



THE VOICE OF FOOD RETAIL

Feeding Families  Enriching Lives

March 7, 2016

Vicky T. Robinson
Chief, Retailer Management and Issuance Branch
Rm. 426, Food and Nutrition Service
3101 Park Center Drive,
Alexandria, VA 22302

Re: Supplemental Nutrition Assistance Program (SNAP) Photo Electronic Benefit Transfer (EBT) Card Implementation Requirements; Proposed Rule

Docket: RIN 0584-AE45

Dear Ms. Robinson:

On January 6, 2016, the United States Department of Agriculture's (USDA) Food and Nutrition Service (FNS) published a Proposed Rule entitled, "Supplemental Nutrition Assistance Program (SNAP) Photo Electronic Benefit Transfer (EBT) Card Implementation Requirements" (Proposed Rule). The Proposed Rule would, among other things, provide parameters on the requirements for States that elect to implement a photo on an EBT card and establish procedures to ensure that any member of a household or authorized representative of the household regardless of whether their photo is on the card is able to purchase food.

The Food Marketing Institute (FMI) appreciates the opportunity to comment on this important matter. FMI and its members look forward to continuing to work with the Department to find ways to ensure SNAP program access is not inhibited in retail stores; and program access and program integrity is ensured for States providing a photo option on EBT cards.

FMI proudly advocates on behalf of the food retail industry. FMI's U.S. members operate nearly 40,000 retail food stores and 25,000 pharmacies, representing a combined annual sales volume of almost \$770 billion. Through programs in public affairs, food safety, research, education and industry relations, FMI offers resources and provides valuable benefits to more than 1,225 food retail and wholesale member companies in the United States and around the world. FMI membership covers the spectrum of diverse venues where food is sold, including single owner grocery stores, large multi-store supermarket chains and mixed retail stores. For more information, visit www.fmi.org and for information regarding the FMI foundation, visit www.fmifoundation.org.

Background

FMI and its members appreciate FNS' interest in strengthening the integrity of SNAP with regards to food retailers. While we are generally supportive of the need for clarification and implementation guidelines for mandatory or voluntary photo EBT requirements, FMI urges the Department to consider the following comments to ensure any changes to the SNAP program do not inhibit participant access.

Under Section 7(h)(9) of the Food and Nutrition Act of 2008 (the Act), States have the option to require that a SNAP EBT card contain a photo of one or more household members. The States are tasked with administering the SNAP program on behalf of the federal government. Under existing regulations, a State that elects to require a photo on EBT cards, must also establish procedures to ensure the same participant access is maintained. The Act and existing regulations further provide that a State that implements a photo requirement for EBT cards shall establish procedures to ensure that any other appropriate member of the household or any other authorized representative of the household may use the card.

Although well-intentioned, and allowable under USDA policy, FMI members continue to believe that photo ID requirements are unnecessary, costly, and raise significant legal questions, all with little or no benefit compared to the cost of administration. Additionally, recent State implementation of the photo EBT requirement has resulted in significant operational complexities, challenges and legal issues that FMI urges the Department to consider in developing a Final Rule. While FMI acknowledges that under current law States may require photo identification on EBT cards, we believe there are less complicated and burdensome ways to prevent and deter potential fraud in the SNAP program.

Issuance of Photo EBT Card Implementation Plan

Given the complex legal, operational, and civil rights issues that have arisen around the implementation of photo EBT cards, FMI urges FNS to continue to work closely with individual States that elect a photo ID requirement on EBT cards to ensure that the transition and implementation is seamless and within the bounds of the law and existing regulations. In the Proposed Rule, FNS acknowledges the existing challenges for States that elect to have photo ID requirements and is therefore proposing a requirement for State agencies to submit an Implementation Plan to FNS. The Implementation Plan would need to delineate how the State will operationalize this option. FNS would then review the plan before approval and States would be prohibited from using EBT cards with photos until FNS has given the State authorization.

