



April 30, 2014

Robert Shelbourne  
Office of Family Assistance  
Administration for Children and Families  
370 L'Enfant Promenade SW, 5<sup>th</sup> Fl. East  
Washington, DC 20024

Re: Docket #ACF\_FRDOC\_0001-0045  
NPRM on State Reporting on Policies and Practices to Prevent Use of TANF Funds in  
EBT Transactions in Specified Locations.

Dear Mr. Shelbourne:

The Center for Law and Social Policy (CLASP) submits these comments pursuant to the Notice of Proposed Rulemaking that was published at 79 Fed. Reg. 7127 et seq., February 6, 2014. The proposed rule implements the TANF EBT location restrictions from Section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012 by amending penalty provisions at 45 CFR 262.1-3 and definitions of accountability provisions at 45 CFR 264.0 and also adding two new sections at 45 CFR 264.60 and .61.

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, and striving to translate each world to each other.

Our comments on this regulation are guided by three general principles. First, while we agree that the penalty provision gives the Administration for Children and Families (ACF) the statutory authority to regulate on these restrictions, given the overall TANF framework of state control, we believe that ACF should not use this authority to restrict state flexibility without compelling reason. Second, we believe that ACF should bear in mind the overall goals of TANF, as enumerated in both statute and existing regulations. To the extent that there is ambiguity in the statutory language, ACF should make reasonable choices that help promote employment and economic self-sufficiency for recipients of TANF assistance. And finally, based on the statutory history, we believe that these provisions are intended to bolster public confidence in program integrity and stewardship of public funds. Restrictions that cannot meaningfully be enforced do not advance this goal, and may in fact undermine it.

Specifically, we offer the following comments:

- 1) We strongly support of ACF's overall approach of giving states flexibility in determining the appropriate "policies and procedures" to implement to prohibit benefit access in the specified locations. There is no evidence that suggests that one approach to restricting access is superior to another. Moreover, as the technology involved is in a state of rapid transition, new approaches that are not currently known may become available over time.
- 2) We have no concerns with the regulatory definitions for the three types of prohibited locations, which are largely drawn from the statutory language. We believe that these accurately describe the types of locations where Congress intended to restrict access, and provide states with sufficient clarity to implement these provisions.
- 3) ACF incorporates into the regulation the statutory requirement that states report annually on their policies and procedures, and specifies that these reports must address four elements: identifying locations, methods to prevent use of TANF assistance via EBT transactions in restricted locations, monitoring, and enforcement of compliance. We support this framework, and note that it is important that state's policies must include steps that are reasonably designed to prevent access at restricted locations, and do not mere punish recipients retroactively for improper transactions.
- 4) In the preamble, ACF requests input on the question of "whether states and banks have, or reasonably could have, the capacity to apply the EBT transaction restrictions to assistance funds deposited in private bank accounts and to monitor whether recipients use such funds in a prohibited manner." We believe that states and banks do not have such capacity, and that such a requirement would be impossible to implement. The same concern applies to states that allow recipients to direct deposit TANF assistance payments onto a third-party payment card, such as those offered by banks, merchants and payroll processors, and increasingly used as a banking alternative by low-income and underbanked populations.

The only way that states could conceivably implement such a requirement is by not allowing recipients to have their benefits paid by direct deposit. We are already aware of one state that has stopped allowing direct deposit of TANF payments in the past year, apparently in response to these provisions.<sup>1</sup> Even then, a state still could not prevent recipients from withdrawing their funds through an EBT transaction at an allowable location, depositing them in a bank account, and then later accessing these funds at a prohibited location. We believe that Congress did not intend to require states to apply restrictions in such cases, nor to restrict client access to funds deposited in bank accounts or on third-party payment cards.

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<sup>1</sup> Arizona discontinued direct deposit of TANF benefits effective May 1, 2013. See [https://extranet.azdes.gov/faapolicymanual/FAA6/baggage/FB%2013-13%20\(03-08-13\)%20-%20CA%20Direct%20Deposit%20Option%20Discontinued.pdf](https://extranet.azdes.gov/faapolicymanual/FAA6/baggage/FB%2013-13%20(03-08-13)%20-%20CA%20Direct%20Deposit%20Option%20Discontinued.pdf).

Discontinuing direct deposit as an option for TANF recipients would be an unintended consequence of Section 4004, and would be directly in conflict with the broader TANF goals of promoting work and self-sufficiency. Most banks waive fees on deposit accounts if customers have regular payments directly deposited, and banks may even refuse to allow some customers to open accounts without direct deposit. Bank accounts allow customers to avoid unnecessary fees for accessing benefits and paying bills, promote savings, and permit clients to build a credit history. Credit scores are increasingly used by employers as a means of screening job applicants. ACF should be encouraging states to provide benefits through direct deposit, not discouraging it.

- 5) ACF similarly asks for input on the question of whether the statute was intended to apply to internet transactions. It is our understanding that Electronic Benefit Transfer (EBT) cards cannot currently be used for online transactions; however, the Electronic Payment Card (EPC) systems used by some states do allow for such transactions. Access to online shopping may be very helpful for some clients, especially those with mobility limitations, or residing in areas with few low-cost shopping options.

We do not object in principle to extending the Section 4004 restrictions to the online equivalents of the restricted locations, but strongly agree with ACF's suggestion that there may be "significant practical issues" in attempting to enforce such a restriction. We believe that ACF should not so extend the requirement in the absence of a clear statement from states currently providing benefits via EPC that such restrictions are feasible and enforceable.

- 6) ACF should require, by regulation, that states post their annual reports regarding their policies and practices on the internet, and should compile on the ACF website a list of links to these reports. There is no reason this information should not be publicly available. Our initial review of state plan amendments reflecting the section 4004 requirement finds that many states have simply added a statement to their plan attesting that they will develop policies and practices to implement this requirement.
- 7) We strongly agree with ACF's statement that information sharing among states about the effectiveness of policies and practices will be helpful as states consider adjustments to their procedures over time. We would suggest that ACF should also encourage states to share information about the costs of different approaches.

Thank you for your consideration.

If you have any questions regarding these comments, please contact:

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