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Errors and Fraud in the Supplemental Nutrition Assistance Program (SNAP)

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Summary

The Supplemental Nutrition Assistance Program (SNAP) is the nation's largest domestic food assistance program, serving over 42.1 million recipients in an average month at a federal cost of over $68 billion in FY2017. SNAP is jointly administered by state agencies, which handle most recipient functions, and the federal government—specifically, the U.S. Department of Agriculture's Food and Nutrition Service (USDA-FNS)—which supports and oversees the states and handles most retailer functions. In a program with diverse stakeholders, detecting, preventing, and addressing errors and fraud is complex. SNAP has typically been reauthorized in a farm bill approximately every five years; this occurred most recently in 2014 (P.L. 113-79). Policymakers have long been interested in reducing fraud and improving payment accuracy in the program. Provisions related to these goals have been included in past farm bill reauthorizations and may be considered for the next farm bill, expected in 2018.

There are four main types of inaccuracy and misconduct in SNAP:

- *Trafficking SNAP benefits* is the illicit sale of SNAP benefits, which can involve both retailers and recipients.
- *Retailer application fraud* generally involves an illicit attempt by a store owner to participate in SNAP when the store or owner is not eligible.
- *Errors and fraud by households applying for SNAP benefits* can result in improper payments. Errors are unintentional, while fraud is the intentional violation of program rules.
- *Errors and fraud by state agencies*—agency errors can result in inadvertent improper payments; the discussion of agency fraud largely focuses on certain states' Quality Control (QC) misconduct.

Certain key ideas are fundamental to any discussion of SNAP errors and fraud:

- Errors are not the same as fraud. Fraud is intentional activity that breaks federal and/or state laws, while errors can be the result of unintentional mistakes. Certain acts, such as trafficking SNAP benefits, are always considered fraud; other acts, such as duplicate enrollment, may be the result of either error or fraud depending on the circumstances of the case.
- SNAP fraud is relatively rare, according to available data and reports.
- There is no single measure that reflects all the forms of fraud in SNAP. There are some frequently cited measures that capture some parts of the issue, and there are relevant data from federal and state agencies' enforcement efforts.

The most frequently cited measure of fraud is the national retailer trafficking rate, which, estimated that 1.5% of SNAP benefits redeemed from FY2012-FY2014 were trafficked. While the national retailer trafficking rate (which is issued roughly every three years) estimates the extent of retailer trafficking, there is not a standard recipient trafficking rate, nor is there an overall recipient fraud rate.

USDA-FNS is responsible for identifying stores engaged in retailer trafficking—using transaction data analysis, undercover investigations, and other tools—and imposing penalties on store owners who commit violations. Retailers found to have trafficked may be subject to permanent disqualification from participation in SNAP, fines, and other penalties. USDA-FNS also works to identify fraud by retailers applying to accept SNAP benefits. Retailers found to have falsified their applications may be subject to denial, permanent disqualification, and other penalties.

While retailer trafficking and retailer application fraud are primarily pursued by a single federal entity (USDA-FNS), recipient violations (i.e., recipient trafficking and recipient application fraud) are pursued by 53 different state agencies. Recipients found to have trafficked may be required to repay the amount trafficked and may be subject to disqualification from receiving SNAP benefits and other penalties. State agencies' efforts to reduce and punish recipient fraud vary, which is evident, for instance, in state-submitted data on recipient disqualification activities.

The national payment error rate (NPER) is the most-cited measure of nationwide payment accuracy. Using USDA-FNS's Quality Control (QC) system, the NPER estimates states' accuracy in determining eligibility and benefit amounts. The NPER has limitations, though; for instance, it only reflects errors above a threshold amount ($38 in FY2017). After publishing a FY2014 NPER, USDA Office of the Inspector General (OIG) and USDA-FNS identified data quality issues that prevented the publication of an NPER in FY2015 and FY2016, but USDA-FNS published a NPER for FY2017 in June 2018. For FY2017, it was estimated that 6.30% of SNAP benefit issuance was improper—including a 5.19% overpayment rate and a 1.11% underpayment rate. Regardless of the cause of an overpayment, SNAP agencies are required to work toward recovering excess benefits from households that were overpaid (this is referred to as "establishing a claim against a household"). Applying these rates to benefits issued in FY2017 (over $63.6 billion), an estimated $3.30 billion in benefits were overpaid, and about $710 million in benefits were underpaid.

Overpayments and underpayments to households can be the result of recipient errors, recipient fraud, or agency errors during the certification process. State agencies rely on household-provided information in applications, but also employ a range of data matches—some required by federal law, some optional that vary by state—to promote accuracy and double-check information. According to the USDA-FNS FY2016 State Activity Report, of states' established claims for overpayment, approximately 62% of overpayment claim dollars were for recipient errors, about 28% were for agency errors, and about 11% were due to recipient fraud.

In addition to inadvertent agency errors, state agencies and their agents have been involved in isolated instances of fraud. Beyond cases of fraud conducted by state agency employees for personal gain, in FY2017 the Department of Justice obtained False Claim Act settlements from three state agencies accused of falsifying their Quality Control data and unlawfully obtaining federal bonuses. Investigations into this matter, conducted by the USDA-OIG, are ongoing.

Across all types of fraud, oversight entities such as the Government Accountability Office and USDA-OIG have identified issues and strategies relevant to combating errors and fraud in SNAP. USDA-FNS has also proposed related regulatory changes that were not finalized. On the retailer side, issues identified focus on opportunities to prevent and more promptly punish trafficking. On the recipient side, issues identified include the nonexistence of a recipient fraud rate, states'varied levels of anti-fraud efforts (which may be better incentivized), and improvements to data matching in the application process. During the 115th Congress, Members voted on farm bill proposals that contained some changes to SNAP program integrity policy; these proposals are summarized in CRS Report R45275, *The House and Senate 2018 Farm Bills (H.R. 2): A Side-by-Side Comparison with Current Law*.

Changes that might strengthen payment accuracy and punishments against fraud can be in tension with other policy objectives such as preserving recipient access to the program, and may have unintended consequences such as incurring costs greater than their savings. Balancing program objectives such as these are considerations for policymakers in this area.

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Introduction

The Supplemental Nutrition Assistance Program (SNAP) is the nation's largest domestic food assistance program, serving about 42.2 million recipients in an average month at a federal cost of over $68 billion in FY2017.[1] It is jointly administered by the federal government and the states and provides means-tested benefits to recipients who are deemed eligible. These benefits may be used only for eligible foods at any of the approximately 260,000 authorized retailers, which range from independent corner stores to national chain supermarkets.[2] In a program that operates with so many different stakeholders, detecting, preventing, and addressing errors and fraud is a complex undertaking. Among the complexities are the monitoring of retailer acceptance and recipient use of benefits, the accuracy of information provided by applicant households, and states' performance administering the program. Many governmental entities—federal and state agencies, including both human services and law enforcement—play a role in efforts to detect, prevent, and punish fraudulent SNAP activities and to reduce inadvertent errors.

SNAP has typically been reauthorized in a farm bill approximately every five years; this occurred most recently in 2014 (P.L. 113-79).[3] Policymakers have long been interested in reducing fraud and improving accuracy in the program, and provisions related to these goals are frequently included in farm bills. In preparation for the next farm bill, up for reauthorization in September 2018, policymakers have again begun to discuss error and fraud in the program.[4] The Trump Administration has also announced related policy changes.[5] At the same time, some policymakers defend the program against criticism of its integrity.[6]

To help policymakers navigate this complex set of policy issues, this report seeks to define terms related to errors and fraud; identify problems and describe what is known of their extent; summarize current policy and practice; and share recommendations, proposals, and pilots that have come up in recent years. The report answers several questions around four main types of inaccuracy and misconduct: (1) trafficking SNAP benefits (by retailers and by recipients); (2) retailer application fraud; (3) errors and fraud in SNAP household applications; and (4) errors and fraud committed by state agencies (including a discussion of states' recent Quality Control (QC) misconduct). The report then discusses challenges to combating errors and fraud—across the four areas—and potential strategies for addressing those challenges.

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[1] Average monthly participation data and total program cost for FY2017 are from the U.S. Department of Agriculture Food and Nutrition Service (USDA-FNS) administrative data.

[2] For basic information on SNAP eligibility rules, benefit calculation, and benefit redemption, see CRS Report R42505, *Supplemental Nutrition Assistance Program (SNAP): A Primer on Eligibility and Benefits*, by Randy Alison Aussenberg.

[3] For background, see CRS In Focus IF10663, *Farm Bill Primer: SNAP and Other Nutrition Title Programs*, by Randy Alison Aussenberg.

[4] See Chairman K. Michael Conaway, *Past, Present, and Future of SNAP: Hearing Series Findings: 114th Congress*, House Committee on Agriculture, December 7, 2016, pp. 38-48, https://agriculture.house.gov/UploadedFiles/SNAP_Report_2016.pdf.

[5] For information regarding these policy changes, see, for example: December 5, 2017, USDA press release, https://www.usda.gov/media/press-releases/2017/12/05/usda-promises-new-snap-flexibilities-promote-self-sufficiency; and December 8, 2017, USDA press release: https://www.usda.gov/media/press-releases/2017/12/08/usda-clears-arizona-test-snap-fraud-prevention-improvement.

[6] See, for example, Representative Jim McGovern, "U.S. Rep. McGovern's 18th End Hunger Now Speech: Fraud, Waste, Abuse," press release, July 17, 2013, https://mcgovern.house.gov/news/documentsingle.aspx?DocumentID=396547.

Certain key ideas that are fundamental to discussion of SNAP errors and fraud are explored further in the report:

- Errors are not the same as fraud. Fraud is intentional activity that breaks federal and/or state laws, but there are also ways that program stakeholders—particularly recipients and states—may inadvertently err, which could affect benefit amounts. Certain acts, such as trafficking, are always considered fraud, but other acts, such as duplicate enrollment, may be the result of either error or fraud depending on the circumstances of the case.
- SNAP fraud is relatively rare, according to available data and reports. While this report discusses illegal or inaccurate activities in SNAP, they represent a relatively small fraction of SNAP activity overall.
- There is no single data point that reflects all the forms of fraud in SNAP. The most frequently cited measure of fraud is a national estimate of retailer trafficking, which is a significant, but not the only, type of fraud in the program.
- While retailer trafficking and retailer application fraud are pursued primarily by a single federal entity, recipient violations are pursued by 53 different state agencies. This leads to disparate approaches and disparate reporting.[7]
- The national payment error rate (NPER) is the most-often cited measure of nationwide SNAP payment accuracy, but it has limitations. For example, it only reflects errors above an error tolerance threshold.

Policies to reduce fraud and increase accuracy can be in tension with other policy objectives, and may have unintended consequences. Policies that make retailer authorization more onerous, for instance, have the potential to decrease participants' access to SNAP-authorized stores. Making eligibility determinations more complex for recipients can impede recipients' access to the program and could strain states' eligibility determination operations. Implementing better data collection and accountability systems could require more staff and could incur more costs than it reduces.

This report provides a foundation for discussing error and fraud in SNAP and for evaluating policy proposals. It does not make independent CRS findings, but rather synthesizes the many available resources on error and fraud in SNAP. It relies, in particular, on reports and data from the United States Department of Agriculture's Food and Nutrition Service (USDA-FNS) as well as the published audits of the USDA's Office of the Inspector General (USDA-OIG) and the Government Accountability Office (GAO). For a list of abbreviations used in this report, see **Appendix A**.

Types of Errors and Fraud

This section defines each of the types of intentional fraud and unintentional errors committed by recipients, retailers, and state agencies, including retailer trafficking (fraud), recipient trafficking (fraud), retailer application fraud, recipient application fraud, recipient errors, agency errors, state agency employee fraud, and state agency fraud.

[7] 50 states, the District of Columbia, Guam, and the U.S. Virgin Islands administer SNAP.

Trafficking: Retailer and Recipient

USDA-FNS is responsible for administering the retailer side of SNAP and for pursuing retailer fraud; while states are responsible for administering the recipient side of SNAP (with federal oversight) and for pursuing recipient fraud.[8] "Trafficking" usually means the direct exchange of SNAP benefits (formerly known as food stamps) for cash, which is illegal, and both retailers and recipients can engage in this form of fraud.[9] Although SNAP benefits have a dollar value, they are not the same as cash because they can only be spent on eligible food for household consumption at authorized stores equipped with Electronic Benefit Transfer (EBT) point of sale (POS) machines.[10] Trafficking can also include the exchange of SNAP benefits for controlled substances, firearms, ammunition, or explosives.[11] Additionally, trafficking includes indirect exchanges, such as obtaining cash refunds for products purchased with SNAP benefits or reselling products purchased with SNAP benefits. Trafficking SNAP benefits includes recipient trafficking and retailer trafficking. Retailer trafficking of SNAP benefits usually occurs when a SNAP recipient sells their benefits for cash, often at a loss, to an owner or employee of a store participating in SNAP.[12] Recipient trafficking usually coincides with retailer trafficking, but it may take other forms (e.g., if a recipient were to sell their benefits, or food purchased with benefits, to another individual). Trafficking is one of the most serious forms of SNAP fraud, and although it does not increase costs to the federal government (as overpayments do), it does divert federal funds from their intended purpose.

Retailer Application Fraud

Retailers misrepresenting themselves or circumventing disqualification in the application process can be a source of fraud. To obtain SNAP authorization, applicant retailers must meet certain requirements, including stocking[13] and business integrity standards.[14] When a retailer initially applies to receive authorization to participate in SNAP or applies for reauthorization to continue SNAP participation,[15] the store owner must submit personal and business information and documentation to USDA-FNS in order to verify eligibility for SNAP participation. If a retailer

[8] Sections 9, 12, and 15 of the Food and Nutrition Act of 2008 (FNA) outline the requirement that USDA-FNS administer SNAP on the retailer side; Section 11 outlines the requirement that states administer SNAP on the recipient side.

[9] For the full definition of trafficking, see 7 C.F.R. §271.2.

[10] Stores authorized to participate in SNAP are required to ensure that SNAP benefits are accepted as payment only for eligible food. Many, but not all, stores ensure compliance by programming their point of sale systems to recognize the SNAP eligibility of products at the checkout counter, thereby preventing the use of SNAP benefits to pay for ineligible products.

[11] Controlled substances as defined at 21 U.S.C. §802.

[12] For example, a recipient swipes their SNAP EBT card for a $20 purchase transaction, but rather than receiving $20 of eligible food, the recipient obtains $10 in cash from the store owner. The total amount of the transaction ($20) is deposited into the store owner's bank account. In this example, both the recipient and retailer are engaged in trafficking SNAP benefits.

[13] SNAP stocking standards may be met with either a range of different staple foods on hand or documentation reflecting more than 50% of store sales in staple foods. For more information, see CRS Report R42505, *Supplemental Nutrition Assistance Program (SNAP): A Primer on Eligibility and Benefits*, by Randy Alison Aussenberg.

[14] SNAP business integrity standards require that store owners do *not* have a history of certain convictions, civil judgments, and violations. Section 9(a)(1)(D) of the FNA (codified at 7 U.S.C. §2018(a)(1)(D) and implemented at 7 C.F.R §278.1(b)(3)).

[15] Stores participating in SNAP must apply for reauthorization on a regular basis. Depending on risk level and other factors, stores are reconsidered on reauthorization cycles that vary from one to five years.

deliberately submits false or misleading information of a substantive nature in order to receive SNAP authorization despite their ineligibility, then they have committed falsification—retailer application fraud.[16] Another kind of retailer application fraud involves a store owner attempting to circumvent disqualification from SNAP by engaging in a purported sale or transfer of ownership of their store to a spouse or relative; after which the new purported owner applies to participate in SNAP, claiming that the former disqualified owners are no longer associated with the store. This practice is often referred to as "straw ownership," and USDA-FNS does not consider such sales or transfers of ownership to be bona fide.[17] Such actions by the disqualified retailer are considered circumvention—retailer application fraud.[18] Retailer application fraud does not increase costs to the federal government (as overpayments can), but it does enable retailers who may be more likely to engage in trafficking to enter the program.

Errors and Fraud in Benefit Issuance to Households

In addition to retailer trafficking and retailer application fraud, errors and fraud can arise in determining eligibility and benefit amounts for recipients.

Recipient Errors

When a household initially applies to receive or recertifies to continue receiving SNAP benefits, the applicant household must submit personal information and documentation to their state agency for eligibility determination, and for benefit calculation if found to be eligible. During this application process, an applicant may misunderstand SNAP rules, make a miscalculation, otherwise unintentionally provide incorrect information, or accidentally omit certain information. If this error results in an overpayment to the household and there is no proof that this error was *intentional*, then this error is designated as an inadvertent household error (IHE).[19]

Recipient Application Fraud

If an applicant is found to have intentionally submitted false or misleading information during the initial application or recertification process that leads to an incorrect eligibility or allotment determination (resulting in an overpayment), then that applicant has committed an intentional program violation (IPV)—recipient application fraud.[20]

[16] Examples of falsification include providing USDA-FNS with a fake Social Security Number (SSN) for a store owner, untruthfully attesting that a store owner had never been convicted of a crime, or providing forged records indicating an inventory of foodstuffs not stocked at the store.

[17] A "straw owner" is an individual who legally owns property, or has the legal appearance of owning property, on behalf of another individual, sometimes for a fee. Typically, such arrangements are conducted solely to hide the identity of the effective owner.

[18] U.S. Department of Agriculture, Office of the Inspector General, *FNS: Controls for Authorizing Supplemental Nutrition Assistance Program Retailers*, Audit Report 27601-0001-31, July 2013, pp. 3-4, https://www.usda.gov/oig/webdocs/27601-0001-31.pdf (hereinafter cited as "July 2013 USDA-OIG report").

[19] Inadvertent household errors are sometimes referred to as unintentional program violations (UPVs).

[20] This is also referred to as "eligibility fraud" although recipient application fraud can involve recipients falsifying information pertaining to eligibility as well as income. See Section 6(b) of the FNA (codified at 7 U.S.C. §2015(b) and implemented at 7 C.F.R. §273.16).

Agency Errors

SNAP overpayments or underpayments that are *not* the result of recipient actions (i.e., not the result of recipient errors or recipient fraud) are generally the result of agency errors (AEs).[21] Agency errors include overpayments or underpayments caused by the action of, or failure to take action by, any representative of a state agency.

Fraud Conducted by State Agencies or Their Agents

"State agency employee fraud" and "state agency fraud" are not terms defined in statute, regulation, or agency guidance. As used in this report, "state agency employee fraud" and "state agency fraud" include forms of fraud often referred to as "insider threats"—a threat to SNAP integrity that comes from within entities that administer SNAP (i.e., state agencies).

State Agency Employee Fraud

State agency employee fraud is any intentional effort by state employees to illegally generate and benefit from SNAP overpayments. State agency employee fraud usually involves eligibility workers who abuse their positions and access to the SNAP certification process in order to unlawfully generate SNAP accounts that materially benefit individuals not entitled to such benefits.

State Agency Fraud

State agency fraud is any intentional effort by state officials to mislead USDA-FNS or other federal authorities in order to illegally obtain federal funds or avoid federal monetary penalties. State agency fraud cases are very infrequent and generally center on a state's falsification of program-related data. Of interest to policymakers, the state agency fraud case examined in this report, first identified in 2017, deals with multiple states' falsification of Quality Control (QC) data in order to obtain monetary bonuses and avoid monetary penalties, with some actions dating back to 2008.[22] (For more information, see "State Agency Fraud: SNAP Quality Control.")

Extent of Errors and Fraud

Extent of Retailer Trafficking

USDA-FNS publishes an annual report that summarizes their annual administrative activities pertaining to retailers participating in SNAP,[23] including detailed retailer data on participation and redemptions, retailer applications and authorizations, investigations and sanctions, and administrative review. According to this Retailer Management Report, in FY2016 there were 260,115 retailers participating in SNAP, and USDA-FNS permanently disqualified 1,842 stores for retailer trafficking (less than 1% of all stores).[24]

National Retailer Trafficking Rate[25]

The most recent trafficking study (analyzing 2012-2014 data) estimated that 1.50% of all SNAP benefits redeemed were trafficked (sold for cash or exchanged illegally) at stores. This is up from an estimated 1.34% in the 2009-2011 study. This only reflects one type of fraud—retailer trafficking.

Roughly every three years, USDA-FNS publishes a study estimating the extent of retailer trafficking in SNAP over about three years of SNAP redemption data. The retailer trafficking studies referenced in this report were issued in 2017 (covering 2012-2014), 2013

(covering 2009-2011), and 2011 (covering 2006-2008).[26] By examining a representative sample, these studies determined two national rates that reflect the prevalence of retailer trafficking. The *national retailer trafficking rate* represents the proportion of SNAP redemptions at stores that were estimated to have been trafficked. The *national store violation rate* represents the proportion of authorized stores that were estimated to have engaged in trafficking.

The national retailer trafficking rate is the most-cited measure of fraud in SNAP, although it does not capture all types of fraud (i.e., it represents only retailer trafficking). According to the September 2017 USDA-FNS Retailer Trafficking Study, the national retailer trafficking rate for 2012-2014 was 1.50%, up from 1.34% in the 2009-2011 study.[27] This means that, during this period, USDA-FNS estimates that 1.50% of all SNAP benefits redeemed were trafficked at participating stores. This constitutes about $1.1 billion in estimated benefits trafficked each year at stores during this period.[28] Additionally, this study estimated that the national store violation rate for this period was 11.82%, up from 10.47% in the 2009-2011 study.[29] This means that, during this period, USDA-FNS estimates that 11.82% of all SNAP-authorized retailers engaged in retailer trafficking at least once.

The September 2017 USDA-FNS Retailer Trafficking Study found that the increase in retailer trafficking was due to increased program participation by smaller stores, which have a higher rate of retailer trafficking. While stores enter and leave the program from year to year, the overall growth in SNAP-authorized stores over the last 10 years (FY2007-FY2016) was about 93,000, and about 63% of this growth came from convenience stores in the program (see **Table D-1** in **Appendix D**).[30] As of FY2016, convenience stores constitute about 46% of all stores in the program, up from 36% in FY2007.[31] According to the September 2017 USDA-FNS Retailer Trafficking Study, covering 2012-2014, convenience stores account for about 5% of total SNAP redemptions, but about 57% of retailer trafficking (see **Table D-3** in **Appendix D**).[32] Also

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[21] Agency errors are sometimes called "administrative errors."

[22] U.S. Department of Justice (DOJ), "Wisconsin Department of Health Services Agrees to Pay Nearly $7 Million to Resolve Alleged False Claims for SNAP Funds," press release, April 12, 2017, https://www.justice.gov/opa/pr/wisconsin-department-health-services-agrees-pay-nearly-7-million-resolve-alleged-false-claims.

[23] Retailer Management Reports are available at https://www.fns.usda.gov/snap-retailer-data.

[24] This comes to about 0.71% of total stores participating in the program in FY2016. This CRS calculation is based on data provided in an email from SNAP, USDA-FNS, October 25, 2017.

