Restricting Access to TANF Funds at Specific Merchant Locations

The experience of State EBT Directors in restricting benefits

Section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012 requires states to prevent recipients of Temporary Assistance for Needy Families from accessing their benefits in liquor stores, casinos and adult-oriented entertainment businesses. However, a number of states implemented such restrictions prior to the law. Their experiences provide guidance to federal regulators and other states seeking to develop Section 4004-compliant strategies.

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ABOUT THE EGOVERNMENT PAYMENTS COUNCIL

The eGovernment Payments Council is an association of public and private sector professionals involved in the design, development and operation of payment systems that deliver government benefits or payments to consumers. The mission of eGPC is to inspire and promote business practices favorable to the adoption of government-driven electronic payment systems. It does this through collaboration, cooperation and inclusion in its meetings, teleconferences, white papers, task forces and an annual conference.

The eGPC is a service of the Electronic Funds Transfer Association, the nation's leading inter-industry professional association promoting the adoption of electronic payment systems and commerce.

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Introduction

For years the general media have run a number of stories about recipients of various government-assistance payments accessing or using their public assistance benefits in business establishments for which the benefits were never intended. These stories began to emerge in force following the devastating hurricanes along the Gulf Coast in 2005, and usually involved debit cards issued by various agencies for disaster relief being used on cruise ships, in casinos or for cosmetic surgery.

These stories of misuse began to escalate in 2007 as the economy soured and the rolls of assistance programs like Temporary Assistance to Needy Families (Tanf) and Supplemental Nutrition Assistance Program (Snap) soared. The hook for many of these stories was resentment allegedly felt by ordinary people who had been hit hard by the recession, only to find out that their tax dollars, instead of funding basic necessities like food, clothing and shelter, were instead paying for vices like alcohol, gambling and adult-entertainment.

Legislative issues

As a reaction to these news stories and complaints lawmakers in eight states—Arizona, Colorado, Indiana, Massachusetts, Minnesota, Missouri, Pennsylvania, and Washington—have placed some sort of ban on using public assistance benefits to purchase various products or services. These include alcoholic beverages, tobacco, lottery tickets, firearms and gaming. In addition a ninth state, California, has banned such uses of public assistance by executive order.

In addition, another 22 states, from Hawaii to Rhode Island, are contemplating legislative proposals to ban the use of public assistance for the purchase of these products and services.

On December 9, 2011 Congress took up the charge. Led by Rep. David Camp (R-MI) chairman of the House Ways and Means Committee, a group of House Republicans introduced H.R. 3630, which, among other things, included a provision that would prohibit states from allowing Tanf benefits to be used at liquor stores, casinos and adult-oriented entertainment businesses in any electronic benefits transfer transaction.

In February Congress rushed to pass the Middle Class Tax Relief and Job Creation Act of 2012, a bi-partisan bill known mostly for extending the so-called payroll tax holiday. As the bill moved towards a vote, Congress packaged a number of other provisions into the tax bill. The language of H.R. 3630 was included as Section 4004 of the tax bill, which was signed into law by President Obama on February 22, 2012.

The federal law, which does not preempt existing or planned state legislation, requires all states to take measures to prevent access to Tanf funds at liquor stores, casinos, and adult entertainment clubs. States have two years from the time of passage to comply. States that fail to meet this deadline could see their Tanf block grants decreased by five percent.

How this penalty will work is not entirely clear from the law. What is unclear is whether states would be allowed reduce benefits to cover the five-percent penalty, or whether the Department of Health and Human Services, which administers the Tanf program, would require the offending state to make up the difference with state funds.

Even if states choose or are required to use state funds to make up for the five percent penalty, they may face the choice of "backfilling" the five percent loss of federal funding by cutting other state programs.

Regulatory issues

Although Section 4004 is not specific about enabling regulation, DHHS has been given the job of writing regulations to enforce the provisions of Section 4004. DHHS manages the Tanf program through its Administration for Children and Families, or ACF. Regulators are currently sorting through the various issues involved in a state's effort to restrict access to Tanf benefits through electronic benefits transfer technology. Even the law's definition of EBT is overly broad, and needs to be refined in any regulation.

