

FEB 18 2014



United States
Department of
Agriculture

Food and
Nutrition
Service

Civil Rights
Division

3101 Park
Center Drive

Alexandria, VA
22302-1500

Commissioner Stacey Monahan
Department of Transitional Assistance
600 Washington Street
Boston, MA 02111

Dear Commissioner Monahan:

The Food and Nutrition Service Civil Rights Division (FNS CRD) recently received and reviewed correspondence from Massachusetts individuals and organizations expressing concerns surrounding the implementation of the State's new EBT photo identification requirement. Additionally, CRD has engaged in ongoing discussions regarding these issues with the Supplemental Nutrition Assistance Program (SNAP) staff in both the national office and Northeast Regional Office.

FNS CRD has determined that the State's practice of requiring or requesting that non-applicant heads of household (who are not issued a photo EBT card) consent to the photo identification process violates Title VI of the Civil Rights Act of 1964. The Northeast Regional Office has informed FNS CRD that the State is in the process of revising this policy; however, formal guidance has yet to be issued from the State to its workers. The purpose of this letter is to secure voluntary compliance from the State of Massachusetts with regard to the issues described above, and we recognize the State's initial efforts in this regard.

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color and national origin by recipients of Federal financial assistance. Under established case law, Department of Justice (DOJ) interpretations and the USDA's Title VI implementing regulations at 7 CFR Part 15, facially neutral policies and practices that have a disparate impact on members of a protected class can only survive where there is a substantial legitimate justification for such policies and practices, and where equally effective alternatives have been considered and evaluated.

FNS CRD believes that the above described practice has a disparate impact based on national origin due to the disproportionately high number of affected persons being from non-citizen immigrant populations. This is particularly axiomatic when non-applicant heads of household are required or requested to consent to the photo requirement when they lack a valid Social Security Number. FNS CRD also finds that there is no substantial legitimate justification for this requirement, a finding buttressed by the voluntary nature of the practice as communicated by the State to FNS.

FNS CRD finds that this practice has the adverse potential to dissuade certain individuals from applying for or continuing benefits on behalf of eligible individuals, and that the State has no substantial legitimate justification for collecting and maintaining a photographic record in such circumstances.

Though it is FNS' understanding that the practice of scheduling photo appointments as described above may have recently ended, three compliance related issues remain outstanding.

1. The State must issue official policy guidance to staff specifically prohibiting the practice of requiring or requesting consent to the photo requirement for non-applicant heads of household. This guidance should be developed and communicated to staff no later than thirty (30) calendar days from receipt of this letter.
2. The state must send cancellation notices to non-applicant heads of household prospectively scheduled for photo appointments. FNS' understanding is that thousands of persons were recently scheduled for photo appointments via letter correspondence, though the number of non-applicant heads of household affected by that mailing is unclear. The cancellation notices must be sent no later than thirty (30) calendar days from receipt of this letter, though a shorter timeframe is expected where possible to provide enhanced customer service for those with scheduled appointments within the thirty (30) day timeframe noted above.
3. The State must eliminate photo records of any non-applicant heads of household taken since the implementation of the EBT photo requirement. This includes any physical or electronic photographic record. The photo record information should be eliminated within forty five (45) calendar days from receipt of this letter.


Certification and documentary evidence from the State to FNS that the above items have been completed must be submitted to FNS no later than sixty (60) days from receipt of this letter. Please use the address at the top left corner of page one of this letter for all written correspondence.

We recognize the State's initial efforts to address this practice and we look forward to working with you to completely resolve the issues described above. While we anticipate your continued cooperation in this matter, please be advised that failure to take appropriate corrective actions will result in additional compliance activities to include referral to the USDA's Office of the Assistant Secretary for Civil Rights, and possible referral to the United States Department of Justice.

If you have any questions, please contact Steve Miliano, FNS NERO Civil Rights Director, at stephen.miliano@fns.usda.gov or 617-565-6424 or the FNS Civil Rights Division's national office at (703) 305-2195. You may also contact Bonnie Brathwaite, NERO SNAP Director, at bonnie.brathwaite@fns.usda.gov or 617-565-6397.

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Sincerely,



David Youngblood, Director
Civil Rights Division

Cc (via email)

Jessica Shahin, Associate Administrator – SNAP
Patricia Dombroski, Acting Regional Administrator – NERO
Bonnie Brathwaite, SNAP Director – NERO
Angela Kline, Certification Policy Branch Chief – SNAP
Crystal Tolar, Compliance Branch Chief– CRD
Steve Miliano, Regional Civil Rights Director– NERO