

May 7, 2014

Robert Shelbourne
Office of Family Assistance
Administration for Children and Families
U.S. Department of Health and Human Services
370 L'Enfant Promenade SW, 5th Fl. East
Washington, DC 20024

Re: Docket #ACF_FRDOC_0001-0045, 79 Fed. Reg. 7127 (Feb. 6, 2014)
Proposed Rules to Prevent Use of TANF Funds in EBT Transactions in Specified
Locations, 45 CFR Parts 262 and 264

Dear Mr. Shelbourne:

The National Consumer Law Center, on behalf of its low income clients, Arise for Social Justice, California Reinvestment Coalition, Corporation for Enterprise Development (CFED), Georgia Legal Services Program, Legal Aid Society of Cleveland and Public Justice Center¹ submit these comments on the proposed regulations to implement the ban on accessing to cash Temporary Assistance to Needy Families (TANF) benefits on EBT cards through withdrawals at liquor stores, gambling locations, and adult entertainment venues. That ban was adopted in Section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012.

These comments are limited to the issue of whether the Section 4004 restrictions should be extended to TANF funds that are directly deposited into a traditional bank account.² Restrictions should *not* be extended to bank accounts into which TANF benefits have been directly deposited. Such a restriction is unnecessary, would be impossible to enforce, and most importantly -- would discourage states and banks from encouraging TANF recipients to participate in the financial mainstream. Instead, governmental policies should encourage and facilitate TANF recipients using bank accounts.

Extending Section 4004 Restrictions to Bank Accounts Would Be Unenforceable and Inhibit Access to Bank Accounts

Extending Section 4004 restrictions to TANF funds that are directly deposited to bank accounts would inhibit recipients from having bank accounts. The option of direct deposit of TANF benefits enables recipients to access a bank account that would otherwise be out of reach. Many bank accounts are too costly for low income consumers, but banks often waive their monthly fee and minimum balance requirements for consumers who arrange direct deposit.

However, states will be reluctant to offer a direct deposit option, and if the Section 4004 restrictions apply to those accounts. States cannot control where a bank debit card is

¹ Descriptions of the organizations are listed on the Attachment.

² We also oppose extending restrictions if TANF funds are directly deposited to a prepaid card of the recipient's choice obtained on the private market.

used. States have no access to bank account transaction data and cannot monitor where funds are accessed.

In order to avoid the possibility of violating the law by having an inadequate program to police Section 4004 restrictions, states are likely not to offer the choice of direct deposit at all. The possibility of adverse press if a TANF recipient is seen in a forbidden location may also lead states to eliminate the direct deposit option. At least one state has already stopped allowing direct deposit of TANF payments in the past year, apparently in response to the Section 4004 provisions.³

Banks may also be more hesitant to have TANF recipients as customers if the Section 4004 restrictions apply. Low balance accounts are already a challenge for banks. Banks will not want to be subject to information requests and be forced to choose between their customers' privacy and the demands of a state agency. The possibility that a bank could get caught up in a dispute about where the funds are accessed, and suffer adverse press, could lead to discrimination against TANF recipients or reluctance to waive fees for TANF direct deposits.

The Goals of TANF will be Furthered by Encouraging Access to Bank Accounts

Congress did not intend to require states to apply Section 4004 restrictions to funds deposited in bank accounts or third-party prepaid cards that states do not control. 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. 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.

Throughout the country, states and cities are promoting “Bank On” programs to help their residents access bank accounts. “Something as simple as a checking account can be the first step in saving, planning for the future, building credit and climbing the economic ladder.”⁴ The JoinBankOn.org was relaunched by the CFED in partnership with the San Francisco Office of Financial Empowerment, the National League of Cities and the New America Foundation, with support from the U.S. Department of the Treasury. The Bank On program promotes access to bank accounts for several reasons:⁵

- **Cost savings:** The average unbanked person spends five percent of net income on unnecessary fees. For a lower-to-medium income worker, this amounts to about \$1,000 in fees per year, or \$40,000 over an average working life.⁶
- **Public safety:** Without a safe place to keep their money, unbanked people are more likely to be victims of crime because they often carry large sums of cash on

³ 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) .

⁴ <http://joinbankon.org/about/#important>.

⁵ <http://joinbankon.org/about/#important>.

⁶ Matt Fellowes and Mia Mabanta, “Banking on Wealth: America’s New Retail Banking Infrastructure and Its Wealth-Building Potential,” Washington, DC: Brookings Institution, 2008.

- their person or keep cash in their homes. Elderly, disabled or undocumented immigrants can be particularly vulnerable.⁷
- **Disaster preparedness:** In the event of an emergency, unbanked families have no safe way to access their money, and any cash kept in the home may be lost. The lack of a bank account impedes a government's ability to get funds to people in the event of a disaster/evacuation. For example, in the aftermath of Hurricane Katrina, an estimated 70% of evacuees were unbanked,⁸ with no way to receive payments electronically.
 - **Asset building:** Without a bank account, a family lacks the ability to save for the future, establish credit and access asset-building instruments such as loans for a car, small business or home mortgage.

Bank accounts and the bill payment and debit card services that come with them enable accountholders to make payments in a free and convenient manner to a wide variety of individuals and businesses, far more than EBT cards. Checks can be given in person or mailed to individuals who do not accept cards. Debit cards can be used online and over the telephone to purchase goods and services that are lower cost or more available than in stores. Bill payment features can be accessed from the convenience of a home, library computer or smartphone without the need to pay for a money order and carry it to a utility or other bill payment location.