[25] Joseph Willey, Nicole B. Fettig, and Malcolm Hale, *The Extent of Trafficking in the Supplemental Nutrition Assistance Program: 2012–2014*, prepared by WRMA, Inc. for the U.S. Department of Agriculture, Food and Nutrition Service, September 2017, pp. ii-9, https://www.fns.usda.gov/snap/extent-trafficking-supplemental-nutrition-assistance-program-2012%E2%80%932014 (hereinafter cited as "September 2017 USDA-FNS Retailer Trafficking Study")

[26] These three studies can be found online at https://www.fns.usda.gov/report-finder.

[27] September 2017 USDA-FNS Retailer Trafficking Study, pp. ii-9.

[28] SNAP benefit redemptions in FY2012, FY2013, and FY2014 were about $75 billion, $76 billion, and $70 billion, respectively.

[29] September 2017 USDA-FNS Retailer Trafficking Study, pp. 17.

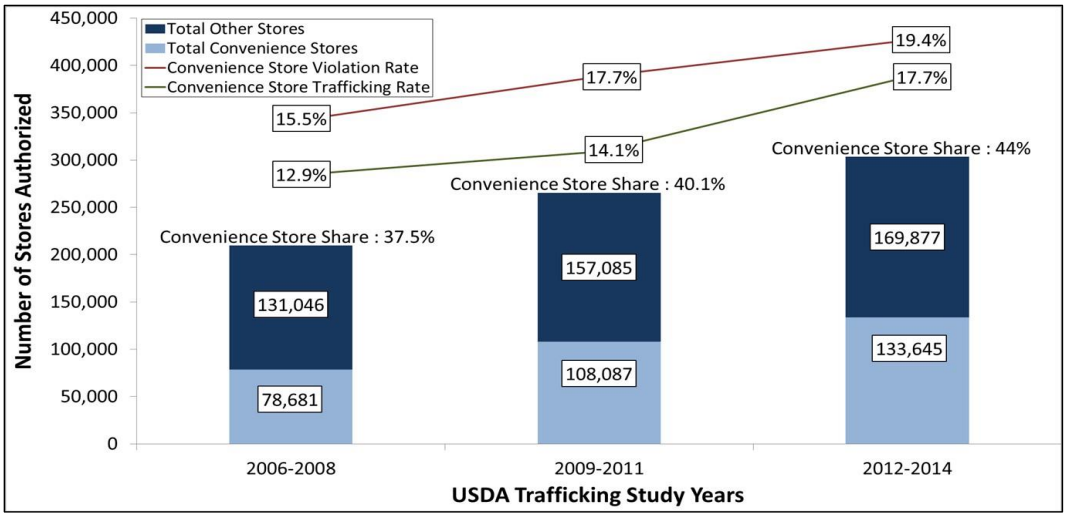
[30] This CRS calculation is based on data provided in an email from SNAP, USDA-FNS, January 5, 2018. USDA-FNS categorizes retailers into "store types" (e.g., "convenience store") according to definitions in an internal agency document. Store types are largely defined by volumes of sales, size, and other business characteristics.

[31] This CRS calculation based on data provided in an email from SNAP, USDA-FNS, January 5, 2018, and from U.S. Department of Agriculture, Food and Nutrition Service, *2016 Retailer Management Year End Summary Report*, December 2016, p. 1, https://fns-prod.azureedge.net/sites/default/files/snap/2016-SNAP-Retailer-Management-Year-End-Summary.pdf (hereinafter cited as "December 2016 USDA-FNS Retailer Management Report").

[32] This CRS calculation based on data from September 2017 USDA-FNS Retailer Trafficking Study, p. 9.

according to this study, about 18% of all SNAP benefits used at authorized convenience stores are trafficked by these stores (i.e., the convenience store trafficking rate), and about 19% of all authorized convenience stores are engaged in trafficking (i.e., the convenience store violation rate).[33] These rates are significantly higher than the national rates for all stores (see **Table D-2** in **Appendix D**). The increase in SNAP participation by smaller stores appears to correlate to an overall increase in retailer trafficking, according to USDA-FNS.[34] **Figure 1** displays some of these data from the three most recent trafficking studies.

Figure 1. Authorization and Trafficking at Convenience Stores, 2006-2014



Source: The three USDA-FNS retailer trafficking studies referenced can be found online using https://www.fns.usda.gov/report-finder.

Extent of Retailer Application Fraud

There is no standard measure of retailer application fraud. However, USDA-FNS does report annually on actions taken against business integrity violations, and a retailer engaged in application fraud (including falsification and circumvention) is generally considered to be in violation of business integrity standards.

In FY2016, USDA-FNS sanctioned 126 stores for business integrity violations. This number includes sanctions not related to retailer application fraud and amounts to less than 1 store sanctioned for every 2,064 stores participating in the program.[35] During the same period, USDA-FNS permanently disqualified about 15 times as many stores for retailer trafficking.[36]

[33] September 2017 USDA-FNS Retailer Trafficking Study, p. 9.

[34] September 2017 USDA-FNS Retailer Trafficking Study, pp. iii-14.

[35] This business integrity sanction total includes stores sanctioned for past convictions as well as retailer application fraud (i.e., circumvention and falsification). Total FY2016 business integrity sanctions include 25 time-limited denials, 5 time-limited withdrawals, 56 permanent denials, 37 permanent withdrawals, and 3 permanent disqualifications; December 2016 USDA-FNS Retailer Management Report, p. 5, and email from SNAP, USDA-FNS, October 25, 2017.

[36] Total FY2016 permanent disqualifications for retailer trafficking were 1,842. CRS calculations in this paragraph use data from the December 2016 USDA-FNS Retailer Management Report, pp. 1-8, and email from SNAP, USDA-FNS, October 25, 2017.

Extent of Errors and Fraud in Benefit Issuance to Households

National Payment Error Rate

The SNAP Quality Control (QC) system measures improper payments in SNAP. This system was first established by the Food Stamp Act of 1977.[37] Under the QC system, every state agency conducts a monthly review of a sample of its households, comparing the amounts of overpayments and underpayments to total issuance.[38] From this review, state agencies calculate their state payment error rate (SPER). USDA-FNS conducts annual reviews of a sample of each state's reviews to validate state findings and determine national rates—developing the national payment error rate (NPER).

The NPER is the most-often cited measure of payment accuracy in SNAP.[39] Unlike the national retailer trafficking rate, the NPER is *not* a measure of fraud. The NPER reflects improper payments, but not the *cause* of these overpayments and underpayments. The NPER estimates all overpayments and underpayments resulting from recipient errors, recipient application fraud, and agency error.[40] Per current federal law, only overpayments and underpayments of $38 or more (inflation-adjusted annually) in the sample month are counted when calculating the payment error rate—this is called the Quality Control threshold.[41] Additionally, the NPER combines both the overpayment rate and the underpayment rate, so it does not reflect only excess expenditures. For example, in FY2017, the NPER was 6.30%—which included a 5.19% overpayment rate and a 1.11% underpayment rate.[42]

In discussions regarding SNAP payment accuracy, the NPER is sometimes misunderstood to be a measure of the federal dollars lost to fraud and waste in the program. The NPER instead reflects the extent of inaccurate payments that exceed the Quality Control threshold in a given year. Regardless of the cause of an overpayment, SNAP agencies are required to work towards recovering excess benefits from households that were overpaid. Recovery of overpayments involves, first, the establishment (or determination) of a claim against a household, and, second, the actual collection of that claim. Applying the FY2017 NPER to total benefit issuance, in FY2017 an estimated $3.3 billion in benefits were overpaid, an estimated $710 million in benefits

[37] Section 16 of the 1977 FSA originally established the SNAP QC system; Section 4418-4420 of the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill) and Sections 4019-4021 of the 2014 Farm Bill modified Section 16 of the FNA (codified at 7 U.S.C. §2025 and implemented at 7 C.F.R. §275).

[38] This statistical sample includes households receiving benefits, as well as households denied, suspended, or terminated from receiving benefits in the sample month.

[39] USDA uses the NPER to measure the payment accuracy of SNAP issuance per the requirements of the Improper Payments and Elimination and Recovery Act of 2010 (P.L. 111-204); see https://paymentaccuracy.gov/program/supplemental-nutrition-assistance-program/. Also see CRS Report R43694, *Improper Payments in High Priority Programs: In Brief*, by Garrett Hatch.

[40] For information regarding the determination of payment error rates, see 7 C.F.R. §275.23(b) & (c).

[41] When SNAP agencies detect overpayments and underpayments of less than $38 (inflation adjusted annually), they still must follow SNAP rules and correct these errors. The Quality Control threshold, also known as the error tolerance threshold, is only important in the calculation of the payment error rate. The current Quality Control threshold was most recently set by Section 4019 of the 2014 Farm Bill which modified Section 16(c)(1)(A) of the FNA (codified at 7 U.S.C. §2025(c)(1)(A) and implemented at 7 C.F.R. §275.12(f)(2)). This threshold has been adjusted by statute and regulation over the years (set at $5 in FY1980, $25 in FY2000, $50 in FY2009, $25 in FY2010, $50 in FY2012, $37 in FY2014, and most recently $38 in FY2015).

[42] The NPER is sometimes called the "combined payment error rate" or the "national performance measure", and the NPER is sometimes called the "national payment accuracy rate" when inverted (i.e., 93.70% in FY2017).

were underpaid.[43] In FY2016, the most recent year available, states established over $684 million in claims to recover overpayments.[44]

Context for Comparing FY2017 NPER to Prior Years

Recent years' NPERs are listed in **Table 1**, showing rates from FY2011-FY2014 and then skipping to FY2017. SNAP national payment error rates were not released by USDA-FNS in FY2015 or FY2016, due to data quality concerns.

In 2014, USDA found data quality issues in 42 of 53 state agencies' Quality Control data reporting. These data quality issues are not, in and of themselves, proof of wrongdoing. In some cases, states had not followed protocol, while in other cases states had been found to have deliberately covered up errors (fraudulent actions). (A more detailed discussion of Quality Control as well as these audits and investigations can be found in "State Agency Fraud: SNAP Quality Control"). USDA-FNS suspended error reporting for FY2015 and FY2016, and also used this time to examine and improve state quality control procedures.[45]

In June 2018, USDA-FNS published FY2017 state and national error rates (NPER). USDA-FNS's accompanying materials describe that this NPER was determined "under new controls to prevent any recurrence of statistical bias in the QC system," which includes "a new management evaluation process to examine state quality control procedures on a regular basis."[46] The agency also described that the FY2017 rate stems from "a modernized review process, which includes updated guidance, revisions to [the relevant FNS handbook], extensive training for State and Federal staff, and modifications to State procedures to ensure consistency with Federal guidelines."[47]

As displayed (**Table 1**) and discussed earlier, the FY2017 NPER of 6.30% is a substantial increase from the FY2014 of 3.66%. USDA-FNS states the FY2017 rate "is higher than the previous rate ... but it is more accurate."[48] However, changes to data collection and related oversight since FY2014 make it difficult to reliably compare FY2017 rates to earlier years, as it is possible that earlier years include systemic under-reporting.

Table 1. National Payment Error Rate, FY2011-FY2014, FY2017

	FY2011	FY2012	FY2013	FY2014	FY2017[a]
Overpayment	2.99%	2.77%	2.61%	2.96%	5.19%
Underpayment	0.81%	0.65%	0.60%	0.69%	1.11%

[43] CRS calculation using USDA-FNS SNAP summary data for FY2017. This data is typically published in USDA-FNS QC annual reports; the FY2017 report has not been published as of the date of this report.

[44] In FY2016, 884,301 claims were established with a total value of $684,187,891, and $402,007,206 in claims were collected. Claims are established only when an overpayment is detected by the state agency. Claims are not always established or collected in the year that the overpayment occurred, and there exists large variability between levels of state claim establishment and collection activity. FY2016 SAR, pp. 32, 34.

[45] See, e.g., U.S. Department of Agriculture, Food and Nutrition Service , *Fiscal Year (FY) 2016 Supplemental Nutrition Assistance Program (SNAP) Payment Error Rate*, June 29, 2017, https://fns-prod.azureedge.net/sites/default/files/snap/FY2016-Payment-Error-Rate-Memo.pdf.

[46] USDA-FNS, "Fact Sheet: SNAP Payment Error Rate," June 2018, https://www.fns.usda.gov/sites/default/files/snap/QC-FactSheet-2018.pdf.

[47] USDA-FNS, "Quality Control," https://www.fns.usda.gov/snap/quality-control, accessed September 24, 2018.

[48] USDA-FNS, "Fact Sheet: SNAP Payment Error Rate," June 2018, https://www.fns.usda.gov/sites/default/files/snap/QC-FactSheet-2018.pdf.

	FY2011	FY2012	FY2013	FY2014	FY2017[a]
NPER	***3.80%***	***3.42%***	***3.20%***	***3.66%***	***6.30%***

Source: USDA-FNS QC Annual Reports from the respective fiscal years.

Note: Overpayment and underpayment rates may not total to listed NPER due to rounding.

a. Per USDA-FNS, the agency developed new controls for FY2017 data collection that were not in place in FY2014.

Differentiating Between Recipient Fraud, Recipient Errors, and Agency Errors

The SNAP overpayment rate (component of the national payment error rate) estimates the extent of all SNAP overpayments, including overpayments resulting from recipient errors, recipient fraud, and agency errors (estimated to total about $3.3 billion overpaid in FY2017). The NPER does *not*, however, differentiate between the relative extents of each of these types of errors and fraud (i.e., the NPER cannot tell us what percentage of this $3.3 billion is due to, for example, agency errors). There is currently no single standard measurement that individually quantifies the extent of recipient errors, recipient fraud, or agency errors. State agencies are, however, responsible for administering the recipient side of SNAP, and every year states report data on these activities which USDA-FNS publishes in the SNAP State Activity Report (SAR).[49] This report includes detailed data on state-level program operations including benefit issuance, participation, administrative (i.e., non-benefits) costs, recipient disqualification, and claims.

When a recipient error, an act of recipient fraud, or an agency error results in an overpayment to a household (and that overpayment is detected by the state agency), the household is generally required by the state agency to repay the overpaid amount (i.e., a claim is established). Data on the establishment of claims resulting from recipient errors, recipient fraud, and agency errors is provided in the state report (subdivided by type). The extent of claims establishment, therefore, can serve as a proxy for the extent of these types of errors and fraud. In addition, when a recipient commits fraud (and that act of fraud is detected and proven by the state agency), that recipient is generally punished with disqualification from SNAP. The extent of recipient disqualifications, therefore, can serve as a proxy for the extent of recipient fraud.

Before examining these claims and disqualification data, however, it is important to understand the limitations of this approach. Claims are not established in all instances of overpayments resulting from recipient errors, recipient fraud, or agency errors. For example, claims may not be established when overpayment amounts fall below state agencies' claims thresholds[50] or when overpayments are not detected by state agencies. Likewise, not all acts of recipient fraud are detected, proven, and punished with disqualification. Also, these claims establishment and disqualifications data are not based on representative samples and, therefore, these data may not fully reflect the prevalence of recipient errors, recipient fraud, or agency errors in the SNAP caseload. Despite these shortcomings, these claims and disqualification data are the only available measures which reflect, albeit imperfectly, the extent of recipient errors, recipient fraud, or agency errors in SNAP. The following calculations of the extent of these types of errors and fraud are based on SNAP State Activity Report FY2016 data including the following: total issuance of

[49] State Activity Reports are available at https://www.fns.usda.gov/pd/snap-state-activity-reports.

[50] Per SNAP regulation at 7 C.F.R. §273.18(e)(2), the "claims threshold" is the minimum dollar value of overpayments that *must* be collected by states. States *may* establish claims on amounts below this threshold. The claims threshold applies to overpayments regardless of cause (i.e., recipient error, recipient fraud, or agency error). Since 2000 the claims threshold has been set at $125.

$66,539,351,219; average monthly participation of 21,777,938 households; an average monthly participation of 44,219,363 persons; total claims established of 884,301; and total claims dollars established of $684,197,891.[51]

Recipient Fraud

Unlike retailer trafficking, which is handled by one federal entity (USDA-FNS), recipient fraud is detected and punished by 53 different SNAP agencies (50 states, DC, Guam and the U.S. Virgin Islands) and, as noted in the September 2012 USDA-OIG report, "FNS cannot estimate a recipient fraud rate because it has not established how States should compile, track, and report fraud in a uniform manner."[52] This lack of standardization is a reason why a national recipient fraud rate does not exist.[53] Both recipient trafficking and recipient application fraud are included in these figures.

According to the FY2016 SNAP State Activity Report

- for every 10,000 households participating in SNAP, about 14 contained a recipient who was investigated and determined to have committed fraud that resulted in an overpayment that the state agency required the household to repay (30,274 claims established);
- for every $10,000 in benefits issued to households participating in SNAP, about $11 were determined by state agencies to have been overpaid due to recipient fraud and were required to be repaid by the overpaid household ($73,403,758 in fraud claims established);
- about 3% of the total number of claims established were established due to recipient fraud;
- about 11% of the total claims dollars established were established due to recipient fraud;
- for every 10,000 recipients participating in SNAP, about 13 were disqualified from the program for violating SNAP rules (e.g., committing fraud; 55,930 disqualified);
- about 1.5% of disqualification entries made into the USDA-FNS electronic Disqualified Recipient System (eDRS)[54] in FY2016 were permanent disqualifications;[55] and
- for every $10,000 in benefits issued to households participating in SNAP, about $21 were determined by state agencies to have been lost (overpaid due to recipient application fraud or trafficked) to recipient fraud associated with

[51] U.S. Department of Agriculture, Food and Nutrition Service, *State Activity Report Fiscal Year 2016*, September 2016, pp. 5-36, https://fns-prod.azureedge.net/sites/default/files/snap/FY16-State-Activity-Report.pdf (hereinafter cited as "FY2016 SAR")**.**

[52] U.S. Department of Agriculture, Office of the Inspector General, *Analysis of FNS' Supplemental Nutrition Assistance Program Fraud Prevention and Detection Efforts*, Audit Report 27002-001-13, September 2012, p. 2, https://www.usda.gov/oig/webdocs/27002-0011-13.pdf (hereinafter cited as "September 2012 USDA-OIG report").

[53] USDA-FNS has considered developing a level of standardization sufficient to calculate a recipient fraud rate, but in May 2014 the agency determined that it was not possible without significant investment and oversight. Email from SNAP, USDA-FNS, November 24, 2017.

[54] The USDA-FNS-eDRS compiles information regarding recipients disqualified by SNAP state agencies.

[55] Email from SNAP, USDA-FNS, January 3, 2018.

disqualified recipients ($136,475,242 in program loss associated with disqualified recipients).[56]

Recipient Errors

According to the FY2016 SNAP State Activity Report

- for every 10,000 households participating in SNAP, about 181 were overpaid due to a recipient error and the state agency required the household to repay the overpaid amount (394,883 recipient error claims established);
- for every $10,000 in benefits issued to households participating in SNAP, about $63 were determined by state agencies to have been overpaid due to recipient errors and were required to be repaid by the overpaid household ($421,934,288 in recipient error claims established);
- about 45% of the total number of claims established were established due to recipient errors;
- about 62% of the total claims dollars established were established due to recipient errors;
- about 65% of FY2016 claims were established by four states;[57]
- about 55% of FY2016 claims amounts were established by these four states; and
- these four states accounted for about 30% of SNAP participants.

Agency Errors

According to the FY2016 SNAP State Activity Report

- for every 10,000 households participating in SNAP, about 47 were overpaid due to agency errors, and the state agency required the household to repay the overpaid amount (459,144 agency error claims established);
- for every $10,000 in benefits issued to households participating in SNAP, about $28 were determined by state agencies to have been overpaid due to agency errors and were required to be repaid by the overpaid household ($188,859,846 in agency error claims established);
- about 52% of the total number of claims established were established due to agency errors;
- about 28% of the total claims dollars established were established due to agency errors;
- about 80% of the total number of agency error claims established were established by California;[58]

[56] Per the FY2016 SAR, p. 32, "Some states establish all non-agency error claims as household error claims initially and then transfer the claim from household error to fraud after the prosecution or [administrative disqualification hearing] ADH. Therefore, the sum of the fraud associated with disqualifications is a better measure of the ultimate amount of fraud claims than the newly established amount."

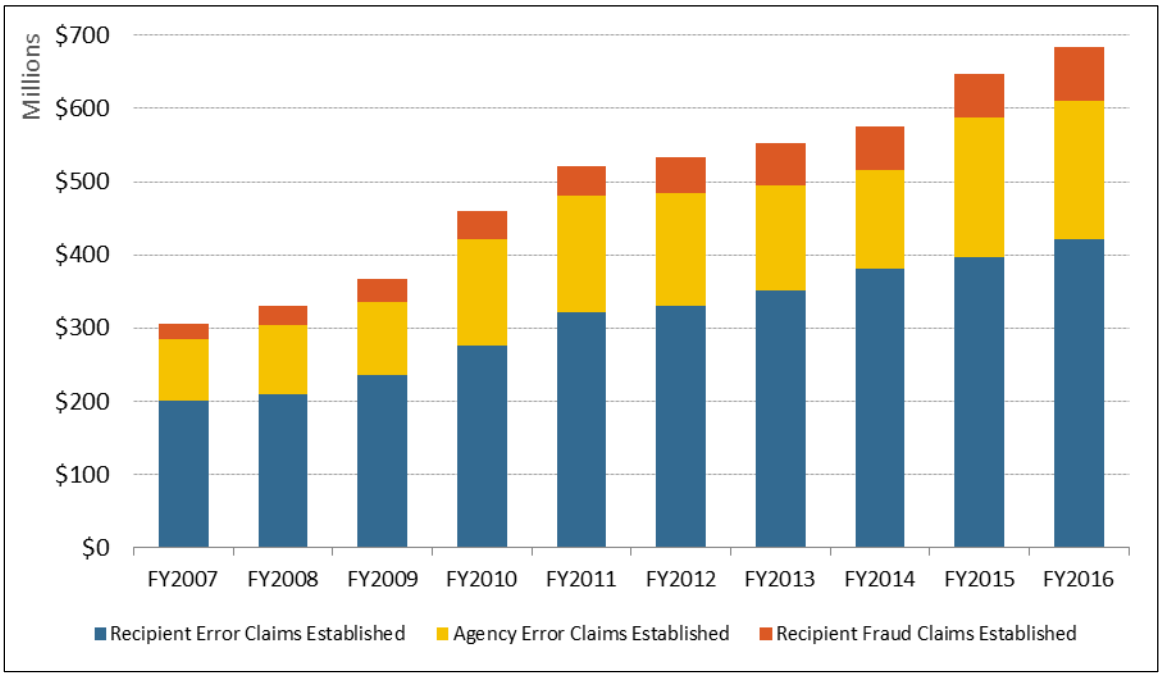
[57] These states are California, Illinois, Texas, and Florida.

