



## General Information System (GIS) Message

### Section 1

<b>Transmittal:</b>	23DC071 Upstate and New York City
<b>Date:</b>	October 13, 2023
<b>To:</b>	Subscribers
<b>Suggested Distribution:</b>	Commissioners, TA Directors, Staff Development Coordinators, Legal Staff
<b>From:</b>	Valerie Figueroa, Deputy Commissioner Employment and Income Support Programs
<b>Subject:</b>	Stewart v. Roberts: Second Opt-In Notice and Related Training & Procedures
<b>Effective Date:</b>	Immediately
<b>Contact Information:</b>	Temporary Assistance Bureau at 518-474-9344 or <a href="mailto:tabureau@otda.ny.gov">tabureau@otda.ny.gov</a>
<b>Attachments:</b>	<a href="#">Attachment 1: "Stewart Opt-In Second Notice"</a> <a href="#">Attachment 2: LDSS 5183: "Determination of Stewart Class Membership"</a>

### Section 2

The purpose of this General Information System (GIS) message is to inform social services districts (districts) that a "Stewart Opt-In Second Notice" has been mailed to all potential class members of the *Stewart v. Roberts* class action litigation. This GIS sets forth the process districts must follow to schedule interviews and identify class members, supplementing [21-INF-04-T](#). Additionally, this GIS contains information about a required training that district staff must attend if they are involved in the implementation of the requirements in *Stewart v. Roberts*.

Each district must maintain a log of potential class members who may have reached out to the district after receiving the "Stewart Opt-in Second Notice" that was mailed September 19, 2023, via phone and/or email pertaining to *Stewart v. Roberts* litigation. The log should include the date of contact, the potential class member's name, contact number of individual and brief summary of reason for call. This log will need to capture all calls received from September 19, 2023 until the district has completed the mandated Stewart training.

Districts must notify OTDA **immediately** if there have been any changes to your districts designated Stewart contact. In addition, districts must ensure that procedures are in place to confirm that all calls/emails are redirected to the new/appropriate designated Stewart contact. As a reminder, calls regarding *Stewart v Roberts* **must** be returned within **4 business days** by an individual who is knowledgeable about the *Stewart* litigation and who can schedule an interview.

Any potential class member who calls districts between September 19, 2023, and when mandated Stewart training occurred on October 11, 2023 (with a second training scheduled for October 19, 2023), must be re-evaluated for *Stewart* class membership, after the district has completed the training and policy guidance has been issued.

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### Section 3

In order to identify *Stewart v. Roberts* class members, OTDA and districts must administer an opt-in procedure. To comply with the court-ordered opt-in procedure, OTDA previously sent opt-in notices to all adults (age 18 and older) and minor heads-of-household, who were denied or discontinued Temporary Assistance (TA) due to excess resources, from July 20, 2015, through May 10, 2020. A second opt-in notice was mailed to all potential class members as identified above, including those who may have already had class membership determined. As is explained below, recipients of this notice are entitled to an interview, by the district, to determine if they are *Stewart v. Roberts* class members.

The opt-in notice informs potential class members that if their TA application was denied or TA case was discontinued due to ownership of a vehicle during the above-described period, they are entitled to an interview, which can be completed over the phone if the individual requests, or in person at any district, to determine if they are class members. Once a potential class member contacts the district, the district must schedule an interview **within 30 days from the date the potential class member contacts the district**. An interview for this purpose is not the same as a TA eligibility interview. Therefore, as previously mentioned, it may be completed over the telephone unless an individual specifically requests an in-person interview. The purpose of the interview will be to determine *Stewart v. Roberts* class membership, and all persons interviewed for this purpose must receive a **new** LDSS 5183: "Determination of Stewart Class Membership" as annexed hereto as Attachment 2.

Potential class members who respond to the second opt-in notice, including those who may have previously received an LDSS 5183, **must** be offered an opportunity to re-interview. The district must review the case to determine/re-determine class membership and provide a **new** LDSS 5183 advising the potential class member of the determination of class membership. If the potential class member requests to interview, the district cannot make a determination that they are not a class member until after the interview has been conducted. Potential class members who respond to the second opt-in notice who were previously determined to be a class member shall be advised that no further action need be taken.

Each district has identified a designated district contact person and phone number and must notify OTDA of any changes. This person must be familiar with *Stewart v. Roberts* requirements. In cases where the designated district number is not answered by a person but goes to a designated voicemail, the mailbox **must** have a message that identifies the *Stewart* case by name and provides an opportunity for the individual to leave a message. All voicemails/emails **must be returned within 4 business days** by a person who is knowledgeable about the *Stewart* case and has the ability to schedule an interview.

