NYC

**Human Resources
Administration**
Department of
Social Services

Robert Doar
Commissioner

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July 12, 2012

Jeanine Stander Behuniak
Office of Legal Affairs
NYS Office of Temporary and Disability Assistance
40 North Pearl Street, 16C
Albany, NY 12243-0001

RE: Proposed Rule Making – Elimination of Finger Imaging in Food Stamp
Program.

Dear Ms. Behuniak:

New York City opposes the Office of Temporary and Disability Assistance's
(OTDA) proposed rule, which eliminates finger imaging as a method to verify
identification for Food Stamp Program applicants and recipients.[1] The proposed
amendments to sections 351.2 and 384.3 and the proposed repeal of section
387.9 and 388.8 of title 18 of the New York Codes Rules and Regulations
("N.Y.C.R.R.") are based on anecdotal information and run counter to the proven
success New York City has achieved while using the automated finger imaging
system (AFIS).

The City of New York takes its responsibility to properly administer a program
that provides over $3.3 billion in annual taxpayer-funded benefits to over 1.8
million city residents very seriously. The federal investment in benefits and the
City's investment in administering the program need to be properly protected. Of
primary concern is that the proposed amendment leaves the Food Stamp
Program vulnerable to fraud, abuse, and administrative error as the alternative
being presented, when it is implemented, cannot (and will not) function as a
replacement for the finger-imaging requirement. We have further expanded on
our concerns below as this proposed rule will weaken the integrity of the Food
Stamp program, and in turn require us to invest additional resources to maintain
our present confidence in the program we are charged with administering.

I. Eliminating Finger Imaging Will Hinder Fraud, Abuse, and Error Detection in NYS' Largest Local Social Service District

We are very concerned that the state has not provided for a viable alternative to
AFIS; particularly in the areas of front-end detection of duplicate benefits, and in
deterring individuals from using multiple identities to defraud the program.

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[1] Prop. N.Y.St. Reg. I.D. No. TDA-22-12-000-22-P, 41-43 (May 30, 2012).

The Statewide Clearance System Does Not Provide Quality Data and Accurate Results

The Statewide Clearance System (System)[2] cannot replace AFIS as an effective front-end detection tool or deterrent because, unlike finger imaging, it relies on applicant self-reported and manually inputted information to detect duplication. Federal regulations require Food Stamp Program integrity; more specifically, each state must "establish a system to assure that no individual participates more than once in a month, in more than one jurisdiction, or in more than one household within the State in the Food Stamp Program."[3] While the System uses a formula to score combinations of certain factors, the formula rests on a foundation of self-reported and manually entered data. Applicants self report Social Security Numbers (SSNs), dates of birth, names, and genders, which either the applicant or New York City staff manually enter.

Over the last two decades, private, public, and academic institutions have also criticized the validity of self-reported information.[4] In fact, in a recent paper released through Rutger's University entitled *Duplicate Records Detection Techniques: Issues & Illustration*, the authors concluded that "Data accuracy is vital," and that manually-entered data does not ensure data quality.[5] Manual entry often leads to duplicate records, as minor variations, as show below, are not always recognized by computer systems:

Name	Address
John Smith	1 Washington Park
J.B. Smith	1 Washington Park
J. Smith	1 Washington Park
John Smith	1 Washington Park Ave
John Smith	1 Washington Park Avenue[6]

This example directly correlates to HRA's Food Stamp Program with our over 1.8 million recipients, many of whom share common names and/or dates of birth. Moreover, there has not been adequate time to vet the system as a viable substitute for finger imaging. In practice, we have found that the system does not

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[2] *Id.*

[3] 7 C.F.R. 272.4 (e) (1).