[58] The claim threshold for agency errors in California is $35 for current households and $125 for inactive households. See http://www.cdss.ca.gov/shd/res/htm/FoodStampIndex.htm.

- about 64% of the total agency error claims dollars established were established by California; and
- California accounted for about 10% of SNAP participants.

Although the total volume of claims established has increased over time, the majority of claims established have been the result of recipient errors, with agency errors being second most common, and recipient fraud claims being least common—as illustrated by **Figure 2**.

Figure 2. Claims Establishment by Type, FY2007-FY2016



Source: Created by CRS using data from SNAP State Activity Reports FY2007-FY2016.

Detection and Correction of Errors and Fraud

State and federal efforts to detect and correct errors, as well as efforts to detect and deter fraud, are detailed in this section.

Retailer Fraud

USDA-FNS is responsible for administering the retailer side of SNAP and for pursuing retailer fraud.[59] USDA-OIG, in collaboration with the Federal Bureau of Investigations (FBI), U.S. Secret Service, and other federal, state, and local law enforcement entities, is responsible for pursuing criminal charges against retailers found to be engaging in retailer trafficking.

Detection of Retailer Trafficking

Retailer trafficking can be detected through a variety of means, including the following:

[59] Sections 9, 12, and 15 of the FNA outline the requirement that USDA-FNS administer SNAP on the retailer side.

Analysis of EBT Transaction Data—Whenever a SNAP EBT card is swiped, the transaction data is captured and analyzed by USDA-FNS for suspicious patterns. USDA-FNS use these data to develop a case against a retailer when the transactions indicate retailer trafficking is occurring at their store. In FY2016, USDA-FNS reviewed the transactions of nearly 9% of participating stores.[60] Over 80% of retailer trafficking detected by USDA-FNS are found primarily through EBT transaction analysis.[61]

Undercover Investigations—USDA-FNS performs undercover investigation of stores suspected of violating SNAP rules (e.g., trafficking), and in FY2016, USDA-FNS investigated over 1% of participating stores.[62]

State Law Enforcement Bureau (SLEB) Agreements—Some state agencies enter into state law enforcement bureau (SLEB) agreements with law enforcement entities in their jurisdictions in order to further their efforts to detect trafficking. These agreements are typically focused on recipient trafficking, but they can have implications for retailer trafficking.

Tips and Referrals—USDA-FNS receives tips, complaints, and referrals, which can lead to cases of retailer trafficking. These referrals come from SNAP retailers, SNAP recipients, members of the public, state agencies, SLEBs, USDA-OIG, or other law enforcement entities. USDA-OIG operates a website and hotline for members of the public to report instances of fraud.[63] In FY2016, USDA-OIG referred 4,320 complaints to USDA-FNS.[64]

Correction of Retailer Trafficking

If a store is found to have committed trafficking, then all of the owners of the store may be subject to penalties.[65] Major penalties associated with retailer trafficking include the following:

Disqualification—If USDA-FNS finds that a SNAP-authorized retailer violated *any* SNAP rules, then that retailer may be subject to a period of disqualification from program participation.[66] Trafficking SNAP benefits is considered one of the most severe violations of SNAP rules, and a

[60] This CRS calculation is based on data from the December 2016 USDA-FNS Retailer Management Report, p. 1.

[61] This CRS calculation is based on data from the December 2016 USDA-FNS Retailer Management Report, p. 8 and an email from SNAP, USDA-FNS, October 25, 2017. In FY2016 1,842 stores were permanently disqualified for trafficking SNAP benefits, and USDA-FNS undercover investigations identified retailer trafficking in 288 instances. The remaining stores were EBT cases, sometimes referred to as paper cases.

[62] About 20% of these investigations resulted in findings of trafficking. This CRS calculation is based on data from the December 2016 USDA-FNS Retailer Management Report, p. 8.

[63] USDA-OIG hotline information available at https://www.usda.gov/oig/hotline.php.

[64] U.S. Department of Agriculture, Office of the Inspector General, *Semiannual Report to Congress: Second Half, April 1, 2016-September 30, 2016*, Number 76, November 2016, p. 54, https://www.usda.gov/oig/webdocs/sarc2016_2nd_half_508.pdf (hereinafter cited as "USDA-OIG SARC 2nd Half FY2016"); U.S. Department of Agriculture, Office of the Inspector General, *Semiannual Report to Congress: First Half, October 1, 2015-March 31, 2016*, Number 75, May 2016, p. 57, https://www.usda.gov/oig/webdocs/sarc2016_1st_half.pdf (hereinafter cited as "USDA-OIG SARC 1st Half FY2016").

[65] In community property states, the spouses of owners are automatically considered owners themselves and are also subject to all applicable penalties. As of March 2018, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin are community property states.

[66] Disqualifications can be for a term or permanent. Term disqualification can vary in length from 6 months to 10 years, depending on the nature of the violation. Disqualification for trafficking is generally permanent. Section 12 of the FNA (codified at 7 U.S.C. §2021 and implemented at 7 C.F.R. §278.6).

retailer found by USDA-FNS to have trafficked SNAP benefits (regardless of the amount) is generally subject to a permanent disqualification (PDQ) from program participation.[67]

Reciprocal WIC Disqualification—Stores that are disqualified for violations of the rules of SNAP are disqualified for an equal (but not necessarily concurrent) period of time from participation in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).[68] Likewise, stores disqualified from WIC are disqualified from SNAP for an equal (but not necessarily concurrent) period of time. PDQs, such as PDQs for trafficking, are also reciprocal between the programs.

Restitution of Benefits Trafficked (Claims)—When a retailer accepts or redeems SNAP benefits in violation of the Food and Nutrition Act of 2008 (FNA), such as engaging in retailer trafficking of SNAP benefits, that retailer may be compelled to repay the amount that they illegally redeemed. This is called a claim and is considered a federal debt. USDA-FNS has the authority to collect such claims by offsetting against a store's SNAP redemptions as well as a store's bond or letter of credit (LOC),[69] where applicable.[70]

Rights of Retailers Accused of Fraud

Following a completed trafficking investigation, the agency sends a retailer a "charge letter" detailing the charges, and explaining the retailer's right to request administrative review. If requested, an independent subdivision of USDA-FNS considers the validity of the charges anew and issues a Final Agency Determination that sustains, reverses, or modifies the charges and explains the retailer's right to request judicial review. The retailer may choose to file a complaint against USDA-FNS in the court of jurisdiction after receiving a Final Agency Determination.

Public Disclosure of Disqualified Retailers—USDA-FNS has the authority to publicly disclose the store and owner name for disqualified retailers.[71] A December 2016 USDA-FNS Final Rule asserted USDA-FNS's intent to disclose this information in order to deter retailer trafficking.[72]

Transfer of Ownership Civil Money Penalty (TOCMP)—If a retailer under a period of disqualification sells or transfers ownership of their store, then USDA-FNS is to assess that disqualified retailer a "transfer of ownership civil money penalty" (TOCMP).[73] This means that retailers permanently disqualified from SNAP for committing retailer trafficking are to be assessed this penalty *whenever* they sell or transfer ownership of their stores (regardless of how much time has passed since the disqualification occurred). In FY2016, USDA-FNS assessed 257 such penalties with a mean value of $29,284.[74]

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[67] Section 12(b)(3)(B) of the FNA (codified at 7 U.S.C. §2021(b)(3)(B) and implemented at 7 C.F.R. §278.6(e)(1)(i)).

[68] Section 12(g) of the FNA (codified at 7 U.S.C. §2021(g) and implemented at 7 C.F.R §278.6(e)(8)). For more information on WIC, see CRS Report R44115, *A Primer on WIC: The Special Supplemental Nutrition Program for Women, Infants, and Children*, by Randy Alison Aussenberg.

[69] In certain circumstances USDA-FNS may require a retailer to provide a form of financial collateral (i.e., a collateral bond or an irrevocable letter of credit) as a condition of SNAP authorization.

[70] Section 15(e) of the FNA (codified at 7 U.S.C. §2024(e) and clarified at 7 C.F.R. §278.7).

[71] Section 9(c) of the FNA (codified at 7 U.S.C. §2018(c) and implemented at 7 C.F.R. §278.1(q)(5).

[72] U.S. Department of Agriculture, Food and Nutrition Service, "Enhancing Retailer Standards in the Supplemental Nutrition Assistance Program (SNAP)," 81 *Federal Register* 90675, December 15, 2016 (hereinafter cited as "December 2016 Final Rule"). For more information about this final rule, see CRS Report R44650, *Updated Standards for SNAP-Authorized Retailers*, by Randy Alison Aussenberg.

[73] Section 12(e)(1) of the FNA (codified at 7 U.S.C. §2021(e) and implemented at 7 C.F.R. §278.6(f)(2)).

[74] Email from SNAP, USDA-FNS, October 17, 2017.

Exclusion from the General Service Administration's System for Award Management (GSA-SAM)—This GSA system tracks individuals and entities that do business with the federal government. An individual or entity excluded from this system is prohibited from doing business with the federal government for the duration of the exclusion.[75] All of the owners of a store permanently disqualified from SNAP participation for trafficking benefits are permanently listed as exclusions in GSA-SAM. As of September 2017, 10,307 permanently disqualified retailers have been listed by USDA-FNS in GSA-SAM as exclusions due to SNAP and WIC violations.[76] This type of exclusion can have collateral consequences for the excluded party.[77]

Criminal Charges and Penalties—Retailers engaged in trafficking may be criminally charged and penalized with fines up to $250,000 and imprisonment up to 20 years.[78] In addition, other adverse monetary penalties (e.g., asset forfeitures, recoveries, collections, and restitutions) may be assessed against those convicted. USDA-OIG, in collaboration with federal, state, and local law enforcement entities, pursues charges against retailers who traffic SNAP benefits. USDA-OIG usually criminally pursues only retailers who traffic in high dollar amounts of benefits and/or retailers who also engaged in other criminal activity. In some cases, state law enforcement bureaus may pursue criminal charges against individuals engaged in retailer trafficking under state or local statutes. In FY2016, USDA-OIG opened 208 SNAP fraud investigations, and obtained 600 indictments, 510 convictions, and $95.3 million in monetary penalties.[79]

Detection of Retailer Application Fraud

USDA-FNS reviews all information and materials submitted by applicant retailers in order to identify suspicious items and documentation that may indicate retailer application fraud. Where such suspicions arise, USDA-FNS may require additional supporting documentation from the applicant retailer and may contact other federal, state, or local government entities (e.g., entities that administer business licensure, taxation, or trade) to verify questionable items.[80]

Correction of Retailer Application Fraud

Denial of Application—If USDA-FNS finds during the application process that a retailer fails to meet requirements such as stocking and business integrity standards, then the retailer's application is to be denied. If USDA-FNS determines that an applicant retailer has falsified the

[75] For more information on GSA-SAM, see CRS Report RL34753, *Procurement Debarment and Suspension of Government Contractors: Legal Overview*, coordinated by Kathleen Ann Ruane (available to congressional clients upon request to CRS).

[76] U.S. Department of Agriculture, Office of the Inspector General, *Implementation of Suspension and Debarment Tools in the U.S. Department of Agriculture*, 50016-0001-23, September 2017, p. 5, https://www.usda.gov/oig/webdocs/50016-0001-23.pdf (hereinafter cited as "September 2017 USDA-OIG report").

[77] This GSA system is available to the public, and this system is frequently used by employers, banks, universities, professional associations, and other institutions when checking the background of candidates or applicants. A GSA-SAM exclusion is often regarded by such institutions as a derogatory mark and may result in a wide range of adverse actions against the individual subject to the exclusion (e.g., denial of a mortgage loan, revocation of professional credentials, or non-selection for employment).

[78] This penalty is applicable to any party that knowingly misuses SNAP benefits equal to or greater than $5,000 in value (a felony). For felony violations involving benefits valued equal to or greater than $100 and less than $5,000, the penalties are a fine up to $10,000 and imprisonment up to five years. For misdemeanor violations involving benefits valued at less than $100, the penalties are a fine up to $1,000 and imprisonment up to one year. Section 15(b) of the FNA (codified at 7 U.S.C. §2024(b)(1)).

[79] Email from USDA-OIG, January 11, 2018.

[80] Section 9(c) of the FNA (codified at 7 U.S.C. §2018(c) and implemented at 7 C.F.R. §278.1(b)).

application, then that retailer's application is to be denied—the period of denial ranges from three years to permanent depending on the severity and nature of the falsification.[81] A retailer denied authorization to participate in SNAP is not generally subject to any penalties other than denial.[82]

Permanent or Term Disqualification—Retailers who knowingly engage in falsification of substantive matters (e.g., falsification of ownership or eligibility information) may be subject to a permanent disqualification from program participation. Retailers who engage in falsification of a lesser nature (e.g., falsification of store information such as store name or address) are generally subject to a term disqualification of three years. Retailers that are permanently disqualified for falsification may be subject to all of the penalties associated with permanent disqualification (as discussed previously in the context of retailer trafficking penalties), including reciprocal WIC disqualification, claims, public disclosure, TOCMP, GSA-SAM exclusion, and criminal charges and penalties where appropriate.[83]

Errors in Benefit Issuance to Households

SNAP certification is the process of evaluating an application, determining if an applicant is eligible to receive SNAP benefits, and the appropriate size of the benefit allotment if the applicant is found to be eligible. This is one of the primary responsibilities of state agencies (with federal oversight). Errors (i.e., recipient errors and agency errors) that occur during this process can result in underissuance or overissuance of SNAP benefits.

Detection of Recipient Errors—Data Matching

The primary sources for information needed to make certification determinations are generally the applicants themselves, but the eligibility worker may also utilize collateral contact with other entities when necessary.[84] In addition, an eligibility worker may perform additional checks using federal, state, local, or private data systems in order to verify information provided by applicants.[85] A visual overview of data matching in the certification process is presented in **Figure 3**.

[81] See 7 C.F.R. 278.1(k)(3)-(4), 278.6(e)(1),(3).

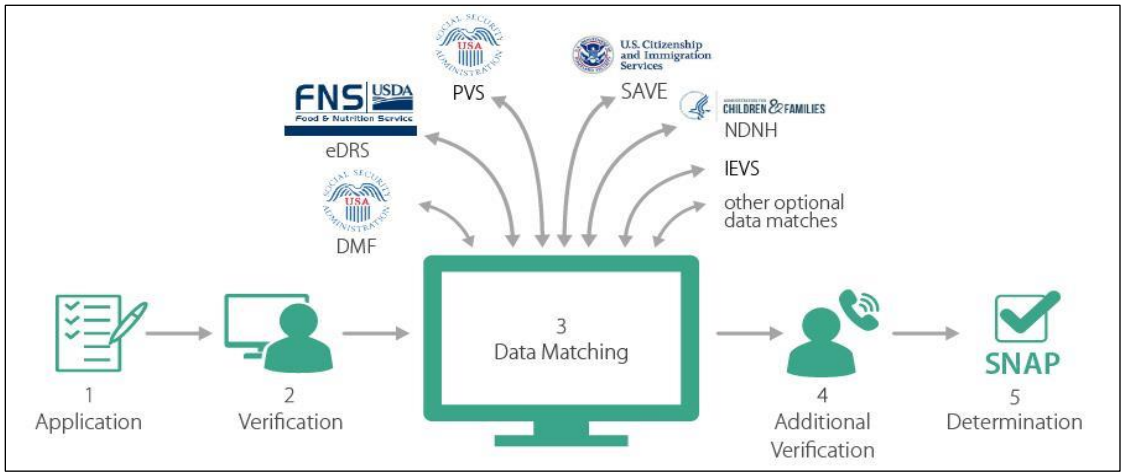
[82] According to 7 C.F.R. §278.1(o), a retailer applicant's submission of false information may subject the store and its owners to civil or criminal action, but no such penalties are currently pursued against retailers denied for falsification.

[83] Email from SNAP, USDA-FNS, January 5, 2018.

[84] For example, an eligibility worker may contact an applicant's landlord in order to confirm residency and shelter costs.

[85] For more information regarding verification requirements, see 7 C.F.R. §273.2(f)

Figure 3. Data Matching in SNAP Certification



Source: Prepared by the Congressional Research Service (CRS).

Notes: Certification, as illustrated in this graphic, includes five main steps: (1) a household initially applies to receive or recertifies to continue receiving SNAP benefits; (2) a SNAP eligibility worker evaluates the household's application for completion and verifies submitted information (including through interviews with the applicant); (3) a range of data matching systems (both mandatory and optional) is used to confirm eligibility and income information reported by the applicant; (4) when needed, the SNAP staff follows up to verify data; and (5) SNAP staff ultimately makes a SNAP eligibility determination and, if appropriate, designates the benefit allotment amount.

In FY2016, about 62% of overpayment dollars identified through the claims establishment process (i.e., after overpayments have already occurred) were due to inadvertent household errors made by recipients when applying for benefits.[86] With a caseload of about 22 million households, recipient errors (sometimes stemming from simple misunderstanding of federal SNAP regulations) can add up quickly and create a serious payment accuracy problem for states. Although the upfront cost and effort required of a state agency to implement a data match as part of the SNAP certification process can be considerable, data matches using federal, state, local, or private systems can allow agencies to quickly identify recipient errors that could affect applicants' eligibility or benefit amount. Over the years, policymakers have been interested in data matching systems to reduce overpayments.

Mandatory Data Matches

The following six data matches have been statutorily mandated as part of the SNAP certification process:

U.S Department of Health and Human Services, Administration for Children and Families, National Directory of New Hires (HHS-ACF-NDNH) New Hire File—This system is used to verify household employment information.[87] The 2014 Farm Bill mandated state use of the New

[86] This is addressed more fully in the "Extent of Errors and Fraud in Benefit Issuance to Households" section of this report.

[87] Matches made from this file are not considered verified upon receipt, so additional steps are necessary to confirm matches. According to USDA-FNS, as of September 2017, 47 SNAP agencies were utilizing NDNH (per telephone call, SNAP, USDA-FNS, January 5, 2018) and in a survey of SNAP agencies from an October 2016 GAO report, only 14 of the 39 agencies utilizing it at the time considered it moderately or extremely useful (U.S. Government Accountability Office, *Supplemental Nutrition Assistance Program: More Information on Promising Practices Could Enhance States' Use of Data Matching for Eligibility*, GAO-17-111, October 2016, p. 16, https://www.gao.gov/assets/

Hire File and this requirement was implemented in a January 2016 USDA-FNS Interim Final Rule.[88]

Social Security Administration, Prisoner Verification System (SSA-PVS)—This system is used to verify if household members are incarcerated.[89] The Balanced Budget Act of 1997 mandated that all SNAP agencies match against the SSA's Prisoner Verification System.[90]

Social Security Administration, Death Master File (SSA-DMF)—This system is used to verify if household members are deceased.[91] In 1998, P.L. 105-379 mandated that all SNAP agencies match against the SSA-DMF.[92]

USDA-FNS Electronic Disqualified Recipient System (USDA-FNS-eDRS)—This system is used to verify if household members are disqualified from SNAP.[93]

U.S. Department of Homeland Security U.S. Citizenship and Immigration Services Systematic Alien Verification for Entitlements (DHS-USCIS-SAVE)—This system is used to verify household members immigration status.[94] The 2014 Farm Bill mandated that SNAP agencies utilize an immigration status verification system[95] as a part of the certification process;[96] a December 2016 USDA-FNS notice of proposed rulemaking (NPRM) regarding the requirement to utilize this data match was published, but the rule has not yet been finalized.[97]

Income and Eligibility Verification System (IEVS)—SNAP agencies are required to verify the income and eligibility of all applicants during the SNAP certification process. They generally fulfill this requirement through the use of an income and eligibility verification system (IEVS). An IEVS is not a single data match, but rather a state system that may use multiple federal, state,

690/680535.pdf (hereinafter cited as "October 2016 GAO report").

[88] Section 4013 of the 2014 Farm Bill modified Section 11(e)(24) of the FNA (codified at 7 U.S.C. §2020(e)(24) and implemented at 7 C.F.R. §272.16) and U.S. Department of Agriculture, Food and Nutrition Service, "SNAP Requirement for National Directory of New Hires Employment Verification and Annual Program Activity Reporting," 81 *Federal Register* 4519, January 26, 2016.

[89] Matches made from this system are not considered verified upon receipt, so additional steps are necessary to confirm matches.

[90] Section 1003 of P.L. 105-33 modified Section 11(r) of the FNA (codified at 7 U.S.C. §2020(q) and (e)(18) and implemented at 7 C.F.R. §272.13). This requirement was implemented initially in a USDA-FNS directive in February 2000 and finally in U.S. Department of Agriculture, Food and Nutrition Service, "Supplemental Nutrition Assistance Program: Disqualified Recipient Reporting and Computer Matching Requirements," 77 *Federal Register* 48045, August 13, 2012 (hereinafter cited as "August 2012 USDA-FNS Final Rule").

[91] This system is also referred to as the Deceased Matching System (DMS). Matches made from this system are not considered verified upon receipt, so additional steps are necessary to confirm matches.

[92] Section 1 of P.L. 105-379 modified Section 11(r) of the FNA (codified at U.S.C. §2020(r) and clarified at 7 C.F.R. §272.14). This requirement was implemented initially in a USDA-FNS directive in February 2000 and finally in the August 2012 USDA-FNS Final Rule.

[93] Matches made from this system are not considered verified upon receipt, so additional steps are necessary to confirm matches. The use of the USDA-FNS-eDRS is mandated by SNAP regulations at 7 C.F.R. §273.16(i).

[94] Matches made from this system are considered verified upon receipt. As of January 2018, every state is using this system (Email from SNAP, USDA-FNS, January 2, 2018).

[95] Section 4015 of the 2014 Farm Bill modified Section 11(p) of the FNA (codified at 7 U.S.C. §2020(p)) to specify that SNAP agencies must use the immigration status verification system established under §1137 of the Social Security Act (42 U.S.C. §1320b-7). This system is DHS-USCIS-SAVE.

[96] Section 4015 of the 2014 Farm Bill modified Section 11(p) of the FNA (codified at 7 U.S.C. §2020).

[97] U.S. Department of Agriculture, Food and Nutrition Service, "Supplemental Nutrition Assistance Program: Student Eligibility, Convicted Felons, Lottery and Gambling, and State Verification Provisions of the Agricultural Act of 2014," 81 *Federal Register* 86614, December 1, 2016 (hereinafter cited as "December 2016 Proposed Rule").

and local data sources to confirm the accuracy of eligibility and income information provided by the applicant and to locate pertinent information that may have been omitted by the applicant.[98] The specific data matches used in an IEVS, however, will vary from state to state.[99] The 2014 Farm Bill made states' use of IEVS mandatory in accordance with standards set by the Secretary of Agriculture. This policy is pending implementation, as USDA-FNS published an NPRM in December 2016, but a final rule has not yet been published.[100]

Optional Data Matches

States also use optional data matches and incorporate these into their processes. Several key eligibility data examples, such as income and program disqualifications, are discussed below:[101]

Income matches—A household's income and related SNAP deductions are basic determinants of eligibility and an applicant's benefit allotment. As a result, in addition to the mandatory matches discussed above, most states utilize several optional federal and state data matches to verify earned and unearned income. For examples of optional income matches, see **Appendix C**.

