



U.S. Department of Agriculture



Office of Inspector General
Southeast Region

Audit Report

Food Stamp Program Retailer Authorization and Store Visits

Report No. 27601-15-At
September 2008



UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

Washington, D.C. 20250



September 26, 2008

REPLY TO

ATTN OF: 27601-15-At

TO: Roberto Salazar
Administrator
Food and Nutrition Service

ATTN: Lael Lubing
Director
Grants Management Division

FROM: Robert W. Young */s/*
Assistant Inspector General
for Audit

SUBJECT: Food Stamp Program Retailer Authorization and Store Visits

This report presents the results of our audit of retailer authorizations and store visits in the Food Stamp Program (FSP). Your agency's response to the draft report, dated September 10, 2008, is included in its entirety as Exhibit A, with excerpts and the Office of Inspector General's (OIG) Position incorporated into the relevant sections of the report.

We initiated this audit to determine if Food and Nutrition Service's (FNS) management controls over retailers' authorizations to participate in the FSP were adequate. Generally, we found FNS' controls over retailer authorizations to be adequate. However, we identified two areas where FNS can strengthen its processes for approving retailers for participation in the FSP, and thus strengthen program integrity. We found FNS lacks a process to verify FSP retailers' criminal records and therefore cannot comply with its own requirement to deny authorization for any retailer with a criminal conviction (i.e., embezzlement, theft, forgery, etc.) that reflects on the business integrity of the owner. Also, due to a reduction in staff, FNS field offices are no longer required to hold face-to-face meetings with applicants to verify their identity or explain compliance with FSP regulations and the different types of violations (i.e., trafficking¹). We are recommending that FNS consult with the Department of Justice (DOJ) to determine the feasibility and practicability of obtaining criminal history from the National Crime Information Center (NCIC) database for use in licensing FSP retailers and to ensure their retailer

¹ FNS stamp recipients exchange of benefits for cash instead of food with retailers, usually for 50 cents per dollar of benefit.

authorization process is sufficient for successful prosecution of retailers who are trafficking food stamp benefits. FNS does not agree that the recommendation to obtain criminal background checks is cost effective or feasible without a regulatory change. While we have accepted FNS' management decision on this control weakness, we remain concerned that FNS does not have controls in place to determine or ensure the business integrity of a store owner who applies to participate in the FSP. FNS has estimated that about \$241 million is diverted each year from the FSP due to illegal trafficking of program benefits. Therefore, we believe FNS should continue to seek other options to address the issue. Please follow your internal agency procedures in forwarding final action correspondence to the Office of the Chief Financial Officer.

BACKGROUND

FNS is responsible for reducing hunger by helping low-income individuals and families obtain a more nutritious diet by supplementing their income with Food Stamp Program (FSP) benefits to purchase food. The mission of the FSP is carried out in cooperation with private food stores known as retailers. The Food, Agriculture, Conservation and Trade Act of 1990 requires the periodic reauthorization of all retailers participating in the FSP.

FNS Headquarters in Alexandria, Virginia, administers the FSP through 7 regions, 44 field offices, 1 area office, and 16 satellite offices. For fiscal year (FY) 2006, FNS disbursed \$30.2 billion in food stamp benefits that were redeemed at 162,015 retailers nationwide.

To be eligible as a retailer in the FSP, a retailer must sell a variety of qualifying staple food items² or 50 percent of its sales must be in a staple group such as meat or bakery items. Any retailer that wishes to participate in the FSP must file an application that contains information on the nature and scope of the firm's business for FNS to determine if it qualifies. FNS has agreements with private contractors to perform store visits at the retailers' place of business. If the application is complete, FNS forwards a request to a private contractor to conduct the store visit. The private contractor confirms the location of the retailer, draws a diagram of the store layout, and takes pictures of its food stock and forwards this information to FNS. FNS reviews the information and makes an eligibility determination for the store. If the eligibility determination is favorable, the retailer is authorized to participate in the FSP for 5 years.

