



United States
Department of
Agriculture

SEP 05 2014

Food and
Nutrition
Service

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SUBJECT: Supplemental Nutrition Assistance Program – Retailer, Issuance and
Electronic Benefits Transfer Provisions of the Agricultural Act of 2014
– Questions and Answers

TO: All Regional Directors
Supplemental Nutrition Assistance Program

The attached questions and answers is the third of a series intended to address inquiries received concerning certain retailer provisions of the Agricultural Act of 2014, P.L.113-79. These questions and answers serve as formal guidance for use by FNS Regional Offices, State agencies, and affected stakeholders as they implement the retailer provisions of the Agricultural Act of 2014.

Additional questions and answers pertaining to the retailer provisions will be forthcoming. Thank you for your patience. If further questions arise related to the implementation of these provisions, please contact Vicky Robinson at vicky.robinson@fns.usda.gov.

A handwritten signature in black ink, appearing to read "Andrea Gold".

Andrea Gold
Director
Retailer Policy and Management Division

Attachment

Agricultural Act of 2014
Retailer, Issuance and Electronic Benefits Transfer
Q & As Ver3

C. Section 4002 - Retailers - EBT Equipment Costs

C9: Will FNS notify the retail community, more specifically the EBT-only merchants, regarding the termination of State-supplied EBT-only terminal devices and supplies? If so, what is the timing of the notification? Will the notification provide an FNS phone number or FNS email address where retailers can call or email questions?

Answer: FNS has sent a general notice to all SNAP authorized retailers and has updated materials that are provided to newly authorized retailers. Further, FNS has reached out to the three primary EBT processors so that we can target additional retailer outreach to those retailers who currently have EBT-only equipment. States, or their EBT processors on their behalf, will also need (and have begun) to contact the non-exempt retailers that currently use EBT-only terminals regarding the termination of free services.

C10: Who is educating the merchants on how to sign up for services from a third party once EBT contractors no longer provide the terminals?

Answer: Information about potential service providers varies by geographical area. EBT processors have already developed materials to share with retailers in specific States and States may wish to consider posting such information online. FNS will share any information made available by EBT processors regarding Third Party Processors and will provide links to any such State or EBT processor postings on the FNS public website as well. Information that has been received by FNS can be found at this link: <http://www.fns.usda.gov/sites/default/files/snap/SNAP-EBT-Third-Party-Processor-List.pdf>. This list will be updated as additional information is received.

C11: Will newly authorized merchants still receive information on the EBT-only equipment? Has FNS changed its newly-authorized retailer packets to eliminate the EBT-only material? What information is sent out to the individual merchants once they have been approved? Does it inform the retailer about what type of business they are? Will the retailers be told whether they are classified as exempt or non-exempt?

Answer: FNS has revised materials that are provided to all newly-authorized retailers. Materials include updated information about the available equipment options, and describe the types of retailers that are exempt and therefore eligible for State-provided EBT equipment, supplies and services. Information regarding exempt retailers is available to the EBT processors through the REDE file.

C12: While advising retailers of their option to purchase commercial equipment, will FNS suggest they consider compatible equipment for electronic WIC transactions?

Answer: Not at this time. FNS will provide the EBT Fact Sheet and other pertinent materials in our authorization package. This package is used nationally for all retailer types. WIC State agencies are at various stages of EBT planning, development and implementation, and only a small percentage of SNAP retailers are also authorized as WIC vendors. States that are at a point where such communication is appropriate may wish to have their EBT processors address the issue with non-exempt retailers.

C13: Will WIC EBT terminals be covered by the Agricultural Act of 2014 provisions, i.e., must non-exempt retailers pick up the cost of WIC point-of-sale equipment?

Answer: WIC terminals are not covered by the Agricultural Act of 2014 provisions. The WIC program is covered by the Child Nutrition Act of 1966, as amended by the Healthy Hunger-Free Kids Act of 2010.

C14: What is the outlook concerning WIC POS support?

