



United States Department of Agriculture
Office of Inspector General





FNS: Controls for Authorizing Supplemental Nutrition Assistance Program (SNAP) Retailers

Audit Report 27601-0001-31

What Were OIG's Objectives

To assess (1) FNS' controls over the retailer authorization process; (2) findings reported by Scripps Howard News Service of permanently disqualified owners participating in SNAP; and (3) FNS' recent actions to strengthen its processes.

What OIG Reviewed

In fiscal year 2012, FNS distributed over \$75 billion in SNAP benefits to low-income households and approved 246,565 retailer locations to participate in SNAP. FNS has seen a 41 percent increase in retail authorization over the last 5 fiscal years.

What OIG Recommends

FNS should comprehensively review its policies and procedures, seek legislative change to retain a portion of retailer penalties, require background checks for retailers, strengthen internal guidance, make improvements to its automated retailer data system, create and strengthen safeguards for high-risk stores, and require more supervisory reviews. FNS should also review the owners we identified to determine if they need to be penalized or disqualified from SNAP.

In light of news articles on SNAP trafficking, OIG audited the controls FNS uses for authorizing, reauthorizing, and disqualifying retailers that participate in SNAP.

What OIG Found

The Office of Inspector General (OIG) found that the Food and Nutrition Service (FNS) does not have clear procedures and guidance to carry out key oversight and enforcement activities to address SNAP retailer fraud, or adequate authority to prevent multiple instances of fraud—either by a particular owner or within a particular location. In addition, FNS regional offices put their limited resources towards other activities, such as retailer authorization, rather than assessing and enforcing retailer penalties. These issues occurred because FNS has not yet comprehensively updated its regulations and guidance to reflect the changed fraud risks that accompanied the transition from a stamp-based benefit system to the Electronic Benefit Transfer system. This has led to a retailer authorization process without clear roles and responsibilities for different FNS divisions, inadequate supervisory reviews, and fragmented access to important documents. Finally, FNS does not require retailers to undergo self-initiated criminal background checks. Although FNS has recently taken several steps to strengthen oversight—such as creating new policy for high-risk retailers and increasing denial rates for business integrity issues—without a proper authorization framework, we found that problems often went undetected or unaddressed.

As a result, the integrity of SNAP is at risk because FNS does not consistently provide deterrents for trafficking. From a sample of 316 locations, we found that FNS did not properly determine potentially \$6.7 million in penalties, and authorized 51 ineligible store owners, who redeemed over \$5.3 million in benefits since 2006. In addition, we identified 586 owners allowed to continue participating in SNAP at other locations after being permanently disqualified, and 90 retail locations that had two or more firms permanently disqualified. OIG accepted management decision on 12 of the 20 recommendations; however, further action from the agency is needed before management decision can be reached for the other recommendations.



United States Department of Agriculture
Office of Inspector General
Washington, D.C. 20250



DATE: July 31, 2013

AUDIT
NUMBER: 27601-0001-31

TO: Audrey Rowe
Administrator
Food and Nutrition Service

ATTN: Mark Porter
Director
Office of Internal Controls, Audits and Investigations

FROM: Gil H. Harden
Assistant Inspector General for Audit

SUBJECT: FNS: Controls for Authorizing Supplemental Nutrition Assistance Program
Retailers

This report presents the results of the subject audit. Your written response to the official draft, dated July 16, 2013, is included in its entirety at the end of this report. Excerpts from your response and the Office of Inspector General's (OIG) position are incorporated into the relevant Finding and Recommendation sections of the report. Based on your written response, we are able to accept management decision on Recommendations 1, 2, 3, 4, 8, 12, 13, 14, 15, 18, 19, and 20. However, we are unable to accept management decision on Recommendations 5, 6, 7, 9, 10, 11, 16, and 17. Documentation or action needed to reach management decision for these recommendations are described under the relevant OIG Position sections.

Please follow your internal agency procedures in forwarding final action correspondence to the Office of the Chief Financial Officer. In accordance with Departmental Regulation 1720-1, please furnish a reply within 60 days describing the corrective actions taken or planned, and timeframes for implementing the recommendations for which management decisions have not been reached. Please note that the regulation requires management decision to be reached on all recommendations within 6 months from report issuance, and final action to be taken within 1 year of each management decision to prevent being listed in the Department's annual Agency Financial Report. However, we agreed to extend final action for Recommendations 3, 8, and 20 until September 30, 2014, and December 31, 2015, for Recommendation 12.

We appreciate the courtesies and cooperation extended to us by members of your staff during our audit fieldwork and subsequent discussions. This report contains publically available information and will be posted in its entirety to our website (<http://www.usda.gov/oig>) in the near future.

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Background and Objectives

Background

The Food and Nutrition Service (FNS) administers the Supplemental Nutrition Assistance Program (SNAP) to provide improved levels of nutrition to low-income households. Eligible households can use their benefits to purchase food from retail food stores that have been approved to participate in SNAP. In fiscal year (FY) 2012, FNS provided SNAP benefits in excess of \$75 billion to over 46 million people, with over 246,000 participating retailers.

To be authorized to participate in SNAP, retailers must apply to FNS, and be approved, before they can accept SNAP benefits through Electronic Benefits Transfer (EBT). A retailer seeking to be authorized must submit documentation regarding the nature and extent of its food business, as well as additional owner and business documentation.¹ FNS reauthorizes retailers at least once every 5 years, and in January 2012, FNS issued a policy requiring high-risk retailers to be reauthorized annually, effective beginning in FY 2013. Retailers who abuse SNAP by trafficking or other fraud may be disqualified from the program temporarily or permanently, or may receive only a civil money penalty, depending on the circumstances.² The Store Tracking and Redemption System (STARS) supports FNS' management of retailer authorization, withdrawals, disqualifications, and tracking. STARS maintains extensive data on all retailers that apply for, and participate in, the SNAP program. The system is also used for the monitoring of benefit redemptions, reconciliation with EBT processors, and compliance, including retailer investigations, and the development of cases brought against retailers found to be violating SNAP regulations.

Permanent disqualification is reserved for the most serious cases, such as trafficking, and stands as the maximum disqualification period permitted by the Act and FNS program regulations.³ A firm can be disqualified permanently if personnel of the firm—such as a clerk, other employee, or management and owners—commit a flagrant violation.⁴ When a retail location is serving a disqualification period and the owner sells or transfers the store prior to the completion of the disqualification period, or before paying its civil money penalties in full, FNS is required to impose a transfer-of ownership civil money penalty.

¹ Authorized retailers must continuously sell a variety of qualifying foods from four staple food categories or receive at least 50 percent of their gross sales from a variety of qualifying staple food items.

² FNS may impose a trafficking penalty in lieu of a permanent disqualification if the retail location meets specific eligibility criteria. A hardship penalty may also be imposed in lieu of disqualification if FNS determines that removing the retail location from SNAP would cause a hardship, rather than just an inconvenience, to recipients that normally frequent the location.

³ Public Law 110-234, Title IV, Section 4001, *Food and Nutrition Act of 2008*.

⁴ FNS deems flagrant violations to be trafficking in SNAP benefits for cash; trafficking in firearms, ammunition, explosives, or controlled substances; or violations which warrant a disqualification and the firm has previously been sanctioned twice.

Retail store owners permanently disqualified from SNAP due to trafficking sometimes attempt to circumvent the disqualification by establishing "straw ownerships."⁵ This often involves transferring or selling the firm to a spouse or relative. FNS regulations prohibit this practice, and also prohibit authorization of a new owner who was part of the disqualified firm during the time the violations occurred.

FNS also uses an Anti-Fraud Locator using EBT Retailer Transactions Database (ALERT) to provide Watch Lists, which detail possible retailer fraud activities, to regional and field offices. Field offices are responsible for monitoring the retailers, imposing disqualifications on retailers found violating program rules, and ensuring disqualified retailers do not continue to participate in SNAP. When a SNAP case is extremely egregious, FNS will refer it to an investigative branch, so that a formal investigation can be conducted.⁶

Scripps Howard News Service (Scripps Howard) is a national investigative news service. In February 2012, Scripps Howard reported that retailers permanently disqualified from SNAP due to trafficking were still allowed to redeem SNAP benefits after the disqualification. In March 2012, a congressional hearing was held by the U.S. House of Representatives Committee on Oversight and Government Reform to assess the Department of Agriculture's (USDA) oversight of SNAP retailers and determine the validity of the claim by the news service. Following the testimony, the Office of Inspector General (OIG) undertook this audit.

We performed an evaluation of the information disclosed by Scripps Howard, including FNS' review of the results. FNS provided OIG a list of 36 retailers that Scripps Howard reported as being permanently disqualified, but still listed as currently authorized. FNS researched the claim to determine if it was valid. FNS conducted an extensive review of the retailers and determined that 29 of the 36 retailers were not associated with the previous permanently disqualified owner. FNS found that six of the retailers circumvented the permanent disqualification through straw owners, and one case was referred to OIG for investigation.

After reviewing the retailers identified by Scripps Howard, OIG agreed with FNS' determination for 32 of the 35 retailers.⁷ However, we determined that two retailers were cleared by FNS in error. Specifically, one retail location appeared to have the previous permanently disqualified owner's lease still in effect, because the file lacked documentation to show a transfer of ownership. The second retail location had a currently authorized owner who had been part of the management group of the previous permanently disqualified ownership. For the third location, FNS officials were unable to locate the file; therefore, we could not evaluate FNS' determination.

FNS designates stores as high-risk for a variety of reasons, including if (1) there are any previous permanent disqualifications at that location, or (2) the store's owner has been permanently

⁵ For the purposes of this report, OIG uses this term as it is defined in an online legal dictionary to encompass the various methods by which a person receives the title to a property or a business interest for the sole purpose of concealing the true owner.

⁶ The investigative entities include the FNS Retailer Investigative Branch, State Law Enforcement Bureaus, and OIG Office of Investigations.

⁷ We did not review the one retailer under investigation.

disqualified at another location. In January 2012, FNS implemented new high-risk procedures that required staff to obtain additional documentation and conduct a more detailed review to identify associations with previously disqualified owners. For example, FNS is required to obtain and review all applicable business licenses, bills of sale, store leases, and property deeds. In addition, FNS staff must conduct a System for Award Management⁸ search, and contact outside agencies that interact with retailers to gain more information on the high-risk location. For instance, an FNS authorization staffer should contact a State liquor licensing agency to gain more information about a retailer.

OIG issued an audit report on FNS' retailer authorization processes in 2008.⁹ FNS and OIG reached management decision on the two recommendations, but disagreed on the issue of requiring criminal background checks for SNAP retailer applicants. We recognize that FNS does not have the legal authority to perform National Crime Information Center (NCIC) background checks; instead, we agree with FNS that it can legally require retailers to obtain and provide their own NCIC record as part of the application process.

Objectives

The overall objectives were to assess (1) FNS' controls over the retailer authorization process to participate in the Supplemental Nutrition Assistance Program (SNAP), including the initial authorization, periodic reauthorization, and disqualification processes; (2) the findings reported by Scripps Howard News Service; and (3) FNS' recent actions taken, based on previous audit recommendations and recent news articles, to strengthen its processes to prevent the authorization of previously disqualified owners from participating in SNAP.

⁸ This is a General Services Administration system, formerly known as Excluded Parties List System.

⁹ *Food Stamp Program Retailer Authorization and Store Visits*, 27601-15-At, September 26, 2008.

Section 1: SNAP Retailer Guidance

Finding 1: FNS Needs To Update and Clarify Its Guidance and Procedures

FNS does not have clear procedures and guidance to carry out key oversight and enforcement activities related to retailer fraud, or adequate authority to prevent multiple instances of fraud, either by a particular owner or at a particular location. In addition, we found that some FNS regional offices made the decision to put their limited resources towards activities other than assessing and enforcing retailer penalties. These issues occurred for several reasons. First, FNS did not comprehensively update its regulations and guidance to reflect the changing circumstances of retailer fraud investigations and enforcement actions when the SNAP program transitioned from stamp-based benefits to the EBT system. Also, FNS does not require retailers to undergo criminal background checks before being allowed to participate in SNAP. Finally, with all retailer penalties reverting to Treasury, rather than supplementing FNS' current funding sources, providing adequate resources for such compliance activities continues to be a challenge. As a result, the integrity of SNAP is at risk because FNS does not provide sufficient deterrents to trafficking. We found that FNS did not properly evaluate and impose potentially \$6.7 million of transfer penalties on permanently disqualified owners (Finding 5), and authorized 51 ineligible store owners who circumvented permanent disqualification and redeemed over \$5.3 million in SNAP benefits (Finding 4). Also, we identified 586 owners who were allowed to continue participating in SNAP at other locations after being permanently disqualified (Finding 3), and 90 retail locations that had two or more owners' firms permanently disqualified (Finding 2).¹⁰ We found the overwhelming majority of permanent disqualifications are due to trafficking.

Office of Management and Budget (OMB) Circular A-123 states that management must clearly define areas of authority and responsibility.¹¹ The Clinger-Cohen Act of 1996 also requires agencies to revise administrative processes, as appropriate, "before making significant investments in information technology."¹² Most of FNS Handbook 318, hereafter referred to as the "handbook," was written at a time when benefits were redeemed through food stamp coupons, instead of through EBT; a shift that fundamentally changed the nature of SNAP trafficking.¹³ EBT was established in 1990 as an alternative way to issue benefits, and FNS required all States to have the EBT system available by October 1, 2002. As of June 2008, EBT became the sole method for redeeming benefits, and the name of the program was officially changed to SNAP from the Food Stamp Program.¹⁴ FNS updated portions of the handbook in 2004, and issued new Standard Operating Procedures (SOPs) in 2009, but neither constituted a comprehensive update of the procedures.¹⁵

¹⁰ Several owners and locations we identified appear in multiple findings.

