year under the special assistance certification and reimbursement alternatives set forth in § 245.9” be subject to the second review of applications. This could be a very burdensome requirement without there being a demonstration that a second review of all Provision 2 and 3 operators is warranted.

Source of Errors

Several SNA members have suggested simplifying applications, including providing alternatives to paper applications, would help reduce errors. Additionally, there are instances when the errors are beyond the control of LEAs. Some members suggest that USDA guidance for application processing requires that applications be taken at "face value", and since there are no longer temporary applications LEA's can even take an application with zero income and the family be approved for benefits all year long. These members responsibly ask if USDA guidance on this issue, while well intentioned, is in conflict with concerns about errors. Similarly, should a student be declared eligible for the year based on a family's income or SNAP eligibility at the time of application, this approval should not be characterized as an “error” during a subsequent verification if the family's income has changed since the initial approval.

Errors by families are a continuing and difficult concern. LEAs frequently encounter delays in getting responses from families. While LEAs will do what they can to resolve these issues, second reviews may well delay approvals, and result in the provision of substitute meals to students. This is a serious and difficult problem for both the student, as well as for the SFA.

Some members have also advised us of unique difficulties encountered by military service families due to transiency. They are required to process a high number of new applications, almost each year.

Timeframe for Review

Even though Sec. 304 of HHFKA requires that “the review of initial eligibility determinations...shall not result in the delay of an eligibility determination for more than 10 operating days after the date on which the application is submitted”. SNA members suggest that these requirements are not realistic given the task at hand. SNA strongly urges the Department to (1) modify the timeframe for eligibility determination so that it is based on the later of the start of the school year or the date of application; and (2) to reexamine if 10 operating days is a sufficient and reasonable deadline, particularly at the start of the school year.



Some LEAs have attempted to provide early application for meal benefits for the convenience of families, and in line with requirements for other school forms set by school districts. For example, in one case applications, for the convenience of parents, are posted online 15 days before personnel report to work. Therefore it is not possible to review all of the applications within 10 operating days without changing school personnel policies.

Additionally, the volume of applications received at the start of the school year may be too great to handle within 10 days. This can be an issue for schools with large enrollments, along with smaller schools that have few people assigned to deal with all of the SFA's responsibilities. Adding a second review risks the potential for a delay in the provision of meal benefits.

The proposed rule at § 245.11(c)(1) states "The second review of initial determinations must be completed by the local educational agency in a timely manner and must not result in the delay in notifying the household, as set forth in § 245.6(c)(6)(i)." Since the reviewer is independent, LEAs are concerned that there is no practical way to ensure control of the review process.

Finally, on this topic, LEAs believe that second reviews may jeopardize their current ability to provide same day approval.

Other Concerns

Training for Correction of Errors

While we recognize that this issue is beyond the discussion of the proposed rule, members have suggested to us that there is a continuing need for training and training materials to help staff develop strategies for identify and correcting errors. The role and responsibility of state agencies needs to be clearly stated.

Alternative Second Review Processes Already in Place

Some LEAs already have audits and other second review methods in place as a result of a verification process that randomly chooses applications based upon error-prone applications or focused samples. They question whether or not these alternatives will continue to be acceptable, or how these current processes may be modified so that they can continue to be used.



Who Conducts the Second Review, and How It Is Done

The proposed rule provides at § 245.11(c) that “The second review must be conducted by an individual or entity who did not make the initial determination. This individual or entity is not required to be an employee of the local educational agency but must be trained on how to make application determinations. All individuals or entities who conduct a second review of applications are subject to the disclosure requirements set forth in § 245.6(f) through § 245.6(k).”

LEAs ask for further guidance regarding these reviews, including:

- Who is responsible for hiring/selecting the second reviewer, and what discretion they have in the selection process;
- Who will be responsible for paying for the second review;
- What training is required;
- If state agencies have to visit LEAs to verify they are doing the 2nd review? Is it a follow-up visit or the next review cycle (3 years) or LEAs send report;
- The consequences if an LEA does not do the second review or if there are still more than 10% errors following the review; and
- If the LEA is using an electronic application and approval process, what will be involved in the 2nd review? The burden of the second review may outweigh the benefit of electronic processing.

SNA continues to appreciate its strong working relationship with the Food and Nutrition Service and other USDA agencies. We look forward to working with you on further action regarding this proposed rule and other matters important to the integrity and quality of school meal programs.

Sincerely,

Sandra E. Ford, SNS
President