



Notice of Proposed Rulemaking (NPRM)

Temporary Assistance for Needy Families (TANF) Program, State Reporting On Policies and Practices to Prevent Use of TANF Funds in Electronic Benefit Transfer Transactions in Specified Locations



February 19, 2014

**Administration for Children and Families
U.S. Department of Health and Human Services**

WEBINAR OVERVIEW

- Notice of Proposed Rulemaking
- Summary of Legislation and Requirements
- Proposed Definitions
- Proposed Acceptable Policies and Practices to be in Compliance
- Proposed Elements of a Complete Report
- Penalty
- Next Steps

KEEP IN MIND...

- Proposed rules not in effect.
 - States must submit reports on the policies they have implemented as per section 408(a)(12) of Social Security Act based on their reasonable interpretation of the statute by **February 22, 2014.**
 - Submit reports to tanfebtreports@acf.hhs.gov
 - Review Q&As and TANF-ACF-PI-2013-03 on OFA website, contact Federal staff in Region for additional guidance.
 - Reminder of penalty triggers:
 - if state does not report on time
 - if the information in the state's report does not indicate that the state has implemented the required policies and practices
 - if the state describes policies and practices that do not reflect a reasonable interpretation of the statutory language
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NPRM

- Published in the Federal Register on February 6, 2014
- Available at:
 - Federal Register: <https://federalregister.gov/a/2014-02402>
 - OFA's Website under "News" section of Homepage
 - Regulations.gov, Doc ID#: ACF_FRDOC_0001-0045
- Comments
 - Deadline: May 7, 2014.
 - Submit comments, identified by docket number, by :
 - Federal eRulemaking Portal: <http://www.regulations.gov> (strongly recommended)
 - Mail: Office of Family Assistance, Administration for Children and Families, 5th Floor East, 370 L'Enfant Promenade, SW., Washington, DC 20024, Attention: Robert Shelbourne
 - Hand Delivery / Courier: OFA/ACF, 5th Floor East, 901 D Street, SW., Washington, DC 20251

SUMMARY

- Middle Class Tax Relief and Job Creation Act of 2012 (P.L. 112-96) enacted on February 22, 2012

- Requires states receiving TANF grants to maintain policies and practices as necessary to prevent assistance provided under the program from being used in any electronic benefit transfer transaction in:
 - any liquor store;
 - any casino, gambling casino, or gaming establishment; or
 - any retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.

SUMMARY, CONT'D

■ Reporting Requirement:

- Each state is required to report to the Secretary by February 22, 2014, and annually thereafter, on its implementation of policies and practices.

■ Penalty:

- ACF is required to reduce a state's block grant if the state fails to comply with the deadline of the reporting requirement or if, based on the information that the state reports, ACF finds that the state has not implemented and maintained the required policies and practices.

■ Regulatory Authority:

- The statute at 42 U.S.C. 617 limits the authority of the Federal government to regulate state conduct or enforce the TANF provisions of the Social Security Act, except as expressly provided → allows us to regulate where Congress has charged ACF with enforcing certain TANF provisions by assessing penalties.
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DEFINITIONS

45 CFR 264.0

“Electronic Benefit Transfer Transaction”

- Statutory definition: “the use of a credit or debit card service at an automated teller machine, point-of-sales terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or service.”
- Broad
 - Includes Electronic Benefit Transfer cards and Electronic Payment Cards
 - Direct deposits into recipients’ private bank account → Invite Comments

DEFINITIONS, CONT'D

“Liquor Store”

- Statutory definition: “any retail establishment which sells exclusively or primarily intoxicating liquor, and does not include a grocery store which sells both intoxicating liquor and groceries including staple foods.”

DEFINITIONS, CONT'D

“Casino, Gambling Casino, or Gaming Establishment”

- Statute provides exclusions; term does not include:
 - grocery store which also offers gaming activities (e.g., lottery), or is located within the same building or complex as casino, gambling or gaming activities
 - other establishments where such activities are incidental to the principal purpose of the business.
- Proposed definition: “an establishment with a primary purpose of accommodating the wagering of money.”