¹¹ OMB Circular A-123, *Management's Responsibility for Internal Control*, Section II, Revised December 21, 2004.

¹² Public Law 104-106, Title LI, Section 5113, *National Defense Authorization Act for Fiscal Year 1996*.

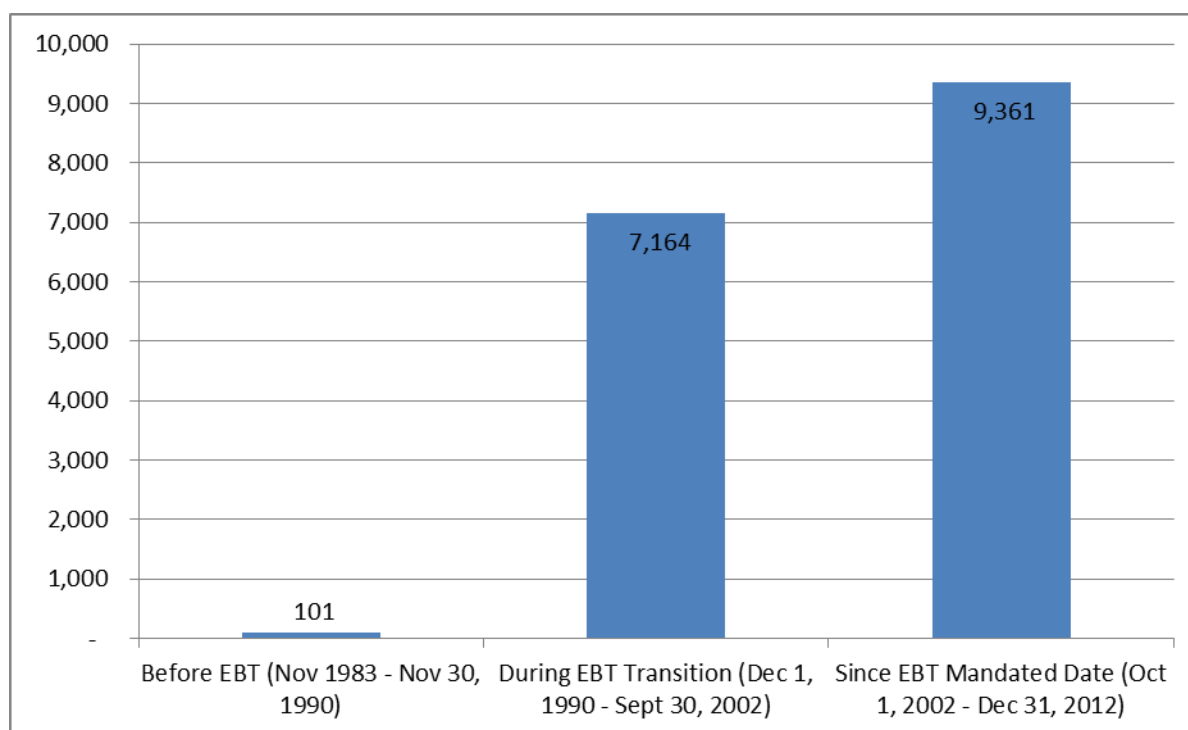
¹³ FNS Handbook 318 provides policy on how FNS shall administer activities related to: (a) the authorization of retail food stores to accept food stamp benefits; (b) the supervision of authorized firms; and, (c) the imposition of sanctions and claims against firms found to be violating the rules and regulations.

¹⁴ Public Law 110-234, Title IV, Section 4001, *Food, Conservation and Energy Act of 2008*.

¹⁵ FNS updated 6 out of a total of 23 chapters in the handbook.

Previously, smaller numbers of SNAP retailers became permanently disqualified because the process required a full, physical investigation of the wrongdoing. With current methods of EBT enforcement, retailers can be permanently disqualified by exhibiting certain trends known to correlate to trafficking. These are referred to as "paper cases" because they do not involve an onsite investigation of these stores, but rely on data analysis techniques done remotely. FNS was required to establish regulations to use paper cases in August 1996.¹⁶ FNS issued policy memoranda regarding administrative action against retailers based on transaction data in January and November of 1995. The use of EBT paper cases caused the number of permanently disqualified retailers to increase.

Total permanent disqualifications by time period



This chart shows the increase in permanent disqualifications after the introduction of EBT cards. While there were only 101 permanent disqualifications nationwide between November 1983 and December 1990, this number increased to 9,361 between October 2002 and December 2012.

In addition, the overall number of retailers participating in the program has increased dramatically in recent years. In 2008, over 175,000 retailers participated in SNAP, while 2012 data shows an increase in retailer participation to over 246,000.

FNS reorganized its retailer management functions in January 2013, to streamline and enhance authorization, reauthorization, and compliance activities by incorporating technology advancements, improving communication, and integrating operations into a single national unit. FNS' efforts include issuing new SOPs, shifting employee duties, and proposing

¹⁶ Public Law 104-193, Title VIII, Section 841, *Personal Responsibility and Work Opportunity Reconciliation Act*.

substantially increased penalties for many kinds of violations. We view these efforts as a positive step in strengthening enforcement, and believe FNS must also take a comprehensive look at its regulations and guidance related to retailer authorization and fraud to ensure that these are clear, effective, and updated.

Regulations and Guidance

Though FNS has recently strengthened its authorization process for high-risk stores (see Finding 6), FNS' guidance reviewed during the audit does not delineate the roles and responsibilities of its regional retailer authorization and compliance divisions. Because their roles in the process and the coordination of actions are not defined, we found these divisions often did not complete required steps for detecting issues with retailers that had been permanently disqualified and that subsequently sold or transferred their businesses.

As we describe in Findings 4 and 5, FNS personnel did not properly assess whether (1) a legitimate transfer of business occurred after the previous owner had been permanently disqualified, and (2) a transfer penalty for the previous permanently disqualified owner was warranted. Transfer penalties can only be applied if the transfer is legitimate—if not, the new store owner should not be authorized to participate in the program in the first place, as they are closely associated with the previous permanently disqualified owner (such as being a spouse or employee).¹⁷ Such transfers are referred to as "straw ownerships," in that they are a stand in, or "straw man," for another person. If a new owner does not provide sufficient documentation to demonstrate that the transfer is legitimate, FNS staff should not authorize his or her SNAP application.¹⁸

In 2004, sections of the handbook were updated to address issuing transfer of ownership penalties. However, FNS guidance is contradictory or unclear on the roles of the authorization and compliance staff. Chapter 10 of the handbook states that FNS staff are responsible for evaluating a transfer or sale as legitimate and, if necessary, assessing a transfer of ownership penalty. However, Chapter 10 does not specify which regional division performs these actions. Unfortunately, two SOPs issued in 2009—one used by compliance staff, the other used by authorization staff—appear to contradict each other.¹⁹

- SOP 1 for authorization staff states that it is their responsibility to (1) obtain proof that the transfer is legitimate and (2) if applicable, resolve an automatic flag in FNS' retailer information system for the location by requesting additional documents from the retailer. This indicates that authorization staffers are responsible for determining whether a sale is legitimate. The SOP also mentions the transfer of ownership penalty, but does not make clear when, how, and who should pursue the penalty.
- SOP 4-5 for compliance staff states that they "must establish that a legitimate sale or transfer has taken place..." by examining documents submitted by the buyer, seller,

¹⁷ FNS Handbook 318, Chapter 10.

¹⁸ FNS Handbook 318, Chapter 3.

¹⁹ Authorization SOP 1, revised December 2010 and Compliance SOP 4-5, revised May 2011.

and applicable third parties—implying that compliance staffers are responsible for determining whether a sale is legitimate. It then explains that if the transfer is not legitimate, "any request for authorization on the part of the 'new' owner will be denied." The SOP does not specify who is responsible for actually carrying out the denial.

The handbook also contains confusing information regarding when a transfer should be considered ineligible. Section 1041 states that a sale or transfer for little or no money is not necessarily illegal or automatic grounds for denial, except when occurring between a close acquaintance, or to relatives other than a spouse or close relative. Section 1041 says that these terms are defined in Chapter 6, A7 (a) and (b). However, no such Chapter exists in the current version of the handbook.

This overall lack of clarity carried over into the daily actions of the authorization and compliance divisions, whom we found would frequently not assess transfer penalties, not gather sufficient documentation to determine that transfers were legitimate, and approve non-legitimate transfers. When we discussed why oversights occurred, FNS staff stated they were not always aware of the requirement or that it was the other division's job to carry out the action. Also, some FNS staff did not conduct sufficient reviews of documents already available—some of which were at separate physical locations, and often in the possession of two different divisions.

We note that because the EBT system has given rise to more sophisticated methods for identifying trafficking than were available under stamp benefits, the frequency of permanent disqualification has increased. FNS regulations need to change to reflect some situations stemming from this new reality. For instance, FNS' current regulations allow for a retail location to be authorized even if multiple previous owners have been permanently disqualified. The topic is not addressed in any SOPs or guidance. Since locations with multiple permanent disqualifications continue to be authorized under new ownership, this practice appears to enable repeat trafficking among the SNAP participants that the store serves (see Finding 2).²⁰

Also at issue are multi-unit owners being permanently disqualified at one location, who are still allowed to stay in the program and receive new authorizations for other owned locations to participate in SNAP. Handbook Section 1340 states that if an owner with a permanently disqualified location "was not involved in any of the violations and owned more than one firm (location) prior to the investigation of the initial location, the application should be accepted and processed without prejudice."

This flexibility was necessary because the nature of stamp benefits allowed rogue employees to potentially commit trafficking without the owner's knowledge. Therefore, regulations gave owners that were not involved in the violations, and owned more than one location, the chance to get other new locations authorized, as well as the ability to keep existing owned locations participating in SNAP. While this approach was fair during the era of stamp benefits, the EBT

²⁰ FNS permanently disqualified a total of 101 retailers before implementation of EBT (November 1983 through November 1990), and did not keep data on how many, or if, these disqualifications involved the same retail location. During the period of our review, January 2006 through June 2011, we identified 129 locations that had multiple permanent disqualifications, out of a total of 4,599 permanent disqualifications during this time.

system requires that all revenues from SNAP be directly deposited into the owner's bank account. Thus, owners with employees caught trafficking are now more likely to be involved in or knowledgeable about the fraud themselves. An SOP, updated in May 2011, reflects this, stating that, "it is generally assumed that if EBT settlements are made to the owner's account then the owner has benefited."²¹

When we discussed this issue with FNS, officials used Section 1340 to explain the current practice of allowing permanently disqualified owners in one location to continue participating in the program (for more details, see Finding 3). However, OIG notes that the handbook is vague and sometimes contradicts itself on this topic, as do some SOPs.

- Handbook Section 310 states that an owner can be denied authorization if they had "a previous denial of authorization on grounds which still warrant denial," and if the owner has a previous disqualification still in effect.
- SOP 1 states that it is possible for FNS to remove locations from SNAP if it determines that the owner "is part of a multi-unit firm and there is evidence of violations at other firms."

Handbook Section 320 brings up the issue of business integrity, stating that the personal involvement of the owner of the firm in serious violations is sufficient basis for denying other locations under the same ownership, based on the lack of business integrity. This section also gives FNS the ability to weigh multiple violations at multiple locations as a factor, even when the ownership is not directly involved in the violations, again on the basis of business integrity.

Background Checks and Resources

FNS' regulations clearly state that FNS shall deny the authorization of a firm if its business integrity and reputation is called into question by crimes such as embezzlement, theft, forgery, and falsification or destruction of records.²² However, regulations do not currently permit FNS to pursue and obtain a National Crime Information Center (NCIC) background check for store owners applying to redeem SNAP benefits, and do not require the applicant to obtain its own NCIC criminal background check.²³

NCIC background checks are the most comprehensive checks of all the criminal background checks available. Information contained in NCIC databases is provided by the Federal Bureau of Investigations; Federal, State, local and foreign criminal justice agencies; and authorized courts. NCIC criminal history data are provided to non-criminal justice State and local agencies for use in connection with licensing, employment, or other uses, but only where such

²¹ Compliance SOP 4-5, revised May 2011.

²² 7 Code of Federal Regulations (CFR) 278.1(b)(3). Other offenses include making false statements, bribery, receiving stolen property, making false claims, or obstruction of justice; and violating Federal, State, and/or local consumer protection laws or other laws relating to alcohol, tobacco, firearms, controlled substances, and/or gaming licenses.

²³ NCIC is the United States' central database for tracking crime-related information, providing information flow between numerous law enforcement agencies.

dissemination is authorized by Federal or State statutes and approved by the Attorney General of the United States. For example, many State alcohol and tobacco bureaus and public school districts require NCIC background checks before licensing or employment.

While current regulations do not prohibit FNS from requiring an applicant to provide a self-initiated background check, FNS has stated that such a requirement would be burdensome to applicants. FNS currently requires an applicant owner to self-certify by answering an application question on whether any individual involved in the ownership or management of the retail store has been convicted of any crime. Applicants must provide an explanation if they disclose a criminal record.