Other issues regulators need to consider are:

- The definition of "policy and practices" as envisioned in the law
- How to ensure that the regulations are sufficiently flexible to allow states to craft solutions that will actually prevent the unauthorized spending of benefits envisioned by the law
- Whether it is wise to regulate technical solutions that may become obsolete as technology improves
- How to craft a regulation that accomplishes Congress' goal of restricting Tanf benefits while at the same time not limiting access to other assistance funds that might be accessed by the same EBT card
- Defining debit or EBT card services in such a way as to exclude those services over which the state agency has no control, such as a non-state issued debit card tied to a consumer bank account beyond the control of the agency

Regulators need to consider these and other questions as they draft the proposed rules for implementing Section 4004.

Regulators hope to complete a draft proposed rule for publication by September, followed by a 90-day comment period. A proposed final rule will follow evaluation of public comments submitted following the publication of the draft rule.

Implementing Tanf access restrictions

There is a significant body of extant work that demonstrates the challenges and issues involved in implementing policies that restrict access to public assistance. This work is based on the nine states that have already been mandated by state legislatures or, in the case of California, its governor, to restrict access to public assistance. This experience can help guide regulators as they sort through the issues of restricting Tanf access.

From January 9 through January 31, 2012 the eGovernment Payments Council of the Electronic Funds Transfer Association conducted a survey of all state agency managers who administer the delivery of public assistance benefits to eligible households via electronic benefit transfer technology.[1] This survey provides valuable information on the experience of managers who have had to implement blocking programs and of managers who will be responsible for doing so in the future.

These are the individuals who understand the delivery mechanism for benefits like Tanf and have experience developing and overseeing these highly complex data processing systems known as EBT systems. Their experiences provide a detailed look at the issues involved in restricting benefit access.

State EBT programs

The survey was a population survey conducted during the month of January using a commercially available collection program.

Survey methodology

The access-restriction survey was administered to the directors of all 58 state and territorial agencies that administer the distribution of public assistance on a state level. Thirty-five of the 58 state agency directors responded to the survey (60%). The results were tabulated and then cross-tabulated against certain characteristics within the survey population.

Survey Issues

The survey covered three general areas:

- ***Processing technology***. These questions were designed to establish the state agency's technical capability to institute *systemic*[2] blocking of cash access transactions at ATMs or point-of-sale terminals.

[1] A number of these states also deliver Tanf and other benefits via direct deposit into a recipient's demand deposit bank account.
[2] Systemic blocking involves the reprogramming of electronic funds transfer systems, like ATMs or POS terminal networks to prevent access by recipients of certain forms of assistance at specifically proscribed classes of merchants (e.g. liquor stores)

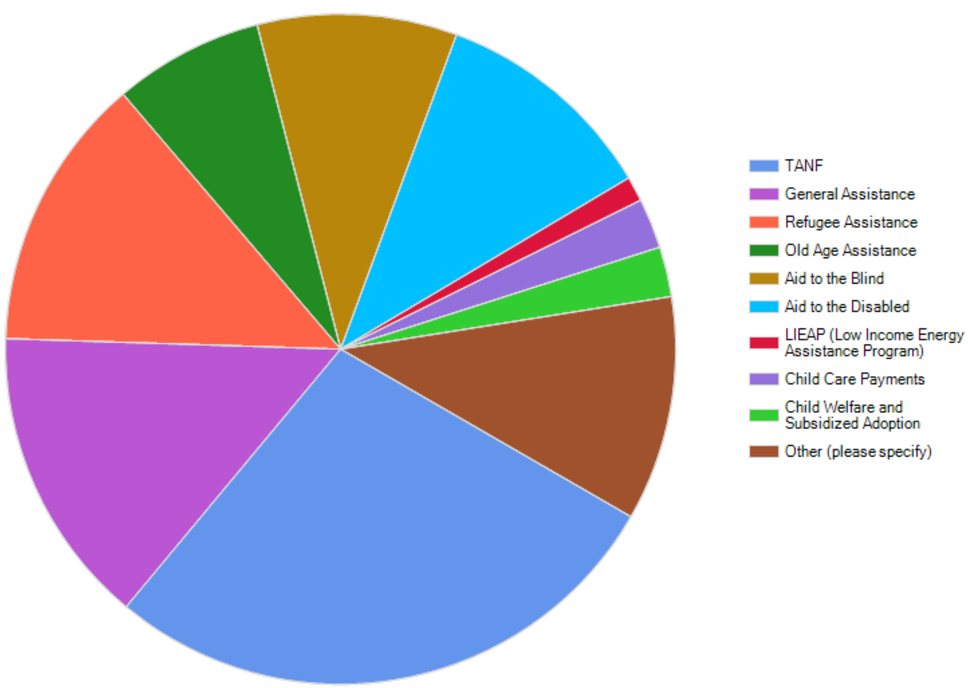
- ***Experience restricting transactions***. These questions involved the experience of the respondent in blocking proscribed ATM transactions.
- ***Program characteristics***. These questions provided filtering data on the size of the respondents' programs and average number of monthly transactions per cardholder.

