Exhibit A

## Questions and Answers on SNAP: Trafficking Controls and Fraud Investigations Final Rule

**Question 1**: Does FNS have standard language for the notice requirement for identifying what constitutes a misuse or fraudulent use of benefits? Can this required information be contained in another document enclosed with the card as long as the notice refers to the enclosed document?

**FNS Response**: FNS does not have standardized language; the State has discretion to meet this requirement. FNS has examples of excessive replacement card notices containing the required language. Examples were included in the power point training on the rules, which can be located on the FNS Partner Web. We have also included an example of a notice (Exhibit A). Please note that this sample notice does not contain the amended definition for "trafficking". States must ensure the notices are written in clear and simple language and must be consistent with the amended definition of "trafficking" found in 7 CFR 271.2 of SNAP regulations that includes, "(6) Attempting to buy…" in its explanation for what is considered a misuse or fraudulent use of benefits.

**Question 2**: Does the state have to send written notice to the client again when they request the 5th card (i.e. the card that will be withheld) or can the state have the EBT contractor and/or eligibility worker read a statement to the client about their card being withheld?

**FNS Response**: The State must notify the client in writing. Section 274.6(b)(5)(i) of the SNAP regulations states, "The State agency shall also notify the household in writing once the threshold has been exceeded that the State agency is withholding the card until contact is made".

**Question 3:** The requirement in 274.6(b)(5)(iii) states that, "In all cases, a State agency shall act to protect households containing homeless persons, elderly or disabled members, victims of crimes and other vulnerable persons who may lose EBT cards but are not committing fraud." Can the State use information in their computer system to automatically remove elderly and disabled clients from the list of people who would be subject to the card-withholding option? Homeless clients would still be required to contact the State agency for the 5th card, but the staff person would ask the client if he/she is homeless and if the client answers yes, the State agency would not pursue investigation. Would this procedure satisfy the regulatory requirement? If the elderly and disabled clients are removed from the card withholding option, would they still need to receive the Excessive Replacement Card Notice as per 274.6(b)(6)?

**FNS Response:** If a State has elected to exercise the option in Section 274.6(b)(5) of the SNAP regulations, they may not filter out homeless persons, elderly, or disabled members. As explained in the preambles to the proposed and interim-final rules, one purpose of the regulatory option to allow State agencies the ability to require household contact is to determine the nature and cause for the excessive replacement card requests and if fraud is not suspected, to provide the household with an education contact regarding how to properly manage their EBT card. Education is just as applicable to vulnerable populations as it is to all SNAP households. The purpose of Section 274.6(b)(5)(iii) of the SNAP regulations is to ensure no undue hardships are placed on vulnerable populations and the accommodations State agencies typically make available to comply with federal regulations will also be made available for them if a State agency invokes this option.

**Question 4:** Given the protections above, can the state continue to withhold cards after the 5th card for all other clients? The regulations in Section 274.6(b)(5)(ii)(B) state, "The State agency shall educate the client on the proper use of the card if the explanation is deemed appropriate and the State agency shall not require contact upon subsequent requests, unless the pattern of card activity has changed since the initial contact and indicates possible trafficking activity." The State feels that if they have educated the client on the proper use of the card, and the client still continues to request cards after that, that this in itself would be suspicious activity and any subsequent card replacements should be withheld until the client contacts the State agency. Would this be acceptable? If not, does FNS have any further guidance about what would constitute a change in the pattern of card activity?

**FNS Response:** If a State has elected to exercise the option in Section 274.6(b)(5) of the SNAP regulations, the State may elect to withhold subsequent card requests provided that the notice requirements of this section are met and the pattern of card activity has changed and indicates possible trafficking activity. The State is required to refer the cases of suspected fraud for investigation.

The State is responsible for determining whether there is suspicious card activity as there are a large number of scenarios based on the specifics of each case. The State must make a determination based on the individual case and the activity that has changed to now lead the State to believe the card activity indicates possible trafficking activity.

