

Section 2: Payment Accuracy

Finding 4: SNAP Households' Eligibility Questionable Under BBCE

States did not assess the eligibility of more than 15 million SNAP households in FY 2012 under the traditional SNAP eligibility requirements because of their Broad Based Categorical Eligibility (BBCE) status. States allowed these BBCE households to qualify for SNAP benefits based on these households' receipt of information about other State benefit programs. Their eligibility also was not assessed during the QC process used to determine the SNAP error rate. This lack of assessment occurred because FNS established its BBCE policy without ensuring that the other State programs used to confer eligibility met all regulatory requirements regarding State-funding percentages, program purposes, and participant gross monthly income levels. FNS also incorrectly decided to treat BBCE cases the same as other categorically eligible (CE) cases during the QC process. In FY 2012, we found more than 6.4 percent of BBCE QC households received SNAP benefits, even though they exceeded the statutory gross and net income limitations. Further, SNAP's FY 2012 national error rate was understated by more than 6.5 percent (or nearly 0.24 percentage points) because BBCE SNAP recipients' eligibility was not assessed during the QC process. This rate equates to more than \$178 million in improper payments. Considering that more than 15 million households (roughly two thirds of the 22.3 million SNAP households in FY 2012) are eligible due to their BBCE status, and with total SNAP benefits averaging over \$71 billion annually since FY 2010, the amount overpaid to SNAP recipients nationwide due to FNS' BBCE policy is likely substantial.⁵⁹

Federal regulations state that Categorical Eligibility (CE) can be conferred (with FNS approval) to "any household . . . in which all members receive or are authorized to receive non-cash or in-kind services from a program that is less than 50 percent funded . . . under Title IV-A and that is designed to further purposes three and four⁶⁰ of the TANF [Temporary Aid for Needy Families] block grant . . . and requires participants to have a gross monthly income at or below 200 percent of the Federal poverty level."⁶¹ *FNS Handbook 310* states that the QC reviewer need not review those elements of eligibility superseded by categorical eligibility (e.g., resources, gross and net income limits, etc.). According to a 2011 FNS policy memorandum, "the verifications for resources, gross and net income . . . for BBCE households are the responsibility of the [Temporary Aid for Needy Families] TANF program. They are TANF verifications, even if they are listed in State SNAP manuals and should not be verified by SNAP QC."⁶²

Historically, CE enabled recipients who had previously met the eligibility requirements for other comparable programs to be automatically eligible for SNAP. This eliminated the need for States to determine the recipients' eligibility twice. Under CE, the expectation was that another

⁵⁹ A Congressional Budget Office report in 2012 estimated the total cost of BBCE to be roughly between \$11.5 billion and \$11.8 billion over the next 10 years.

⁶⁰ Purpose three is to "prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies." 42 U.S.C. § 601(a). Purpose four is to "encourage the formation and maintenance of two-parent families." *Id.*

⁶¹ 7 C.F.R. § 273.2(j)(2)(ii)(B).

⁶² USDA FNS Policy Memorandum, *Questions and Answers on Broad-Based Categorical Eligibility* (January 31, 2011).

Federally-funded program already assessed and verified certain information about the SNAP applicant's eligibility for financial assistance (e.g., gross and net income, value of resources, citizenship, residency, etc.). In 2009, FNS expanded CE to BBCE, which allowed States to confer eligibility to SNAP applicants based solely on applicants receipt of information (e.g., a brochure, a website address, or a phone number) that described other State programs' services, as long as the applicants' gross incomes were less than 200 percent of the Federal poverty level (FPL). In 2012, FNS estimated that over 15 million SNAP households (approximately 68 percent of all SNAP households) were considered categorically eligible for benefits, based on their receipt of information that referred to other State programs.⁶³ We determined, however, that FNS' BBCE policy did not meet SNAP regulatory requirements regarding State-funding percentages, program purposes, and participant gross monthly income levels. Also, the policy inappropriately excluded ineligible BBCE cases from the SNAP error rate analysis during the QC process. The following sections provide details regarding our findings:

Impact on SNAP Eligibility

We found that the TANF programs referenced in the brochures did not separately assess or determine the applicants' eligibility, and we found no evidence at the eight visited States that those States determined whether the SNAP applicants or their household members were eligible or actually participated in any of these programs. Furthermore, these programs did not meet the regulatory requirements needed to confer SNAP eligibility (e.g., they did not have gross income limitations or meet the required TANF purposes).⁶⁴ Under BBCE, State SNAP eligibility workers assessed the SNAP applicants based on more lenient State-established BBCE requirements, which varied by State, but included gross income limitations that were up to 70 percentage points higher than those for SNAP, and had no net income or asset limitations.⁶⁵

Specific examples of what OIG found are described below.

