



United States Department of Agriculture

Food and  
Nutrition  
Service

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DATE: January 31, 2023

SUBJECT: Replacement of SNAP Benefits in the Consolidated Appropriations Act of 2023

TO: All SNAP State Agencies  
All Regions

The United States Department of Agriculture (USDA) is aware of increased reports of Electronic Benefit Transfer (EBT) theft due to card skimming, cloning, and similar fraudulent methods. On December 29, 2022, President Joseph R. Biden signed into law the [Consolidated Appropriations Act, 2023](#) (the Omnibus), which includes provisions for the replacement of stolen EBT benefits with Federal funds.

Title IV, Section 501 of the Omnibus requires that Food and Nutrition Service (FNS) issue guidance to State Agencies and promulgate regulations to protect and replace SNAP benefits stolen via card skimming, card cloning, and other similar fraudulent methods. As FNS works to implement an interim final rule required by the Omnibus, State Agencies must submit plans for the replacement of stolen benefits using Federal funds appropriated under section 18 of the Food and Nutrition Act of 2008 (7 U.S.C. 2027). These State plans will address how State Agencies will process household claims of stolen benefits (hereafter referred to as claims). State plans must be submitted to FNS no later than February 27, 2023, which is 60 days after the enactment of the Omnibus. Approved plans will be incorporated into the States' Plans of Operation and will remain in effect until the publication of the interim final rule.

This memo contains FNS's policy guidance regarding the requirements set forth in section 501(b) of the Omnibus. In addition to reviewing this guidance, FNS encourages State Agencies to review the requirements set forth in 501(b) in their entirety. To aid State Agencies in the creation of the plans required by this section, FNS has prepared templates and instructions that may be used for developing a plan and submitting data in Appendices A, B, C, and D of this document.<sup>1</sup>

### **Benefit Eligibility**

When FNS approves a State plan, that State will be able to replace certain benefits stolen October 1, 2022, through September 30, 2024, using Federal funds. Per the Omnibus, benefit theft that qualifies for such replacement includes card skimming, card cloning, and other similar fraudulent methods. Card skimming occurs when devices illegally installed on ATMs or point-of-sale (POS) terminals capture card

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<sup>1</sup> FNS is seeking approval from the Office of Management and Budget for the information collection burden related to the data collection outlined in this guidance. However, statutory authority within the Omnibus requires the submission of data reports on benefit theft and replacement activity to USDA as a part of state plans.

data or record SNAP households' PINs.<sup>2</sup> Criminals can use the data captured by skimming or other means to create fake EBT cards (card cloning) and then use those to steal from households' accounts. Other similar fraudulent methods of obtaining EBT card data may include, but are not limited to, scamming through fraudulent phone calls or text messaging that mimic official State Agency messaging and phishing. A theft that resulted from any of these methods would be eligible for replacement.

Per the Omnibus, replacement benefits may be issued for SNAP benefits. SNAP benefits may include D-SNAP and Emergency Allotments (EA). P-EBT benefits are not SNAP benefits and therefore cannot be replaced under the authority of the Omnibus.

### **Replacement Criteria**

Replacement of stolen benefits for a household cannot exceed the lesser of the amount of benefits stolen from the household or the amount equal to 2 months of the monthly allotment (monthly allotment may include EA or D-SNAP, depending on the month in question and the timing of EA or disaster benefit issuance in the State) of the household immediately prior to the date when the benefits were stolen.

For example, if a household reports that it lost \$100 on March 1, 2023, because of skimming, and their last allotment was issued on February 10, 2023, for \$250 (2 months of their last monthly allotment is equal to \$500) the household would receive \$100 in replacement benefits as it is the lesser of the two. If the same household reports that it lost \$600 on March 1, they would receive \$500 in replacement benefits. A household may only receive two instances of replacement benefits in each Federal Fiscal Year (FFY) by a State Agency. State Agencies may only complete the act of replacing benefits two times in a FFY, even if an occurrence of theft crosses two FFYs.

If a theft occurs over the course of several transactions and several days, calculations for the amount of replacement benefits will be determined based on the date of the first occurrence of theft. For example, a household receives their \$200 monthly allotment on June 15, 2023, but realizes and reports on June 20 that \$250 in benefits were stolen in multiple transactions between June 17 and June 18. In this situation, the June 15 allotment is the monthly allotment that took place immediately prior to June 17, the first date of theft. The household would receive the reported \$250 loss in replacement benefits, as it is less than 2 months of the June allotment, which totals \$400.