We noted that self-certification is not always honestly done, and there is no check in place to determine if the declaration is correct. For instance, from a limited review of 212 owners from our sampled locations, we identified 3 owners that did not report prior criminal convictions that would have made them ineligible for SNAP.²⁴ These three owners were subsequently permanently disqualified for trafficking.

In a 2008 audit, OIG recommended that FNS determine the feasibility of requiring retailers to obtain their own NCIC background information as part of the application process.²⁵ FNS responded by stating that requiring background checks from applicants could be overly burdensome and be seen as an invasion of privacy. We believe that FNS' concern in this case is unfounded. Several other Department of Agriculture programs place additional requirements on applicants that carry higher risks. For instance, the Risk Management Agency requires producers with high-risk land to pay higher premiums as a condition for receiving Federal crop insurance. Background checks are also commonly required by State agencies that regulate the sale of alcohol or lottery tickets at retail stores. Therefore, we contend that requiring background checks of retailers is neither an unusual nor unprecedented requirement. NCIC background checks can be facilitated through most local law enforcement agencies, and require fingerprinting by the agency in order to run the check. The total cost for the fingerprinting and background check report service in ten States²⁶ ranges from \$26 to nearly \$80 and takes approximately 3 to 21 business days to complete.

While such a requirement would not be overly burdensome to retailer applicants, we acknowledge that FNS may have concerns about the increased time and work it may add to the authorization process. We believe that background checks would not be burdensome on FNS staff if applicants are required to obtain a background check on their own and provide it to FNS as part of their application materials. The applicant can request to have the results of the NCIC background check provided directly to FNS.

²⁴ Our review to identify criminal histories of store owners was limited to Federal court records available through the Public Access to Court Electronic Records (PACER). Because we were unable to use NCIC databases for our review, we believe the total number of retailers with criminal histories is understated because State and local criminal records are not part of PACER.

²⁵ *Food Stamp Program Retailer Authorization and Store Visits*, 27601-15-At, September 26, 2008.

²⁶ NCIC background check costs were obtained for Alabama, California, Florida, Kansas, Minnesota, Missouri, New Mexico, New York, and Washington from the States' applicable criminal justice agencies websites.

FNS concedes that there is no provision in the Food and Nutrition Act of 2008 that prohibits it from requiring retailers to obtain their own NCIC record. However, FNS contends that to require retailers to obtain their record, regulations must be changed. Thus, FNS should change its regulations to require new applicants and retailers seeking re-authorization to procure and submit a background check as part of normal application procedures. FNS could use such information to exclude known criminals with questionable business integrity, as required by FNS regulations.

Requiring background checks is a specific step to strengthen FNS enforcement. Overall, FNS needs resources to effectively implement new policies and procedures to mitigate trafficking. For FY 2012, FNS' total cost for all of its programs stood at \$106.7 billion—a 207 percent increase from FY 2005.²⁷ FNS staff positions are funded primarily out of the Nutrition Programs Administration account; this account has represented approximately one-third of 1 percent of the total FNS budget. The agency has responded to limitations on its administrative resources and staffing with actions such as making use of new technologies and adopting a more focused, risk based approach to program oversight. However, in its FY 2012 financial report, FNS raised concerns about its ability to execute internal controls already put in place, or to develop additional controls that may be needed in the future.

Since FNS retailer penalties currently revert to the U.S. Treasury and do not benefit FNS directly, we believe that FNS should propose that the Secretary request a legislative change allowing FNS to keep a portion of the penalties it collects from retailers as a supplement to its annual appropriations. FNS could then put the resulting funds towards enhancing its enforcement and oversight capabilities. Such a measure could also provide FNS with increased resources to consistently and accurately apply penalties to retailers (See Finding 5).

In conclusion, FNS' overlapping and outdated guidance must be addressed so that FNS employees can clearly understand their responsibilities. FNS must also have clear and effective enforcement actions available to aid staff in preventing reoccurring trafficking problems. Finally, increased resources for FNS enforcement activities and greater requirements placed on high-risk owners will give FNS the tools it needs to more effectively address fraud.

Recommendation 1

Review the handbook, SOPs, and regulations to ensure that they do not contradict one another and provide a practical framework for authorization and enforcement actions using the EBT system.

Agency Response

FNS concurs with the recommendation and has completed corrective actions. FNS reviewed its retailer management policy handbook and standard operating procedures prior to completion of

²⁷ *Food and Nutrition Service Financial Statements for Fiscal Years 2012 and 2011*, 27401-0002-21, November 8, 2012, and *Food, Nutrition, and Consumer Services' Financial Statements for Fiscal Year 2005*, 27401-1-FM, November 8, 2005.

this OIG audit, and created National SOPs and policy memos. FNS has systemically identified operational inconsistencies and developed a process to eliminate their reoccurrence. FNS has also better identified roles and responsibilities, instituted random supervisory reviews, and held weekly supervisor calls with staff to ensure policies are followed consistently. FNS is also working to develop enhanced reviews of internal controls processes and training needs. The retailer management policy handbook is being retired by September 30, 2013 in favor of issue-specific policy memorandums. At the same time, FNS is forming a quality assurance branch to objectively identify and address retailer management issues.

In subsequent correspondence, FNS stated that actions required for this recommendation were completed February 1, 2013.

OIG Position

We accept FNS' management decision.

Recommendation 2

Review SOPs to ensure they provide clear instructions on division of responsibilities and the steps that should be taken to review, authorize, deny, penalize, and collect penalties from an owner.

Agency Response

FNS agrees with this recommendation, and had actions on this issue underway prior to this audit. FNS completed National SOPs on February 1, 2013. FNS has also completed extensive staff training, as detailed in the response to Recommendation 1. An internal control oversight component was established on May 1, 2013, and a quality assurance function is being integrated into retailer management. FNS is also in the midst of a Lean Six Sigma effort to improve the collection of established penalties and is considering many options such as using data brokers, a third party collection agent at the Department of Treasury, or the Treasury Offset Program. FNS will complete this effort by September 30, 2014, and implement recommendations stemming from the effort in fiscal year 2014.

In subsequent correspondence, FNS stated that actions required for this recommendation were completed February 1, 2013.

OIG Position

We accept FNS' management decision.

Recommendation 3

Update the regulations to require any new applicant and current retailers being reauthorized to provide FNS with a self-initiated NCIC background check prior to authorization or reauthorization.

Agency Response

FNS agrees to initiate a proposed rule that would require any new, high-risk applicant, and current high-risk retailers being reauthorized who have not already completed such certification, to provide FNS with a self-initiated NCIC background check prior to authorization or reauthorization. The required work plan to initiate this proposed rule will be completed in fiscal year 2014.

In subsequent correspondence, FNS stated that the work plan to initiate the proposed rule will be completed by September 30, 2014.

OIG Position

We accept FNS' management decision.

Recommendation 4

Establish SOPs and/or update the handbook to address how criminal background checks will be used and reviewed by personnel.

Agency Response

FNS will establish appropriate policy and standard operating procedures pending a final regulation stemming from Recommendation 3. These will be established within one year of the effective date of the final rule.

OIG Position

We accept FNS' management decision.

Recommendation 5

Propose that the Secretary seek legislative change to allow FNS to retain a portion of funds collected from retailer penalties as a supplement to its annual appropriations that can be used to enhance its abilities to oversee retailer authorization, monitoring, and enforcement actions, including assessing warranted penalties.

Agency Response

FNS agrees with the goal of enhancing program integrity. A decision to pursue the ability to retain a portion of funds collected from retailer penalties as a supplement to annual appropriations however, requires considerable research and deliberation. FNS agrees to work with the Office of Management and Budget to develop options for additional resources to pursue program compliance. The timeframe is contingent upon the budget process.

OIG Position

We are unable to agree with FNS' proposed corrective action for this recommendation. In order to reach management decision, FNS needs to provide a position paper or decision memorandum to the Secretary outlining its goal of enhancing program integrity by retaining a portion of funds collected from retailer penalties could be used to enhance its retailer authorization, monitoring, and enforcement actions.

Finding 2: A Single Retail Store Location Can Be Permanently Disqualified Multiple Times for Trafficking

Our review of 316 retail store locations identified 90 locations that had two or more firms permanently disqualified.²⁸ FNS had subsequently authorized all of these locations under new ownership. This occurred because FNS does not have the authority to permanently disqualify a troubled store location that has a repeat history of trafficking violations. The permanent disqualification only applies to the owner at each subject location. At the same time, FNS does not have the legal authority to implement additional safeguards for high-risk locations associated with multiple permanent disqualifications, which could deter future trafficking. We note that many of the 90 locations we identified appear in our other findings, such as circumventing permanent disqualification (Finding 4). Since high-risk retail store locations with multiple permanent disqualifications continue to be authorized under new ownership, this practice appears to enable trafficking among the SNAP participants that the store serves.

As we described in Finding 1, FNS regulations do not address the issue of a single location with multiple permanent disqualifications under different owners. FNS is allowed to disqualify a firm²⁹ if personnel of the firm commit a flagrant violation, but not the physical location.³⁰ Further, according to an Office of the General Counsel opinion, FNS is not legally allowed to permanently disqualify a physical location. However, if an owner has been previously sanctioned for a violation that was not serious enough to warrant a permanent disqualification, such as selling ineligible items for SNAP benefits, then the owner must present a collateral bond or letter of credit as a condition of future authorization.³¹ Thus, while current store owners with previous SNAP violations are subject to additional safeguards, the Food and Nutrition Act of 2008 prohibits FNS from requiring store owners to post a bond or a letter of credit for an initial authorization at a high-risk location.

Our review found some locations that had several disqualifications, many of which were in the last 5 years. For instance, a store in Camden, New Jersey, had five owners that were disqualified, starting in July 1996. Three were permanently disqualified in February 2007, November 2009, and April 2011. We found that one of the five owners was a case of circumvention, which is identified in Finding 4.³² Another store location, in Patterson, New Jersey, had four permanently disqualified owners in the last 5 years.³³ Again, one of the four owners was a case of circumvention we identified. Another location in Bronx, New York, was initially authorized in August 2000 and the owner was permanently disqualified in May 2002. There have been four additional owners permanently disqualified at this location,

²⁸ Of the 90 stores, 53 disqualifications occurred in the last 5 years.

²⁹ FNS Handbook 318, Section 1020 defines a firm as a “commercial business entity or enterprise of one or more persons.”

³⁰ FNS Handbook 318, Section 1022A – Permanent Disqualification.

³¹ 7 CFR 278.1 (b) 4. The collateral bond must have a face value in the amount of \$1,000 or 10 percent of the average monthly redemptions for the most immediate 12 months that the firm participated, whichever amount is greater.

³² FNS does not define circumvention, but infers that it is an attempt to avoid a period of disqualification by selling the firm to a spouse or relative or former manager or employee that was part of the operation during the time the violations occurred.

³³ Starting in November 2007.

three of which occurred since 2007. One of the owners also owned another authorized store when he was disqualified, yet was allowed to continue participating in SNAP at the other store. We identified this case in Finding 3.

There are no additional safeguards to prevent these locations from being authorized under new ownership, although FNS has clear evidence that fraud is a continuing problem in the locations. If a new owner is required to have a vested interest in SNAP by posting a collateral bond or letter of credit, this would help deter those who may be trying to purchase a store, not as a viable business, but as an easy location for committing SNAP fraud. We believe that the amount of the bonds or letters of credit should be proportionate to the risks the location poses, such as being based on the number of previous violations at each location. For instance, FNS could base the amount at half of the proposed statutory limit for trafficking, which is \$100,000. In conclusion, the amount should be sufficient to serve as a viable deterrent to potential traffickers.

Recommendation 6

Propose that the Secretary seek legislative changes that would allow FNS the authority to require any applicant of a location that has been previously permanently disqualified for trafficking to have a vested interest, such as posting a collateral bond or letter of credit before authorization.

Agency Response

FNS supports this recommendation and will pursue legislative change that would allow FNS the authority to require any applicant of a location that has been previously permanently disqualified for trafficking to have a vested interest, such as posting a collateral bond or letter of credit before authorization. FNS will consider the best option for determining an appropriate, scalable, bond or letter of credit amount. The timeframe is contingent on opportunities to pursue statutory change (i.e. via the Farm Bill).

OIG Position

We are unable to agree with FNS' proposed corrective action for this recommendation because of the contingent timeframe. However, we recognize the burdensome and time-consuming nature of obtaining legislative changes. Therefore, in order to reach management decision, FNS needs to provide a position paper or decision memorandum to the Secretary seeking legislative changes that would allow FNS the authority to require any applicant of a location that has been previously permanently disqualified for trafficking to have a vested interest, such as posting a collateral bond or letter of credit, before authorization.

Recommendation 7

If legislative changes are made, establish collateral bond and letter of credit limits based on the number of previous violations at the location, or a percentage of the proposed statutory limits for trafficking penalties. Until legislative changes are made, strengthen oversight and monitoring of store locations that have been permanently disqualified two or more times for trafficking.

Agency Response

As noted in the Agency's response to Recommendation 6, FNS supports seeking legislative change that would require the new owners of a previously permanently disqualified location to have a vested interest. FNS will consider the best option for determining an appropriate, scalable, bond amount. The timeframe is contingent upon Recommendation 6 above.

