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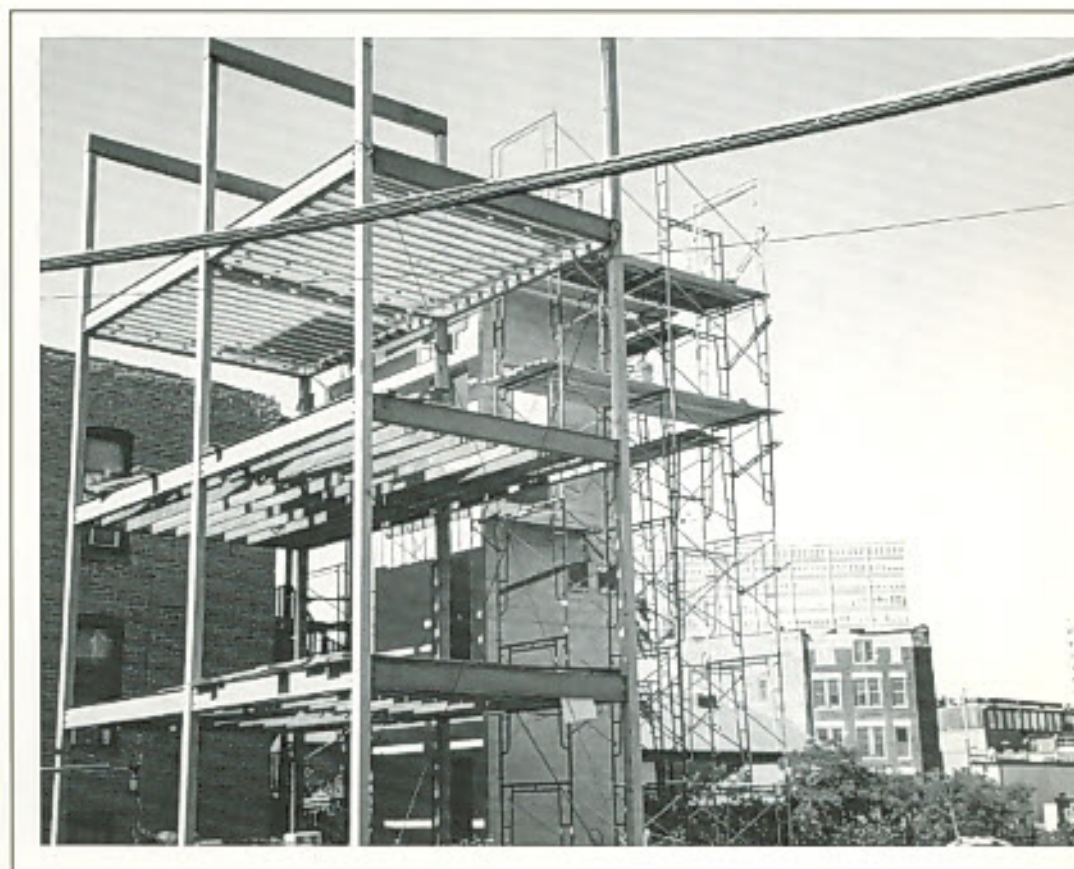
INSIDE

Administrative and
Judicial Enforcement
of Consolidated Plan
Obligations

How to Use the Fair
Housing Laws to Achieve
Your Community
Development Goals

Recipient Concerns with
the Use of Electronic
Benefit Transfer Systems
for the Delivery of State
and Federal Benefits

The Living-Wage
Ordinance: A First Step
in Reducing Poverty



Consolidated Plan and Community Development Block Grant Advocacy

Recipient Concerns with the Use of Electronic Benefit Transfer Systems for the Delivery of State and Federal Benefits

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In recent years public benefit agencies have increasingly used electronic benefit transfer systems (EBT) as a replacement for paper benefit checks, food stamp coupons, and other voucher payment systems to deliver public assistance benefits.^{[1/](#)} With the passage of the 1996 welfare reform legislation, EBT use has grown exponentially.^{[2/](#)}

I. Overview

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 significantly affected EBT developments at the state level: First, whereas EBT was an option that states could elect for the delivery of food stamp benefits, the 1996 Act mandated that all states implement EBT systems for these benefits by October 1, 2002, when the printing of food stamp coupons is to be totally eliminated.^{[3/](#)}

Second, as the Act converted the Aid to Families with Dependent Children program to the new block grant Temporary Assistance for Needy Families (TANF) program, the U.S. Department of Health and Human Services (HHS) stepped away from any involvement with EBT as the delivery system for cash-assistance benefits. This allowed states to develop EBT systems for cash delivery with fewer consumer protections. States were thus enabled to reap even greater savings by converting to an EBT delivery system than they would have when under federal oversight.

