



December 29, 2023

FINANCIAL DATA RIGHTS

c/o Legal Division Docket Manager
Consumer Financial Protection Bureau (CFPB)
1700 G Street, NW
Washington, D.C. 20552

To Whom it May Concern:

RE: *Personal Financial Data Rights Proposed Rule*; Docket No. CFPB-2023-0052, RIN 3170-AA78

FMI – The Food Industry Association welcomes the opportunity to comment on the proposed rule to implement personal financial data rights under the Consumer Financial Protection Act of 2010 (CFPA). Specifically, we are commenting on the question about whether electronic benefit transfer (EBT)-related data should be included in the final rule. While we appreciate the concerns of some regarding participants' access to EBT data and the desire to sunset screen scraping, it is inappropriate to include it in a proposed rule under the CFPA and should remain excluded from the final rule.

As the food industry association, FMI works with and on behalf of the entire industry to advance a safer, healthier, and more efficient consumer food supply chain. FMI brings together a wide range of members across the value chain — from retailers that sell to consumers, to producers that supply food and other products, as well as the wide variety of companies providing critical services — to amplify the collective work of the industry.

Our food retailers, which range from independent operators to large national and international players, operate roughly 33,000 grocery stores and 12,000 pharmacies, ultimately touching the lives of more than 100 million U.S. households per week and an industry that employs over 6 million individuals. FMI's food retailers are private sector partners with the federal government in serving as points of redemption for Supplemental Nutrition Assistance Program (SNAP) and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) participants. FMI and our members are committed to strengthening the integrity and viability of SNAP and WIC for millions of Americans in every community.

Over twenty years ago, Congress recognized the inefficiencies of paper food stamps and directed the U.S. Department of Agriculture (USDA) to develop the EBT card system used today by states to administer the federal food assistance programs. Congress explicitly established authority over SNAP under USDA. USDA has proven to be an effective regulator of the program, driving innovation and change to meet the needs of participants, retailers, and the government. USDA has the expertise, infrastructure, and history to best address the concerns regarding screen scraping and participants' access to EBT data. As such, we oppose including EBT in the CFPA final rule and support retaining USDA authority over SNAP and EBT under USDA's policy purview.





In developing EBT, USDA promulgated robust regulations alongside the stakeholder communities to ensure privacy and ease of access for SNAP participants. As a condition of earning and maintaining a SNAP license, retailers must comply with USDA's rigorous regulations including continuous education. Additionally, retailers invest significant resources to participate in SNAP, including bearing the cost of point-of-sale technology, equipment updates, software, and training for store associates.

Innovation and efficiency have expanded since SNAP migrated to EBT. As directed by Congress, USDA developed a SNAP online solution that is now live in every state in the country. Today, SNAP beneficiaries can order their groceries online for home delivery or curbside pickup at the store. USDA is presently working with retailers to pilot the enablement of SNAP mobile payments.

Currently, some states are exploring the migration from magnetic stripe EBT cards to EBT chip cards. As directed by Congress in the Consolidated Appropriations Act of 2023 (P.L. 117-328), USDA is in the process of developing guidance for states wishing to migrate to EBT chip cards. This guidance development process has been underway for the better part of the year, with USDA now convening biweekly public forums with FMI, our SNAP retailers, state processors, service providers, and other stakeholders to discuss a myriad of implementation issues. The migration to chip cards is technically and administratively complex, as it involves development, adoption and implementation of industry standards and security, upgraded point-of-sale terminal hardware and payments software, and SNAP program recertification of every register terminal at each retail location. The migration to EBT chip cards will also involve extensive education and communication to SNAP participants about the utilization of these cards and program modifications.

While we recognize CFPB's interest in SNAP participants' data access, it is not the appropriate agency to address this matter. CFPB is tasked with ensuring consumers access to their personal financial data, particularly those regulated as demand deposit accounts (DDAs). Congress clearly excluded EBT from these regulations and recognized its innate differences from DDAs. USDA has the authority, granted by Congress, to regulate SNAP and EBT and provide appropriate protections and considerations for participants and the agency continues to be actively involved in this work.

Thank you for the opportunity to share our thoughts. FMI and our members are committed to working with USDA to build upon the success of SNAP to ensure it continues to serve families in need across the country with efficiency and integrity.

Sincerely,

A handwritten signature in black ink that reads 'Christine Pollack'.

Christine Pollack
Vice President, Government Relations