- One State conferred BBCE on all SNAP applicants that met its State-established BBCE limitations (200 percent of the FPL for gross income, and no net income or asset limits) by having a family planning brochure available. The programs referenced in the brochure did not have any financial eligibility requirements. Additionally, State officials provided the brochure only at the request of SNAP applicants. Consequently, SNAP applicants in that State may not have received the

⁶³ FNS did not track its BBCE households. Consequently, it estimated the number of BBCE households based on the type of assistance received. Those households that received non-cash services or benefits were generally considered BBCE.

⁶⁴ 7 C.F.R. § 273.2(j)(2)(ii)(B).

⁶⁵ SNAP eligibility requirements include a net income limitation of 100 percent of the FPL, a gross income limitation of 130 percent of the FPL, and an asset limitation of \$2,000 (with certain exceptions). As of FY 2013, 43 States, including the District of Columbia and two territories, implemented BBCE with varying gross income and asset requirements. Of these, 29 (more than 67 percent) implemented gross income limitations that ranged from 160 to 200 percent of the FPL. Conversely, only 7 of these States (16 percent) had limits on net income and only 5 of these States (11 percent) had limits on assets. The limit on assets for the five States ranged from \$5,000 to \$25,000.

information that was used to confer eligibility for SNAP unless they specifically requested the information.⁶⁶

- Another State conferred BBCE on all SNAP applicants that met its State-established BBCE limitations (185 percent of the FPL for gross income, and no net income or asset limits) by providing them with a brochure for social services. The brochure referenced many programs that did not have financial eligibility requirements or meet the required TANF purposes. Additionally, the State only mailed the brochure to applicants after it conferred their eligibility for SNAP. Consequently, the State determined the SNAP applicants to be “categorically eligible” for benefits based on a brochure that the applicants had not yet received.
- A third State conferred BBCE on all SNAP applicants that met its State-established BBCE limitations (130 percent and 100 percent of the FPL for gross and net income respectively, and no asset limit)⁶⁷ by providing them with a brochure for the State’s family planning services. The services referenced in the brochure did not have any financial eligibility requirements, but they were restricted to individuals that were of child-bearing age, not sterile, and not pregnant. Consequently, many of the State’s SNAP applicants did not benefit from the information or were not even eligible for the services described in the brochure that was used to confer their eligibility for SNAP. For example, in 2 of the 4 BBCE cases (50 percent) we reviewed at the State, none of the SNAP household members were eligible for the family planning services cited in the brochure because they were young children, ages 5 and below.

We concluded that providing the contact information for another State program can be a service for BBCE purposes, as long as each member of a SNAP applicant’s household actually receives or is authorized to receive such services. Further, we concluded that BBCE cannot be extended to a SNAP household unless all household members are receiving or are authorized to receive services from a program that meets the specific purpose, income level, and other requirements of SNAP regulations.⁶⁸ Consequently, FNS’ BBCE policy did not comply with SNAP regulations because it did not ensure that SNAP applicants received or were authorized to receive services and the services came from a program that met the regulatory requirements (i.e., State-funding percentages, program purposes, and participant gross monthly income levels).

In FY 2012, FNS estimated that more than 91 percent of all SNAP households were CE, and that nearly 75 percent of these households (or more than 15 million) were BBCE. Officials from all of the eight States we visited acknowledged that almost all SNAP recipients were either CE or BBCE and, therefore, few recipients had to meet SNAP’s statutory income and asset limitations.⁶⁹ We analyzed FNS’ QC data from FY 2012, and

⁶⁶ We could not determine from the cases we reviewed whether the applicant actually requested or received a brochure. The State only documented in the applicant’s case file that their status was BBCE.

⁶⁷ These limitations were in effect at the time of our audit; however, the State has since raised its BBCE gross income limitation to 200 percent of the FPL.

⁶⁸ 7 C.F.R. § 273.2(j)(2)(ii)(B).