However, FNS does not agree with predicated strengthened oversight and monitoring of store locations that have been permanently disqualified two or more times for trafficking on whether Recommendation 6 is legally viable. In fact, FNS has already strengthened oversight and monitoring of such high-risk locations, including additional documentation requirements and increased frequency for reauthorization, and will continue to pursue opportunities for further improvements within existing authorities.

OIG Position

We are unable to agree with FNS' proposed corrective action for this recommendation. In order to reach management decision, FNS needs to provide a position paper or decision memorandum to the Secretary as discussed under Recommendation 6. Also, FNS needs to provide OIG with evidence of its strengthened oversight of store locations that have been permanently disqualified two or more times for trafficking.

Finding 3: FNS Authorizes Permanently Disqualified Retail Store Owners to Participate in SNAP

Out of over 246,000 SNAP-authorized locations nationwide, FNS currently allows 585 multi-unit retail store owners to continue redeeming SNAP benefits at other locations after being permanently disqualified for trafficking in one location.³⁴ This occurred because FNS allows owners of multi-unit firms to be independently sanctioned with permanent disqualifications at each retail location. Also, after an initial permanent disqualification occurs, FNS staff are not required to subject the owners' other locations to increased scrutiny, but may do so at their own discretion.³⁵ While FNS officials said that this policy is in place to protect chain stores whose employees may be committing fraud without knowledge of the management, we found that none of the 586 owners owned a chain store.³⁶ As a result of this policy, we found 39 owners who were identified in FNS' STARS as the actual case violators responsible for their disqualification. The violators redeemed over \$3.8 million in SNAP benefits for FY 2012 at their other SNAP-authorized locations. We also found 66 permanently disqualified owners who were authorized at new locations after their disqualifications. They collectively redeemed over \$11 million in benefits in FY 2012. The remaining 481 owners redeemed over \$50.5 million for FY 2012.^{37,38} We believe that the current practice weakens SNAP fraud deterrence efforts and could allow an owner that has participated in fraud to continue such behavior in other locations.

FNS staff have the ability to withdraw a SNAP authorization if the firm's owner was personally involved in serious violations, based on a lack of business integrity. FNS can also deny any applicant with evidence of violations at other units of multi-unit firms.³⁹ However, the FNS handbook states that an application should be approved if the owner was not involved in any of the violations and owned more than one location prior to the investigation of the initial location.⁴⁰ As we described in Finding 1, this policy was necessary under the stamp benefit system, but the EBT system requires that all SNAP revenue be deposited directly into a designated owner's account. According to FNS, it is generally assumed that if EBT settlements are made to the owner's account, then the owner has benefited.⁴¹

FNS officials believed that this policy protects major grocery stores and other chain stores from permanent disqualification. However, our review found that the 586 owners did not include any of these types of stores. While 18 owners had 5 or more stores authorized, these were convenience stores and not major grocery stores. FNS officials were also concerned that since a majority of permanent disqualifications come from EBT paper cases, identifying an actual case violator is difficult. However, FNS assumes that since SNAP benefits are directly deposited into

³⁴ There were a total 586 permanently disqualified multi-unit owners. One multi-unit owner was permanently disqualified for selling ineligible items.

³⁵ FNS Handbook 318 Section 1022(I)(1).

³⁶ FNS defines a chain store as a major chain supermarket with 11 or more similar stores or a large, non-chain supermarket having \$2 million or more in annual gross sales. The owners in question held several small, independent stores that did not meet these criteria.

³⁷ These annual redemption amounts are for FY 2012 (October 1, 2011 through September 30, 2012).

³⁸ These 481 owners were not case violators and had authorized stores prior to their permanent disqualifications.

³⁹ FNS Handbook Section 410 (A)(4).

⁴⁰ FNS Handbook 318 Section 1340(B)(3).

⁴¹ SOP 4-5, updated in May 2011.

the owner's banking account, the owners are likely to financially benefit from the trafficking, whether they were directly involved or not.

FNS does provide an alternative to permanent disqualification in certain circumstances. When a firm is caught trafficking, it may be allowed to pay a trafficking civil money penalty in lieu of disqualification. The firm must demonstrate four criteria in order to be eligible: have an effective compliance policy, prove that the compliance policy was in place prior to the occurrence of the violations, develop an effective personnel training program, and show that the firm owners or management were not aware of, did not approve of, or did not benefit from the trafficking.⁴² While this provision could provide a reasonable alternative to permanent disqualification for owners of multi-unit firms that are truly unaware of their employees' fraudulent actions, the mention of "benefit" in the criteria poses a problem to its application. Because all SNAP reimbursements are directly deposited into owners' accounts, it would be extremely difficult for owners to produce documentary proof that they did not "benefit" from the trafficking, as their accounts would receive all the proceeds of the trafficking. We believe that, in order to have a viable alternative in place for multi-unit owners who are subject to a permanent disqualification, FNS should issue a definition of "benefit" that would allow for owners to demonstrate that they did not benefit from any trafficking that occurred.

In conclusion, FNS should initiate regulatory changes to ensure permanently disqualified owners are not allowed to reenter the SNAP program at new locations. To address the heightened risk of repeat instances of fraud, these regulatory changes should require FNS to permanently disqualify store owners at all SNAP locations if they do not meet the revised criteria for a civil money penalty in lieu of permanent disqualification.

Recommendation 8

Issue a definition of "benefit" that would allow for owners to demonstrate that they did not benefit from any trafficking that occurred, and are therefore eligible for a civil money penalty in lieu of disqualification.

Agency Response

FNS agrees to initiate a proposed rule that includes a definition of "benefit" that would allow store owners to demonstrate that they did not benefit from trafficking.

In subsequent correspondence, FNS stated that actions required for this recommendation will be completed by September 30, 2014.

OIG Position

We accept FNS' management decision.

⁴² FNS Handbook 318, Section 1080 (D)(3)(a-d).

Recommendation 9

Revise regulations and policy to permanently disqualify retail store owners at all authorized retail locations operated by that owner(s) if the owner(s) does not meet the criteria to receive a trafficking civil money penalty in lieu of permanent disqualification.

Agency Response

FNS is supportive of the goal of this recommendation. With this goal in mind, FNS recommends carrying the premise of Recommendation 6 to Recommendation 9; i.e. FNS agrees to initiate a proposed rule that would require that an owner with multiple locations that has any one of their locations permanently disqualified for trafficking have a vested interest, such as a collateral bond or letter of credit, which would cover all remaining SNAP authorized locations. FNS will consider the best option for determining an appropriate, scalable bond or letter of credit amount. If additional violations occur, the bond or letter of credit would be forfeited. The required work plan to initiate this proposed rule will be completed in fiscal year 2014.

OIG Position

We are unable to agree with FNS' proposed corrective action for this recommendation. We believe that continuing to allow known traffickers to participate in SNAP will undermine program integrity. We do not accept FNS' alternative corrective action to have a vested interest, such as a collateral bond or letter of credit. Specifically, FNS has agreed to change the definition of "benefit" as described in Recommendation 8, and can define "benefit" with its own criteria and evidence requirements.

In order to reach management decision, FNS needs to initiate a proposal to revise its regulations and policies to permanently disqualify retail store owners at all authorized retail locations operated by that owner(s) if the owner(s) does not meet the criteria to receive a trafficking civil money penalty in lieu of permanent disqualification.

Recommendation 10

After regulations are revised, notify the 586 store owners that in the future, any trafficking violation will require the store owner to qualify for and pay an in lieu of permanent disqualification penalty or be subject to permanent disqualification at all store locations currently authorized for that owner.

Agency Response

FNS concurs with the goal of this recommendation. If we are able to achieve the policy changes described in Recommendation 9, the agency agrees to take action consistent with the policy change. Any actions would be taken within one year of the effective date of the final rule. In the interim, and by September 30, 2013, FNS will notify these retailers to ensure they are fully aware of their status and that they are being watched closely as a result of their previous transgressions.

OIG Position

We are unable to agree with FNS' proposed corrective action because it is contingent on Recommendation 9. In addition, FNS disputes the amount of SNAP benefits redeemed by the 586 store owners, as reported in Exhibit A, Summary of Monetary Results. FNS needs to clarify how the \$65.3 million in Exhibit A is incorrect. Exhibit A only states that during the period cited, these retail stores redeemed \$65.3 million in SNAP benefits. If FNS has another redemption amount for those 586 retailers during that period, please provide it.

In order to reach management decision for this recommendation, FNS needs to reconsider its position on Recommendation 9, and provide supporting information regarding any reservations FNS has on how we calculated the amount in Exhibit A.

Recommendation 11

Initiate the regulatory changes necessary to ensure owners that have been permanently disqualified for trafficking are not granted authorization as a SNAP retailer at new locations.

Agency Response

When the owner of a single store is permanently disqualified, subsequent SNAP authorization is not granted at a new location. However, as this relates to the owners of multiple stores that have one or more stores disqualified, FNS concurs with the goal of this recommendation.

FNS recommends that the alternative suggested in recommendation 9 be applied here as well. Statutory change would be required in this instance; i.e. owners of multiple stores that have one or more stores disqualified would be required to have a vested interest, such a bond or letter of credit, which would cover a newly authorized SNAP location that has not been deemed a replacement store for a previously permanently disqualified location. FNS will consider the best option for determining an appropriate, scalable, bond or letter of credit amount. FNS agrees to initiate pursuit of this statutory change. The timeframe is contingent on opportunities to pursue statutory change (i.e. via the Farm Bill).

OIG Position

We are unable to agree with FNS' proposed corrective action for this recommendation. We believe that continuing to allow known traffickers to participate in SNAP will undermine program integrity. Specifically, FNS has agreed to change the definition of "benefit" as described in Recommendation 8, and can define "benefit" with its own criteria and evidence requirements for owners. However, if an owner cannot prove his/her innocence and does not qualify for a trafficking civil money penalty in lieu of permanent disqualification, the owner will—by default—be considered a trafficker. We cannot accept FNS' proposal to allow such an owner to receive new SNAP authorizations for additional stores, even if he/she is required to establish vested interests before receiving the authorization.

In order to reach management decision, FNS needs to initiate a proposal to revise its regulations and policies to permanently disqualify retail store owner(s) from having any new store authorized for SNAP if the owner(s) does not meet the criteria to receive a trafficking civil money penalty in lieu of permanent disqualification.

Section 2: FNS Retailer Authorization and Enforcement

Finding 4: Retailers Circumvented Permanent Disqualification

From our sample of 316 locations, we identified 51 permanently disqualified retail store owners who circumvented their disqualification by transferring ownership of their stores to a spouse, relative, co-habitant, prior employee, or manager. This occurred because FNS did not establish adequate guidance and management controls to ensure that staff reviewed authorization and compliance documentation (see Finding 1). Also, some documentation for the previously disqualified owner is the responsibility of the compliance division, while the authorization division is responsible for documents pertaining to the new owner's application. Since the compliance files are held at various locations, staff have difficulties obtaining the documents needed for a comprehensive review. As a result, we found that the ineligible store owners redeemed over \$5.3 million in SNAP benefits.

FNS can deny an applicant who is attempting to circumvent disqualification by selling the firm to a spouse or relative living with the applicant.⁴³ FNS guidance also permits denial if there is evidence of an attempt to circumvent a period of disqualification, or any other evidence reflecting on the business integrity or reputation of the applicant firm.⁴⁴ FNS' new high-risk procedures call for more documentation to better identify associations with prior owners (see Finding 6). However, these procedures do not require a supervisory review to ensure documents obtained were adequately evaluated by staff prior to authorization.

Of the 51 owners we identified, 25 circumvented disqualification by transferring ownership of the store to a spouse, relative, or co-habitant. We identified co-habitants by comparing addresses on different documents. For example, one permanently disqualified owner in Detroit, Michigan, transferred ownership to his wife, who is currently authorized. FNS staff were aware of this at the time of authorization, yet still authorized the wife because they did not believe it was a case of circumvention. They were unaware that, under FNS regulations, a transfer of ownership to a spouse is deemed to be an attempt to circumvent disqualification.

Of these 25, we found such instances as a permanently disqualified son "gifting" a store to his father, who also served as the manager of the store under the son's ownership.⁴⁵ Another owner in Reading, Pennsylvania, was temporarily disqualified and transferred ownership to his brother. The brother then became permanently disqualified, and transferred ownership back to his previously temporarily disqualified brother, who is now authorized. The second owner had submitted documents at the time of his authorization that explicitly stated he was obtaining the store from his brother. FNS officials admitted that, at the time the retailers were authorized, they were not as vigilant in their review of ownership connections as they are now. Their priority was reviewing store eligibility and food stock, rather than identifying circumvention.

⁴³ FNS Handbook 318 Section 410 (A) 2(b).

⁴⁴ FNS Handbook 318 Section 320 (B).

⁴⁵ FNS staff deemed this a legitimate transfer, but admitted they did not review the documents as thoroughly as usual, as the authorization occurred during the transfer penalty moratorium (see Finding 5). The father continues to benefit from SNAP redemptions.

