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May 11, 2016

Ms. Mary Rose Conroy, Chief
Program Design Branch, Program Development Division
Food and Nutrition Service
3101 Park Center Drive, Room 810
Alexandria, VA 22302

Re: Proposed Rule: Supplemental Nutrition Assistance Program Promotion (RIN 0584-AE44)

Dear Ms. Conroy:

Thank you for the opportunity to comment on the Food and Nutrition Service's Proposed Rule implementing Section 4018 of the Agricultural Act of 2014 ("the Act"). Benefits Data Trust (BDT) is a national, not-for-profit organization committed to transforming how individuals in need access public benefits. BDT believes all vulnerable individuals and families across the country should be able to secure the benefits that enable them to achieve economic stability. BDT seeks to create a benefits access system that is simple, comprehensive, and cost-effective. Since its inception in 2005, BDT has conducted outreach and education to more than 1.2 million vulnerable individuals about the Supplemental Nutrition Assistance Program ("SNAP" or "the Program"). Each year, BDT provides robust application assistance to over 37,000 households (primarily seniors) in Pennsylvania, Maryland, New York, Colorado, and South Carolina.

SNAP is a critical safety net that reduces food insecurity and improves health for more than 45 million low-income Americans. Unfortunately, significant barriers to SNAP participation remain. For instance, only 40% of eligible seniors receive the benefit due to lack of awareness, mobility, and technology, as well as burdensome application processes. Effective outreach and application assistance is essential to connecting this and other vulnerable groups to SNAP.

BDT commends the Food and Nutrition Service (FNS) for issuing thoughtful and detailed proposed regulations on SNAP promotion. BDT strongly supports the proposed rule's preamble which clarifies that prohibited recruitment activities do not include: providing accurate program information, answering questions about SNAP, providing assistance in filling out forms or obtaining verification documents, providing basic information about SNAP availability, application procedures, eligibility requirements, and the benefits of the program. However, BDT recognizes the potential 'chilling effect' that this rule may have on community-based organizations, state agencies, and other outreach partners who may be confused and discouraged from providing the informational activities allowable and encouraged by Section 11(e)(l) of the Food and Nutrition Act of 2008 ("FNA"). In order to minimize confusion, BDT has identified three areas where the proposed rule would benefit from revisions:

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1. **Retain ‘informed choice’ in the definition of Recruitment.** The current regulation at 7 C.F.R. §277.4(b) prohibits recruitment activities designed to persuade an individual who has already made an *informed choice* not to apply for SNAP. By not including similar language in the proposed rule, FNS may inadvertently signal that outreach providers cannot share factual information with individuals who may be hesitant to learn more about the Program due to myths and misconceptions. The final rule should codify FNS’ long-standing practice of prohibiting outreach entities from using coercive or intimidating practices, but should not go so far as to suggest that providing educational information to individuals who have not yet had the opportunity to make an informed choice is prohibited.
2. **Revise examples of persuasive practices.** With the addition of the “informed decision” language recommended above, BDT largely supports FNS’ proposed definition of persuasive practices. In particular, BDT appreciates the explicit language at 277.4(b)(5)(i) which says, “Communicating factual information pertaining to SNAP is not a recruitment activity designed to persuade an individual to apply for SNAP benefits.” However, several of the examples in the preamble appear to contradict this directive by suggesting that communicating factual information *may* be considered a persuasive practice in certain instances, which introduces unnecessary ambiguity. Specifically, the examples suggest that sharing factual information after an individual says “I am not interested” is only permissible if the individual explains *why* they are not interested and the outreach worker recognizes it as a myth or misconception. BDT proposes alternative examples for consideration below.
3. **Confirm that compensation prohibition applies to individuals only.** BDT supports FNS’ prohibition on compensating individual outreach workers based on the number of SNAP applications they facilitate. BDT recommends that FNS clarify that the proposed rule does not restrict state agencies and partnering outreach programs from setting outreach and application goals as part of state outreach plan contracts. State agencies should be able to hold outreach partners accountable for effective use of state and federal resources and tracking submitted applications that result from educational activities should continue to play a critical role in monitoring.

