

April 23, 2013

Ms. Shanta Swezy, Chief  
Retailer Management and Issuance Branch  
United States Department of Agriculture  
Food and Nutrition Service  
SNAP Benefit Redemption Division  
2010 Park Center Drive  
Room 426  
Alexandria, VA 22302

**Reference: 7 CFR Part 278, Supplemental Nutrition Assistance Program: Proposed New Rule Titled  
Suspension of SNAP Benefit Payments to Retailers**

Dear Ms. Swezy:

The Electronic Funds Transfer Association is submitting the following comments in response to the above-captioned Proposed Rule published February 22, 2013 in the Federal Register.

EFTA is a non-profit professional association that through education and outreach promotes the adoption of electronic payments and commerce. EFTA was an early and strong proponent of using electronic benefits technology for the food stamp, now SNAP, program. We have worked with FNS for nearly 30 years on various EBT issues. These efforts have included development of the first set of operating rules for EBT for EBT in April 1992; the 1996 exemption of means-tested benefit programs like SNAP, formerly food stamps, from Regulation E of the Electronic Funds Transfer Act; and most recently, conversion of food delivery in the WIC program to EBT.

Today we represent a significant number of the state agencies responsible for the delivery of SNAP benefits via EBT. We also represent all of the EBT transaction processors responsible for the systems that deliver millions of dollars in SNAP benefits safely and securely each day.

EFTA and its Electronic Government Payments Council applaud FNS for its efforts to curb fraud in the SNAP program. In the third quarter of federal fiscal year 2012 alone, FNS sanctioned or temporarily disqualified, nearly 600 stores for program violations. In addition, over 1,000 stores were permanently disqualified during this period for trafficking in SNAP benefits or for falsifying an application to be SNAP-certified.

In FFY 2012 FNS took a number of additional steps to reduce fraud. These including cracking down on online fraud, giving states the option of contacting EBT cardholders who request an inordinate number of card replacements, and notifying states for further investigation of cardholders with suspicious transactions at stores that have been sanctioned for trafficking.

Issues with the Proposed Rule

FNS continues to look for ways to curb fraud and abuse in the SNAP program. However, we believe that the method described in the Proposed Rule will not help in this continuing battle. We believe that such a drastic shift in the way funds are handled will not be cost beneficial to the program. Further, we believe there is a more cost-effective, simpler solution that we are proposing below.

The vast majority of retailers involved with the SNAP program play by the rules. We support FNS' attempt to enhance this record of retailer business integrity through the Proposed Rule. However, we feel that the Rule as proposed will not be cost-beneficial to the program, and would have a disruptive effect on it for the following reasons.

1. Complexity and Cost

What FNS envisions in the Proposed Rule would require a complex set of changes within the EBT processing systems. As one processor has opined, EBT processing systems have "a lot of moving parts." EBT systems are an orchestration of many subsystems and automated routines. A change such as that described in the Proposed Rule would likely have effects on many of these downstream routines. These cascading effects would impact various stakeholder groups in the EBT process. Further, the full extent of these impacts likely would not be known until testing. We believe that the changes outlined in the Proposed Rule fit into the "easier said than done" category.

A change of this magnitude would require a significant level of effort in order to design, modify, test and implement the changes that the Proposed Rule would require.

These changes would saddle EBT processors with a significant amount of unbudgeted cost. How processors would be reimbursed for modifying current systems in order to assist FNS in implementing this initiative is not addressed in the Proposed Rule.

2. Timeline

Given the complexity that would be required to implement the Proposed Rule, the required lead time would be significant, exclusive of the time required for the rules-making process itself. We estimate that the timeline required could be as long as 18 months and as short as 12 months. However, there are many open questions on what specific business requirements will be necessary for implementing the proposed rule. We believe the scope of work will be considerable, and the timeline will reflect that.

3. Issues with Existing Rules

The changes that FNS seeks through the Proposed Rule were not contemplated in existing EBT rules sets like the Quest® or Lone Star operating rules. The rules-making process for these rules sets may be the equal in length to the federal rules-making process. This would mean additional delays to implementation.

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For example, the Quest rules are administered by NACHA — The Electronic Payments Association. However, changes are generally initiated through the eGPC State Forum. The Forum is made up of eGPC members who are state agencies responsible for EBT in their respective states. The collegial nature of this group could require at least six months to approve any required rules changes. This activity would be slightly ahead of any design work by processors. However, all development and testing would have to await approval of the final rule.

The entire operating-rules process could add a year or more to the schedule.

#### 4. Funds Management

The Proposed Rule does not address issues involving the funds in question. For example, who would own the funds being held by the processor? How would the funds move? If the processor holds the funds, what would its liabilities be?

These are all questions unanswered by the Proposed Rule.