The remaining 26 owners circumvented disqualification by either transferring ownership of the store to a manager or employee of the permanently disqualified store, or by becoming an employee of the currently authorized store. One location in Bronx, New York, had managers of the permanently disqualified store become the owners of the next authorized store on two occasions. FNS staff stated they do not request employee or manager information from retailers, because it may frequently change. We agree that keeping up-to-date with all employees would pose a burden to both FNS and store owners. However, we were able to identify these associations from information FNS already had in its authorization and compliance files, such as store visit consent forms, applications, drivers licenses, affidavits, bills of sale, or other documentation. FNS stated that during authorization, they do not typically review the permanently disqualified owner's file to obtain employee information because the available documents in STARS center on the owner and not the employees.

Even if FNS mandated that such reviews be completed, authorization staff would find it difficult to obtain ownership documentation related to the previously disqualified stores. These files are maintained by the compliance division and may not always be located in the same office, or may be archived. As a result, we found that the only information FNS authorization staff consistently reviewed was what was available in STARS. However, this information for a new authorization is limited, and STARS does not contain all documents from the permanently disqualified owners' files.

Therefore, for high-risk locations with a previously disqualified owner, we believe FNS should require staff to scan and upload all compliance documentation into STARS or another automated system for easier review by authorization staff.⁴⁶ This change would also facilitate our recommendation to add functionality to STARS that would suspend authorization of high-risk locations with a previously disqualified owner until all information is reviewed by an FNS employee, and then certified by a supervisor. Since authorization staff are not always familiar with methods for identifying circumvention, FNS should begin a training program to familiarize them with the new documents available electronically and on how to conduct effective reviews. Such measures would ensure that FNS staff have the tools they need to sufficiently detect and prevent fraud via circumvention.

Recommendation 12

Require all compliance documentation associated with a permanent disqualification to be scanned and uploaded into STARS or another automated system.

Agency Response

This effort was underway as a part of the Retailer Management Modernization prior to this audit. FNS began to define workflows, business requirements, and online solutions in the fall of last year. FNS will be engaged in detailed requirements gathering and system design in 2014 and will have an electronic retailer filing system in place by the end of calendar year 2015.

⁴⁶ Scanning and uploading compliance documentation would be limited to only those high-risk locations with a permanent disqualification. FNS permanently disqualifies approximately 1,200 to 1,400 owners annually.

In subsequent correspondence, FNS stated that actions required for this recommendation will be completed by December 31, 2015.

OIG Position

We accept FNS' management decision.

Recommendation 13

Establish and implement internal controls that would prevent authorization and reauthorization of high-risk locations with a previously disqualified owner until all associated compliance information is reviewed by the program specialist and certified by the supervisor.

Agency Response

FNS agrees with this recommendation and actions were already on-going prior to this audit. The following are complete:

- Staff is required to review Store Tracking and Redemption system high-risk flags and obtain information to clear flags before an authorization or reauthorization determination is made.
- Extensive documentation must be obtained and reviewed before a high-risk application can be considered complete and processing can begin, or the SNAP reauthorization can be completed.
- If an applicant-retailer does not provide the required high-risk documentation, the application is withdrawn.
- In the case of reauthorization, failure to provide required documentation results in withdrawal.
- Weekly calls and random reviews of high-risk applications and reauthorizations are being conducted to ensure standard operating procedures are being followed in a consistent and appropriate manner.
- A quality assurance team is being hired and trained; in fiscal year 2014 this team will add another quality check to retailer processes.

In subsequent correspondence, FNS stated that actions required for this recommendation were completed May 31, 2013.

OIG Position

We accept FNS' management decision.

Recommendation 14

Develop a specialized nationwide training program to assist authorization personnel in identifying associations between new applicants and permanently disqualified owners that would result in a circumvention determination.

Agency Response

FNS has already developed a nationwide training program. Weekly calls are held to discuss consistency in procedures, address training needs and raise policy questions. These weekly sessions have included bona fide transfer of ownership procedures and high-risk store processing and documentation requirements.

As described in the FNS response to Recommendation 1, the Retailer Operations Division has implemented nationwide training for staff who review all high-risk stores and not only for those involving a prior disqualified owner. The training has been developed by both the Retailer Operations Division and the Retailer Policy and Management Division, which ensures consistency in the training. These trainings have included sessions on topics such as reviewing and clearing system flags for high-risk stores, and reauthorizing high-risk stores.

Additional training will be held before the end of fiscal year 2013 on topics such as the methodology for reviewing legal documents and affidavits, and the use of public websites for obtaining state licensing, property, and tax assessments that can be used to verify information provided by high-risk stores.

In subsequent correspondence, FNS stated that actions required for this recommendation were completed June 30, 2013.

OIG Position

We accept FNS' management decision.

Recommendation 15

Review all 51 permanently disqualified owners to determine whether the transfers of ownership circumvented disqualification and take the appropriate corrective action.

Agency Response

FNS has completed reviews of these 51 instances and is taking appropriate corrective action. The following results are current as of June 20, 2013:

- 18 owners circumvented a permanent disqualification and are being involuntarily withdrawn for lack of business integrity.
- 13 owners circumvented a previous permanent disqualification, but are no longer on the program due to involuntary or voluntary withdrawal.

- 9 owners were permanently disqualified for falsification (1 is currently in judicial review).
- 3 owners are currently under an open Retailer Investigations Branch case.
- 1 owner was permanently disqualified for trafficking.
- 1 owner received a less than permanent disqualification (currently under administrative review).
- 1 owner received a less than permanent disqualification, but the decision was overturned on judicial review.
- 1 owner's withdrawal for circumvention was overturned on administrative review.
- 4 of the OIG determinations were determined to be speculative as the OIG work papers did not clearly identify that circumvention had taken place. FNS will conduct a more in-depth review before clearing these cases.

OIG Position

We accept FNS' management decision.

Finding 5: FNS is Not Consistently Imposing Penalties on Retailers

From our sample of 316 retail locations, we found that FNS did not adequately evaluate the cases of 188 permanently disqualified store owners who sold or transferred their businesses to determine if a transfer of ownership civil money penalty (transfer penalty) was warranted. Of these 188 store owners, 64 should have received a transfer penalty, but did not. For the remaining 124 owners, FNS had not obtained sufficient documentation to support a determination that a legitimate transfer had actually occurred, or when it occurred. Therefore, FNS was unable to determine whether a transfer penalty could be applied. This occurred because FNS' authorization and compliance divisions did not have clear roles and responsibilities, which resulted in the divisions not completing steps necessary to identify whether transfer penalty circumstances were present in a new application (see Finding 1). While FNS does have a mechanism in STARS to identify circumstances that may warrant a transfer penalty, the mechanism does not contain a control to suspend authorization until a receivable is recorded in FNS' accounting system or Headquarters receives documentation supporting that the penalty is not appropriate. As a result of these issues, FNS did not impose approximately \$2.3 million in penalties, and missed the opportunity to impose a potential maximum of \$4.4 million in estimated penalties.⁴⁷ Because FNS penalties for permanent disqualification are applied inconsistently, their utility as a deterrent against trafficking risks is diminished.

FNS regulations state that if a retail store is disqualified from SNAP and the store is sold or transferred after that disqualification, the permanently disqualified owner is liable for a penalty reflecting the portion of the disqualification period not yet expired.⁴⁸ FNS staff must examine supporting documentation—such as the bill of sale, sales contract, or deed—to determine whether a legitimate transfer occurred between the current applicant and the prior, permanently disqualified owner. If the transfer was legitimate, then a transfer penalty will apply. Penalties are limited, and FNS reports the average transfer penalty is \$35,763.⁴⁹ Also, FNS has the authority to request additional documents from retailers when those submitted are not adequate to make a determination.

FNS personnel did not obtain sufficient documentation to determine if a legitimate transfer occurred between the current applicant and the previous permanently disqualified owner, resulting in the 124 cases with uncertain applicable penalties. In other situations, FNS did obtain the required documentation from the applicant, but did not levy the appropriate penalties.

Specifically, FNS had sufficient documentation that clearly showed a legitimate transfer of ownership had occurred for 37 permanently disqualified owners; however, FNS staff did not impose a transfer penalty on them. Officials said that these were staff oversights, and did not provide further explanation. FNS also had adequate documentation to conclude that a legitimate transfer occurred for another 27 permanently disqualified owners, but FNS staff did not impose a transfer penalty because FNS' national office placed a moratorium on the process from

⁴⁷ \$6.7 million is calculated by multiplying 188 identified transfers of ownership by the FNS average fine of \$35,763.

⁴⁸ 7 CFR 278.6(f)(2).

⁴⁹ On August 9, 2012, FNS reported in their proposed Retailer Sanctions rule the average transfer penalty is \$35,763.

February 2007 until April 2009.⁵⁰ When the moratorium was lifted, the FNS national office instructed staff to revisit authorizations for transfers that occurred during the moratorium and determine whether transfer penalties should be applied.⁵¹ However, many offices did not perform a review of authorizations completed during the moratorium. These offices stated they were aware of the opportunity to revisit authorizations during the moratorium, but did not have the time to review them. They said they would review them in the future, as time permits.

The following examples show how, in some locations, ownership was transferred multiple times after each subsequent owner was permanently disqualified for trafficking (for more on store locations with repeated trafficking problems, see Finding 2). One store location in Miami, Florida, was initially authorized to participate in SNAP in July 1993, and the owner was permanently disqualified in May 1996. This same store had 5 subsequent owners that were each authorized and permanently disqualified from 1996 through October 2010. No transfer penalties were applied, and the store is still authorized and redeeming benefits. Using the average fine identified by FNS, the potential recovery for this store location would have been \$214,578.⁵² Another store in Paterson, New Jersey, was authorized to redeem SNAP benefits in October 2006. This store's owner was permanently disqualified in November 2007. This location subsequently had three permanently disqualified owners that transferred ownership of the store after they were no longer allowed to participate in SNAP. Using the average penalty amounts, FNS did not apply \$143,052 in penalties.

Given the high amount of potential transfer penalties that were not sufficiently determined, we believe FNS should create an additional control within STARS. Currently, STARS does provide a flag when a new authorization is being processed and the business in question had a previous owner that was permanently disqualified. The flag prompts staff to obtain and review additional documentation to establish that the transfer was legitimate. FNS should establish a mechanism that would automatically suspend an authorization until a transfer penalty determination is completed. Also, to address the issues identified in this finding, FNS should review the 188 owners identified and determine if transfer penalties are warranted.

Recommendation 16

Establish a mechanism to suspend authorization of the retail location until a transfer of ownership civil money penalty receivable is recorded in the accounting system, or documentation is provided to Headquarters supporting that the penalty is not appropriate.

Agency Response

FNS does not agree that it is necessary to establish a new process. FNS already has a mechanism that requires suspending the authorization of a retailer location until appropriateness

⁵⁰ This moratorium was put into place so that USDA's Office of the General Counsel could determine the legality of such a penalty.

⁵¹ FNS, Transfer of Ownership Civil Money Penalty Moratorium email, April 14, 2009.

⁵² This amount is calculated by multiplying the total disqualifications (6) by the average fine (\$35,763).

of a transfer of ownership civil money penalty is fully assessed by the retailer operations staff. The process in place ensures:

- Until a determination is made as to whether there has been a legitimate transfer of ownership, the applicant owner cannot be authorized.
- If the sale or transfer of the business is not legitimate, the applicant owner must be denied. If the sale or transfer is legitimate, then applicant is approved and the former owner is billed for the transfer of ownership civil money penalty amount.

FNS continues to focus on staff training to ensure these steps are followed. In addition, a STARS enhancement will be rolled out in August of 2013 that will require FNS staff to document (in STARS) the specific reasons for why a transfer penalty was or was not assessed. Automated emails will be generated by STARS when an application for a disqualified location is authorized, to notify the appropriate staff of the need to evaluate the disqualified owner for a potential transfer penalty.

OIG Position

We are unable to reach management decision on this recommendation. While we agree with FNS' actions to strengthen controls and provide additional training to staff for administering penalties, the response does not indicate whether FNS would establish the mechanism described. Because we found gaps in FNS' administration of transfer penalties at all levels, we believe a specific mechanism, similar to what is described in the recommendation, is necessary to ensure that transfer penalties are applied fairly and consistently. In order to reach management decision, FNS needs to establish a mechanism to suspend authorization of the retail location until a transfer of ownership civil money penalty receivable is recorded in the accounting system, or documentation is provided to Headquarters supporting that the penalty is not appropriate. If FNS does not believe that such a mechanism is the best solution, FNS needs to provide OIG with an alternative action that will achieve sufficient assurance that transfer penalties are assessed.

Recommendation 17

Review the 188 owners permanently disqualified for trafficking that subsequently transferred ownership to determine whether transfer of ownership civil money penalties should be imposed. If penalties are appropriate, establish and pursue collections of all penalties.

Agency Response

To date, FNS has reviewed 37 owners that OIG says should have been assessed a Transfer of Ownership Civil Money Penalty (TOCMP):

- 4 have already been assessed a TOCMP.
- 28 are being referred to the Investigative Analysis Branch to calculate the correct assessment and issue the TOCMP.
- 5 have been determined not to warrant a TOCMP, but will be referred to the Investigative Analysis Branch to conduct a secondary assessment.

OIG noted an additional 27 retailers should have been subject to a TOCMP but at the time of the store sale, a moratorium had been placed on TOCMP assessment. This is accurate. The Agency was working through a significant policy question related to TOCMP's with our legal counsel. Once the moratorium was lifted, SNAP directed retailer operations staff to forgo the TOCMP assessments due to the time-gap that had occurred for both resource reasons and because these were deemed difficult to justify. No further action will be taken with regard to these locations; however, the Store Tracking and Redemption System will be appropriately updated no later than September 30, 2013.