Together these three areas provided a profile of the agencies that would be on the point for enforcing any mandate to restrict access to certain programs at ATMs or POS terminals.

EBT program characteristics

State agencies deliver Tanf, the subject of Section 4004 of the law, in any number of ways. It can be included on an EBT card, included on an electronic payment card (EPC), or deposited directly into a demand deposit bank account of the recipient. At least three states still issue Tanf checks, a labor and cost-intensive process.

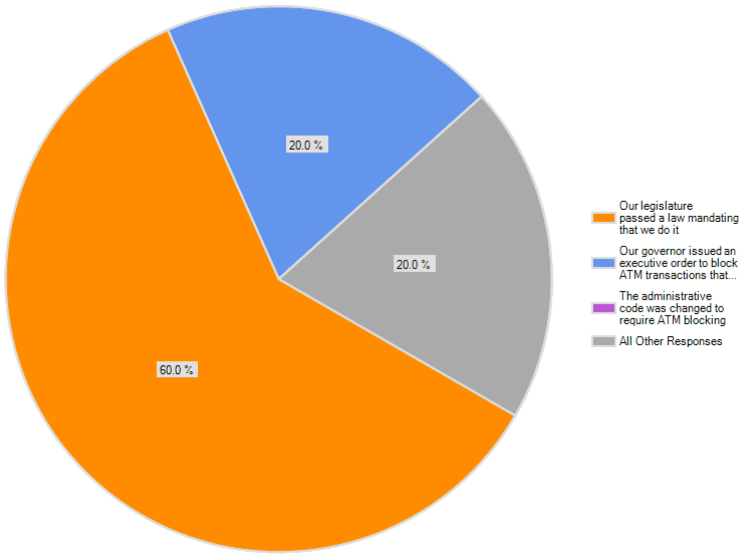
Exhibit 1: Program benefits issued on state EBT cards



Of the survey respondents, 63% manage agencies that distribute Tanf on an EBT card. These are the states which would be affected by the new law, as depicted in Exhibit 1.

Experience in restricting access

Twenty-two percent of the respondents indicated that they had already implemented an access-restriction program of some type. Over 60% of the blocking mandates came from state legislatures. (Exhibit 2).