[4] Mark L. Wilson & Joachim Zietz, *Systematic Bias in Student Self-Reported Data*, J. ECON. EDUCATORS, vol. 4, no. 4 (Fall 2004), http://frank.mtsu.edu/~jee/pdf/wilsonzietzfall04.pdf; Michael Baker, et al., *What Do Self-Reported, Objective, Measures of Health Measure*, NAT'L BUREAU OF ECON. RSRCH. (working paper 2001), *available at* http://www.nber.org/papers/w8419.pdf?new_window=1; I. Chang & S.C. Lapham, *Validity of Self-Reported Criminal Offences and Traffic Violations in Screening of Driving-While-Intoxicated Offenders*, MED. COUNCIL ON ALCOHOLISM (1996), *available at* http://alcalc.oxfordjournals.org/content/31/6/583.short; Dick J. Hessing, et al., *Exploring the Limits of Self-Reports & Reasonable Action: An Investigation of the Psychology of Tax Evasion Behavior*, 54 J. OF PERSONALITY & SOC. PSYCH. (Mar. 1988), *available at* http://psycnet.apa.org/journals/psp/54/3/405/.

[5] Miklos A. Vasarheyli & Hussein Issa, *Duplicate Records Detection Techniques: Issues & Illustration*, STATE UNIV. OF N.J., RUTGERS BUSINESS SCHOOL WORKING PAPER SERIES (Aug. 16, 2011), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1910473.

[6] *Id.* at 2.

function properly and the scores, unfortunately, do not explain or eliminate duplications. For example, six similar identities might all return a score of 102/106. Without biometric information, personal identification is just not accurate enough to rely solely on the System's scoring algorithm.

Matching Social Security Numbers Is an Insufficient Method to Verify Identity

SSNs have increasingly become the subjects of identity fraud and theft. In 2009, two Carnegie-Mellon University researchers analyzed the use of on-line analytic and search techniques to tie specific identities to SSNs. In *Predicting Social Security Numbers from Public Data*, Alessandro Acquisti and Ralph Gross demonstrated how the structure of SSN assignment made it relatively easy for scammers to tie SSNs to other identity information.[7] Since that article was published three years ago, the data scraping and analytic capabilities of newer programs have significantly increased, and the volume of data that can be accessed to identify, correlate, and use Social Security information has increased exponentially (e.g., programs that mine social media sites, such as Facebook or Twitter). There are also a number of businesses that troll for valid SSNs and offer them for sale for "credit rebuilding" schemes.

The absence of any biometric marker for identity information connected to a SSN—together with the static nature of SSN assignments (in part because virtually every American now alive will have the same SSN until death)—makes SSN-based analytics a gold mine for scammers, and an increasingly weak protection for agencies that rely upon them.

The Social Security Administration's Inspector General has recognized that many people have multiple numbers, that some with multiple numbers are being paid benefits on multiple accounts, and that there are significant weaknesses in the SSN control systems (cards issued after date of death, individuals reported as deceased who are still alive, payments made after date of death). In addition, a preliminary report of a 10 state audit (that included New York State) by the USDA's Inspector General found that recipients using invalid SSNs or those of deceased individuals, along with receiving benefits in more than one state resulted in approximately $1.1 million a month in improper payments in five states alone.[8]

Finger Imaging Remains the Most Accurate Identity-Verification Method

Federal Courts rely on a five-factor test to determine the reliability of scientific evidence. Although the courts and scientific community have repeatedly questioned and examined the last 100 years of fingerprinting practice and

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[7] Allesandro Acquisti & Ralph Gross, *Predicting Social Security Numbers from Public Data*, 106 PROCEEDINGS OF THE NAT'L ACAD. OF SCIS. OF THE U.S.A. 10975—80 (July 7, 2009) http://www.pnas.org/content/106/27/10975.full.pdf+html?sid=3c1859a8-ab8b-4857-89ff-2201b61b3035.
[8] USDA Office of Inspector General Testimony, Committee on Oversight and Government Reform U.S. House of Representatives, March 8, 2012

science,[9] fingerprint evidence remains the most reliable form of identity verification for two reasons. First, each person's fingerprints are unique, and do not change from birth to death.[10] "[I]f anyone were to come across a case in which two different fingers had identical fingerprints, that news would flash around the legal world at the speed of light. It has not happened in 100 years."[11] Second, there is a less than one percent error rate in the acquisition of finger imaging—despite various standards or rules concerning how to take a finger print and then how many specific data points must match to verify someone's identity.[12]

