



June 11, 2012

**From:** Center for Law and Social Policy (CLASP)  
**To:** Department of Health and Human Services, Administration for Children and Families,  
Office of Family Assistance  
**Re:** TANF Assistance and Electronic Benefit Transactions

Thank you for the opportunity to submit these comments in response to the Department's request for input (published April 25, 2012 at 77 Federal Register 24667) on the implementation of Section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012.

CLASP seeks to improve the lives of low-income people. We develop and advocate for federal, state and local policies to strengthen families and create pathways to education and work. Through careful research and analysis and effective advocacy, CLASP develops and promotes new ideas, mobilizes others, and directly assists governments and advocates to put in place successful strategies that deliver results that matter to people across America. We are nonpartisan and situated at the intersection of local practice, national research, and state and federal policy.

Because there is a fiscal penalty attached to the requirements of Section 4004, HHS has clear authority to regulate in this area. CLASP recommends that HHS consider the following broad principles as it prepares regulations:

- As much as possible, regulations should minimize the burden upon states of implementing these requirements. In the context of a fixed block grant and demand for services that far exceeds the available funding, resources devoted to enforcing restrictions on TANF EBT access as resources that are taken away from other services for needy families. Moreover, given the statutory language that provides that states should not be subject to penalty for individual violations, HHS should make clear that states are not expected to devote to enforcement the resources needed to achieve 100 percent compliance.
- HHS should make clear that the blocking requirement only applies to funds that are placed onto a state provided EBT card. It does not apply to the use of a debit card to access funds from a bank account that originated as TANF benefits (through a check, direct deposit, or by a client withdrawing funds from EBT and placing them in the bank). The blocking requirement also does not apply to TANF non-assistance (including short-term non-recurrent payments and wages for subsidized employment), to benefits under solely state funded programs claimed as MOE, to child support payments distributed to recipients, or other non-TANF benefit programs.

- By including the state plan language about ensuring client access to TANF benefits (including low-cost or free access) in this section, Congress recognized that EBT blocking may have adverse impacts on access or cost. HHS should explicitly permit states to make exceptions to EBT blocking in areas where benefits can not readily be accessed except in restricted locations.
- There is significant variation across states in the fees that EBT vendors and ATM/POS owners may charge to clients for accessing their TANF benefits. These policies should be clearly disclosed to clients and described in the state plan, and states should make public information about the total fees collected. HHS should share best practices in this area with the states, along the lines of the Department of Labor's Unemployment Insurance Program Letter 34-09, available at <http://wdr.doleta.gov/directives/attach/UIPL/UIPL34-09.pdf>
- HHS should encourage states to implement the requirements of section 4004 in a way that minimizes the burden on clients to understand and comply with the restrictions, and that does not put cash register operators in a position of monitoring compliance.

### **Implementing EBT Restrictions (Question 3)**

We are aware of three different broad approaches that states have taken to restricting access to or use of TANF cash assistance at certain locations. These approaches are EBT blocking through a central database, mandating affected businesses to set their ATMs or POS devices to block EBT access, and imposing penalties on clients for accessing funds in the specified locations. These approaches are not entirely distinct, and several states have adopted policies that combine two or all three approaches.

#### Centralized blocking

**California** is the prime example of a state that has blocked recipients' ability to use TANF EBT cards at a list of ATMs and POS devices developed by the state's EBT contractor based on the state's criteria. Because the type of business where an ATM or POS device is located is not stored in a central database, the contractor must manually review each location and make an assessment of whether it is among the prohibited businesses based on the name of the establishment. (California's restrictions go beyond the requirements of section 4004 and include casinos, adult entertainment businesses, smoke shops, tattoo and piercing parlors, nightclubs, taverns and bars, liquor stores, cannabis shops, bingo halls, racetracks, smoke shops, spa and massage salons, two cruise ships, and a gun dealership.) The specified ATMs and POS devices are then blocked from the system. There is a process for the business owner to appeal this decision if a mistake is made in identifying the location, or if an ATM or POS device is moved to a new location. California law establishes the right of TANF recipients to have reasonable access to cash benefits and therefore, the state was also required to consider any barriers that resulted from the EBT blocking. Our understanding is that this policy has in fact resulted in some ATMs being unblocked.

