

**MEMORANDUM OF UNDERSTANDING
BETWEEN
TN DEPARTMENT OF HUMAN SERVICES
STATE LAW ENFORCEMENT BUREAU (SLEB)
AND
Local Law Enforcement Agency**

The purpose of this Memorandum of Understanding (MOU) is to set forth the conditions and responsibilities of Local Law Enforcement Agencies (LLE) to conduct investigations into possible Supplemental Nutrition Assistance Program (SNAP) retailer fraud and acquire Electronic Benefit Transfer (EBT) cards for such law enforcement and investigative activities.

The LLE shall abide by all terms and procedures contained in the attached "Agreement between the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) and TN Department of Human Services and "Procedures for State or Local Law Enforcement Agencies to Investigate Misuse of Supplemental Nutrition Assistance Program Electronic Benefit Transfer Benefits.

Conditions and limitations on use of EBT cards for investigations

The LLE shall not transfer EBT cards acquired through the SLEB to another LLE. The LLE accepts full liability for EBT cards and the benefits associated with them. The LLE shall immediately inform SLEB of any damaged, lost or stolen EBT cards.

The LLE shall not use EBT Supplemental Nutritional Assistance Program (SNAP) benefits to pay awards or informants.

If using an informant, cooperating individual or other individual in any SNAP investigations, and that individual also happens to be a recipient of SNAP benefits, you cannot direct that individual to use their own SNAP benefits in a manner not authorized by the program for the purpose of an investigation. Nor can you direct your informant or other individual to use another recipient's SNAP benefits for the purpose of an investigation. Such activity is contrary to program regulations and a violation of Federal law and can result in serious actions being taken against those parties responsible for arranging such activities

Requests to conduct investigation(s) and to acquire EBT cards

The LLE shall submit a written request to the SLEB for approval. In its request for EBT cards, the LLE shall:

1. Identify the name and the title of the person who will conduct the investigation(s) and acquire the EBT cards and be responsible for their security.
2. Outline the intent and scope of proposed investigation(s), including dates and locations of such planned activity.
3. Specify the number of EBT cards requested and the SNAP benefit amounts to be posted to each card.
4. Provide the undercover identity information and photograph needed to produce EBT cards.

The SLEB shall submit the LLE's request to the USDA FNS for approval. **The LLE shall not begin their investigation without prior approval of USDA.** In situations where USDA FNS has approved the planned investigative activity, and the LLE has not begun their investigation within 60 days of the approval date, the LLE shall notify the SLEB of the investigation's cancellation or postponement. Upon approval, the SLEB shall authorize the issuance of EBT cards. The LLE staff and the SLEB representative shall sign a receipt acknowledging the transfer of the EBT cards. The LLE and the SLEB shall maintain a copy of this receipt.

Security of Retailer Information

The LLE understands that certain retailer information that contains individual store owners and/or personnel proprietary information, including retailer-specific SNAP redemption information, bank accounts, miscellaneous addresses such as the home address of the retailer or other personnel, and other confidential information is protected under the Food and Nutrition Act, and may only be disclosed for purposes directly connected with the enforcement of the Act and regulations, and to administer and enforce the laws and regulations of other approved state and federal government agencies.

The LLE understands that there are penalties for disclosures made in violation of the Act. Any person, who publishes, divulges, discloses, or makes known in any manner or to the extent not authorized by Federal law any protected SNAP information shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

Completion of Investigations

LLEs are strictly liable for all EBT benefits, which are: 1) in the possession of the LLE; and 2) held by local law enforcement or investigative units to which the benefits have been assigned, or held by local/state prosecutors or courts. All property held by the LLE must be kept secured.

I. EBT CARDS

The LLE shall return all EBT cards to the SLEB when no longer needed for evidentiary purposes. If the LLE intends to conduct additional investigations, the LLE may retain the cards with the approval of the SLEB. However, benefit amounts shall be canceled until approval is granted.

The LLE shall also return to the SLEB any non-SLEB EBT cards confiscated during the investigation.

II. CASH AND PROPERTY ACQUIRED WITH EBT CARDS

A. Cash

All property obtained with EBT cards, whether food or non-food, is the property of USDA up to the value of the SNAP benefits transacted.

B. PROPERTY RETAINED BY LLE

All property obtained by the LLE may be retained only for use in evidentiary proceedings. Property obtained by the LLE with SNAP funds must ultimately be either sold, donated, or destroyed in accordance with the processes outlined below. Other than for evidentiary proceedings, the LLE may not retain property obtained in its investigations.