Before the 1996 legislation only about a dozen states operated some form of an EBT delivery system. As a result of the two changes made by the legislation, more than 40 states are expected to be **p216** operating EBT systems in at least parts of their states by the end of 1998.

A. Public Benefit Recipient Concerns

Our most vulnerable citizens are not adequately protected under the new EBT systems. Public-benefit recipients in an EBT environment are more likely than general consumers to need basic consumer protections for at least two reasons. First, the decision to use the electronic method for accessing funds is a voluntary one for the general population. The

general consumer may weigh potential benefits and risks and decide whether to accept a bankcard. For the most part, state agencies deny recipients of government benefits the same choice, although the Treasury Department has said that electronic delivery is voluntary for federal program beneficiaries.

Second, many recipients need consumer protections (especially those receiving public assistance) because they are living at the margins. They cannot afford to suffer out-of-pocket losses from unauthorized benefit transfers, to run around town looking for an automatic teller machine (ATM) that works or a merchant who provides point-of-sale (POS) cash withdrawals in amounts sufficient to pay bills. Recipients should not have to defer purchases of food or rent payments because the system is not operating. They are not as likely as the general public to have reserves to fall back on while an error or theft at an ATM is resolved. Accordingly recipients participating in EBTs need policies that go beyond the limited scope of consumer protections offered by current federal policies.^{4/}

Regrettably many of the policymakers who are developing EBT structures have not fully recognized the value of involving recipient representatives and have therefore designed programs that fail to address recipient concerns.^{5/} Advocates must have meaningful opportunities to participate in the development of local EBT systems and federal-level decision making about these systems.

B. Electronic Delivery Better for Some

EBT may provide an improved delivery option for some. Delays due to slow mail, mail theft, and long waiting lines to pick up benefits or cash checks are all reasons why electronic delivery may be a better system.^{6/} A person concerned about being identified as a welfare recipient when using coupons or vouchers or by standing in a separate line at a public location may prefer the anonymity of an EBT card.

A properly designed EBT system would eliminate many of these problems. Electronic delivery may avoid the mail altogether. By allowing recipients to make incremental withdrawals of cash benefits and by eliminating the need for food stamp coupons and Women, Infants, and Children (WIC) benefit vouchers, mugging **p217** opportunities would be reduced if not totally avoided.^{7/} EBT may eliminate the need for people to identify themselves as recipients. And many recipients who have participated in EBT systems indicate that, being allowed to make incremental withdrawals against their accounts, they can budget better their limited funds over the course of the month.^{8/}

Whether EBT fulfills its potential as an enhanced delivery system without causing new problems depends on its design. Unfortunately system designers are focusing on cutting the costs associated with administering government benefit programs; in particular, they are using EBT as a fraud-control mechanism in the food stamp program, often at the expense of client service.

II. Specific Concerns

Recipient concerns range from meeting recipients' special needs to interoperability between states. Discussed in this article are 22 areas identified as concerns for recipients.

A. The Need for Exemptions in Mandatory EBT Systems

The danger that conversion to a mandatory EBT system may create major barriers to participation for some recipients is quite real. This is true particularly for food stamp and general assistance recipients who are elderly or disabled and who are unable to use the system even after training.

Some may simply be unable to remember a personal identification number (PIN). Others may have a limited ability to think conceptually and deal with abstract benefits they cannot see and feel, even though they are able to count out money or coupons. Others may not have ready access to ATMs and/or POS terminals in stores that they frequent because of deployment problems. Still others need equipment that is specially modified to accommodate a handicapping condition. Such equipment includes Braille PIN pads, wheelchair-accessible ATMs, and on-screen messages for those limited in English.

Simply put, some recipients are unable to deal with an electronic system, and for them a paper-based system needs to be retained. The low-income population is no different from the rest of the population; but society does not mandate debit card technology and ATM or POS usage for the general population.

This is why at a minimum an EBT system must incorporate good-cause exceptions to EBT participation. , The U.S. Department of Agriculture (USDA) changed its final regulations to require compliance with the Americans with Disabilities Act of 1990 (ADA).^{9/} Neither the federal benefit agencies nor the state welfare agencies, however, have been monitoring ADA compliance in the EBT context. They instead leave it to an aggrieved individual to find somehow a way to manage while pursuing independently an ADA claim.

