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## **MEMORANDUM**

June 8, 2020

### **BY ELECTRONIC MAIL**

**TO: Office of Information and Regulatory Affairs**

**FROM: Olsson Frank Weeda Terman Matz PC**

**RE: FNS Proposed Rule re: Taking Administrative Actions Pending FOIA  
RIN # 0584-AE63**

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### **FNS's Proposed Rule is Economically Significant**

FNS's proposed regulation, if finalized without substantial changes, will deprive small retail food stores of their right to FOIA requests during agency administrative proceedings, will result in the close of thousands of small retailers annually due to the loss of their SNAP authorization, and will have an illegal discriminatory impact as most SNAP-authorized small retail food stores are owned by persons of color and/or immigrants. The economic impacts thereof will be *at least* **\$151,157,662.16** per year. As of December 2019, there were 241,310<sup>1</sup> authorized Supplemental Nutrition Assistance Program (SNAP) retailers, serving 34,469,763 SNAP households<sup>2</sup> with issued SNAP benefits totaling \$53,762,442,599<sup>3</sup>. The number of retailers year over year has dropped by roughly 15,000.<sup>4</sup>

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<sup>1</sup> Raw data produced by the USDA's SNAP Retailer Locator tool retrieved on 12/20/19.

<https://www.fns.usda.gov/snap/retailer-locator>

<sup>2</sup> USDA December 2019 Report found at <https://fns-prod.azureedge.net/sites/default/files/resource-files/34SNAPmonthly-12.19.pdf>

<sup>3</sup> *Id*

<sup>4</sup> According to FNS Fiscal Year End Summary for 2018.

<https://www.fns.usda.gov/snap/retailer/data>

Small food stores, delivery routes, convenience stores, farmers markets and other smaller business enterprises make up 85.31% of the SNAP retailers as of the end of fiscal year 2018.<sup>5</sup> Convenience stores account for 45% of the total SNAP retailer population and small grocery stores account for another 4.42%.<sup>6</sup> The majority of these stores are owner/operator family businesses or parts of small private retail convenience store chains (3 or fewer stores).<sup>7</sup> In total, small retail food stores (those stores not classified as Supermarkets and Superstores) transact \$10,616,851,613.39<sup>8</sup> in business annually, with convenience stores and small grocers accounting for \$3,952,366,978.

This nearly \$4 billion per year segment of SNAP retailers accounts for more than 88% of the adverse administrative actions taken by FNS.<sup>9</sup> Assuming each small retailer accounts for an equal portion of the nearly \$4 billion dollars, that would mean that<sup>10</sup> SNAP disqualifications issued to 2,347 annually results in a net impact of \$73,163,688.16 *per year*, if limited to disqualified stores only. Stores whose authorizations have been withdrawn or whose applications have been denied will also be adversely affected by the proposed FNS rule during review of their reauthorization or authorization denial; FNS took adverse action against 2,486 such stores in FY 2018 and their losses (for EBT transactions) account for another \$77,993,974.08 in annual impacts.

Finally, when a store loses EBT revenue, it also loses traditional revenue. SNAP participants purchase items, including SNAP-ineligible items (e.g. alcohol and tobacco) in stores using cash/credit/debit. No studies appear to have tracked these supplemental losses, but an informal survey of hundreds of stores who have faced adverse FNS action indicates that such losses range, on average, between 5% and 20% of the store's *gross revenue*. Depending on store size, this can amount to more than \$100,000 per year per store.

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<sup>5</sup> FY 2018 Report.

<sup>6</sup> *Id.*

<sup>7</sup> Based upon a survey of of more than 500 stores nationwide.

<sup>8</sup> Using FY 2018 numbers

<sup>9</sup> FY 2018 numbers.

<sup>10</sup> Using FY 2018 numbers for consistency: there were 115,456 convenience stores and 11,331 small grocers, for a combined total of 126,787 stores. Using these numbers, an equal share of SNAP revenue (which is conservative given that enforcement tends to occur at higher averaging stores) \$31,373.28 per store per year.