SNAP disqualification matches—In addition to the mandatory USDA-FNS-eDRS match, states maintain their own internal databases of recipients disqualified within the state, and a match from such state databases indicates that a member of an applicant household is ineligible.[102]

Other data matches—In addition, state agencies use data sources to assess a number of other aspects of a household's application or recertification. For instance, state criminal justice or correctional agency system matches and state department of health vital information system or burial assistance program matches can ensure that a household does not include incarcerated or deceased members. Likewise, state department of children's services or foster care matches can ensure that a household does not include children that have been removed. Such state matches to verify that household size is correct are generally considered verified upon receipt. Matches against state and federal crime databases can ensure that individuals subject to crime-related restrictions are correctly excluded in eligibility determination.[103] Data matches between SNAP and other public benefit programs can also help a state agency ensure that states are accurately implementing their comparable disqualification policies.[104] These data matches are discussed in more detail in the October 2016 GAO report.[105]

Detection of Agency Errors

State agencies are responsible for preventing, detecting, and correcting agency errors.[106] Agency errors are generally the product of human error, so training and supervision of eligibility workers is the primary means of mitigating them (e.g., something as simple as an eligibility worker

[98] See §1137 of the Social Security Act for IEVS federal requirements.

[99] The definition of IEVS can be found at 7 C.F.R. §§271.2 and 272.8.

[100] Section 2015 of the 2014 Farm Bill modified Section 11(p) of the FNA (codified at 7 U.S.C. §2020). December 2016 Proposed Rule.

[101] For more information regarding SNAP eligibility, see CRS Report R42505, *Supplemental Nutrition Assistance Program (SNAP): A Primer on Eligibility and Benefits*, by Randy Alison Aussenberg.

[102] Matches made from these systems are generally considered verified upon receipt.

[103] For more information, see CRS Report R42394, *Drug Testing and Crime-Related Restrictions in TANF, SNAP, and Housing Assistance*, by Maggie McCarty et al.

[104] Section 6(i) of the FNA (codified at 7 U.S.C. §2015(i) and implemented at 7 C.F.R. §273.11(k)).

[105] See https://www.gao.gov/assets/690/680535.pdf.

[106] Section 13 of the FNA (codified at 7 U.S.C. §2022 and implemented at 7 C.F.R. §273.18).

transposing two digits during data entry). Agency errors can be detected by ongoing, independent process improvements (e.g., quality control or quality assurance), supervisory case review, eligibility workers, and recipients. Agency errors may also result from state system technical glitches, so states may detect these errors through system audits and mitigate them through system improvements.

Correction of Recipient and Agency Errors—Claims

If a household receives an overpayment, and that overpayment is detected by the state agency, then the agency generally establishes a claim against the household, requiring the adult members of the household to repay the amount that was overpaid. Claims are considered federal debt and must be repaid by the adult members of overpaid households regardless of the cause of the overpayment (i.e., recipient error, recipient fraud, or agency error) except in the case of a major systems failure.[107] Agencies must also correct underpayments that they identify. State agencies may elect *not* to establish claims on low dollar overpayments when such overpayments fall below the agency's claims threshold, explained below.

Claims Threshold

The "claims threshold" is the minimum dollar value of overpayments that *must* be collected by state agencies. Agencies *may* establish claims on amounts below this threshold.[108] This threshold applies to overpayments regardless of cause (i.e., recipient error, recipient fraud, or agency error). Since 1983, this threshold was set at $35, but in 2000 it was raised to $125.[109] This threshold does not apply to any overpayments discovered during the Quality Control (QC) process, and claims must be established on all such amounts (regardless of dollar value). Generally, this threshold does *not* apply to households currently participating in the program, as it is easier to collect claims from actively participating households using allotment reduction (i.e., a portion of the household's monthly SNAP benefits are withheld until the claim amount is repaid). States may, however, establish their own cost-effectiveness plans. Under such a plan, if approved by USDA-FNS, a state may modify this threshold for one or more types of overpayments and may create a threshold limit for claims on households currently participating in the program.

Claims are not always established in the year that the overpayment occurs and claims are not always collected in the year that they are established. State agencies are entitled to retain 35% of the amount they collect on recipient fraud claims and certain recipient error claims, 20% of the amount they collect on all other recipient error claims, and none of the amount they collect on agency error claims.

[107] If 8% or more of a state's caseload receives overpayments over a six-month or longer period due to a major state systems failure, then claims may not be established against the recipients and USDA-FNS may initiate a collection action against the state per 7 C.F.R. §273.19. A similar incident was reported in 2012—about 70,000 households in Maine received overpayments of about $70 each over several months in 2011, resulting in nearly $5 million in overpayments (Eric Russell, *Feds order Maine to pay for food-stamp error*, The Portland Press Herald, September 27, 2012, https://www.pressherald.com/2012/09/27/maine-food-stamp-overpayment-recipeints-usda-reimbursment-letter-mary-mayhew/).

[108] See 7 C.F.R. §273.18(e)(2).

[109] U.S. Department of Agriculture, Food and Nutrition Service, "Food Stamp Program: Recipient Claim Establishment and Collection Standards; Final Rule," 65 *Federal Register* 41751, July 6, 2000.

Recipient Fraud

Detection of Recipient Fraud

State agencies are responsible for administering the recipient side of SNAP (with federal oversight) and for pursuing recipient fraud.[110] State agencies must, furthermore, establish and operate a SNAP recipient fraud investigation unit.[111] These units detect and punish recipient trafficking, as well as other forms of recipient fraud. USDA-FNS supports state agencies in this capacity by providing technical assistance and setting policy. USDA-OIG, in collaboration with other federal and state law enforcement entities, sometimes criminally pursues recipients who traffic SNAP benefits when such recipients traffic in high dollar amounts of benefits and/or such recipients also engage in other criminal activity. Recipient fraud, like retailer fraud, can be detected through a variety of means, including the following:

Analysis of EBT Transaction Data—Once USDA-FNS has completed the process of administratively penalizing a *retailer* for retailer trafficking, and the retailer has exhausted their appeal rights,[112] then USDA-FNS provides the retailer trafficking case to the appropriate state agency including EBT card numbers which can be used to identify SNAP *recipients* who may be trafficking.

Social Media—State agencies use automated tools and manual monitoring to detect postings on social media and online commerce websites by individuals attempting to traffic SNAP benefits.

Undercover Investigations—As is done with retailer trafficking cases, state agencies perform undercover investigations to detect recipient trafficking and recipient application fraud.

Multiple Card Replacement—Recipients who frequently request replacement EBT cards are flagged for review as potentially involved in trafficking benefits, because they would request replacements after selling their cards.[113] This recipient trafficking detection mechanism was established by an April 2014 USDA-FNS Final Rule.[114] In December 2017 USDA-FNS granted a waiver for one state to contact recipients who request a replacement card more than two times in a 12-month period, as opposed to the current regulations' standard of four requests in a 12-month period.[115]

State Law Enforcement Bureau (SLEB) Agreements—Some state agencies enter into state law enforcement bureau (SLEB) agreements with law enforcement entities in their jurisdictions in order to further their efforts to detect recipient trafficking and recipient application fraud. There are advantages to such arrangements for state agencies; for example, under SLEB agreements, the agency could be notified whenever an individual is arrested in possession of multiple EBT cards, allowing the agency to flag the recipients associated with those EBT cards for potential recipient trafficking.

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[110] Section 11 of FNA outlines the requirement that states administer SNAP on the recipient side.

[111] Section 11(e)(20) of the FNA (codified at 7 U.S.C. §2020(e)(20)).

[112] Section 14 of the FNA (codified at 7 U.S.C. §2023).

[113] Section 7(h)(8) of the FNA (codified at 7 U.S.C. 2016(h)(8) and implemented at 7 C.F.R. §274.6(b)(6)).

[114] U.S. Department of Agriculture, Food and Nutrition Service, "Supplemental Nutrition Assistance Program: Trafficking Controls and Fraud Investigations," 79 *Federal Register* 22766, April 23, 2014 (hereinafter cited as "April 2014 USDA-FNS Final Rule").

[115] USDA Office of Communications, "USDA Clears Arizona to Test SNAP Fraud Prevention Improvement," press release, December 8, 2017, https://content.govdelivery.com/accounts/USDAOC/bulletins/1cad357.

Tips and Referrals—As is done in detecting retailer trafficking, agencies use tips and referrals to detect recipient trafficking and recipient application fraud.

Data Matching and Other Verification—As is done in detecting recipient errors when applying for SNAP benefits, the data matching and certification process may also provide information useful in detecting recipient application fraud.

Correction of Recipient Fraud

Whenever a SNAP recipient is found to have committed fraud, that individual is subject to individual penalties, such as disqualification. The other members of the SNAP household will not automatically be subject to such penalties, but the adult members of the household will generally be obligated to repay the amount established by the state agency as a claim for overpayment or trafficking. Major penalties associated with recipient fraud include the following:

Rights of Recipients Accused of Fraud

When a state agency determines that a recipient has committed fraud, the agency provides notice of adverse action to the recipient, which outlines the charges. This notice explains the recipient's right to request a fair hearing (fair hearings may be requested by any recipient aggrieved by a SNAP agency action, not just recipients accused of fraud).[116] After a hearing, the recipient is notified of the decision reached and of the recipient's right to request an appeal or rehearing with the state agency. After a rehearing or appeal, the recipient is notified of the decision reached and the recipient's right to request judicial review. Until this process has been exhausted, recipients continue to receive SNAP benefits. Advocates argue that some states' anti-fraud efforts are overly aggressive and deny recipients' access to SNAP when a recipient error, not fraud, may be to blame for an overpayment.[117]

Disqualification—Trafficking and recipient application fraud are types of intentional program violations, and a SNAP recipient found to have committed fraud is generally subject to a period of program disqualification varying from one year to permanent.[118] **Figure 4** below compares the number of FY2016 SNAP recipient disqualifications to the monthly average number of participating recipients in the state in FY2016. Performing investigations and proving that recipients have committed intentional program violations (in order to disqualify them from SNAP) can require a considerable amount of state agency resources. This chart illustrates the extent to which agencies have prioritized this aspect of SNAP administration relative to their SNAP caseload.

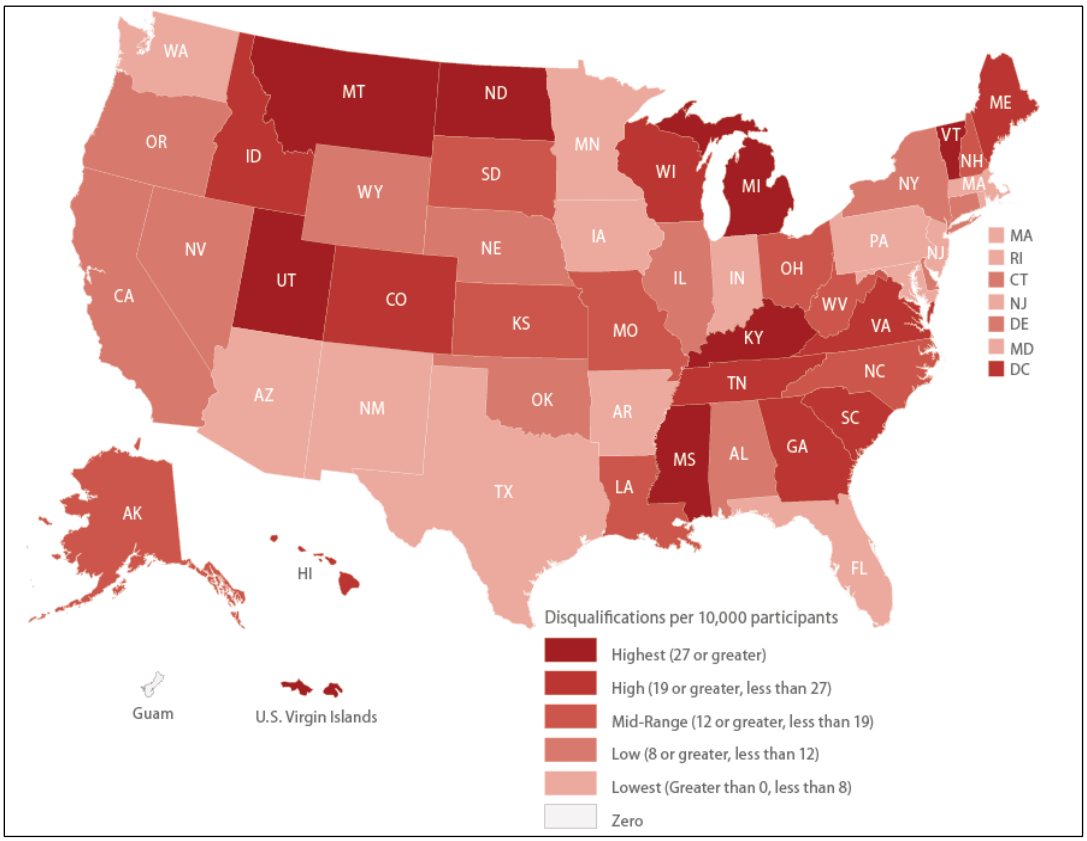
[116] SAR data indicates significant variability between the number of fair hearings held and the percentage of state decisions upheld/reversed from state to state. One state, Pennsylvania, accounted for about 36% of the fair hearings held in FY2016 although this state had an average of only 4% of the monthly recipients participating in that year. CRS calculation based on data from the FY2016 SAR, pp. 5, 20, 50.

[117] Bill Lueders, "Wisconsin FoodShare fraud crackdown questioned," Wisconsin Center for Investigative Journalism, May 3, 2015, https://www.wisconsinwatch.org/2015/05/wisconsin-foodshare-fraud-crackdown-questioned/. When charging a recipient with an intentional program violation, state agencies often encourage recipients to sign administrative disqualification hearing waivers. Signing such a document waives a recipient's rights to a fair hearing. This type of waiver accounted for about 44% of SNAP disqualifications in FY2016. Many recipients, advocates posit, are also unaware of their appeal rights and that participants often win on appeal. According to the FY2016 State Activity Report (pp. 20-25), state decisions were reversed in about 63% of fair hearings (this includes fair hearings held as result of any adverse state action, not just hearings held as a result of disqualification actions).

[118] Penalties for fraud generally include a one-year disqualification for the recipient's first violation, a two-year disqualification for the recipient's second violation, and a permanent disqualification for the recipient's third violation; however, recipients that traffic $500 or more in benefits are permanently disqualified upon the first violation. Section 6(b) of the FNA (codified at 7 U.S.C. §2015(b)).

Figure 4. Per Capita Recipient Disqualifications in States

Comparing levels of state agency disqualification action



Source: Prepared by the Congressional Research Service (CRS) using data from the FY2016 State Activity Report, pp. 29-37.

Restitution of Benefits Defrauded (Claims)—A SNAP household must generally repay benefits amounts that are overpaid due to recipient application fraud or are trafficked.[119]

Comparable Disqualification—If a SNAP recipient is disqualified from any federal, state, or local means-tested public assistance program, then the state agency *may* impose the same period of disqualification on the individual under SNAP.[120] This comparable disqualification is mandatory for the Food Distribution Program on Indian Reservations (FDPIR).

Criminal Charges and Penalties—Generally, if criminal charges are pursued against recipients who traffic benefits or commit recipient application fraud, it is the states that will pursue and prosecute. State fraud laws vary in their penalties for recipient fraud.[121] Additionally, as stated in a

[119] Section 13 of the FNA (codified at 7 U.S.C. §2022 and implemented at 7 C.F.R. §273.18).

[120] Section 4211 of the 2008 Farm Bill modified Section 6(i) of the FNA (codified at 7 U.S.C. §2018(i) and implemented at 7 C.F.R. §273.11(k)).

[121] These criminal penalties may include fines, imprisonment, probation, community service, etc. For example, under Oklahoma law, recipient trafficking is punishable by fines up to $5,000 and/or imprisonment up to two years (OK Statute Title 56 Chapter 7 §243); under Mississippi law, recipient trafficking is punishable by fines up to $10,000 and/or imprisonment up to three years (MS Code Title 97 Chapter 19 §71). Most of the state laws' penalties for recipients are more lenient than the penalties enumerated at Section 15(b) of the FNA (codified at 7 U.S.C. §2024(b)(1)).

GAO report from August 2014, each state exercises its discretion differently with respect to filing criminal charges in cases of recipient fraud.[122] As with retailer trafficking, USDA-OIG sometimes pursues criminal charges in collaboration with federal and state law enforcement entities against recipients engaged in SNAP fraud.

State Agency Employee Fraud Detection and Correction

U.S. Department of Agriculture, Office of the Inspector General (USDA-OIG), in conjunction with local, state, and other federal law enforcement entities, investigates cases of state agency employee fraud and penalizes state agency employees engaged in it. Criminal penalties for state agency employee fraud vary from state to state, and individuals who commit state agency employee fraud may be prosecuted for other crimes (e.g., identity theft) that occurred during the commission of the state agency employee fraud. Penalties for this type of criminal fraud vary but may include imprisonment, probation, and/or monetary restitutions.

State Agency Fraud: SNAP Quality Control

SNAP has long had policies and procedures in place for measuring improper payments—largely, the program's Quality Control (QC) system. QC is currently the basis for levying financial penalties from low-performing states and providing financial performance incentives for the higher-performing and most improved states. In June 2018, following concerns that there had been misreporting of errors, USDA-FNS released a FY2017 NPER under new quality control procedures. This section reviews QC and these developments.

Quality Control: Incentives and Penalties Overview

This section discusses false claims by state agencies with regard to Quality Control (QC) data and state payment error rates (SPERs). As discussed earlier in this report, since 1977, the SNAP Quality Control system has measured improper payments in SNAP, comparing the amounts of overpayments and underpayments that exceed the error tolerance threshold ($38 adjusted annually for inflation)[123] to total benefits issuance. The Quality Control process starts with state agency analyses that determine state payment error rates, which are then reviewed by USDA-FNS to develop the SNAP national payment error rate (NPER). After conducting this annual Quality Control review, USDA-FNS awards bonuses to high-performing state agencies and assigns penalties to low-performing state agencies.[124]

USDA-FNS annually awards high-performance bonuses to up to 10 states with the lowest or most improved state payment error rates. High-performance bonuses must be used by states to improve

[122] U.S. Government Accountability Office, Supplemental Nutrition Assistance Program: Enhanced Detection Tools and Reporting Could Improve Efforts to Combat Recipient Fraud, GAO-14-641, August 2014, pp. 15-16, https://www.gao.gov/products/GAO-14-641 (hereinafter cited as "August 2014 GAO report"). For example, this report stated that the minimum amount of recipient fraud that would result in the filing of criminal charges was $100 in Tennessee, while it was $5,000 in Texas. In addition, according to this report certain prosecutors and jurisdictions refused to prosecute recipient trafficking cases entirely due to limited resources and caseloads replete with more serious criminal cases.

[123] When agencies detect overpayments and underpayments under the threshold, they still must follow SNAP rules and correct these errors. This current Quality Control threshold was most recently set by Section 4019 of the 2014 Farm Bill which modified Section 16(c)(1)(A) of the FNA (codified at 7 U.S.C. §2025(c)(1)(A) and implemented at 7 C.F.R. §275.12(f)(2)).

[124] See Section 16(d) of FNA (codified at 7 U.S.C. §2025(d) and implemented at 7 C.F.R. §275.24).

their administration of SNAP.[125] The total annual amount awarded for SPER high-performance bonuses is $24 million.[126] The bonuses awarded in FY2014 are summarized in **Table 2**. Awards for FY2017 have not yet been announced, as of the date of this report.

Table 2. Bonuses Awarded to States for High Payment Accuracy, FY2014

Amount of bonuses in thousands

State	AK	FL	KS	MS	RI	SC	TN	TX	VT	WA
Bonus	$247	$7,742	$628	$1,302	$502*	$1,672	$2,687	$6,497	$293*	$2,428

Source: USDA-FNS, https://fns-prod.azureedge.net/sites/default/files/snap/2014-chart-awards.pdf.

Note: Bonus amounts marked with an asterisk "*" are for the most-improved state payment error rates.

State sanctions—known as "liabilities"—are used to punish states that have comparatively high payment error rates. If there is a 95% probability that a state makes payment errors 5% more frequently than the national average, then that state has "exceeded the liability level". If a state exceeds the liability level for two years in a row, then it is assessed a penalty—known as a "liability amount".[127] Liability amounts are assessed for only that portion of the state payment error rate that is above 6% (e.g., a state that exceeds the liability level with a state payment error rate of 5.99% would be assessed a $0 liability amount).[128] Once assessed, states have the option to pay the liability amount in full or enter into a settlement agreement with USDA-FNS.[129]

From FY2005 to FY2014, 42 of 53 state agencies have exceeded the liability level at least once, but only 9 state agencies have ever been compelled to actually repay an at-risk penalty amount to USDA-FNS.[130] This is because most states improve their state payment error rates within one or two years and avoid being required to make a payment to USDA-FNS. Over these 10 years, these 9 states repaid about $1.5 million to USDA-FNS (see **Table 3**).[131]

[125] Section 4021 of the 2014 Farm Bill modified Section 16(d) of the FNA (codified at 7 U.S.C. §2025(d) and implemented at 7 C.F.R. §275(a)(8)). Consistent with the 2014 statutory change, this regulation limits the use of high-performance bonuses to SNAP administration. In terms of related proposals, the House-passed farm bill in the 113th Congress would have eliminated the performance bonuses (H.R. 2642), and the FY2019 President's Budget (FY2019 USDA-FNS Budget Justification, http://www.obpa.usda.gov/32fns2019notes.pdf, p. "32-87") also proposed elimination (estimating a savings of $480 million over FY2019-2028).

[126] Section 4420(a) of the 2002 Farm Bill modified Section 16(d)(2)(B)(ii) of the FNA (codified at 7 U.S.C. §2025(d)(1)(ii) and implemented at 7 C.F.R. §275.24(b)(1)).

[127] USDA-FNS determinations of error rates must be within 95% statistical probability. As a result, sometimes smaller states report exceeding the liability level, but are not assessed a liability as such a statistical determination cannot be made. Email from SNAP, USDA-FNS, December 28, 2017.

[128] Section 16(c)(1)(C) of the FNA (codified at 7 U.S.C. §2025(c)(1)(C) and implemented at 7 C.F.R. §275.23(d)(2)). Once assessed, generally half of liability amounts must be invested by the state in improving SNAP administration (without a federal match) and the other half are designated as "at-risk" for repayment to USDA-FNS. At-risk funds must be repaid to USDA-FNS if the state exceeds the liability level again the following year. This means that states have three years in which to improve their program administration before they are ever required to pay a penalty to USDA-FNS. See also 7 C.F.R. §275.234(e).