Further, the State's System will make program integrity activities less efficient because it places the onus on the worker to investigate all less-than-perfect scores. The formula utilized by the System results in a score—this score also includes data hits listing common last names and months and years of birth. The System will require workers to evaluate the demographic information in each hit to determine whether the applicant is the same person who already actively receives benefits on another case. Without photo identification and supporting documents, the task becomes difficult, error prone, and ineffective. Applicant demographics can be manipulated to produce a low or no score, so the clearance process does little to prevent fraud if a client presents multiple times with different identifying information. Even when there is a "perfect match," the eligibility System does not automatically stop the duplicative case from activating in a new district (it does within the same district). That responsibility rests with the district worker and supervisor.

Importance of Front-End Detection

Finger imaging is one of our most valuable front-end tools and removing it opens the door to fraud and abuse schemes occurring after the eligibility determination (e.g. Food Stamp trafficking).

The due process obligations required by federal and state law for existing recipients make post eligibility investigation and enforcement substantially less effective, and more costly, than the simple finger imaging deterrent on the front end. As of June 2012, there is a two-year delay for OTDA to schedule administrative hearings for Intentional Program Violations (i.e. the Program's administrative penalty) even after recipient fraud has been discovered and investigated by local social services districts. During that time, the allegedly fraudulent recipient can continue to receive full benefits merely by requesting their continuance. Many District Attorneys have been unwilling to prosecute Food Stamp cases in light of competing law enforcement priorities and the

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[9] *U.S. v. Havvard*, 117 F. Supp. 2d 848 (2000).

[10] "[B]arring some serious and deeply penetrating wound to the hand that substantially alters or defaces the surface of one or more of the fingers or of the palm." *U.S. v. Llera Plaza I*, 179 F. Supp. 2d 492, 551 (E.D. Pa. 2002). *But see U.S. v. Llera Plaza II*, 188 F. Supp. 2d 549 (E.D. Pa. 2002) (reversing the initial decision that fingerprinting did not in fact pass the *Daubert* standard because the error rate is very low and the fingerprints are unique to each individual).

[11] *Havvard*, 117 F. Supp. 2d at 854.

[12] *Id.*; *see also Llera Plaza II*, 188 F. Supp. 2d at 555, 573; *Commonwealth v. Patterson*, 455 Mass. 626 (2005); *State v. Escobido-Ortiz*, 126 P.3d 402, 405 (Haw. Ct. App. 2005).

weaknesses of the state and federal post-eligibility budgeting, reporting, and oversight system. The State has fallen short in efforts to maintain controls, like placing photo identification on EBT cards. With these obstacles, front-end detection and deterrence remain the most effective weapons against fraud and abuse.

Finger Imaging as an Effective Deterrence to Fraud

Prior to the use of finger imaging, in the early 1990s, New York City uncovered egregious examples of people defrauding the Food Stamp Program by applying with multiple and/or falsified identification information. For example, in 1992, two sisters used fake IDs, SSNs, and nine false identities as part of a larger ring that defrauded the welfare system (including the Food Stamp Program) of more than $45 million over five years.[13] In 1994, a welfare beneficiary collected benefits using eight names, with claims for 46 fictitious children, and defrauded the system of $450,000 in five years. She obtained at least 15 different benefit identification cards, each with her real photo.[14]

Finger imaging in the public assistance program was first introduced in New York State by Governor Mario Cuomo and it required all case members 18 years of age or older and/or heads of household under 18 years of age be finger imaged, unless exempt, in order to receive benefits.[15] New York City implemented AFIS as a front-end fraud detection measure and saw immediate success. In the first two years of implementation, 1995-1996, New York City uncovered more than 37,700 anomalies, which resulted in case closings and eligibility denials. More importantly, since the implementation of AFIS for Food Stamp applicants 14 years ago, the State's own records show New York City virtually eliminated a common fraud scheme involving multiple case openings and multiple identities. From 1998 to 2010, the State's records demonstrate the AFIS program resulted in a cost savings of over $35.5 million.

