

**ANALYSIS  
OF PROPOSED REGULATIONS  
IMPLEMENTING  
THE**

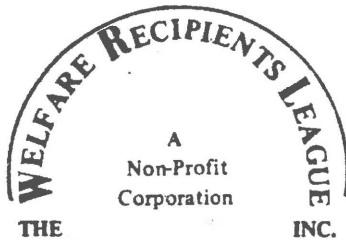
**FOOD STAMP ACT OF  
1977**

**Submitted by :**

**KEVIN M. ASLANIAN**

**Welfare Recipients League, Inc.**

**June 1978**



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June 10, 1978

Honorable Bob Bergland, Secretary  
United States Department of Agriculture  
Washington, D.C.

Dear Mr. Secretary:

Attached hereto is a our written testimony regarding the proposed regulations implementing the Food Stamp Act of 1977.

We have carefully reviewed these regulations in our community, with county and state food stamp administrators to determine its impact on the poor.

We have also had the opportunity to participate in the various hearings that USDA sponsored, regarding these regulations, and hearings conducted around the country. We also attended the meetings of USDA and FRAC last year that was very helpful.

We believe this kind of cooperative efforts could be greatly enhanced, if USDA will set up a Food Stamp Advisory Committee pursuant to an Executive Order issued by you last year.

To summarize the regulations we must admit that for most part they were a great improvement from existing regulations which is primarily because the decision making process was taken away from the traditional bureaucrats and placed in the hands of the administrators of the program.

We did notice some regulations that were totally contrary to the Act and its Legislative History, but we hope our testimony will correct those inconsistencies.

In conclusion we wish to extent our appreciation to USDA and FNS for its openness and responsiveness to the poor which stil needs lot of improvements.

Bread & Justice,

  
KEVIN M. ASLANIAN, President

KMA;da

cc: Lew Straus, FNS, Carol Foreman, Bob Greenstein, Chris Van Leeten, Nancy Snider, Alberta Frost.

## TABLE OF CONTENTS

	<u>Page</u>
271.2 Definitions	1
Summary of Section 271.6 - Complaint procedure	2
Summary of Section 272.1(c) - Access to File Information	3
Summary of Section 272.4(a) - Staffing Standards	4
Summary of Section 272.4(e) - Training	5
Summary of Section 272.6(f)(3) - Hot-lines	6
Summary of Section 272.7 - Non-Discrimination Compliance	7
Summary of Section 273.1 - Household Concept	8
Summary of Section 273.2(d) - Household Cooperation	9
Summary of Section 273.(e) - Interviews	11
Summary of Section 273(f)(2)(ii) - Collateral Contacts	12
Summary of Section 273.2(h)(i) - Delays caused by the Household	13
Summary of Section 273.2(h)(2) - Delays caused by the State Agency	14
Summary of Section 273.2(i) - Expedited Service	15
Summary of Section 273.2(j) - Households Requesting Replacement Allotments	16
Summary of Section 273.2(k) - PA and GA Households	17
Summary of Section 272.7 - Citizenship and Aliens	18
Summary of Section 273.6 - S.S.I. Cash Out States	19
Summary of Section 273.7 - Work Registration Requirement	20
Summary of Section 273.8 - Transfer of Resources	21
Summary of Section 273.9 - Income and Deductions	22
Summary of Section 273.9(c)(ii) - Vendor Payments	23

	<u>Page</u>
Summary of Section 273.10(f) - Certification Periods	24
Summary of Section 273.10(g)(v) - Photo I.D.	25
Summary of Section 273.11(c)(5)(ii) - Certifying Households	26
Summary of Section 273.12 - Reporting Changes	27
Summary of Section 273.13 - Notice of Adverse Action	29
Section 273.14 - Recertification	31
Summary of Section 273.15 - Fair Hearings	32
273.15(k) - Continuation of Benefits	35
Summary of Section 273.16 - Fraud Disqualification	36
Summary of Section 273.17 - Restoration of Lost Benefits	37
Summary of Section 273.18 - Claims Against Household	39
Summary of Section 273.19 - Sixty-day Continuance of Certification	40
Summary of Section 274.2 - Issuance Systems	41
Summary of Section 274.2(c) - Coupons Lost in the Mail	42
Other Comments	44

271.2 Definitions (Definition of "bilingual person")

"Bilingual" has not been defined in this section. It is important to come up with a rational definition that can be applied nationwide. One definition that can be considered is that a "bilingual person is one who does not think in English, although they may speak English".

### Summary of Section 271.6 -Complaint procedure

This section describes the various places that consumers could file complaints. It provides that discrimination complaints will be handled by FNS. The regulations also suggests that the regional office may direct the complaint to the State.

### Analysis

This section has no identifiable positive impact for the consumers of the program, because it does not provide any new remedy to resolve problems that consumers are facing.

### Recommendation/Position - Support with Amendments

The department should develop a specific criteria for dealing with any or all complaints. For example, Mrs. Smith calls and says that her food stamps are not enough. This shall be treated as a complaint and FNS shall investigate the complaint to determine the reason therefore. FNS shall also inform the complainant that they may also file for a FH and/or file a complaint with the State. In no event shall FNS reject complaint because there may be remedies available at the State agency level.

The listing of regional offices should include their phone numbers and the names of Regional administrators and FSP Directors. It should also provide that FNS will accept collect calls or establish a toll-free number in each region.

Summary of Section 272.1(c) -Access to File Information

This section describes who shall have access to information contained in the food stamp file.

Analysis

This section may be construed by some administrators that participants of the program are not entitled to information contained in their file.