Overall, BDT supports FNS’ effort to protect the essential education, outreach and application assistance that organizations across the country provide, while clearly prohibiting coercive practices. Provided below are detailed comments with suggested revisions to both the regulatory language and the preamble to ensure that the final rule is sufficiently clear for states and their outreach partners.

Detailed Comments and Recommendations

Recommendation #1: Retain 'informed choice' in the definition of Recruitment

- Language in Proposed Rule: 7 C.F.R. §277.4(b)(5)(i) prohibits “recruitment activities designed to persuade an individual to apply for SNAP benefits through the use of persuasive practices. Persuasive practices constitute coercing or pressuring an individual to apply, or providing incentives to fill out an application for SNAP benefits.”

Comment: BDT strongly recommends that FNS preserve the concept of “informed choice” in the definition of persuasive practices to avoid introducing ambiguity between “persuasion” and “education.” Pressuring a well-informed person to apply for SNAP is persuasion. Encouraging an uninformed person to learn more about SNAP before dismissing it out of fear or misperception is education. The key difference is whether the individual has had the opportunity to make an “informed choice” not to pursue SNAP.

Recommended Change: 7 C.F.R. §277.4(b)(5)(i) prohibits “recruitment activities designed to persuade an individual to apply for SNAP benefits through the use of persuasive practices. Persuasive practices constitute coercing or pressuring an individual **who has made an informed choice not to apply to change his or her decision** to apply, or providing incentives to fill out an application for SNAP benefits.”

Recommendation #2: Revise examples of Persuasive Practices

- Language in Preamble: “A worker funded by SNAP funds is staffing a SNAP informational table at a food pantry. A food pantry visitor comes to the table, but soon replies that he is not interested in learning more. The worker continuing to discuss SNAP with the visitor would constitute a persuasive practice because the visitor has clearly expressed a lack of interest and should not be pressured to apply.”

Comment: This example is problematic for two reasons. First, the example implies that encouraging the food pantry visitor to “learn more” in order to make an informed choice about SNAP is the same as pressuring the visitor to “apply.” Second, the example does not explain whether the food pantry visitor has enough information to make an informed choice not to pursue SNAP. This visitor might be discouraged from continuing the conversation because he does not think he is eligible or assumes he will only receive the minimum benefit. The outreach worker should have the opportunity to ask the food pantry visitor why he is not interested and let him know how to get more information if he is interested in the future.

Recommended Change: “A worker funded by SNAP funds is staffing a SNAP informational table at a food pantry. A food pantry visitor comes to the table, but soon replies that he is not interested in learning more. **The worker following the visitor as he walks away from the table and/or insisting that he complete an eligibility screening** would constitute a persuasive practice because the visitor has clearly expressed a lack of interest and should not be pressured to apply.”

- Language in Preamble: “An outreach worker is talking to a senior citizen who explains that he does not think he is eligible because he owns his own home. The worker would be allowed to correct this misconception, provided the senior citizen does not express disinterest in learning more.”

Comment: As the preamble acknowledges, senior citizens are particularly susceptible to myths and misconceptions. From BDT’s extensive experience educating older adults about SNAP, likely eligible individuals often express mild reluctance to learn more about the Program due to underlying misconceptions or shame about accepting government help. Even if a senior does not explicitly articulate feelings of shame, an attentive outreach worker may suspect it and mention that it is possible to apply for SNAP without going in person to the welfare office. Upon hearing this new information, seniors often express relief and request a full screening to determine their likely eligibility for SNAP.

As FNS well knows, understanding the underlying fears and misconceptions preventing eligible households from learning about SNAP is a critical role that outreach workers play. Allowing outreach workers to correct misconceptions after an individual expresses “disinterest in learning more” is not equivalent to coercing an individual to apply. Rather, by providing an individual with accurate information, the outreach worker is empowering that individual to make an informed decision for himself.

Recommended Change: “An outreach worker is talking to a senior citizen who explains that he does not think he is eligible because he owns his own home. The worker would be allowed to correct this misconception. ~~,provided the senior citizen does not express disinterest in learning more.~~”

Recommendation #3: Confirm that compensation prohibition applies to individuals only

- Language in Proposed Rule: 7 C.F.R. §277.4(b)(6) states, “Any entity that receives funding from the programs identified by this section and § 251.4 is prohibited from compensating any person for conducting outreach activities relating to participation in, or for recruiting individuals to apply to receive benefits under, the supplemental nutrition assistance program, if the amount of the compensation would be based on the number of individuals who apply to receive the benefits.”