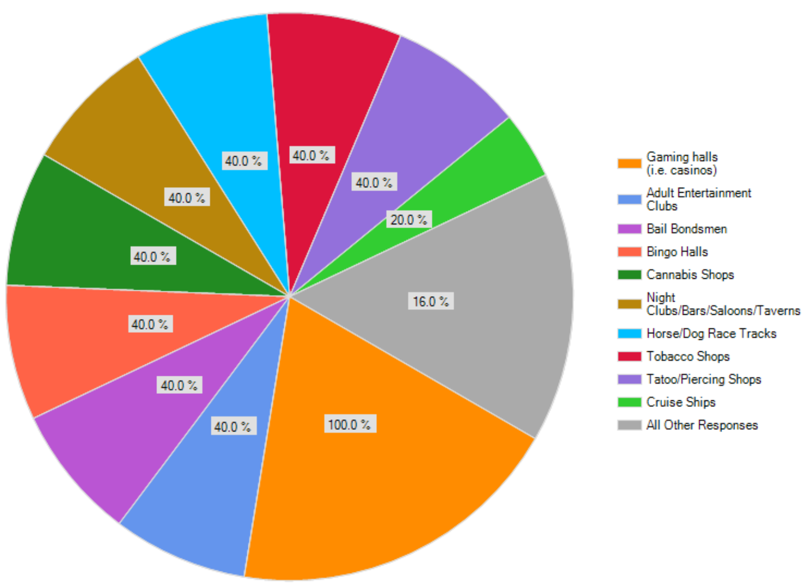


In many cases state legislatures are more restrictive than Section 4004 of the federal legislation. For example, the state of Washington blocks cash withdrawals at any location where those under 18 years of age are not allowed, and includes tattoo parlors and nightclubs.[3]

Exhibit 2: Driving forces behind access restriction

In fact, the list of merchant categories at which access to assistance payments is restricted by the states is long, as shown in the following exhibit.

Exhibit 3: Prohibited businesses in state access restriction laws



[3] National Council of State Legislatures, "EBT Card Restrictions for Public Access," updated March 9, 2012.

Challenges to access restriction

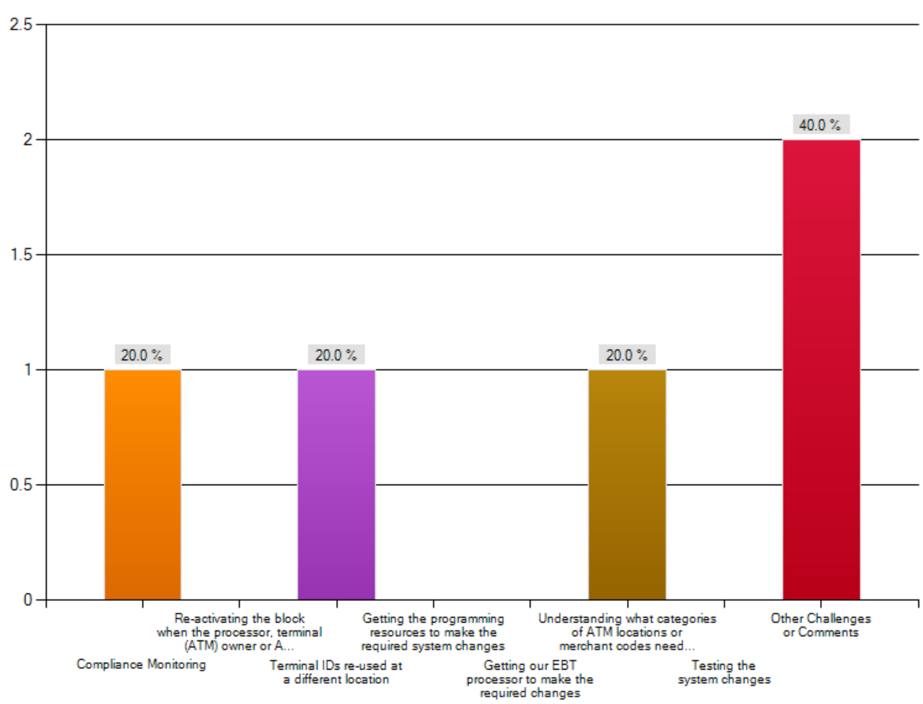
The respondents to the survey were the public officials responsible for enacting and enforcing access restrictions. They will be the officials responsible for enacting and enforcing Section 4004 Tanf restrictions.

These respondents voiced a number of concerns in the survey about the challenges that such restrictions pose.

The most often cited problems to implementing blocking laws were monitoring compliance with the law, understanding the various categories of merchants and keeping track of the ATMs at which recipients access their benefits.

All three of these problems appear to stem from the same challenge: The merchant categories at which access is being restricted are not controlled or regulated in any way by the agencies charged with enforcing the law.

