Attachment A: Legal Authority

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§274.6 Replacement issuances and cards to households.

(a) *Providing replacement issuance.* (1) Subject to the restrictions in paragraph (a)(3) of this section, State agencies shall provide replacement issuances to a household when the household reports that food purchased with Program benefits was destroyed in a household misfortune.

(2) Where a Federal disaster declaration has been issued and the household is eligible for disaster SNAP benefits under the provisions of part 280, the household shall not receive both the disaster allotment and a replacement allotment for a misfortune.

(3) *Replacement restrictions.* (i) Replacement issuances shall be provided only if a household timely reports a loss orally or in writing. The report will be considered timely if it is made to the State agency within 10 days of the date food purchased with Program benefits is destroyed in a household misfortune.

(ii) No limit on the number of replacements shall be placed on the replacement of food purchased with Program benefits which was destroyed in a household misfortune.

(iii) Except for households certified under 7 CFR part 280, replacement issuances shall be provided in the amount of the loss to the household, up to a maximum of one month's allotment, unless the issuance includes restored benefits which shall be replaced up to their full value.

(4) *Household statement of loss.* (i) Prior to issuing a replacement, the State agency shall obtain from a member of the household a signed statement attesting to the household's loss. The required statement may be mailed to the State agency if the household member is unable to come

into the office because of age, handicap or distance from the office and is unable to appoint an authorized representative.

(ii) If the signed statement or affidavit is not received by the State agency within 10 days of the date of report, no replacement shall be made. If the 10th day falls on a weekend or holiday, and the statement is received the day after the weekend or holiday, the State agency shall consider the statement timely received.

(iii) The statement shall be retained in the case record. It shall attest to the destruction of food purchased with the original issuance and the reason for the replacement. It shall also state that the household is aware of the penalties for intentional misrepresentation of the facts, including but not limited to, a charge of perjury for a false claim.

(5) *Time limits for making issuance replacements.* (i) Replacement issuances shall be provided to households within 10 days after report of loss or within two (2) working days of receiving the signed household statement required in paragraph (a)(4) of this section, whichever date is later.

(ii) The State agency shall deny or delay replacement issuances in cases in which available documentation indicates that the household's request for replacement appears to be fraudulent.

(iii) The household shall be informed of its right to a fair hearing to contest the denial or delay of a replacement issuance. Replacements shall not be made while the denial or delay is being appealed.

(6) *Verifying issuance and household misfortune.* (i) Upon receiving a request for replacement of an issuance for food destroyed in a household misfortune, the State agency shall determine if the issuance was validly issued. The State agency shall also comply with all applicable provisions in paragraphs (a)(3) through (a)(5)of this section.

(ii) Prior to replacing destroyed food that was purchased with Program benefits, the State agency shall determine that the destruction occurred in a household misfortune or disaster, such as, but not limited to, a fire or flood. This shall be verified through a collateral contact, documentation from a community agency including, but not limited to, the fire department or the Red Cross, or a home visit.

(7) *Documentation and reconciliation of replacement issuances.* (i) The State agency shall document in the household's case file each request for replacement, the date, the reason, and whether or not the replacement was provided. This information may be recorded exclusively on the household statement required in paragraph (a)(4) of this section.

(ii) The State agency shall maintain, in readily-identifiable form, a record of the replacements granted to the household, the reason, and the month. The record may be a case action sheet maintained in the case file, notations on the master issuance file, if readily accessible, or a document maintained solely for this purpose.

(iii) When a request for replacement is made late in an issuance month, the replacement will be issued in a month subsequent to the month in which the original benefit was issued. All replacements shall be posted and reconciled to the month of issuance of the replacement and may be posted to the month of issuance of the original benefit, so that all duplicate transactions may be identified.

(b) *Providing replacement EBT cards or PINs.* The State agency shall make replacement EBT cards available for pick up or place the card in the mail within two business days following notice by the household to the State agency that the card has been lost, stolen or damaged unless the State agency implements a replacement procedure pursuant to paragraph (b)(5) of this section.

(1) The State agency shall ensure that a duplicate account is not established which would permit households to access more than one account in the system.

(2) An immediate hold shall be placed on accounts at the time notice is received from a household regarding the need for card or PIN replacement. The State agency shall implement a reporting system which is continually operative. Once a household reports that their EBT card has been lost or stolen, the State agency shall assume liability for benefits subsequently drawn from the account and replace any lost or stolen benefits to the household. The State agency or its agent shall maintain a record showing the date and time of all reports by households that their card is lost or stolen.