FNS is required to reauthorize retailers every 5 years to verify that the retailer continues to meet FSP store eligibility requirements. However, if a field office has firsthand knowledge of a retailer and is sure the store continues to meet FSP eligibility criteria, a reauthorization store visit does not need to be conducted. The reauthorization of these firms can be made by contacting the firm to confirm its stock, ownership, and location information is correct. In addition, the following types of firms are routinely exempt from a reauthorization store visit:

- major chain supermarkets;
- large, non-chain supermarkets;
- meal services/shelters; and

² Offer for sale, on a continuous basis, a variety of qualifying foods in each of the four categories (meat, poultry or fish, bread or cereal, vegetables or fruits, dairy products) including perishable foods in at least two of the categories.

- drug and alcohol treatment centers.

FNS' field offices are responsible for authorizing retailers to participate in the FSP, monitoring the retailers' FSP redemption patterns, imposing disqualifications on retailers found violating program rules (e.g., trafficking) and ensuring disqualified retailers do not continue to participate in the FSP. When FNS determines that a retailer has committed a program violation, the retailer is subject to a term or permanent disqualification or a civil money penalty (CMP). The retailer cannot redeem food stamp benefits during a disqualification period. Furthermore, in the event any retail food store which has been disqualified is sold or the ownership is otherwise transferred to a purchaser or transferee, the person or other legal entity who sells or otherwise transfers ownership of the retail food store shall be subject to, and liable for, a CMP in an amount to reflect that portion of the disqualification period that has not expired.³

In addition, FNS is required to disqualify from the FSP any retailer that is disqualified from the Women, Infants, and Children Program (WIC) for any violation of program regulations which is shown to constitute a misdemeanor or felony violation of law. FNS must disqualify retailers for WIC violations such as exchanging WIC food instruments for cash.⁴ A State agency may not authorize a WIC vendor applicant that is disqualified from the FSP or that has been assessed an FSP CMP,⁵ unless denying the authorization would result in inadequate participant access.

FNS cannot forbid the sale of a retail store; however, it can refuse to authorize a new owner to participate in the FSP. If a new owner of a store that has been disqualified, or is pending disqualification, wants to be authorized to participate in the FSP, the new owner must not have been involved in the violations leading to the disqualification. Further, the new owner must not have been part owner or otherwise involved in management of the store during the time the violations occurred.

OBJECTIVE

The objective of the audit was to assess FNS' controls (1) for retailer authorization; (2) over contractor visits to stores that apply to become a FSP retailers; (3) for transfer of ownership of FSP retailers; (4) over collection of CMP from disqualified store owners who sold their stores during a disqualification period; and (5) to confirm that FNS took reciprocal actions against stores for WIC program violations.

REVIEW RESULTS

Overall, we found FNS' controls over retailer authorizations to be adequate. Our areas of review included the authorization process, store visits, change and transfer of ownership for stores, and reciprocal actions for WIC program violations.

³ Title 7 *Code of Federal Regulations* (CFR), part 278.6 (f).

⁴ 7 CFR, part 278.6 (e) (8).

⁵ 7 CFR, part 246.12 (g) (3) (iii).

Authorization/Reauthorization Process

We compared the reauthorization date to the previous authorization date for 60 retailers to determine if the reauthorizations were performed within 5 years. Although the field offices were late in reauthorizing 17 retailers (from 1 to 10 months), FNS eventually assessed their eligibility and authorized them to continue their participation in the FSP.

Store Visits

We reviewed the documentation (checklist of food inventory, photo of stores' layout, etc.) for store visits performed by private contractors and determined that sufficient information was obtained. We also visited 11 stores (Florida (2), Georgia (3), and California (6)) to verify information submitted by the contractor. No exceptions were noted between our visits and the private contractor visits.

Change in Ownership

To evaluate whether changes in ownership were legitimate, we reviewed documentation for 60 stores that had a change in ownership. We did not find any instances where the transfer of ownership documents had not been obtained or where the transfer of ownership was not legitimate.