FNS would also require States to demonstrate sufficient capacity to issue photo EBT cards before they receive authorization from FNS to implement the photo ID option. FMI supports this proposal and believes that the submission of an Implementation Plan is an important step to ensure that States agencies that implement the photo EBT card option are prepared and have the necessary resources to implement and oversee a photo EBT policy. As stated above, there are significant challenges and complexities involved in implementing a photo EBT requirement, and

FMI believes that FNS prior approval of a State Implementation Plan will help insure photo ID policies are adequate.

State Agency Requirements for Photo EBT Card Implementation

In the Proposed Rule, FNS notes that they are aware of some instances in which SNAP authorized retailers, unauthorized retailers and other individuals have purchased multiple EBT cards illegally. To address this concern, the Proposed Rule would now require retailers to ask individuals using three or more EBT cards in one transaction to provide photo identification, such as a driver's license, and an explanation as to why multiple cards are being used. Additionally, if a retailer suspects fraud is being committed and an individual refuses to provide identification, the retailer would have the option to deny the sale. Under the Proposed Rule, if a retailer suspects a fraudulent transaction they would then be required to report this information to the USDA OIG Fraud Hotline. FNS seeks comments on the requirement requiring retailers to ask for identification of anyone who presents three or more EBT cards at checkout. FNS also seeks comment on whether there are alternative approaches to identify and deter fraud when individuals use multiple EBT cards that have been illegally obtained. While FMI is not aware of specific instances in which SNAP retailers, whether unauthorized or authorized, have purchased multiple cards illegally, FMI members are committed to the elimination of all waste, fraud and abuse in the system and all Federal programs. While FMI fully supports FNS' efforts to strengthen the integrity of the SNAP program, we have concerns that the photo ID requirement could create access issues for SNAP recipients and would create significant challenges for retailers tasked with identifying potential fraud.

The Food and Nutrition Act also requires States implementing photo EBT to "establish procedures to ensure that any other appropriate member of the household or any authorized representative of the household may utilize the card". Specifically, all household members and authorized representatives have a right to access SNAP benefits by using the household EBT card with a valid PIN even if their picture is not on the card or there is no picture on the card. It follows that a State agency must take steps to ensure that individuals who are not pictured on the card can continue to access benefits on the card, which is particularly critical for the ability of authorized representatives to use the card to ensure access to the elderly and disabled, among others.

FMI is aware of many circumstances where an individual would be using multiple EBT cards to legally purchase groceries for a SNAP recipient. Having the ability to do so is an important tool to ensure all individual's within a household are able to utilize their benefits. For example, it is very common for an individual to shop for an elderly client or relative using the SNAP recipient's EBT card. It is also common for individuals working for an authorized group home or facility to use multiple EBT cards in a transaction. In both cases, an authorized individual would be using multiple cards in order to purchase food legally for their client or relative. A SNAP card can be issued to an individual, or to an entire family for use. It is important to keep in mind that children in SNAP households may do the shopping for the family and may not have acceptable identification.

While FMI strongly supports the Department's efforts to strengthen the integrity of the SNAP program to more effectively identify potential fraud, we believe that there needs to be flexibility for SNAP authorized retailers to address various situations in a way that does not create unnecessary delays at checkout or create an access issue for SNAP recipients. For example, as an alternative to the proposed identification requirements, FNS could require States who require a photo ID on an EBT card to issue a letter stating that an individual is an authorized representative for three or more SNAP recipients. Individuals who frequently use multiple EBT cards could ask the State to issue a letter which could easily be provided to a retailer upon request. FMI notes that a State issued letter is just one possible alternative to the proposed photo ID requirement and FMI is committed to working with FNS to develop additional solutions to the questions raised in the Proposed Rule.

Thank you for your consideration, and we look forward to continue working with FNS on this issue. Please contact Stephanie Barnes at sbarnes@fmi.org or 202-220-0614 for questions.

Sincerely,

Stephanie K. Barnes

Regulatory Counsel