(3) The State agency may impose a replacement fee by reducing the monthly allotment of the household receiving the replacement card; however, the fee may not exceed the cost to replace the card. If the State agency intends to collect the fee by reducing the monthly allotment, it must follow FNS reporting procedures for collecting program income. State agencies currently operating EBT systems must inform FNS of their proposed collection operations. State agencies in the process of developing an EBT system must include the procedure for collection of the fee in their system design document. All plans must specify how the State agency intends to account for card replacement fees and include identification of the replacement threshold, frequency, and circumstances in which the fee shall be applicable. State agencies may establish good cause policies that provide exception rules for cases where replacement card fees will not be collected.

(4) *Replacement card.* The State agency shall issue replacement cards and PINs in accordance with §274.2(f) of this chapter.

(5) *State option to withhold replacement card.* The State agency may require an individual member of a household to contact the State agency to provide an explanation in cases where the number of requests for card replacements is determined excessive. If they so require, the State agency must establish a threshold for the number of card replacements during a specified period of time to be considered excessive. That threshold shall not be less than four cards requested within 12 months prior to the request, unless the State agency has additional evidence indicating a suspected trafficking violation, as defined at §271.2 of this chapter. If a trafficking violation is suspected prior to the fourth card request, the State agency shall refer the client for investigation and, if deemed appropriate, may provide a notice to the client, requiring the individual or

household to contact the State agency to provide an explanation prior to receiving a subsequent replacement card.

(i) The State agency shall notify the household in writing when it has reached the threshold, indicating that the next request for card replacement will require contact with the State agency to provide an explanation for the requests, before the replacement card will be issued. The State agency shall also notify the household in writing once the threshold has been exceeded that the State agency is withholding the card until contact is made. These notices must:

(A) Be written in clear and simple language;

(B) Meet the language requirements described at §272.4(b) of this chapter;

(C) Specify the number of cards requested and over what period of time;

(D) Explain that the next request, or the current request if the threshold has been exceeded, requires contact with the State agency before another card is issued;

(E) Provide all applicable information on how contact is to be made in order for the client to comply, such as whom to contact, a telephone number and address;

(F) Include a statement that explains what is considered a misuse or fraudulent use of benefits and the possibility of referral to the fraud investigation unit for suspicious activity.

(ii) Following notification, should another card be requested, the State agency shall require that the household contact the State agency to provide an explanation for the requests. If the client makes contact, the State agency shall make the replacement EBT card available for pick up or place the card in the mail in accordance with §274.2(f) of this chapter within two business days following household contact with the State agency, regardless of whether or not an explanation was provided.

(A) If a household does not contact the State agency in response to the State agency's notice, the State agency shall not issue a replacement card to the household and the case must be referred for investigation.

(B) The State agency shall educate the client on the proper use of the card if the explanation is deemed appropriate and the State agency shall not require contact upon subsequent requests, unless the pattern of card activity has changed since the initial contact and indicates possible trafficking activity.

(C) The State agency shall refer the individual for investigation in cases where the individual contacts the State agency but refuses to explain the card losses or the explanation provided appears to be indicative of trafficking in accordance with §271.2 of this chapter. The State agency shall issue a replacement card to any household that makes the required contact so that the household has access to benefits in its EBT account while the investigation is underway and while awaiting a hearing, in accordance with §273.16(e)(5).

(iii) In all cases, a State agency shall act to protect households containing homeless persons, elderly or disabled members, victims of crimes and other vulnerable persons who may lose EBT cards but are not committing fraud.

(6) *Excessive Replacement Card Notice.* The State agency shall monitor all client requests for EBT card replacements and send a notice, upon the fourth request in a 12-month period, alerting the household that their account is being monitored for potential, suspicious activity. If another replacement card is subsequently requested and trafficking is suspected, the State agency shall refer that case to the State's fraud investigation unit.

(i) The State agency shall be exempt from sending the Excessive Replacement Card Notice if they have chosen to exercise the option to withhold the replacement card until contact is made with the State agency, in accordance with paragraph (b)(5) of this section, as long as the State agency has chosen to use the minimum threshold, which requires sending the first warning notice on the fourth card replacement request within 12 months. If the State agency chooses to use a threshold higher than the fourth card replacement request, the State agency must send the Excessive Replacement Card Notice on the fourth card request in accordance with this section.

(ii) The State agency shall notify the household in writing upon their fourth card request that their case is being monitored. This notice shall, at a minimum:

(A) Be written in clear and simple language;

(B) Meet the language requirements described at §272.4(b) of this chapter;

(C) Specify the number of cards requested and over what period of time;

(D) Explain that the transactions of the cardholder's account are being monitored for potential trafficking activity;

(E) Include a statement that explains what is considered a misuse or fraudulent use of benefits and the possibility of referral to the State's fraud investigation unit for suspicious activity.

(F) Provide contact information, including a telephone number, should the household have questions or concerns regarding the notice.

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