1. SALE

The net proceeds from the sale of property (up to the value of the benefits used in the investigation) is the property of USDA. The LLE shall send a report to the SLEB containing the following information:

- a. The date of the sale.
- b. A description and estimated value of the property sold.
- c. The name and address of the person, organization or agency that purchased the property.
- d. The amount of money received for the property and method of payment.

2. DONATION

The LLE shall donate the property to a non-profit charitable organization. The LLE shall send a report to the SLEB containing the following information:

- a. The date of donation.
- b. A description and estimated value of the property donated.
- c. The name and address of the organization receiving the property.

3. DESTRUCTION

If the LLE cannot sell or donate the property, the LLE shall destroy the property as a last resort. The LLE shall send a report to the SLEB containing the following information to the SLEB:

- a. The date of destruction.
- b. A description and estimated value of the property destroyed.
- c. A signed statement that the LLE destroyed the property.

III. RESTITUTION

Court ordered restitution and reparations are the property of USDA, but only up to the value of the EBT SNAP benefits unrecovered during the investigation.

IV. INVESTIGATIVE REPORTS

The LLE shall submit an investigative report to the SLEB detailing the results of its investigation within fifteen (15) days of the investigation's completion. *An investigative report is not required for each EBT SNAP transaction; rather, the investigative report must be submitted for each cumulative investigation in which SNAP violations are documented.* The LLE's investigative report shall include the following:

1. The date and time of each transaction pass where the LLE used the EBT cards.
2. The name of LLE person who used the EBT cards.
3. The name and card identification number on the card and benefits transacted.
4. A narrative description of the transaction pass to include what was attempted (i.e. the purchase of ineligible items, trafficking, etc.) and the result.
 - o If the purchase of ineligible items is attempted, a complete description of each item is needed. In order to warrant a sanction, a transaction must

consist of ineligible items sold comprising not less than 30 percent of the total number of items purchased to be considered clearly violative. However, any transaction in which a major ineligible item is purchased alone, or with common ineligible items, shall be considered a clearly violative transaction, regardless of whether or not the 30 percent ratio is met. Major ineligible items include any item with a stated price (excluding sales tax) of \$10 or more, or the purchase of tobacco [one carton (or ten packs) of cigarettes; or any combination of tobacco products (other than cigarettes) with a total stated price (excluding sales taxes) of \$10 or more] or alcoholic beverages [any quantity of distilled spirits (hard liquor); a six-pack of beer or malt liquor; a four-pack of wine coolers; 48 ounces or more of beer, malt liquor or wine coolers; or .75 liter or more of wine] or gasoline [any amount].

- If trafficking is attempted, the dollar amount transacted and the amount of cash returned, etc. Trafficking is defined as (1) the buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone; (2) The exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for SNAP benefits; (3) purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount; (4) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; or (5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.
5. The dollar value on the EBT card prior to the transaction, the dollar value of the transaction, and the remaining balance on the EBT card after the transaction.
 6. Notification of proposed civil or criminal prosecution and/or clearance for FNS to proceed with administrative action
 7. Signature of the investigator and date.

The LLE understands that its investigators and/or aides may be asked to testify in court to the facts presented in the investigative report.

V. AUDIT

The USDA Office of Inspector General may audit any or all state or local records and any other related documents, as it deems necessary. The LLE shall fully cooperate in any such audit.

VI. REMITTANCE TO USDA

The LLE shall remit to the SLEB the cash and documentation of the proof of the sale, donation, destruction or retention of property received for EBT SNAP benefits when no longer needed for evidentiary purposes. In addition, the LLE shall remit to the SLEB all court ordered restitution and reparations. The SLEB shall subsequently forward the cash and/or reports to USDA.

VII. PROSECUTIONS / PLEAS

The LLE shall submit a report to the SLEB within 15 days following the conclusion of the case. The LLE shall include in the report the charge(s) pled to or convicted of and the amount of any fines and court ordered restitution.

TERMINATION OF MOU

This MOU shall remain in effect until terminated by written notice by either party. Such written notice shall be provided at least 30 days prior to the desired termination date.

LLE Name or Representative

Signature

Date

Richard J. Carr

SLEB Coordinator
Richard J. Carr

Signature

Date