

Comments

by the

International Biometrics & Identification Association (IBIA)

on

The New York State Office of Temporary and Disability Assistance (OTDA)

Proposed Rule Making

To Eliminate Finger Imaging for the Food Stamp Program

**(Sections 351.2 (a); 384.3(a)(3)(i); 387.9 (c); new 387.9 (c);
and 388.8 of Title 18 NYCRR)**

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of the
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I.D. No. TSA-22-12-00022-P

INTRODUCTION

The International Biometrics & Identification Association (IBIA) is submitting these comments in response to the proposed rule to eliminate finger imaging for purposes of the Food Stamp Program. IBIA is a non-profit industry trade association with its key focus on the use of technology in determining identity. IBIA works to promote the effective and appropriate use of technology to determine identity and enhance security, privacy, productivity, prevention of fraud, and convenience for government, the commercial sector, and consumers.

Identity plays a vital role in our globally connected world, and biometrics is one of the technologies that plays an increasingly important role in the identification of individuals, with its use reaching into our everyday lives. Many people are aware that biometrics is used in law enforcement, military and intelligence activities. However, there are broader uses for biometrics such as the following:

- Protecting national borders and ports
- Enhancing the integrity of government programs like driver's licenses and social benefits registrations
- Securing facilities like daycare centers, banks, health clubs, and schools
- Preventing identity theft
- Securing data and transactions for financial and health care institutions
- Protecting personal data in laptop computers and mobile devices

OVERVIEW

IBIA strongly supports the continuation of the use of finger imaging in the Food Stamp Program and submits these comments in opposition to the proposed rule.

Finger imaging has been used in New York State since 1995 solely for the purpose of preventing recipients from receiving duplicate benefits under multiple names. Biometrics has not been used to determine eligibility for food stamp benefits.

As demonstrated below, repeal of this highly effective and reliable system for deterring fraud, preserving taxpayer resources, and protecting the identities and privacy of food stamp recipients is simply not supported by the facts. Furthermore, replacing it with a system that will not be effective in achieving these important objectives will likely to lead to an increase in the cost of administering the food stamp program. Further, no evidence is provided in the Regulatory Impact Statement that demonstrates that finger imaging has been a “barrier to participation”, which is the rationale provided to justify its repeal.

Since its inception, finger imaging has established its effectiveness by:

- Demonstrating it is the most effective tool available to prevent “double dipping” by individuals claiming multiple identities as well as fraudulent claims under stolen identities
- Substantially reducing the widespread fraud that had existed in the food stamp program before the introduction of finger imaging
- Preserving taxpayer resources, through this reduction in fraud, so that the limited program resources were available to reach the greatest number of eligible citizens
- Protecting food stamp recipients from identity theft.

During this same time, there has been a tremendous increase in the number of people who receive food stamp benefits, particularly in NYC.

In contrast, the statewide clearance system, which is based on demographic data that can be stolen and forged, will not be effective in deterring fraud and, over time, is likely to result in an increase in fraud as well as increased costs in administering the food stamp program.

BENEFITS OF A FINGER IMAGING (BIOMETRIC) IDENTITY SYSTEM

In matters of fraud, such as multiple benefits under different names (“double dipping”), it is always the “who” that is important. It is never the system, card, token, password, or PIN that misbehaves. It is always an unauthorized and ill-intentioned individual who is at the heart of every fraudulent transaction.

The basic challenge in any public benefit program is to determine “who” with a high degree of certainty. A biometric solution is the only system available today that provides positive identity of an individual with a high level of assurance. No other solution provides the same high degree of certainty.

A biometric-based solution provides this high degree of certainty of “who” because it is based on unique physical traits of individuals. This is how it works.

What distinguishes a biometric-based identity system?

A primary goal of any identity system is to ensure that there is only one identity for every person in the system. In other words, that every name in a system is associated with a single person. An identity system cannot be based on names alone. Experience has shown that names are often duplicated in a population and, therefore, other information is required to secure a unique association with an individual, such as date of birth, address, height, weight, hair color, etc. Usually the source of this other information, however, is dependent on the word of the individual or other documents that the individual presents. These “breeder” documents can be forged or altered and do not provide the basis for a reliable identity system.

Coupling a biometric to a name of a person in the identity system assures the uniqueness of the individuals within the system, independent of any forged or altered document or statements, and ensures the integrity of each transaction performed by a person registered in the system.