Transfer of Ownership Civil Money Penalty (TOCMP)

We reviewed a total 18 TOCMP cases and did not find any instances where previous owners had financial involvement with the new owner. Furthermore, we determined that the TOCMPs calculations were accurate and timely imposed on the retailer.

WIC Disqualifications

We reviewed 22 FSP retailers that were disqualified from the WIC program. We found that FNS field offices took the appropriate reciprocal actions against the 22 FSP retailers for WIC violations.

During our review, we identified two areas where FNS can strengthen its processes for approving retailers for participation in the FSP.

Criminal Record Checks for Retailers

FNS does not require criminal record checks for FSP retail store applicants. The FSP application for retailers is a self-certification. The application asks if any individual involved in the ownership or management of the retail store has been convicted of any crime. The applicant is required to provide an explanation if they state they have a criminal record. However, there is no verification process if the applicant certifies they have no criminal record. As a result, FNS does not have sufficient information to evaluate the business integrity of the applicants.

FNS is required to deny the participation of any retailer in the FSP where records of criminal conviction or civil judgment exist that reflects on the business integrity of owner, officers, or managers, such as embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice.⁶ In addition, any application containing false or misleading information may result in the denial of approval for participation in the program and may subject the retailer and persons responsible to civil or criminal action.⁷

Small stores⁸ (less than \$2 million in gross sales per year) redeem only about 14 percent of food stamp benefits, but account for about 78 percent of the authorized retailers. Also, food stamp trafficking occurs more frequently in small stores and often between store owners and food stamp recipients with whom they are familiar. The estimated rate of trafficking at small stores is much higher (7.6 cents per dollar) than the estimated rate for supermarkets (0.2 cents per dollar) where most food stamps are redeemed (86 percent).⁹ Small stores are usually owned by individuals and the rate of change in ownership is higher than supermarkets.

OIG investigations of small store owners suspected of trafficking food stamp benefits found that the store owners who received FNS approval to redeem food stamp benefits falsely certified on their applications that they did not have a criminal record. These owners did not disclose their criminal record of convictions for offenses such as theft of property, false statement, larceny, and trafficking of a controlled substance. One store owner illegally redeemed about \$352,000 in food stamp benefits over a 19-month period. He had certified on his application that the store's annual gross sales totaled \$8,400.

Without a process to verify the accuracy of information provided by FSP retailer applicants, FNS cannot comply with its requirement to deny the authorization of retailers with criminal records. As part of the applicant process, FNS could require the retailer to obtain a NCIC record from a local law enforcement agency or a release from the applicant to allow FNS to obtain the NCIC record. The NCIC record would show any criminal history on a nationwide basis.

The NCIC is the United States' central database for tracking crime-related information (i.e., criminal record history). The purpose of NCIC is to provide a centralized information system to facilitate information flow between the numerous law enforcement agencies. However, criminal history data can be obtained by non-criminal justice agencies for use in connection with licensing for local/state employment or other uses, but only when such dissemination is authorized by Federal or State statutes and approved by the United States Attorney General. We recommend that FNS work with DOJ or law enforcement agencies to determine the feasibility and practicability of requiring retailers to obtain NCIC records as part of the application process.

⁶ 7 CFR, part 278.1.b (2) and 7 CFR, part 278.1.k (1).

⁷ 7 CFR, part 278.1.o.

⁸ Convenience stores, grocery stores, and combination stores such as grocery/gas, grocery/bar, grocery/restaurant, and grocery/merchandise.

⁹ General Accountability Office Report No. GAO-07-53, "Food Stamp Trafficking – FNS Could Enhance Program Integrity by Better Targeting Stores Likely to Traffic and Increasing Penalties, dated October 2006."

RECOMMENDATION 1:

Work with the DOJ or law enforcement agencies as appropriate to determine the feasibility and practicability of obtaining criminal history from the NCIC database for use in licensing of FSP retailers. If feasible, require retailers to obtain NCIC background information as part of the application process.

