

Congress of the United States
Washington, DC 20510

October 20, 2022

The Honorable Thomas J. Vilsack
Secretary
U.S. Department of Agriculture
1400 Independence Avenue, N.W.
Washington, D.C. 20250

Dear Secretary Vilsack,

We write on behalf of the over 1.6 million low-income New York residents we represent whose SNAP benefits are at risk of being stolen through skimming. Already, in only a few months, thieves have stolen over \$300,000 in SNAP dollars from more than 2,200 households in New York State. Every month, more low-income households are at risk of losing their SNAP benefits and facing hunger. Low-income households who rely on SNAP benefits to feed themselves and their families face food insecurity and economic instability when their SNAP benefits are stolen. At least 8 other states are also reporting a rash of SNAP benefits lost due to skimming.

We understand that USDA is telling New York and other states that they cannot use federal SNAP funds to restore the lost SNAP benefits. We urge USDA to take immediate action to (1) instruct states to restore benefits stolen through skimming and assure states that USDA will cover the cost, and (2) move quickly to help states implement Electronic Benefits Transfer (EBT) technologies that are more secure than the current system and that are workable for households.

Skimming occurs when criminals place a “skimming”¹ device on an ATM or POS (point of sale) device to capture the PIN and the data stored on the magnetic strip of the SNAP EBT card. The criminals then use that information to duplicate the EBT card and to 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 Fund Transfer Act (EFTA) and Regulation E, which protect 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 protections, leaving SNAP EBT cardholders without the recourse available to other consumers when their benefits are stolen.

When Congress excluded EBT from consumer protection laws in 1996, it provided that:

¹ We understand that the skimming device is not always visible to the customer.

Regulations issued by the Secretary regarding the replacement of benefits and liability for replacement of benefits under an electronic benefit transfer system shall be similar to the regulations in effect for a paper-based food stamp issuance system.²

The regulation in effect at the time of PRWORA for the paper-based issuance system required full replacement of food stamp ATPs (authorizations to purchase) or coupons that were stolen under circumstances beyond the household's control.³ As long as the state was not at fault for the loss, the federal government covered the cost of replacement. This regulation was rescinded in 2010 after the paper-based system was replaced by EBT. Twenty-six years after PRWORA, USDA has still not issued regulations addressing the replacement of benefits under an EBT system.

Possibly, USDA has assumed that additional regulations were not needed because a regulation that preceded PRWORA provides:

State agencies shall be held strictly liable for overissuances resulting from Electronic Benefit Transfer system errors and unauthorized account activities. Such overissuances shall include but not be limited to: Overissuances to household accounts that are accessed and used by households, replacement benefits to a household's account due to unauthorized use of the benefits in a household's account, benefits drawn from an EBT account after the household has reported that the EBT card is lost or stolen to the State or its agent, overdraft situations due to the use of manual back-up procedures approved by the State agency, overcredits to a retailer account and transfer of funds to an illegitimate account.⁴

A payment to a thief is an "overissuance"⁵ "resulting from . . . unauthorized account activities" or the "transfer of funds to an illegitimate account." Under the regulations, the states are liable for "replacement benefits to a household's account due to unauthorized use." Thus, states are responsible for replacing benefits lost due to skimming.⁶ However, there can be no question that Congress in 1996 intended that under an EBT system, as under the paper-based system, the federal government was responsible for covering the cost of replacing benefits stolen under circumstances beyond the household's control.

The federal government mandated that states deliver benefits through EBT.⁷ The risk of skimming has been apparent for a number of years, but, USDA has not issued regulations or established standards to help states implement more secure systems.⁸ USDA should immediately address the current crisis by directing states to promptly restore benefits that are stolen due to

² 7 U.S.C. § 2016(h)(7).

³ See, e.g., 7 C.F.R. § 264.6(a)(1989). This regulation was rescinded in 2010 after the paper-based system was replaced by EBT.

⁴ 7 C.F.R. § 262.2(b)(7)(emphasis added).

⁵ "Overissuance means the amount by which benefits issued to a household exceeds the amount it was eligible to receive." 7 C.F.R. § 271.2. Stolen benefits exceed the amount the thief was eligible to receive.

⁶ In addition to 7 C.F.R. § 262.2(b)(7), see also 7 U.S.C. § 2020(e)(state agencies strictly liable to USDA for any financial losses involved in the acceptance, storage and issuance of benefits); 7 U.S.C. § 2020(e)(11) (state agency must provide for prompt restoration to a household of any allotment wrongfully denied); 7 U.S.C. § 2020(b) (requiring state agency to promptly restore improperly denied or underissued benefits).

⁷ 7 C.F.R. § 2016(h)(1)(A).

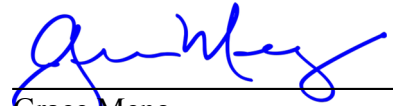
skimming and by confirming that the federal government will reimburse states for the replacement costs. Meanwhile, USDA must—as quickly as possible—develop and implement more secure systems for accessing critical nutrition benefits.

We appreciate your attention to this urgent matter to ensure SNAP households are not held accountable for the acts of skimming rings in their communities and are not left without food to feed their families due to the theft of their SNAP benefits.

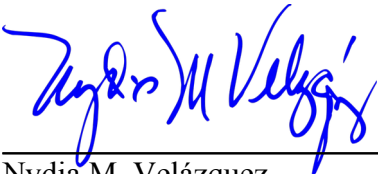
Sincerely,



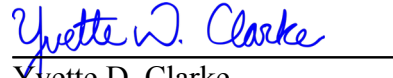
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United States Senator



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Member of Congress



Nydia M. Velázquez
Member of Congress



Yvette D. Clarke
Member of Congress



Sean Patrick Maloney
Member of Congress



Ritchie Torres
Member of Congress

⁸ We have been told that chip cards cannot be skimmed provided the card is used in the chip reader and not swiped. The statute provides that the “Secretary shall issue final regulations that establish standards for the approval of [EBT systems] and shall periodically review such regulations and modify such regulations to take into account evolving technology and comparable industry standards. . . . The standards shall include – . . . measures to maximize the security of a system using the most recent technology available and which may include personal identification numbers, photographic identification on electronic benefit transfer cards, and other measures to protect against fraud and abuse.” 7 U.S.C. § 2016(h)(2)(c)(i). The Secretary has not issued regulations or established standards regarding chip cards.



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