II. Finger Imaging is Not a Barrier to Program Enrollment or Employment

In this proposed rule, the State has suggested that finger imaging is a deterrent to participation because of "the perceived presumption of criminality." This has not been the experiences in New York City. In 2011, the City had 42 percent of the State's population, and accounted for over 56 percent of Food Stamp beneficiaries, despite being one of the few jurisdictions in the State which required finger imaging. This result is particularly impressive given that over 75 percent of New York State's immigrant population resides in New York City, and federal law prohibits many in this population from receiving Food Stamp benefits (including most adults who have been legal immigrants for less than five years).

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[13] Christopher Ruddy, *Fingerprinting Can Catch New York's Welfare Cheats*, NEWSDAY, Feb. 17, 1993, at 80.
[14] Seth Faison, *Official Says Woman on Welfare Stole Thousands with Fake ID's*, N.Y. TIMES, May 20, 1994, *available at* http://www.nytimes.com/1994/05/20/nyregion/officials-say-woman-on-welfare-stole-thousands-with-fake-id-s.html?pagewanted=all&src=pm.
[15] 18 N.Y.C.R.R. § 387.9.

In fact, the data has consistently shown that New York City does a significantly better job at program access than the rest of New York State and better than many other parts of the nation that do not require finger imaging. The City's record on program access is one reason the Obama administration recognized the City with a Hunger Champion Award in 2011. In addition to a series of USDA awards and grants, New York City has seen a steady increase in access and participation in the program as measured by the federal government. Using the USDA's Program Access Index, in 2010 New York State had the highest rate since reporting began of 78.1 percent, almost 30 percentage points higher than the low of 48 percent in 2004. New York City contributed a great deal to this increase as the growth in our Food Stamp caseload outpaced the rest of the State during the same time period. Applying the same methodology, the New York City Program Access Index is 84.9 percent. Even when using the more refined USDA participation rate that factors in program eligibility requirements, New York City's participation rate for 2010 (the most recent available data) was 77.5 percent, also the highest ever calculated.

Moreover, finger imaging is not a barrier to employment for Food Stamp applicants because New Yorkers with limited availability or mobility during the standard work week have several alternate application methods. People in New York City can apply for Food Stamp benefits on line, via mail, fax, or in person at an HRA center or through one of 83 community-based organizations spread across the five boroughs. HRA specifically made strides to target increased access and to lessen any burden on employment of its finger imaging services. HRA expanded both the available locations and one center in every borough is open on Saturdays for finger imaging. Individuals can be finger imaged at any of the 26 HRA Food Stamp or Job Centers in New York City, so they can select the location most convenient to their residences or work locations. If there is a person who, literally, has a work schedule or work location that would prevent him or her from coming anywhere in New York City at anytime between 8:30 am and 6 pm five days a week or 9 am to 5 pm on Saturday, there is a process to get a centralized location appointment for other hours. In our experience, no one exercised that option.

Finger Imaging Does Not Stigmatize Food Stamp Applicants

The proposed regulations cite no authority or scholarly references for its conclusion that finger imaging "stigmatizes" applicants for Food Stamps. Instead, they base this claim solely on conversations with the advocate community that "there is concern that finger imaging is a deterrent to participation because of the negative connotations...." Finger imaging does not "stigmatize" Food Stamp applicants and it is a commonly used technique to verify identity at every level of society, including the most privileged, and across both the public and private sectors. Individuals at various levels voluntarily agree to this practice in order to obtain positions, honors, and access to places and benefits. Every political appointee of the Cuomo administration is required to provide his/her fingerprints and allow an effective background check in order to receive or retain his/her position. Every New York City civil service employee is also required to provide a finger image for initial employment. Finger imaging is an increasingly common measure to verify identity without the need for paper documentation.