The return address of the opt-in notices will be the district in which the individual's TA was denied or discontinued. For opt-in notices that are returned to the district as undeliverable, the district **must, within 30 days** of the receipt of the undeliverable opt-in notice, undertake a manual review of those potential class members' case files to determine whether they are putative class members. For any putative class members identified in this manner, the district must make a note in their case file, and, if a new mailing address is identified (including by way of a new address identified on the returned mail), the district must send another opt-in notice **within fifteen business days** advising such individuals of their option to contact the district for an interview. The district must use the opt-in notice attached to this GIS as Attachment 1 and must include a district specific phone number and email address to be used for scheduling purposes, as this is a requirement of the court order.

## CLASS MEMBER IDENTIFICATION

Any potential class member who contacts the district must be given the opportunity to have an interview. The district must review the case file initially upon contact with the potential class member to determine whether the case file contains any relevant information as to whether the resource causing the denial or discontinuance of TA was a motor vehicle.

The scope of the interview and review are to be limited to the denial or discontinuance reason(s) listed within the notice. Only putative class members (those denied or discontinued for excess vehicle resources) who were otherwise eligible for TA for at least one month during the class certification period and whose vehicle had a loan, note, or other encumbrance on it which resulted in no equity or minimal equity value during that time period, will be considered class members. It is important for districts to remember that the analysis of class membership shall be based upon assets existing at the time of the denial or discontinuance, not upon currently existing assets. The district should not look beyond the denial or discontinuance reasons within the notice made between July 20, 2015 and May 10, 2020 and therefore also may not overturn any prior determinations of ineligibility for, or discontinuance of, public assistance.

The district must utilize any relevant information regarding indebtedness on the vehicle or any other relevant TA eligibility information that is already in the putative class member's TA, Supplemental Nutrition Assistance Program (SNAP), or Medicaid (MA) file(s) for purposes of promptly determining whether the individual is a class member. The district must accept as true, the information provided on the TA application that led to the denial that is the basis of the person being considered a potential class member assuming that information was previously verified pursuant to 18 NYCRR 351.5(a).

For example, the district reviews a TA case that had a denial notice stating that the only reason the individual was ineligible for TA was due to a motor vehicle. During the review, the district finds the individual should have also been denied due to excess resources from a bank account, however, the original notice did not state that the individual was also ineligible due to the bank account. Therefore, the district cannot deny class membership because of the bank account and must only review the motor vehicle information.

If the putative class member's TA, SNAP, or MA case record contains any evidence (including, but not limited to, references to debt or loan documents in any part of the case record, district case notes, applications, or recertification paperwork), that their vehicle was subject to a debt during the period of July 20, 2015 – May 10, 2020, the district must, prior to the interview, evaluate the equity value of the vehicle at the time of initial application, discontinuance, or period of overpayment. The equity value is determined by using the Kelly Blue Book FMV (which should have been documented in the case record at the time of the denial/discontinuance) and subtracting the amount owed on the vehicle.

This preliminary review is intended to help the district assess what further documentation they will need to discuss with, and request from, the putative class member during the interview. When the putative class member has their interview, the district must advise them of the type of documents that are still needed and which must be provided to show proof of indebtedness, including, but not limited to, loan documents on the vehicle that was the subject of the TA denial or discontinuance.

If a determination of eligibility as a class member is not possible using only the information already available in the case record, the district must provide the putative class member with the [LDSS-2642 Documentation Requirements](#) form or local equivalent and an explanation of the documents that must be submitted for an eligibility determination to be made. These documents include but are not limited to: any documents about the vehicle owned at the time of application, including copies of the title or registration; any documents which provide the VIN number of the vehicle at issue; any documents which provide information about any loans against said vehicles including but not limited to statements from a bank or finance company' statements. The district must give the individual **60 days** to submit such documentation, with the ability to request an extension for good cause. Please note, the district has a

duty to assist the putative class member in the gathering of such documents. In accordance with 18 NYCRR 351.5(a), districts are required to engage in a good faith effort to review Putative Class Member's case files before requesting information and will share information they have that is readily accessible and will help the Putative Class Members produce any requested additional information. Additionally, consistent with applicable regulations, districts must consider and make available to Putative Class Members, copies of documents in their files, which are relevant to a determination that the person is a class member.

Putative class members who *are not currently receiving TA and who wish to be interviewed for class membership* must receive an interview, even if they do not want to apply for TA. However, in order to obtain a corrective payment, the putative class member must currently be in receipt of TA. It is important to advise the class member that to obtain a corrective payment, they must have an active TA case.