Beyond the access to full-featured transaction services, a bank account is “a foundational product for households to begin building a personal financial safety net for emergencies and developing asset-building opportunities.”⁹ Bank accounts can provide links for deposits or access to savings accounts. A relationship with a bank can provide the basis for credit options, such as a credit card that helps smooth uneven income, or a car loan that helps a recipient accept a better paying job. A bank account history is also key to achieving the American dream of homeownership. Bank accounts are the first step to accessing mainstream banking services.

The goals of the TANF program are served by giving recipients the option of receiving their funds through direct deposit to a bank account. Banking resources are “essential elements that help in achieving financial stability, self-sufficiency, and long-term financial well-being.”¹⁰ Inadequate access to bank accounts “may undermine widely

⁷ New research finds that in areas where financial institutions have begun to cater to Latino customers, the incidence of armed robberies has dropped significantly due to area residents' reduced reliance on cash-based transactions. Gregory Fairchild and Kulwant Rai, *Perdido en la Traducción: The Opportunity in Financial Services for Latinos* (Charlottesville, VA: Tayloe Murphy Center, Darden School of Business, University of Virginia, 2011).

⁸ The Washington Post/Kaiser Family Foundation/Harvard University, “Survey of Hurricane Katrina Evacuees,” Washington DC: Kaiser Family Foundation, 2005.

⁹ Karan Gill et al., “Building Financial Capability: TANF Bank Accounts,” Center for Financial Security, Emergency Savings Project (June 2013), available at <http://www.theprosperityagenda.org/wp-content/uploads/2014/03/Building-Financial-Capability-TANF-Bank-Accounts.pdf>.

¹⁰ “Strategies to Increase Access to Bank Accounts, Financial Education and Money Management Skills for Public Assistance Recipients,” Report to the Governor and the Legislature, Washington State Department of Social and Health Services (Dec. 2011), available at

shared societal goals of reducing poverty, moving families from welfare to work, and rewarding work through incentives such as the Earned Income Tax Credit.”¹¹

Recipients should be encouraged to choose the account that works best for them and to have access to a range of financial products that meet their needs, today and into the future. Bank accounts may not be right for every TANF recipient. Some will find that EBT cards serve their needs. Others will have difficulty managing checks and overdraft fees. But it serves the broader goals of the TANF program to offer the choice of direct deposit to recipients who wish to use it and to avoid regulations that impede that option.

The TANF program should be implemented consistent with its broad goal of helping needy families to reach economic self-sufficiency. Imposing unnecessary and unenforceable restrictions on bank accounts that states do not control would impede recipients from having access to bank accounts and other mainstream financial services, frustrating the goals of the TANF program.

Thank you for considering these comments.

Yours very truly,

National Consumer Law Center, on behalf of its low income clients
Arise for Social Justice (Massachusetts)
California Reinvestment Coalition
Corporation for Enterprise Development (CFED)
Georgia Legal Services Program
Legal Aid Society of Cleveland
Public Justice Center (Maryland)

<http://www.dshs.wa.gov/pdf/main/legrep/Leg1211/Financial%20Literacy%20-%20Electronic%20Benefits%20Card%202011%20Report.pdf>.

¹¹ Michael S. Barr, “Banking the Poor: Policies to Bring Low-Income Americans into the Financial Mainstream,” Brookings Institution, September 2004.

<http://www.brookings.edu/research/reports/2004/10/banking-poor-barr>.

Attachment: Organizational Descriptions

Since 1969, the **National Consumer Law Center®** (NCLC®) has used its expertise in consumer law to work for consumer justice and economic security for low-income and other disadvantaged people. NCLC's expertise includes policy analysis and advocacy; consumer law 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 agencies and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

Arise for Social Justice is a Western MA low-income rights organization which believes we have the right to speak for ourselves. Our members are poor, homeless, at-risk, working, unemployed & people pushed to the side by society. We organize!: voting rights, housing, homelessness, health care, criminal injustice & more!

The **California Reinvestment Coalition** is a statewide membership-based non-profit working to increase fair and equal access to affordable banking and financial services for lower income communities and communities of color. We have approximately 300 organizations as members across rural and urban California.

The **Corporation for Enterprise Development (CFED)** empowers low- and moderate-income households to build and preserve assets by advancing policies and programs that help them achieve the American Dream, including buying a home, pursuing higher education, starting a business and saving for the future. As a leading source for data about household financial security and policy solutions, CFED understands what families need to succeed. We promote programs on the ground and invest in social enterprises that create pathways to financial security and opportunity for millions of people.

Georgia Legal Services Program is a non-profit law firm serving rural and small town Georgia. We offer free legal services in civil cases to people who cannot afford to hire a lawyer. Our clients have "high stakes" problems, such as domestic violence, eviction or foreclosure, denial of hard-earned benefits such as unemployment, inability to get critically needed health care or food aid, and many more. Our work is to assure that low income people have access to justice and opportunities out of poverty.

Legal Aid Society of Cleveland works to secure justice and resolve fundamental problems for those who are low income and vulnerable by providing high quality legal services and working for systemic solutions. Founded in 1905, Legal Aid is the fifth oldest legal aid organization in the United States, with four offices serving clients in Ashtabula, Cuyahoga, Geauga, Lake and Lorain counties.

The **Public Justice Center** works with people and communities to confront the laws, practices, and institutions that cause injustice, poverty, and discrimination. We advocate in the courts, legislatures, and government agencies, educate the public, and build coalitions, all to advance our mission of "pursuing systemic change to build a just society."