Once a person is enrolled into the system, the system can then be used to confirm the identity of the person or to self search to determine duplication of an enrollment – simply with the presentation of his/her biometric. No other information is required, such as a potentially altered or forged document like a drivers’ license, an identity card, a voter registration card, etc.

In short, a biometric-based solution, such as finger imaging, identifies “who” with a “high degree of certainty.”

Biometric solutions are the most effective fraud deterrence tool available

Finger imaging, a biometric solution that uses fingerprint technology, is the most effective deterrent available to prevent fraudulent duplication of benefits under multiple names in the NYC food stamp program.

Multiple enrollments of the same person under different names are identified because the biometric presented is already in the system under a specific name, thus preventing multiple benefits to the same individual. In addition, services requested by an individual under a name that is in the system whose biometric is different from the registered biometric associated with that name will be denied.

In effect, after a period of time, people are deterred from trying to “game” the system because they learn that there is too much risk associated with doing so. If a person knows that his /her finger images are already registered in the system, that person is not likely to apply again under a different name. Likewise, if someone knows a person’s finger images are in the system under a particular name, they are less likely to apply under that name, since they have no chance of conducting a fraudulent transaction.

The finger imaging system has resulted in substantial reductions in

- Individuals receiving benefits multiple times under different names
- Claims under stolen identities of people already receiving food stamp benefits by providing physical evidence of fraud otherwise not available.
- Sharing of an identity to receive a benefit, e.g. by merely providing a card or some other token to another person.

Protecting identities and privacy of eligible recipients

The use of finger imaging substantially reduces the incentive to conduct identity theft to receive a food stamp benefit, thereby protecting the identities of eligible food stamp recipients.

With a recipient's finger images in the system, no other person can steal that recipient's identity, claim benefits, and create a host of legal problems for that recipient, thereby providing protection for eligible citizens at a time when they are most vulnerable.

Identity theft is a major and growing problem. Social Security theft is rampant and forged and altered documents have become more sophisticated and difficult to detect.

Protecting taxpayer resources

The food stamp program has limited financial resources, and it is the obligation of government to stretch the program's finite resources as far as possible by preventing fraudulent double dipping so that the resources are available to reach the greatest number of eligible citizens. Finger imaging is the most effective tool for deterring and preventing fraudulent double dipping.

THE RATIONALE IN THE REGULATORY IMPACT STATEMENT DOES NOT JUSTIFY ELIMINATING FINGER IMAGING

According to the Regulatory Impact Statement, approximately 30% of people in NYS who are eligible for food stamps do not receive benefits. To ensure that eligible citizens in need receive benefits, OTDA's laudable goal is to eliminate barriers to participation. Then, the assumption is made that finger imaging is a major barrier to participation and should be repealed.

No systematic evidence is provided that demonstrates finger imaging is a "barrier to participation"

Although barrier to participation is the primary rationale given for eliminating finger imaging, no supporting evidence, surveys, or studies are provided. For example, one survey by the American Public

Human Resources Association (APHS) indicates that low minimum benefits and other concerns are deterrents to participation, not finger imaging.

Instead, anecdotes and statements by the OTDA advocate community are offered as evidence. However, compelling as some of these anecdotes may be, this is not the level of evidence that should justify the elimination of a system that has proven itself to be highly effective in reducing fraudulent double dipping, preserving taxpayer resources, and protecting the identities and privacy of food stamp recipients.

The advocate community claims that finger imaging deters participation because it (i) carries a criminalizing stigma; (ii) is a logistic burden on applicants and clogs the application process; (iii) leads to abuse of power by staff; and (iv) generates worries in the immigrant community that the data will be forwarded to the FBI or to Immigration and Customs Enforcement (ICE).

We accept the fact that specific individuals may indeed reflect these sentiments. However, as detailed in the remainder of this section, there are no indications that these are prevailing views. As also discussed in this section, the responsible approach is to work to alleviate concerns and build acceptance among food stamp recipients through public education, contractual vendor requirements, and staff oversight. It is not to repeal finger imaging.

