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Skimming: Preparing to Mitigate the Harm of Stolen SNAP Benefits

This past year, states have seen a dramatic increase in Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families Program benefits reported stolen from clients electronically through “skimming” and “phishing” crimes. New federal policy is aimed at curbing skimming theft, and on a temporary basis, providing affected SNAP consumers with certain replacement benefits. State SNAP agencies must file plans this month to let the U.S. Department of Agriculture (USDA) know what policies and procedures the state will apply in replacing skimmed SNAP Electronic Benefit Transfer (EBT) benefits. Lessons learned during the early implementation of the new policy are likely to inform lawmakers’ consideration of permanent responses to skimmed benefit thefts when they consider changes to SNAP in the 2023 Farm Bill.

Background on Skimming

Skimming occurs when criminals place a skimming device on an ATM or POS (point of sale) unit that SNAP clients use to redeem benefits on their electronic benefit cards. SNAP cards have a three-digit code (PIN number) as an added security feature. The placement of the skimming device allows the criminal to capture the EBT card PIN number and data stored on the card’s magnetic stripe. The criminal then uses that information to duplicate the card and access the benefits in the SNAP beneficiary’s account. Debit and pre-paid cards may also be skimmed but the holders of these cards are covered by the federal Electronic Funds Transfer Act (EFTA) and Regulation E, which protect SNAP consumers against losses from unauthorized electronic transactions. EFTA, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) in 1996, expressly excludes EBT cardholders from its protection, leaving EBT cardholders without the recourse available to other consumers when their card benefits are stolen.¹

Across the country, the impact of EBT card skimming varies. Among particularly hard-hit states are California and Massachusetts — with California reporting an estimated

¹ (10) Applicable law. Disclosures, protections, responsibilities, and remedies established by the Federal Reserve Board under section 904 of the Electronic Fund Transfer Act (15 U.S.C. 1693b) shall not apply to benefits under this Act delivered through any electronic benefit transfer system. "Text - H.R.3734 - 104th Congress (1995-1996): Personal Responsibility and Work Opportunity Reconciliation Act of 1996." *Congress.gov*, Library of Congress, 22 August 1996, <https://www.congress.gov/bill/104th-congress/house-bill/3734/text>.

\$4.7 million² and Massachusetts \$1.6 million³ in stolen benefits. It is important to note that it is difficult to ascertain accurate estimates of losses as it takes a while for victims to become aware of or report the losses. During 2022, USDA, states, EBT processors, and advocates worked to alert customers about best practices for protecting EBT card security, as well as explored options for improving EBT card security going forward.⁴ Despite requests, however, USDA Food and Nutrition Service (FNS) did not approve state use of federal SNAP funds for issuing replacement benefits to households victimized by skimming. Anti-hunger advocates elevated the issue with federal partners, including Members of Congress. Several Members of Congress weighed in with USDA about EBT skimming⁵, and by the end of 2022, took legislative action to begin to address it.

Congressional Action to Address Skimming Thefts in the Short Term

The [Consolidated Appropriations Act of 2023](#) (the Omnibus), enacted in December 2022, included provisions to replace certain stolen SNAP EBT benefits with federal funds.⁶ Specifically, under Title IV, Section 501, of the Omnibus⁷:

- USDA's Food and Nutrition Service must issue ongoing guidance on the security measures states must take to detect and prevent the theft of EBT benefits through card skimming, card cloning, and other similar fraudulent methods. Such guidance should be consistent with industry standards for detecting, identifying, and preventing debit and credit card skimming, card cloning, and other similar fraudulent methods.
- USDA also must issue regulations on federally-funded replacement benefits to SNAP households victimized by electronic thefts.
- States must issue replacement SNAP benefits stolen from households between October 1, 2022, and September 30, 2024, due to card skimming, card cloning, and other similar fraudulent methods, up to twice a year per household. States must replace the lesser of the full amount stolen or two months of stolen benefits.

By February 27, 2023, (60 days after the December 29, 2022, enactment date), state SNAP agencies must submit plans to USDA detailing procedures they will apply to validate stolen SNAP benefit claims and replace benefits. States have flexibility on how they will validate claims.

² <https://laist.com/news/thieves-drain-millions-off-california-and-california-works-recipients-cards-families-wait-and-taxpayers-pay>

³ <https://www.westernmassnews.com/2022/12/16/increase-ebt-skimmers-being-reported-locally/>

⁴ <https://www.fns.usda.gov/snap/snap-retailer-reminder-card-skimming>; <https://www.fns.usda.gov/snap/snap-tanf-ebt-card-skimming-prevention>; <https://www.fns.usda.gov/snap/scam-alerts>

⁵ [Letter to MA Delegation](#); [Letter to CA Delegation](#); [Letter to NY Delegation](#)

⁶ "Text - H.R.2617 - 117th Congress (2021–2022): Consolidated Appropriations Act, 2023." *Congress.gov*, Library of Congress, 29 December 2022, <https://www.congress.gov/bills/117th-congress/house-bill/2617/text>.

⁷ <https://www.appropriations.senate.gov/imo/media/doc/JRQ121922.PDF>

FNS Guidance on State Plans

On January 31, 2023, FNS issued guidance on the Replacement of SNAP Benefits.⁸ The guidance provides templates and instructions for the state agencies to create their plan.

