



SEP 24 2012

**United States
Department of
Agriculture**

Food and
Nutrition
Service

Northeast Region

10 Causeway St.
Room 501
Boston, MA 02222

The Honorable Mary Mayhew
Commissioner
Department of Health and Human Services
221 State Street
Augusta, Maine 04333-0040

Dear Commissioner Mayhew:

Over the course of the past year, the Food and Nutrition Service (FNS) discovered serious compliance issues with Maine Department of Health and Human Services' (DHHS) administration of the Supplemental Nutrition Assistance Program (SNAP). These issues have significant policy and cost implications for the Federal government, for the taxpayers that provide financial support for SNAP, as well as for the participating households that rely upon SNAP to make ends meet.

In November 2011, FNS became aware that DHHS improperly issued SNAP supplements totaling \$4,861,920 to recipients. The State's reported reason for this overpayment was due to the DHHS' failure to adhere to State administrative procedures process.

This letter summarizes the chronology of the overpayment, requirements for handling claims, and the application of the high performance bonus payment to offset the overissuance.

Standard Utility Allowances

Federal regulation at 7 CFR 273.9(d)(6)(iii)(B) allows for a State agency to choose, with approval from FNS, to develop a Standard Utility Allowance (SUA) to be used in place of actual utility costs in determining a household's excess shelter deduction and requires State agencies to update these SUA figures annually.

SUA Optional Extension

In recent years, FNS provided State agencies, including DHHS, with multiple extensions of the fiscal year (FY) 2009 figures in the form of waivers and waiver modifications. The purpose of the waiver initially was to soften the effect that lower energy costs had on household benefits and maintain the congressionally-mandated benefit increase received by all households in April 2009 as a result of the American Recovery and Reinvestment Act of 2009. Since then, FNS provided two additional 3-month extensions to this waiver. These two extensions assisted low-income SNAP recipients through the winter months when energy costs are traditionally at their highest.

The terms of the December 2, 2010 waiver modification provided that on April 1, 2011, States that chose to implement the waiver would be required to adjust their

SUAs to the FY 2011 amount as calculated based on the State's FNS-approved methodology. FNS set a limit (floor) which ensured that updated SUAs would not result in benefit reductions of more than \$20.

Chronology of Maine's Overissuances

On April 1, 2011, DHHS updated the SUA as required. However, DHHS later realized that they had not complied with State administrative procedures. Therefore, in June 2011, without consulting FNS, DHHS provided restored benefits to clients for a period that met the State's administrative procedure requirements (April through July of 2011). It is unfortunate that Maine did not pursue a consultation with FNS. This would have afforded FNS the opportunity to properly advise the State of their legal responsibilities and options, and likely would have prevented the establishment of these claims.

FNS appreciates that competing legal requirements can create confusion. That being said, SNAP is a Federal program and must conform to Federal requirements. FNS has clearly expressed this sentiment to States on multiple occasions through previous policy guidance and communications. State administrative procedures laws, such as those in question here, are not a sufficient legal reason for a State to contravene Federal requirements. Maine's actions were contrary to Federal requirements and resulted in an overissuance of SNAP benefits by the State in an amount of almost \$5 million.

In November 2011, FNS discovered that Maine had not implemented its SUA properly on April 1, 2011 resulting in DHHS overpaying 70,482 households by as much as \$20 for each month.

Following considerable discussion and dialogue between DHHS and FNS about this serious infraction and potential remedies, on March 30, 2012, FNS notified DHHS that the State must establish claims for the overissuance in accordance with Federal law. In July 2012, Maine began issuing pre-notification letters to affected households to explain the reason for the overpayment.

Repayment of Overissuances and Performance Bonus

Section 13(b) of the Food and Nutrition Act of 2008 ("the Act") requires that the State agency collect any overissuance of benefits issued to a SNAP household; however, if the overissuance is the result of a systemic state error under Section 13(b)(5), FNS is required to establish a claim in the amount of the overissuance against the State and FNS may prohibit the State agency from collecting the overissuances from households.

After additional review of the facts of this case, FNS has now determined DHHS's error in implementing its SUA was a systemic error that caused the overissuances to occur. As a result, FNS is establishing a claim of \$4,861,920 against Maine and is prohibiting DHHS from collecting the overissuances from the households affected by the DHHS decisions.

Section 13(a)(1) of the Act authorizes FNS to reduce amounts otherwise due to DHHS under Section 16 of the Act to collect unpaid claims assessed against the State agency, if DHHS has declined or exhausted its appeal rights under Section 14 of the Act. Pending the conclusion of any potential appeal of this claim, FNS will withhold all of Maine's FY 2011 Section 16(d) bonus payments. For FY 2011, FNS has determined that Maine qualified for performance bonus awards for Best Negative Error Rate, Best Program Access Index, and Highest Application Timeliness. Subject to the outcome of any potential appeal of the overissuance claim, the three performance bonus awards totaling \$2,051,781 will be applied to reduce the \$4,861,920 claim against Maine, resulting in a final aggregate amount of \$2,810,139.

