United States Department of Agriculture

Food and Nutrition Service

1320 Braddock Place
Alexandria VA 22314

Retailer Policy and Management Division, SNAP
RPMD Policy Memorandum 2020-12

**Subject:** **Compliance – Business Integrity**

**Legislation:** Food and Nutrition Act of 2008, Section 9(a)(1)(B)(v)

**Regulations:** 7 CFR 278.1(b)(3)

**Supersedes:** Policy Memorandum 03-06, "The Business Integrity of Retailers in the Food Stamp Program"
Policy Memorandum 2013-05, "Status of Owners, Managers, and Officers for stores applying to participate in SNAP in light of previous disqualification" and
Policy Memorandum 2013-02, "Notarized affidavit"

**Implementation:** Upon Publication

OVERVIEW**:** Section 9 of the Food and Nutrition Act provides the Secretary with the authority to consider the business integrity and reputation of retailers who apply or are currently authorized to redeem Supplemental Nutrition Assistance Program (SNAP) benefits when determining the retailers' qualifications to participate in SNAP.

Fraudulent activity in SNAP or other government programs, or in business-related activities in general, reflects on the ability of a firm to effectuate the purposes of SNAP and abide by its rules. The Food and Nutrition Service (FNS) may consider any offense that indicates a lack of business integrity or business honesty of owners, officers, managers of the firm, regardless of if the offense occurred on the store's premises or at the store location.

In addition to those firms seeking authorization or reauthorization, the business integrity standards as outlined in the regulations apply to participating firms, and may be the basis for withdrawal, denial, or debarment.

CLARIFICATION: The following are business integrity offenses that FNS considers when determining the retailer's eligibility to participate in SNAP. FNS may only consider offenses committed or established on or after June 1, 1999.

The contents of this document do not have the force and effect of law and are not meant to bind the public or FNS in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

USDA is an Equal Opportunity Provider, Employer and Lender

Convictions or Civil Judgments—A firm may be permanently denied, withdrawn, and/or debarred if the owner(s), officer(s), or manager(s) of the firm are convicted of or have a civil judgment against them for the commission of fraud or other criminal offense. The types of fraud or criminal offenses applicable to business integrity include, but are not limited to:

- Theft
- Embezzlement;
- Forgery;
- Bribery;
- Falsification or destruction of records;
- Making false statements;
- Receiving stolen property;
- Making false statements or false claims;
- Receiving stolen property;
- Conspiracy;
- Violation of Federal, State, and/or local consumer protection laws
- Violation of laws relating to alcohol, tobacco, firearms, controlled substances, and/or gaming licenses; or
- Obstruction of justice.

In general, the following convictions do not rise to the level of business integrity violations:

- Possession of a controlled substance;
- Possession of drug paraphernalia; or
- Traffic offenses such as driving under the influence (DUIs)

Administrative Findings—A firm may be denied or withdrawn for 1 year for administrative findings by Federal, State, or local officials for which the firm has been removed from the other program (not SNAP). Likewise, if a firm is not removed but FNS determines that a pattern of 3 or more instances exist that shows a lack of business integrity on the part of owners, officers or managers of the firm, then the firm may be denied or withdrawn for 1 year.

This provision does not apply to firms that have a short-term removal of 30 days or less, or to firms that incurred fines or penalties in lieu of removal from the other Federal, State, or local program unless FNS determines that a pattern exists and the 1 year denial or withdrawal applies. Any short-term removal or fine or penalty imposed may be counted as 1 instance to determine if a business integrity pattern exists. For example, a firm that incurs both a short term removal and a fine for the same violation would be counted as 2 instances. This provision also does not apply to firms that receive a warning letter or citation only. Warning letters or citations may not be treated as suspensions or removals, and would not be counted to determine if a business integrity pattern exists.

For Women, Infants, and Children (WIC) disqualifications, FNS may apply a reciprocal disqualification for SNAP under program regulations at 7 CFR 278.6(e)(8). However, for those WIC violations that were administrative findings that did not result in the disqualification or removal from WIC, FNS may deny or withdraw the firm under business integrity for 1 year if there is a pattern as described above. For example, if the firm was imposed a civil money penalty (CMP) in lieu of a WIC disqualification, that CMP would count as 1 instance of the 3 instances needed to demonstrate a pattern. Except for citations or warning letters, any other fines or penalties imposed against the firm for the same or a subsequent WIC violation that did not result in the removal from WIC may be counted as 1 instance to determine if a business integrity pattern exists.

