

Using Text Message Outreach to Reduce SNAP Churn

SECTION 3

LEGAL + POLICY

Understanding the Regulatory and Compliance Landscape

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About This Section

This is one section from the guidebook [Using Text Message Outreach to Reduce SNAP Churn](#), produced by the [Beeck Center for Social Impact + Innovation at Georgetown University](#) and [Benefits Data Trust](#).

The goal of the guidebook is to give state and local government agencies practical advice on how to scope and design a text messaging program to support SNAP clients through the recertification process. You can develop and implement your text messaging program in-house or partner with a vendor, and we offer guidance based on both scenarios. While we focus on the use case of SNAP recertification, we hope this content might still be useful for anyone using text messaging to improve safety net benefits delivery in other ways.

To view or download the entire guidebook, as well as other individual sections, visit: <https://beeckcenter.georgetown.edu/report/using-text-message-outreach-to-reduce-snap-churn/>

Table of Contents

Understanding the Regulatory and Compliance Landscape

Sending Text Messages

Using and Disclosing Client SNAP Data

Understanding the Regulatory and Compliance Landscape

A successful text messaging program must navigate some key regulatory requirements. As a result, it's paramount that you bring your legal and policy teams into the planning process as early as possible.

For a project like this, the two main areas to consider are the requirements governing:

1. Sending large volumes of text messages, and
2. Sharing data (if a third party or vendor will receive client data in order to send messages)

The following is a brief overview of key regulatory considerations and compliance requirements for which your team will need to plan. Note that this does not constitute legal advice. You should consult with your legal and policy experts to assess the regulatory landscape in the jurisdictions your agency serves and develop the right path forward for your specific program.

Sending Text Messages

The Telecommunications Consumer Protection Act (TCPA)¹ and the Federal Trade Commission Act (FTCA)² are the primary statutes that may apply to a SNAP recertification text messaging program. A program like this is allowable under these laws if it meets all three of these criteria:

1. Messages are for a non-commercial purpose,
2. The individual has a prior relationship with the agency and voluntarily provided their phone number to the agency, and
3. Messages are not being sent via an automatic telephone dialing system.

It should be noted that if a state agency sends the text messages to itself, [the FCC has ruled the consent requirement of the TCPA does not apply.](#)

A text messaging program that contacts SNAP clients to help them complete the recertification process would generally satisfy the above criteria because:

1. The messages being sent are for informational, not commercial, purposes,
2. Clients voluntarily provided their phone numbers to the government agency (a SNAP application only needs to contain a name, address, and signature to be considered complete so this includes an additional level of data collection), and
3. Messages are being directed to specific known numbers rather than being reached through a system using random or sequential messaging.³

1 Restrictions on the use of telephone equipment, 47 USC § 227 (2018). <https://www.govinfo.gov/app/details/USCODE-2019-title47/USCODE-2019-title47-chap5-subchap11-part1-sec227>

2 Federal Trade Commission established; membership; vacancies; seal, 15 USC § 41 et seq. (2018). <https://www.govinfo.gov/app/details/USCODE-2019-title15/USCODE-2019-title15-chap2-subchapl-sec41/summary>

3 Facebook, Inc v. Duguid et al. 592 (U.S. 2021). https://www.supremecourt.gov/opinions/20pdf/19-511_p86b.pdf

However, given the significant penalties and reputational harm associated with bad actors, texting platforms (discussed further below) and telecommunication carriers (e.g., Verizon, AT&T, T-Mobile) impose stricter requirements for using their platforms and networks than required by law. To navigate these self-imposed industry restrictions, government or nonprofit entities looking to engage in text messaging programs should consider these recommendations to avoid roadblocks that could include being barred from sending messages:

- **Get client consent to send text messages:** Get direct consent from clients to send them text messages about their SNAP benefits.⁴ Add a statement about the text messaging program to SNAP forms (both paper and electronic) with a space for individuals to provide written consent (e.g., check a box on SNAP application form authorizing communications through text message). These measures help you avoid barriers in getting approvals from texting platforms and telecommunication carriers and are general good practice. For more on obtaining client consent, see the Texting Strategy and Content section in the full guidebook.

Sample Communication Preferences Checkbox to Obtain Consent

Contact Information

Email Address	<input type="text" value="example@email.com"/>
Mobile Number	<input type="text" value="(215) 555-1234"/>
Home Number Preference	<input type="text" value="(215) 555-1234"/>

Communication Preferences

How would you like to hear from us?

	Email	Text	U.S. Mail
Important case communications	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Helpful information about benefits	<input type="checkbox"/>	<input checked="" type="checkbox"/>	

If you select to receive texts, you agree to these Terms and Conditions. Message and data rates may apply. Message frequency varies. Case communications will be sent from short code 123456 and informational messages will be sent from short code 789012. You may opt out anytime by texting 'STOP' to the short code or get assistance by texting 'HELP'.

