

# Clearinghouse REVIEW

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## Protecting Households as States Stagger SNAP Issuance

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States traditionally issued benefits under the Food Stamp Program (now the Supplemental Nutrition Assistance Program (SNAP)) on the first day of the month. This practice reduced states' issuance costs, but it also allowed stores in low-income areas to raise their prices at the beginning of each month, forcing recipient households to pay higher prices than more affluent customers. Congress amended the statute in 1985 to allow states to stagger households' issuances throughout the month, but the costs of issuing paper food-stamp coupons prevented many states from taking this option except in large urban areas or led them to stagger issuances only over part of the month.<sup>1</sup>

SNAP's shift to electronic benefits has made staggered issuance virtually costless to states.<sup>2</sup> In a February 2012 letter to all state welfare commissioners the Food and Nutrition Service, which administers SNAP for the U.S. Department of Agriculture, encouraged the commissioners to adopt or expand staggered issuance of SNAP benefits. The letter argued that "issuing SNAP benefits on a single day or over a limited number of days ... puts an unnecessary strain on SNAP clients and on participating retailers by causing surges in customer traffic at SNAP[-]authorized stores."<sup>3</sup> The

<sup>1</sup>Food Security Act of 1985, Pub. L. No. 99-198, § 1518, 99 Stat. 1354 (1985) (codified as amended at 7 U.S.C. § 2016(g)(1)).

<sup>2</sup>The federal government pays all Supplemental Nutrition Assistance Program benefit costs (Food and Nutrition Act of 2008, 7 U.S.C. § 2013(a)). States do pay half of the administrative costs of issuing benefits, but with electronic benefits transfer that requires only modest computer reprogramming (*id.* § 2025(a)(3), (6)).

<sup>3</sup>Letter from Jessica Shahin, Associate Administrator, Food and Nutrition Service, to Reggie Bicha, Director, Colorado Department of Human Services (Feb. 2012) (noting that similar letters were sent to other state welfare commissioners) (in my files).

letter reported that “retailers struggle to adequately staff and stock their stores in anticipation of SNAP benefit issuance and use” without staggered issuance. The Food and Nutrition Service recommended that states spread issuances out over as much of the month as possible.

If implemented appropriately, staggered issuance can help retailers as well as households. Staggering SNAP issuances benefits SNAP participants by eliminating long lines at grocery stores on the first of the month, increasing access to fresh fruit and vegetables, and avoiding a run on food pantries toward the end of the month. Most states, however, have made no provision for assisting households during the transition to the new system. These states merely delay issuances to most current recipients, effectively denying the recipients’ benefits for half a month or more. Households have enough difficulty buying thirty days’ food with one month’s allotment; forcing them to stretch that allotment several additional days is likely to result in serious hardship.

Moreover, the benefits lost during the transition to a new system are never restored. The first issuance in the new system cannot be spent retroactively, and will be needed to purchase food for the full month before the household’s next allotment. Even if the delayed allotment were sufficient to cover the household’s food needs in the gap, retailers may not sell food on credit to be paid with SNAP benefits.<sup>4</sup> The later issuance date means that the state will have time to make future reductions in—and terminations of—some households’ benefits one month earlier than it would have if the household had stayed on the prior system.<sup>5</sup> Put another way, if a household’s benefits were postponed just three days every month, by the end of a year the household

would have lost more than a full month of benefits. State administrators have acknowledged this problem. For example, the North Carolina Department of Health and Human Services warned the state’s food banks about increased demand for emergency food during the transition to staggered issuance and asked food pantries to serve households without the usual referral letters.<sup>6</sup>

A fair reading of the Food and Nutrition Act requires supplemental allotments to tide households over during this transition. Unfortunately the Food and Nutrition Service has been largely silent during this time. Most states do not seem to have considered providing the allotments. If advocates learn early that their states plan to adopt or expand staggered issuance and press their states for supplemental allotments, they can save millions of dollars in federal food assistance for low-income households.

Section 7(g)(1) of the Food and Nutrition Act allows states to stagger issuance dates for any household and requires them to do so for households on Indian reservations.<sup>7</sup> This section of the Act evolved in three main steps relevant to protecting households in transition. First, Congress enacted the original version of this paragraph, now appearing as Section 7(g)(2)(A)(ii), in 1985 to require any state staggering issuance to “ensure that no household experiences an interval between issuances of more than 40 days.”<sup>8</sup> Second, Congress returned to this subject in 1990 to add what is now Section 7(g)(2)(A)(i), requiring that any staggering procedure “not reduce the allotment of any household for any period.”<sup>9</sup> Third, the 2008 Farm Bill added Section 7(g)(2)(B), prohibiting issuance systems that routinely provide more than one benefit issuance each month.

<sup>4</sup>Participation of Retail Food Stores, 7 C.F.R. § 278.2(f) (2012).

<sup>5</sup>Requirements for Change-Reporting Households, 7 C.F.R. § 273.12(c)(2) (2012) (establishing deadlines for acting on changes reducing households’ benefits).

<sup>6</sup>Letter from Dean Simpson, Chief of Economic and Family Services, North Carolina Department of Health and Human Services, Division of Social Services, to County Directors of Social Services (April 1, 2011) (in my files).

<sup>7</sup>U.S.C. § 2016(g)(1).