DEFINITIONS, CONT'D

“Retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state to entertainment.”

- Statute is silent on definition
- Proposed definition: “such an establishment that prohibits the entrance of minors under the age specified by state law.”
- For example, excludes a theater or cinema whose primary purpose is not to provide adult-oriented entertainment, but may, for feature a movie or show where performers disrobe

POLICIES AND PRACTICES

45 CFR 264.60

- Goals of new requirements
 - ensure that cash assistance is used in a manner consistent with the purposes of TANF.
 - promote the integrity of the program and the responsible stewardship of public funds.
- ACF will accept any reasonable approaches that further these goals and comply with the statutory and regulatory requirements.
- State flexibility in determining appropriate policies and practices to prevent the use of TANF assistance in electronic benefit transfer transactions at specified locations.
- Ensure reasonable access to cash assistance, as directed by Congress.

ELEMENTS OF A COMPLETE REPORT

1. Initial and on-going process for identifying the establishments in state that are subject to the requirements
2. Approaches implemented by state that aim to prevent a recipient from accessing or using his or her TANF assistance in EBT transactions at locations identified
3. Monitoring activities
4. Enforcing compliance

(No standard form or format)

IDENTIFYING LOCATIONS

- Acknowledge challenges
 - Encourage states to explore an array of approaches aimed at identifying locations subject to restrictions
 - Examples (depending on actual policies and practices implemented):
 - reviewing transaction records for keywords
 - conducting Internet searches
 - other forms of searches as appropriate and feasible (e.g., visiting establishments)
 - collaborating with state licensing agencies, such as a state's gaming commission or state liquor authority to obtain a list of all establishments with a liquor license
 - Identify on-going procedures for identifying new establishments to which the state's requirements apply
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IDENTIFYING LOCATIONS, CONT'D

■ Sovereign Tribal Lands

- Requirements in P.L. 112-96 do not apply to tribal TANF programs
- States have responsibility to develop appropriate policies for preventing access to TANF cash assistance provided by state programs at prohibited location, including those that are located on sovereign tribal land.
- We encourage states to work with tribes to try to prevent state TANF assistance use at the prohibited locations located on sovereign tribal land.

IDENTIFYING LOCATIONS, CONT'D

■ Internet Transactions

- Statutory definition of “electronic benefit transfer transaction” refers to “access to an online system for the withdrawal of funds or the processing of a payment for merchandise or a service” in the establishments identified in the statute.
- Suggestion: that the statute is only intended to apply to transactions occurring in the specified establishments and not to internet transactions.
- Balance overall goals of the legislative provision and feasibility of enforcing restrictions on internet transactions.
- Invite comments on whether the restrictions should extend to internet transactions, and if so, what mechanisms might be available to states to enforce such restrictions.

INTERACTION WITH STATE PLAN REQUIREMENTS

- State plan requirement at section 402(a)(1)(A)(vii) of Social Security Act to outline “plan to ensure that recipients of the assistance have adequate access to their cash assistance.”
- However, proposed regulations do not allow states the flexibility to avoid imposing a restriction at an ATM or POS terminal even if such a restriction would limit the ability of recipients in a geographic area to access their cash assistance.
- State plan requirement conveys a responsibility for states to take corrective actions to increase locations where TANF recipients may access their cash assistance if they find that there is an insufficient number of access points in a geographic area.
- As they develop plans to ensure adequate access to cash assistance, states must be sure to consider whether there is an adequate number of locations where recipients may obtain cash assistance at a minimal cost *and* at no cost, in accordance with section 402(a)(1)(A)(viii) of Social Security Act.