Exhibit 4: Challenges to Implementing Access Restriction Laws



Generally speaking the electronic programs responsible for distribution of public assistance are run through the various state departments of social or human services.[4] These departments may have a relationship with food retailers[5] through the Supplemental Nutrition Assistance Program (formerly Food Stamps). But they have no formal relationship with liquor stores, casinos or adult entertainment businesses. These are the types of business at which access to Tanf must be restricted, according to Section 4004.

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[4] In some states these departments are known by names that stress the temporary nature of the assistance or the fact that the assistance is considered temporary help to recipients on their way to permanent employment. For example the New York Office of Transitional & Disability Assistance of the Ohio Office of Workforce Development.

[5] House Bill 3630 was revised in the final bill to exclude food retailers who sell alcoholic beverages and lottery tickets as adjunctive services to their main business of selling food.

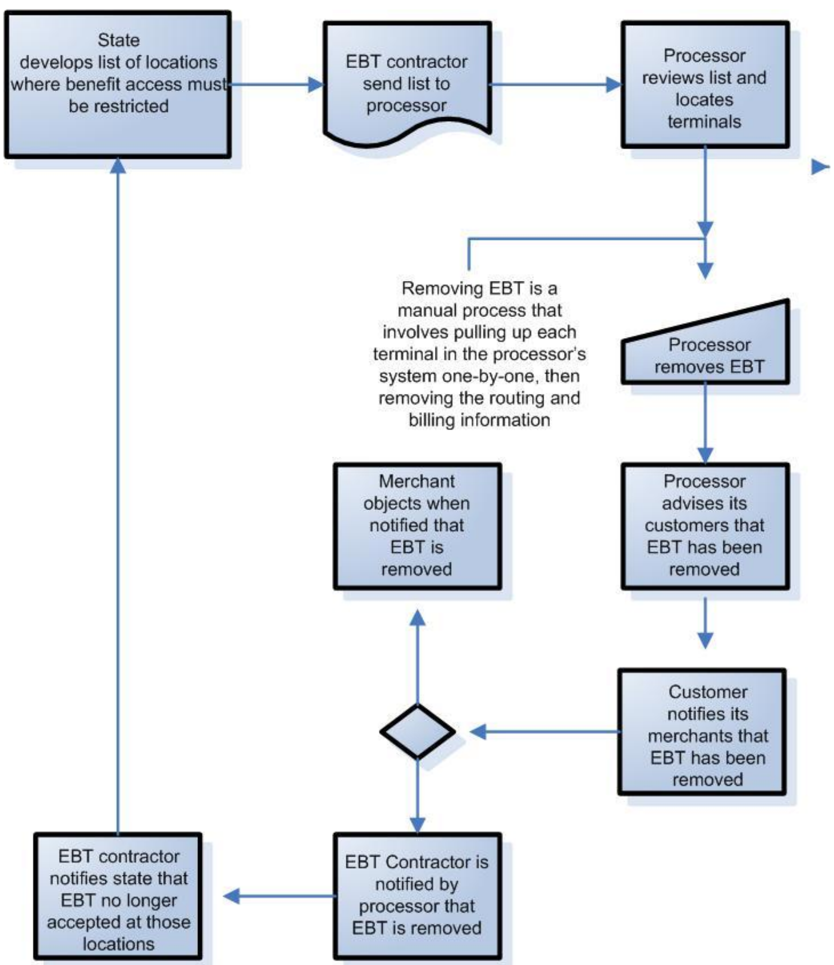
In open-ended questioning the respondents noted that they have no way of monitoring compliance with the law. For example, liquor stores on a state level are typically licensed or monitored by some sort of alcoholic beverage commission, not by a department of human services. In many cases a state official's only way of locating these businesses is the Yellow Pages.

In addition, the ATMs in those locations may or may not be owned by the liquor store or casino owner. It is common practice for owners of small ATMs, the kind used primarily to dispense cash, to move the machines around from location to location for various business reasons.

The blending of merchant categories, the reuse of terminal IDs on ATMs and the movement of terminals from one location to another all make enforcement of restriction laws an highly subjective, manual process for those called on to enforce the law, say survey respondents.