In order to clarify this matter there is a necessity for clarifying language to insure that participants and/or their representatives are entitled to look at their own files.

Recommendation/Position

We adopt FRAC's recommendation, May 1978, page 3.

Summary of Section 272.4(a) Staffing Standards

This section merely provides that the states shall have sufficient staff to do their job.

Analysis

The Department's failure to come up with a minimum staffing standard insures that all of the problems that the program has been having will continue because of lack of adequate staff, which results in inadequate services.

At the San Francisco APWA meeting, many state and county administrators were looking for leadership from FNS to set forth guidelines for adequate staffing. Such leadership will assist them in finding such needed staff from their own legislatures or local political sub-divisions and it will assure the effective, efficient and equitable administration of the program.

Recommendation/Position - Oppose

The Department should not be scared of taking leadership and establishing minimum staffing standards to insure that the program will be administered adequately, nation-wide.

Summary of Section 272.4(e) Training

We support these provisions for training that is needed and we further wish to express our support for 272.4( ) (1)(lv) that requires public participation. We would recommend that the community be notified of this opportunity or the State be required to notify the community of this opportunity.

Summary of Section 272.6(f)(3) Hot-lines

This section provides that there shall be hotlines and the number of hot-lines are based upon caseload.

Analysis

The hot-line concept has always been beneficial to the poor, when operated by community based organizations, thus we support this section. However, this section bases the number of hot-lines on caseload, rather than potentially eligible persons, which is a more valid yardstick; also it does not require that community based organizations operate the hot-line.

Recommendation/Position - Support with Amendments

We hereby incorporate the recommendations made by FRAC herein and further recommend:

1. That the number of telephone lines be dependent upon the number of potentially eligible persons;
2. That FNS require the State and local agency to contract out the hot-line services to recipient organizations and only after showing FNS that recipient organizations refuse to do the service, shall the State or local agency be authorized by FNS to operate it.

Summary of Section 272.7 Non-Discrimination Compliance

This section provides a fine procedure to combat discrimination in the food stamp program.

Analysis

This will be beneficial to the consumers; for the first time there will be an identifiable system to combat discrimination.

Recommendation/Position - Support

We adopt FRAC's recommendation, May 1978, page 7.

Summary of Section 273.1 Household Concept

We support this entire section.

Summary of Section 273.1(d) Head of Household

We oppose this section. This section states that the head of household shall be the person who has earned the greatest amount of money in the past 60 days.

Analysis

This section will require the certification worker to verify the income of all household members 60 days prior to application to determine who shall be head of the household. This will be difficult for poor people to verify income that far back. It will be possible to have two or three different people qualifying to be the head of the household in a given month or any month. Applicant will be denied benefits because they were not able to verify all of their income 60 days back. It will increase the error rate in the program that always resulted in unnecessary harassment of the consumers of the program or force non-participation of the poor.

Recommendation/Position - Oppose

Maintain current practice for head of household and per definition of head of household in the House Report that states on Page 168:

"The head of household (that member in whose name application is made for participation in the program)."

## Summary of Section 273.2(d) Household Cooperation

This section explains that the household will be required to provide certain verification to the welfare department and food stamps will not be denied because the household merely "failed" to provide the information, rather the household will have to "refuse" to cooperate before their benefits will be terminated. If the household refuses to cooperate and this results in denial of an application, they may reapply but benefits will be granted only after it is determined by the agency that the household has cooperated.

### Analysis

This section, although it emphasizes that adverse action shall be taken only if the household "refuses" to cooperate, does not specify what constitutes refusal as provided in the House Report, page 156, that states that the household has refused only if there is a positive refusal to provide the requested information. This section treats applicants who have allegedly "refused" to cooperate in the past differently from other applicants, although there is no statutory authority to treat "former alleged refusers to cooperate" as lower class applicants or blacklisted applicants. Thus, this section may provide some "symbolic" benefits to the poor, but they are drafted in a fashion where persons who fail to cooperate will be routinely denied their application for refusal to cooperate by the agency, because they (the agency) are not required to show "refusal" and/or the regulations do not define "refusal". The last words of this section: "but shall not be determined eligible until it cooperates" means that the agencies shall keep a list of all persons who did not cooperate and this list will have to follow the household wherever they go. When they reapply, they will have to cooperate before they could receive food stamps, for they are the "black sheep" of the food stamp program. I wonder if FNS will be contracting with the FBI to keep track of the people on the list of non-cooperatives.

### Recommendation/Position - Oppose; Support with Amendments

I. In order to insure that only households that "refuse" to cooperate are denied benefits we will suggest the following procedure:

a. FNS shall provide that there will be a FNS form that will describe various verifications households may be required to submit.

b. When the household applied the agency shall provide this form to the applicant that will show what verification the household is required to provide.

c. The household will return that form indicating what information they were able to return and what they were not and the reasons therefore.

Section 273.2(d) (cont'd)

d. If the agency believes that the household's reasons are not appropriate, then they shall provide the household with another form stating the reasons why it is inappropriate and show the household how they could obtain the needed information.

e. If the household after a specified number of days fails to provide the information, the agency shall make a personal contact with the household before the household is deemed to have refused to cooperate with the agency, to determine if the household is going to provide the needed information. If the household indicates during this personal contact that they refuse to cooperate, then their application shall be denied. This form could also be used to determine when the agency shall assist the applicant as provided in Section 273.2(f)(3).

II. In section 273.2(d), delete the words "but shall not be determined eligible until it cooperates."

## Summary of Section 273.(e) Interviews

This section requires a face-to-face interview which is more restrictive than current regulations which allows an interview by telephone. This section provides for a number of situations where the household may request a waiver of face-to-face interview.

