



May 31, 2016

Ms. Andrea Farmer, Chief
School Meals Program Branch
Policy and Program Development Division
Child Nutrition Programs
Food and Nutrition Service
U.S. Department of Agriculture
3101 Park Center Drive
Alexandria Virginia 22302-1594

Dear Ms. Farmer:

The School Nutrition Association (SNA), representing 56,000 school nutrition professionals, welcomes the opportunity to submit comments on the US Department of Agriculture's (USDA) proposed regulation, *Child Nutrition Program Integrity; Proposed Rule*, with comments due by May 31, 2016.

In addition to providing meals under the National School Lunch Program (NLSP) and School Breakfast Program (SBP), SNA members offer options under the Child and Adult Care Food Program (CACFP) and the Summer Food Service Program (SFSP). Our members, including state agency representatives, have implemented numerous regulations contained in the Healthy, Hunger-Free Kids Act of 2010 (HHFKA) and are therefore in a unique position to understand how any new proposed regulations will impact child nutrition programs, including increased costs and administrative work.

With this opportunity to comment on the proposed rule, we are providing input to USDA before the release of a final rule, as requested in the proposed rule. SNA urges USDA to consider the following comments:

Section 303 Related Issues

The assessment of any penalty to a Local Educational Agency (LEA) or state agency would be a proposed hardship and challenges the intent of schools serving meals to children during the school day. State agencies and LEAs administer and operate child nutrition programs on a very limited budget in complying with all federal regulations and policies. An assessment of any kind against the school nutrition program, LEA and/or a state agency places all programs with difficult decisions on whether to continue with a federal/state agreement or state/LEA agreement. The proposed regulations do not allow for a state agency appeal. All levels should be allowed an opportunity for an administrative appeal.

The reasons why an assessment would be charged against an LEA or state agencies are not clearly defined. For purposes of a punitive financial assessment against a school district, any formula to determine such an assessment should have a well-defined basis. The formula proposed in the regulations looks at a tiered assessment structure based on program reimbursement dollars only. It is tied to program reimbursements yet the reason for the assessment may not be caused by actions of the school nutrition program. The assessment could be due to local actions that are outside of the school nutrition program area of responsibilities. The tiered assessment structure is based on an arbitrary value and does not define what actions would initiate an assessment. In addition, this type of

assessment is outside of municipal finance practices. For example, a school nutrition program should not be penalized and charged an assessment if a school board or superintendent does not fully implement a district's wellness policy.

It is important to note that any assessment against a small LEA would have greater impact due to the limited resources already affecting those programs. Although Section 303 has listed upper limits for assessments, it would be prudent for USDA to look at a more applicable formula and minimize the impact on program funds. It seems that the assessment formula, as written, does not equal what are identified as issues referenced in the preamble of the proposed rule as excerpted below from pages 17565 and 17566 of the Federal Register of Tuesday, March 29, 2016:

'It is important to note that the statutory scheme only anticipates assessments be established in instances of severe mismanagement of a program, disregard of a program requirement of which the program operator had been informed, or failure to correct repeated violations. These criteria suggest that violations that would result in assessments would be egregious or persistent in nature, remaining unresolved after the normal monitoring and oversight activities have failed to secure corrective action. Current program regulations require rigorous FNS and State agency monitoring and oversight... Generally, State agencies and school food authorities work together to correct Program violations for the betterment of the Program and the children they serve... The Department anticipates assessments would be established only on rare occasions in securing corrective action.'

Recognizing differences among state agencies, several areas of the regulations require the Food and Nutrition Service Regional Offices (FNSRO) to review and approve state agency procedures to be developed based on these proposed regulations. There are also differences in the administration and operations between FNSROs. FNSROs need to address provisions in this proposed rule in a consistent and equitable manner. In developing procedures and approval guidelines for the various items in this rule, consideration should be given to include review by key stakeholders in the programs, including state agency and LEA representatives.

This entire proposed regulation needs to be shared and communicated to LEA administrators, including superintendents and school committees.

Section 322 Related Issues

Section 322 addresses SFSP disqualification from program operations based significantly on the procedures used in CACFP. Although there are challenges in some instances with new SFSP program operators, consideration should be given to the time a program has invested in sponsoring a summer program and the depth of training received by a new program. Due to the nature of the SFSP operating for a short time period annually, consideration might be given to allow new sponsors to shadow other programs or be on an annual agreement rather than a permanent agreement the first year of operation.