The following exhibit details the level of complexity involved in attempting to block EBT cards from specific merchant classifications or locations.

Exhibit 5: Blocking ATM Transactions



Impact on other state programs

Section 4004 specifically restricts access to Tanf benefits. But respondents also complained about the impact of these federal restrictions on their own state programs. For example, it is typical that an EBT or EPC card provides access to more than one public assistance cash program. In addition to Tanf these may include state programs like general assistance, refugee assistance, or the state-administered Low-income Heating and Energy Assistance Program, or LIHEAP, for example. There is no reliable way to restrict one cash program without blocking access to the others.

This means blocking Tanf as required by law could have the unintended consequence of blocking state programs not covered by Section 4004, said respondents.

Ultimately, upon implementation there will be no way for state program officials to verify that the funds that they have restricted in accordance with Section 4004, were the ones they were required to block.

EBT state directors implement Tanf access restrictions: the experience

State agency EBT directors were pointed and direct in their comments on the prospect of having to enforce the restriction of access at certain locations:

"This is a ridiculous idea."

"It's just public perception and political."

"Blocking is a subjective, labor-intensive process."

"Blocking designated ATMs is not going to change client behavior."

While some of the comments were visceral, a number of the state directors posed questions not easily answered in the legislation. One director questioned how the law could be enforced in the case of direct deposit. A number of states do offer Tanf recipients the option of having their benefits electronically deposited in a bank account. Section 4004 defines electronic benefits transfer as

> *…the use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or a service.*

This overly general definition could create to scenarios that would impossible for the state agency to detect:

- A Tanf recipient has money directly deposited into her bank account and then accesses those funds via a bank debit card tied to that account
- A recipient has Tanf funds directly deposited into her account, and then uses the money to pay over the Internet for Internet payment of goods or services proscribed by the law: e.g. liquor, online gambling, or pornography. This could be done via a bank debit card associated with that account or through PayPal® or other Internet payment service.

In either case the state that issued the Tanf benefits would have no way of knowing that the recipient was using EBT as defined in the law to patronize proscribed businesses. Nevertheless, that state could theoretically be sanctioned by DHHS for allowing such misuse.

Another concern voiced by the state directors was one covered above on page 7 in this paper: the fact that many Tanf EBT cardholders receive multiple forms of cash payments. Section 4004 refers only to Tanf payments. By blocking card access at liquor stores, casinos and adult entertainment venues Section 4004 in effect blocks access at those locations to funds not covered by the law.

The three categories of proscribed businesses all offer low-wage employment, such as clerks, janitors and servers. It is not beyond possibility that these workers might receive various forms of assistance. However, Section 4004 restricts their access to those funds though ATMs on the premises.

In addition, one state director noted that prohibitions like those in Section 4004 do nothing to stop a Tanf recipient from accessing funds at an on-premise bank ATM and then spending it to purchase alcohol, to gamble, or to patronize adult entertainment clubs. This makes enforcement of the law spotty at best and discriminatory at worse, according to the respondent.

Perhaps the biggest state challenge to Section 4004 enforcement is the fact that those responsible for enforcement—state departments of social or human services—have no enforcement mechanism over any of the three categories of proscribed businesses. Even if they knew exactly where Tanf benefits were being spent, department officials would have nothing to compel those businesses to deny access or use of Tanf funds.

One respondent in the survey suggested that enforcement of the law at a state level should be the responsibility of whatever state agency is responsible for licensing that category of business. For example, an alcoholic beverage commission should be responsible for overseeing enforcement of the ban at liquor stores that the commission regulates. A gaming commission would be responsible for enforcement at casinos, bingo parlors and similar gaming businesses.

However, this solution would require additional legislation on the state level. This enabling legislation would take time and be subject to attack by lobbying groups representing these industries.

In addition to the fact they have no regulatory authority over gaming, state program managers noted two other significant problems restricting access at casinos. The first is that casinos located on, and operated by, Independent Tribal Organizations have sovereignty over gaming operations on their land.[6] The second is that in many rural areas, including tribal lands, there are no banks or independent ATMs. The closet ATMs in these cases are those located in casinos operated by ITOs.