### Retailer blocking

**Washington** State is an example of the second approach, mandating the specified businesses to block EBT access at the ATMs and POS devices in their premises. To the extent that these businesses are licensed by a state agency, that agency is required to make enforcement of this provision a condition of the license, and it must be revoked immediately upon discovery of violations. Washington's rule applies to taverns, beer/wine specialty stores, liquor stores, nightclubs, bail bond agencies, gambling establishments, tattoo, piercing or body art shops, adult entertainment venues, and any establishments where persons under the age of eighteen are not permitted.

**Colorado** also attempts to restrict access to ATMs in casinos, bingo halls, liquor stores, bars and pubs, and is working with its EBT contractor to get these businesses to do so on a voluntary basis. It reports close to universal compliance by casinos, but lower rates of cooperation by the other types of entities.

### Client prohibitions or use bans

A number of states have passed laws that place the onus on clients to avoid restricted locations. We know of such policies in **Colorado, Indiana, Kansas, Massachusetts, Minnesota, Pennsylvania** and **Washington**, but this is not a comprehensive list. In some states, including **Massachusetts** and **Washington**, this goes beyond restricting access at certain locations to prohibiting use of funds received under TANF for purchasing alcohol, even if the EBT card is not used. The penalty for accessing or using TANF funds in contradiction to these restrictions ranges from having to pay back the amount of funds misused, to denial of benefits, to fraud charges.

We have deep concerns about this approach for several reasons. First, it is difficult to imagine how a use ban could be systematically enforced in a non-stigmatizing and non-discriminatory manner. Given the limits on state resources, these bans are likely to be enforced only sporadically. However, states will be expected to respond to media stories and individual reports of violations. It is highly likely that cash register operators and even other customers will attempt to monitor whether customers who fit their preconceptions of what a welfare recipient looks like are using EBT cards in banned locations, while not imposing similar scrutiny on others.

Second, it puts the burden on the individual client both to remember the details of the access restriction and to make an assessment of whether a particular establishment falls under the restricted categories. States that have implemented such laws typically provide applicants a notice of the restrictions; however, multiple implementation studies have found that application processes can overwhelm clients with paperwork and information at a period when they are under high stress, and that important information is often not retained. Clients are at significant risk of being sanctioned — or even charged with criminal fraud — for an inadvertent error.

For this reason, HHS should consider issuing regulations that require states to adopt one of the forms of EBT blocking discussed above in order to meet the requirements of section 4004. If

HHS does not do so, at a minimum, HHS should require states that propose to meet the requirements of section 4004 through a use ban to provide explanations of:

- How the state will enforce the use ban, and what data it will examine to measure the effectiveness of the ban;
- How the state will ensure that it is implemented in a non-discriminatory manner that does not single out some groups of recipients for higher enforcement than others; and
- How clients will be informed and reminded of the use ban. (One promising approach in this area is the **Indiana** provision that requires ATM and POS owners in prohibited locations to post a notice next to each machine stating that clients may not access TANF funds.)

Moreover, HHS should share with states guidance on best practices for implementing such provisions in a manner that minimizes the stigma and does not require store employees to identify TANF recipients.

### **Access Fees or Charges (Questions 6, 7 and 8)**

For this purpose, it is helpful to distinguish between two types of charges that TANF recipients may experience — transaction fees and surcharges.