NYU's Langone Hospital uses finger imaging for its patients.[16] In its first year of implementation, more than 125,000 patients voluntarily used the technology.[17] Since 2005, all Walt Disney World theme parks in Orlando, Florida use finger imaging to scan all visitors over 10 years of age.[18]

California, Colorado, and Texas state governments require finger imaging of all residents to receive a driver's license.[19] New York State already requires certain populations to be finger-imaged for non-criminal reasons, including attorneys, New York City School District Employees, school bus drivers, child care workers, public art gallery employees, military personnel, New York accountants, police officers, and most doctors as part of their license applications.[20] In July 2011, for the purposes of an immigration bill, Senator Charles Schumer (N.Y.), as Chairman of the Judiciary Committee's Subcommittee on Immigration, Border Security and Citizenship described the proposed use of biometrics to capture non-forgeable finger prints or palm prints as a "tough, fair and effective employment verification system."[21]

Further, although the State seeks to eliminate the finger imaging requirement for the Food Stamp Program, it will continue to require finger imaging for all Cash Assistance applicants.[22] State courts in New York and California upheld the constitutionality of finger imaging to establish identification for Food Stamp applications.[23] In a case challenging California's Food Stamp finger imaging policy on First Amendment, freedom of religion grounds, the Court of Appeals in California's Third District held "the Legislature could rationally find welfare

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[16] "More than 125,000 Patients Now Using PatientSecure at NYU Langone Medical Center." March 12, 2012. http://communications.med.nyu.edu/media-relations/news/more-125000-patients-now-using-patientsecure-nyu-langone-medical-center.

[17] *Id.*

[18] Karen Harmel, *Disney World Scans Fingerprint Details of Park Visitors*, BOSTON GLOBE, Sept. 3, 2006, *available at* http://www.boston.com/news/nation/articles/2006/09/03/disney_world_scans_fingerprint_details_of_park_visitors/.

[19] Licensed California Drivers (Thumbprint) CAL. VEHICLE CODE § 12800 (West 1995); Licensed Texas Drivers (Thumbprint) TEX. REV. CIV. STAT. ANN. art. 6687b-5b (West 1994); Licensed Colorado Drivers (Index Finger) COLO. REV. STAT. ANN. § 42-2-106 (West 1995).

[20] N.Y. EDUC. LAW § 2590-b(20) (McKinney 1994); N.Y. VEH. & TRAF. LAW § 498(2)(d) (McKinney 1994); N.Y. ARTS & CULT. AFF. LAW § 61.11 (McKinney 1994); N.Y. COMP. CODES R. & REGS. tit. 10(c), § 405.21 (McKinney 1994); N.Y. COMP. CODES R. & REGS. tit. 8 § 59.5 (1994); N.Y. COMP. CODES R. & REGS. tit. 9(f) §6056.6 (1994). For more in-depth discussion, see James J. Killerlane III, *Finger Imaging: A 21st Century Solution to Welfare Fraud at Our Fingertips*, 22 FORDHAM URBAN L.J. (1994).

[21] Jaikumar Vijayan , *Congress Eyes Biometric Authentication for Job Eligibility*, , COMPUTERWORLD, July 22, 2009, *available at* http://www.computerworld.com/s/article/9135820/Congress_eyes_biometric_authentication_for_job_eligibility.

[22] Prop. N.Y.St. Reg. I.D. No. TDA-22-12-000-22-P, 41-43 (May 30, 2012).