Compliance

So how will state agencies comply with Section 4004? Right now there appear to be several options, although none of them on their own would project to be completely effective, based on past experience.

Scope of the problem

In order to craft solutions appropriate to the problem it is important to understand the scope of the issue. First, Section 4004 restrictions only apply to the Tanf program. Second, In the fiscal year 2006, the total in federal TANF grants received by states totaled \$16.7 billion.[7] Only 28 percent of families in

[6] The Indian Gaming Regulatory Act of 1988 recognized the sovereignty of ITOs over gaming operations on Indian land and established the National Indian Gaming Commission to regulate gaming.

[7] 8th Annual Report to Congress. Administration for Children and Families, U.S. Department of Health and Human Services.

poverty receive any Tanf benefits.[8] The State of Colorado, which has had an access restriction program in place for some time[9] reports that approximately three-tenths of one percent of ATM benefit access transactions are initiated in casinos.[10]

In California, one of the first states to restrict benefit access at proscribed locations, the results were similar, with less than one-tenth of one percent of ATM benefit withdrawals occurring at adult entertainment businesses.

So the number of transactions that will be affected by Section 4004 is relatively small, given the scope of the benefit programs. In Colorado there are an estimated 300,000 liquor stores, bars, and pubs that would be affected by Section 4004. The law would require the state to ensure compliance at all of them. There is no way of knowing at this point how many even have ATMs at which beneficiaries could access Tanf funds.

Therefore, any compliance solutions should take this issue of scope into account.

Systemic compliance

One way to restrict access to Tanf funds at proscribed locations is by changing certain parameters within the electronic funds systems[11] through which the funds are accessed. However, this solution, attempted in a number of states already, is far more complicated than "flipping a switch," as was suggested by one lawmaker. Exhibit 6 above details the complexity of blocking transactions through the electronic funds system.

The experience of WorldPay™, which processes over 28 million ATM transactions each month, is illustrative in this regard.[12] Electronic benefits transactions can be managed like any other network transaction from the perspective of an ATM processor like WorldPay. When an EBT cardholder uses his or her EBT card at an ATM or a point of sale, the processing systems that acquire that transaction are programmed to route[13] the transaction according to a bank-identification number to the EBT processor in whichever state or territory issued that card. And it is possible to block those transactions by a specific merchant classification code. However, restricting EBT access at these prohibited categories requires the state agency to supply a list of locations that fall into the prohibited category.

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[8] "GOP Bill Would Require Drug Testing of Welfare Recipients," The Nation. http://bit.ly/lDPK54.

[9] State of Colorado Human Services Code 26-2-104.

[10] "Restricting TANF Benefit Use: What Does It Mean for States?" Webinar sponsored by the Electronic Funds Transfer Association. April 25, 2012.

[11] e.g. ATM or point-of-sale systems.

[12] "Who gets to decide? Challenges at the ATM." Mike Cowart, Vice President ATM and ISO/MSP, WorldPay. Presentation to the Electronic Funds Transfer Association EBT—The Next Generation conference, November 8, 2011, Clearwater Beach, FL

[13] Routing is the acquiring and transmission of a transaction from wherever the cardholder initiates it back to whatever bank or state issued the EBT Card in order to authorize the transaction.

An EFT processor would then have to manually locate the ATM terminals that fall into the proscribed categories and remove them from their routing and billing systems, in effect, blocking that network's[14] transactions from working on those terminals. This is a laborious and porous process. For example, once a merchant is notified that his business falls into one of the proscribed categories he may complain to the processor. For example, he may deny the nature of his business. He may change the name of the business. He may move the business. Each of these cases would require field investigation to determine if the business really operated in one of the proscribed categories.

In addition, the law, as drafted, is vague in terms of defining an "EBT" card. One could reasonably conclude that direct deposit of TANF funds into a recipient's bank account meets the law's definition of EBT. Therefore a recipient who has his monthly Tanf funds direct deposited into a bank account as an example of the above, and could access those funds through an ATM in a proscribed business with his own bank-issued debit card. Since the recipient's bank card has the bank routing identification number, called a BIN, of a bank, and not a state EBT program BIN, that transaction would not be blocked. So, at best, application of the law in this way would be capricious.

