

Comments of National Consumer Law Center  
on behalf of its low income clients  
to  
Department Of Health and Human Services  
Administration for Children and Families  
45 CFR Parts 262 and 265  
TANF Assistance and Electronic Benefit Transfer Transactions;  
77 Fed. Reg. 24667 (April 25, 2012)

June 8, 2012

Thank you for the opportunity to submit these comments in response to the Department's request for means to ensure that recipients of Temporary Aid to Needy Families (TANF) have access to cash assistance with minimal fees or charges.

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other vulnerable people in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services; and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness. NCLC publishes a series of consumer law treatises, including *Consumer Banking and Payments Law*. These comments are submitted on behalf of our low income clients.<sup>1</sup>

We applaud the Department for undertaking this initiative to ensure that TANF recipients have adequate access to their cash assistance and can access that assistance without fees or charges. The imposition of fees for accessing TANF and other benefits is an important issue on which we have focused for a number of years. In late 2010 we surveyed the fees charged on Electronic Benefit Transaction (EBT) cards used to pay TANF and other cash benefits.<sup>2</sup> In addition, in 2011 we conducted a more extensive survey on a related issue, the fees charged in the 40 states that use prepaid cards to pay unemployment compensation. Our treatise *Consumer Banking and Payments Law* includes extensive discussions of EBT cards, the use of prepaid cards to pay public benefits, and the law governing these payment mechanisms.

Based on our experience with prepaid and EBT cards, we offer the following recommendations for ensuring adequate cash access and minimizing fees on benefits recipients:

1. Permit direct deposit to the recipient's own account as the first choice.

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<sup>1</sup> These comments were written by Lauren Saunders, Managing Attorney of NCLC's Washington, DC Office.

<sup>2</sup> See National Consumer Law Center, *Consumer Banking and Payments Law* § 8.6.2.1 ( Supp. 2011).

2. Require sufficient free ATM withdrawals, wide ATM networks and protections for recipients in rural or remote locations.
3. Facilitate finding free ATMs and publicize cash access options.
4. Limit fees to access balance information and customer service.
5. Improve information about and awareness of fees.
6. Gather data on and monitor fees paid by recipients.

## Surveys of Fees on Prepaid Cards and EBT Cards

In 2011, NCLC issued a report on prepaid cards used by 40 states to pay unemployment compensation (UC).<sup>3</sup> Our report describes the variety of fees charged on those cards and ways in which recipients can get access to cash without fees. The report also discusses the guidelines that the Department of Labor issued in 2009 for UC prepaid cards, which are attached as Appendix A.<sup>4</sup> We found that the guidelines are helpful but that not every card followed them and that additional protections are needed for UC recipients.

The UC prepaid card report covers issues that are relevant on cards used to pay TANF, especially but not only for those states that use similar Visa- or MasterCard-branded prepaid cards. Though most states still pay TANF using EBT cards that are on the Quest network, many of the issues presented are similar, especially as EBT cards come to have more and more of the fees that prepaid cards have.

The full report is included in Appendix B, and a national overview of UC prepaid cards is found in the chart on page 3 of the report. Though some states have improved their fees since the report was issued, of the 40 UC prepaid cards we found:

- 34 states permit direct deposit to the recipient's own account.
- 18 offer unlimited free in-network ATM withdrawals and 20 others grant 2 to 5 free per month. ATM fees range from \$0.75 to \$1.75.
- 35 states offer one or more teller withdrawals per deposit. Teller fees range from \$1.25 to \$10.
- 16 states charge no ATM balance inquiry fees and 12 other states permit multiple or unlimited inquiries at network ATMs. Balance inquiry fees range from \$0.25 to \$1.
- 20 states offer free customer service calls and every state permits at least one, and usually more than one, free call per month. Customer service fees range from \$0.20 to \$3 per call.

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<sup>3</sup> National Consumer Law Center, *Unemployment Compensation Prepaid Cards: States Can Deal Workers A Winning Hand by Discarding Junk Fees* (May 2011), available at <http://www.nclc.org/issues/unemployment-compensation-prepaid-cards.html>, attached as Appendix B.

<sup>4</sup> Employment and Training Admin. Advisory System, U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 34-09 on Best Practices for Payment of Unemployment Compensation (UC) by Debit Cards, at 3 (Aug. 21, 2009) (DOL UC Program Letter), available at [http://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=2795](http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2795).

The survey results show that there are many types of fees that can be and are imposed for the use of UC prepaid cards, creating a significant risk of draining away these subsistence benefits. The survey also shows, however, that it is possible for states to deliver benefits via a prepaid card that does not charge fees for most basic uses. States varied greatly in the fees imposed for use of their UC prepaid cards. In large part, the differences appear to be based simply on how good a bargain the state was able to strike with the vendor that issued the card.