The timeframes outlined for corrective action against SFSP sponsors are rather aggressive. With the short duration of SFSP program operations, the full impact of these timelines may hamper a state agency's ability to oversee all programs by having to focus on the abbreviated timelines for corrective action. Currently, 48 hour notice and confirmation of corrective action has been quite successful in addressing serious issues. If these proposed timelines are included in the final rule, state agencies will need additional administrative funds for oversight.

The procedures to contact other state agencies that might be involved with SFSP sponsors should be left for state agencies to develop and manage without USDA FNSRO regulatory language. If an individual state has challenges, FNSRO or headquarters should address them with the state agencies.

Section 332 Related Issues

It is overreaching and excessively punitive to require state agencies to pay all valid claims for reimbursement from non-Federal sources, if the required timeframes for a fair hearing are not met. In some states, the laws for administrative review are different than USDA regulations. The process can involve scheduling between the state agency and another government entity. USDA should allow waivers in states that have administrative law procedures that challenge the CACFP timelines and in cases where a designated official by title is unavailable.

Section 335 Related Issues

Additional funds for state agencies would assist in the operations of CACFP program reviews and audits, especially with the review process revisions included in this proposed rule. The process to request additional funds should be practical, pertinent and done expeditiously.

Section 362 Related Issues

In consideration of disqualified schools, institutions and individuals across all child nutrition programs, it is critical that USDA not disqualify a program from participating because of one individual who may have acted outside of the scope of his/her responsibilities. For instance, if there is theft of program funds by an individual, the entire organization should not be designated on the National Disqualified List. As the child nutrition programs have become part of the full service school day, careful and thoughtful procedures need to be in place to prevent children who rely on nutritious meals from being denied participation because of the actions of one individual.

Other Issues

The proposed regulatory change to require annual procurement training as part of the Professional Standards training should apply to only those individuals in the LEA or local sponsoring organization that are involved in procurement, including school business officials and municipal finance personnel. Procurement training for all school nutrition personnel would put additional training burdens on program personnel and increase program costs. Some program personnel do not have procurement as part of their job responsibilities and valued training in food safety may better serve those staff members. In addition, requiring this content area annually takes away from other content that is broad spectrum for school nutrition program operators. Training developed by USDA or any contractors should be relevant to program needs, address literacy and language differences of program staff and be available for reinforcement after the actual training has taken place.

Food service management company contracts limited to fixed fee type contracts should benefit the LEA to assure that the local district is able to monitor costs and services. Requiring state agencies to approve the contract reaches beyond the contract agreement, which is between the LEA and the food service management company. With the contracts changing to fixed fees, maintaining the current regulation to review and approve the contract terms prior to the local signatory process is sufficient to address program integrity, rather than the annual review and approval of each contract amendment.

Corrective action and technical assistance, with the goal of program improvement, will assuredly be better received than assessments on local school districts. Designing corrective actions with achievable goals, appropriate timelines and rationale to support the changes needed would be best in addressing program integrity concerns.

In the regulations, USDA requests comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- (1) Are the requirements in the proposed regulations clearly stated?
- (2) Does the rule contain technical language or jargon that interferes with its clarity?
- (3) Does the format of the rule (e.g., grouping and order of sections, use of headings, and paragraphing) make it clearer or less clear?
- (4) Would the rule be easier to understand if it was divided into more (but shorter) sections?
- (5) Is the description of the rule in the preamble section entitled "Background and Discussion of the Proposed Rule" helpful in understanding the rule? Could the description be rewritten to make it easier for a reader to understand the intent?

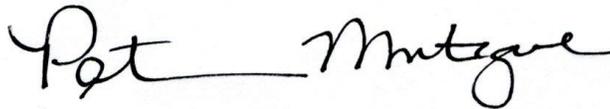
In general, the proposed federal regulations are layered with language that are sometimes very difficult to understand. School nutrition programs have evolved into nutrition programs serving children throughout the year, not just the school year. Due to the crossover of proposed regulations for the SFSP to establish a similar National Disqualified List as the CACFP, school programs will need to establish new procedures for SFSP. While it is appreciated to make requirements across programs similar, it is critical to make them clear. Using the term 'administrative review' in these proposed regulations to address a hearing procedure or appeal process confuses the term 'administrative review' with the administrative review conducted in NSLP. Likewise, the proposed assessments are referenced as 'tiered.' This adds further confusion to the already confusing terms that are used in CACFP to denote Tier I and Tier II family day care homes, as well as Tier I and Tier II program reimbursement rates.

Again, we thank you for the opportunity to comment on the proposed rule *Child Nutrition Program Integrity*. We look forward to working with USDA on all of our child nutrition programs.

Sincerely,



Jean Ronnei, SNS
President



Patricia Montague, CAE
Chief Executive Officer