The waiver of face-to-face is only mandatory for those who are over 65 years old or handicapped, which is the reason they cannot attend the interviews.

### Analysis

These new regulations will make it mandatory for all applicants old or sick to attend a face-to-face interview. The fact that the household can request a waiver is known to the agency, who is not required to inform all households so they can decide whether or not they wish to request a waiver. Even if they request a waiver, that does not mean they will not have to attend the face-to-face interview. The person over 65 years old will have to verify their age, which will take a face-to-face interview, and they will also have to prove why they cannot take one hour and come into the office.

The requirement that the agency document the reason for waiving the face-to-face interview will only encourage agency workers not to waive the requirement, for waiving that requirement will mean more work and more QC problems. This procedure will have a great adverse impact on our nations limited energy supplies for people will be coming into the office to relate information that would be obtained over the phone.

### Recommendation/Position - Oppose

- I. In every case where there is a face-to-face interview, the agency shall document why a waiver was not granted to the household.
- II. FNS should allow the household to choose what type of interview they wish: a) telephone, b) in their house, c) at the agency.

Summary of Section 273(f)(2)(ii) Collateral Contacts

Reading 273.2(a) out of context, it will appear that the agency has been given blanket authority to make collateral contacts without the household's express approval. Future sections make it clear that the agency shall contact persons specifically identified by the household rather than persons of the agency's choosing.

Analysis

Because the sections contradict each other, state agencies may start contacting persons not authorized by the household and thereby violate their privacy rights.

Recommendation/Position - Support with Amendments

Clarify section 273.2 to provide that only persons authorized in writing by the household shall be contacted by the state agency for collateral contact purposes.

Summary of Section 273.2(h)(i) Delays caused by the Household

This section provides that the agency will have to document exactly what caused the alleged delay in the record, before they are allowed to take any further action.

Analysis

This section will protect the households from past abuses that they have been subjected to by forcing the state agency to document the reasons for their negative action.

Recommendation/Position - Support

Summary of Section 273.2(h)(2) Delays caused by the State Agency

This section provides that if the application has not been processed within 30 days and it is not because the applicant's "refusal" to cooperate, then the application shall remain active for another 30 days.

Analysis

Many of the states have opposed this section without any reason that can be identified or even understood. Presently many agencies leave the case active for 30 days and then they close the case. Under USDA's proposal, some cases will be open for 60 days to insure that the poor, whom the agency is supposed to be serving, has every opportunity to participate.

Recommendation/Position - Support

## Summary of Section 273.2(i) Expedited Service

This section provides for very complicated way of determining which household is in need of expedited service by breaking the month into four quarters to determine the amount of benefits.

### Analysis

Although we appreciate what USDA is attempting to do with this complicated procedure (get benefits to those who need it the most), we think there is a better way to accomplish this goal without spending so much money on administering this complicated system and use that money for benefits to the poor.

We have discussed this section very extensively with recipients, advocates, lawyers, county officials and state friends and find that there is general agreement that

1. This system is too complicated for both recipients, advocates, and the agencies;
2. There is a great potential for households being certified for quarters 1, 2, and to come back into the office to be certified for quarter 3 and even 4, because the expected income did not arrive. This will mean another interview and another hand-issued benefit. By the time you add up the administrative cost for all of this, including the cost of expedited hearings, it will by far exceed the amount of benefits that the household may receive on the 4th quarter, for generally it takes 20 days or more from the date of application to start receiving new benefits, be it AFDC, GA, Unemployment Insurance, Disability Insurance, etc.
3. It will be much simpler to treat the expected income as non-recurring income and certify the household for zero purchase for the month of application, if upon application they do not have regular income.

### Recommendation/Position

Support the revised method proposed by FRAC, May 1978, pages 10-11, and #3 above.

Summary of Section 273.2(j) Households Requesting Replacement Allotments

We oppose this section. This section provides that if one loses their food stamps, they must file a report with the local police and no household should lose food stamps more than once every 3 months, because they will not be replaced, even if you report it to the local police.

Analysis

First of all, there is no Congressional authorization for these added obstacles before the poor trying to eat or participate in the food stamp program. Referral to local police department may very well force a household into non-participation in the program, especially if they have a traffic warrant pending for their arrest.

The cost and the energy (gas) that will be wasted for this frivolous system by far outweighs any benefits that USDA will realize. Finally, replacing lost food stamps once every three months punishes the needy for being poor, and having to live in poor neighborhoods where the crime rate is high, without statutory authority.

Recommendation/Position - Oppose

Delete the reporting requirement to the local police and the prohibition of replacing allotment more than once every three months to every month or every week (for expedited issuance).

Summary of Section 273.2(k) PA and GA Households

This section provides that when a PA household applies for benefits under the law that they are entitled to, there will be no run around from one worker to another. Currently some agencies have the applicant see one worker for cash assistance and another worker for food stamps. This section consolidates the interview and verification process and prohibits denial of food stamp benefits, because the household has not provided the agency with verification need for cash assistance.

Recommendation/Position - Support

## Summary of Section 272.7 Citizenship and Aliens

The proposed regulations provide that only citizens and lawful aliens shall be entitled to food stamp benefits.

### Analysis

We believe that the proposed regulations generally accurately track the language of the 1977 Act. However, the following general comments are noted: To avoid unnecessary hardships on aliens, (1) the regulations should be clarified to indicate that INS will not be contacted without specific written consent of the applicant/recipient; (2) many aspects of the regulations should be rewritten to tighten up verification practices; (3) the regulations are too long and should be divided into shorter subsections; (4) States should be expressly denied the opportunity to rewrite or paraphrase these regulations; and (5) the published commentary regarding these regulations should be published with the final regulations.