1. Finger imaging enjoys widespread use and public support in our modern society.

The use of finger imaging by government, the commercial sector, and individual consumers has become widespread for many useful purposes: to prevent cheats from using stand-ins to take professional competency and academic admission examinations; in school lunch programs to avoid bullying for lunch money and to avoid stigmatizing low-income children who receive food benefits; in day care centers to match parents with children to prevent kidnapping; to protect against unauthorized access to sensitive financial, health, and other data in information systems; and to protect facilities against unauthorized access. It is used for logical and physical access, to obtain a variety of licenses such as real estate, brokers, drivers, race tracks in New York and across the country, even for identity management in the Armed Forces. *(Please see the attached memorandum on Biometric Solutions)*

There is no stigma associated with the use of biometrics. American citizens understand that biometric solutions serve beneficial purposes and protect privacy and identity. Certainly, if there is no stigma to a member of the Armed Forces protecting our country or to a school child receiving food through a lunch program, there certainly is no stigma for adult food stamp recipients. In addition, to the extent that food stamp recipients perceive a stigma, it is just as likely to result from the fact that they need food stamps, not because of the finger imaging.

The State should take steps to eliminate the misconceptions relating to finger imaging. For example, public education about the benefits, widespread use and support for finger imaging can be used effectively to alleviate concerns about finger imaging or how the data will be used. This can be implemented on an ongoing basis because the population of food stamps recipients is not static and

changes over time. Elimination of an effective program that achieves important social objectives is not the responsible solution.

2. Finger imaging is not a significant contributor to large lines at the centers.

The statement that the use of finger imaging slows the application process and is a logistics barrier to participation does not appear to be supported by the facts and no supporting evidence is provided.

We understand that finger imaging enrollment itself takes about five (5) minutes and is at the end of the application process. There is no indication that finger imaging imposes additional burdensome logistic demands.

We also understand that large lines at certain peak hours reflect the fact that the majority of food stamp recipients appear to still prefer paper applications and face-to-face interviews, rather than use the online process. Even when the online application is used, follow up visits to the office are often needed to provide documents and to answer questions in person. In our view, finger imaging is not a significant contributor to large lines at the centers.

We must also remember that large lines in government offices during peak hours are the norm and they are not barriers to people partaking of the services. For example, getting a driver's license, permits, etc. typically entail lines and waiting. People wait to get their licenses and to file necessary papers. The food stamp process is no different. In fact, we understand that the food stamp application process is efficient, particularly in NYC which has the largest population of food stamp recipients in the State, where extended hours and additional facilities have been made available to alleviate undue burdens on applicants.

3. Finger image data is not shared with the FBI and Immigration and Customs Enforcement (ICE).

To alleviate concerns about data sharing, the responsible solution is to increase education within the immigrant community about the legal constraints against data sharing and the excellent record of OTDA in complying with all legal requirements. Elimination of finger imaging is not the responsible alternative.

4. Finger imaging does not cause staff abuse of power.

The abuse of power by staff should not be tolerated. If staff is abusing any of their powers, the remedy is to take swift and effective disciplinary action.

In the end, this is an internal agency issue and it is the agency's responsibility to address it properly. The agency should not shift its responsibility to address an internal personnel problem by claiming that the problem is the finger imaging system. That is clearly not the case.

Significantly, the numbers belie claims that finger imaging has deterred participation.

Looking for example at NYC's Food Stamp Program, the NYC Human Resources Administration (HRA) reports that, while using the finger imaging system, the food stamp program has seen a 98% caseload growth since 2009, translating into over 785,000 new recipients. Furthermore, HRA also reports that in the past three (3) years alone, the number of people receiving food stamps has increased by 50%. While the state of the economy is certainly the dominant factor in this increase, it is hard to understand how it can be argued that there is a deterrent effect from finger imaging when more than three-quarters of a million people have been added to the system.

RECENT SURVEYS DEMONSTRATE THAT MAJORITIES SUPPORT FINGER IMAGING IN FOOD STAMP PROGRAMS

Recognizing the benefits of finger imaging in reducing fraudulent multiple claims and the identity and privacy protections it offers, majorities of survey respondents in both the NYS Siena Survey (50% to 46%) and the Rasmussen national survey (53% to 36%) support the use of finger imaging.

STATEWIDE CLEARANCE SYSTEM WILL NOT BE EFFECTIVE IN DETERRING FRAUDULENT DOUBLE DIPPING

The Statewide clearance system relies solely upon demographic data – social security number, date of birth, name, and gender – which has repeatedly been shown as being replicated through theft, forgery, or alteration. Simply stated, such data, whether viewed as individual components or as a set of data, lacks the uniqueness, certainty and exclusivity of a biometric.