⁶⁹ 7 U.S.C. § 2014(c), (g).

found that 2,286 (or 6 percent) of the 35,582 BBCE QC cases exceeded SNAP's statutory gross and net income limitations. These recipients received \$241,655, or nearly 3 percent of the SNAP benefits issued in the QC sample month for these cases.⁷⁰ In addition, this number could be much larger if the effect of the elimination of the statutory SNAP asset limitation was known. FNS does not currently obtain asset information for those households that are BBCE, so we were unable to determine whether these households exceeded the statutory limitation. Under FNS' BBCE policy, SNAP applicants' assets are not considered in most States when determining their eligibility for benefits.

Impact on SNAP Error Rate

FNS and States conduct QC reviews of a sample of SNAP households to determine the national error rate for SNAP. The QC reviews are intended to assess whether SNAP recipients were eligible for benefits and received the correct amount. FNS' procedures, however, directed QC reviewers to not assess the eligibility of BBCE SNAP recipients because FNS treated these cases as it treated other CE cases that had eligibility assessed and verified by another program.

FNS' QC procedures for BBCE were inappropriate because, unlike other CE cases, SNAP was the only program that would have assessed the applicants' eligibility under BBCE; no other program would have verified the households' financial information in accordance with regulatory requirements. As previously discussed, State SNAP eligibility workers conferred BBCE on SNAP applicants and determined whether applicants met the State-established BBCE limitations. The State SNAP eligibility workers processed BBCE applications as they processed any other SNAP applications (except applicants were subjected to more lenient requirements), and no other program was involved in the process.

FNS' QC procedures also allowed BBCE SNAP recipients to continue receiving benefits after it became known that they were no longer eligible to participate in the program. For example, during our review of sampled QC cases, we found a SNAP recipient's gross income was 460 percent of the Federal Poverty Level (FPL) during the QC review month. The recipient was allowed to continue in the program, even though the recipient's gross income exceeded the State's BBCE gross income limitation by nearly 150 percent (the State's limitation was 185 percent of the FPL). In another case, we

⁷⁰ The amount cited here is based on our analysis of the QC cases nationwide from FY 2012 recorded in ROQCTS. As was previously noted, FNS does not track its BBCE cases; however, we concluded that households in ROQCTS were likely BBCE if they received no cash assistance from authorized programs in States that implemented FNS' BBCE policy. Our analysis is similar to an analysis performed by GAO in its 2012 report (GAO-12-670, *Improved Oversight of State Eligibility Expansions Needed*, July 2012). Our estimate of BBCE households is also consistent with FNS' 2012 estimate. For these BBCE households, we determined from ROQCTS that 2,157 had gross incomes above 130 percent of the FPL (the SNAP statutory gross income limitation) and an additional 129 households had net incomes above 100 percent of the FPL (the SNAP statutory net income limitation). BBCE households that exceeded the statutory limitations would not have been eligible for benefits without their BBCE status. The 2,286 households received nearly 3 percent of the SNAP benefits issued for the FY 2012 BBCE QC cases (the households received \$241,655 in benefits which, when divided by the \$8,768,239 in benefits provided to FY 2012 BBCE QC cases, equals nearly 3 percent).

found that a SNAP recipient's gross income was 238 percent of the FPL during the QC review month. The SNAP recipient was allowed to continue in the program, even though the recipient's gross income exceeded the State's BBCE gross income limitation by nearly 20 percent (the State's limitation was 200 percent of the FLP). In both cases, QC determined there was no error and no claim was established to recover the amounts.

FNS' QC procedures for BBCE significantly understated the SNAP error rate since BBCE recipients' eligibility was not assessed during the QC reviews. In FY 2012, we found 405 BBCE SNAP households exceeded the States' BBCE gross or net income limitations. Had these households' eligibility been assessed, it would likely have resulted in the identification of additional errors and increased the national SNAP error rate by more than 6.5 percent, or nearly 0.24 percentage points, which equates to more than \$178 million of improper payments.⁷¹ This number could be significantly higher if information regarding the households' assets was maintained and known by FNS.⁷²

In 2010, a Presidential Memorandum⁷³ emphasized the importance of preventing payment errors and protecting public funds against fraud, waste, and abuse. It stated that "In those cases where data available to agencies clearly shows that a potential recipient of a Federal payment is ineligible for it, subsequent payment to that recipient is unacceptable." Contrary to guidance in the memorandum, FNS' QC procedures advised that BBCE households would "never [be] ineligible regardless of income," and that QC reviews did "not identify any eligibility errors" for these households.⁷⁴ FNS did not require QC reviewers to identify eligibility errors for BBCE households, even if the SNAP recipients were required to report changes that made them no longer eligible