RECOMMENDATION/POSITION- Support with the amendment submitted by CRLA Law Center of California.

## Summary of Section 273.6 S.S.I. Cash Out States

This section provides that in those states where Congress has provided that certain states do not have to provide food stamp benefits to the member of the household, who is a S.S.I. recipient.

### Analysis

The primary problem that recipients and welfare administrators have been encountering in this provision is that S.S.I. recipients, Food Stamp benefits are terminated once they receive the notice of benefits rather than the actual benefits.

Thus, many times food stamp benefits have been terminated for months, while the household is waiting to receive the benefits.

### Recommendation/Position - Support with Amendments

1. The regulations should provide that food stamp benefits will not be terminated until the household receives at least their first regular S.S.I. check which shall be considered non-recurring income.

2. At the end of subsection (a) add the language:

"so long as mandated by the terms of P.L. 94-365 or other extended in subsequent legislation."

Summary of Section 273.7 Work Registration Requirement

The only comment we wish to make about this section is that any AFDC, GA or any person who is registered with their local employment services office shall not be required to register again for food stamp purposes. The entire "work registration" process is only a paper shuffling operation, and this recommendation will reduce the "paper shuffle."

## Summary of Section 273.8 Transfer of Resources

This section provides that if any person transfers property with the intent to qualify for aid within three months prior to application or after being certified for food stamps, they shall be ineligible for aid up to one year.

### Analysis

Adverse consumer impact is and shall be placed at the doorsteps of Congress, who instituted this insane scheme. It should be noted that in the House Report on page 90, it states that as a result of transfer of property, action can be taken against the household only as determined "after notice and fair hearing", which means the opportunity to file for a fair hearing and receive benefits.

### Recommendation/Position - Oppose; Support with Amendments

1. If the applicant household is charged with transferring property with the intent to qualify for aid, then their application shall be denied with a notice and an opportunity to file for a timely request for a hearing and receive benefits pending the decision of the fair hearing.
2. If a household is certified and it is discovered that the household allegedly transferred property to maintain eligibility for food stamps, then they should receive a notice and fair hearing date with the notice similar to the fraud hearing procedures.
3. The chart used to determine the period of ineligibility should be changed to read \$5,000 or more, otherwise agencies will increase the period of ineligibility.

Summary of Section 273.9 Income and Deductions

In this section we oppose subsection 273.9(b)(3) which provides that the income of a disqualified person will be pro-rated and counted as income, which clearly conflicts with the House Report that provides that the income or resources of the disqualified member shall not be used in computing the benefits for the rest of the members of the household, unless it is actually made available. We understand from the preamble that this was done to make sure that persons do not disqualify themselves to obtain more benefits, but we do not believe that people are going to disqualify themselves for these reasons, and this is a clear paranoid reaction by USDA. Furthermore, the ends do not justify the means and Congress makes laws, not USDA.

Recommendation/Position - Oppose

Write this regulation consistent with the law.

### Summary of Section 273.9(c)(ii) Vendor Payments

This Section closes the door on many vendor payments that should be considered "vendor payments" under the Act.

#### Analysis

This is one of the other disappointing areas in the entire regulatory package. Congress, in our opinion has spoken very definitively--

" The most desirable approach is not to count any vendor payments as income. Federal rent supplements go directly to landlords. State day care supplements go directly to day care centers. Low-income families never receive or even see this money. Even if they receive, they are legally bound to transmit it to the intended recipient. It is not available to them to use for food."

Subsection (c)(ii) flies blatantly in the face of the Act, the Anderson and Dean cases, and is administratively "much ado about what is the chimera of multiple welfare benefits". No less objectionable is the "catch all" of subsection (b)(5)... "all other direct money payments from any source whatever which can be construed to be a gain or benefit."

#### RECOMMENDATION/POSITION-Oppose

In the stead of these deviations from the plain mandate of the Act, at a minimum the third sentence of subsection (c)(ii) should be stricken as well as the forth. The distinction over receipt as a conduit or not is plainly rejected by the House Report on page 32.

Summary of Section 273.10(f) Certification Periods

Subsection 273.10(f)(3)(iv) and (v) provide specifically when the household may be certified for 6 months or 12 months.

Analysis

The work "may" in these 2 subsections (iv) and (v) effectively negate their uniform national application to all participants. Thus it is very possible for two households with identical facts to receive a 6 month period in the project area, and the next one, a 12 month period in another project area.

Recommendation/Position - Support with Amendments

In order to insure the effective, efficient and equitable administration of these subsections, the words "may" should be changed to "shall."

Summary of Section 273.10(g)(v) Photo I.D.

This section provides that upon the household's consent the State Agency may use Photo I.D.'s to identify persons redeeming food stamps except that this will not be a condition of eligibility for food stamp benefits.

Analysis

Usually when the recipients are allegedly given an option it is an either/or. Congress considered this matter and the conference committee rejected the photo I.D. card concept because of all its negative inhumane implications on the poor of America.

Recommendation/Position - Oppose

Repeal this section to be consistent with the spirit of conference report.

Summary of Section 273.11(c)(5)(ii) Certifying Households

This section provides that when a member of the household is terminated from the household for food stamp benefits, only that member is entitled to a notice of adverse action and the remaining members are not entitled to the Goldberg notice of adverse action informing them the termination will also affect them.