Sample Consent Message with the Option to Opt-Out

We will call, email, or text you notifications regarding the status of your application or any other benefits you may qualify for. Message and data rates may apply. You may opt out of receiving notifications at any time. Would you like to opt out?

- Yes
 No

What phone number would you like to use to receive notifications?

⁴ Courts have held that when an individual knowingly releases their phone number, they have in effect given their invitation or permission to be called at the provided number, and the express consent requirement of the TCPA is met (see *Chisholm v. AFNI, Inc.*, Civil Action No. 15-3625 JBS/JS (U.S. Dist. NJ 2016). <https://casetext.com/case/chisholm-v-afni-inc>). However, for the reasons explained, we strongly recommend getting direct consent from SNAP clients before sending them text messages.

- **Follow message content best practices:** Telecommunication carriers require the following items in the statement of consent. (See the Consent subsection of the Texting Strategy and Content in the full guidebook section for more detail.)
 - Clearly identify the sender and the purpose of the message;
 - Disclose in the first message that message and data rates may apply;
 - State in the first message when the client opted into texts and the planned frequency of how often future messages will be sent; and
 - Provide opt-out instructions in the first message and in subsequent messages that resume contact with the client.

- **Review federal, state, and local regulatory requirements:** In addition to understanding federal requirements, some states and localities have introduced their own restrictions and compliance requirements on high volume text messaging activities. Reviewing what, if any, additional state- and local-level requirements there might be can help set the project up for success.

- **Choose a vendor set up to work with government agencies:** The requirements and needs of government (and nonprofit) agencies are typically different from those of commercial entities, which most vendors are set up to accommodate. In the crowded marketplace of texting platforms, some are better set up to work with government agencies. In selecting a vendor, you should evaluate their knowledge of requirements specific to governments and experience working with other government agencies. This goes for vendors of other services involved in your text messaging program as well.

- **Choose the right type of number for the job:** There are three types of numbers used for text messaging: short codes, toll-free numbers, and local numbers (also called 10-digit-long codes). Each type has unique costs, provisioning (i.e., approval parameters and timelines), allowable uses, and throughput and total volume limits. See Choosing the Right Type of Number for the Job in the Texting Strategy and Content section in the full guidebook for more detail about these options and differences among them.

- **Use a service to clean phone lists of non-cell phone numbers:** Some text message platforms offer this as a service although there may be additional fees associated with it. This should be considered in the procurement process. Ensuring that only cell phones are being sent text messages will reduce the likelihood of triggering spam alerts that can prevent messages from being delivered.

- **Do not exceed the throughput volume limit:** Throughput is the number of messages per second that can be sent. This limit will depend on the type of number being used (see Choosing the Right Type of Number for the Job in the Texting Strategy and Content section) and other factors that are part of the provisioning process. Exceeding authorized limits will trigger spam alerts and potentially lead to being locked out completely by telecommunications providers. Securing a high throughput number or spacing out messages throughout the day can help avoid this.

- **Ensure opt-out requests are honored:** Texting platform software is designed to automatically process opt outs, but you should also ensure that your agency records are updated accordingly so as not to send messages again to those who opt out.

Using and Disclosing SNAP Client Data

To protect client confidentiality, federal regulations generally restrict use and disclosure of information obtained from SNAP clients. However, there is an exception that allows SNAP participant data to be shared for purposes of SNAP administration.⁵ Because notifying households about recertification is a part of SNAP administration,⁶ SNAP agencies are permitted to use and share client data to carry out the text messaging program for this purpose. In addition, recertification assistance is noted as allowable under SNAP outreach plan guidance where a SNAP outreach partner is being considered for carrying out the texting messaging program.⁷ You should review state and local regulations for the use and disclosure of SNAP data. In BDT's experience, executing SNAP data sharing agreements in many states, state and local laws have not been a barrier.

5 Requirements for Participating State Agencies, 7 CFR 272.1(c)(1)(i) (2021). <https://casetext.com/regulation/code-of-federal-regulations/title-7-agriculture/subtitle-b-regulations-of-the-department-of-agriculture/chapter-ii-food-and-nutrition-service-department-of-agriculture/subchapter-c-supplemental-nutrition-assistance-and-food-distribution-program/part-272-requirements-for-participating-state-agencies/section-2721-general-terms-and-conditions>

6 Certification of Eligible Households, 7 CFR 273.14 (2021). <https://casetext.com/regulation/code-of-federal-regulations/title-7-agriculture/subtitle-b-regulations-of-the-department-of-agriculture/chapter-ii-food-and-nutrition-service-department-of-agriculture/subchapter-c-supplemental-nutrition-assistance-and-food-distribution-program/part-273-certification-of-eligible-households/subpart-e-continuing-participation/section-27314-recertification>

7 US Department of Agriculture. (2017). Supplemental Nutrition Assistance Program (SNAP): State Outreach Plan Guidance. https://fns-prod.azureedge.net/sites/default/files/resource-files/SNAP_Outreach_Guide_%20July_2017.pdf