[129] Under such a settlement, half of the liability amount must be invested by the state into improving SNAP administration (without federal match) and the other half are designated "at-risk" for repayment to USDA-FNS. At-risk funds must be repaid to USDA-FNS if the state exceeds a 6% error rate again the following year. This means that states have three years in which to improve their program administration before they are required to pay a penalty to USDA-FNS.

[130] Email from SNAP, USDA-FNS, January 19, 2018.

[131] This is compared to about $17.6 billion in benefits overissued by states, based on USDA-FNS QC Reports, FY2005-FY2014.

Table 3. Penalties Repaid by States for Low Payment Accuracy, FY2005-FY2014

Liability amounts (penalty) are in thousands, and year is fiscal year liability amount was established

State	DC	ME	AZ	MD	WV	VT	GU	NV	RI	VT	GU	**TOTAL**
Penalty	$189	$387	$220	$212	$77	$171	$76	$3	$152	$68	$38[a]	**$1,514**
Year	2006	2007	2010	2010	2011	2011	2012	2012	2012	2012	2013	**2005-2014**

Source: Email from SNAP, USDA-FNS, January 19, 2018.

a. Amount due for repayment has not yet been paid as of the date of this report.

State Agency Misreporting and Falsification of Quality Control Data

State agencies perform Quality Control reviews to determine state payment error rates and then submit these rates to USDA-FNS for its annual review; and agencies may be awarded or sanctioned according to these rates. This combination of positive and negative reinforcement is intended to incentivize high payment accuracy among states. USDA-FNS oversees state agencies through the management evaluation process and the Quality Control system, in addition to other federal oversight mechanisms.[132]

USDA-OIG performs regular audits of and investigations into state agency compliance with a range of SNAP rules. Through this oversight, USDA-OIG and USDA-FNS identified concerns in state-reported Quality Control data. In order to examine this issue, USDA-OIG began a series of audits in March 2013, which culminated in a September 2015 USDA-OIG report.[133] USDA-OIG looked at eight states and determined that all eight state agencies had deliberately weakened the integrity of the Quality Control process with the aid of hired consultants.[134] USDA-FNS responded in the September 2015 USDA-OIG report that USDA-OIG drew its conclusions on the basis of unconfirmed information, misunderstandings of SNAP policy, and insufficient statistical analysis. As a result, USDA-FNS contends that the concerns identified over these eight states' QC efforts were largely the result of administrative issues rather than fraud.[135]

According to 2017 U.S. Department of Justice (DOJ) findings, at least three state agencies (Virginia, Wisconsin, and Alaska) engaged in state agency fraud related to Quality Control data falsification since at least 2008. These three state agencies, with the help of their third-party consultants, were found to have mitigated errors,[136] fraudulently improving their state payment error rates.[137] USDA-FNS and USDA-OIG testified on this subject in two hearings, one before

[132] Management evaluations are periodic reviews of state agency operations by USDA-FNS focusing on specific areas of compliance with program rules. More information regarding SNAP management evaluations is available at https://www.fns.usda.gov/snap/snap-program-improvement.

[133] U.S. Department of Agriculture, Office of the Inspector General, *FNS Quality Control Process for SNAP Error Rate*, 27601-0002-41, September 2015, https://www.usda.gov/oig/webdocs/27601-0002-41.pdf. (hereinafter cited as "September 2015 USDA-OIG report").

[134] Ibid., p. 4.

[135] Ibid., pp. 56-58.

[136] For example, if a household in the Quality Control sample was overpaid by $50 due to an agency error (AE), the state agency employee conducting the Quality Control review would look for ways to offset this error (e.g., by adding new household or medical expenses) in order to bring the total overpayment below the Quality Control threshold, rather than simply reporting the error as required. September 2015 USDA-OIG report, p. 5.

[137] Wisconsin, for example, reduced its state payment error rate from 7.38% in FY2008 to 2.02% in FY2011, a 73%

the Senate Committee on Agriculture, Nutrition, and Forestry in August 2017 and one before the House Committee on Agriculture in July 2016.[138] Entities, including state agencies, found to have defrauded federal programs are required to repay funds obtained through fraud, plus interest, under the False Claims Act (31 U.S.C. §3729). As of the date of this report, these three state agencies have admitted to the DOJ that they engaged in falsifying QC data and violating the False Claims Act in their administration of SNAP.[139] As part of their settlements with DOJ, the Virginia state agency agreed to pay $7,150,436,[140] the Wisconsin state agency agreed to pay $6,991,905,[141] and the Alaska state agency agreed to pay $2,489,999.[142] These $16.6 million in payments represent the share of the high-performance bonuses awarded to these states for low state payment error rates while they were engaged in fraudulent practices, plus interest.

For FY2015, USDA-FNS determined that data quality issues existed for 79% of state agencies; however, such issues are not in and of themselves proof of fraud.[143] All three states that settled with DOJ had hired the same Quality Control consultant firm. As of the date of this report, the USDA-OIG investigation into this state agency fraud is still ongoing and Mississippi is known to be under investigation for Quality Control fraud.[144] In her comments at the August 2017 Senate Agriculture Committee Hearing, Ann M. Coffey, Assistant Inspector General of Investigations at USDA-OIG, stated that a "significant number" of states were still under investigation and that the scale of this state fraud was "unique."[145]

Combating Errors and Fraud: Issues and Strategies

Over time, USDA-FNS, SNAP state agencies, USDA-OIG, GAO, and other stakeholders have identified issues that may complicate or impede the detection and correction of errors and fraud in SNAP. These kinds of issues can stem from shortcomings or gaps in existing regulation and law, as well as complexities in the fundamental design of the program itself. In addition, stakeholders

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decline, during the period it worked with consultants and committed state agency fraud.

[138] Senate Committee on Agriculture, Nutrition, and Forestry, *Nutrition Programs: Perspectives for the 2018 Farm Bill*, 115th Cong., 1st sess., August 13, 2017, https://www.agriculture.senate.gov/hearings/nutrition-programs-perspectives-for-the-2018-farm-bill (hereinafter cited as "August 2017 Senate Agriculture Committee Hearing"). House Committee on Agriculture, *Past, Present, and Future of SNAP: Evaluating Error Rates and Anti-Fraud Measures to Enhance Program Integrity*, 114th Cong., 1st sess., July 6, 2016. https://agriculture.house.gov/news/documentsingle.aspx?DocumentID=3472.

[139] For more information regarding the False Claims Act, see CRS Report R40785, *Qui Tam: The False Claims Act and Related Federal Statutes*, by Charles Doyle.

[140] U.S. Department of Justice, "Virginia Department of Social Services Agrees to Pay $7.1 Million to Resolve Alleged False Claims for SNAP Funds," press release, April 10, 2017, https://www.justice.gov/opa/pr/virginia-department-social-services-agrees-pay-71-million-resolve-alleged-false-claims-snap.

[141] U.S. Department of Justice (DOJ), "Wisconsin Department of Health Services Agrees to Pay Nearly $7 Million to Resolve Alleged False Claims for SNAP Funds," press release, April 12, 2017, https://www.justice.gov/opa/pr/wisconsin-department-health-services-agrees-pay-nearly-7-million-resolve-alleged-false-claims.

[142] U.S. Department of Justice, "Alaska Department of Health and Social Services to Pay Nearly $2.5 Million to Resolve Alleged False Claims for SNAP Funds," press release, August 18, 2017, https://www.justice.gov/opa/pr/alaska-department-health-and-social-services-pay-nearly-25-million-resolve-alleged-false.

[143] This CRS calculation is based on data provided by the USDA-FNS QC Statement; QC data for only 11 of the 53 state agencies could be validated for FY2015. The remaining 42 state agencies had serious data quality issues in their QC samples. See https://www.fns.usda.gov/snap/quality-control.

[144] See https://www.clarionledger.com/story/news/2017/11/29/doj-investigates-mississippi-department-human-services-over-food-stamps-consultant/901927001/.

[145] August 2017 Senate Agriculture Committee Hearing.

have proposed strategies to address these kinds of issues and further curb errors and fraud in SNAP. These include, for example, proposed rulemaking actions, proposed statutory changes, and state pilots. Changes that strengthen payment accuracy and punishments against fraud can be in tension with other policy objectives, such as preserving recipient access to the program, and may have unintended consequences such as incurring costs greater than their savings. Balancing program objectives such as these is always a consideration for policymakers in this area.

Recent Developments

In the second session of the 115th Congress, Members voted on related policies in farm bill proposals considered in the House and Senate. See CRS Report R45275, *The House and Senate 2018 Farm Bills (H.R. 2): A Side-by-Side Comparison with Current Law* for a summary of the policies passed in versions of H.R. 2. The House and Senate each passed bills that contained policies related to errors and fraud, but the bills differ in their precise contents.

Retailer Trafficking

Certain Store Owners Remain Active in SNAP Despite Permanent Disqualification for Trafficking

According to SNAP rules, if a store is permanently disqualified from participating in SNAP and later that store's owner applies to participate in SNAP at a new store, then USDA-FNS will deny the new store's application. Due to a longstanding USDA-FNS policy, however, store owners who own multiple stores that participate in SNAP have been able to remain in the program with some of their stores despite a permanent disqualification at another of their stores.[146] This USDA-FNS policy, identified and examined in the July 2013 USDA-OIG report, was intended to prevent the elimination of whole chains of stores from the program as a result of violations at one store.[147] However, the policy has been applied beyond chain stores, and USDA-OIG identified it as a weakness in efforts to combat trafficking. In the July 2013 report, USDA-OIG identified 586 store owners who remained in SNAP due to this policy despite their association with a permanently disqualified store; 66 of these owners were found to have obtained SNAP authorization at new stores.[148]

In the July 2013 report, USDA-OIG proposed that USDA-FNS make a change to SNAP regulations and USDA-FNS policy to allow for the permanent disqualification or denial of *all* current or future stores, respectively, associated with an owner of a store that is permanently disqualified for retailer trafficking unless the retailer can meet certain criteria.[149]

USDA-FNS responded to USDA-OIG with an alternative policy that would impose collateral requirements for these owners. (Under current law, collateral bonds or letters of credit are required as a condition of participation in SNAP for stores that have been subjected to a term disqualification.[150] These are held as collateral against the retailer committing future violations.)

[146] For example, an individual owns three stores (Store A, B, and C) that are authorized to participate in SNAP. Store B is permanently disqualified from participating in SNAP due to a USDA-FNS finding that the store engaged in retailer trafficking. Store A and Store C will continue to participate in SNAP irrespective of the permanent disqualification of Store B. Additionally, when the store owner applies for SNAP authorization for a new store location, Store D, USDA-FNS will generally process that new application irrespective of the past trafficking violations that took place at Store B.

[147] July 2013 USDA-OIG report, p. 9.

[148] Ibid., pp. 2-19.

[149] Relevant criteria are outlined in SNAP regulations at 7 C.F.R. §278.6(i).

[150] The value of these bonds or letters of credit is equal to 10% of the SNAP business conducted by the store in the

USDA-FNS suggested requiring a bond or letter of credit for all authorized stores associated with a permanently disqualified owner and for new stores when such stores have an owner associated with a store permanently disqualified for trafficking.[151] USDA-OIG indicated that it considered this USDA-FNS alternative to its disqualification recommendations inadequate, noting "[w]e believe that continuing to allow known traffickers to participate in SNAP will undermine program integrity."[152]

As of the date of this report, none of these proposed policy changes have been implemented.[153]

Strengthening Monetary Penalties against Trafficking Retailers

An estimated $1.1 billion in SNAP benefits were trafficked annually at stores,[154] but in FY2016, USDA-FNS fined trafficking retailers only about $7.5 million.[155] Monetary penalties can discourage retailers from engaging in trafficking and also help recoup federal funds lost to fraud. For these reasons, changes to SNAP rules have been proposed to augment the monetary penalties assessed against trafficking retailers.

Increasing Transfer of Ownership Civil Money Penalties—The 2008 Farm Bill modified the FNA to increase civil monetary penalties against retailers that break SNAP rules to a maximum of $100,000 per violation.[156] If a retailer that has been permanently disqualified for trafficking SNAP benefits subsequently sells or transfers ownership of a store, then USDA-FNS assesses that retailer a "transfer of ownership civil money penalty" (TOCMP).[157] This is currently the primary financial penalty assessed by USDA-FNS against retailers found to have engaged in trafficking.

In August 2012, USDA-FNS published a notice of proposed rulemaking (NPRM) to implement the 2008 Farm Bill change.[158] This notice stated that existing limits used by USDA-FNS were $11,000 per violation and $59,000 per investigation, and that this rulemaking action would increase these limits to up to $100,000 per violation per the intent of Congress expressed in the 2008 Farm Bill.[159] As of the date of this report, this rulemaking action is inactive (see **Table B-1** in **Appendix B**). Because this change in the limits on TOCMPs has not been implemented, USDA-FNS continues to assess TOCMPs according to the limits in place before the passage of the 2008 Farm Bill (i.e., $11,000 per violation and $59,000 per investigation). In FY2016, the mean value of TOCMPs assessed by USDA-FNS was $29,284, about half of the limit per

previous 12-month period. Section 12(d) of the FNA (codified 7 U.S.C. §2021(d) and implemented at 7 C.F.R. §278.1(b)(4)).

[151] Under this change, if a retailer owned three stores (Store A, B, and C) and Store B was permanently disqualified for trafficking, the retailer would be required to submit a bond or letter of credit for Store A and Store C, in addition to a bond or letter of credit for any future store applying for participation in SNAP.

[152] July 2013 USDA-OIG report, p. 21.

[153] July 2013 USDA-OIG report, pp. 20-22.

[154] This figure represents estimated retailer trafficking annually from 2012 to 2014 per the September 2017 USDA-FNS Retailer Trafficking Study, pp. ii-iii.

[155] This CRS calculation is based on information provided via email from SNAP, USDA-FNS, October 17, 2017.

[156] Section 4132 of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill, P.L. 110-246) modified Section 12(a)(1)(B) and (c)(1) of the FNA (codified at 7 U.S.C. §2021(a)(1)(B) and (c)(1) and implemented at 7 C.F.R. §3.91(b)(3)(i)).

[157] Section 12(e)(1) of the FNA (codified at 7 U.S.C. §2021(e) and implemented at 7 C.F.R. §278.6(f)(2)).

[158] U.S. Department of Agriculture, Food and Nutrition Service, "Supplemental Nutrition Assistance Program: Farm Bill of 2008 Retailer Sanctions," 77 *Federal Register* 4848461, August 14, 2012 (hereinafter cited as "August 2012 USDA-FNS NPRM").

[159] Ibid, p. 48466.

investigation.[160] Implementation of these changes in the maximum limits on TOCMPs could represent a nearly tenfold increase in the penalty amounts for permanently disqualified retailers engaged in a high volume of SNAP business, potentially increasing the penalties' deterrent effect.[161]

Creating Additional Civil Money Penalties—Currently, USDA-FNS only fines a limited share of trafficking retailers. Firms permanently disqualified for trafficking are subject to a TOCMP when USDA-FNS becomes aware that the permanently disqualified store owner has sold a store, but USDA-FNS can only become aware of such a sale when, and if, the new store owner applies for SNAP authorization. For every retailer assessed a TOCMP in FY2016, more than seven retailers were permanently disqualified for trafficking.[162] Ultimately this means that the overwhelming majority of store owners found by USDA-FNS to have committed and materially benefited from retailer trafficking are subject to no monetary penalty at all.

USDA-FNS proposed to create a new kind of monetary penalty, the trafficking civil penalty (TCP), in the August 2012 USDA-FNS NPRM.[163] Under this proposal, a retailer permanently disqualified for trafficking would be subject to this new kind of fine, the size of which would be based on the retailer's volume of fraud, as it is for a TOCMP.[164] Establishing this new fine would provide an immediate monetary penalty at the time of permanent disqualification to further deter retailers from engaging in trafficking activity and recoup misappropriated federal funds. As of the date of this report, this rulemaking action is inactive (see **Table B-1** in **Appendix B**) and USDA-FNS is not assessing this new kind of fine.

Changes in EBT Transaction Processing since 2014

Prior to September 2014, about half of all SNAP-authorized retailers (including many smaller independent retailers) used free EBT-only point of sale (POS) devices provided by their state's EBT host processors.[165] Transaction data for purchases made at these free EBT-only POS devices went directly to EBT host processors and then to USDA-FNS. USDA-FNS uses this transaction data to detect retailer trafficking activity.

The 2014 Farm Bill modified the FNA to require that all nonexempt retailers pay for their own EBT equipment and services.[166] Since this change, most stores now work with third-party

[160] Email from SNAP, USDA-FNS, October 17, 2017.

[161] For example, if a store that redeemed an average of $4,000 in SNAP benefits per month is permanently disqualified for six retailer trafficking violations, then it would be assessed a TOCMP at the maximum of $59,000 under current regulations. Such a store would be assessed a TOCMP of $576,000 under this proposal. This CRS calculation is based on information provided in the August 2012 USDA-FNS NPRM and regulations at 7 C.F.R. §278.6(g).

[162] This CRS calculation is based on data from the December 2016 USDA-FNS Retailer Management Report, pp. 1-8.

[163] The Food Stamp Act of 1977 granted USDA-FNS the authority to either disqualify a firm for program violations or impose a civil money penalty, but not both. This authority was broadened by the 2008 FNA to allow USDA-FNS to simultaneously apply both kinds of penalties (i.e., disqualification *and* civil money penalty) to retailers in violation.

[164] For example, if a store that redeemed an average of $4,000 in SNAP benefits per month is permanently disqualified for six retailer trafficking violations, then it would be immediately assessed a fine in the amount of $288,000. This CRS calculation is based on information provided in the August 2012 USDA-FNS NPRM.

[165] EBT host processors are larger companies, such as Fidelity National Information Services (FIS), Solutran, and Conduent, that contract with individual states or groups of states to provide EBT services such as routing transactions and printing cards. These EBT host processors are subject to service contracts that reflect the statutory and regulatory requirements of the EBT system and are overseen by USDA-FNS.

[166] Section 4002(b)(1) of the Agricultural Act of 2014 (the 2014 Farm Bill, P.L. 113-79) modified Section 7(f)(2)(A) of the FNA (codified at 7 U.S.C. §2016(f)(2)(A)). A small number of SNAP-authorized retailers were exempt from this change, including military commissaries, nonprofit food purchasing cooperative ventures, group living arrangements,

companies that provide POS equipment and services for a fee. The introduction of these unregulated intermediary entities has complicated USDA-FNS's efforts to detect retailer trafficking,[167] and has also facilitated new forms of fraud. For example, in 2017, an account executive for a third party processor was sentenced to prison, to be followed by supervised release, and was ordered to pay restitution for his role in illegally providing 50 unauthorized stores with active SNAP EBT point-of-sale devices which were used to redeem about $6.5 million in benefits (at least eight of these stores were found to engaged in retailer trafficking).[168]

Enhancing Retailer Stocking Standards

Since 1994, retailers applying to participate in the program have been required to meet stocking standards which mandate a minimum of 12 food items.[169] In an October 2006 GAO report on trafficking, these minimal stocking requirements were identified as a factor potentially contributing to retailer trafficking, as the standards may make it easier for small, fraud-prone retailers that do not primarily sell food to enter the program.[170] In addition, the September 2017 USDA-FNS Retailer Trafficking Study identified a correlation between an increase in small stores (e.g., convenience stores) in the program and an increase in retailer trafficking (for more information, see **Appendix D**). As a result, increasing stocking standards has been proposed as a strategy to curb retailer trafficking. The 2014 Farm Bill modified the FNA to enhance retailer stocking standards for participating stores.[171] The December 2016 USDA-FNS Final Rule implemented these changes and included several other provisions that would have significantly increased stocking standards for retailers; however, Section 765 of the Consolidated Appropriations Act of 2017 (2017 Omnibus, P.L. 115-31) prevented full implementation of this rule.[172] On January 17, 2018, USDA-FNS began implementing the remaining provisions of the December 2016 USDA-FNS Final Rule. Current implementation requires a modest increase to the number of items stocked (from 12 to 36 food items) but not as much as would have been required by the final rule before the 2017 Omnibus (84 food items).

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direct-marketing farmers, farmers' markets, and others. See also agency guidance, *Supplemental Nutrition Assistance Program Provisions of the Agricultural Act of 2014 - Implementing Memorandum*, U.S. Department of Agriculture, Food and Nutrition Service , March 21, 2014, pp. 1-3, https://fns-prod.azureedge.net/sites/default/files/SNAP%20Provisions%20of%20the%20Agricultural%20Act%20of%202014%20-%20Implementing%20Memo.pdf.

[167] These entities include independent sales organizations (ISOs) and third-party processors (TPPs). An ISO generally works directly with a retailer by providing EBT equipment and helping to set up the retailer's connection to a TPP. A TPP generally provides transaction services between a retailer and an EBT host processor. TPPs and ISOs have no contractual relationship with states and are not overseen by USDA-FNS.

[168] USDA-OIG SARC 1st Half FY2017, pp. 29-30.

[169] Section 201 of the Food Stamp Program Improvements Act of 1994 (P.L. 103-225) modified Section 3(o)(1) of the FNA (codified at 7 U.S.C. §2018(a)(1) and implemented in 7 C.F.R. §271.2 and §278.1(b)(1)). See also U.S. Department of Agriculture, Food and Nutrition Service, "Food Stamp Program: Revisions to the Retail Food Store Definition and Program Authorization Guidance," 66 *Federal Register* 2795, January 12, 2001.

[170] U.S. Government Accountability Office, Food Stamp Trafficking: FNS Could Enhance Program Integrity by Better Targeting Stores Likely to Traffic and Increasing Penalties, GAO-07-53, October 2006, p. 5, http://www.gao.gov/assets/260/252570.pdf.

[171] Section 4002(a)(1) and (2) of the 2014 Farm Bill P.L. 113-79 modified Section 3(o)(1)(A) of the FNA (codified at 7 U.S.C. §2012(o)(1)(A)).

[172] For more information on this rulemaking, see CRS Report R44650, *Updated Standards for SNAP-Authorized Retailers*, by Randy Alison Aussenberg.

Suspending "Flagrant" Retailer Traffickers

Some retailers have been found to have delayed the disqualification process for their stores, enabling them to continue trafficking. Between the USDA-FNS official notification of trafficking charges and the permanent disqualification for trafficking, there are a number of administrative steps.[173] Until final implementation of a permanent disqualification, the retailer may continue to participate in the program, accepting and redeeming SNAP benefits. According to USDA-FNS, some charged retailers exploit the delay created by these administrative steps in order to continue (or even accelerate) their trafficking of SNAP benefits, sometimes remaining in the program for months.[174] The 2008 Farm Bill modified the FNA to require USDA-FNS to utilize the EBT system to immediately suspend the payment of redeemed SNAP benefits to stores determined to be engaged in this "flagrant" retailer trafficking.[175] A February 2013 USDA-FNS NPRM included a provision to implement this 2008 Farm Bill requirement, but, as of the date of this report, this rulemaking action is inactive (see **Table B-1** in **Appendix B**).