Answer: WIC is developing final regulations to implement the WIC EBT changes required by the Healthy Hunger-Free Kids Act of 2010. The final rule will address WIC vendor equipment requirements.

C15: With SNAP no longer supporting EBT terminal costs, it presents multiple challenges to those states that operate cash, SNAP/TANF, and WIC through a single contract. According to State agencies, given the TANF ATM restrictions, State agencies are now required to ensure adequate cash access, which was assisted in part by EBT-only terminal equipment in rural communities. Since this affects multiple programs administered by two federal entities, will FNS be working with U.S. Department of Health and Human Services (HHS) as well as the States in formulating a plan?

Answer: The Agricultural Act of 2014 requires non-exempt SNAP retailers to pay 100 percent of the costs for acquiring and implementing EBT equipment, supplies, and services. The Agricultural Act of 2014 provides the Secretary the authority to exempt specific types of SNAP retailers from this requirement; however, FNS does not have the authority to exempt any SNAP retailers that are not specifically exempt under the Agricultural Act of 2014.

It is expected that WIC State agency contract provisions for the installation and support of EBT equipment in authorized WIC vendors will continue to be supported consistent with existing WIC regulations and policy guidance. Likewise, it is expected that State agencies will make the appropriate decisions with regards to cash access in accordance with HHS regulations and guidance. As always, any WIC vendor may elect to obtain commercial payments services supporting WIC EBT at any time. FNS SNAP and WIC will continue to coordinate and are willing to coordinate with HHS and State agencies as needed.

C16: Is there federal funding available for the cost and efforts to implement the new requirement that SNAP retailers pay for their own EBT equipment, supplies, and services?

Answer: There is no special funding available for implementation of these changes.

C17: What about route vendors and other retailers that accept manual vouchers to conduct ongoing business, but have an EBT-only terminal back at the office which they use to clear the voucher transactions for settlement?

Answer: Every non-exempt (based on REDE file store type) retailer with an existing EBT-only terminal agreement, must arrange for paid EBT equipment, supplies and services within the timeframes provided by the March 21, 2014, Implementing Memo. This includes non-exempt retailers that accept manual vouchers.

C18: The Secretary may exempt farmers markets and other direct-to-consumer markets. So what retailers are getting ruled out? Just the mom and pop stores? Are fruit/vegetable specialty, homeless meal providers and meal delivery services exempt? Are the meat trucks considered a direct-to-consumer market?

Answer: States and their EBT contractors have been informed of exempt and non-exempt SNAP retailer types.

Direct-to-consumer markets, which refers to direct-marketing farmers and non-profit cooperatives that operate using the community supported agriculture model, are exempt. Homeless meal providers and public or non-profit meal delivery services are exempt and still eligible for no-cost EBT equipment, supplies and services.

Fruit/vegetable specialty and delivery route retailers (such as meat trucks) are not considered direct-to-consumer markets and are not exempt. Mom and pop stores are usually classified as convenience stores or small groceries, and are not exempt.

C19: What is the process that a retailer or State agency should use to verify and, if needed, correct the store type for that retailer?

Answer: State agencies can check with their EBT processors to get information about a specific retailer's store code. This is available from the REDE file. Retailers may call the FNS Retailer Service Center with any questions about their authorization status. FNS will be establishing a formal procedure for validating and correcting inaccurate data. In the interim, such requests should be directed to our web email address at RPMDHQ-WEB@fns.usda.gov. The subject of the message should be **STORE TYPE VERIFICATION** and the e-mail message should include sufficient information to identify the store in question.

C20: The March 21, 2014, Implementing Memo states that the timeframe for this change is six months. Is it six months from the signing of the bill, or six months from March 21st when the

Implementing Memo went out? Is it FNS' position that States begin making changes within six months? Or must the changes be completed within six months? Does the Implementing Memo mean the State has a plan and is working on completing that plan, or does it mean everything is complete?