PREVENTING USE OF TANF ASSISTANCE VIA EBT TRANSACTIONS

- Electronic or Automated Prevention Measures, e.g.:
 - Reprogram ATMs and POS terminals so that they deny TANF EBT or EPC transactions in specified locations by blocking bank identification numbers (BINs) associated with TANF benefit cards.
 - Regarding EPC, one commenter explained that “transaction servicers could block transactions by matching the terminal ID of the incoming transaction against a list of prohibited terminal IDs/locations provided by the State.”
 - Approaches that do not require electronic blocking of ATMs or POS terminals, e.g.:
 - Communicate to recipients and/or establishments that recipients are not permitted to access their TANF benefits via EBT transactions at the specified locations and enforce compliance with appropriate penalties for violations.
 - Require merchants to post signs next to terminals to inform TANF recipients of the restrictions.
 - Provide a list of restricted establishments to recipients, which should be updated on a regular basis.
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MONITORING ACTIVITIES

- Necessary to evaluate effectiveness of policies and practices, and take steps to enforce compliance.

- Examples:
 - Auditing a certain percentage of recipients' transaction records to determine compliance by individuals and businesses

 - Reviewing monthly ATM activity reports, matching them against a list of terminal IDs or addresses of restricted locations, to determine whether the owners and processors complied with the request to reprogram ATMs (if required)

 - Random site visits to establishments that are subject to the requirements, e.g., to verify whether signs are posted (if required)

ENFORCING COMPLIANCE

- Necessary for taking corrective actions.

 - Examples:
 - Penalties or notices for the parties responsible for ensuring that ATMs and POS terminals are reprogrammed (e.g., merchants, ATM owners or third-party processors) if they do not block transactions with state EBT or EPC cards from being processed at relevant ATMs and POS terminals.

 - Impose penalties on, or provide notice to, merchants who do not post signs informing TANF recipients that they cannot use their EBT cards or EPC to purchase goods at that establishment or access funds at an ATM located on the premises.

 - If authorized by state law, the state could impose financial penalties in relation to entities that are subject to state licensing requirements.

 - Sanction or penalty on a recipient who is found to have used his or her EBT or EPC card at a prohibited location (subject to applicable appeals procedures needed to meet due process requirements).

 - Assigning a protective payee.
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OTHER USEFUL INFORMATION

- We encourage states to share any information they develop concerning the effectiveness of policies and enforcement practices (e.g., data related to the incidence of the use of TANF assistance via EBT transactions in restricted locations), whether the state was able to achieve desired outcomes, and any potential plans to modify policies in order to address challenges or improve effectiveness.

PENALTY

45 CFR 262.1-3 and 264.61

- Failure to report by February 22, 2014, and annually thereafter, on the state's implementation of policies and practices in accordance with section 408(a)(12) of the Act OR failure to demonstrate that it has implemented and maintained such policies and practices
 - Combined penalty will not exceed five percent of its adjusted SFAG
- Reports should address the following four areas: identifying locations; methods to prevent use of TANF assistance via EBT transactions in restricted locations; monitoring; and enforcement of compliance.

PENALTY, CONT'D

- Imposed for FY 2014 and each succeeding fiscal year
- In accordance with 45 CFR Part 262
 - Option to appeal, submit reasonable cause justification, or enter into corrective compliance.
- HHS has the discretion to reduce the penalty amount based on the degree of noncompliance of the state (Sec. 409(a)(16)(C) of the Act, as amended by Sec. 4004(b) of P.L. 112-96)
- “Fraudulent activity by any individual in an attempt to circumvent the policies and practices required by Sec. 408(a)(12) shall not trigger a state penalty under subparagraph (A)” (Sec. 409(a)(16)(C) of the Act, as amended by Sec. 4004(b) of P.L. 112-96)

NEXT STEPS: REPORTS

- Proposed rules not in effect.
- States must submit reports on the policies they have implemented as per section 408(a)(12) of Social Security Act based on their reasonable interpretation of the statute by February 22, 2014.
 - Submit reports to tanfebtreports@acf.hhs.gov
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NEXT STEPS: NPRM

- After the comment period, ACF will evaluate proposed rules based on comments received, then publish a Final Rule.
- Once a Final Rule is published, we will inform states that they will need to review their policies and practices to determine whether they comply with Federal regulations, and make any changes as necessary.

FEDERAL CONTACTS

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