It is not uncommon for the agency to make errors in computing benefits which is the reason for Goldberg v. Kelly hearing process and notice requirement to protect the poor from habitual bureaucratic mistakes. When the household loses one member, this will affect the entire computation of the benefit based upon the new amount of the household income and deductions that will change as a result of the departure of the disqualified member.

Not affording the household a copy of the notice that should contain this entire new computation is a flagrant denial of their minimum rights to due process of law.

Recommendation/Position - Support with Amendment

Require that the household shall receive a notice and adverse action prior to any change in benefits, and not to assume the disqualified members income to be available to other members of the household.

## Summary of Section 273.12 Reporting Changes

### 273.12(b) Report Forms

This section provides that upon application the agency will provide the applicant with a report form. When the household has a change to report, they will mail this form to the agency 10 days from the date of the change. The regulations will allow the states to have a "waiver" form on the report form, so the household could waive their constitutional right to a notice and benefits pending the timely hearing (if they file for a hearing).

Once the state receives the reported change, and if the household waives their constitutional rights (because they feel it's the right thing to do, otherwise it wouldn't be on the form. They are not sure that the constitution covers them anyhow, after the way they were treated at the food stamp office and given all of these forms to waive this and that.) the state will take adverse action without notice. The state will then mail out another reporting form.

### Analysis

The description above of this subsection pretty well shows how waivers will affect the poor. We can only add that it is contrary to basic law and that most recipients will sign waivers thinking if they do not, all of their benefits will be terminated, for the agencies have ways of retaliating and "you can't fight city hall." The recent "sterilization" controversy should be more than enough evidence how this waiver process could be manipulated to screw the poor.

This section provides for a system that could have the following drawbacks:

1. If the form is given upon application, and the change occurs four-five months down the line, it is very unlikely that the household will have the form or remembers what the form was for anyhow.
2. What if the household has more than one change to report but does not have a form to report the second change, because it was already used to report the first change?
3. The proposed system, although it requires a report of change within 10 days, does not appear to be a system that will be administered effectively, efficiently, and equitably.

Recognizing that Congress mandated some type of reporting, but not a monthly reporting system, like we have in California, Welfare Recipients League, with the advice and general consensus of the state and county representatives believes that modifying the California system to comport to the House Report will be

Section 273.12 (cont'd)

more responsive to the needs of the recipients and the administrators.

Recommendation/Position

USDA should adopt the following reporting systems; "The Exception Reporting System."

Under this system each household will receive a stamped envelope and a "Change-Report Form" with their coupons or ATP's, which should also have a carbon copy.

The household will be required to return the form to the agency within 10 days after receiving said form only if they have a change to report that occurred in the previous month. If they have a change to report, they complete the form, keep the carbon copy and mail it to the agency.

If the household has no change to report, then they will throw the form away.

If the agency receives a change-report within five (5) days, they shall send out a "Thank You Letter" to the household for submitting the report. No household shall be subject to an overissuance claim as long as they meet these requirements.

## Summary of Section 273.13 Notice of Adverse Action

This section provides that the household should receive a notice stating the reason their benefits will be reduced or terminated. They will also be told of their right to a fair hearing and where they can obtain legal representation. The notice shall be at least a ten-day notice. A household will not be entitled to such notice, and benefits will be terminated automatically if the household: a) Is a victim of a mass change; b) was talked into signing a waiver; c) the agency receives "notification" of the death of all household members; d) household has been receiving retroactive benefits; e) household's allotment varies from month-to-month within the certification period; f) household's food stamp allotment is going to change because the agency will start considering cash benefits; g) in the case of a disqualified member for fraud, there will be no notice to the qualified members about changes in their benefits; and h) strikers going back to work

### Analysis

The notice as proposed is only supposed to provide the "reason" for the proposed action. The "reason" is generally the "conclusion." For example, the household's benefits were reduced because of increase in adjusted net income. The "reason" is the increased adjusted net income, which is the "conclusion." The adjusted net income is based upon a number of "premises" such as income, deduction, shelter cost, child care; and in order to test the validity of the "conclusion," one must have the opportunity to test the validity of the "premises" one by one that the conclusion derived from to see if there are any mistakes; and if there are, then the household could request a fair hearing.

By not providing all of the "premises" and only the "conclusion," then USDA is effectively depriving the household of the required information to request a fair hearing as provided by Wheeler v. Montgomery.

Many agency workers have coerced the poor into not filing for a fair hearing and getting aid paid pending that they are entitled to and need because they are told, "If you lose the hearing, you'll have to pay that all back." Some go on to say that it will be fraud. Many times, poor people get scared and go hungry rather than exercise their constitutional rights because of these kinds of "monkey wrenches" that the government places between the poor and their constitutional right.

The regulations provide that households filing for a hearing shall be notified of free "legal representation." It should be noted that the word "legal" contains certain connotations that most of the people today representing food stamp participants cannot meet. Free legal representation means a lawyer, and lawyers generally don't do fair hearings. It is done by welfare rights groups and paralegals.

Section 273.13 Analysis (cont'd.)

a) We oppose any mass change without an individual notice informing the individual household what they will receive next month and an opportunity to contest that action if their benefits are computed incorrectly. This view is also expressed in the House report, p. 289.

b) Many times somebody may make a phone call and allege that someone is dead, and the agency will act upon that without any "verification," only to discover it was a false claim, but the household will go hungry for a long time as a result of this false alarm.

c) A family may go on vacation, and an angry neighbor may call the agency and say they moved away from the project area. The agency should have "verification" of another permanent address (change of address) before they act on such information.

d) The purpose of the notice is letting the household know what they will receive next month, prior to the arrival of the benefits based upon current information. To certify a household for month a, b, c at different levels is administratively hard, and it will only result in hurting the households because the agency will certify at higher levels to avoid over-issuance. This is also illegal, in our opinion.