Answer: The timeframe is six months from the date that the Implementing Memo was issued. Consequently, changes to retailer equipment provisions must be completed by September 21, 2014. By September 21, 2014, all non-exempt retailers currently accepting EBT through an EBT-only terminal agreement must arrange for paid EBT equipment, supplies and services. After that, only exempt retailer types (based on REDE file store type) can continue to participate under EBT-only terminal agreements. States have already begun developing plans for implementation and, unless otherwise approved by FNS, all actions to implement the EBT equipment requirements must be completed by September 21.

C21: Should EBT processors a) stop shipping new EBT-only equipment immediately for all States, b) work with each State on specific direction, or c) coordinate our actions with the documentation changes FNS is making for newly authorized retailers?

Answer: All States should have stopped equipping new non-exempt retailers authorized by FNS on or very soon after March 22, 2014. EBT processors should continue working together with their individual States to develop plans, actions and timelines for achieving the September 21, 2014, requirements in a manner which best suits the State's circumstances. FNS has sent notification to retailers, revised our authorization package and updated online training materials, so no additional coordination with our documentation is required. Additional FNS outreach is planned for the coming weeks.

C22: For non-exempt EBT-only terminal retailers authorized on or before March 21, 2014, must their state-supplied equipment be removed by September 21, 2014?

Answer: We know from conversion experience that there will be some non-responsive retailers that fail to make alternate arrangements on time. FNS does not require that every terminal be removed by September 21. However, unless otherwise approved by FNS, as of 12:00am on September 22, 2014, any unreturned terminals used by non-exempt retailers must be disabled unless alternate payment arrangements have been made between the EBT processor and the retailer so that costs for equipment and supplies and services are borne by the retailer.

C23: The State has a recently signed contract with an EBT processor and implementation is in process. Will the new contract and pricing, which was based on a contractor provided terminals and signed before the new legislation was signed, need to change?

Answer: All States will need to determine if contract renegotiation is necessary regardless of the date the contract was signed. While it is recognized that retailer support continues for a limited number of exempt stores, the cost to the State of retailer equipment, supplies and service, as well as the support infrastructure for SNAP, should

change as on-going costs for all non-exempt SNAP authorized retailers will be borne by those retailers. Please work with your EBT processors to determine the basis for any pricing change.

C24: How are retailers to transition to these costs and accomplish everything by the implementation date?

Answer: Transition of retailers to a new EBT processor during contract conversion usually takes less than six months, so there should have been ample time for retailers to make suitable arrangements with an equipment provider.

C25: What does FNS mean by “suitable arrangements with contractors”? Does this mean contracts have to be changed? What actions will FNS hold States accountable to accomplish by September 21, 2014?

Answer: By September 21, 2014, States and their EBT processors will minimally need to:

1. Revise internal procedures so that free EBT-only equipment, supplies and services are only offered to retailers identified by FNS store type as exempt;
2. Determine if they will opt to give non-exempt retailers an earlier timeframe for terminal transition;
3. Notify all non-exempt retailers with EBT-only terminal agreements of the State’s deadline and instruct them on future steps;
4. Where available, provide the non-exempt retailers with materials or a link to a public website identifying potential terminal providers that retailers could contact;
5. Determine whether EBT processor retailer agreement language needs to be modified for exempt retailers who will continue to be entitled to no cost equipment;
6. Receive and securely handle or dispose of returned equipment;
7. Track retailer progress with transition, and follow up with non-responders as needed;
8. No later than 12:00am on September 22, 2014, disable service to all remaining non-exempt retailers still using EBT-only terminals without additional arrangements to pay, unless otherwise approved by FNS;

After September 21, 2014, States and their EBT processors will also need to:

- Continue to collect or remove any remaining equipment that has not been returned or transitioned to paid service with existing EBT processors, unless otherwise approved by FNS; and
- Negotiate appropriate EBT contract amendments and pricing changes to reflect the applicable requirements of the Agricultural Act of 2014.

C26: Can all the EBT-only equipment at non-exempt retailer locations be deactivated at once? Some States have already asked EBT processors to do so immediately. Or, must there be a

regional approach? Is there a requirement for prior notification to EBT-only retailers and, if so, what should the notification say and who is responsible for sending it?