In late 2010, we did a brief survey of the fees on EBT cards. The findings are reproduced in Appendix C.<sup>5</sup> Among the items we noted:

- Some cards have the same types of fees as UC prepaid cards, as described above.
- Minnesota and Indiana limit the total amount of fees recipients can incur.
- Most states do not have statutes or regulations that regulate EBT card fees, though the fees are governed by the contract.

### **States Should Permit Direct Deposit to the Recipient's Own Bank Account**

The best way to ensure that recipients have adequate access to cash and to prevent them from incurring unnecessary fees to access their benefits is to permit them to elect direct deposit to their own bank account for those who have one.<sup>6</sup> Indeed, this principle is embodied in the Electronic Funds Transfer Act, and its implementing Regulation E, which provide:

No person may ... require a consumer to establish an account for receipt of electronic fund transfers with a particular financial institution as a condition of employment or receipt of a government benefit.<sup>7</sup>

EBT systems established by government agencies for needs-tested benefits are not covered by the EFTA, but the principle remains a solid one that should apply in the EBT context.

### **Require Sufficient Free ATM Withdrawals, Wide ATM Networks and Protections for Recipients in Rural or Remote Locations**

The Department of Labor (DOL) interprets the Federal Unemployment Tax Act to require “at least one opportunity for the individual to withdraw the entirety of each UC payment at no cost.”<sup>8</sup> DOL recommends more than one free ATM withdrawal per payment. Indeed, recipients are more likely to

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<sup>5</sup> The findings are described in National Consumer Law Center, *Consumer Banking and Payments Law* § 8.6.2.1 (Supp. 2011).

<sup>6</sup> Recipients should also be permitted to elect direct deposit to a privately selected prepaid card. However, in order to avoid predatory practices and deception, states that permit this option should require eligible cards to comply with the Treasury Department's rules for direct deposit of federal payments to a prepaid card. See 31 U.S.C. § 210.5(b)(5)(i).

<sup>7</sup> 15 U.S.C. § 1693k(2); see Regulation E, 12 C.F.R. § 205.10(e).

<sup>8</sup> DOL UC Program Letter at 3.

leave money on the card and use the card for purchases, and avoid the dangers of carrying cash, if they do not need to withdraw all of the cash at once to avoid fees. Our UC prepaid card survey found that most states permit unlimited, or at least a number, of free ATM withdrawals at network ATMs.

The rules for cash benefits paid on EBT cards should also require a *minimum* of one free complete withdrawal per deposit and encourage multiple free withdrawals. If the benefit is paid only monthly, recipients should have a minimum of two free withdrawals per month so that they do not need to carry a month's worth of cash in their pockets.

Fees are much more frequent at out-of-network ATMs, and those fees are in addition to any surcharge by the ATM operator. In our survey, 27 of 40 UC prepaid cards charged out-of-network ATM fees starting with the very first transaction and every other card gave only a limited number of free transactions.

Recipients who live in rural or remote locations, or merely in locations that are not well served by card vendor's network, are much more likely to incur fees regularly. One survey in Ohio reviewed the fee-free ATMs in the U.S. Bank and Visa Plus networks used for the Ohio unemployment compensation prepaid cards. The survey found that many non-urban counties have few ATM locations, often one free location every 20 miles.<sup>9</sup>

In order to protect recipients who are not near network ATMs, EBT card programs should:

- Permit at least some free out-of-network withdrawals.
- Limit out-of-network fees to the amount needed to reimburse the card vendor for charges by ATM operators.
- Waive fees for recipients in locations without access to network ATMs.

### **Facilitate Finding Free ATMs and Publicize Cash Access Options**

It can be very difficult to determine where free ATMs are located unless the consumer is both sophisticated and persistent. If a card is offered by a bank, the ATMs can usually be located by zip code on the bank's website and sometimes on a mobile app. But many low income consumers do not have access to computers or smartphones or know about this feature. Even if they do, some EBT cards are offered by institutions other than banks where the ATM network is not so obvious. And even bank cards may supplement their own branch ATMs with additional ATM networks that the recipient may have overlooked.

Recipients may have other options for accessing cash for free, but many are unaware of those options. These include:

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<sup>9</sup> See Testimony of David Rothstein, Project Director, Policy Matters Ohio Before the Senate Committee on Banking, Housing, Urban Affairs, Subcommittee on Financial Institutions and Consumer Protection, "Examining Issues in the Prepaid Card Market" at 3, 5, 6 (March 14, 2012), attached as Appendix D.

- Cash back at a supermarkets and a growing number of larger retailers.<sup>10</sup>
- With a prepaid card, using the teller window at any bank or credit union that is a member of the network (Visa or MasterCard) (if there are free teller withdrawals).