**Question 5:** For the Excessive Card Replacement (ECR) withholding card option – does this remain an option for States even though the 2014 Farm Bill includes language indicating the Secretary may make this a requirement?

**FNS Response**: Yes, withholding a replacement EBT card in accordance with 7 CFR 274.6(b)(5) remains an option for State agencies.

**Question 6:** Define the minimum threshold meant “within a 12 month period”. For example, is this within 12 months from a recipient’s first card replacement request, or within a calendar/fiscal year?

**FNS response**: The clock begins with the client’s first card replacement request. The State agency must monitor individual card replacement requests, and when a household is requesting a replacement EBT , the State agency must look back to determine if this request is the fourth replacement card request within a 12 month period. The 12-month period is not meant to reflect the calendar or fiscal year.

**Question 7:** Once the agency has notified the recipient in writing in either the FINAL or INTERIM FINAL RULE, does the 12 month period start over? For example, a county sends the recipient a written notice on January 1, 2014. Does the 12 month period start over, meaning that if the client requests four more cards in the next 12 month period does the agency send another written notice?

**FNS Response**: The 12 month period for counting replacement requests is rolling and does not start over.

Exhibit A

Under the excessive card replacement notice requirement in 7 CFR 274.6(b)(6), the State agency may send additional notices in suspect cases for the fifth or later card request within a 12-month period. For the fifth or later card request within a 12-month period, the State is required to refer cases where trafficking is suspected to the State's fraud investigation unit.

If choosing the card withholding option under 7 CFR 274.6(b)(5), the State agency must send another notice if a client requests a fifth card within a 12-month period and withhold the card.

**Question 8:** Can a State request a waiver to the final and interim rule and continue using its current excessive card replacement program as described in their approved SNAP integrity plan?

**FNS Response**: States must comply with the requirement that an excessive replacement card notice be sent after four replacement card requests, if these requests have occurred within a rolling 12-month period looking back to the first card request.

**Question 9:** How often does the State send notices to clients on the excessive replacement card list, quarterly, monthly, etc?

**FNS Response**: FNS requires State agencies to send the excessive card notice when the household has requested a fourth replacement card within 12 months. The State agency must have the ability to look back to determine if those four requests occurred within a rolling 12-month period, beginning with the first request. It is up to the State agency how many additional notices it sends beyond this requirement. State agencies are required to investigate and take action where appropriate once the threshold has been exceeded and trafficking is suspected.

Exhibit A

CABINET FOR HEALTH AND FAMILY SERVICES
DEPARTMENT FOR COMMUNITY BASED SERVICES

**Steven L. Beshear**
Governor

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**Audrey Tayse Haynes**
Secretary

Dear

Our records show that you have ordered an unusually high number of Electronic Benefit Transfer (EBT) cards in the past several months. Specifically, you have ordered a total of ____ cards since your EBT account was opened and ____cards in the past twelve months.

Please be aware that your Supplemental Nutrition Assistance Program (SNAP) transactions are monitored closely. Federal law considers each time a card is trafficked or misused to be a violation of SNAP rules. A program violation can lead to the reduction or loss of SNAP benefits.

Trafficking means to sell or trade your SNAP EBT card or benefits for:

1. Cash;
2. Alcoholic Beverages or Tobacco Products;
3. Firearms, Ammunition or Explosives; or
4. Illegal drugs.

Misuse of SNAP benefits means to use your EBT card to:

1. Purchase non-food items;
2. Pay on a credit or charge account, even if the charges were for eligible food;
3. Allow a non-household member to buy groceries for themselves; or
4. Purchase food for individuals not included in your SNAP household.

Your EBT card will last for years. You can use the same EBT card for as long as you receive benefits.

If you continue to request replacement EBT cards, the Office of Inspector General may investigate to ensure that your SNAP benefits are not being misused or trafficked. If you are misusing or trafficking your SNAP benefits or EBT card, you will be penalized.

If you have any questions concerning this letter, please contact your local DCBS office.

Sincerely,