Answer: Retailers need sufficient time to identify paid services providers, establish a contract and have equipment installed or updated, so EBT-only services cannot be terminated immediately. FNS allowed six months for this process based on past conversion experience. The EBT processor and the State should create a decommission plan that works best for them and considers all of the actions listed above, so that they can meet the September 21, 2014, deadline or an earlier date.

C27: Have you issued any separate guidance to the EBT contractors or are States to follow up individually with their vendors?

Answer: We have issued the March 21, 2014, Implementing Memo, a notice to retailers on the SNAP provisions of the Agricultural Act of 2014, and Retailer Q&As on May 20 and July 30, 2014. States should follow up with their contractors individually and/or as coalitions to ensure that the activities outlined in Q&A C25 are accomplished.

C28: Who is designated as the first state rollout to be supported under this new commercial model?

Answer: There is no “first State rollout”. Every State needs to take action as soon as they can to ensure that non-exempt EBT-only terminal retailers convert to paid EBT equipment, supplies and services by September 21, 2014.

C29: Does “newly SNAP authorized” mean “new SNAP” retailers just joining the program or does it refer to existing retailers that sign new agreements with the EBT processor during a conversion?

Answer: This refers to retailers newly authorized by FNS to participate in the program. A retailer is not considered newly-authorized when signing an agreement with the new processor during a conversion.

C30: If a State is in process of conversion, can all non-exempt retailers be required to go directly to the commercial model as they convert? Would they still be expected to do so prior to September 21? Or, are the current retailers grandfathered in and the EBT processor just stops giving new devices?

Answer: States that are in the process of converting from one EBT processor to another should determine whether an earlier implementation date would be an advantage. They may wish to require non-exempt EBT-only retailers to go directly from the current processor’s cost-free terminals to paid EBT equipment, supplies and services, and not require the new processor to equip them at all. States that are in the midst of conversion must still meet the September 21, 2014, deadline for the equipment cost provision. No non-exempt retailers will be “grandfathered”.

C31: Please confirm whether the FNS regulation regarding 14 days installation of EBT-only terminals will be kept only for exempt store types, or will it still cover the non-exempt retailers?

Answer: Since non-exempt retailers authorized by FNS after March 21, 2014, are no longer eligible for no-cost EBT-only terminals, the 14-day installation requirement no longer applies to them. All exempt retailers that opt for State-provided services must continue to have their equipment installed within 14 days of the FNS authorization date as required by regulation.

C32: Please confirm whether the FNS regulation regarding replacement of EBT-only terminals within 48 hours will be kept only for exempt store types, or will it still cover the non-exempt retailers?

Answer: All exempt retailers that opt for State-provided services must continue to receive a replacement or repair within 48 hours. This requirement will not apply to non-exempt retailers once they are no longer operating under an EBT-only agreement.

C33: Please let us know if supply credits to the existing EBT-only retailers must continue for six months or can they stop immediately. Will FNS eliminate the requirement for supply reimbursement for those exempt retailers who continue to qualify for state-sponsored equipment? Continuation of this payment to low volume retailers like group homes, commissaries and farmers markets would result in reimbursements of only a few pennies per month.

Answer: Supply reimbursement credits should continue for all existing non-exempt retailers until such time as the retailer converts to paid equipment or September 21, 2014, whichever occurs first.

States and/or their contractors are still required to provide free supplies (or a supply reimbursement) to the exempt retailers that are eligible to continue using or receive State-sponsored EBT only services. If the amounts are small, EBT processors may wish to consider moving to less frequent reimbursement for small volume retailers.

C34: Given the reduced number of retailers with EBT-only equipment nationwide, is it still necessary to maintain 24x7 retailers help desk?

Answer: FNS does not require 24x7 retailer support, as long as there is a way for the retailer to report equipment problems and get replacements within the 48 hours period required by regulation.

C35: For retailers that qualify for state sponsored equipment, will there be any changes to deployment guidelines (7 CFR 274.3 (b)(1) through (4))?