Circumvention—A firm may be denied or withdrawn for 3 years if evidence exists that a store owner is circumventing or attempting to circumvent a period of disqualification, a civil money penalty, or fine imposed against the firm by FNS. FNS may determine that circumvention applies when the sanctioned store owner sells or otherwise transfers the store to a spouse, other relative, or other individual to avoid serving the disqualification period but is still involved with the store in any capacity or is otherwise benefiting from the firm's participation in SNAP.

FNS may request documentation from the applicant retailer to determine circumvention, such as, but not limited to, the bill of sale or sales contract, business licensing, lease agreement, proof of payments, bank statements, and/or tax records.

Prior SNAP Violations—A firm may be denied or withdrawn for a period of time equivalent to the appropriate period of disqualification applicable under 7 CFR 278.6(e), effective from the date of the current application's denial, for SNAP violations previously imposed to have been committed by owner(s), officer(s), or manager(s) and not satisfied.

*Exception*: A manager or other non-owner employee of a firm that was previously disqualified or for which a disqualification is pending (i.e., the store has received a determination letter), may be eligible for authorization as an owner, officer, or manager at an applicant store (even at the same location as the disqualified store) if he or she:

- Was not personally involved in any previous SNAP violations;
- Was not in a capacity as an owner or officer at the previously disqualified store when the violations occurred;
- Provides documentation that the transfer of ownership of the store is bona fide; and
- Meets all other SNAP eligibility requirements, including business integrity provisions.

While an owner, officer, manager, or any other employee of a disqualified store may work in another authorized store in a non-ownership or non-management capacity, even if they were personally involved in the violations, FNS may consider the role this individual has in current operations to determine if their employment adversely impacts the business integrity and reputation of the applicant store.

Other Business Integrity Offenses—A firm may be denied or withdrawn for 1 year for commission of any other offense that indicates a lack of business integrity or business honesty of the owner(s), officer(s), or manager(s) of the firm.

Non-Considerations—If the retailer's history indicates a lack of business integrity, the action to deny or withdraw must be taken in accordance with program regulations. As such, FNS does not consider factors not relevant to business integrity, to include:

- Whether the owner served their sentence, received probation or parole, or satisfied the terms of their probation or parole;
- Whether a conviction is classified as a misdemeanor or a felony, or the severity or seriousness of the infraction committed; and
- Whether the owner obtains any supportive statements that a prior conviction should not affect the owner's ability to participate in SNAP.

Notarized Affidavit—A notarized affidavit is required to help FNS maintain the integrity of SNAP by obtaining statements from retailers to assess if a firm meets the business integrity requirements to be an authorized retailer. A notarized affidavit is also used to determine whether a bona fide transfer of ownership has taken place to determine if circumvention applies.

FNS may obtain any further information needed before making a determination related to business integrity, when there is an affirmative answer to any of the questions on the affidavit. An affirmative answer to any of the questions on the affidavit may not necessarily prevent a retailer from participating in SNAP.

*Examples:*

- The owner indicates that they were an owner of a previously disqualified store. The disqualification may only have been for six months and the penalty period already served.
- The owner indicates they have a familial relationship with a currently sanctioned owner of a store at the same location. However, with the exception of spouses, a familial relationship in and of itself is not enough to establish that circumvention is occurring.

If it is determined that the firm has filed an affidavit that contains false or misleading information, the firm may be subject to denial or disqualification per §278.l(k)(4) and 278.6(e)(1) and (3).

Any questions regarding this policy should be directed to:SM.FN.RPMDHQ-WEB@usda.gov.

SHELLY PIERCE Digitally signed by SHELLY PIERCE
Date: 2020.07.13 14:51:45 -04'00'

Shelly Pierce
Acting Director
Retailer Policy and Management Division
Supplemental Nutrition Assistance Program