#### 5. Collateral Damage

The agreements that allow the processing of EBT transactions not only apply to retailers and processors, but to other entities as well. We believe that the changes that would be required to comply with the Proposed Rule would also have a “downstream” impact on legal agreements and obligations already in place between:

- Contractors and states
- Contractors and retailers
- Contractors and third party processors/acquirers
- Third party processors and retailers

In short, the Proposed Rule would add little to accomplishing FNS’ program integrity goals. The complexities of the changes that the Proposed Rule would require, the unfunded costs of the changes that would be required, the long implementation time frames, and the effect of the changes on many stakeholders, none of which committed fraudulent behavior, have to be balanced against the limited amount of ill-gotten gains that could be recouped through the method that FNS proposes.

Alternative Solution

We understand what FNS is attempting to do in the Proposed Rule. However, we think there is a better way to accomplish the same goal. That way is through the FNS Retailer EBT Data Exchange, or “REDE” file.

The REDE file is the book of record when it comes to which retailers are authorized to accept benefits. For every one of the millions of SNAP transactions they process, the EBT contractors validate the authorized FNS retailer number against the REDE file. This ensures that only authorized retailers are able to pass SNAP transactions through the system.

More important to this discussion, the EBT processors use the data to prevent disqualified or withdrawn retailers from accepting SNAP EBT cards. Every state is responsible for ensuring that their EBT processor verifies the FNS retailer authorization numbers for all transactions against the REDE file.

Every day, the EBT processing systems perform a match of the retailer to the FNS REDE file to verify the retailer’s authenticity. If a retailer’s data does not show up in the REDE file, his request for authorization will be declined.

We believe that an approach that suspends retailer participation in the SNAP program via removal from the REDE file while the fraud investigation is ongoing would be the quickest, most efficient, and most cost-beneficial way of suspending retailer payments.

This program could be implemented immediately—no system changes, no design sessions, no development, no testing, no delays.

We understand that FNS has two issues it is attempting to resolve with the Proposed Rule. The first is to assure that retailers who are investigative targets are given due process with regard to investigations. The second is to give FNS the authority to suspend payment pending disqualification. It appears from the Proposed Rule that FNS believes that the approach outlined in the Proposed Rule will allow them to “claw back” the current day’s settlement when the withholding of reimbursement goes into effect.<sup>1</sup> We disagree.

The second issue that the Proposed Rule appears designed to stop is that of retailers who do business in so-called “food deserts” leaving the program while they are under investigation for fraud. Often these grocers are the only stores convenient to SNAP cardholders. The proposed rule appears to imply that the Proposed Rule will keep those retailers in the program pending adjudication of the funds in question.

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<sup>1</sup> Within this commentary “current day” refers to the day on which a suspension or stop-payment order would be lodged against a retailer under investigation for trafficking or other fraudulent behavior.

We believe that as soon as a retailer fitting this profile fails to receive his reimbursement he will leave the program. We see no distinct advantage in the Proposed Rule in terms of keeping retailers like this in place in food deserts without being paid, regardless if the Proposed Rule is implemented or if our proposed alternative method is employed.

The methodology outlined in the Proposed Rule, despite its high cost, would be of limited use in this matter. Here's why: Because EBT settlement is made on the next business day, FNS—even with quick and timely communication to the EBT processors—would at best only be able to impact settlement of the previous business day and forward. (Settlement on non-bank days like holidays, and weekend days may be delayed until the settlement systems are available.)

The crux of the matter is the timing of when FNS communicates to the processors that a particular retailer is to be taken offline. The timing of this notification, and how quickly a processor could affect it would affect how quickly the processor could take the retailer offline. Processors can only stop what has yet to be done. They cannot go back and pull funds that are already being settled through the bank systems. No stop-payment order, even one executed under the methodology outlined in the Proposed Rule—could impact benefits that may have been trafficked prior to the order.

Put more simply, we do not think that the Proposed Rule would achieve the FNS' goals of in this situation any better than removing the retailer from the REDE file would. No matter how much FNS would like to keep a retailer in place pending adjudication of a trafficking complaint, once a trafficking retailer fails to see his reimbursement in his bank account, it is likely he will be lost to the program.

However, the Proposed Rule would be significantly more costly, time-consuming and inefficient than simply making the change through the REDE system.

In addition, in evaluating one solution over the other we also ask FNS to consider the cost of lost opportunity. We estimate that implementing the Rule as proposed could take 12-18 months or possibly longer. On the other hand, using the REDE file solution could be implemented in a matter of days. We ask FNS to consider how much fraud could go undetected during that 12-18 month implementation period, and weight that against the amount that could be saved by immediately implementing the REDE solution.

EFTA continues to support FNS in its effort to safeguard the SNAP program. However, we believe that there is a better, simpler, more cost-effective way to achieve this goal than the Proposed Rule.

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If you have any questions about our comments, please feel free to contact me directly. Our members, through our eGPC stand by to work with you on implementing the proper response to SNAP fraud. On behalf of EFTA and its state agency and EBT processor members, I thank you for the opportunity to comment on this important subject. We wish FNS well in its deliberations and look forward to reviewing its draft regulations on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kurt Helwig". The signature is fluid and cursive, with the first name "Kurt" being more prominent and the last name "Helwig" following in a similar style.

Kurt Helwig  
President and CEO