Increasing Requirements for High-Risk Stores

When a store applies for authorization to participate in SNAP, USDA-FNS internally assigns that store a risk status (i.e., high, medium, or low) based on retailer trafficking data for the location and area.[176] If a new store applies at a physical address associated with past retailer trafficking, that new store is more likely to be considered "high risk." In a July 2013 report, USDA-OIG noted that certain high-risk store locations evidence a pattern of retailer trafficking that continues under new ownership.[177] USDA-OIG recommended requiring a bond or letter of credit as a precondition of SNAP authorization at high-risk store locations, which would require statutory changes.

Recipient Trafficking

Requiring Recipient Photographs on EBT Cards

While some have argued that placing recipient photographs on EBT cards would reduce trafficking, specifically the sale of cards between recipients and unauthorized use of cards at authorized stores, there are operational and access challenges to this strategy. Since 1996, state agencies have had the option to require photographs of one or more SNAP household members on the household's EBT card(s).[178] This state option is known as "photo EBT."

Like SNAP benefits, EBT cards are issued to households, not to individuals. Also, households may appoint authorized representatives (outside of the household) to use their EBT cards to shop

[173] These administrative steps include providing USDA-FNS with additional information, requesting agency administrative review, and filing Freedom of Information Act (FOIA) requests that must be fulfilled before final implementation of a permanent disqualification for trafficking may occur.

[174] U.S. Department of Agriculture, Food and Nutrition Service, "Supplemental Nutrition Assistance Program: Suspension of SNAP Benefit Payments of Retailers," 78 *Federal Register* 12245, February 22, 2013 (hereinafter cited as "February 2013 USDA-FNS NPRM").

[175] Section 4132 of the 2008 Farm Bill modified Section 12(h) of the FNA (codified at 7 U.S.C. §2021(h)).

[176] Stores with higher-risk statuses may be subjected by USDA-FNS to more rigorous authorization processes, including enhanced documentation requirements and more frequent inspections.

[177] July 2013 USDA-OIG report, p. 16.

[178] Section 825(a)(9) of Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) modified Section 7(h)(9) of the FNA (codified at 7 U.S.C. §2016(h)(9) and implemented at 7 C.F.R. §274.8(b)(5)).

on the households' behalf.[179] As a result, a photo EBT card might only bear the image of the head of a household despite the fact that all members of the household can use the card. Similarly, an authorized representative may use a card that does not have the representative's picture on it. Retailers therefore cannot legally deny a SNAP transaction just because the user does not match the photo on the card. Additionally, some advocates point out that photo EBT has shown some adverse effects on recipient access.[180]

A number of states have considered or implemented photo EBT since 1996. States' evaluations of photo EBT have generally concluded that the option has or would have little to no effect on recipient trafficking.[181] Though evidence of reduced trafficking is lacking, two states, Maine and Massachusetts, currently implement photo EBT. Maine contended that it "[strengthens] the integrity of our public assistance programs."[182]

The implementation of photo EBT in a state requires both upfront and ongoing costs to the state and federal government. Upfront costs generally exceed ongoing costs, and ongoing costs generally increase over time. State estimates and actual expenditures on the cost of photo EBT vary widely. As an example, in 2000, Missouri enacted a state law mandating photo EBT, and the Office of the Missouri State Auditor evaluated the option in August 2001.[183] This audit determined that in the first year of implementation, photo EBT effected no fraud reduction, cost $1,801,858 ($947,280 federal costs and $854,578 state costs), and should be discontinued.[184] In 2001, Missouri discontinued its use of photo EBT.

In reviewing 14 states that have considered photo EBT implementation since 2001, upfront costs range from about $1.6 million in New Hampshire (2016) to about $25.1 million in North Carolina (2011).[185] Estimates of ongoing annual costs vary across an even wider range, from approximately $65,000 in Virginia (2017) to $8.4 million in Arizona (2016).[186]

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[179] For example, a household containing homebound senior citizens may give their EBT card and PIN to a neighbor and authorize them to shop on the household's behalf.

[180] See, for example, a summary of Massachusetts client advocate experiences and concerns included in an Urban Institute issue brief published in March 2015, "Assessing the Merits of Photo EBT Cards in the Supplemental Nutrition Assistance Program."

[181] This includes state reports such as those conducted by Missouri in August 2001 (https://catalog.loc.gov/vwebv/search?searchCode=LCCN&searchArg=2002435093&searchType=1&permalink=y), Rhode Island in September 2013 (https://lisaopdycke.files.wordpress.com/2014/03/ebt-feasibility-in-ri1.pdf), Pennsylvania in November 2012 (http://lbfc.legis.state.pa.us/Resources/Documents/Reports/450.pdf), and Massachusetts in April 2012 (http://archives.lib.state.ma.us/bitstream/handle/2452/213365/ocn885253047.pdf?sequence=1&isAllowed=y).

[182] Maine Department of Health and Human Services Commissioner Mary Mayhew, Department of Health and Human Services, Maine, "DHHS to Begin Putting Photos on Maine EBT Cards," press release, April 17, 2014, http://www.maine.gov/dhhs/archivednews_autosearch.shtml?id=618847.

[183] See Section 208.182, RSMo 2000.

[184] Office of Missouri State Auditor, *Audit of Department of Social Services Electronic Benefit Security Card and Electronic Benefit Transfer Benefit Delivery System*, Report No. 2001-58, August 2001, p. 8, https://catalog.loc.gov/vwebv/search?searchCode=LCCN&searchArg=2002435093&searchType=1&permalink=y.

[185] The cost estimate for New Hampshire in 2016 estimated an upfront cost of $1,554,634 and ongoing costs of about $887,507 a year. The cost estimate for North Carolina in 2011 estimated an upfront cost of $25,050,000 and ongoing costs of $2,450,000 a year. Department of Health and Human Services, New Hampshire, Fiscal Note: Senate Bill 529, January 28, 2016, https://legiscan.com/NH/text/SB529/id/1318275; General Assembly of North Carolina, Legislative Fiscal Note: House Bill 734, July 1, 2012, pp. 2-3, https://www.ncleg.net/Sessions/2011/FiscalNotes/House/PDF/HFN0734v1.pdf.

[186] The cost estimate for Virginia in 2017 estimated ongoing costs at approximately $65,000 per year and an upfront cost of $1,836,935 (this estimate only included costs directly associated with card production and excluded other ongoing photo EBT implementation costs); Joint Legislative Audit and Review Commission, 2017 General Assembly

State Agency Reporting on Recipient Fraud

There is currently no single standard measurement of recipient fraud (neither recipient trafficking nor recipient application fraud). In the absence of a national recipient trafficking rate, it is difficult to observe trends and evaluate the effectiveness of enforcement strategies. Both GAO[187] and USDA-OIG[188] have commented on the significance of this shortcoming and recommended changes to allow for the creation of a national recipient trafficking rate akin to the national retailer trafficking rate. Based on USDA-FNS analysis, however, GAO found it is infeasible to create a uniform methodology for states to calculate a national recipient trafficking rate without statutory changes to require and enable USDA-FNS and state agencies to assign sufficient resources to this issue.[189] USDA-FNS echoed these feasibility concerns in a May 2014 evaluation.[190]

Additional authority and resources to develop a recipient trafficking rate might allow USDA-FNS to do some or all of the following:

- conduct and publish a study of recipient trafficking of SNAP benefits using currently existing data, including a national recipient trafficking rate;
- determine and document what changes must be made to current regulations, forms, policies, and practices to standardize state agency reporting and calculation of recipient trafficking, including at minimum the definition of relevant terms (e.g., definition of "investigation"), the annual timeframes, and the data sources for compilation of recipient trafficking data; and
- implement the identified changes necessary to reliably and accurately document the national recipient trafficking rate.

Enhancing Federal Financial Incentives for State Agencies to Fight Fraud

USDA-FNS provides financial incentives to state agencies to reward high performance.[191] These bonuses reward states with low error rates but do not reward states that effectively detect and penalize recipient trafficking. In April 2014, USDA-FNS published a Request for Information (RFI) soliciting comment on ways to modify performance bonuses for state agencies, including creating bonuses related to activities targeting recipient trafficking.[192] The July 2016 GAO report

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Session, Fiscal Impact Review: House Bill 2208, February 6, 2017, p. 3, https://lis.virginia.gov/cgi-bin/legp604.exe?171+oth+HB2208J110+PDF. The cost estimate for Arizona in 2016 estimated ongoing costs of $8.4 million per year and an upfront cost of $12 million; Joint Legislative Budget Committee of Arizona, Fiscal Note: House Bill 2596, February 17, 2016, p. 1, https://www.azleg.gov/legtext/52leg/2r/fiscal/hb2596.docx.pdf.

[187] Government Accountability Office, *Supplemental Nutrition Assistance Program: Enhanced Detection Tools and Reporting to Combat Recipient Fraud Are in Development*, GAO-16-719T, May 2016, pp. 4-15, https://www.gao.gov/assets/680/677779.pdf (hereinafter cited as "June 2016 GAO report").

[188] September 2012 USDA-OIG report, p. 21.

[189] June 2016 GAO report, p. 4-5.

[190] As of May 2014, USDA-FNS evaluated the feasibility of calculating a national recipient trafficking rate and determined that it would be necessary for USDA-FNS to create a system similar in nature to the SNAP Quality Control system in order to calculate a recipient fraud rate. This system would, like the SNAP QC system, require statutory authority and extensive regulations to standardize terminology, definitions, timelines, methodologies, data reporting, and data formatting. The system would also require a significant investment of state and federal resources to establish and operate. As no such authority or resources currently exist, USDA-FNS found that establishing the rate was infeasible. Email from SNAP, USDA-FNS, November 24, 2017.

[191] Section 16(d) of the FNA (codified at 7 U.S.C. §2025(d) and implemented at 7 C.F.R. §275.24).

[192] U.S. Department of Agriculture, Food and Nutrition Service, "Request for Information: Supplemental Nutrition

also found that USDA-FNS does not sufficiently incentivize state agencies to pursue recipient trafficking cases. The report stated, "to help address the increased caseloads and the resources needed to conduct investigations, we recommended that USDA explore ways that federal financial incentives could be used to better support cost-effective anti-fraud strategies. At this time, FNS has decided not to pursue bonus awards for anti-fraud and program integrity activities."[193] Establishing a standard to measure performance for these bonuses would likely require the establishment of a national recipient trafficking rate as discussed earlier in this section.

Additionally, as stated earlier, state agencies establish and collect claims against recipients who traffic SNAP benefits. If a state agency collects on a claim resulting from fraud, such as recipient trafficking, the state agency is entitled to retain 35% of the amount collected.[194] The August 2014 GAO report suggested that increasing this retention rate and restricting the use of retained funds to state agency anti-fraud activities could significantly enhance efforts to combat recipient trafficking, noting that the strategy "may result in a net savings for SNAP if increased collections in payment recoveries outweigh the increased amount states receive in retentions."[195] Implementation of this strategy may require statutory change.

Federal Oversight of State Agencies—Management Evaluations (MEs)

USDA-FNS oversees state agency administration of SNAP, and one of the primary tools used in this federal oversight is the management evaluation (ME). USDA-FNS conducts annual management evaluations on high priority areas and triennial reviews on lower priority areas.[196] If a state agency is found to be out of compliance with SNAP rules, then a corrective action plan (CAP) will be developed and USDA-FNS will work with the state agency to improve compliance. A January 2012 USDA-OIG report noted that USDA-FNS did not utilize management evaluations to assess the effectiveness of state agencies' efforts to detect and penalize recipient trafficking.[197] In response, USDA-FNS created a "recipient integrity" management evaluation in FY2012 which it currently uses to evaluate state agencies every three years.[198]

Delayed State Agency Notification of Retailer Trafficking Cases

State agencies are responsible for investigating recipient trafficking, and USDA-FNS is responsible for investigating retailer trafficking. A large share of trafficking, however, results

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Assistance Program (SNAP) High Performance Bonuses," 79 *Federal Register* 22788, April 23, 2014.

[193] July 2016 GAO report, p. 29.

[194] Section 16(a) of the FNA (codified at 7 U.S.C. §2025(a) and implemented at 7 C.F.R. §273.18(k)(1)).

[195] August 2014 GAO report, pp. 15-34.

[196] See 7 C.F.R. §275.3(a). In FY2017, for example, management evaluations included the administration of policies and programs related to Able-bodied Adults without Dependents (ABAWD), SNAP Employment and Training (E&T), Program Access Review (PAR), and photo EBT. U.S. Department of Agriculture, Food and Nutrition Service, *Supplemental Nutrition Assistance Program - Fiscal Year 2017 National Target Areas for Management Evaluations*, June 2018, pp. 1-2, https://fns-prod.azureedge.net/sites/default/files/snap/SNAP%20FY17%20National%20Target%20Areas%20for%20Management%20Evaluations%20%282%29.pdf.

[197] U.S. Department of Agriculture, Office of the Inspector General, *State Fraud Detection Efforts for the Supplement Nutrition Assistance Program*, Audit Report 27703-0002-HY, January 2012, p. 2, https://www.usda.gov/oig/webdocs/27703-0002-HY.pdf.

[198] For more information about these management evaluations, see https://www.fns.usda.gov/snap/snap-program-improvement.

from collusion between recipients and retailers. If a state agency is made aware that a store in its jurisdiction is engaged in retailer trafficking, it can place the store under surveillance and build cases against recipients engaged in trafficking at that location.[199] Usually, however, state agencies have no such opportunity. USDA-FNS provides retailer trafficking cases to state agencies only after completing the agency administrative and appeal process. By the time the state agency is made aware of a retailer trafficking case, the store has ceased accepting SNAP and has often closed. At that point, meaningful surveillance of the store cannot be performed and EBT transaction data cannot be corroborated with other forms of hard evidence. It is important to note, however, that providing state agencies with advance notification regarding ongoing USDA-FNS investigations of retailers may jeopardize these investigations.[200]

Difference in Burden of Proof for Retailer Trafficking versus Recipient Trafficking

Retailer and recipient trafficking proceedings have different burdens of proof; therefore, governments will not necessarily prevail in both cases with the same evidence. Accepting SNAP benefits as a form of payment is not an entitlement for retailers. To disqualify a SNAP retailer for a violation of SNAP rules, USDA-FNS must only meet a lower-level burden of proof—the "preponderance of the evidence" standard.[201] Receiving SNAP benefits is an entitlement for eligible individuals. To disqualify a SNAP recipient for fraud, a state agency must meet a higher-level burden of proof—the "clear and convincing evidence" standard.[202] This means that evidence deemed sufficient to prove retailer trafficking may not be sufficient to prove recipient trafficking. Indeed, over 84% of the USDA-FNS retailer trafficking cases that resulted in a permanent disqualification in FY2016 relied primarily on an analysis of suspicious transaction patterns based on Anti-fraud Locator using EBT Retailer Transactions (ALERT) system data.[203] These EBT transaction data, on their own, are not generally considered sufficient grounds for the disqualification of SNAP recipients. For this reason, state agencies often have difficulty disqualifying recipients whose EBT cards were used in transactions flagged as trafficking by ALERT transaction data analysis, absent other evidence of recipient trafficking.

Best Practices for Fighting Recipient Fraud—the SNAP Fraud Framework

Grants to states for integrity activities, established by Section 4029 of the 2014 Farm Bill, were awarded in FY2014 and FY2015 but not in FY2016 or FY2017.[204] USDA-FNS is currently

[199] Surveillance helps identify the SNAP recipients who frequent the store and, paired with EBT transaction data, can provide evidence of recipient trafficking. If, for example, a SNAP recipient enters a trafficking store, swipes his/her EBT card for a large transaction amount, and then leaves the store without bags of groceries, it is extremely likely that the recipient is engaged in trafficking.

[200] Email from SNAP, USDA-FNS, January 5, 2018.

[201] Under the preponderance standard, if more than 50% of the evidence favors a party, then that party prevails. In the context of a retailer administratively sanctioned by USDA-FNS for trafficking, the retailer must satisfy the preponderance standard to prove that the USDA-FNS administrative sanction was invalid. If the retailer is unable to meet this burden of proof, then the court will sustain USDA-FNS's administrative sanction. See USDA-FNS Final Agency Decisions at https://www.fns.usda.gov/snap/retailer-sanctions-final-agency-decisions-fads.

[202] The clear and convincing standard is met if the plaintiff/prosecutor proves that their position is substantially more likely than not to be true (i.e., if more than 70-75% of the evidence favors the plaintiff/prosecutor, then the plaintiff/prosecutor will win the case). The applicability of this burden of proof for SNAP recipients is established in regulation at 7 C.F.R. §273.16(e)(6).

[203] CRS calculation based on data from December 2016 USDA-FNS Retailer Management Report, p. 8.

[204] For state activities under this grant, see, for example, U.S. Department of Agriculture, Food and Nutrition Service,

developing a "SNAP Fraud Framework," which combines best practices for fraud prevention gathered by USDA-FNS over several years from federal, state, and private partners. USDA-FNS plans to launch the SNAP Fraud Framework in FY2018 and to offer states grant opportunities using this funding to implement the framework.[205]

Retailer Application Fraud

USDA-FNS is responsible for reviewing the applications submitted by retailers and ensuring that retailers authorized to participate in SNAP meet all eligibility requirements. Included in these applications are store owners' personal information, including but not limited to owners' Social Security Numbers (SSNs), but USDA-FNS is statutorily limited in how it can use these SSNs.

Restrictions on the Use of Retailers' Social Security Numbers (SSNs)

When a retailer applies to participate in SNAP, they must provide to USDA-FNS the SSNs of all owners of the applicant store. Per the Social Security Act, USDA-FNS may only legally use these SSNs for one purpose: "the establishment and maintenance of a list of the names and social security account numbers of such individuals for use in determining those applicants who have been previously sanctioned or convicted under section 12 or 15 [of the FNA]."[206] Due to this restriction, USDA-FNS is unable to use these SSNs to perform background checks or match with federal databases.

Verification and Use of Retailer Submitted Social Security Numbers (SSNs)

During the application process, retailers provide USDA-FNS with the SSNs of all store owners. USDA-OIG compared these retailer-submitted SSNs to the Social Security Administration's Death Master File to identify store owners using SSNs that matched the SSNs of deceased individuals. In a January 2017 USDA-OIG report, 3,394 stores were found to have at least one owner using an SSA-DMF matched SSN, and 346 of these stores were found to have all owners using SSA-DMF matched SSNs.[207] USDA-OIG recommended that USDA-FNS follow up with these 3,394 retailers and implement a new workflow process to check retailer-submitted SSNs on an ongoing basis. In the agency response to the report, USDA-FNS addressed these 3,394 identified retailers, but also identified the statutory barrier to this proposed change, stating: "FNS recognizes the value in conducting a DMF match on an on-going basis. As such, should FNS be granted future authority to use SSN for matching purposes, FNS will match to the SSA DMF using SSN on an on-going basis."[208] As of the date of this report, USDA-FNS does not verify retailer-submitted SSNs or match against the SSA-DMF due to this statutory restriction.[209] Implementation of this change would require modification to the Social Security Act.

FY 2015 SNAP Recipient Integrity Information Technology Grant Summaries, October 2015. https://www.fns.usda.gov/snap/fy2015-snap-recipient-integrity-information-technology-grant-summaries.

[205] U.S. Department of Agriculture, Office of Budget and Program Analysis , *2019 USDA Budget Explanatory Notes: Food and Nutrition Service* , pp. 32-91, https://www.obpa.usda.gov/32fns2019notes.pdf.

[206] Section 205(c)(2)(C)(iii)(I) of the Social Security Act (codified at 42 U.S.C. §405(c)(2)(C)(iii)(I) and implemented at 7 C.F.R. §278.1(q)(3)).

[207] U.S. Department of Agriculture, Office of the Inspector General, *Detecting Potential SNAP Trafficking Using Data Analysis*, Report 27901-0002-13, January 2017, https://www.usda.gov/oig/webdocs/27901-0002-13.pdf, pp. 3-8.

[208] January 2017 USDA-OIG report, p. 6.

[209] Section 205(c)(2)(C)(iii)(I) of the Social Security Act (codified at 42 U.S.C. §405(c)(2)(C)(iii)(I) and implemented at 7 C.F.R. §278.1(q)(3)).

Other Verification of Retailer Submitted Information

In the July 2013 report, USDA-OIG recommended that USDA-FNS use other methods to verify applicant retailer information such as memoranda of understanding (MOUs) with state licensing agencies. USDA-FNS proposed instead to test the use of data brokers to complement existing techniques used to verify retailer applicant information.[210] In 2014, USDA-FNS conducted four pilots testing the use of data brokers and determined that it had low return on investment, in part due to USDA-FNS's inability to utilize applicant retailers' SSNs in data matches.[211]

Mandating Background Checks on High-Risk Retailer Applications

Store owners who have been convicted of certain crimes will be denied authorization to participate in SNAP for lack of business integrity if they declare the past conviction when applying. However, USDA-FNS is not currently able to verify the information provided by the retailer if he/she chooses to falsify the application and conceal past criminal convictions. A September 2008 USDA-OIG report[212] suggested that USDA-FNS utilize the Interstate Identification Index (III) of the National Crime Information Center (NCIC) to perform background checks on retailers applying to participate in SNAP.[213] The July 2013 USDA-OIG report repeated this recommendation, finding three owners who failed to disclose past criminal convictions on their application for SNAP authorization out of a sample of 212 owners (all three were later permanently disqualified for retailer trafficking).[214] In response, USDA-FNS agreed to initiate a proposed rulemaking action to require retailer applicants and currently authorized retailers deemed "high risk"[215] to provide USDA-FNS with a self-initiated background check.[216] However, USDA-FNS does not currently have the statutory authority to compel retailer applicants to submit background checks. As of the date of this report, this rulemaking action is "inactive" (see **Table B-1** in Appendix B).

[210] A data broker, or information broker, collects information on individuals from private and public records and provides access to this information to customers for a fee.

[211] Email from SNAP, USDA-FNS, January 5, 2017.

[212] U.S. Department of Agriculture, Office of the Inspector General, *Audit Report: Food Stamp Program Retailer Authorization and Store Visits*, Report No. 27601-15-AT, September 2008, pp. 6-8, https://www.usda.gov/oig/webdocs/27601-15-At.pdf.

[213] The III, or "triple-I", is a national database of individuals' criminal histories which can be used for individual criminal background checks. The III database is accessible through the system used to access the DOJ-FBI-NCIC and maintained by the FBI. The NCIC is the country's central repository for a range of criminal information, facilitating information flow between federal, state, and local law enforcement agencies. USDA-FNS, and other non-criminal justice agencies, do not have access to the NCIC, but can obtain NCIC data when authorized by statute and approved by the U.S. Department of Justice (DOJ). Although individuals may obtain their own NCIC records, agencies like USDA cannot compel individuals to submit their own NCIC records without statutory authority and DOJ approval.