USDA denied Oregon's request for a waiver from EBT to allow the elderly, the disabled, those needing expedited service, and remotely located households to cash out food stamp benefits. Massachusetts's request to provide for cash-out for the elderly was similarly turned down. USDA has even denied waiver requests from states which would permit conversion of cash in natural disasters, although such a waiver has been granted to other states.^{10/} *p218*

Conversely all states allow direct deposit of TANF benefits and other cash assistance into recipient-owned bank accounts (an option that few states offered before converting to EBT). Iowa and Minnesota offer cash-assistance recipients the option to receive paper checks.^{11/}

Although hard data are limited, advocates in several states assert that many recipients who are elderly, handicapped, and not fluent in English or Spanish are dropping off food stamp rolls with the conversion to EBT, despite their need for benefits.^{12/} In Minnesota,

when participation in EBT for Aid to Families with Dependent Children and general assistance recipients was mandatory, nearly one-third of the caseload had to be exempted from EBT participation, and a check-based delivery system was maintained. Maryland for awhile exempted much of its disabled recipient population from EBT participation.

There are more palatable approaches than mandating a "one size fits all" approach to EBT participation. Even the Treasury realized this with the Electronic Funds Transfer 99 initiative and is taking the position that recipients of direct federal benefit payments such as social security benefits and Supplemental Security Income may continue to receive a paper check unless they affirmatively indicate an interest in participating in one of the electronic alternatives.¹³ There is a middle ground: Recipients can be required to opt out of the new system affirmatively by claiming a hardship waiver if they do not wish to participate.¹⁴

The only other accommodation provided in the final EBT regulations for food stamps is that persons whose handicaps prevent them from participating in an EBT environment may have authorized representatives act on their behalf.¹⁵ To a number of states USDA has granted waivers that *p219* allow group-living facilities such as battered women's shelters, homeless meal providers, and drug-treatment facilities to be equipped with their own POS equipment. This equipment allows residents' to convert food stamp benefits to funds that are directly deposited into a facility's bank account.¹⁶ Persons who are capable of using the current check/coupon system, however, should not be required to surrender independence maintained through a paper-based system and should not be forced to rely on authorized representatives.

Empowering people to move into mainstream society means affording them increased opportunities and options and permitting them to choose the course that best meets individual circumstances. To mandate a particular course, especially when the general population has not chosen it, does not empower. Such a mandate instead exemplifies the paternalism that is all too prevalent in policies toward the less fortunate members of society.

B. Fees and Surcharges

Imposing fees and surcharges on recipients of needs-based assistance is unconscionable.¹⁷ Poor families need all their benefits to subsist and cannot afford to use any portion of these benefits to pay access fees.¹⁸

1. Opposition to Imposing Fees and Surcharges

Fees and surcharges reduce the benefits of recipients who do not currently pay fees to cash their checks. States should increase the amount of aid to cover such fees. To date, no state has done this.

For EBT participants surcharges raise another problem that most other ATM users do not face. Because EBT participants do not have bank accounts, transactions take place at a

nonhost bank and may be subjected to surcharges. With no government restrictions on the imposition or the amount charged, recipients are at great risk of becoming captive targets for those who viewing EBT as a new revenue source for private-sector profit.[/19/](#)

The widespread variation in fee structures illustrated in table XXX makes clear a need to create federal standards for fees.[/20/](#) For states to attempt to keep EBT costs down by looking at methods to cut back on recipients' access to benefits would be inappropriate. States instead should look at options that would not have such an adverse effect.[/21/](#)
p220

2. Point-of-Sale Fee Structure

Retailers may not charge recipients for accessing food stamp benefits to purchase groceries,[/22/](#) but there are no federal prohibitions against charging for access to cash benefits. Some states have implemented (or are contemplating) procedures that allow retailers to charge as high as \$1 per POS cash-back or cash-withdrawal transaction even in states where recipients already pay the state fees for cash transactions at POS devices. (Refer to table XXX for information available on cash EBT POS transaction fees and surcharges.) The fees charged by these merchants are substantially higher than the average per transaction cost that the merchants incur.[/23/](#) Thus merchants in effect have been authorized to profit at the expense of recipients who are forced to use their equipment.

Many of the POS fee structures make it virtually impossible for a recipient to know whether a particular store is complying with a fee agreement made with the state or its agent. To report unlawful assessments, the system essentially requires recipients to know whether the store they frequent is authorized to assess a fee. The system further requires state officials or their agents to monitor stores constantly to assure that they are living up to the agreement with respect to the cash-withdrawal options offered.[/24/](#)

C. Transaction Limitations

Restrictions on the number and type of transactions and dollar amounts charged for transactions must be reasonable. Recipients in EBT project sites offer as two of the major advantages of EBT (1) the ability to make incremental withdrawals against their cash benefit accounts and (2) the anonymity of accessing their cash benefits at ATMs. Some states, including Texas, have created systems where recipients are able to access their cash benefits only at manned POS devices. Others permit only a limited number (if any) fee-free ATM transactions per month. Such restrictions greatly reduce the advantages of this alternative delivery mechanism. (See table XXX.)