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<sup>2</sup> <https://www.fbi.gov/how-we-can-help-you/safety-resources/scams-and-safety/common-scams-and-crimes/skimming>

### **Retroactive Replacements**

States should include in their plans a description of how they will address stolen benefits claims made in quarter one of FFY 2023 – prior to the implementation of their State plan. The State should include the timeframe they will accept these claims. All households must submit a signed statement (see also “Validation Criteria”) regardless of whether their theft occurred before or after the implementation of the State plan.

Direction regarding Federal reimbursement for States that replaced benefits with non-federal funding prior to the implementation of their State plans but within FFY2023 will be forthcoming.

### **Timely Submission of Claims (Section 501(b)(1)(A))**

States must include in their plan appropriate procedures for the timely submission of claims, as well as a definition of what they consider to be timely. The period of timeliness should begin on the date that a household discovers that their benefits were stolen. Though the Omnibus does not prescribe what is “timely,” FNS considers a report made to the State Agency within 30 days of the date the household discovered their benefits were stolen a timely request. In the State plan, States should define the timely submissions for claims of benefits stolen prior to (i.e., retroactive replacement claims) and after the approved state plan is implemented.

### **Procedure for Submissions of Claims**

States are encouraged to provide a stolen benefits claim template for households to document how the benefits were likely stolen (e.g. card skimming, card cloning, or another similar fraudulent method), whether the household had their card in their possession during the time the fraudulent transaction(s) took place, and a list of all theft transactions (including but not limited to the date, amount, retailer, retailer address) among other details that can explain each report of benefit theft.

### **Timely Validation of Claims (Section 501(b)(1)(A))**

State plans should indicate what the State considers to be a timely validation of a claim. FNS encourages States to model their validation timeliness criteria on the existing procedures in place when validating standard claims of benefit loss due to household misfortune. The Omnibus does not define timeliness for the validation of claims, however, regulations at 274.6(a)(5)(i) give the State Agency a time limit for providing replacements that is either the later of 10 days after a report of loss or 2 working days after receiving a signed household statement. FNS encourages following these timelines.

## **Validation Criteria**

State plans should include procedures and criteria that are used to validate claims of electronic benefit theft. State plans must include a signed statement by the affected households attesting to the benefit theft. The State Agency may accept physical, electronic, and telephonic (recorded verbal assent) signatures so long as they are consistent with the signature requirements and options provided by section 11(e)(2)(C) of the Food and Nutrition Act of 2008, as amended (7 U.S.C. 2020(e)(2)(C)).<sup>3</sup>

States may validate claims of theft in a manner of their choosing, though they are encouraged to model their approach on established methods of verification that exist in current regulations. Per current regulations at 273.2(f)(4), State Agencies may establish their own standards for household verification, though these standards must be applied on a Statewide basis and cannot be imposed on a selective or case-by-case basis on certain households. Forms of verification used to validate the theft include, but are not limited to, household attestation, collateral contacts and documentary evidence, such as EBT processor data, or retailer or news media reports of identified skimming devices.

Claims may be validated through data provided on the State's Administration Terminal (AT) such as a household's transaction history. For example, a State may access a household's transaction history from the date the proposed theft occurred. The AT data may indicate that the household's benefits were used for an in-State purchase, yet only hours later, their benefits were used in an out-of-State transaction. Additionally, States may validate claims by comparing households' theft statements with identified stolen benefit trends occurring in the State, such as known phishing schemes. Data from State's interactive voice response (IVR) systems may also be used to access household's balance inquiry history to verify that all inquiries were made with household phone numbers.

## **Denials**

State plans should include procedures and criteria for denials of stolen benefits claims. The State Agency shall deny replacement issuances in cases in which available evidence indicates that the household's request for replacement is either fraudulent or outside the allowed scope of replacement outlined within section 501(b)(2) of the Omnibus. The State Agency shall also deny replacement issuances if the household has already received two replacement issuances for stolen benefits in the FFY. Finally, the State Agency shall deny replacement issuances if the household submits the claim outside of the timely reporting time period. As a reminder, State Agencies are responsible for investigating cases of alleged intentional program violations (IPVs) and ensuring appropriate actions are taken on these cases (7 CFR 273.16(a)).

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<sup>3</sup> Section 11(e)(2)(C) of the Food and Nutrition Act of 2008, as amended (7 U.S.C. 2020(e)(2)(C)) is further explained in Federal Regulations at 273.2(c)(7)(vi), (vii),(viii) and (ix).

### **Fair Hearings**

The State Agency shall inform the household of its right to a fair hearing to contest the denial of replacement issuance. Replacements shall not be made while the denial or delay is being appealed.