Agency Response:

In its September 10, 2008, response, FNS stated:

We reviewed the feasibility of this recommendation. It is important to note, however, that less than 1,000 stores annually are sanctioned for the most egregious violation of trafficking in food stamp benefits. With close to 170,000 stores authorized, this recommendation would effectively require over 99 percent of authorized stores to go through a process that adds to applicant burden, has an associated cost, and is questionable in its expected result.

* * * * *

With the Office of General Counsel’s assistance, we analyzed this recommendation and determined the following:

1. It would be extremely difficult for FNS to obtain direct access to the * * * NCIC database.
 - a. The system is limited to criminal justice agencies. * * *
 - b. * * * There is currently no statute that we are aware of that authorizes FNS use of this database.
 - c. Numerous security measures must be adopted at locations with access to the database and these would appear to be costly and time-consuming for FNS to implement at field offices across the country. * * *
2. There are several logistical concerns in requiring retailers to obtain their NCIC records.
 - a. If an individual is already in the NCIC system, a new set of fingerprints are required for identification verification before the individual can seek access to their own record.
 - b. The request to review a record must be made through a local law enforcement agency that already has access to the system. * * *

- c. Some law enforcement agencies may be able to access an individual's online record, while others would have to request the record by mail, so there could be a waiting period involved in the process. * * *
 - d. If an individual has no NCIC record, but NCIC clearance were a requirement of authorization, FNS would need to receive a letter from the law enforcement agency stating that this individual had no current record. * * *
3. Legally, requiring retailers to obtain their NCIC record is possible, but it would require a regulatory change.
 - a. There is no provision in the Food Stamp Act that prohibits FNS from requiring retailers to obtain their NCIC record. In fact, the statute mandates that FNS shall consider the business integrity and reputation of the applicant. This qualification could include a criminal record; however, requiring retailers to obtain their NCIC record, which would entail being fingerprinted, would necessitate the promulgation of a new regulation for retailers.
 - b. Many commenters may object to the fingerprinting requirement as overly burdensome and an invasion of privacy.

Based on the above factors, we recommend that OIG withdraw this recommendation or, alternatively, explore a process by which all applicant retailer information is routed to OIG investigations for an NCIC check prior to or post-FNS licensing.

As noted in our telephone exit conference, FNS also takes exception to the comment in the OIG report, page 5 * * * which states that ". . . *some store owners who received FNS approval to redeem food stamp benefits falsely certified on their applications that they did not have a criminal record. These owners did not disclose their criminal record of convictions...*" It was during our telephone exit conference that the OIG auditor confirmed that these statements were anecdotal, were based on the recollection of a single OIG investigator in the Southeast region, and that the investigator's recollection was of two or three such instances. There were no additional supporting facts for this statement. We request, therefore, that this paragraph be removed from the final report.

OIG Position:

We do not agree with FNS' assertion that our report contains anecdotal information or that our auditor confirmed that information was anecdotal during the exit conference. The statement that "... *some store owners who received FNS approval to redeem food stamp benefits falsely certified on their applications that they did not have a criminal record*" is supported by three

OIG reports of investigation. The reports show that the retailers had criminal convictions prior to being approved for participation in the Food Stamp Program including verdicts for theft of property, making false statements, larceny, and trafficking of a controlled substance. Therefore, we have not removed this paragraph from the report.

While we understand FNS' misgivings regarding the difficulties of implementing a process to obtain criminal history checks of retailer applicants prior to approval, we remain concerned that FNS does not have controls in place to determine or ensure the business integrity of a store owner who applies to participate in the program other than self-certification by the applicant itself. FNS has estimated that about \$241 million is diverted each year from FSP benefits due to trafficking. Yet, FNS cannot ensure the business integrity of store owners who want to participate in the program. Therefore, while we accept FNS' management decision that a regulatory change to require criminal background checks of retailer applicants may not be cost beneficial at this time, FNS should continue to seek other options to better ensure the integrity of retailers applying to participate in the program.