<sup>8</sup>*Id.* § 2016(g)(2)(A)(ii).

<sup>9</sup>*Id.* § 2016(g)(2)(A)(i).

This sequence is telling. As a matter of statutory construction, the prohibition on reductions in benefits must provide additional protections beyond the forty-day maximum interval between allotments. If the prohibition on reductions did not do so, Congress would have had no reason to act in 1990. Legislative history confirms this. The 1985 Senate Agriculture Committee proposed the forty-day rule for staggering benefits “to ensure that the gap in benefit coverage is not too great,” not to eliminate such gaps.<sup>10</sup> The House Committee in 1985 preferred a thirty-five-day limit on the gap between issuances; it would have allowed supplemental issuances to fill that gap but did not require them.<sup>11</sup>

By contrast, Senate Agriculture Chairman Patrick Leahy explained during the final passage of the 1990 amendments that “[o]bviously, households cannot live for forty days on allotments designed for thirty. Therefore, this legislation, like current law, provides for issuances providing benefits for each day during transition periods.”<sup>12</sup> Chairman Charles Hatcher of the House Nutrition Subcommittee expressed similar views, going on to state that the legislation “provides for more than one issuance during transition periods.”<sup>13</sup>

Eighteen years later, when Congress prohibited states from regularly splitting households’ monthly issuances into two or more parts, it left intact the prohibition on losses of benefits in the transition to staggered issuance. Legislative history made clear that these changes do not limit households’ right to supplemental issuances to protect them against the loss of benefits in a transition to a new or expanded staggered issuance system. Sen.

Tom Harkin, chairman of the Senate Agriculture Committee (and the chairman of its Nutrition Subcommittee in 1990), stated that, apart from prohibiting routine splitting of allotments, the legislation “does not intend to change the rules [in] any other area.”<sup>14</sup>

In writing rules to implement staggered issuance, however, the Food and Nutrition Service has failed to implement Section 7(g)(2)(A)(i)’s protection against recipients’ loss of benefits.<sup>15</sup> Instead 7 C.F.R. § 274.2(d)(3) merely repeats the forty-day rule of Section 7(g)(2)(A)(ii). It allows the regular monthly allotment to be divided into two parts for this transition but states that “[t]he supplemental issuance cannot provide the household more benefits than the household is entitled to receive.”<sup>16</sup> This does not explicitly prohibit states from providing supplemental allotments for the fraction of a month that otherwise would be lost in the shift to staggered issuance, but it certainly does not require the issuance of such supplemental allotments and may discourage them.

Food and Nutrition Service staff members seem to acknowledge the possibility of supplemental issuances to implement Section 7(g)(2)(A)(i). On March 14, 2012, Russell Shedd, the Food and Nutrition Service’s regional electronic benefits transfer coordinator in its southeast regional office, reported that the Benefit Redemption Division in the Food and Nutrition Service’s national office confirmed that the 2008 legislation prohibited “splitting *ongoing* issuances [not] specific instances such as changing from one issuance procedure to another.”<sup>17</sup> Nonetheless the Food and Nutrition Service has not

<sup>10</sup>S. REP. NO. 99-145, at 260, 446 (1985).

<sup>11</sup>H.R. REP. NO. 99-271, at 314 (1985).

<sup>12</sup>136 CONG. REC. S16666-01, S16673 (1990).

<sup>13</sup>*Id.* H11848-04, H11863 (1990).

<sup>14</sup>154 CONG. REC. S4743-03, S4752 (2008).

<sup>15</sup>Supplemental Nutrition Assistance Program: Regulation Restructuring, 75 Fed. Reg. 18377, 18384 (April 12, 2010); Food Stamp Program: Benefit Delivery Rule, 60 Fed. Reg. 20178, 20181 (April 25, 1995); Food Stamp Program: Benefit Delivery Rule, 56 Fed. Reg. 23027–28 (proposed May 20, 1991).

<sup>16</sup>Providing Benefits to Participants, 7 C.F.R. § 274.2(d)(3) (2012).

<sup>17</sup>E-mail from Russell Shedd, Regional Electronic Benefits Transfer Coordinator, Food and Nutrition Service, to Sandra Allen (March 14, 2012) (in my files).

taken a clear position on supplemental issuances; at a minimum it does not appear to be taking any steps affirmatively to require states to protect households against losses of benefits.

Although issuing supplemental benefits for the fractions of months lost in transition to staggered issuance systems is relatively simple and virtually costless to states, in practice such issuances are unlikely unless they are included in the state's plan to convert to, or expand, staggered issuance. States typically formulate these plans many months before the actual transition to allow the necessary system changes. Preventing these

losses of benefits requires advocates to contact state administrators to determine if the state plans to initiate or alter its staggered issuance system and, if so, to request that it provide supplemental allotments. Where the transition has already occurred, or is too far along in planning to allow the state's system to be reprogrammed to provide the supplemental allotment, advocates should notify state administrators that they believe all affected households were underissued benefits and are entitled to correction of those underissuances under Sections 11(b) and 11(e)(11) of the Food and Nutrition Act.<sup>18</sup>

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<sup>18</sup>7 U.S.C. § 2020(b), (e)(11); see also 7 C.F.R. § 273.17(a) (2012) (requiring correction of underissuances).



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