Overall, these regulations will set back the program to the pre-Goldberg days, and it also seems that USDA is making a conscious effort to interfere with the rules set forth by Goldberg which are beneficial to the poor in the hopes that it will be litigated and give the Supreme Court the opportunity to modify Goldberg, where more poor folks will get screwed as they were in the pre-Goldberg days.

Recommendation/Position Support with amendment; otherwise absolute opposition.

1. The notice shall set forth each and every reason the agency relied upon to propose the adverse action. Merely stating the conclusion will make the notice improper, for a proper notice will have to set forth all the reasons for the proposed action.

2. Benefits received pending the outcome of the hearing shall not be considered over-issued benefits unless the household commits a fraudulent act at the hearing.

3. The regulations shall delete the word "legal" when referring to representation at the fair hearing or otherwise.

4. Section 273.13 b2, 6, 7, 8, 9 shall be repealed because they flagrantly violate the minimum due process rights of the poor.

5. Section 273.13 b3 and 4 shall be amended by striking the word "notification" and inserting in lieu verification like death certificate for (3) and an address change or a written statement from the household as (4).

Section 273.14. Recertification

We support FRAC's recommendation, May 1978, page 20.

## Summary of Section 273.15 Fair Hearings

This section provides for the same fair-hearing system that we have now. It allows the states to have a local hearing or state hearing, or part of the state may have local hearing, and the other part, state hearings.

### Analysis and Position

§ 273.15(a). This section limits fair hearings to issues which affect the participation of the household in the program. This will effectively prevent households from filing for hearings because their workers treated them disrespectfully, maybe insulted them, and the fact that these acts are precluded from the fair hearing system may imply that USDA promotes such acts.

§ 273.15(b). Oppose. This section allows the state to have local or state hearings in the same state. Local hearings have a proven record of being unresponsive to the needs of the poor and many times intimidating the people filing for a hearing. If a person files for a hearing, it is evident that he tried to resolve the matter at the local level and was not satisfied. For USDA to allow local hearings means that USDA is making it harder for the poor to seek resolution of their problem and is helping the local agencies in their efforts to conceal their bad policies. Most local hearings, especially in small areas, are conducted sometimes by a next-door neighbor or the certification worker's supervisor or the supervisor's supervisor. Generally, the only thing that can be achieved by a local hearing is that the local agency is more able to coerce the poor into dropping the hearing, sometimes through outright intimidation. If I were an agency director and wanted to deal with "these people" who filed for a fair hearing and get aid paid pending, I would set up a local hearing system and teach them a lesson. Many of us have been victims of this horrible system. We have had families whose children literally went hungry because of this inhuman, monstrous local-hearing system, only to win at a higher level.

§ 273.15(c) Oppose and support. We support subsection (1), which deals with hearings at the state level, and oppose (2) and (3) because of the reasons stated above.

§ 273.15(c)(5). Support. This has been a problem area in the past, and we support this section because it will allow households who may need a postponement to secure counsel, child care, a day off work, full opportunity to participate in the system as they are entitled to do so. In the past, households were rarely given a postponement but the local agencies have never been denied a postponement in my seven years of experience in doing fair hearings.

§ 273.15(d). Support with amendments; otherwise oppose. Basically, this section provides that the household may present their case to

Section 273.15 (Cont'd)

a "higher authority." The regulations do not state who this higher authority is. Is he/she from Mars? What's wrong with good old fair hearing. Households may think that the supervisor of the worker is the "higher authority." Some workers may say they are the "higher authority," and that is as high as "you food stamp recipients" are going to go. Anyway, if the household who was denied benefits under expedited certification decides to reach out to this higher authority, then two days from the day they state that they want to reach out (which may be in writing or orally-- the regulations don't say anything about it), there is a conference at the agency with the worker and his/her supervisor that already rejected them.

We have a great problem and irreversibly oppose these "consent" conferences with the local agencies. The conference means the household, who is hungry and destitute, will have to make another trip down to the welfare office to avail themselves of the agency workers, who will usually try to get the household to withdraw their hearing, for that is the way conferences have always been used by the agencies in the past, and we have no reason to see a change in attitude hereafter.

Recommendation

It will be much simpler administratively and to the household for the agency to perform a desk review without the household, but with the agency director or supervisor. If they decide to reverse their decision, they shall pay the benefits to the household; otherwise, the hearing should be scheduled.

Many recipients will think (and this thinking will usually be reinforced by the agency) that the conference is a hearing, and they should withdraw the hearing because the results will be the same if there is another hearing.

§ 273.15. Oppose. These kinds of hearing violate the privacy of recipients, and it is dehumanizing. This process only benefits the system and hurts the poor. We have had people who refused to go to a group hearing, and this denied access to the hearing system and forced them not to participate in the program to protect their privacy.

§ 273.15(f). Support, with amendments. The regulation only requires notification at the time of application. It shall include at the time of each and every certification, because at the time of application, the household is confronted with a lot of stuff, and it is hard to comprehend it all.

"Legal representation" should be changed to read "representation."

§ 273.15(9). Support. We have seen many households who were not even aware of the fair hearing system and were improperly denied

Section 273.15 (Cont'd)

benefits, which was discovered by legal aids or recipient organizations way after forty days. Thus, we support the one-year time period, as it already is in California.

§ 273.15(j). Support, with amendment. This section like many other sections talks about "good cause," but it does not define good cause. We believe there is a definite need for USDA to explain each and every good cause as to what they mean.

