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August 14, 2006

Department of Health and Human Services  
Room 404E  
200 Independence Avenue, SW  
Washington 20201  
Attention: DES RFI Response

**Re: Request for Information: Development and Implementation of Electronic Benefits Transfer System for Victims of Disaster to Receive Federal and State Benefits**

Dear Sir:

The Food Marketing Institute (FMI), on behalf of the nation's supermarkets and the food distribution industry, appreciates the opportunity to submit comments to the Department of Health and Human Services (DHHS) in response to DHHS's Request for Information (RFI) on the Development and Implementation of Electronic Benefits Transfer System for Victims of Disaster (71 Fed. Reg. 34361 (June 14, 2006)).

By way of background, FMI is a national trade association that conducts programs in research, education, industry relations and public affairs on behalf of its 1,500 member companies — food retailers and wholesalers — in the United States and around the world. FMI's members operate approximately 26,000 retail food stores with combined annual sales of \$340 billion — three quarters of all retail food store sales in the United States. FMI's retail membership is composed of large multi-state chains, regional companies and independent grocery stores.

FMI and our members have been closely involved in both fields underlying DHHS's inquiry and stand ready to work with DHHS to achieve the goal mandated by the White House of improving the delivery of assistance to disaster victims by developing a comprehensive and efficient system to maximize the ease of health and human services benefits delivery to victims of disasters. First, we have been at the forefront of the development of the current electronic benefits transfer (EBT) system for Food Stamp benefits and are working with the handful of states that are currently developing an EBT system for benefits delivered through the Women Infants and Children (WIC) program. Second, FMI has supported our members and our industry as they have successfully handled numerous disasters that vary widely in type, location, length and scope.

In fact, past disasters have shown that the private sector food distribution industry is critical to the recovery of areas hard hit by disasters. People need to be able to obtain food, water, medicines, and the other household supplies that are essential to re-establishing their lives in the wake of a disaster and they depend on their neighborhood supermarkets to be able to supply them. Moreover, the electronic benefits that are currently provided to consumers for the Food Stamp Program are also delivered through the food distribution industry by way of local neighborhood grocery stores. Therefore, the proper functioning of the private food distribution system will be critical to DHHS's desire to deliver electronic benefits to victims of disasters.

In order to ensure that our industry can deliver on its promise to help its customers and its desire to assist the government and DHHS in delivering benefits electronically to disaster victims, the private sector food distribution industry must be designated as part of the critical infrastructure. Critical infrastructure designation will give our sector priority for key public services and resources necessary to fulfill our mandate, such as fuel, trash removal and vaccines. Similarly, we need temporary first responder status extended to us so that we can access our facilities via foot as well as via our vehicles following a disaster. Our industry also needs priority status for cash. When banks are closed and automatic teller machines are inoperable as a result of storms or other major disasters, supermarkets have been an important place for disaster victims to obtain much needed cash. Accordingly, in addition to considering our comments below, we encourage you to assist FMI in its efforts to ensure that the private sector food distribution industry will have the status necessary carry out DHHS's mandate to deliver electronic benefits to disaster victims.

The RFI you issued is comprehensive and was clearly designed to illicit responses from a number of different types of entities including state and local governments. FMI is a long-time member of the NACHA Electronic Benefits and Services (EBS) Council, a public-private partnership. The comments submitted to you by the EBS Council explain much about the structure of the current EBT system and the challenges of putting multiple types of benefits on the existing cards, so we will not comment further in those areas.

### **Advance Planning**

Advance planning has consistently been rated as the most important factor in disaster response planning. Not only must planning be done before disaster strikes, the plans developed must be communicated widely and consistently across states and municipalities, utilizing to the extent possible common technologies, existing infrastructure and trained personnel.

In this regard, one important micro issue that we experienced during the 2005 Gulf Hurricanes was the need to have a standard list of pre-determined bank identification numbers (BINs) for disaster cards that are distributed to retailers and card processors in advance of a disaster or activation. This allows retailers and processors to identify disaster card transactions in order to know how to handle situations such as stand in processing, returned items or purchase limitations or rules variations. For instance, one of the Gulf

Hurricane Electronic Payment Cards had a limitation that said it could not be used for the purchase of firearms. Some retailers might sell hunting rifles at the same location they sell clothing or food, but without the BIN number loaded electronically into their computer system in advance of the disaster; it was difficult if not impossible to differentiate the disaster benefits card from any other debit card that carried no limitations. To add to the challenge, different disaster cards had different limitations.

To address this situation, DHHS should develop a system that provides for the same operating rules for all cards issued in a particular disaster or a particular year/season regardless of the issuer or state of issuance. Moreover, BIN's should be distributed to retailers and processors before the disaster or activation so that the industry can identify these transactions more readily.

### **Consistency**

In addition to consistent BIN numbers and consistent operating rules, DHHS should ensure that its rules are applied consistently across state lines as much as possible. In a disaster, people cannot and do not stay in the same location. They may be evacuated to a neighboring county or state or they may evacuate to a family member or friend's home across the country. In each of these scenarios, it is important for their cards and benefits to work the same in each environment with the same limitations and operating rules. The following examples that our members experienced during the Gulf Hurricanes of 2005 illustrate just how unnecessarily frustrating the situation can become for those who have already lost everything they own and have been forced to evacuate their home states.