Actual experience with EBT has shown that once a recipient becomes familiar and comfortable with the new system, the recipient makes an average of three or four ATM withdrawals per month. Many recipients, however, need to draw down the bulk of cash benefits at one time to pay monthly bills. Accordingly no restrictions should be placed on transactions unless experience shows that recipients are using such unlimited transactions

as to make the cost to government prohibitive. If restrictions are imposed, recipients should be allowed an unlimited number of free transactions for the initial months of participation so that they gain confidence that they have ready access to their benefits.

D. Card Issuance

Until the inception of the Texas EBT project, mandatory EBT projects issued EBT cards and PINs in person at the time of training. Texas was the first state to exercise the option offered by the food stamp EBT regulations to issue the cards and PINs by mail. The card and PIN were sent in separate envelopes on different days.^{*p226*} Since then several other states have followed suit^{/25/} largely because they were successful in obtaining waivers from the in-person-training requirement.

The issues of theft, loss, and delay that attend paper-based benefit delivery are also raised when EBT cards and PINs are mailed. A greater concern has emerged because some states are making the mail-issued cards self-activating upon PIN receipt.^{/26/} This is unlike the practice generally employed by credit card companies when a phone call is required to prove identity before a mail-issued card is activated. In the current system someone--such as a dishonest postal employee--can rip off the mail-issued cards and PINs and access benefits without the recipients knowing that the cards had been issued.

E. Personal Identification Number Selection

Recipients feel very strongly about the importance of permitting PIN self-selection. In projects where have been assigned, recipients find they cannot remember their PINs or that they need to write them down on the cards.^{/27/} The solution is obvious: Allow recipients to pick their own PINs, or at least offer the option.

Self-selection reduces the likelihood that the recipient needs to write the number down on the access device or on a piece of paper carried with the card. Without the number readily available, a lost or stolen card would not result so easily in unauthorized access. Self-selection also reduces potential losses to recipients and program agencies because of fraud; it is why the final food stamp EBT regulations were amended to allow recipients to choose their PINs.^{/28/} USDA has granted several states waivers from PIN assignment as long as recipients are given the option of changing to a PIN of their own choosing.^{/29/}

F. Issuance of Multiple Cards

Households that include more than one adult recipient, such as two-parent or multigenerational households, should have the option of receiving multiple EBT cards so that more than one family member has authority to access benefits. When multiple cards are elected, each person should have a separate PIN. Further, the primary caretaker or household head in non-TANF cases should be able to designate the programs that may be accessed by the additional cardholders and whether restrictions should be imposed on the amount of the benefits available.

Similarly, in households with members who currently receive benefits that are not for all members' use (such as a multigenerational household in which the grandmother receives social security benefits and the adult daughter and her son receive TANF), the household should have the option of having two separate EBT accounts. Each adult could have his or her own card and PIN for each account even if together they are considered a single household for food stamp purposes.

If an institution or person has been issued an EBT card in lieu of or in *p227* addition to the recipient and is not part of the assistance unit, the institution or person should have a separate PIN and card. Such persons or institutions include representative payees, alternate shoppers, and group homes. Moreover, the recipient should be able to designate whether restrictions apply.

These issues are not addressed in the federal agency material on EBT, and there is no evidence that individual states have adequately addressed these issues.[/30/](#)

G. Card Replacement

EBT systems must establish procedures for promptly responding to a recipient's request for a replacement card or PIN. Cards and PINs may have to be replaced for such reasons as loss, damage to the card or the magnetic strip, failure to remember the assigned PIN, or concern that the card or PIN has been compromised. Oftentimes the only way that a recipient may access the benefits needed to pay bills and other bare necessities is by using a card. Accordingly a simple procedure for requesting and promptly obtaining a replacement card and/or PIN must be in place. This procedure should include a clear explanation of the steps needed to initiate the process and should be given both orally and in writing during training.[/31/](#)

The food stamp EBT rules permit states two full business days to replace cards or issue new PINs after receiving a *p228* request for replacement. The rules further specify that states may specifically request waivers to allow for an even longer replacement time.[/32/](#) Several states already have requested and received waivers.[/33/](#) Certainly there are grounds for establishing systems capable of supplying faster replacement, especially if recipients request replacement in person.