§ 273.15(g). Implementation of hearing decisions. Oppose in part (the part that provides for recoupment of continued benefits). These regulations provide that if the household receives continued benefits and then loses the hearing, they would be liable to pay back those benefits to the agency. We oppose this provision because it was not provided for in § 10(a)(11) of the Act.

Furthermore, the reality is that these claims, that average out to be less than \$100, are rarely collected, and the amount that is collected, compared to the cost of opening up a claim and maintaining the claim, is far more expensive and time consuming than the amount collected.

Finally, it is an unnecessary obstacle between the poor and their constitutional rights.

273.15(k) Continuation of Benefits Oppose

This section provides that if a household requests a fair hearing and continuation of benefits, then they shall receive benefits on a continued basis until the final decision of the hearing or the expiration of the certification period, whichever happens first. This section goes on to state in subsection (ii) that if the hearing official determines at the time of the hearing that the issue is one of Federal law, regulation or policy, continued benefits will cease.

Thus this section clearly provides that the mere fact the household made a timely request for a hearing does not mean that they will receive continued benefits. They will have to request continuation of benefits and those benefits may be stopped by the hearing official at the fair hearing.

Some recipients and advocates raised questions about 1) the requirement of requesting continued benefits (although the household has requested a timely hearing) as a condition of receiving continued benefits and 2) the authority if the hearing official to order termination of continued benefits during the hearing.

To answer these questions we read the Act, specifically section 11(a)(10) of the Act that provides as follows:

" . . .any household which timely requests such fair hearing after receiving individual notice of agency action reducing or terminating its benefits within the household's certification period shall continue to participate and receive benefits on the basis authorized immediately prior to the notice of adverse action until such time as the fair hearing is completed and an adverse decision rendered or until such time as the household's certification period terminates, whichever occurs earlier."

As a simple reading of the law will show, there is not authority for requiring 1) the household to request continued benefits after requesting a timely fair hearing or termination of continued benefits at the time of the fair hearing.

In conclusion all we could plead for is the "obeyance of the law."

### Summary of Section 273.16. Fraud Disqualification

This section specifically defines what constitutes fraud and the fact that fraud must be proved by clear and convincing evidence.

If a person is alleged to have committed fraud, then he is given a notice with a summary of the evidence against him and a date for a hearing.

The hearing will be held without the household, unless there is good cause for the household not to appear at the hearing.

### Analysis with Recommendations

We must compliment USDA for providing clear and precise guidelines consistent with the House Report to determine fraud.

We have a number of problems in these regulations that need the attention of USDA:

§ 273.16(d)(2). Fraud Hearing Procedures. This subsection provides for a separate hearing system for fraud hearings. We don't want the Fraud Hearing Unit to be separate from the regular hearing unit, which may very well happen given the fact that the fraud hearing regulations are separate. Therefore, some states will set up a Fraud Unit, and part of that unit will be the Fraud Hearing Unit. Such a setup will greatly diminish any possibilities of receiving a fair hearing.

We would rather see the "fraud hearing" concept be abolished, and all the regulations should say is when a notice of fraud is mailed out, the hearing, as provided in 273.15, shall be scheduled for the person in question. The notice that will be mailed out should be placed in section 273.13 with the following changes:

a) The notice should not merely summarize the evidence that the agency relied upon to determine alleged fraud; rather, "the notice shall describe the evidence."

b) The notice shall indicate the name, address and phone number of local legal services projects, welfare rights and anti-hunger groups which may represent them at the hearing.

### Summary of Recommendations for § 273.16 and Position Support, with recommendations:

a) Section 273.16(d) shall be placed in section 273.15.

b) Section 273.16(c) and (d)(3) shall be placed in section 273.13 with changes of describing the evidence rather than summarizing the evidence and listing the organizations where the person could obtain representation.

## Summary of Section 273.17. Restoration of Lost Benefits

This section provides that lost benefits may be restored by going back twelve months from the date of discovering the under-issuance, provided it was not the household's fault, or the error that caused the under-issuance was not the household's fault.

If it is determined that there is an under-issuance, and it is not the household's fault, then the household has to provide all needed verification for the agency to compute the benefits.

If the household is lucky enough to get through these two impossible obstacles, then the benefits are restored to the household, not to exceed 100% of the household's allotment.

### Analysis

The primary problem that we have with these regulations is the fact that it limits restoration of lost benefits to those households who were not at fault in the under-issuance of benefits. Thus, under the proposed regulations, a household that was found to be ineligible, but later found to be eligible, will not be entitled to restoration of lost benefits because it was the household's fault that the household was found to be ineligible. This criterion is totally inconsistent with House Report on p. 285, that provides as follows:

"Thus, if a household lost benefits because it was found to be ineligible when it was eligible or because its allotment was not as high as it should have been such benefits would be recouped in the form of allotment add-ons."

The fact that the household did not receive the benefits that they were entitled to is wrong, and those benefits were "wrongfully denied or terminated." Section 11(a)(11) of the Act. Had Congress intended to "wrongfully" mean "fault," then it would have been reflected in the House Report that was adopted by the conferees of S. 275.

The secondary problem is that the regulations provide that the household has to provide all needed documentation to determine lost benefits. We believe that this will make it just about impossible for the household to provide verification of information for twelve months back. The regulations should provide for an alternative method (if the household cannot provide the agency with the necessary verification) to determine lost benefits.

Recommendation/Position. Oppose; support, with amendments.

1. Benefits shall be restored as long as it is established that the household was found ineligible, when it was eligible

Section 273.17 (Cont'd)

or when its benefits were not as high as they should have been (not withstanding whose fault it was) and shall be entitled to restoration of lost benefits.