An additional 124 owners are currently under review. FNS expects to complete this review and take appropriate action before the end of fiscal year 2013.

OIG Position

We are unable to accept FNS' proposed corrective action. In order to reach management decision, FNS needs to provide OIG with supporting documents and the decisions it made on each of the cited 188 owners permanently disqualified for trafficking. FNS also needs to provide a copy of the demand letter for transfer penalty collection owed to the Government, and evidence that the amount (1) has been entered as a receivable on the agency's accounting records, or (2) has been collected. In regards to the moratorium, FNS needs to provide a copy of the directive and explain the authority it operated under to allow FNS staff to forgo assessments of 27 transfer penalties applicable during the moratorium. To clarify, FNS provided the audit team with guidance from Headquarters that authorized regional offices to go back and assess transfer penalties held in abeyance during the moratorium.

Finding 6: FNS Did Not Follow Its Own Procedures for Initially Authorizing High-Risk Retail Locations

FNS personnel did not adhere to new policy for initial authorization of high-risk retail stores for 25 out of 95 locations in our high-risk sample. Specifically, FNS personnel did not perform a System for Award Management search and obtain tax returns, notarized affidavits, and all applicable business licenses. Also, personnel did not complete the new requirement of checking with outside agencies (referred to as collateral contacts) for further information on the stores. Finally, when they did obtain required documents, FNS personnel did not adequately review them. This occurred because supervisors were not required to conduct reviews of initially authorized high-risk retail stores to ensure that personnel adhered to the updated procedures and obtained all applicable documentation. As a result, FNS cannot be assured that owners of initially authorized high-risk retail locations are qualified for the program and not associated with permanently disqualified owners. Six stores had previous permanently disqualified owners that were not assessed a transfer penalty (see Finding 5), while another store owner circumvented disqualification (see Finding 4).

FNS implemented new procedures for applicants of high-risk stores on January 31, 2012. According to the new policy, a store is high-risk if any previous permanent disqualification occurred at that location. FNS now requires that program personnel secure copies of specific documentation, including, but not limited to, tax returns, notarized affidavits, and all applicable business licenses. The policy also requires FNS personnel to make collateral contacts, and review the documentation obtained to ensure that the owners listed on the application have not been previously disqualified, or are not associated with the previous permanently disqualified owners.⁵³ We randomly selected 95 out of over 1,100 high-risk stores authorized since February 1, 2012, and found FNS personnel did not adhere to new policy for initial authorization for 25 out of the 95 locations.

These oversights occurred because supervisors were not required to conduct reviews to ensure that personnel adhered to the updated procedures. There is also no requirement to upload the documents obtained during the high-risk procedures into STARS, which would facilitate such reviews. Also, personnel responsible for authorization did not ensure the information was received and reviewed appropriately—for instance, a proper review would have identified that one of the new applicants was associated with the previous permanently disqualified owner. FNS officials stated that personnel were not yet acclimated to the new procedures. After we identified this issue, officials said that they would provide additional guidance to regional offices on how to utilize the new procedures.

We believe this additional guidance will be helpful to bring awareness and clarification to FNS staff. However, we note that the requirement to make collateral contacts is more complex than seeking additional documentation from applicants. To effectively implement that requirement, FNS must build relationships with outside agencies across the country. Since FNS is centralizing its retailer division into a single national unit that would handle all authorizations, we are concerned that FNS staff may not be able to maintain sufficient local contacts, and may

⁵³ FNS Benefit Redemption Division Policy Memo 2012-01, issued January 31, 2012.

not be able to quickly and effectively obtain the information they need from collateral contacts. Therefore, we are recommending that FNS enter into Memoranda of Understanding with outside licensing agencies, both to facilitate information sharing and to ensure a formal relationship with reliable points of contact for FNS staff researching high-risk stores.

Beyond facilitating the high-risk authorization procedures, Memoranda of Understanding could provide both parties with valuable information and support. For example, during our field work, we interviewed a State alcohol commission that also investigates and authorizes retailers. This agency conducted a raid on a store and found several EBT cards stashed behind the counter. However, the agency did not know whom to contact for further investigation of the cards. This agency said it would be eager to share information with FNS and enter into a formal agreement.

We also found that many agencies, such as gaming commissions that regulate the sale of lottery tickets, already require criminal background checks for store owners before the issuance of required licenses. Different agencies require different levels of background checks, with some being quite thorough by checking all associated owners and their spouses. Obtaining this information would help FNS in determining if transfers are legitimate, as the outside agencies may have more information on a permanently disqualified owner's associates.

In conclusion, FNS should conduct a nationwide review of high-risk locations to gain a better understanding of current compliance levels with the new policy, and take corrective actions, as necessary. FNS also needs to develop and implement internal controls to ensure personnel are following high-risk authorization procedures, such as supervisory reviews. Finally, FNS should formalize and strengthen its relationships with State agencies responsible for monitoring retailers. Taken together, these measures should make FNS' high-risk procedures more effective at identifying and preventing fraud.

Recommendation 18

Develop and implement internal controls to ensure that personnel are following the updated high-risk authorization procedures issued on January 31, 2012. In addition, the personnel responsible for authorization should ensure the information required is received, uploaded into STARS or another automated system, and reviewed appropriately.

Agency Response

FNS has already completed the actions recommended. The FNS High Risk Policy memo was issued January 31, 2012 and the audit sample of 95 retail store locations included stores that were authorized as early as February 1, 2012. Based on that sample, the OIG audit team noted 25 stores with errors.

- This finding does not reflect OIG audit team discovery of straw ownership or circumvention.
- This finding reflects oversights in collection of business licenses.
- Though training was conducted immediately following release of the high-risk policy, the policy was implemented for retailer applicants on a going forward basis, with

annual reauthorization to capture issues with participating retailers.

In January 2013, the high-risk policy memo and checklist that accompanies the policy memo were updated to provide additional guidance for staff. Specifically, if the SNAP application indicates that non-food items requiring State/local licenses are sold (i.e., liquor, tobacco, lottery), copies of those licenses are required prior to SNAP authorization.

FNS has implemented internal controls including random supervisory review of high-risk applications and reauthorization to ensure that all staff adheres to current policy.

In subsequent correspondence, FNS stated that actions required for this recommendation were completed January 3, 2013.

OIG Position

We accept FNS' management decision.

Recommendation 19

Conduct a thorough review of high-risk retail locations authorized for SNAP to determine whether the new procedures have been followed on a national level. If problems are identified, take appropriate corrective action.

Agency Response

FNS has already completed the actions recommended. The FNS Retailer Operations Division has already built such a review into the ongoing internal-review process. Appropriate follow-up actions will be taken based on findings from these reviews.

Once fully established in FY 2014, the Retailer Policy and Management Division Quality Assurance Branch will include review of high-risk locations in their review portfolio as well.

In subsequent correspondence, FNS stated that actions required for this recommendation were completed June 7, 2013.

OIG Position

We accept FNS' management decision.

Recommendation 20

Establish Memoranda of Understanding to the extent allowed by law with State licensing agencies, such as alcohol, gaming, and tobacco, to obtain background information about retail owners.

Agency Response

FNS does not agree with this recommendation. It is unclear that the resource requirement necessary for building such an extensive network of agreements with individual licensing bureaus in all the States is an effective approach. Not all State licensing agencies have information that accurately reflects current ownership (for example, in early 2012 the New York State alcohol licensing agency was experiencing a 2 years lag in application processing).

Instead, FNS has a process underway to obtain industry input on how to better gather owner information for the purpose of reviewing high-risk stores applying for authorization. FNS believes data broker arrangements would be more efficient than hundreds of State licensing agreements. This process will be completed by the end of calendar year 2014.

In subsequent correspondence, FNS stated that actions required for this recommendation will be completed by September 30, 2014.

OIG Position

We accept FNS' management decision.

Scope and Methodology

We performed our audit fieldwork from April 2012 through February 2013 at FNS Headquarters in Alexandria, Virginia, six regional offices⁵⁴ across the nation, and one field office in Sacramento, California. Our review focused on the controls FNS has implemented to ensure that disqualified retailers are not reentering SNAP, and assessed recent actions taken by FNS in response to OIG recommendations and the Scripps Howard News Service report.

To accomplish our objectives, we performed the following audit procedures at FNS Headquarters, regional, and field offices:

- Interviewed the appropriate officials to ascertain the controls in place to authorize, reauthorize, and disqualify retail stores.
- Reviewed written policies and procedures that FNS provided to the regional and/or field offices for the initial authorization of retailers, disqualification of retailers, and the reauthorization of retailers that were previously permanently disqualified from participating in SNAP.
- Assessed whether the controls established are sufficient to prevent disqualified retailers from reentering SNAP.
- Identified and reviewed FNS regulations, policies, and procedures in place applicable to conducting site visits to retail stores prior to authorization and during the reauthorization process.
- Evaluated the results of the Scripps Howard News Service report, including FNS' review of the report.
- Obtained FY 2011 program universe data on the number of permanently disqualified firms and FY 2012 program universe data on the number of authorized stores.
- Reviewed electronic and paper retailer files for 316 sample locations.
- Analyzed electronic data for 586 retail store owners with permanent disqualifications that have authorized stores at other locations redeeming SNAP benefits.

We obtained the listing of the 36 retail locations Scripps Howard News Service provided to FNS as possible banned owners still redeeming SNAP benefits, but only reviewed 35.⁵⁵ FNS provided us with a listing of over 1,100 high-risk retailers that had been initially authorized since February 2012, when the new high-risk procedures were implemented. We also obtained a

⁵⁴ Mid-Atlantic Region in Robbinsville, New Jersey; Midwest Region in Chicago, Illinois; Mountain Plains Region in Denver, Colorado; Northeast Region in Boston, Massachusetts; Southeast Region in Atlanta, Georgia; and Southwest Region in Dallas, Texas.

⁵⁵ One file was sent to OIG Investigations, so we were unable to review it.

listing of over 232,000 stores currently authorized to redeem SNAP benefits. FNS provided a list of the nearly 4,600 retailers that have been permanently disqualified from January 2006 to June 2011. We conducted a match, based on location, of the currently authorized stores and permanently disqualified stores, which resulted in 1,686 locations. We then took a non-statistical random sample of 114 locations to review. We filtered the permanently disqualified retailers list to show those locations with multiple disqualifications, which resulted in 129 locations. We then selected 72 currently authorized locations to review. Finally, we randomly selected 95 high-risk locations that were authorized since February 2012 to review. Our review of FNS retailer files consisted of 316 locations.⁵⁶ Finally, FNS provided a list of 586 retail store owners with permanent disqualifications that have authorized stores at other locations redeeming SNAP benefits. We conducted an analysis on all 586 retail store owners.

We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

⁵⁶ This includes 35 samples based on Scripps Howard reporting, 114 samples from matches we performed on store location, 72 samples of currently authorized locations that had multiple disqualifications in the past, and 95 samples of high-risk locations.

Abbreviations

ALERT	Anti-Fraud Locator using EBT Retailer Transactions Database
EBT	Electronic Benefit Transfer
FNS	Food and Nutrition Service
FY	Fiscal year
OIG	Office of Inspector General
SNAP	Supplemental Nutrition Assistance Program
STARS	Store Tracking and Redemption System
TOCMP	Transfer of Ownership Civil Money Penalty
USDA	Department of Agriculture

Exhibit A: Summary of Monetary Results

Finding No.	Recommendation	Description	Amount	Category
3	10	Permanently disqualified owners for trafficking were allowed to redeem SNAP benefits.	\$65,300,000	Questioned Costs No Recovery
4	15	Permanently disqualified retail store owners circumvented their disqualification by transferring ownership.	\$5,300,000	Questioned Costs No Recovery
5	17	FNS did not always determine if a transfer of ownership civil money penalty was warranted.	\$6,700,000	Funds to Be Put to Better Use: Management Improvements

**USDA'S
FOOD AND NUTRITION SERVICE'S
RESPONSE TO AUDIT REPORT**



United States
Department of
Agriculture

Food and
Nutrition
Service

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Alexandria, VA
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DATE: July 16, 2013

AUDIT
NUMBER: 27601-0001-31

TO: Gil H. Harden
Assistant Inspector General for Audit
Office of Inspector General

FROM: Audrey Rowe /S/
Administrator
Food and Nutrition Service

SUBJECT: FNS: Controls for Authorizing Supplemental Nutrition Assistance Program
Retailers

This letter responds to the Office of Inspector General (OIG) official draft report for audit report number 27601-0001-31, FNS: Controls for Authorizing Supplemental Nutrition Assistance Program Retailers. Specifically, the Food and Nutrition Service (FNS) is responding to the content, recommendations and Exhibit A in the audit report.

FNS Response to the Introduction section of the audit report, “What OIG Found”:

FNS is disappointed that the audit’s broad findings did not make clear the substantive work and change that was occurring and accomplished by the Agency during the audit period regarding retailer management functions. While referenced briefly, the audit does not reflect the significant discussion and updates provided by the Agency in response to the auditors’ work during the period of the audit.