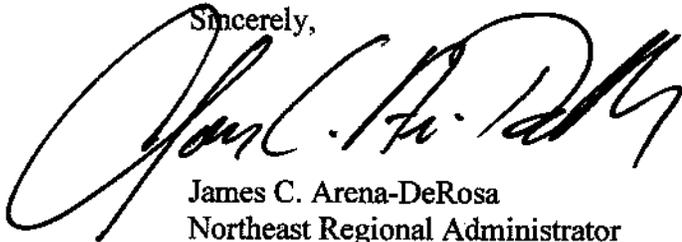
Enclosed is a SF-1114 "Bill for collection" in the amount of \$2,810,139, taking into account the potential offset of Maine's FY 2011 performance bonus awards. If for any reason FNS does not apply any of the performance bonus awards to reduce the overissuance claim against Maine, DHHS will be responsible for the full amount of the \$4,861,920 claim, subject to appeal. If you do not agree with this bill, you have ten (10) days in which to file a formal appeal in accordance with 7 CFR 276.7. The appropriate mailing address for your appeal is:

Executive Secretary
State SNAP Appeals Board
c/o Administrative Review Branch
Food and Nutrition Service, USDA
3101 Park Center Drive, Room 608
Alexandria, VA 22302

FNS understands the burden this places on the State at a time of budget challenges; therefore, FNS is interested in working with DHHS to negotiate a repayment plan that may include the ability to repay the outstanding debt spread over multiple fiscal years.

If you have any questions regarding this letter or need more information, please contact me at (617) 565-6370 or Bonnie Brathwaite at (617) 565-6397.

Sincerely,



James C. Arena-DeRosa
Northeast Regional Administrator
USDA – Food and Nutrition Service

cc: Dale Denno
Beth Hamm
Karen Curtis
Scott Fitts

BILL FOR COLLECTION

Billing Agency:

NERO - FOOD AND NUTRITION SERVICE

10 Causeway Street

Room 501

Boston, MA 0222-1069

Contact: Financial Management

Telephone: (617) 565-6446

Bill Number: NE01 - 18120058

Bill Date: 9/20/2012

Due Date: 10/20/2012

Payer:

ME DEPT OF HUMAN SVCS

MAINE DEPT OF HUMAN SVCS

221 STATE ST

STATION 11

AUGUSTA, ME 04333

Receivable Number: RA201204000013001

Customer Account Number: S2392901000

This bill should be returned by the payer with the remittance below.
SEE INSTRUCTIONS BELOW

DESCRIPTION

AMOUNT

CUMULATIVE BILL TOTAL

2,810,139.00

INSTRUCTIONS

THIS IS NOT A RECEIPT

The payment due date is 30 days following the bill date indicated on this notice or the certified mail receipt date, whichever is later. Pursuant to 31 USC 3717, additional charges will be assessed on payments received after the due date, including interest accruing from the date the debt is owed. If the debt is referred to the Department of the Treasury for collection, additional administrative and penalty charges may be added, accrued from the original service date.

Online payments go to <http://www.fns.usda.gov/fns/fm.htm> and click on "Payments"

Online Technical Support: (877) 807-4135 (toll free), Customer Account Support: (703) 305-2078, Monday thru Friday 9 a.m. to 6 p.m. (eastern)

Detach Here.

Please make your payment online at <http://www.fns.usda.gov/fns/fm.htm> (click on "Payments") or mail this portion with your payment.

To ensure proper credit please write your receivable number on your check.

Bill Number: NE01 - 18120058

Receivable Number: RA201204000013001

Customer Account Number: S2392901000

Remit Info:

Mail this portion and payment to:
NERO - FOOD AND NUTRITION SERVICE
Attention: Accounting Division
PO Box 979027
St. Louis, MO 631979000

Remit Telephone: (703) 605-0486

Customer: ME DEPT OF HUMAN SVCS
 MAINE DEPT OF HUMAN SVCS
 221 STATE ST
 STATION 11
 AUGUSTA, ME 04333

Bill Number: NE01 - 18120058
 Bill Date: 9/20/2012
 Due Date: 10/20/2012

Detail List Of Charges

Treasury Symbol			
Receivable Type			
Service	Customer Ref	Document Number/Suffix	Amount
12 2 3505			
OTHER ACCT. REC.			
S6019 SNAP EBT (O)			
	BILL FOR OVER COLLECTION	RA20120400013/001	2,810,139.00
Subtotal Service:	S6019 SNAP EBT (O)		2,810,139.00
Subtotal Receivable Type:	OTHER ACCT. REC.		2,810,139.00
Total Treasury Symbol:	12 2 3505		2,810,139.00
Bill Total:			2,810,139.00