2. In order to determine the amount of lost benefits, the computation shall be done with the information that is in the possession of the household, and such information that is not in the possession of the household shall be verified through an affidavit signed by the head of household.

Summary of Section 273.18. Claims Against Household

This section provides for two types of claims that can be levied against the poor: Nonfraud claims and fraud claims.

Nonfraud claims are overissuances that were no fault of the household. Fraud claims are when the household received benefits as a result of a fraudulent act.

Analysis

To penalize the poor for the mistakes and the inherent problems of the bureaucracy seems extremely harsh and totally insensitive towards the poor, especially when we can't find statutory authority for the collection of claims from the poor that are a product of bureaucratic incompetency.

Households should not have fraud claims assessed against them without a hearing or a specific finding of a fraudulent act. The hearing that is used to determine the fraudulent act should also determine the claim amount. This would protect the poor from possible abuses that have been occurring and still occur.

Recommendation/Position. Oppose, with amendments.

We hereby incorporate and adopt the recommendation of FRAC in this matter. FRAC Report, May 1978.

Summary of Section 273.19. Sixty-day Continuance of Certification.

This provision basically requires that when a household moves from one project or to another, their benefits shall continue for sixty days, provided they present the FNS 286 to the other project area.

Analysis

The entire section is based upon the precondition that the household have an FNS when they arrive at the second project area. Without the FNS 286, the household will not be able to receive the sixty-day continuation of certification.

It has been our experience that most households move from one project area to another without getting an FNS 286. Thus, rarely are they subject to the sixty-day continuation of certification.

Recommendation/Position. Support with Amendments.

This section should be amended to provide that if the household arrives at the second project area without an FNS 286, then the second project area shall contact the first project area and obtain the necessary information to complete the FNS 286 and pay benefits based upon that FNS 286.

## Summary of Section 274.2. Issuance Systems

The proposed regulations provide for three methods of issuance, whichever ones the state chooses:

1. Household Issuance Register (HIR). This is where you go down to the issuance center, and they already have your authorization to participate.
2. Where the household gets the ATP in the mail and then takes it down to the issuance center to get their allotment.
3. Direct-mail Issuance--where the coupons are mailed to the house.

### Analysis

Of these three systems, we see possible problems that could result in nonparticipation by the household in direct-mail system. Under HIR, it is possible that the household will go down to the center, stand in line for hours, only to find out that their card is not there because of some bureaucratic problem. The mail system is totally dependent upon the problems which plague the postal system. There is no provision in these regulations to mandate over the counter issuance of food stamps. Without such a provision, the fact that the state agency is required to hand-issue ATP is irrelevant because the state agency can exclusively mail out coupons.

Recommendation/Position. Support, with Amendment.

We recommend that each project area be mandated to have an ATP system and one of the two other systems.

Summary of Section 274.2(c). Coupons Lost in the Mail

This section provides that if the household does not receive their coupons through the mail, then the agency shall issue replacement coupons to the household within five days after the report of non-delivery has been received by the agency.

Analysis

This section troubles us greatly because it will force a lot of families into starvation because of the time it will take to replace the lost coupons.

Reading this section with 273.2(j), here is an example of how this will impact the poor:

First, we will assume that most states will adopt the five-day waiting period, although this is utterly excessive and totally inhuman. The day after the due date for delivery of the coupons should be an appropriate waiting time period.

Under the proposed parameters, if the coupons were due on a Monday, first of the month, and it did not arrive in the mail, the household will call their worker to find out what happened. If they are lucky to talk to their worker, they will be told to wait and see if it comes in the mail tomorrow. If the coupons don't show up in the mail Tuesday, the household may decide to give it another day and borrow some food from the neighbor who got their R/S Food Stamps.

After checking the Wednesday mail, they decide to call their worker and tell him that they still have not received their coupons.

The worker now informs the household to report the loss to the police department and gives them an appointment for 10:30 a.m., on Friday, to complete the lost-coupon forms. The husband runs down to the police department to report the loss of the coupons and is arrested for past traffic tickets. Now, the wife and their three kids are hungry, and their father is in jail. She is able to get a ride to the agency (because her car was impounded by the police when they arrested her husband) on Friday, only to be told that her coupons will be mailed to her on the 10th of the month, because there is a five-day waiting period from the day she completes the "lost coupon report."

It seems that this grand scheme is designed to harass the poor and force them to beg, steal and borrow to feed their children and themselves. The impact on the elderly is simple, they may have to resort to restaurant garbage cans for food.

Recommendation/Position. Oppose

We recommend that the waiting period be the day after the due date for delivery of the coupons. This is current policy in

Section 274.2(c) (Cont'd)

California for replacement of Medi-Cal cards, and there has been no great problems with the system. On the second day, the household shall be given all the necessary forms to complete and shall be given hand-issued coupons the same day.

## Other Comments

### 1. Monitoring of implementation of the Act.

We recommend that USDA monitor the implementation of the Act and contract with community-based organizations to assist USDA in these monitoring efforts.

### 2. Having only federal regulations and opposing the FNS instructions.

It has been suggested that USDA may retain FNS instructions under the new disguise called "Program Guidelines." We oppose the creation of any policy issuance other than those located in the federal regulations.

### 3. Considering the unborn child a member of the household.

HEW has traditionally provided federal financial participation for payments made to unborn children. Congress has also expressed its feelings about unborn children through its action on abortion. Given these facts, it is evident that Congress and the public considers unborn children as persons, and therefore they should be made a part of the household.

It should also be noted that pregnant women need more food than the average person because they are not only feeding themselves but also the unborn baby.

