



## Office of Temporary and Disability Assistance

ANDREW M. CUOMO  
Governor

SAMUEL D. ROBERTS  
Commissioner

March 29, 2017

Sasha Gersten-Paal, Branch Chief  
Certification Policy Branch  
Program Development Division, FNS  
3101 Park Center Drive  
Alexandria, VA 22302

Re: Federal Register Vol 81 No 231 (pages  
86614-86627) and republished in Vol 82,  
No. 39 to extend the comment period  
(page 12184), Proposed Rule:  
Supplemental Nutrition Program:  
Student Eligibility, Convicted Felons,  
Lottery and Gambling and the State  
Verification Provisions of the Agricultural  
Act of 2014

Dear Ms. Gersten-Paal:

The New York State Office of Temporary and Disability Assistance (OTDA) submits the following comments in response to the above cited proposed rule, which seeks to implement four sections of the Agricultural Act of 2014 (2014 Farm Bill) affecting eligibility, benefits, and program administration requirements for the Supplemental Nutrition Assistance Program (SNAP). This proposed rule first appeared in the Federal Register of December 1, 2016 and was republished as a summary in the March 1, 2017 Federal Register in order to extend the comment period. Specifically, OTDA's comments pertain to Sections 4008 and 4009 as set forth below.

### **Section 4008 – Eligibility Disqualifications for Certain Convicted Felons**

Section 4008 prohibits anyone convicted of Federal aggravated sexual abuse, murder, sexual exploitation and abuse of children, sexual assault, or similar State laws, and who are not in compliance with the terms of their sentence or parole or are a fleeing felon, from receiving SNAP benefits. As written, the provisions to enact Section 4008 are extremely vague in that they lack sufficient details necessary to enable uniform implementation of these rules. States will need information on the specific crimes nationwide that will be covered under this regulation. The Background of the proposed rule notes that the US Department of Justice “may establish guidelines” to clarify the definitions of similar offenses. However, without specific guidelines, states will not be able to implement this rule.

OTDA is also concerned about the lack of objective data sources available to states to support compliance with the proposed rule. There is no national database available which would allow states to conduct the required verification. We request that FNS provide clarification as to how states are reasonably expected to meet this requirement.

OTDA is concerned that states will be required to comply with these vague standards without adequate federal guidance or the support mechanisms needed for proper and uniform implementation. For example, the proposed rule requires states to determine when an attestation is "questionable." However, no direction or guidance is provided to assist states in making this determination, thereby encouraging a lack of national uniformity and consistency in implementation. Finally, OTDA requests clarification regarding the relationship of the proposed rule with the Fleeing Felon rule.

### **Section 4009 – Lottery and Gambling Winners**

Section 4009 prohibits households containing a member with substantial lottery and gambling winnings from receiving SNAP benefits until the household meets the allowable financial resources and income eligibility requirements of the program. Section 4009 also provides that State SNAP agencies are required, to the extent practicable, to establish cooperative agreements with gaming entities in the State to identify SNAP recipients with substantial winnings. However, the proposed requirements raise many operational concerns and questions. Recognizing the recent proliferation of gaming locations and well-founded concerns over confidentiality, the proposed rule's expectations for data sharing and cooperative agreements are overly simplistic. Implementation of this rule would not only be problematic but would also be overly burdensome for both the state agency and the gaming regulators. Further, the proposed rule would generate a very limited benefit to SNAP. Any attempt to quantify a benefit to SNAP would be purely speculative, as data does not exist in a form that makes such an assessment possible. In addition, there do not appear to be any existing mechanisms for sharing data about gambling winners from the general public among all national gaming locations and the state agencies. Consequently, implementing this rule, as proposed, would not be cost effective for the states. Moreover, operationalizing this requirement would be difficult given confidentiality restrictions and concerns.

OTDA also requests that the proposed rule provide clarification of the following issues:

1. Would a household be deemed ineligible for SNAP if all, or some, of its winnings were withheld for other purposes, such as Lottery Intercept or for payment of past public assistance or child support?
2. How would the impact of withheld taxes, associated gambling losses, and other withholdings affect the definition of a gross prize? The Food and Nutrition Service (FNS) has indicated that it based its definition of substantial winnings on the amount that would cause a significant lifestyle change for a majority of SNAP households. By not considering the impact of certain withholdings and taxes, this rule does not take into account the net result to a household, which is often much less than the gross prize.
3. What is the rationale for disqualifying an entire household, regardless of its size for winning a prize in excess of \$25,000? Again, using the FNS definition of substantial winnings, a prize of approximately \$25,000 before withholdings are deducted may not cause a significant lifestyle change for a large family.

Finally, more clarity is needed in several areas, such as the actions states will have to take to send notices to clients and to close cases; state responsibilities for detecting out of state winners, and how states will inform clients of these rules and the processes for reestablishing eligibility.

Thank you for the opportunity to comment on this proposed rule. If you have any questions, please contact me at 518-473-6035 or [Kevin.Kehmna@otda.ny.gov](mailto:Kevin.Kehmna@otda.ny.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Kehmna', followed by a long horizontal line.

Kevin Kehmna, Director  
Audit & Quality Improvement