⁷¹ The amount cited here is based on our analysis of the nationwide QC data from FY 2012 recorded in ROQCTS. As was previously noted, FNS does not track its BBCE cases; however, we concluded that households in ROQCTS were likely BBCE if they received no cash assistance from authorized programs in States that implemented FNS' BBCE policy. Our analysis is similar to that performed by GAO in its 2012 report (GAO-12-670, *Improved Oversight of State Eligibility Expansions Needed*, July 2012). Our estimate of BBCE households is also consistent with FNS' 2012 estimate. For these BBCE households, we determined that 405 exceeded their State's BBCE gross or net income limitations and were no longer eligible for SNAP benefits. To determine the additional error amount for these 405 ineligible households, we calculated the difference between their State-reported monthly allotments and the State-reported error amounts already identified and reported by the States during the QC process. Using the State reported amounts, we utilized FNS' methodology to determine the impact on the error rate. We calculated the weighted average of each State's additional error amount, which equaled nearly 0.24 percent. We concluded that the SNAP error rate was understated by more than 6.5 percent (0.24 percent rounded and then divided by the FY 2012 SNAP error rate of 3.42 percent plus 0.24 for the additional errors identified. This equates to \$178,237,675 in improper payments (0.24 percent multiplied by \$74,619,344,626 in FY 2012 SNAP benefits). In our calculation, we used the State-reported information in ROQCTS that does not reflect the results of the Federal re-reviews discussed in Finding 3; however, the effect of the re-reviews has historically been small and increased the State-reported error rates. As was previously discussed, the results of both reviews (State and FNS) are combined to calculate the States' error rates.

⁷² Five States have BBCE asset limitations; however, QC does not obtain information regarding assets for CE households so the State-established BBCE asset limitations are not verified.

⁷³ Presidential Memorandum, *Enhancing Payment Accuracy Through A "Do Not Pay List"* (June 18, 2010), published at 75 Fed. Reg. 35,953 (June 23, 2010).

⁷⁴ FNS emails addressing "National office response – BBCE Q&As" and "National Office Response BBCE question" sent to FNS personnel on April 15, 2011, and July 6, 2011, respectively.

(though FNS does not currently require all BBCE SNAP recipients to report when they exceed the State's BBCE gross income limitation).⁷⁵

In order to ensure that CE is appropriately conferred on SNAP applicants, FNS needs to obtain from the Office of the General Counsel (OGC) a legal opinion on whether its current BBCE policy complies with the Federal regulation requiring that all SNAP household members must receive, or be authorized to receive services from another program that meets SNAP regulatory requirements regarding State-funding percentages, program purposes, and participant gross monthly income levels. FNS also needs to amend its QC procedures to ensure BBCE recipients' eligibility for SNAP benefits is fully assessed during the QC review process and any QC errors are included in the error rate.

Recommendation 16

Obtain from the Office of the General Counsel (OGC) a legal opinion on whether FNS' BBCE policy complies with the Federal regulation requiring that all SNAP household members must receive, or be authorized to receive, services from another program that meets SNAP regulatory requirements (i.e., State-funding percentages, program purposes, and participant gross monthly income levels).

Agency Response

In its August 31, 2015, response FNS stated:

FNS will consult with its Office of the General Counsel and senior policy officials and consider the appropriateness of obtaining a legal opinion on whether FNS's BBCE policy complies with Federal regulations requiring that all SNAP household members must receive, or be authorized to receive, services from another program that meets SNAP regulatory requirements.

FNS provided an estimated completion date of September 30, 2016, for this action.

OIG Position

We do not accept management decision on this recommendation. To reach management FNS needs to obtain an independent legal opinion from OGC.

⁷⁵ Under simplified reporting rules, SNAP recipients must report when their gross income exceeds 130 percent of the FPL (the gross income limitation). Since BBCE allows SNAP applicants to have higher gross incomes than what is traditionally allowed, applicants' gross income may be above 130 percent of the FPL at the time of certification. FNS does not require these SNAP recipients to report when their income increases above the State-established BBCE income limitation. In a 2009 policy memorandum, FNS stated,

[C]ategorically eligible households with gross income over the gross income limit have no reporting requirements until they recertify or file a periodic report, whichever comes first We would expect, however, that the TANF program used to confer categorical eligibility would require households to report when their income exceeds the income threshold for the TANF program.

USDA FNS Policy Memorandum, *Categorical Eligibility Questions and Answers* (December 15, 2009).