Alternative solutions

Systemic solutions are far from the perfect answer to Section 4004 compliance. But there are other solutions that used in lieu of, or in combination with, systemic solutions might make compliance with the law more effective.

First, states should begin an education campaign with all Tanf program participants, both those currently receiving benefits and new applicants who qualify for the program. This education should stress that using TANF benefits in proscribed locations is illegal under federal law.

Second, states could strengthen the effort to reduce misuse of Tanf benefits with their own laws aimed not only at cardholders but at operators of liquor stores, casinos and adult entertainment venues. These laws should contain civil monetary penalties for knowingly allowing Tanf beneficiaries to receive and/or use their benefits in these locations.

Third, effective enforcement of the federal law will involve applying enforcement pressure to the proscribed businesses. As it stands enforcement will fall to the state agencies that administer Tanf. However, these agencies have no relationship with liquor stores, casinos or adult clubs. Therefore, state-level enforcement will more effective if applied by other state agencies with which these types of businesses may have existing licensing or permitting relationships. These might be a gaming commission in the case of casinos or an alcoholic beverage commission or liquor control board in the case of liquor stores.

Since the appropriate regulatory bodies will have enforcement authority they can work with the businesses they regulate to craft appropriate solutions. For example, a chain of liquor stores or a

[14] Most state EBT agencies belong to the Quest® EFT network. Like most networks it has a set of operating rules and ways of identifying transactions as part of its network, although in this case, the network consists exclusively of electronic benefits transactions.

particular casino or gaming company may choose to have its own ATMs block state BIN numbers for EBT cards. This is a systemic solution that is preferable to putting the burden on state human services staff which have no experience regulating these three types of businesses. This might be supplemented by point-of-purchase display notices stating that EBT cards are no longer accepted at that location.

Voluntary Solutions

Colorado, working with its EBT processor J.P. Morgan, has had some success in promoting voluntary compliance with the existing state law that restricts benefit access. The state has been able to get 39 of 40 casinos in the state to agree to restrictions, a success rate of 98 percent.

Results with other proscribed businesses—bingo halls, liquor stores and bars—are less impressive but nevertheless show promise in this area. The state has achieved voluntary compliance rates of 39 percent in bingo halls, for example. The compliance rate for bars is considerably lower, perhaps owing to the daunting task of trying to determine which of the 300,000 such locations have ATMs. One conclusion may be that the fewer locations the easier it is to achieve compliance this way.

Conclusions

Many Americans share Congress' disdain for seeing Tanf benefits squandered on what they would consider non-essential spending: liquor, gambling and adult entertainment. The Tanf program is an effort by states to provide temporary assistance to children and families as they strive to become self-sufficient. Diverting those funds away from providing shelter, clothing and other necessities for children is something Section 4004 views as misuse of those funds.

Nevertheless the law as written will be difficult, if not impossible, to enforce without the proper regulatory structure.

However, the fact that nine other states have already engaged in enforcement of such bans provides a roadmap for federal regulators on where to go and what to avoid. We know that while writing regulations will be difficult, enforcing compliance will be even more so.

We also know that compliance with laws of this type is a "subjective, labor-intensive" process, as one survey respondent wrote. This can be made less so if enforcement is delegated to state agencies that have existing relationships with the proscribed businesses, know where they are located, and have the statutory authority to apply the appropriate penalties, if necessary, to ensure compliance.

We also know that systemic solutions, by themselves, don't guarantee compliance. Solutions of this type would be more effective if combined with a program of education, outreach and, ultimately, enforcement of the law at the level of the proscribed businesses. This would be preferable to indiscriminant grant reduction for all Tanf beneficiaries in a state.

Finally, over 20 states are considering state laws that would ban the use of public assistance in a variety of business that include the three now proscribed by federal law. In order to make Section 4004 enforcement effective, states should consider combining enforcement of their own bans with enforcement of Section 4004.