FSP Training for Retailers

FNS recently made changes to streamline the retailer application process due to a reduction in field office staffing. Specifically, FNS field office staff is no longer required to hold a face-to-face meeting with FSP retailer applicants to explain compliance with FSP regulations. Therefore, FNS field office staff does not verify the applicants' identity and applicants are not required to certify that they have been trained and understand the FSP regulations. As a result, the United States Attorney for the Northern District of Illinois is concerned this process may impact the successful prosecution of food stamp trafficking cases. FNS' handbook states that field office personnel may interview applicants for authorization to obtain additional information about the firm's business and to ensure that the applicant understands the responsibilities of participation.¹⁰ The interview may be conducted in the field office or by telephone. Also, during the meeting or interview with applicants prior to authorization, field office personnel shall discuss topics such as compliance with the FSP regulations including an explanation of different types of violations (e.g., selling ineligible food items and exchanging cash for coupons) and a warning of the possible consequences of violations—criminal, as well as administrative penalties, false claims, financial loss, and adverse publicity.

FNS made changes to the retailer authorization process to streamline the process. Because of the dwindling number of FNS employees in the field offices, and for certain locations because of the distance, it is an inconvenience for retailers to come into a FNS field office for an interview. The current process requires retailers to mail completed applications to an FNS field office and, if the applicant is approved, a store visit is made by a contractor. The contractor confirms the location of the store, draws a diagram of the store layout, takes pictures of the store food stock, and forwards this information to FNS. FNS field office staff reviews the information and makes an eligibility determination for the store. If the eligibility determination is favorable, FNS will authorize the retailer to accept food stamps. The field office will then mail an authorization kit, which contains an FSP training guide and video, to the retailer.

¹⁰ *Food Consumer Service Handbook 318*, Chapter 3 - Authorization, Section 310, Paragraph C, "Interviewing and Meeting with Applicants."

Under the current process: (1) FSP retailers are not required to meet in person with FNS field office staff to receive instructions on compliance with FSP regulations; (2) field office staff do not interview the applicant to verify their identity; and, (3) retailers are not required to certify in person they received and reviewed the FSP training guide and video.

The United States Attorney for the Northern District of Illinois expressed concerns with the current FSP retailer authorization process. The United States Attorney stated the process provides limited evidence to establish the identity of the person who actually applied to operate the retail store. Also, because the training video is sent by regular mail, there is no proof that it was actually received by the applicant and there is no requirement that the applicant certify that he/she watched the video. We are recommending that FNS work with the DOJ to ensure their FSP retailer authorization process is sufficient for successful prosecution of retailers who are trafficking food stamp benefits.

Recommendation 2:

Consult with the DOJ to ensure the FSP retailer authorization process is sufficient for successful prosecution of retailers who are trafficking food stamp benefits.

Agency Response:

In its September 10, 2008, response, FNS stated:

FNS will provide the application package and authorization materials to the Office of General Counsel for follow-up with DOJ by December 30, 2008.

OIG Position:

We accept FNS' management decision for this recommendation.

SCOPE AND METHODOLOGY

The audit fieldwork was conducted at the FNS national office, the FNS Southeast Regional Office (SERO) located in Atlanta, Georgia, and the Western Regional Office (WRO) located in San Francisco, California. Our review focused on the retailer authorizations and reauthorizations for FY 2006. We expanded our review to other fiscal years as necessary to ensure coverage of all objectives at each review location.

The SERO was selected because it has the highest number of authorized retailers in the nation, 33,650 firms out of 162,015 nationwide (21 percent). The Atlanta, Georgia, and Tallahassee, Florida, field offices were judgmentally selected from the SERO because Georgia and Florida have the highest number of retailers authorized to participate in the FSP.

The WRO was selected because it has the second highest number of authorized retailers in the nation, 30,011 out of 162,015 nationwide (19 percent). California had the highest number of

authorized retailers to participate in the FSP of the nine States in the WRO. The Sacramento and Los Angeles, California, field offices were judgmentally selected because they were the only field offices servicing California.