Key points include that:

- State agencies are encouraged to establish procedures that ensure equity and accessibility in EBT benefit theft prevention and replacement.
- SNAP benefits eligible for federally-funded reimbursements if the benefits have been taken from the client fraudulently may include Disaster-SNAP and Emergency Allotments. Such reimbursements will not be covered for theft of Pandemic EBT (P-EBT) benefits because P-EBT benefits are not SNAP benefits.
- State agencies may issue federally-funded replacements for electronically stolen SNAP benefits to the same household only two times in the same federal fiscal year (FFY).
- State agency plans must describe how they will address stolen benefit claims made in the first quarter of FFY 2023 prior to the implementation of the state plans. The state agency also must delineate the timeframe when such claims will be accepted.
- States may decide what they consider timely submission of claims. For reference, FNS points out it considers a report made within 30 days of discovery of theft to be timely.
- States are encouraged to create a benefits theft template for households to document how the benefits were stolen.
- When validating the claim, the state plan must include a signed statement by the affected party, however, the state agency may accept physical, electronic, and telephonic signatures.
- States have leeway on how they choose to verify the theft as long as it is applied on a statewide basis.
- States are encouraged to model their timeline criteria for validating, processing, and issuing stolen benefit claims on the existing procedure in place for processing standard claims of benefit loss due to household misfortune. Pursuant to 7 C.C.R. section 274.6(a)(5)(i), the timeline for states to issue the replacement benefits for misfortune is either within 10 days after a loss is reported or within two working days after receiving a household's signed statement of loss.
- States should include procedures and criteria for denials. Such denials must be accompanied by a notification of a household's right to a fair hearing.

⁸ <https://www.fns.usda.gov/snap/replacement-snap-benefits-consolidated-appropriations-act-2023>

- States are allowed to require the replacement of an EBT card if a household reports that their benefits were stolen.

What State Agencies Can Do

Below are steps that states can take to provide a more equitable, effective replacement process for skimmed SNAP benefits.

- Follow the January 31 FNS memo recommendation that states establish procedures that can accommodate the varying needs of households, including vulnerable households who may require in-person assistance at their local office.
- Create a reasonable timeline for reporting theft. While not mandatory for this purpose, 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. California has been a leader in protecting its residents against skimming and was the first state in the nation that replaced any skimmed benefits, but the theft has to be reported within 10 days, making it challenging for people to report it.⁹
- Simplify the process for documenting benefit theft for SNAP clients and caseworkers. The January 31 FNS memo clarifies that a state agency can determine the way it will accept signatures. Reducing paperwork associated with such claims and allowing victims to report over the phone and use voice signatures would both simplify the verification process for the state agency and the victimized households, and also mitigate food hardship.
- Issue timely reimbursements. Many families with low incomes depend on SNAP as their main source of food resources. It is the only way they can afford food and still pay their rent and pay for other basic needs. As such, prompt reimbursement of stolen benefits is critically important for health and well-being.
- Affirmatively reach out to households. It is important that the state plan set out how the state agency will contact households to alert them about skimming. The outreach should be conducted in a culturally competent and linguistically appropriate manner. It should also be locally based, informed by collaboration with individuals and families with low incomes, and take into account effectively communicating with various groups, such as those with persons who have low literacy levels and/or limited English proficiency.
- Identify patterns of theft. Proactively track the locations where skimming occurs and work with law enforcement and retailers to ramp up security measures.
- If requiring victims to reset their PIN numbers, states should ensure that they have explained the procedure in the language the victim understands. If requesting that the victim obtain a card replacement, the state should ensure that there will be no fees and that the participant can opt for same day in-person access to a new card and/or prompt mail delivery.

⁹ <https://www.cafoodbanks.org/blog/congress-must-take-bold-and-immediate-action-to-address-ebt-skimming-crisis/>

- Ensure that the state plan promote equity, including by recognizing that households vary in their access to technology, in ease of monitoring their EBT card balances, in English-language proficiency, and in need for in-person assistance. For example: Include an outreach plan that takes into account language access and culture-appropriate messaging, and is taking feedback from individuals with lived expertise and community partners.
- Utilize a multiprong approach of utilizing texts, phone calls, SNAP outreach partners, flyers, and trusted community leaders to deliver the message. The state can consider Massachusetts’s outreach plan in addressing the end of Emergency Allotments as a good example of an outreach plan that is clear, intentional, accessible, and culturally sensitive.

What Happens if Your State Is Not Engaged or Has Not Been Affected?

USDA’s requirement that states submit a state plan is mandatory regardless of whether the state has been affected. This is the perfect opportunity to be proactive and protect beneficiaries before they are affected.

It is helpful for state advocates to contact their state agencies, provide feedback, and share resources on the best practices of other states that have been affected.

Resources for Advocates

We will be updating this information as we hear from states about what they are doing. In the meantime, we have noted legislative efforts from states on the ways they are tackling skimming:

[Massachusetts is hoping to use \\$2 million to replace SNAP benefits stolen as a result of “skimming” that happened before October 1 2022.](#)

[Maryland](#) is introducing legislation to better protect EBT cards.