### **Documentation of Claims**

Plans must include procedures explaining how the State Agency plans to document submitted claims and findings from the validation process. FNS encourages States to follow current procedures through which they document requests for replacement benefits as required by 7 CFR 274.6(a)(7), though it is strongly encouraged that documentation distinguishes benefits stolen by card skimming, card cloning, or other fraudulent means from those lost due to a household misfortune.

### **Replacement Benefits (Section 501(b)(1)(A))**

States must indicate their plans for issuing replacement benefits. States should consider current replacement regulations, as well as the time it will take to validate claims and to issue benefits to households when developing plans. Current regulations at 7 CFR 274.6(5)(i) require that replacement issuances due to household misfortune must be provided within 10 days after a loss is reported or within 2 working days after receiving a household's signed statement of loss, whichever date is later. FNS recommends that States model their plans for stolen benefit replacement on their procedures for replacing benefits due to household misfortune.

Within a State's proposed plan, States must describe how they will monitor households' stolen replacements to ensure they do not exceed the limits set forth in the Omnibus. It is the State's responsibility to verify that replacements do not exceed this limit.

### **EBT Card Replacement**

Upon receipt of a claim, the State should ensure that any compromised EBT cards are cancelled by following current procedures for managing reports of lost, stolen, or damaged EBT cards. States are allowed to require a card replacement if a household reports that their benefits were stolen.

### **Data Reports (Sections 501(b)(1)(iv) and 501(b)(B))**

In their plans for replacement benefits, State Agencies must provide a description of their plans to collect and provide FNS with data reports on benefit theft and replacement activity. Plans must also include procedures for reporting the scope and frequency of card skimming affecting households in the State.

The State Agency should provide FNS with the following reports:

- An initial report including benefit replacement data from the first FFY quarter of the State plan implementation, due no later than 45 days after the end of FFY quarter;
- Interim reports showing data in quarterly FFY increments under the implementation of the State plan, due no later than 45 days after the end of each FFY quarter; and
- A final report showing data of the final months (not included in previous data reports) of implementation under this State plan, due no later than 45 days after the termination of the State plan.

The reports should include the following measures, which are explained in detail in the attached data reporting template:

1. Total number of stolen benefits claims;
2. Total number of approved stolen benefits claims;<sup>4</sup>
3. Total number of denied stolen benefits claims due to invalid claims, claims from households that met the two-replacement limit per FFY, and untimely submitted claims;
4. Total number of households that submitted stolen benefits claims, total number of households that submitted approved claims, and total number of households that submitted denied claims;
5. Total number of fraudulent transactions, total number of fraudulent transactions from approved claims, and total number of fraudulent transactions from denied claims;
6. Total value of benefits determined to have been stolen; and,
7. Total value of replaced stolen benefits.

Appendix B contains a data report template that States may use to provide FNS with this data.

Information on any impacts to reporting on the FNS-46 will be forthcoming.

### **Benefit Theft Prevention Measures (Section 501(b)(1)(A)(vi))**

FNS intends to promulgate new regulations that will require State Agencies to adopt security measures issued in future guidance. As a part of this State plan, States should document both their current and planned use of benefit theft prevention measures, including but not limited to those outlined in the October 31, 2022, guidance issued by FNS and the Administration for Children and Families (ACF) at the Department of Health and Human Services.<sup>5</sup>

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<sup>4</sup> “Approved,” meaning valid claims that meet the requirements set by the Omnibus and are/were replaced with Federal funds.

<sup>5</sup> <https://www.fns.usda.gov/snap/snap-tanf-ebt-card-skimming-prevention#:~:text=The%20U.S.%20Department%20of%20Agriculture%E2%80%99s%20Food%20and%20Nutrition,for%20program%20participants%20to%20proactively%20safeguard%20their%20benefits.>

### **Additional Recommendations**

Within State plans, FNS strongly encourages the addition of an implementation timeline to demonstrate when elements of the plan will be operational.

FNS encourages State Agencies to establish procedures that ensure equity and accessibility in EBT benefit theft prevention and replacement. For example, States are encouraged to establish procedures that can accommodate the varying needs of households, including vulnerable households who may require in-person assistance at their local office.

State Agencies are also encouraged to include in their plans how households will be able to find guidance and other resources that are available from the State SNAP office regarding benefit theft and the claims process. FNS encourages States to distribute materials to households informing them of the ability to report benefits theft and of the steps they can take to protect their benefits. Recommended communication channels include letters, social media, text messages, outreach partners, and the agency's website. In these materials, States may also encourage households to adopt card protection measures (e.g., card freezes), where available, as recommended in FNS' October 31, 2022, guidance.

