

Text to Connect



Legal + Policy considerations for using text
message outreach to reduce SNAP churn



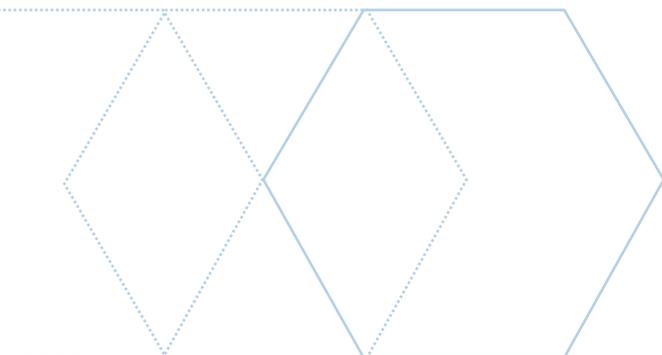
Legal + Policy considerations for using text message outreach to reduce SNAP churn

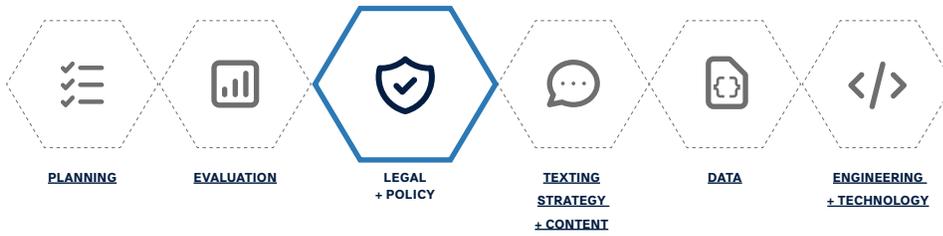
As with any social support strategy, it's imperative to consider legal and policy concerns, especially those that have to do with consent and personally identifiable information.

From a legal and policy standpoint, there are two main areas to consider as you design your program:

1. The legality of **sending** large volumes of text messages, especially when it comes to SMS compliance and rules.
2. **Sharing** client information, especially if a third party or vendor will receive client data in order to send messages.

If you are a lawyer or policy advisor, this guide is intended to provide a general overview of the national statutory and regulatory landscape governing these areas. Note that this does not constitute legal advice. Rather, we hope that this context will jumpstart your analysis so that you can focus on any requirements particular to your jurisdiction. Getting an early and comprehensive understanding of key legal and compliance requirements will ensure that your agency selects the right path forward for your text messaging program.





This guide is part of a series produced by the [Beek Center for Social Impact + Innovation at Georgetown University](#) and the [Benefits Data Trust](#), and is designed to help you implement a text messaging program to reduce SNAP churn. Click on any of the links in this graphic to see a different workflow. Access the entire [guidebook](#).



Inside this document you'll find legal considerations for:

- + [Sending text messages](#), including criteria, consent, and best practices
- + [Using and disclosing client SNAP data](#)



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 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-subchap1-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-sub-chap1-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 Guide](#).

The form is titled "Contact Information" and "Communication Preferences". It includes input fields for "Email Address" (example@email.com), "Mobile Number" ((215) 555-1234), and "Home Number Preference" ((215) 555-1234). Under "Communication Preferences", it asks "How would you like to hear from us?" with radio buttons for "Email", "Text", and "U.S. Mail". There are checkboxes for "Important case communications" and "Helpful information about benefits", both of which are checked. A small text box at the bottom states: "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 Communication Preferences Checkbox to Obtain Consent

The message text reads: "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?" Below this are radio buttons for "Yes" and "No", with "No" selected. At the bottom, it asks "What phone number would you like to use to receive notifications?" with a dropdown menu showing "(215) 555-1234".

+ Sample Consent Message with the Option to Opt-Out

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 Guide](#) 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:

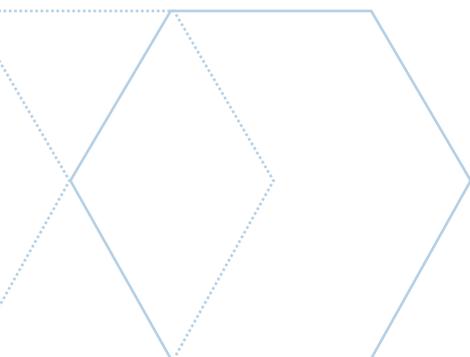
In addition to understanding federal requirements, some states and localities have introduced their own restrictions and compliance requirements on high volume text messaging activities. Reviewing what, if any, additional state- and local-level requirements there might be can help set the project up 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 Guide](#) 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 Guide](#)) 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. USDA Food and Nutrition Service: Outreach. <https://www.fns.usda.gov/snap/outreach>

About the Beeck Center for Social Impact + Innovation

The Beeck Center is an experiential hub at Georgetown University that trains students and incubates scalable, leading edge ideas for social change. We believe impact at scale requires the courage to think and behave differently. Our work centers on investing in outcomes for individuals and society. We equip future global leaders with the mindset to promote outcome-driven solutions, using the tools of design, data, technology, and innovation. We convene actors across the public, private, and civic sectors to advance new tools, frameworks, and approaches necessary to achieve these outcomes.

About Benefits Data Trust

Benefits Data Trust (BDT) is a national nonprofit organization based in Philadelphia that uses these modern approaches to support government agencies in transforming how their residents access the social safety net. In 2017, BDT began a SNAP recertification text messaging program in New York City, and now partners with several states to implement similar programs suited to their needs.

About This Guidebook

Together, the Beeck Center and BDT authored this guidebook to detail practices so more states and local agencies can use text messaging to reach the people they serve with important, timely, and easy to understand guidance so people don't lose their SNAP benefits when they need them most. While we focus on the use case of SNAP recertification, we hope this content might be useful for anyone using text messaging to improve safety net benefits delivery in other ways.

This guidebook is part of a larger initiative by the Beeck Center for Social Impact + Innovation at Georgetown University to document innovations in social safety net benefits delivery driven by human-centered service design, data-informed practices, and responsive technology with a goal of spreading proven practices more widely.

Please contact us with any thoughts, questions, or suggested additions to this guidebook. We can be reached via email at:

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