Our review focused on smaller stores such as convenience stores and small grocery stores since FNS procedures do not require reauthorization store visits to be conducted if the store is a major chain supermarket (i.e., those with 11 or more similar stores) or a large, non-chain supermarket. A supermarket is defined as a full-line retail food store having \$2 million or more in annual gross sales. Also, FNS officials have informed us that the majority of FSP trafficking occurs at smaller stores.

To accomplish the audit objectives we:

- Interviewed FNS officials to assess controls for retailer authorization and store visits.
- Interviewed FNS and State WIC officials to confirm and assess FSP/WIC reciprocal disqualification agreements.
- Reviewed FSP and WIC retailers' application information for consistency.
- Reviewed private contractors' store visit documentation (checklist of food inventory, photos of stores' layout and food inventory, diagram of stores' layout, stores ownership information, etc.) to determine if the store visits were conducted to confirm the store eligibility to participate in the FSP.
- We judgmentally selected 11 stores (Florida (2), Georgia (3), Los Angeles (3), and Sacramento (3)) that were in the vicinity of our fieldwork location and had been recently visited by the private contractor to conduct store visits to verify information submitted by the private contractor.
- Reviewed calculation and collection of TOCMP. Reviewed 60 of FNS' retailer files to determine if they were reauthorized within the required 5-year timeframe.
- Reviewed retailer information such as photo identification, business licenses, social security verification, bill of sales, etc., to verify transfer of store ownerships.
- Obtained information from OIG – Investigations regarding their concerns that FNS no longer holds in-person meetings with retailer applicants and FNS does not check applicants' criminal records.

The audit was performed from October 2006 to December 2007. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. Also, we conducted the audit in accordance with policies and procedures set by the OIG.

Exhibit A – Agency Response



United States
Department of
Agriculture

SEP 10 2008

Food and
Nutrition
Service

3101 Park
Center Drive

Alexandria, VA
22302-1500

Reply: 27601-15-At

To: Robert W. Young
Assistant Inspector General for Audit
Office of the Inspector General

From: Roberto Salazar *Eric J. Starnes, acting*
Administrator
Food and Nutrition Service

Subject: Food Stamp Program (FSP) Retailer Authorization and Store Visits

Below is our response to the FSP Retailer Authorization and Store Visits official draft audit report.

Recommendation 1:

Work with the Department of Justice (DOJ) or law enforcement agencies as appropriate to determine feasibility and practicality of obtaining criminal history from the National Crime Information Center (NCIC) database for use in licensing of FSP retailers. If feasible, require retailers to obtain NCIC background information as part of the application process.

Food and Nutrition Service (FNS) Response:

We reviewed the feasibility of this recommendation. It is important to note, however, that less than 1,000 stores annually are sanctioned for the most egregious violation of trafficking in food stamp benefits. With close to 170,000 stores authorized, this recommendation would effectively require over 99 percent of authorized stores to go through a process that adds to applicant burden, has an associated cost, and is questionable in its expected result.

Codification of the specific business integrity criteria as stipulated in section 278.1(k) of 7 CFR Part 278 became effective on June 1, 1999. This means that actions to deny or withdraw authorization on the basis of business integrity criteria may only be made on or after that date, on the basis of violations committed on or after that date. The regulations stipulate that violations, criminal and/or civil judgments or other findings made prior to June 1, 1999, are prohibited from being used as a basis for business integrity withdrawals or denials of retailers in the program.

In addition, the Office of Inspector General (OIG) has shown in their own investigations that retailer applicants intending to violate will do whatever is necessary to get around authorization checks in order to be licensed. This includes establishing "fronts" that would be licensed on their behalf. For that reason, this recommendation may simultaneously create a burden and do little to prevent those would-be violators from becoming licensed.