[214] September 2008 USDA-OIG report, pp. 4-8.

[215] When a store applies for authorization to participate in SNAP, USDA-FNS internally assigns that store a risk status (i.e., high, medium, or low) based on retailer trafficking data for the location and area. Stores with higher-risk statuses may be subjected by USDA-FNS to more rigorous authorization processes, including enhanced documentation requirements and more frequent inspections.

[216] July 2013 USDA-OIG report, pp. 10-14.

Additional Retailer Application Vulnerabilities Identified in 2012 and 2013 USDA-FNS Proposed Rules

The August 2012 and February 2013 USDA-FNS NPRMs contained four provisions addressing shortcomings in existing retailer application regulations. These proposed rules are currently "inactive" (see **Table B-1** in **Appendix B**). Proposed changes included the following:

Retailers failing to report changes in ownership—Currently, authorized retailers are required to report any changes in the ownership of their stores, but there is currently no penalty for noncompliance. To deter retailer noncompliance, USDA-FNS proposed to subject to a six-month disqualification any retailer that failed to report ownership changes to USDA-FNS within 10 days of the change.[217]

Disqualified SNAP recipients applying to become SNAP-authorized retailers—Under current SNAP rules, USDA-FNS may not deny the application of a retailer who was permanently disqualified from SNAP as a recipient for fraud on business integrity grounds. USDA-FNS proposed to add recipient fraud to the definition of business integrity standards, "because a person, who violates program rules as a recipient, lacks the necessary business integrity and responsibility expected of a store owner who must train employees and oversee operations to ensure that SNAP EBT transactions are conducted in accordance with Department rules."[218] Data matches with the USDA-FNS electronic Disqualified Recipient System (eDRS) are needed to determine whether individuals are disqualified from receiving SNAP benefits, and such matches rely on the use of individuals' SSNs; therefore, USDA-FNS would have difficulty implementing this provision due to statutory restrictions on allowable uses of applicant retailers' SSNs.[219]

Illegal retailer-to-retailer transfers of SNAP authorization—Authorized retailers are prohibited from transferring the SNAP authorization of their stores to a new owner in the event of a sale, and retailers are prohibited from accepting SNAP benefits without first applying for and obtaining SNAP authorization. Under current regulations, if a retailer sells the authorization and a retailer buyer uses it, USDA-FNS penalizes the buyer but not the seller.[220] To address illegal collusion on the part of the seller and curtail unauthorized SNAP redemptions, USDA-FNS proposed to subject the seller to two penalties: permanent SNAP retailer ineligibility (for all current and future stores) and a fine equal to that of the buyer (under current regulations).[221]

Retailers' failure to pay fines, claims, or fiscal penalties—Current SNAP regulations allow USDA-FNS, on the basis of business integrity, to deny or withdraw the authorization of retailers who fail to pay *certain* fiscal claims or fines.[222] USDA-FNS proposed to allow the agency to deny or withdraw the authorization of retailers who fail to pay *any* fine, claim, or fiscal penalty assessed against them under 7 C.F.R. §278 when such debts become delinquent.[223]

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[217] February 2013 USDA-FNS NPRM, pp. 12249-12250.

[218] August 2012 USDA-FNS NPRM, p. 48464.

[219] Section 205(c)(2)(C)(iii)(I) of the Social Security Act (codified at 42 U.S.C. §405(c)(2)(C)(iii)(I) and implemented at 7 C.F.R. §278.1(q)(3)).

[220] The fine for unauthorized acceptance of SNAP benefits is $1,000 for each violation plus an amount equal to three times the face value of the illegally accepted SNAP benefits. Section 12(f) of the FNA (codified at 7 U.S.C. §2021(f) and clarified at 7 C.F.R. §278.6(m)).

[221] February 2013 USDA-FNS NPRM.

[222] Section 9(a)(1)(D) of the FNA (codified at 7 U.S.C. §2018(a)(1)(D) and implemented 7 C.F.R. §278.1(k)(7)).

[223] February 2013 USDA-FNS NPRM.

Recipient Application Errors and Fraud

Establish Federal Incentives to Conduct Pre-certification Investigations

In the June 2016 GAO report, GAO recommended that federal financial incentives should be restructured to encourage effective pre-certification investigations "because some investigative agencies were not rewarded for cost-effective, anti-fraud efforts that could prevent ineligible people from receiving benefits."[224] As this report noted, "when fraud by a recipient is discovered, the state may generally retain 35 percent of the recovered overpayment, but when a state detects potential fraud by an applicant and denies the application, there are no payments to recover."[225] According to FY2016 State Activity Report data,[226] about half of the state agencies dedicated minimal resources to pre-certification investigations.[227] The five state agencies that engaged in the most extensive pre-certification investigation activity represented 96% of these investigations despite serving only 32% of all SNAP participants in FY2016.[228] Together, the five states reported about $369 million in prevented improper federal expenditure through these efforts.[229] With incentives, it is possible that more states would dedicate resources to conducting pre-certification investigations to find error and fraud on a regular basis.

Difficulties in Collecting Amounts Overpaid to or Trafficked by Recipients

As one might expect, it is challenging to recover overpayments from poor and near-poor households.[230] Establishing and collecting claims is the primary way that overpayments are recovered; and, while state agencies have improved the rate of claims establishment since FY2005, states' efforts to actually collect on these claims have not likewise improved. From FY2005 to FY2014:

- the total annual dollar value of claims established has increased from about 20% to about 28% of the total annual dollar value of estimated overpayments; this improvement indicates increased claims establishment activity by state agencies.
- the total annual dollar value of claims collected has remained around 16% of the total annual dollar value of estimated overpayments; this reflects persistent difficulties in claim collection.

Figure 5 reflects these trends.

[224] June 2016 GAO report, p. 9.

[225] Ibid., pp. 9-10.

[226] The following CRS calculations are based on state data from the FY2016 SAR, pp. 5-36**.** Calculations are based on total FY2016 issuance of $66,539,351,219 and average monthly participation of 44,219,363 persons.

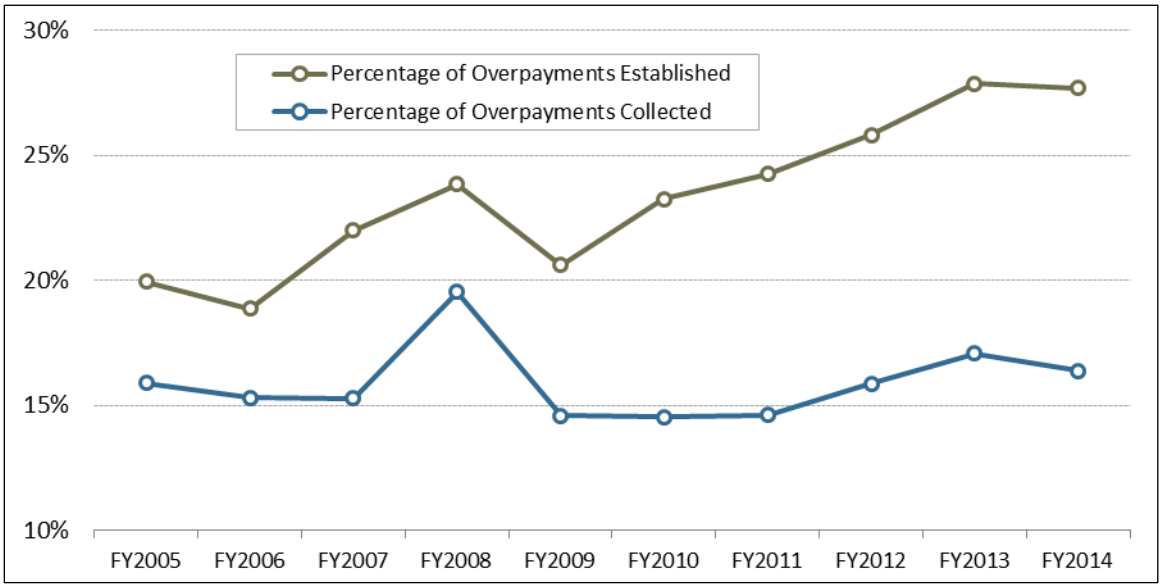
[227] Of the 53 states that administer SNAP (including the District of Columbia, Guam, and the U.S. Virgin Islands), 19 states did not initiate pre-certification investigations in FY2016 (Alabama, Georgia, Guam, Hawaii, Idaho, Illinois, Louisiana, Maine, Massachusetts, Mississippi, Missouri, Montana, New Mexico, Oklahoma, Oregon, South Carolina, Tennessee, Texas, and Wyoming) and 7 states initiated fewer than 100 pre-certification investigations in FY2016 (Colorado, the District of Columbia, Maryland, Nebraska, North Dakota, South Dakota, and Vermont).

[228] These five states are California, Florida, Michigan, New York, and Pennsylvania.

[229] FY2016 SAR, pp. 23-37.

[230] About 41% of claims are collected through the Treasury Offset Program (TOP) and about 39% of claims are collected through recoupment (i.e., partial reduction of an active SNAP household's monthly benefit to gradually collect overpayments). The remaining collections are conducted through other methods. This CRS calculation is based on FY2016 SAR, p. 35.

Figure 5. Claims Established and Claims Collected as Shares of Estimated Dollars Overissued, FY2005-FY2014



Sources: CRS graphic made using data from SNAP State Activity Reports and Annual Quality Control Reports.

Notes: Claims are not always established in the same year as the overpayment or trafficking occurs, and claims are not always collected in the same year that they were established. Totals for claims establishment and claims collection are actual amounts established and collected, while total overpayments are estimates calculated using the SNAP Quality Control review system.

This was a finding in the August 2014 GAO report and, furthermore, "[s]tates' difficulty collecting overpayments compounds their concerns about having adequate resources for investigations because some states use recovered overpayments for this purpose."[231] The GAO report did not provide strategies for how states might address this concern.

Duplicate Enrollment and the National Accuracy Clearinghouse (NAC)

Individuals are not allowed to apply for or receive benefits from more than one state agency at a time. It is important to note, however, that duplicate enrollment may be indicative of either an error or fraud depending on the circumstances of the case. Duplicate enrollment (or "dual participation") results in a 10-year disqualification from SNAP if it is due to intentional fraud.[232]

Some state agencies detect duplicate enrollment through exchanging enrollment data with neighboring states. As of the October 2016 GAO report, Massachusetts and New York, for example, had such an arrangement.[233]

The National Accuracy Clearinghouse (NAC) is a significant effort to detect and prevent duplicate enrollment. The NAC was funded as a pilot by the U.S. Office of Management and Budget (OMB) Partnership for Program Integrity and Innovation from April 2013 until May

[231] August 2014 GAO report, p. 16.

[232] Sections 6(j) and 11(e)(18) of the FNA (codified at 7 U.S.C. §2015(j) and §2020(e)(18)(A) and implemented at 7 C.F.R. §273.16(b)(5)).

[233] October 2016 GAO report, p. 22.

2015. The NAC gathers and analyzes SNAP state enrollment data from five participating states.[234] Since the conclusion of the pilot in May 2015, these five states have continued NAC operations. In practice, the NAC is another data match performed during certification. NAC matches are not considered verified upon receipt, so additional steps are necessary to confirm matches.[235]

An evaluation of NAC published in October 2015[236] documented several elements of NAC's performance, outcomes, and costs, including the following:[237]

- In May 2014, prior to implementation, 10,076 instances of duplicate enrollment across the five states were identified. One year later, in May 2015, duplicate enrollment in these five states had been reduced by almost 50% (5,464 instances identified).
- Using NAC is estimated to have prevented about $548,336 in monthly overpayments during the pilot year,[238] with monthly state agency work effort costs totaling $81,913 (resulting in about $6.69 in monthly overpayments prevented for every $1.00 spent monthly).[239]
- In the first year, using NAC produced an estimated annualized savings of $5,597,076 (less the $669,331 spent on one-time startup costs).
- Nationalizing NAC has been estimated to result in $114,072,753 in annual savings.
- Costs of setting up and utilizing NAC for the first year came to about $1,652,287 for all five participating states.[240] USDA-FNS provides federal matching funds for states' program administration costs, including costs of NAC participation.

During the 115th Congress, the House passed an emergency supplemental appropriations bill, which included a provision that would have required the expansion of NAC to all states (Section 3003 of H.R. 4667; however, this provision was not included in the emergency supplemental appropriations which became law (Bipartisan Budget Act of 2018, P.L. 115-123).[241]

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[234] These five states are Florida, Georgia, Alabama, Louisiana, and Mississippi.

[235] The most common outcome of this process is preventing *accidental* dual participation, a recipient error, when a household failed to report that it moved to a different state. For example, an applicant household resides in Mississippi and is deemed eligible for and receives SNAP in Mississippi. Halfway through the year, the household moves to Louisiana and applies for SNAP benefits there. When a match is detected through NAC, the ultimate result would be the closure of the household's SNAP case in Mississippi followed by certification in Louisiana.

[236] PCG Human Services, *National Accuracy Clearinghouse (NAC) Evaluation*, Final Report, October 2015, pp. 22-38, https://risk.lexisnexis.com/-/media/files/government/report/b7de1d11976a4bdd82a039a8f272265busdareportonnac2016117614-pdf.pdf (hereinafter cited as "NAC October 2015 report"). PCG completed this evaluation under a contract with Mississippi Department of Human Resources. The following CRS calculations are based on data from this NAC October 2015 report.

[237] The following are CRS calculations based on data from the NAC October 2015 report.

[238] Total overpayments in FY2014 in these five states are estimated at about $200 million. This CRS calculation is based on data from the FY2014 QC report, p. 11.

[239] This estimate is based on a comparison of duplicate enrollment levels in these five states prior to implementation (September 2013 to May 2014) with levels in the last four months of the pilot (February 2015 to May 2015).

[240] NAC October 2015 report, p. 22. Generally, USDA-FNS pays 50% of state agencies' costs for program administration.

[241] The FY2019 President's Budget also proposes to require all states to participate in NAC, estimating that this policy change would save $1.1 billion over 10 years (FY2019-FY2028). FY2019 USDA-FNS Budget Justification, http://www.obpa.usda.gov/32fns2019notes.pdf, p. "32-87."

Considerations for Data Matching

As discussed earlier, states are required to conduct certain data matches to verify household application information, and many opt to include additional data sources. There are arguments for and against expanding states' use of additional data matches. While verifying household data to high-fidelity sources seems compelling, the use of matching to less authoritative data can require additional employee hours and might introduce the errors it seeks to prevent.

Implementing new data matches may require large upfront investments and ongoing costs to state agencies. Non-verified upon receipt data matches may necessitate additional manual follow-up, which can create even more cost and delay. As a result, state agencies prefer to use verified upon receipt data matches whenever possible. However, only one of the six federally required databases is considered verified upon receipt. In comments published in response to USDA-FNS rulemaking implementing the statutorily mandated data matches, some states pointed out that the implementation of these data matches is burdensome on state agencies while providing minimal cost avoidance due to the rarity of matches and the effort needed to verify them.[242] A range of anecdotal evidence also points to the limited return on investment for the non-verified upon receipt of federally mandated data matches.[243] In a 2017 series of USDA-OIG audits of five states' compliance with federal requirements for state agencies, USDA-OIG found that all five were improperly handling a mandatory SSA-PVS data match.[244] At least one state explicitly stated that it elected not to perform the mandatory match due to perceived low return on investment.[245]

Some optional data matches are widely used and considered worthwhile by state agencies, while other verified upon receipt and useful non-verified upon receipt data matches are arguably underutilized. Although not federally mandated, SSA benefit program databases were utilized and considered useful by all state agencies surveyed in the October 2016 GAO report, because these data matches provide verified upon receipt data on unearned income. Matches with state systems that provide verified upon receipt data on eligibility and income were used by many, but not all, state agencies.[246] In some cases, statutory obstacles prevent using existing federal data sources, such as the Centers for Medicare and Medicaid Services (CMS) federal data services hub (the Hub), which consolidates various sources of earned and unearned income data matching.[247] Some

[242] With respect to the mandating of the SSA-PVS for example, the New York state agency noted that it piloted use of the system prior to the December 2006 USDA-FNS NPRM and concluded that less than 1% of matches were useful, while the Iowa state agency noted that it implemented use of the system in June 2000 and, as of March 2007, had never had a single confirmed match through it.

[243] According to the October 2016 GAO report, p.19, 41 of the 51 state agencies surveyed (50 states plus D.C.) identified the work hours needed to verify data matches as moderately or extremely challenging, and 35 of the 51 surveyed identified the untimeliness of data matches as moderately or extremely challenging.

[244] This audit series focused on compliance with regulations at 7 C.F.R. §272. States audited include Washington, South Carolina, Pennsylvania, Nebraska, and Georgia.

[245] For Washington, USDA-OIG noted, "During our testing, WA DSHS [the state agency] acknowledged that the State agency does not perform matches against SSA's PVS at application and recertification. This occurred because WA DSHS believes the data from SSA's PVS is neither current nor reliable and instead uses data from the State's [Department of Corrections] DOC database to identify individuals who are incarcerated, which the State believes is more reliable." U.S. Department of Agriculture, Office of the Inspector General, *Washington's Compliance with SNAP Requirements for Participating State Agencies (7 CFR, Part 272)*, Audit Report 27601-0012-10, September 2017, p. 11, https://www.usda.gov/oig/webdocs/27601-0012-10.pdf.

[246] This can include data matches of income (such as child support payments and unemployment insurance benefits) and eligibility (such as state department of corrections records of incarceration and state department of health records of death)—all of which are generally considered verified upon receipt. October 2016 GAO report, pp. 10-20.

[247] The Patient Protection and Affordable Care Act (ACA), the Privacy Act of 1974, the Fair Credit Reporting Act, and

state agencies were concerned that the same data match services are being paid for twice, once for SNAP and once for Medicaid, often for the same beneficiaries.[248] In 2017, certain states have piloted data sharing agreements to utilize these federal data services hubs for SNAP.[249]

Earned income may be especially difficult to verify through data matching, and the costs associated with these matches may be prohibitive.[250] Currently, state agencies contract individually with The Work Number, but USDA-FNS has proposed negotiating a single contract that would make the service available for all state agencies at a greatly reduced cost per match.[251] According to the October 2016 GAO report, USDA-FNS has not done enough to encourage state agencies to adopt best practices in data matching. This includes explaining technical improvements such as unifying data sources into a centralized portal (data brokering) and publicizing the methods and successes of pilot projects like NAC.

State Agency Errors and Fraud

Modifying State Involvement in the Quality Control System

The September 2015 USDA-OIG report stated that the primary vulnerability of the QC system was its "two-tier" structure.[252] USDA-OIG argued that because a state calculates its own SPER, it has the means to manipulate the outcome of the QC process, and because a state stands to benefit from a low SPER, it has the motive to commit this fraud. USDA-OIG recommended the adoption of a "one-tier" QC process conducted exclusively by USDA-FNS. USDA-FNS noted that a one-tier QC system could create additional federal cost.

other statutes, as well as the current terms of certain CMS contracts with private databases, were all cited as preventing the full utilization of CMS's the Hub and other data sources for SNAP certification determinations. October 2016 GAO report, pp. 23-27.

[248] October 2016 GAO report, p. 24

[249] U.S. Government Accountability Office, *Federal Low-Income Programs: Eligibility and Benefits Differ for Selected Programs Due to Complex and Varied Rules*, GAO-17-558, June 2017, p. 38, https://www.gao.gov/assets/690/685551.pdf.

[250] According to the October 2016 GAO report, p. 27, costs associated with data matches, especially private data match services like The Work Number, limited state agency usage of systems that they considered effective in preventing overpayments, with 34 of the 42 respondents identifying upfront costs and 30 of the 42 respondents identifying ongoing costs as challenging.

[251] October 2016 GAO report, pp. 27-33.

[252] September 2015 USDA-OIG report, p. 10.

Appendix A. Glossary of Abbreviations

ACF	Administration for Children and Families (HHS)
AE	agency error
ALERT	Anti-Fraud Locator using EBT Retailer Transactions (USDA-FNS)
APT	Application Processing Timeliness (USDA-FNS-SNAP)
AR	administrative review
CAP	corrective action plan
CAPER	Case and Procedural Error Rate (USDA-FNS-SNAP)
CMS	Centers for Medicare & Medicaid Services (HHS)
DHS	U.S. Department of Homeland Security
DMF	Death Master File (see DMS)
DMS	Deceased Matching System (see DMF)
DOJ	U.S. Department of Justice
EBT	Electronic Benefit Transfer
eDRS	electronic Disqualified Recipient System (USDA-FNS-SNAP)
FAD	final agency determination
FBI	Federal Bureau of Investigations (DOJ)
FDPIR	Food Distribution Program on Indian Reservations (USDA-FNS)
FNA	Food and Nutrition Act of 2008
FNS	Food and Nutrition Service (USDA)
GAO	Government Accountability Office
GSA	General Services Administration
HHS	U.S. Department of Health and Human Services
IEVS	Income and Eligibility Verification System
IHE	inadvertent household error
III	Interstate Identification Index (DOJ-FBI)
IPV	intentional program violation
JR	judicial review
LOC	letter of credit
ME	management evaluation
NAC	National Accuracy Clearinghouse (USDA-FNS-SNAP)
NCIC	National Crime Information Center (DOJ-FBI)
NDNH	National Directory of New Hires (HHS-ACF)
NPER	National Payment Error Rate (USDA-FNS-SNAP)
NPRM	notice of proposed rulemaking
OASDI	Old-Age, Survivors, and Disability Insurance (SSA)
OIG	Office of the Inspector General
OMB	Office of Management and Budget
OPM	Office of Personnel Management
PARIS	Public Assistance Reporting Information System (HHS-ACF)
PDQ	permanent disqualification
POS	point of sale
PVS	Prisoner Verification System (SSA)
QC	Quality Control
RIN	Regulatory Identification Number

SA	state agency
SAM	System for Award Management (GSA)
SAR	State Activity Report (USDA-FNS-SNAP)
SARC	Semiannual Report to Congress (USDA-OIG)
SAVE	Systematic Alien Verification for Entitlements (DHS-USCIS)
SLEB	state law enforcement bureau
SNAP	Supplemental Nutrition Assistance Program (USDA-FNS)
SPER	State Payment Error Rate (USDA-FNS-SNAP)
SSA	Social Security Administration
SSI	Supplemental Security Income (SSA)
SSN	Social Security Number (SSA)
TANF	Temporary Assistance for Needy Families (HHS)
TCP	Trafficking Civil Penalty
TOCMP	Transfer of Ownership Civil Money Penalty
TPP	third-party processor
UA	Unified Agenda
UIB	unemployment insurance benefits
UPV	unintentional program violation (see IHE)
USCIS	U.S. Citizenship and Immigration Services (DHS)
USDA	U.S. Department of Agriculture
VA	U.S. Department of Veteran Affairs
VUR	verified upon receipt
WIC	Special Supplemental Nutrition Program for Women, Infants, and Children

Appendix B. "Inactive" USDA-FNS Rules

In the last 10 years, the U.S. Department of Agriculture Food and Nutrition Service (USDA-FNS) had started to draft new rules in response to direction in federal law and USDA Office of the Inspector General (USDA-OIG) audit findings, and at their own initiative. Currently, none of the regulatory initiatives discussed in this appendix have been completed. Before USDA-FNS's actions were suspended, they were in various stages of the regulatory process, which occurs as follows:

In order to codify a federal regulation in the Code of Federal Regulations (C.F.R.), the following steps must generally be completed:

- a regulatory work plan must be submitted to the Office of Management and Budget (OMB) and OMB must assign the rulemaking action a Regulatory Identification Number (RIN), adding the RIN to OMB's Unified Agenda (UA);[253]
- a notice of proposed rulemaking (NPRM) generally must be published by the rulemaking agency in the *Federal Register* (FR) with a comment period open to the public; and
- the rulemaking agency must consider the comments, make necessary changes to the rulemaking action, and then publish the final rule in the FR.