When a putative class member is *not currently eligible for TA*, but was otherwise eligible for TA for at least one month within the class certification period, as indicated on the notice and is found to have had a loan, note or other encumbrance on the motor vehicle which results in the applicant or recipient having no equity or minimal equity in the vehicle, the individual shall be deemed a class member, and this information must be documented in the class members' case file in the event that the class member becomes eligible for TA in the future. Specifically, the period of eligibility and the amount of the corrective payment must be noted in the file. Such a class member is not immediately eligible for the corrective payment, but will be eligible for corrective payment in the event that the class member becomes eligible for TA in the future.

For putative class members who *are currently receiving TA*, were otherwise eligible for TA for at least one month within the class certification period, as indicated on the notice, and are found to have had a loan, note or other encumbrance on the motor vehicle which results in the applicant or recipient having no equity or minimal equity in the vehicle, the individual shall be deemed a class member and a corrective payment shall be issued. The payment process shall be provided in future guidance from OTDA.

The district must keep in mind:

- If the putative class member has previously verified necessary information which is not subject to change and the district possesses documentation of such verification in its files, the putative class member must not be required to resubmit verification of such information;
- When the putative class member has made reasonable efforts to obtain information from a third party, and the third party fails or refuses to provide the information or verification or seeks to impose a charge or fee for providing the information to the applicant/recipient (A/R), the district must pay such fee or must assist the A/R in obtaining the information or verification from the third party or by other means;
- Class counsel may be contacting the districts directly regarding an issue involving a Potential Class Member, but that districts still must follow all applicable confidential laws, rules, regulations, and policies, including but not limited to written client consent to share information. Class Counsel includes Empire Justice Center, National Center for Law and Economic Justice, and Legal Services of Central New York;
- That once an individual has been determined to be a class member, Class Counsel represents that individual. Notwithstanding the forgoing, districts shall have the right to request the class member's case number to verify that they are speaking with Class Counsel and/or terminate the call and initiate a telephone call back to Class Counsel and/or send a verifying e-mail to Class Counsel.
- When a potential class member is determined to not be a class member, the districts shall identify the reason(s) other than a vehicle resource, if any, that resulted in the denial on form LDSS-5183.

Districts must terminate any prior TA overpayments discovered during the usual course of business, including during the interview to determine class membership or review of the case record, when such overpayment(s) were or are based solely on a vehicle with a FMV over the vehicle resource limit in SSL § 131-n(1)(a), and there is evidence in the recipient's file that the recipient had minimal or no equity interest in the vehicle. Additional details regarding the treatment of these overpayments may be found in [20-ADM-08](#).

If the putative class member no longer resides in the district that issued the denial or discontinuance, they must be allowed to request that the interview take place in the district in which they currently reside, and the district of residence must act as a liaison to the district that issued the denial or discontinuance. Similar to how courtesy interviews are conducted for TA purposes, the where-found district (where the person is residing and requesting to have their interview) will be responsible for conducting the interview in these situations and communicating the contents of the interview with the responsible district. The district that issued the initial denial or discontinuance will be required to request further documentation from the individual as needed, document the case file as appropriate, issue the Determination of Class Membership notice, track the individual on their reporting requirements spreadsheet and perform all other responsibilities as outlined above.

The district must provide each potential or putative class member who had their status as a class member evaluated, as directed in this GIS and in [21-INF-04-T](#), with a new LDSS 5183 "Determination of Class Membership" notice, (Attachment 2) **within 30 days** of their interview or submission of requested documents (whichever is later), advising them of the determination.

## MANDATORY TRAINING

OTDA provided a **mandatory** training of the *Stewart vs. Roberts* requirements on **October 11, 2023**. At the training, procedures for implementation will be reviewed. Each district must send at least one staff member to this training but may register any staff members who are involved in the implementation of *Stewart v. Roberts*. Please contact your Staff Development Coordinator to sign up for the training. An additional training date has been scheduled for **October 19, 2023** for those staff who cannot attend on the first date or wish to be retrained. District staff are encouraged to take this training **as soon as possible**, in order to ensure the proper identification of *Stewart* class members who may be contacting the local district offices. The training will also be recorded and made available to districts to train staff as needed. Districts should also retain the written materials presented at all trainings so that they can present them to district workers that were absent at the initial training session and follow up training or were not in the employ of the district at the time of the training.

## REPORTING REQUIREMENTS

Districts must continue to meet the reporting requirements as outlined in 21-INF-04-T. However, it should be noted that the reporting requirements have been extended and districts should continue to provide quarterly reports through November 2025.

OTDA will be issuing additional guidance pertaining to *Stewart vs. Roberts* implementation in the future.