“Transaction fees” are charged to the client by the vendor that operates the EBT system, and are set under the contract between the state and the vendor. In the spring of 2012, CLASP staff reviewed state websites to try to identify the transaction fees that states charge recipients. We found 31 states where this information was readily available to on the website. We learned that the contracts typically allow recipients one or more ATM withdrawals per month without a transaction fee. The most common number of free withdrawals per month in these states is two, but some states allow as many as 4 or 5 before fees are charged. However, we identified five states (Louisiana, New Mexico, Ohio, Oregon and Washington) in which clients are charged a transaction fee starting with the first withdrawal per month. When fees are charged, they range from \$0.40 per transaction (in Kansas and New Jersey) to \$1.75 per transaction.

Most states did not post to their websites information about the fees that clients are charged for checking their account balance at an ATM. In the states that did report this information, the policies varied, with some states allowing an unlimited number of free balance inquiries, while others charged from the first inquiry.

In states where EBT vendors do not charge transaction fees to clients, the state typically pays more to the vendor, either as a flat rate, a per client fee, or a per-transaction charge. It is important to recognize that in either case, the vendor is paid for its services; the question is whether the funding comes out of individual clients’ grants or out of the state’s TANF block grant.

The second category of charges, “surcharges,” are charged to clients by the owner of the ATM or POS device. These fees are not fixed statewide, but vary from site to site. Not all state websites had information about surcharges, but most indicated that surcharge-free withdrawals could be made at ATMs owned by the EBT vendor, or by its partners. In a few cases, the state website included a listing of surcharge free ATMs, or a link to a website where such ATMs could be located.

One notable state policy is that of Illinois, which has a statutory prohibition on charging of surcharges on Illinois Link transactions at ATM or POS devices within the state.<sup>1</sup> Such surcharges may be charged by non-Illinois based ATMs or POS devices. California prohibits ATM or POS owners from charging higher surcharges on TANF transactions than on bank transactions.

In many stores, it is possible to withdraw funds without surcharge by using a POS device to make a purchase and receiving cash back. However, many stores place low limits on the amount of cash that can be withdrawn in this way, which may make it an impractical solution for withdrawing funds for major expenses such as rent.

Putting both types of fees together, in most, but not all of the states that provided information on the internet, it is possible to access benefits without any fees or charges by BOTH limiting the number of withdrawals to below the threshold for transaction fees, and by selecting an ATM or POS device that is owned by the EBT vendor or its partner and therefore does not charge a surcharge.

As noted above, we were able to locate information online about the fees and surcharges imposed on TANF recipients in only 31 states. This research was conducted by a graduate student with levels of literacy and computer skill significantly above the average adult receiving cash assistance under TANF.

### **Reducing the costs of accessing TANF benefits (Question 9)**

HHS should state that in order to meet the new state plan requirement at 402(a)(1)(A)(viii) to provide clients with low cost access to their funds “including an opportunity to access assistance with no fee or charges,” states must provide clients with at least one opportunity per month (or per deposit, if deposits are made more frequently than monthly) to access their funds without a transaction fee. This is consistent with the requirements under Unemployment Compensation. HHS should encourage states to negotiate contracts with their EBT vendor to allow two or more fee-free transactions per month, as most states already do. Clients should also be able to check their balances via a phone system or ATM without incurring fees.

States should also provide to recipients at application and recertification, and post on their websites, a clear and readable (at no more than a 6th grade reading level) explanation of the fees that are charged for use of the EBT card, and how to locate a surcharge-free ATM. A wallet

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<sup>1</sup> <http://www.ilga.gov/legislation/publicacts/fulltext.asp?name=093-0583> See also <http://www.dhs.state.il.us/page.aspx?item=35541>

sized card mailed or given with the initial EBT card may be the most helpful way to do this, as it can be conveniently stored with the EBT card, but updated information should also be available at benefit offices, online, and by telephone.

In addition, HHS should encourage states to adopt the following practices and policies to ensure that they have secured meaningful, free access and reduce the overall fees and surcharges paid by TANF recipients.