Specifically, we are concerned that the audit work was conducted at the time the FNS retailer management function was undergoing a wholesale organizational change. The retailer management function was centralized on January 1, 2013. This audit was completed during 2012, while the organization was in the midst of this transition. At the entrance conference, held April 2, 2012, the audit team was advised that FNS was in the process of a major transition, and we suggested that a review of retailer controls would be more appropriate once the transition was complete. Despite this request, and fully aware of the reorganization, the audit team proceeded with their work. The reorganization is acknowledged briefly in this document, but the general findings of this report do little to recognize the vast and significant changes that were made and initiated during the time of the audit, and continue to be fully implemented by the Agency. It is most discouraging to note that the report does nothing to reflect the major work that has been done since the initiation of the audit. For example, the establishment of standard operating procedures that provide consistent processes with clear lines of responsibility for all retailer management functions; the development of

internal controls; and the plan for a quality assurance process integrated into the retailer management function in fiscal year 2014.

It is also noteworthy to recognize that the number of retailer applications has increased significantly over the last 5 years and, as a result, FNS retailer management teams were appropriately focused on the authorization of retailers.

- As of September 30, 2012, 246,565 firms were authorized to participate in SNAP, an increase of 41 percent over the last five fiscal years.
- The authorization process is time-limited by regulation (i.e. FNS must make a decision on a completed retailer application in 45 calendar days).
- FNS authorization staff diligently reviewed thousands of front end applications against enhanced high risk application review requirements; in fiscal year 2012, FNS saw a 67 percent increase in the number of stores denied SNAP participation due to business integrity.

The data does not support the OIG audit contention that FNS lost focus on integrity. The number of retailer compliance actions in fiscal year 2012 was the highest in recent years:

- the owners of over 1,392 stores were permanently disqualified or sanctioned for trafficking violations,
- 687 were sanctioned for lesser violations, and
- 743 were warned for minor violations.

It is an inaccurate characterization of the current landscape to suggest that FNS has inadequate authority to prevent multiple instances of fraud, either by a particular owner or within a particular location. OIG appears to have intended this statement to reflect later audit recommendations calling for pursuit of additional legislative authorities, recommendations that FNS agrees with.

FNS would repeat our clarification that regulations were updated to equate coupons with EBT, ensuring that all existing regulations continue to apply—in other words, references in regulation to food stamp coupons have no impact on standard operating procedures, or retailer management work assignments as indicated by OIG in this audit.

Additionally, OIG is aware that FNS has addressed several retailer compliance-related concerns in recent rulemakings.

- The final rule updating the definition of trafficking became effective on March 25, 2013.
- A proposed rule that would allow for expediting action against the most egregiously trafficking retailers closed on April 23, 2013; this rule also moves forward penalties and sanctions against owners who fail to report changes in ownership and who abuse the FOIA process.
- A rule that revises retailer sanctions is on track for publication as a final rule in calendar year 2013; this rule will add significant monetary penalties to permanent disqualifications assessed against retailers who traffic, and raises the cap on monetary penalties.

The OIG audit team is also aware that OIG senior officials have confirmed that criminal background checks via the National Crimes Information Center database, as recommended in an earlier OIG audit, were outside the bounds of FNS authority. This understanding is not appropriately reflected in “What OIG Found”.

OIG reports application of policy as errors, despite the Agency’s attempts to make the policy clear. For example, OIG notes that they identified 586 owners who were allowed to continue to participate in SNAP at other locations after being permanently disqualified. This is not an FNS error. Unless an owner was directly involved in the trafficking of benefits, s/he may continue to participate in SNAP at other locations. These locations, however, are deemed high risk and are subject to annual reauthorization. Further, as to the 90 locations that had two or more independent firms permanently disqualified, this is not an FNS error. FNS has no authority to permanently bar a location from participation in SNAP; changes in ownership at a location do have policy protections and OIG has made recommendations that FNS agrees with to strengthen these protections.

The audit team reviewed information and files that pre-date the full gamut of enhanced high risk retailer review. As we continue to address currently participating high risk retailers through annual reauthorization, FNS expects that the vigorous level of review will identify retailers who may require further action.

Unfortunately the OIG audit team did not consistently provide information regarding specific retailer findings to FNS retailer management staff for immediate follow-up; as a result retailers who OIG believed ineligible to participate in SNAP were allowed to remain authorized. FNS is ever-vigilant with regard to SNAP integrity. The organizational realignment associated with retailer management modernization affords us the ability to:

- Bring greater efficiency to all retailer management processes,
- Manage compliance nationally thereby enhancing FNS’ ability to prioritize and target compliance efforts, and
- Further enhance tools that will compel consistent processes and procedures.

FNS continues to move regulations forward and to pursue statutory change where appropriate.

FNS would request the introduction be reworked to more correctly reflect these comments, noting significant activities and efforts taken to gain efficiency, consistency, and improved compliance as well as correction of those comments that are inconsistent with statutory authority and regulatory policies.

FNS responses to the report's recommendations:

Recommendation 1:

Review the handbook, SOPs, and regulations to ensure that they do not contradict one another and provide a practical framework for authorization and enforcement actions using the EBT system.

FNS Response:

FNS concurs with this recommendation and the corrective actions have been completed.

Review of the retailer management policy handbook, and standard operating procedures was done prior to completion of this OIG audit.

- National Standard Operating Procedures (SOPs) and policy memos are posted and accessible on the Agency intranet site.
- Operational inconsistencies have been systematically identified and a process developed to eliminate their reoccurrence.
- Roles and responsibilities relative to which organizational area is responsible for requesting high risk documentation, determining bona fide transfers, assessing transfer of ownership civil money penalties, and circumventions of prior disqualifications have been clearly identified.
- Random supervisory reviews are conducted by Retailer Operations Division supervisors to insure that procedures are being followed in a consistent and appropriate manner using the SOPs.
- Supervisors have weekly calls with their staff to discuss issues and ensure that the SOPs are being followed.
- An Internal Controls Process team is:
 - Developing a secondary or supervisory review process to determine if critical points in the application process are being appropriately handled.
 - Identifying areas needing clarity to assist specialists in processing authorizations and cases.
 - Identifying potential weaknesses or gaps involving division of responsibility.
 - Recommending training needs for retailer staff.
- The retailer management policy handbook has been deemed redundant and will be retired by September 30, 2013 in favor of issue-specific policy memorandums.
- A Quality Assurance Branch is being formed to objectively identify and address retailer management issues. A quality assurance process will be integrated into the retailer management function in fiscal year 2014.

Formal training has been provided to Retailer Operations staff on the following:

- January 10, 2013 – STARS 101: Enhancement Training
- January 15, 2013 – STARS and ALERT Training

- January 16, 2013 - SOP 4.3 EBT Case Analysis- Building a solid EBT case; building a solid Case Analysis Document; Retailer Replay /prep of sanction determinations; SOP 4.4 thru 4.7; SOPS 4.1 and 4.2
- January 28-31, 2013 – Retailer Operations Branch Training – Provided an organization overview of the Retailer Operations Branch and the new Standard Operating Procedures to provide consistency and guidance
- January 29, 2013 – STARS training on system updates.
- April 9, 2013 – STARS navigation and searches refreshers training.
- April 16, 2013 - Restaurant Meal Program Training – current status of Restaurant Meal Programs and authorization process.
- April 25, 2013 - STARS 101 - Overview of Online Reauthorization Application (ORA) process for High Risk Stores, Part 1 - The session reviewed flow charts of the entire ORA process, the process for assigning reauthorization applications, the role of the Retailer Service Center, and STARS tools available to support working with these retailers.
- May 9, 2013 - STARS 101: *STARS News You Can Use* – Highlights of recent STARS releases since the beginning of the fiscal year that accommodate changes made due to Retailer Management Modernization.
- May 15, 2013 - STARS 101 – Online Reauthorization for High Risk Stores, Part 2 – Reviewing and Clearing System Flags on High Risk Stores. System flags insure consistency in processes by requiring staff to review before a determination can be made.
- May 16, 2013 - STARS 101- Call Order Tracking System and Store Deliverable. This session covered the basics of working with the store visit contractor and using the Call Order Tracking System (COTS) in STARS.
- June 11, 2013 - STARS 101 Online Reauthorization for High Risk Stores – Part 3 – Reinstating Withdrawn Online Reauthorization Application Stores.

Retailer Operation staff participate in weekly calls to discuss consistency in procedures, address training needs and raise policy questions. These weekly sessions have included bona fide transfer of ownership procedures and high risk store processing and documentation requirements.

In addition, the audit team agreed with the FNS determination in 33 of the 35 instances where retailers were identified by Scripps Howard. We have reviewed the two instances where the OIG audit team questioned the FNS finding:

- FNS agrees that one of the two retailers was previously cleared by FNS in error.
- There is insufficient information in the documentation provided by OIG to conclude that the FNS determination was incorrect in the second case.

Recommendation 2:

Review SOPs to ensure they provide clear instructions on division of responsibilities and the steps that should be taken to review, authorize, deny, penalize, and collect penalties from an owner.

FNS Response:

FNS agrees with this recommendation and these actions were already underway prior to this audit.

- National Standard Operating Procedures are completed and were in place as of February 1, 2013.
- Extensive staff training has been completed and will continue to be an integral part of operations (see training documentation in response to recommendation 1).
- An internal controls oversight component has been established (May 1, 2013), and a quality assurance function is being integrated into the retailer management function.
- The Agency is in the midst of a Lean Six Sigma effort to improve the collection of established penalties. Areas of improvement under consideration include, but are not limited to, the use of data brokers, the Treasury Offset Program (TOP), and a third party collection agent at Treasury; all of these options are under consideration for purposes of improving collections.
 - This effort will be completed by September 30, 2013.
 - Recommendations from this effort will be implemented in fiscal year 2014.

Recommendation 3:

Update the regulations to require any new applicant and current retailers being reauthorized to provide FNS with a self-initiated NCIC background check prior to authorization or reauthorization.

FNS Response:

OIG audit states in the narrative regarding this finding that “regulations do not currently permit FNS to pursue and obtain a National Crime Information Center (NCIC) background check for store owners applying to redeem SNAP benefits, and do not require the applicant to obtain their own NCIC criminal background check” but does not acknowledge, as senior OIG officials have, that FNS has no statutory authority to access NCIC directly for the purposes described. As expressed and understood by FNS and senior OIG officials, FNS will not pursue regulations for the agency to obtain NCIC background checks for applicant store owners based on the agency having no statutory authority to access NCIC directly.

However, FNS agrees to initiate a proposed rule that would require any new, high risk applicant, and current high risk retailers being reauthorized who have not already completed such certification, to provide FNS with a self-initiated NCIC background check prior to authorization or reauthorization. The required work plan to initiate this proposed rule will be completed in fiscal year 2014.

Recommendation 4:

Establish SOPs and/or update the handbook to address how criminal background checks will be used and reviewed by personnel.

FNS Response:

FNS will establish appropriate policy and standard operating procedures pending a final regulation stemming from recommendation 3. These will be established within one year of the effective date of the final rule.

Recommendation 5:

Propose that the Secretary seek legislative change to allow FNS to retain a portion of funds collected from retailer penalties as a supplement to its annual appropriations that can be used to enhance its abilities to oversee retailer authorization, monitoring, and enforcement actions, including assessing warranted penalties.

FNS Response:

FNS agrees with the goal of enhancing Program integrity. A decision to pursue the ability to retain a portion of funds collected from retailer penalties as a supplement to annual appropriations however, requires considerable research and deliberation.

FNS agrees to work with the Office of Management and Budget to develop options for additional resources to pursue Program compliance. Timeframe is contingent upon the budget process.

Recommendation 6:

Propose that the Secretary seek legislative changes that would allow FNS the authority to require any applicant of a location that has been previously permanently disqualified for trafficking to have a vested interest, such as posting a collateral bond or letter of credit before authorization.

FNS Response:

FNS supports this recommendation and will pursue legislative change that would allow FNS the authority to require any applicant of a location that has been previously permanently disqualified for trafficking to have a vested interest, such as posting a collateral bond or letter of credit before authorization. FNS will consider the best option for determining an appropriate, scalable, bond or letter of credit amount.

Timeframe is contingent on opportunities to pursue statutory change (i.e. via farm bill).

Recommendation 7:

If legislative changes are made, establish collateral bond and letter of credit limits based on the number of previous violations at the location, or a percentage of the proposed statutory limits for trafficking penalties. If legislative changes are not made, strengthen oversight and monitoring of store locations that have been permanently disqualified two or more times for trafficking.

FNS Response:

As noted in the Agency's response to recommendation 6, FNS supports requirement of a vested interest by the new owners of a previously permanently disqualified location. FNS will consider the best option for determining an appropriate, scalable, bond amount. The timeframe is contingent upon recommendation 6 above.

However, FNS does not agree with predicated strengthened oversight and monitoring of store locations that have been permanently disqualified two or more times for trafficking on whether recommendation 6 is legally viable. In fact, FNS has already strengthened oversight and monitoring of such high-risk locations, including additional documentation requirements and increased frequency for reauthorization, and will continue to pursue opportunities for further improvements within existing authorities.

Recommendation 8:

Issue a definition of "benefit" that would allow for owners to demonstrate that they did not benefit from any trafficking that occurred, and are therefore eligible for a civil money penalty in lieu of disqualification.

FNS Response:

FNS agrees to initiate a proposed rule that includes a definition of "benefit" that would allow store owners to demonstrate that they did not benefit from trafficking.

The required work plan to initiate this proposed rule will be completed in fiscal year 2014.