Along with other rulemaking actions, USDA rules had been in a "pending" status and had not been made available to the public.[254] The Trump Administration made these rules public in July 2017 and termed them "inactive."[255]

Table B-1. Inactive USDA-FNS Rulemaking Actions Related to SNAP Integrity

RIN	Full Title	First in UA	Proposed	Cited as
0584-AE22[a]	Supplemental Nutrition Assistance Program: Suspension of SNAP Benefit Payments to Retailers	2012	02/22/2013 78 FR 12245	February 2013 USDA-FNS NPRM
0584-AD88[b]	Supplemental Nutrition Assistance Program: Farm Bill of 2008 Retailer Sanctions	Spring 2009	08/14/2012 77 FR 48461	August 2012 USDA-FNS NPRM
0584-AE37[c]	Modernizing Supplemental Nutrition Assistance Program (SNAP) Benefit Redemption Systems	Spring 2015	n/a	USDA-FNS Benefit Redemption Modernization Rule
0584-AE46[c]	Supplemental Nutrition Assistance Program: Definition of "Benefit" as it Pertains to Retail Owners	Fall 2016	n/a	USDA-FNS Definition of Benefit Rule

[253] The UA is a government-wide publication of upcoming regulations and is generally published twice each year on https://www.reginfo.gov.

[254] The "pending" list included rules that were not actively being worked on by the agencies.

[255] See CRS Report R45032, *The Trump Administration and the Unified Agenda of Federal Regulatory and Deregulatory Actions*, by Maeve P. Carey and Kathryn A. Francis.

RIN	Full Title	First in UA	Proposed	Cited as
0584-AE47[c]	Supplemental Nutrition Assistance Program: National Crime Information Center Background Check Requirement for Retailer Authorization and Reauthorization	Fall 2016	n/a	USDA-FNS Background Check Rule

Source: Follow the FR links to view the proposed rules. The full inactive list is available online at https://www.reginfo.gov/public/jsp/eAgenda/InactiveRINs_2017_Agenda_Update.pdf.

a. See https://www.federalregister.gov/documents/2013/02/22/2013-04037/supplemental-nutrition-assistance-program-suspension-of-snap-benefit-payments-to-retailers. For the history of this RIN, see https://www.reginfo.gov/public/do/eAgendaViewRule?RIN=0584-AE22.

b. For the history of this RIN, see https://www.reginfo.gov/public/do/eAgendaViewRule?RIN=0584-AD88; https://www.federalregister.gov/documents/2012/08/14/2012-19773/supplemental-nutrition-assistance-program-farm-bill-of-2008-retailer-sanctions.

c. This RIN appears on the OMB inactive list; see https://www.reginfo.gov/public/jsp/eAgenda/InactiveRINs_2017_Agenda_Update.pdf.

Appendix C. Optional Income Data Matches

Data matching is used during the SNAP certification process to help make SNAP eligibility determinations and, if appropriate, designate the benefit allotment amounts for applicant households. In addition to the mandatory data matches discussed earlier in this report, states have many additional federal, state, and local data sources that they might use to verify household income data. This appendix lists some additional data matches that are discussed in related audit reports and state-specific policy manuals. Their verified upon receipt status varies.

Optional Federal Income Data Matches[256]

- Social Security Administration (SSA) Benefit Programs Databases[257]—State agencies can match with SSA databases to verify an applicant's unearned income from these SSA programs.[258] These are verified upon receipt data matches. They are conducted and considered moderately or extremely useful by 51 of the 51 state agencies surveyed (50 states plus D.C.) in October 2016.
- SSA Beneficiary Earnings Exchange Record (BEER)—State agencies can match with SSA-BEER to verify income based on Internal Revenue Service (IRS) earnings and tax data. This is a non-verified upon receipt data match. It is conducted by 24 of the 51 state agencies and considered moderately or extremely useful by only 10 of those using it.
- U.S. Department of Health and Human Services Administration for Children and Families (HHS-ACF) Public Assistance Reporting Information System (PARIS)[259]—State agencies can match with HHS-ACF-PARIS to verify an applicant's earned and unearned income from public assistance and federal employment or retirement. These are non-verified upon receipt data matches. The HHS-ACF-PARIS Interstate Match File is conducted by 40 of the 51 state agencies and considered moderately or extremely useful by 31 of those using it. The HHS-ACF-PARIS Federal/VA File matches are conducted by 31 of the 51 state agencies and considered moderately or extremely useful by 20 of those using them.
- The Work Number—State agencies can match with this commercial verification service operated by Equifax, Inc. (for a fee) to obtain payroll information from participating retailers (covering about 35%-40% of working population) to verify an applicant's earned income. This is a non-verified upon receipt data match. It is used by 45 of the 51 state agencies and considered moderately or extremely useful by 43 of those using it.

[256] All survey numbers are from the October 2016 GAO report, cited elsewhere in this report, https://www.gao.gov/assets/690/680535.pdf.

[257] SSA benefit programs covered include Old Age, Survivors, and Disability Insurance (OASDI), Retirement Survivors and Disability Insurance (RSDI), and Supplemental Security Income (SSI).

[258] SSA databases for these programs that are used include the State On-Line Query (SOLQ), State Verification and Exchange System (SVES), Beneficiary and Earnings Data Exchange (BENDEX), and State Data Exchange (SDX).

[259] The HHS-ACF-PARIS Interstate Match File compiles public assistance beneficiary information from states, HHS-ACF-PARIS Veterans Affairs (VA) File includes VA beneficiary information, and the HHS-ACF-PARIS Federal File includes military and federal employees' and retirees' wage and retirement information gathered from Department of Defense (DOD) and Office of Personnel Management (OPM).

- HHS-ACF National Directory of New Hires (NDNH) Unemployment Insurance and Quarterly Wage Files—These data matches are distinct from the mandatory HHS-ACF-NDNH New Hire File match. The Unemployment Insurance File compiles information from state workforce agencies regarding unearned income, and the Quarterly Wage File compiles information from state workforce agencies regarding earned income. These are non-verified upon receipt data matches. The former is used by 9 of the 51 state agencies and the latter by 4 of the 51.

Optional State Income Data Matches[260]

- State Unemployment Insurance Benefits (UIB) Database—State agencies can match with state workforce agencies that administer UIB to verify applicants' unearned income. This is generally a verified upon receipt data match. It is conducted by 49 of the 51 state agencies surveyed in October 2016 and considered moderately or extremely useful by 48 of those using it.
- Child Support Payments Database—State agencies can match with state human or social services agencies that administer and enforce child support payments to verify applicants' unearned income. This is generally a verified upon receipt data match. It is conducted by 47 of the 51 state agencies and considered moderately or extremely useful by 46 of those using it.
- State Wage Information Collection Agency (SWICA) Database—State agencies can match with SWICAs that gather quarterly wage and new hire data from employers to verify applicants' earned income. This is the state equivalent of the HHS-ACF-NDNH. These are non-verified upon receipt data matches. The former is conducted by 45 of the 51 state agencies and considered moderately or extremely useful by 31 of those using it; the latter is conducted by 36 of the 51 state agencies and considered moderately or extremely useful by 23 of those using it.
- State Day Care License Database—State agencies can match with state human or social services agencies that license day care workers and facilities to verify applicants' earned income. This is generally a verified upon receipt data match. It is conducted by 11 of the 51 state agencies.
- State Taxpayer Database—State agencies can match with state taxation agencies to verify applicants' unearned and earned income. This is generally a verified upon receipt data match. It is conducted by 7 of the 51 state agencies.
- Database of Income Verified by Other State Programs—State agencies can match with state human or social services agencies that administer other means-tested programs[261] to verify applicants' unearned and earned income. This is generally a verified upon receipt data match. It is conducted by 42 of the 51 state agencies and considered moderately or extremely useful by 38 of those using it.

[260] All survey numbers are from the October 2016 GAO report.

[261] These include TANF, old age pensions, aid to the disabled, state SSI supplement, etc.

Appendix D. Trends in Retailer Trafficking and Convenience Store Participation in SNAP

The following three tables include CRS calculations based on data from U.S. Department of Agriculture Food and Nutrition Service (USDA-FNS) Retailer Management Reports, the last three Retailer Trafficking Studies, and other agency sources. **Table D-1** compares the growth in total stores participating in SNAP with the growth of convenience stores ("c-stores") participating in the program. From FY2007 to FY2016, convenience stores have grown from about 36% of all stores in the program to about 46%.

Table D-1. Convenience Stores as a Percentage of All Stores in SNAP

Year	C-Stores	Change in C-Stores	All Stores	Change in All Stores	C-Stores as a Percentage of All Stores
FY2007	58,669	—	162,672	—	36.07%
FY2008	61,968	+5.62%	172,094	+5.79%	36.01%
FY2009	66,809	+7.81%	190,334	+10.60%	35.10%
FY2010	78,754	+17.88%	212,834	+11.82%	37.00%
FY2011	87,857	+11.56%	227,190	+6.75%	38.67%
FY2012	96,769	+10.14%	242,325	+6.66%	39.93%
FY2013	101,059	+4.43%	248,666	+2.62%	40.64%
FY2014	105,742	+4.63%	256,670	+3.22%	41.20%
FY2015	106,531	+0.75%	254,593	-0.81%	41.84%
FY2016	117,591	+10.38%	255,931	+0.53%	45.95%

Source: USDA-FNS data from annual Retailer Management Reports, https://www.fns.usda.gov/snap-retailer-data; and email from SNAP, USDA-FNS, January 5, 2018.

The *national retailer trafficking rate* represents the proportion of SNAP benefits redeemed that were trafficked at stores, and the *national store violation rate* represents the proportion of authorized stores that were estimated to have engaged in trafficking. **Table D-2** compares these two rates for all stores with these rates for convenience stores. Across the nine years examined in the three studies, the convenience store retailer trafficking rates have been more than 1000% of the national retailer trafficking rates, and the convenience store violation rates have been more than 150% of the national store violation rates.

Table D-2. Trafficking Rates in Convenience Stores Compared to the National Trafficking Rates

Report Years	National Retailer Trafficking Rate	C-Store Retailer Trafficking Rate	National Store Violation Rate	C-Store Violation Rate
2006-2008	1.03%	12.93%	8.25%	15.52%
2009-2011	1.34%	14.07%	10.47%	17.68%
2012-2014	1.50%	17.67%	11.82%	19.42%

Source: USDA-FNS data from Retailer Trafficking Studies, https://www.fns.usda.gov/report-finder.

Table D-3 displays data regarding the convenience store share of total redemptions and data regarding the estimated convenience store share of total trafficking. Across the nine years examined in these three studies, convenience stores' shares of redemptions have not exceeded 5% of total redemptions and convenience store shares of trafficking have averaged more than half of total trafficking.

Table D-3. Convenience Store Redemptions and Trafficking as a Percentage of All Redemptions and Trafficking

Report Years	C-Store Redemptions as % of Total Redemptions	C-Store Trafficking as % of Total Trafficking
2006-2008	4.05%	50.91%
2009-2011	4.38%	45.80%
2012-2014	4.84%	57.24%

Source: USDA-FNS data from Retailer Trafficking Studies, https://www.fns.usda.gov/report-finder.

Appendix E. Payment Error Rate Information

This appendix provides a state-by-state summary of payment-error related data from FY2010-FY2014, including state payment error rates (SPERs), high-performance bonuses, and liabilities for low performance. **Table E-1** shows the states' annual rates and whether the state received an award or a sanction, while **Table E-2** displays the amounts of awards and sanctions. Using Alabama as an example, according to the first table the state received a bonus in FY2012 based on a 1.85% SPER, and according to the second table that award amount was approximately $1.9 million.

Table E-1. State Payment Error Rates, FY2010 to FY2014

State	FY2010	FY2011	FY2012	FY2013	FY2014
Alabama	3.75%	5.10%	1.85% (+)	1.70%	2.03%
Alaska	**2.15% (+)**	**0.76% (+)**	**1.07% (+)**	**1.27% (+)**	0.89% (+)
Arizona	*6.69% (-)‡*	*6.34% (-)‡*	*5.60% (-)*	*5.48% (-)*	*5.18% (-)*
Arkansas	*5.64%*	*5.79% (-)*	*4.76% (-)*	4.34%	*5.58%*
California	4.81%	4.58%	3.98%	3.63%	5.13%
Colorado	3.18%	4.45%	*4.55%*	*5.59% (-)*	4.26%
Connecticut	*7.66% ‡*	*6.46% (-)‡*	*5.99% (-)*	7.13% (-)‡	*5.84% (-)*
District of Columbia	4.47%	3.03%	3.91%	*6.87% (-)‡*	*7.38% (-)‡*
Delaware	1.52% (+)	2.53% (+)	3.41%	3.53%	2.78%
Florida	0.78% (+)	0.87% (+)	0.77% (+)	0.81% (+)	0.42% (+)
Georgia	1.99% (+)	2.71%	3.18%	*5.11%*	*6.49%* (-)
Guam	*5.42%*	*6.25% (-)‡*	*7.33% (-)‡*	*6.65% (-)‡*	*7.08% (-)‡*
Hawaii	3.04%	3.37%	4.84%	*4.39%*	4.13%
Idaho	3.32%	2.52% (+)	2.49%	1.86%	2.74%
Illinois	1.70% (+)	3.15%	1.74% (+)	4.27%	*5.27%*
Indiana	2.60% (+)*	3.29%	3.02%	3.72%	4.76%
Iowa	3.36%	3.97%	3.43%	4.12%	4.60%
Kansas	*4.79%*	5.00%	*5.45%*	3.99%	0.75% (+)
Kentucky	4.09%	4.50%	*4.93%*	*5.78% (-)*	*6.00% (-)*
Louisiana	*5.03%*	3.97%	1.45% (+)	1.44% (+)	1.55%
Maine	3.49%	3.28%	2.16%	2.48%	2.52%
Maryland	*7.68% (-)‡*	*6.06% (-)‡*	3.40% (+)*	2.12%	3.41%
Massachusetts	*5.90%*	4.40% (+)*	4.03%	2.87%	*5.09%*
Michigan	3.31%	3.12%	3.55%	2.70%	2.99%
Minnesota	4.76%	5.02%	*5.07%*	4.08%	*6.87% ‡*
Mississippi	1.92% (+)	2.83%	2.10%	1.48% (+)	1.16% (+)
Missouri	*5.65% (-)*	*5.88% (-)*	*7.18% (-)‡*	1.62% (+)*	1.50%
Montana	4.12%	3.10%	2.71%	*6.00%*	*7.25% (-)‡*

State	FY2010	FY2011	FY2012	FY2013	FY2014
Nebraska	3.52%	4.50%	3.19%	2.87%	2.98%
Nevada	*6.57%* ‡	*6.29%* (-)‡	*6.01%* (-)‡	*5.51%* (-)	*7.61%* (-)‡
New Hampshire	5.31%	4.82%	*5.09%*	3.82%	4.72%
New Jersey	4.62%	4.33%	3.49%	1.32% (+)	1.43%
New Mexico	4.50%	4.35%	3.73%	*4.55%*	*6.22%* (-)‡
New York	*5.51%*	4.32%	*5.09%*	*4.79%* (-)	*5.23%* (-)
North Carolina	2.70%	2.65% (+)	2.32%	*4.75%*	*4.98%* (-)
North Dakota	4.38%	4.34%	2.94%	2.30%	1.73%
Ohio	3.31%	3.40%	3.39%	4.12%	4.67%
Oklahoma	4.22%	3.94%	*4.94%*	3.99%	*5.58%*
Oregon	4.88%	3.99%	*4.66%*	4.17%	5.11%
Pennsylvania	3.93%	3.30%	3.08%	3.56%	4.27%
Rhode Island	*5.98%*	*7.89%* (-)‡	*7.36%* (-)‡	*8.25%* (-)‡	*5.97%* (-/+)*
South Carolina	*5.14%*	3.14% (+)*	1.59% (+)	1.75%	1.09% (+)
South Dakota	1.31% (+)	1.59% (+)	1.37% (+)	0.99% (+)	1.26%
Tennessee	4.39%	*5.46%*	3.25%	1.32% (+)	1.08% (+)
Texas	2.13% (+)	3.48%	3.63%	1.44% (+)	0.63% (+)
Utah	4.33%	4.19%	2.39%	2.11%	2.79%
Vermont	*6.59%* ‡	*8.53%* (-)‡	*6.96%* (-)‡	*9.66%* (-)‡	2.76% (+)*
Virgin Islands	3.10%	4.77%	4.20%	3.58%	3.18%
Virginia	*5.87%*	**3.41% (+)***	**1.76% (+)**	**0.44% (+)**	4.73%
Washington	3.30%	3.81%	2.49%	1.71%	0.77% (+)
West Virginia	*7.14%*‡	*6.31%* (-)‡	*7.06%* (-)‡	*5.24%* (-)	4.90%
Wisconsin	**1.97% (+)**	**2.02% (+)**	2.07% (+)	2.40%	2.55%
Wyoming	4.76%	*9.63%* ‡	*7.18%* (-)‡	*4.99%* (-/+)*	5.19%
NPER	3.81%	3.80%	3.42%	3.20%	3.66%

Source: USDA-FNS data, https://www.fns.usda.gov/pd/snap-quality-control-annual-reports.

Notes:

(+) represents years in which states were awarded a high-performance bonus for the years' best state payment error rates (SPERs).

* represents years in which states were awarded a high-performance bonus for the years' most improved SPERs.

(-) represents years in which states were assessed liabilities for SPERS that exceed Quality Control standards.

(+/-) represents years in which states were awarded a high-performance bonus for most improved payment error rate, but still incurred a liability.

‡ represents years in which states' SPERs exceeded the liability threshold of 6%.

Italicized figures represent years in which states' SPERs exceeded the liability level (105% of the national payment error rate).

Bold figures represent years in which states' SPERs were fraudulently misreported (according to U.S. Department of Justice (DOJ) settlement documents, as these SPERs are associated with DOJ False Claims Act cases).

Table E-2. State Bonuses and Liabilities, FY2010 to FY2014

In thousands of dollars

State	FY2010	FY2011	FY2012	FY2013	FY2014
Alabama	–	–	+$1,898	–	–
Alaska	**+$233**	**+$290**	**+$266**	**+$236**	+$247
Arizona	-$1,096	-$561	-$0	-$0	-$0
Arkansas	LLE	-$0	-$0	–	LLE
California	–	–	–	–	–
Colorado	–	–	LLE	-$0	–
Connecticut	LLE	-$298	-$0	-$800	-$0
District of Columbia	–	–	–	LLE	-$307
Delaware	+$321	+$435	–	–	–
Florida	+$6,084	+$9,088	+$8,072	+$7,015	+$7,742
Georgia	+$3,077	–	–	LLE	-$1,386
Guam	LLE	-$26	-$151	-$77	-$117
Hawaii	–	–	–	LLE	–
Idaho	–	+$622	–	–	–
Illinois	+$3,484	–	+$4,092	–	LLE
Indiana	+$1,619*	–	–	–	–
Iowa	–	–	–	–	–
Kansas	LLE	–	LLE	–	+$628
Kentucky	–	–	LLE	-$0	-$0
Louisiana	LLE	–	+$1,946	+$1,614	–
Maine	–	–	–	–	–
Maryland	-$1,475	-$62	+$1,674*	–	–
Massachusetts	LLE	+$2,522*	–	–	LLE
Michigan	–	–	–	–	–
Minnesota	–	–	LLE	–	LLE
Mississippi	+$1,182	–	–	+$1,185	+$1,302
Missouri	-$0	-$0	-$1,725	+$1,656*	–
Montana	–	–	–	LLE	-$220
Nebraska	–	–	–	–	–
Nevada	LLE	-$144	-$5	-$0	-$870
New Hampshire	–	–	LLE	–	–
New Jersey	–	–	–	+$1,638	–
New Mexico	–	–	–	LLE	-$138
New York	LLE	–	LLE	-$0	-$0
North Carolina	–	+$4,079	–	LLE	-$0

State	FY2010	FY2011	FY2012	FY2013	FY2014
North Dakota	–	–	–	–	–
Ohio	–	–	–	–	–
Oklahoma	–	–	LLE	–	LLE
Oregon	–	–	LLE	–	–
Pennsylvania	–	–	–	–	–
Rhode Island	LLE	-$519	-$394	-$683	-$0 / +$502*
South Carolina	LLE	+$2,218*	+$1,892	–	+$1,672
South Dakota	+$275	+$336	+$297	+$261	–
Tennessee	–	LLE	–	+$2,456	+$2,687
Texas	+$6,243	–	–	+$6,056	+$6,497
Utah	–	–	–	–	–
Vermont	LLE	-$341	-$136	-$549	+$293*
Virgin Islands	–	–	–	–	–
Virginia	LLE	**+$2,304***	**+$2,021**	**+$1,724**	–
Washington	–	–	–	–	+$2,428
West Virginia	LLE	-$154	-$530	-$0	–
Wisconsin	**+$1,484**	**+$2,106**	+$1,842	–	–
Wyoming	–	LLE	-$61	-$0 / +$158*	–

Source: SNAP Quality Control Annual Reports FY2010 to FY2014; https://www.fns.usda.gov/pd/snap-quality-control-annual-reports.

Notes:

+$ represents high-performance bonuses awarded to states for the years' best state payment error rates (SPERs).

* represents years in which states were awarded a high-performance bonus for the years' most improved SPERs.

-$ represents liability amounts assessed against states for SPERS that exceed QC standards; if a state exceeded the liability level for two consecutive years but did not exceed the liability threshold of 6%, they were assessed a $0 liability (value noted as "-$0").

-$/+$ represents years in which states were awarded a high-performance bonus for most improved payment error rate, but still incurred a liability.

LLE (liability level exceeded) represents the first year that the liability level was exceeded by a state.

Bold figures represent years in which states' SPERs were fraudulently misreported (according to U.S. Department of Justice (DOJ) settlement documents, as these SPERs are associated with DOJ False Claims Act cases).

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