States and EBT card providers should help recipients know how to find free ATMs and other ways to access cash without a fee. Materials provided with cards should highlight ways to access cash without a fee. Toll free numbers should be available to locate network ATMs and card providers should be encouraged to develop smartphone apps, or to educate recipients about existing apps, to help them locate free ATMs.<sup>11</sup>

### **Limit Fees to Access Information and Customer Service**

Recipients need to have access to the most basic information needed to manage their accounts, including account balances, transaction history and access to customer service representatives when there is a question or a problem. Most EBT cards, like most prepaid cards, do not provide written statements. Though electronic statements may be available online, most recipients do not know about those statements, do not know how to access them, and may not have internet access. EBT cards are also not issued out of a brick and mortar branch where recipients can ask questions.

For prepaid cards used to pay non needs-tested government benefits, Regulation E requires the account balance to be available through a telephone line and at a terminal.<sup>12</sup> DOL also has recommended unlimited free ATM balance inquiries in network.<sup>13</sup>

We believe that ATM balance inquiries for EBT cards should be free both at network and out-of-network ATMs. This information is critical to recipients and they should not be discouraged from accessing it. Any cost to the card issuer of inquiries at out-of-network ATMs should be built into the withdrawal fee in order to simplify fee schedules and facilitate access to information.

Similarly, customer service calls should be free. Calls to interactive voice response (IVR) automated menus can be used to access balances and recent transactions, and live representatives should be available to help with problems and answering questions. This is simply part of the overhead of administering a benefit program and should not be charged to recipients.

DOL recommends unlimited free telephone customer service on UC prepaid cards. That should be the rule for EBT cards as well.

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<sup>10</sup> Recipients will incur a fee if the card charges for debit transactions made using a PIN number, which most stores require for cash back transactions. But most prepaid cards we surveyed did not impose PIN debit charges and the few who did have largely eliminated it.

<sup>11</sup> A study last year found that 75 percent of U.S. adults in households earning less than \$20,000 per year have a mobile phone of some type, and 20 percent have a smartphone. Pew Internet study, 2011, 35% of American Adults Own a Smartphone ([http://pewinternet.org/~media/Files/Reports/2011/PIP\\_Smartphones.pdf](http://pewinternet.org/~media/Files/Reports/2011/PIP_Smartphones.pdf)).

<sup>12</sup> 12 C.F.R. § 205.15(c).

<sup>13</sup> DOL UC Program Letter at 4.

## **Improve Information About and Awareness of Fees**

To the extent that EBT cards do charge fees, it is essential that recipients receive clear and conspicuous information about them. When we did our 2010 survey, it was extremely difficult to find information on fees on state agency websites. In some cases, it may be because the card carries no fees, but even that information should be available.

Recipients undoubtedly receive program materials including fee schedules when they receive their card, but more could be done to make those materials prominent and accessible. A simple brochure that lists fees and ways of avoiding them should be provided.

EBT vendors should also consider offering the option to elect text messages confirming transactions, and any fee charged. Some prepaid cards offer that option.

## **Gather data on and monitor fees paid by recipients**

After a contract is negotiated with an EBT card vendor and the fee schedule is set, states should monitor how those fees work in practice. They should insist on regular reports on the fees that recipients are incurring and on efforts to help recipients avoid those fees. In our research on UC prepaid cards, we found that states often lacked this basic information on how their program is serving, or not serving, their constituents.

If reports show that recipients are incurring a large number of fees, states should take action to reduce those costs. Contracts should permit the state to renegotiate or insist on changes if the costs to recipients turn out to be higher than anticipated.

HHS as well could play a helpful role by gathering information about fee practices nationwide and helping states to negotiate better contracts. We found that many states were able to improve their UC prepaid cards after our report came out comparing the contracts in different states.

Sunlight, and small changes, can make a big difference in the costs that recipients pay. For example, after our UC prepaid card report came out and criticized point-of-service and denied transaction fees, Colorado asked its vendor for changes. The card began waiving one \$0.75 denied transaction fee per deposit and eliminated the \$0.10 point-of-service fee. Those two changes saved recipients \$74,000 per month (\$888,000 over a year).<sup>14</sup>

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<sup>14</sup> "Fees with state-issued debit cards reduced, eliminated," Our Colorado News (Oct. 6, 2011), available at [http://www.ourcoloradonews.com/centennial/newsreleases/fees-with-state-issued-debit-cards-reduced-eliminated/article\\_7eadceca-f058-11e0-aa31-001cc4c002e0.html](http://www.ourcoloradonews.com/centennial/newsreleases/fees-with-state-issued-debit-cards-reduced-eliminated/article_7eadceca-f058-11e0-aa31-001cc4c002e0.html).

## **Conclusion**

As state budgets become more and more stretched, it is tempting to push administrative costs off onto benefits recipients by negotiating EBT contracts that cost the states little but recoup those costs in fees. But the recipients of needs-based benefits are the least able to bear those costs. Even a few dollars can mean a meal skipped.

Thank you for this opportunity to comment.