For this reason and, contrary to assertions in the proposed regulation, such a Statewide clearance system will not prevent duplicate participation at the time of eligibility determination or receipt of benefits as effectively or efficiently as the current system.

For example, to receive multiple benefits, a person has only to buy a new social security number and identity. The ease with which false identities are created through demographic data is known to every underage college drinker and the sophistication of fraud rings is astounding. Only biometrics provide the certainty of non-replication.

The proposed regulation also does not provide any guidance on how OTDA would resolve discrepancies in demographic data and it is unclear how OTDA will proceed to confirm a demographic match. This will drive up cost, add system inefficiency, and worse, delay the benefit to deserving recipients.

These issues are avoided under the current finger imaging system. As explained to IBIA, resolving discrepancies is relatively straightforward, ensuring both efficiency and little delay to the recipient. We understand that discrepancies are basically of two (2) kinds – errors (such as, transposing numbers or a recipient gets married) or fraudulent. The social services districts work closely with the fraud officers and issues can be resolved quickly. This is a system of effective and efficient oversight and supervision.

Under the Statewide clearance system, given the complexity of demographic data, it is likely to be necessary to set up a new and, probably a more costly, system for investigating discrepancies. This raises a host of questions. Is manpower currently available? If additional manpower is needed, is funding available given limited resources? What are the standards for determining the kind of discrepancies that will give rise to an investigation?

It seems almost inevitable that the system will end up depending more on the discretion of the individual case officer, with a decline in uniformity throughout the State and marked by imprecision. This is in sharp contrast to the uniformity and precision of the existing finger imaging system. One could also ask whether the increase in discretion will also risk even greater concerns regarding abuse of discretion that the State claims is engendered by the finger imaging system.

Even ignoring the vulnerability and inefficiency of an exclusively demographic based system, it is critical to note that it appears that the proposed rule making does not mandate that the social service districts even use the Statewide clearance system to determine benefit duplication. Section 5 (local government mandates) of the Regulatory Impact Statement states that the proposed amendment would not impose new mandates and instead would eliminate an existing requirement, namely, finger imaging. The proposed rule also appears silent on monitoring and oversight.

If use of the Statewide clearance system is not mandatory, the question is how effective a deterrent will the system be against fraud?

Section 10 (compliance schedule) of the Regulatory Impact Statement only states that OTDA would issue a policy directive explaining the regulatory amendment and emphasizing the various means available to prevent food stamp duplication.

All this establishes that from inception, the statewide clearance system will not be the effective deterrent against duplicate participation that NYC and other districts in NYS have enjoyed under their finger imaging systems. Over time, people will be more inclined to “game” the system because the risk of gaming the system will be reduced. As this vulnerability becomes known, one can anticipate a return of fraudulent duplicate participation and increased administrative costs to cover the need for

investigations to resolve discrepancies in demographic data.

This is in stark contrast with the finger imaging system that is now in place. With finger imaging, duplicate participation can be resolved at the time of eligibility determination quickly, reliably, and without incurring any additional costs simply by the comparison of finger images. The capability to immediately check the unique finger image of an applicant against a finger image database of program participants ensures that the applicant is not already in the system.

CONCLUSION

For the reasons stated, IBIA strongly supports the continuation of the use of finger imaging in the NYS Food Stamp Program.

There is no reason to repeal this highly effective and reliable system for deterring fraud, preserving taxpayer resources, and protecting the identities and privacy of food stamp recipients by substituting a system that will (i) not be effective in achieving these important objectives and (ii) will likely lead to an increase in the cost of administering the program.

Further, no evidence has been provided that finger imaging has been a barrier to participation - which is the rationale offered to justify its repeal. To the extent that some people have voiced concerns about finger imaging, the responsible solution is to deal with these issues specifically by public education, contractual vendor requirements, and staff oversight.

Since the finger imaging system has been in use, it has

- Demonstrated it is the most effective tool available to deter “double dipping” by individuals claiming multiple identities and claims under stolen identities, resulting in a substantial reduction in the widespread fraud that had existed in the food stamp program before the introduction of finger imaging,
- Preserved taxpayer resources, through this reduction in fraud, so that the limited resources were available to reach the greatest number of eligible citizens,
- Protected food stamp recipients from identity theft, and
- Provided physical evidence against those that do try and double dipping.

Biometric identity systems have become ubiquitous in society. Rather than eliminating such systems that have proven their effectiveness, the State should consider how the use of such systems can be expanded to further enhance the functionality of State programs.