Exhibit A – Agency Response

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With the Office of General Counsel's assistance, we analyzed this recommendation and determined the following:

1. It would be extremely difficult for FNS to obtain direct access to the National Crime Information Center (NCIC) database.
 - a. The system is limited to criminal justice agencies. FNS is not such an agency. Parties accessing the system must do so for a law enforcement objective such as apprehending a fugitive or locating stolen property. FNS field office personnel would not be accessing the system for any of these purposes. Facilitating the apprehension of fugitives is outside the scope of FNS field office personnel responsibilities. As an investigative agency, OIG would be a better conduit of this information.
 - b. In limited circumstances, criminal history data can be disseminated to non-criminal justice agencies for purposes like licensing; however, this dissemination is only allowed when it is specifically authorized by statute and approved by the Attorney General of the United States. There is currently no statute that we are aware of that authorizes FNS use of this database.
 - c. Numerous security measures must be adopted at locations with access to the database and these would appear to be costly and time-consuming for FNS to implement at field offices across the country. For example, there are physical security issues, personnel screening measures, required computer controls, recordation of transaction requirements, and specifications on the data system used for accessing the network. Additionally, the communication channels used for accessing the database would need to be dedicated solely to criminal justice activities.
2. There are several logistical concerns in requiring retailers to obtain their NCIC records.
 - a. If an individual is already in the NCIC system, a new set of fingerprints are required for identification verification before the individual can seek access to their own record.
 - b. The request to review a record must be made through a local law enforcement agency that already has access to the system. Either the applicant or the local FNS office would need to determine the closest law enforcement agency with access to the NCIC system that can accommodate the retailer.
 - c. Some law enforcement agencies may be able to access an individual's online record, while others would have to request the record by mail, so there could be a waiting period involved in this process. Also, there may be additional identification requirements at various law enforcement locations.
 - d. If an individual has no NCIC record, but NCIC clearance were a requirement of authorization, FNS would need to receive a letter from the law enforcement agency stating that this individual had no current record. It is not clear whether local law enforcement agencies are poised to provide such feedback, nor what

Exhibit A – Agency Response

Robert W. Young
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would be required of the requesting individual (i.e. retailer) in order to obtain such clearance.

3. Legally, requiring retailers to obtain their NCIC record is possible, but it would require a regulatory change.
 - a. There is no provision in the Food Stamp Act that prohibits FNS from requiring retailers to obtain their NCIC record. In fact, the statute mandates that FNS shall consider the business integrity and reputation of the applicant. This qualification could include a criminal record; however, requiring retailers to obtain their NCIC record, which would entail being fingerprinted, would necessitate the promulgation of a new regulation for retailers.
 - b. Many commenters may object to the fingerprinting requirement as overly burdensome and an invasion of privacy.
 - c. Although FNS may be able to legally require an NCIC record before a retailer is authorized, there are many considerations that complicate the issue. Therefore, this is ultimately a policy call weighing the interests of parties beyond United States Department of Agriculture (e.g. Office of Management and Budget, Small Business Administration), as to whether FNS should proceed with regulatory action of this nature.

Based on the above factors, we recommend that OIG withdraw this recommendation or, alternatively, explore a process by which all applicant retailer information is routed to OIG investigations for an NCIC check prior to or post-FNS licensing.

As noted in our telephone exit conference, FNS also takes exception to the comment in the OIG report, page 5, first full paragraph which states that “...*some store owners who received FNS approval to redeem food stamp benefits falsely certified on their applications that they did not have a criminal record. These owners did not disclose their criminal record of convictions...*” It was during our telephone exit conference that the OIG auditor confirmed that these statements were anecdotal, were based on the recollection of a single OIG investigator in the Southeast region, and that the investigator’s recollection was of two or three such instances. There were no additional supporting facts for this statement. We request, therefore, that this paragraph be removed from the final report.

Recommendation 2:

Consult with Department of Justice (DOJ) to ensure the FSP retailer authorization process is sufficient for successful prosecution of retailers who are trafficking food stamp benefits.

FNS Response:

FNS will provide the application package and authorization materials to the Office of General Counsel for follow-up with DOJ by December 30, 2008.

Informational copies of this report have been distributed to:

Administrator, FNS (8)

Attn: Agency Liaison Officer

Government Accountability Office (1)

Office of Management and Budget (1)

Office of the Chief Financial Officer (1)

Director, Planning and Accountability Division