FNS also recommends that guidance include language indicating that misrepresentation of theft constitutes an intentional program violation (IPV), as described in 7 CFR 273.16(c), which may subject a household to disqualification from the SNAP program. Additional materials should be made available in multiple languages in accordance with regulations at 7 CFR 272.4(b)(1).

In addition to providing this guidance, FNS remains committed to working with State Agencies and other partners to collaboratively address the criminal matter of EBT benefit theft and fraud. FNS will partner with all stakeholders to better understand the scope and frequency of the benefit theft and the suspected locations of those thefts. Insights gained from data collection efforts will inform EBT fraud prevention, detection, and investigation strategies. FNS will issue guidance to State agencies on an ongoing basis regarding card security measures that is consistent with credit and debit industry standards. Additionally, FNS will promulgate regulations that require enhancements to card security measures. State Agencies with questions regarding this guidance should contact their respective Regional Office representatives.

Sincerely,

Tim English  
Acting Associate Administrator  
Supplemental Nutrition Assistance Program

Enclosures

1. Appendix A – State Plan Template for Replacement Benefit Issuance
2. Appendix B – Instructions for Submitting State Plans
3. Appendix C – Data Report Template
4. Appendix D – Instructions for Submitting Quarterly Data Reports



## Appendix A – State Plan Template

### State Plan for The Replacement of Stolen EBT Benefits, 2023

**State:**

**Region:**

**Primary Citations:** Consolidated Appropriations Act, 2023

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*This template was designed to serve as a guideline for the creation of a State plan for stolen benefit replacement due to card skimming, card cloning, and other similar fraudulent methods. State Agencies should modify this template to best suit their individual needs and provide additional information as they see fit. States are encouraged to use as much space as needed when providing responses in the provided fields.*

**Retroactive Claims:** *Describe how the State will handle retroactive claims (i.e., the claims that cover theft that occurred between October 1, 2022, and the date the State plan is approved). Describe how long the State will accept these replacement requests. How will the State inform households whose benefits were stolen prior to the implementation of the State plan of the possibility for retroactive replacement? Will the State contact households that previously reported stolen benefits?*

**Submission of Claims – Timeliness:** *Describe what the State considers to be a timely report of electronic benefit theft (e.g., within XX days of loss). Describe how the State Agency will verify if a request was submitted in a timely manner.*

**Submission of Claims – Procedure:** *Describe the methods through which the State Agency will accept claims and the criteria that will be used to determine the validity of the claims. Describe how households will submit claims to the State Agency to report benefit theft, whether by mail, online portal, in-person, over the phone, and/or other submission. If the State chooses to create a form for households to report claims, provide a description or example of this form.*

**Validation – Timeliness:** *Describe what the State Agency considers to be a timely validation of claims by the State Agency.*

**Validation – Criteria:** *Describe the criteria against which the State Agency will validate submitted claims of benefit theft. How will the State verify the signed affidavit? What verification/ documentary evidence will the State use?*

- Validation – Denial of Claims:** *Describe conditions for the denial of claims.*
- Fair Hearings:** *Describe how households will be informed of their right to a fair hearing.*
- Record Keeping:** *Describe how the State Agency will document and store submitted claims and the State’s decision on the claim. Describe how the State will ensure that documentation tracks the number of benefit replacements per household.*
- Benefit Distribution:** *Describe how the State Agency will issue replacement benefits. Under what timeframe will benefits, including a new card, be made available to households? If a State Agency’s approach to distributing stolen benefits deviates from their normal procedure for benefit replacement, how will the State Agency coordinate this with their EBT processor? How will the State ensure the household does not receive more than two replacements within the FFY?*
- Data on Benefit Theft:** *Describe how the State will submit this data to FNS. FNS encourages States to report the data elements included in the Federal Replacement of Stolen Benefits Data Report template. Confirm if the State will use the Data Report template. If the State opts-out of using the provided Data Report template, describe the specific data elements the State will report and the data report template or format the State will use. Confirm if the State will use the reporting frequency outlined in the guidance document. If not, describe the frequency at which the State will submit reports.*
- Current Benefit Theft Prevention:** *Describe the current benefit theft prevention measures the State Agency is already using to aid in benefit protection. This may include but is not limited to methods described in the October 31, 2022 guidance issued by FNS and ACF, such as restrictions on common PINs, card freezing capabilities, etc.*
- Planned Benefit Theft Prevention:** *Describe the State Agency’s planned use of any additional benefit theft prevention measures that may be available from its EBT processor or elsewhere.*