- **Allow and encourage direct deposit:** Allow clients to opt to have TANF grants direct deposited into the bank account of their choice rather than provided through EBT cards. This option should be operationalized by online, by phone or in person processes that allow the applicant or recipient to elect to opt in or opt out at any time during the application or afterward. State should partner with banks to encourage them to provide low-fee bank accounts to TANF clients who have their benefits direct deposited.
- **Guarantee surcharge free transactions:** States must secure meaningful access to at least one surcharge free transaction. The regulations should make that clear and offer states options as to how to achieve this goal.
  - **Provide clear and readily accessible means of locating surcharge free ATMs .** While online ATM locators are helpful for some clients, they are not sufficient. Clients should be able to request written lists of surcharge free-ATMs by zipcode, and to use automated phone or text-back systems to locate surcharge-free ATMs.
  - **Impose limits on the surcharges** that ATM owners may charge TANF recipients for accessing their funds from EBT cards.
  - **Subsidize surcharges:** By subsidizing the surcharge of one withdrawal per grant month, states can achieve meaningful access to surcharge free withdrawal of TANF benefits.
  - **Require notice of fees and surcharges.** States should require ATMs and POS devices that can be used to access TANF EBT cards to display information about the fees and surcharges that will be imposed, and allow clients to cancel a transaction without being charged.
- **Monitor EBT fees & surcharges:** States should monitor EBT fees and surcharges paid by TANF recipients and make this information publically available at least annually. The state plan section describing how the state will ensure access should include a statement of how this information will be made available to the public.
- **Consider both cost and access in negotiating contracts.** States should take this information into account when they select EBT vendors. A vendor who charges the state a low fee may turn out to be the higher cost option when client fees are taken into account as well. And a low-fee vendor may turn out to be no bargain if it does not provide access to a sufficient network of surcharge-free ATMs in the areas where TANF clients live and



work. TANF recipients who live in very rural areas or high poverty communities with limited access to banking institutions may be disproportionately impacted by selection of a vendor with an inadequate network of surcharge-free ATMs.

- **Share information about cost and fee structure.** States should include information about the fee schedule in their state plans. In addition to the general principal of maximizing transparency in the use of public funds, such disclosures have the potential to strengthen states' negotiating position with respect to the EBT vendors. When the National Consumer Law Center published a report containing detailed information about the costs imposed on users of prepaid cards for unemployment compensation, several states with above average fees were able to renegotiate their contracts to reduce the fees to be more in line with other states.

### **Access barriers from EBT blocking (Question 10)**

We are concerned that the new restrictions could reduce options for TANF recipients and exacerbate two types of access barriers that are already plaguing TANF recipients: geographic access barriers and cost access barriers

- In some cases, the restricted location may literally be the only ATM for many miles. A Western Center on Law and Poverty analysis of the California casinos where TANF benefits were withdrawn (prior to the implementation of California's EBT blocking policy) found that they were overwhelmingly in rural locations with very limited options for accessing funds.
- In other cases, the restricted location may be the lowest cost option for withdrawing funds, particularly in states that have contracted their EBT services to a vendor that is not a bank with branch locations. Blocking access to these locations may force clients to use higher cost alternatives.

To address these concerns, we believe that HHS should explicitly allow states a good cause exemption from the section 4004 requirements, where states would not be considered to be in violation of these requirements when they have excluded specific locations from blocking due to access concerns. This is similar to California's current practice, but would go further, as it would address cost access in addition to geographic access.

Such an approach would be similar to the Family Violence Option, where states are not penalized for failures to meet the work participation rates or impose time limits when they have provided clients with a FVO exemption. However, we believe that it would be best for these exemptions to be taken into account as part of the initial determination of whether states are complying with this requirement, not just as part of penalty relief. In order to qualify for this exemption, states would have to describe in their state plans the process for identifying locations to exclude from blocking, based on client requests and/or analysis of withdrawal patterns.

Thank you for your consideration of these comments.

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