Comment: BDT supports this prohibition and agrees that individual compensation based on completed applications could induce outreach workers to employ persuasive practices. BDT requests that FNS confirm that this regulation does not prohibit state agencies and their outreach partners from setting outreach and application goals for a given contract period. BDT believes this to be FNS’ intention, but seek clarification to ensure that state and federal agencies can still leverage goal setting for performance management to ensure accountability of federal and state spending.

Additional Comments

- Language in Preamble: “Written materials will be expected to contain accurate, factual information that allows individuals to make a well-informed decision about applying for SNAP benefits. For instance, written materials may include information about SNAP eligibility criteria, application procedures or where to apply for benefits.”

Comment: BDT educates tens of thousands of individuals, primarily seniors, about SNAP every year through effective outreach materials and supports the requirement that all materials contain accurate, factual information. Examples of accurate, effective messages that BDT uses to educate vulnerable populations include: “SNAP can help you pay for groceries”, “SNAP can help you stay well by eating healthy meals,” and that “It is free to apply for SNAP.” To make clear that the list included in the Preamble is not exhaustive, BDT recommends FNS include additional language describing appropriate, factual information that can be included in outreach materials.

Recommended Change: “Written materials will be expected to contain accurate, factual information that allows individuals to make a well-informed decision about applying for SNAP benefits. For instance, written materials may include, **but are not limited to**: information about SNAP eligibility criteria, application procedures, where to apply for benefits, **average benefit amount, or other accurate statements extolling the health and economic benefits of participation in SNAP.**”

- Language in Preamble: “The changes in Section 4018 of the Agricultural Act of 2014 do not preclude specialized services for eligible SNAP applicants, including application assistance for vulnerable populations. Specialized services are particularly important for vulnerable populations including the elderly, homeless, and individuals with disabilities to ensure they receive the food assistance they need.”

Comment: BDT supports FNS’ clear acknowledgement that the Act does not prohibit providing application assistance to vulnerable populations. Additionally, the Manager’s Statement in the Conference Report, H.R. Rep. 113-333, makes clear that application assistance and other specialized services are particularly important for vulnerable populations. However, neither the Act nor the Manager’s Statement limit application assistance and specialized services to vulnerable populations only. Therefore, BDT recommends that the Final Rule clarify that application assistance and specialized services can be provided to all individuals, not just so-called vulnerable populations named in the Preamble.

Recommended Change: “The changes in Section 4018 of the Agricultural Act of 2014 do not preclude specialized services for eligible SNAP applicants, including application assistance for vulnerable populations. Specialized services are particularly important for, **but not limited to**, vulnerable populations including the elderly, homeless, **domestic violence victims, veterans, households with children**, and individuals with disabilities to ensure they receive the food assistance they need.”

- Language in Preamble: “[T]he use of social media like Twitter, Facebook, YouTube, or other internet sites would not be prohibited, so long as the content is not recruitment activity designed to persuade an individual to apply for SNAP benefits through coercion, pressure, or incentives.”

Comment: BDT supports FNS’ decision to allow the use of these social media sites for otherwise allowable informational activities. It is important to address program misconceptions where they exist, and many SNAP related myths are constantly being promulgated on the internet.

- Language in Current Regulations: 7 C.F.R. §272.5(c) permits state agencies to “carry out and claim associated costs for Program informational activities designed to inform low-income households about the availability, eligibility requirements, application procedures, and benefits of SNAP.”

Comment: One highly effective informational activity conducted by states is targeted outreach to low-income households who are likely eligible but not enrolled in SNAP. Targeted outreach represents an efficient way for states to invite low-income households to learn more about SNAP in order to make an informed decision about whether to apply. BDT encourages FNS to affirm that targeted outreach that provides factual information continues to be a permissible informational activity, so long as it complies with the prohibition on persuasive practices defined in 277.4(b)(5)(i).

Benefits Data Trust appreciates FNS’ consideration of these comments. For additional information, please contact Rachel Cahill, Director of Policy, at rcahill@bdtrust.org or 215-207-9108.