Answer: The primary change would impact 7 CFR 274.3(b)(1). The Agricultural Act of 2014 eliminates the requirement that States ensure that retailers with 15 percent or more

of their sales in SNAP must have operational EBT equipment at every register, instead now requiring that retailers ensure they provide adequate EBT service, defined as having EBT equipment at a sufficient number of registers to provide comparable check-out service to SNAP and non-SNAP customers.

Until FNS publishes a final rule implementing this change, the current POS deployment regulations, including 7 CFR 274.3(b)(1), continue to apply to exempt retailers who opt to use State-sponsored EBT only equipment.

C36: Has any thought been given to exempting retailers that serve a rural location with no other options for purchasing food? If so, how would they be identified? Do you need States to pull information for you?

Answer: The Agricultural Act of 2014 provides the Secretary the authority to exempt specific types of SNAP retailers from the requirement for SNAP retailers to pay 100 percent of the costs for acquiring and implementing EBT equipment, supplies, and services; however, FNS does not have the authority to exempt any SNAP retailers that are not specifically allowed to be exempt under the Agricultural Act of 2014. The Agricultural Act of 2014 does not specifically allow the Secretary to exempt retailers that are located in rural areas with limited access to food to continue receiving free EBT equipment, supplies and services.

C37: Do states have any discretion on funding the retailers? If so, is there any time limit? If not, can we assume that means that service to non-exempt retailers must end by September 21?

Answer: States have no discretion unless they wish to fund retailers with 100 percent State funds. The Agricultural Act of 2014 precludes federal funding of such costs and they will be disallowed for 50 percent reimbursement. As previously indicated, unless otherwise approved by FNS, all non-exempt retailers must convert to paid EBT equipment, supplies and services by September 21, 2014, if they wish to continue participation in SNAP.

C38: What is the penalty for failure to implement by September 21, 2014?

Answer: FNS expects that all States will be able to meet this deadline. If not, FNS may disallow funding for costs related to equipping non-exempt retailers.

C39: If an EBT processor has purchased and deployed terminals as part of an EBT contract, and the processor is carrying the terminal on a 5-year depreciation schedule, what is the impact of the Agricultural Act of 2014? Can he continue depreciating that terminal or must he take a tax write down in the year in which the terminal ceases to function or the state ceases to provide for the care and keeping of the device?

Answer: This question is not under the purview of FNS. The EBT processor should consult its corporate tax professional.

C40: The April 15, 2014, retailer notice indicated that Farmers' Markets are exempt and eligible for POS equipment – can we get additional clarification on the free equipment/funding source? Is this speaking to the farmers' market grant funding and thus only markets authorized after November 18, 2011, are eligible for the free POS equipment?

Answer: Farmers' markets and farmers remain eligible for no cost traditional EBT-only terminals, which require an electrical outlet and a land line, if they are able to use such equipment at the market location. Farmers' markets that opt to do business using manual vouchers also continue to be eligible for traditional EBT-only terminals to clear those vouchers.

States may also continue opting to provide wireless terminals and services to farmers' markets. All of these costs are eligible for 50 percent administrative funding.

The equipment cost provision of Agricultural Act of 2014 has no impact on the 100 percent grant funding that has been available since fiscal year 2012.

C41: The State leases all of its EBT POS equipment (monthly) from JPMorgan. The equipment really belongs to JPMorgan, not the State. It is in the State's contract with JPMorgan to lease equipment from them until the contract expires on March 31, 2016. What happens if JPMorgan (or other EBT vendors) refuses to remove the lease equipment as this could cause a monetary loss to JPMorgan?

Answer: To FNS' knowledge, no EBT processor is refusing to remove equipment from non-exempt retailers. EBT processors, like States, are bound by the requirements of the Agricultural Act of 2014 and must comply. As noted elsewhere, FNS expects that states and their processors may need to revisit the terms of their current contract to eliminate costs for EBT equipment, supplies and services for non-exempt retailers that are no longer being incurred, regardless of the expiration date of the current contract.