Recommendation 9:

Revise regulations and policy to permanently disqualify retail store owners at all authorized retail locations operated by that owner(s) if the owner(s) does not meet the criteria to receive a trafficking civil money penalty in lieu of permanent disqualification.

FNS Response:

FNS is supportive of the goal of this recommendation. With this goal in mind, FNS recommends carrying the premise of recommendation 6 to recommendation 9; i.e. FNS agrees to initiate a proposed rule that would require that an owner with multiple locations that has any one of their locations permanently disqualified for trafficking have a vested interest, such as a collateral bond or letter of credit, which would cover all remaining SNAP authorized locations. FNS will consider the best option for determining an appropriate, scalable, bond or letter of credit amount. If additional violations occur, the bond or letter of credit would be forfeited.

The required work plan to initiate this proposed rule will be completed in fiscal year 2014.

Recommendation 10:

After regulations are revised, notify the 586 store owners that in the future, any trafficking violation will require the store owner to qualify for and pay an in lieu of permanent disqualification penalty or be subject to permanent disqualification at all store locations currently authorized for that owner.

FNS Response:

FNS concurs with the goal of this recommendation. If we are able to achieve the policy changes described in Recommendation 9, the Agency agrees to take action consistent with the policy change. Any actions would be taken within one year of the effective date of the final rule.

In the interim, and by September 30, 2013, FNS will notify these retailers to ensure they are fully aware of their status and that they are being watched closely as a result of their previous transgressions.

Recommendation 11:

Initiate the regulatory changes necessary to ensure owners that have been permanently disqualified for trafficking are not granted authorization as a SNAP retailer at new locations.

FNS Response:

When the owner of a single store is permanently disqualified, subsequent SNAP authorization is not granted at a new location. However, as this relates to the owners of multiple stores that have one or more stores disqualified, FNS concurs with the goal of this recommendation.

FNS recommends that the alternative suggested in recommendation 9 be applied here as well. Statutory change would be required in this instance; i.e. owners of multiple stores that have one or more stores disqualified would be required to have a vested interest, such a bond or letter of credit, which would cover a newly authorized SNAP location that has not been deemed a replacement stores for a previously permanently disqualified location. FNS will consider the best option for determining an appropriate, scalable, bond or letter of credit amount. FNS agrees to initiate pursuit of this statutory change.

Timeframe is contingent on opportunities to pursue statutory change (i.e. via farm bill).

Recommendation 12:

Require all compliance documentation associated with a permanent disqualification to be scanned and uploaded into STARS or another automated system.

FNS Response:

This effort was underway as a part of the Retailer Management Modernization prior to this audit. FNS began to define workflows, business requirements and online solutions in the fall of last year. FNS will be engaged in detailed requirements gathering and system design in 2014 and will have an electronic retailer filing system in place by the end of calendar year 2015.

Recommendation 13:

Establish and implement internal controls that would prevent authorization and reauthorization of high-risk locations with a previously disqualified owner until all associated compliance information is reviewed by the program specialist and certified to by the supervisor.

FNS Response:

FNS agrees with this recommendation and actions were already on-going prior to this audit. The following are complete:

- Staff is required to review Store Tracking and Redemption system high risk flags and obtain information to clear flags before an authorization or reauthorization determination is made.
- Extensive documentation must be obtained and reviewed before a high risk application can be considered complete and processing can begin, or the SNAP reauthorization can be completed.
 - If an applicant-retailer does not provide the required high risk documentation, the application is withdrawn.
 - In the case of reauthorization, failure to provide required documentation results in withdrawal.
- Weekly calls and random reviews of high risk applications and reauthorizations are being conducted to ensure standard operating procedures are being followed in a consistent and appropriate manner.

A quality assurance team is being hired and trained; in fiscal year 2014 this team will add another quality check to retailer processes.

Recommendation 14:

Develop a specialized nationwide training program to assist authorization personnel in identifying associations between new applicants and permanently disqualified owners that would result in a circumvention determination.

FNS Response:

FNS has already developed a nationwide training program. Weekly calls are held to discuss consistency in procedures, address training needs and raise policy questions. These weekly sessions have included bona fide transfer of ownership procedures and high risk store processing and documentation requirements.

As described in the FNS response to Recommendation 1, the Retailer Operations Division has implemented nationwide training for staff who review all high risk stores and not only for those involving a prior disqualified owner.

- This includes both the authorization and reauthorization of high risk stores as the same documents are generally required for both.
- The training has been developed as a joint partnership between the Retailer Operations Division and the Retailer Policy and Management Division.
- This insures that the training is consistent from a procedural, policy and systems perspective.
- As indicated in the response to Recommendation 1, these trainings have included:
 - April 25, 2013 - STARS 101 - Overview of Online Reauthorization Application (ORA) process for High Risk Stores, Part 1 The session reviewed flow charts of the entire ORA process, the process for assigning reauthorization applications, the role of the Retailer Service Center, and STARS tools available to support working with these retailers.
 - May 9, 2013 - STARS 101: STARS News You can Use – Highlights of recent STARS releases since the beginning of the fiscal year that accommodate changes made due to Retailer Management Modernization.
 - May 15, 2013 - STARS 101 – Online Reauthorization for High Risk Stores, Part 2 – Reviewing and Clearing System Flags on High Risk Stores. System flags insure consistency in processes by requiring staff to review before a determination can be made.
 - June 11, 2013 - STARS 101 Online Reauthorization for High Risk Stores – Part 3 – Reinstating Withdrawn Online Reauthorization Application Stores.

Additional training will be held before the end of fiscal year 2013 on topics such as the methodology for reviewing legal documents and affidavits, and the use of public websites for obtaining state licensing, property and tax assessments that can be used to verify information provided by high risk stores.

Recommendation 15:

Review all 51 permanently disqualified owners to determine whether the transfers of ownership circumvented disqualification and take the appropriate corrective action.

FNS Response:

Unfortunately the OIG audit team did not consistently share store specific findings with FNS staff during the course of the audit for immediate follow-up. OIG shared the list of owners only once this draft audit report was issued.

FNS has since completed review of these 51 instances and is taking appropriate corrective action. The following results are current as of June 20, 2013:

- 18 owners circumvented a permanent disqualification and are being involuntarily withdrawn for lack of business integrity.
- 13 owners circumvented a previous permanent disqualification, but are no longer on the program due to involuntary or voluntary withdrawal.
- 9 owners were permanently disqualified for falsification (1 is currently in judicial review).
- 3 owners are currently under an open Retailer Investigations Branch case .
- 1 owner was permanently disqualified for trafficking.
- 1 owner received a less than permanent disqualification (currently under administrative review).
- 1 owner received a less than permanent disqualification, but the decision was overturned on judicial review.
- 1 owner's withdrawal for circumvention was overturned on administrative review.
- 4 of the OIG determinations were determined to be speculative as the OIG work papers did not clearly identify that circumvention had taken place. FNS will conduct a more in-depth review before clearing these cases.

Recommendation 16:

Establish a mechanism to suspend authorization of the retail location until a transfer of ownership civil money penalty receivable is recorded in the accounting system, or documentation is provided to Headquarters supporting that the penalty is not appropriate.

FNS Response:

FNS does not agree that it is necessary to establish a new process. FNS already has a mechanism that requires suspending the authorization of a retailer location until appropriateness of a transfer of ownership civil money penalty is fully assessed by the retailer operations staff. The process in place ensures:

- Until a determination is made as to whether there has been a legitimate transfer of ownership, the applicant owner cannot be authorized.
- If the sale or transfer of the business is not legitimate, the applicant owner must be denied. If the sale or transfer is legitimate, then applicant is approved and the former owner is billed for the transfer of ownership civil money penalty amount.

FNS continues to focus on staff training to ensure these steps are followed. In addition, a STARS enhancement will be rolled out in August of 2013 that will require FNS staff to document (in STARS) the specific reasons for why a transfer penalty was or was not assessed.

In addition, automated emails will be generated by STARS when an application for a disqualified location is authorized, to notify the appropriate staff of the need to evaluate the disqualified owner for a potential transfer penalty.

Recommendation 17

Review the 188 owners permanently disqualified for trafficking that subsequently transferred ownership to determine whether a transfer of ownership civil money penalty should be imposed. If a penalty is appropriate, establish and pursue collections of all penalties.

FNS Response:

Unfortunately the OIG audit team did not consistently share store specific findings with FNS staff during the course of the audit for immediate follow-up. OIG shared the list of owners once this draft audit report was issued.

To date, FNS has reviewed 37 owners that OIG says should have been assessed a Transfer of Ownership Civil Money Penalty (TOCMP):

- 4 have already been assessed a TOCMP.
- 28 are being referred to the Investigative Analysis Branch to calculate the correct assessment and issue the TOCMP.
- 5 have been determined not to warrant a TOCMP, but will be referred to the Investigative Analysis Branch to conduct a secondary assessment.

OIG noted an additional 27 retailers should have been subject to a TOCMP but at the time of the store sale, a moratorium had been placed on TOCMP assessment. This is accurate. The Agency was working through a significant policy question related to TOCMP's with our legal counsel. Once the moratorium was lifted SNAP directed retailer operations staff to forgo the TOCMP assessments due to the time-gap that had occurred for both resource reasons and because these were deemed difficult to justify. No further action will be taken with regard to these locations; however, the Store Tracking and Redemption System will be appropriately updated no later than September 30, 2013.

An additional 124 owners are currently under review. FNS expects to complete this review and take appropriate action before the end of fiscal year 2013.

Recommendation 18:

Develop and implement internal controls to ensure that personnel are following the updated high-risk authorization procedures issued on January 31, 2012. In addition, the personnel responsible for authorization should ensure the information required is received, uploaded into STARS or other automated system, and reviewed appropriately.

FNS Response:

FNS has already completed the actions recommended. The FNS High Risk Policy memo was issued January 31, 2012 and the audit sample of 95 retail store locations included stores that were authorized as early as February 1, 2012. Based on that sample, the OIG audit team noted 25 stores with errors.

- This finding does not reflect OIG audit team discovery of straw ownership or circumvention.
- This finding reflects oversights in collection of business licenses.
- Though training was conducted immediately following release of the high risk policy, the policy was implemented for retailer applicants on a going forward basis, with annual reauthorization to capture issues with participating retailers.

In January 2013, the high risk policy memo and checklist that accompanies the policy memo were updated to provide additional guidance for staff. Specifically, if the SNAP application indicates that non-food items requiring State/local licenses are sold (i.e., liquor, tobacco, lottery), copies of those licenses are required prior to SNAP authorization.

FNS has implemented internal controls including random supervisory review of high risk applications and reauthorization to ensure that all staff adheres to current policy.

Recommendation 19:

Conduct a thorough review of high-risk retail locations authorized for SNAP to determine whether the new procedures have been followed on a national level. If problems are identified, take appropriate corrective action.

FNS Response:

FNS has already completed the actions recommended. The FNS Retailer Operations Division has already built such a review into the ongoing internal-review process. Appropriate follow-up actions will be taken based on findings from these reviews.

Once fully established in FY 2014, the Retailer Policy and Management Division Quality Assurance Branch will include review of high risk locations in their review portfolio as well.

Recommendation 20:

Establish Memorandums of Understanding to the extent allowed by law with State licensing bureaus, such as alcohol, gaming, and tobacco, to obtain background information about retail owners.

FNS Response:

FNS does not agree with this recommendation.

- It is unclear that the resource requirement necessary for building such an extensive network of agreements with individual licensing bureaus in all the States is an effective approach.
- Not all State licensing agencies have information that accurately reflects current ownership (for example, in early 2012 the New York State alcohol licensing agency was experiencing a 2 years lag in application processing).

Instead, FNS has a process underway to obtain industry input on how to better gather owner information for the purpose of reviewing high-risk stores applying for authorization. FNS believes data broker arrangements would be more efficient than hundreds of State licensing agreements. This process will be completed by the end of calendar year 2014.

FNS has provided responses to the chart from the audit report, Exhibit A.

Exhibit A: Summary of Monetary Results

Finding No.	Recommendation	Description	Amount	Category	FNS Response
3	10	Permanently disqualified owners for trafficking were allowed to redeem SNAP benefits.	\$65,300,000	Questioned Costs, No Recovery	FNS disputes this amount. There is no indication that the 586 retailers noted in this finding are committing fraud. FNS tentatively agrees that \$3.8 million of the \$65.3 million <i>may</i> be questionable if in fact 39 of the 586 owners were directly responsible for the trafficking violations; FNS is reviewing information provided by OIG. As the remaining 547 owners were not directly involved in the trafficking that occurred, there is no Agency error associated with allowing their continued participation in SNAP and therefore no questionable costs.
4	15	Permanently disqualified retail store owners circumvented their disqualification by transferring ownership.	\$5,300,000	Questioned Costs, No Recovery	FNS disputes this amount. There are at least 4 instances in which the OIG finding was deemed speculative. OIG work papers did not clearly identify that circumvention had taken place.

	17	FNS did not always determine if a transfer of ownership civil money penalty was warranted.	\$6,700,000	Funds to Be Put to Better Use: Management Improvements	FNS disputes this amount. In 27 instances, FNS staff correctly followed policy that directed that they not pursue a Transfer of Ownership Civil Money Penalty. Of 37 additional owners that have been reviewed by FNS, 4 do not warrant a Transfer of Ownership Civil Money Penalty. A full assessment of the accuracy of this amount is pending review of the remaining 124 instances identified by OIG.
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