

## USDA Issues Waivers for Supplemental Nutrition Assistance Plan in Response to COVID-19, Including Expansion of the Online SNAP Program for EBT Customers

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The United States Department of Agriculture (“USDA”) has made several changes to the Supplemental Nutrition Assistance Program (“SNAP”) in order to assist users during the COVID-19 pandemic. Many of these changes are temporary waivers, while some of them may become permanent. Individual states have been filing requests for waivers with the USDA since the crisis began, and the federal government is granting those waivers at a record rate.

In 2008, SNAP replaced the former federal Food Stamp Program. The goal of SNAP is to increase consumption of nutritious foods in low income households. Under SNAP, USDA operates other supplementary programs which assist specific communities, and the most notable of these is the Women, Infants, and Children Program (“WIC”). Federal guidelines define SNAP-eligible foods. State departments of agriculture and other agencies implement the federal guidelines at the ground level, and these agencies may promulgate additional rules of their own, particularly with regard to which food brands and package sizes are eligible based on their ingredients. Similarly, the states maintain lists of prohibited foods. The lists may change periodically, and states have the ability to alter them based on cost of the foods, statewide availability, and nutrient content.

Economic distress arising from COVID-19 as well as reports regarding food shortages and distribution issues have meant that the need for efficient SNAP processes is more important than ever. Some of the waivers requested by states include increasing the SNAP allowance to the maximum, allowing food package substitutions to compensate for market shortages, and suspending in person interview requirements for new users. The USDA appears to be granting the vast majority of these requests.

As more and more Americans are looking to online food shopping sources in order to maintain social distancing, administrators are asking whether it would not make sense for SNAP participants to be able to shop for groceries this way as well. Consumers who participate in SNAP programs generally do so through an electronic benefits transfer (“EBT”); benefits are loaded on to EBT cards, and consumers present the cards at check out in food stores in order to receive their food benefits. It is a requirement that the consumer shop in person and show the EBT card as identification.

In the era of COVID-19, however, reducing traffic in grocery stores has become desirable, and some states are petitioning for a waiver which would allow SNAP customers to buy groceries online. Back in 2014, the USDA initiated a pilot program for online purchasing, and that pilot program is live in Alabama, Iowa, Nebraska, New York, Oregon and Washington. The pilot program is being run through a small number of pilot retailers, including Amazon, Walmart, Safeway, and a few others, and the list of retailers has not been expanded due to the pandemic.

To date, USDA has not announced any intention to expand the pilot to additional retailers as a result of the pandemic. When the pilot began in 2014, the USDA set forth specific eligibility requirements for volunteer retailers. Those requirements included carefully articulated “retailer stocking requirements” from the USDA’s Food and Nutrition Service (“FNS”), as well as specifications for the retailer’s e-commerce platform (a pre-existing e-commerce platform was in and of itself a threshold requirement). The e-commerce capability requirements included, among other things: (1) integration of the secure online PIN-entry via the Third Party Processor (TPP) Application Programming Interface (API); (2) requiring secure entry of the PIN for any SNAP transactions; (3) error handling, including messaging displayed to the customer as appropriate to the situation; (4) matching refunds back to the original purchase; (5) handling of estimated pricing for items that are variably priced based on weight; (6) ensuring only eligible foods can be purchased with SNAP benefits; (7) not charging sales tax on SNAP purchases; and (8) allowing split tender transactions for the payment of non-SNAP eligible items and delivery fees. In addition to meeting these capability requirements, volunteer retailers needed to perform successful end-to-end testing in the online production environment with FNS prior to opening up online shopping to the public.

On April 11, 2020, the USDA approved the state of Florida’s request to join this group. The logistics of these transactions may vary from location to location, but in general, Florida SNAP customers will now be able to create an online order for groceries and pick them up at a designated location at the store, where a sales associate will charge their EBT card. Depending upon the retailer, some SNAP customers may be able to have their groceries delivered, although SNAP benefits may not be used to pay for delivery fees. Approximately three million Floridians receive SNAP benefits.

The duration of these USDA waivers remains to be seen given the uncertainties of how long the COVID-19 crisis will last, and no doubt the economic impacts of the pandemic will last longer than the spread of the virus. SNAP participants and interested retailers will continue to watch the online pilot to assess whether the USDA continues the rollout of the online program to additional states.