**Implementation Timeline:**

*Provide an implementation timeline for this State plan with estimated dates for major milestones in your plan. Dates on the timeline may include the State's availability to accept claims and provide issuance to households.*

**Messaging:**

*FNS strongly encourages including in this plan a description of how the public will be made aware of this replacement option. Will this be communicated through letters, social media, text messages, outreach partners, or the agency's website? Include plans for ensuring accessibility to persons with disabilities, the elderly, and other vulnerable populations, as appropriate.*

**Signature and Title of Requesting SNAP State Agency Official:**

\_\_\_\_\_  
*Print Name and Title*

**Date of Request:**

## Appendix B – Instructions for Submitting State Plans

State WIMS users may submit these plans as follows:

1. Click on the **CREATE REQUEST** tab to create an initial request,
2. **Type:** select *Replacement of Stolen Benefits*,
3. **Title:** select *Replacement of Stolen Benefits*,
4. **Requested Implementation Date:** Enter the MM/DD/YYYY the State seeks to implement its plan,
5. **Requested Expiration Date:** Please enter 09/30/2024,
6. Click the green **CONFIRM** button at the bottom of the page, and
7. On the new page that loads, upload your signed State Plan document by scrolling to the bottom of the page and clicking the **UPLOAD** button in the Case Files section. Select the file from your computer and click **OPEN**.

## Appendix C – Data Report Template

<b>State:</b>	
<b>Report Start Date</b>	
<b>Report End Date</b>	

<b>Federal Replacement of Stolen SNAP Benefits due to Card Skimming, Card Cloning, and other Fraudulent Methods - Data Reporting</b> <i>Complete all shaded fields</i>		
	Figure	Comments*
1		
Total number of stolen benefits claims		
2		
Total number of approved** stolen benefits claims		
3		
Total number of denied stolen benefits claims		
Invalid claims		
Claims from households that met two-replacement limit		
Untimely submitted claims		
4		
Total number of households that submitted stolen benefits claims		
Households that submitted approved claims		
Households that submitted denied claims		
5		
Total number of fraudulent transactions		
Fraudulent transactions from approved claims		
Fraudulent transactions from denied claims		
6		
Total value of stolen benefits		
7		
Total value of replaced benefits		

\*Use the comments field for any clarifications or context that are needed for any data points.

\*\*"Approved," meaning valid claims that meet the requirements set by the Omnibus and are/were replaced with Federal funds.

<b>Notes on Measures</b>
1. Total number of stolen benefits claims submitted due to card skimming, card cloning, or similar fraudulent methods.
2. Total number of approved stolen benefits claims that were approved for replacement due to card skimming, card cloning, or similar fraudulent methods.
3. Total number of denied stolen benefits claims due to invalid claims, claims from households that met the two-replacement limit per federal fiscal year (FFY), and untimely submitted claims.
4. Total number of households that submitted stolen benefits claims, total number of households that submitted approved claims, and total number of households that submitted denied claims.
5. Total number of fraudulent transactions, total number of fraudulent transactions from approved claims, and total number of fraudulent transactions from denied claims.
6. Total value of benefits determined to have been stolen due to card skimming, card cloning, and similar fraudulent methods.
7. Total value of replaced stolen benefits due to card skimming, card cloning, or similar fraudulent methods.

## Appendix D – Instructions for Submitting Quarterly Data Reports

State WIMS users may submit the quarterly data reports on the replacement of stolen benefits as follows:

1. Click on the **OPEN REQUESTS** tab to view all open requests, including open data reports due within 90 days,<sup>6</sup>
2. Sort the list by **Request Type** by clicking the arrow next to the column name,
3. Once you have sorted the list, you can see all cases with the Request Type of **Data Report** listed together,
4. Click the **Case Number** of the data report titled *Replacement of Stolen Benefits* to open the data report request,
5. Review the **Details** tab for information such as the reporting period start and end date and the report due date,
6. View the blank data report template in the Shared Documents folder at the bottom of the page. Select the document and click **DOWNLOAD** to save it to your computer, and
7. Upload your completed data report template by clicking the **UPLOAD** button in the Case Files section. Select the file from your computer and click **OPEN**.

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<sup>6</sup> Note: All State users will receive an automatic email reminder from the system when a data report is due in 90 days. We encourage State users to use the link provided in the email to navigate to the open data report. However, these instructions allow users to navigate to open data reports without the email.