Food Stamp recipients are only eligible to purchase foods that are not hot. USDA can waive this rule when requested by a certain state or certain counties within a state that have experienced a disaster so that customers without access to a stove, oven or power may purchase hot foods for their consumption. In the aftermath of the 2005 Gulf Hurricanes, Mississippi, Florida and Louisiana each applied for and received waivers of this rule. However Florida's waiver was only for a few counties and Louisiana's waiver applied only to purchases made within the state. A group of evacuees from Mississippi was sent to a campground in Florida that was not included in the counties operating under the waiver, so even though the evacuees' cards were issued in a state that was operating under a hot foods waiver, they were living (albeit in a evacuee campground) in a Florida county that did not allow for a hot foods waiver and thus they could not purchase hot foods at the supermarket in that Florida county. A similar situation was relayed to us by Louisiana evacuees, temporarily housed in a vacant Missouri prison.

Consistent federal and state tax treatment is another issue that developed following the Gulf Hurricanes of 2005. DHHS should determine in advance whether purchases made on the disaster EBT cards will be subject to federal, state and local taxes. To the extent possible, states should be encouraged to provide similar determinations to eliminate a complex system of computer programming and accounting, again for a group of people in many cases displaced from homes and very unlikely to stay in one location. In 2005, we had

to wait on some legislatures or governors to make that determination and in at least one instance, the legislative body and executive branch in the same state disagreed as to the tax treatment of purchases made on the card. These decisions should be made well in advance of a disaster and not while a customer is trying to use their card to purchase food or clothes.

### **Common Technologies**

Magnetic stripe cards are readily useable across all merchant categories. PIN pads to enable PIN protection and functionality are available at 99+% of supermarkets. In those instances where PIN pads are not available, the magnetic stripe card can be utilized with a signature, although the issuer may determine that the increased risk of fraud with a signature-enabled magnetic stripe card may not be worth the increased number of merchants it allows customers to access. Note that the widespread availability of magnetic stripe cards and PIN pads is not true of any other payment technology identified by DHHS, including RFID, biometrics, smart card or the like. DHHS should not consider utilizing one of these less prevalent technologies for the EBT disaster program until a similar ubiquity is achieved.

Although PIN-enabled magnetic stripe cards are the most widely available vehicle for distributing electronic benefits, DHHS should ensure that certain protections are included in the Department's program to account for the likelihood that the electrical power necessary to transmit the electronic transaction may not be immediately available. Outside of declining a card, retailers can attempt to get a voice authorization with a manual (i.e. paper) voucher (if telecommunications are not impacted) or may allow a store and forward process for the electronic (i.e. debit) transaction. This allows the information on the transaction and the encrypted PIN to be stored electronically until the system is once again functional and the transaction can be completed. 'Store and forward' is a common commercial practice with credit transactions and a little less utilized with debit transactions. Some states authorize disaster floor limits that guarantee a retailer that they will be paid a certain amount of money per day (i.e. \$25) in the event that the card the customer presented was not adequate to cover their purchase. These protections are important for ensuring that retailers will be able to deliver DHHS's benefits, even in the event of a prolonged power and telecommunications failure.

### **Existing Infrastructure and Trained Personnel**

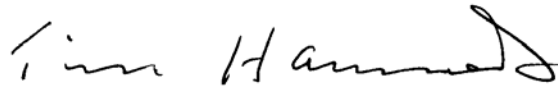
The private food distribution and retail industry sector is extraordinarily efficient and adept at providing all manner of food, medicine and household supplies to consumers around the country every minute of every day. Moreover, given our experience with EBT through the Food Stamp and other programs, our industry is likewise extremely familiar with the benefits and challenges of providing customers with food through EBT systems. Accordingly, DHHS and disaster victims alike will be best served if the Department utilizes the food industry's existing infrastructure. Although some have floated the idea of creating "pods" or designated areas for gathering during an emergency, it would be a disservice for EBT recipients to travel unnecessarily to an unfamiliar location staffed by inexperienced personnel in an attempt to receive their benefits rather than a well-trying and true system of

retail delivery. Moreover, it would be an inefficient use of government resources to try to create a public food delivery system when the private sector has already created an efficient logistical system. Accordingly, we urge DHHS to use the existing retail infrastructure to its advantage during a disaster. We have the channels of distribution as well as the personnel already in place.

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We appreciate the opportunity to comment on this very important program and hope that this information is helpful to you in your review of the Development and Implementation of an Electronic Benefits Transfer System for Victims of Disasters. Of course, we stand ready to assist you as you move forward, so please feel free to contact us if we may provide further information.

Sincerely,

A handwritten signature in black ink that reads "Tim Hammonds". The signature is written in a cursive style with a large, sweeping flourish at the end.

Tim Hammonds  
President and CEO