[23] *See Buchanan v. Wing*, 664 N.Y.S.2d 865, 867 (3d Dep't 1997) (requirement that Food Stamp applicants participate in AFIS as a condition of eligibility for benefits held constitutional); *see also, Medvedev v. Wing*, 249 A.D.2d 755 (3d Dep't 1998).

recipients are no more stigmatized by finger-imaging than are driver's license applicants, lawyers, accountants and many others."[24]

III. The Proposed Rule Will Result in an Unfunded Mandate

The proposed rule states that the change would not create an unfunded mandate and "would not have an adverse economic impact on social service districts". It also suggests that local district staff performing the function would be freed up to assist elsewhere in the program. Both points are incorrect. First, we remind OTDA that the present workers who administer the AFIS process are state-contracted employees and not local district employees. Second, in order to maintain our present confidence in the integrity of the program, we will need to conduct more back end reviews, commonly called "pay and chase" investigations. Without the front-end protection of finger-imaging, policing duplicate benefits in the Food Stamp program will require HRA to invest more city dollars in staff and investigative activities after benefits are issued to provide the same level of integrity. These investigations are more time consuming than AFIS matches and the after-the-fact remedies are inefficient (i.e. considerable backlogs for the IPV hearings and lengthy collection efforts to recover the expended benefits).

Although Food Stamp benefits are paid for with federal tax dollars, for which New Yorkers contribute a disproportionately higher share, over 62 percent of Food Stamp administrative costs are paid for with city tax levy dollars. The State may supervise the program but they withdrew all financial support for local administration in 2009. The City contribution is now $217 million with the federal government reimbursing us for the remaining amount. This is a significant investment on behalf of the City and its tax payers that we have an obligation to protect.

Further, since 1998, New York City has seen an astounding increase in the portion of the caseload recipients who rely on Food Stamp benefits but do not receive cash welfare or federal Supplemental Security Income (SSI). In 1998, there were 329,537 individuals receiving non-cash assistance Food Stamps; that number has now grown to over 1.4 million.[25] OTDA's supporting statement for the proposed rule emphasizes that the Food Stamp/SNAP benefits are 100 percent federally funded, so the "benefit" of fraudulent enrollments and payments accrues to New York State program enrollees, New York State retailers, and New York elected officials, while the risk of fraudulent enrollment and payment is entirely upon the taxpayers across the United States who fund the federal budget. This is clearly incorrect.

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[24] *Sheyko v. Saenz*, 112 Cal. App. 4th 675 (Cal. App. 3d Dist. 2003), *req. den'd, Sheyko v. Saenz*, 2004 Cal. LEXIS 6080 (Cal. June 30, 2004).
[25] HRA Facts April 2012, http://www.nyc.gov/html/hra/downloads/pdf/statistics/hra_facts/hrafacts_2012/hra_facts_2012_04.pdf.

IV. Finger Imaging IS Consistent with the Existing Policies of the United States Department of Agriculture.

OTDA rejected the concept of retaining finger imaging "because the current regulation does not reflect the existing policies of the United States Department of Agriculture...." This is an inaccurate statement and although the present administrator of the Food and Nutrition Service has encouraged states to stop the practice in informal transmittals, the USDA has not exercised its regulatory authority to prohibit the use of finger imaging. In addition, responsibility for the Food Stamp program goes beyond FNS and is shared by the Office of the Inspector General. The USDA Inspector General has clarified in testimony before Congress that the role in protecting the integrity of the program as it relates to individuals is placed on those administering the program while USDA primarily focuses on the integrity of retailers. [26]

In summary, we strongly encourage you to re-evaluate your plan to eliminate the use of finger imaging in the food stamp program until a viable alternative to protecting the program from fraud is identified. In addition, as the taking of photo I.D.s is part of the present AFIS process, we remind OTDA of the importance of photo identification to the integrity of the program and asked that it be retained regardless of your final ruling.

Sincerely,

Robert Doar

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[26] Statement of the Honorable Phyllis K. Fong, Inspector General, Before the Subcommittee on Department Operations, Oversight, Nutrition, and Forestry Committee on Agriculture, U.S. House of Representatives, July 28, 2010.