H. Conversion for Travel

Recipients must be able to convert food stamp EBT benefits readily to food stamp coupons when they need to leave the EBT project area for longer than two days.[/34/](#) An acceptable agency general requirement is for recipients to send advance notice in the normal course of business to allow the agency time to process conversion requests. However, there should be expedited procedures for handling emergency situations in which recipients are unable to give advance notice or to notify the agency before they leave.

The food stamp regulations on EBT require states to convert electronic benefits to coupons when they are advised that a food stamp household is leaving an EBT project area for more than a short-term absence.^{35/} The preamble to the final regulations makes clear that the requirement is intended to cover migrant farmworkers and other seasonal workers.^{36/} The regulations, however, permit the state three business days to make the conversion.^{37/} The three-day rule is simply not responsive to emergencies, which by their nature tend to occur with little or no advance notice.

Only a handful of states permit conversion for short-term absences.^{38/} While the food stamp EBT regulations address "short-term absences from the EBT system area for family emergencies or similar *p229* isolated occurrences,"^{39/} the regulations permit and do not require that states provide for conversion. The rules further permit states to limit the number of times per year that a household may convert their benefits.^{40/}

Allowing states to refuse to convert EBT benefits to cash when a household is leaving for a "short-term" absence that exceeds two days may result in serious deprivations for many families. A family faced with a need to be absent is unlikely to be able to make advance arrangements to take care of its needs until its return. Refusals to convert also restrict a recipient's ability to travel. Currently households may move about freely and use food stamp and WIC coupons to make purchases at authorized retailers anywhere in the country. A family member also may take a share of the family's coupon allotment and explore job prospects in another state while the rest of the family uses coupons at home. The food stamp EBT regulations, however, do not seem to recognize scenarios where only a portion of the family's benefit allotment needs to be converted. No state has independently adopted conversion policies to address these concerns.

I. Point of Sale Terminals/Automatic Teller Machines

Undefined standards regarding consumer protection, border jumping, equipping supermarket lanes, providing access points for cash benefits, and security problems are some issues states face when making the transition to an EBT delivery system.

1. Access to Benefits

The food stamp statute requires that USDA regulations include standards that define the required level of protection for recipients accessing retail food stores. The law provides that if participation is not optional, USDA may not approve an EBT system unless a sufficient number of eligible retail food stores (including those stores able to serve minority-language populations) agree to ensure that eligible households will not suffer a significant reduction in their choice of food retail stores or that there will not be a significant increase in the cost of food or the transportation to get to participating food stores.^{41/}

Despite numerous comments objecting to the lack of specific implementation of this directive in the proposed food stamp EBT regulations, the final regulations added little flesh to these statutory requirements. USDA regulations do not include specifics on how to implement the directive and do not lay out a review process to determine whether accessibility is satisfactory. They also fail to require that a corrective action plan be followed when problems are discovered.

Having a sufficient number of participating retailers is extremely important. The EBT system should not limit recipients' access to retailers in their home neighborhoods. Recipients of cash benefits must be able to access the cash benefits in their EBT accounts readily. This means they need access points beyond local food stamp retailers, many of whom provide limited if any cash back. These are elements that must be addressed before a mandatory EBT project proceeds. An assessment of the situation, however, cannot be made without some standardized policy.^{42/}

In addition to the language about adequate and sufficient access, the food stamp regulations require that all **p236** authorized retailers be afforded the opportunity to participate in the EBT system at no cost.^{43/} For EBT projects implemented before 1997, the government paid to equip authorized retailers that wanted to continue to operate under the EBT system with POS devices and hookups. Merchants were reimbursed for their expenses, such as switch fees, that were incurred in processing EBT transactions. (The government also frequently paid to deploy POS devices at merchants other than food retailers to insure that recipients had adequate access to cash benefits.)

These standards have been weakened substantially.^{44/} Some states are taking the position that government-deployed equipment may be used only for food stamp EBT transactions and not for cash EBT transactions.^{45/} Several states are advising retailers that while the state may furnish POS equipment, it will not reimburse the retailer for telephone hookups or processing fees.

2. Border Stores

The EBT system must be designed to assure that recipients are not inhibited from travelling or shopping outside the area in which they live. Many low-income recipients must purchase food with cash despite USDA regulations prohibiting the imposition of a sales tax on food items purchased with food stamps. For this reason those living near a state border in a state that taxes food purchases made with cash routinely cross state lines to maximize purchasing power. If these recipients cannot make their food stamp and WIC purchases in these same stores, then their food and/or transportation costs are bound to rise with the switch to EBT. Procedures must be developed accordingly to identify and equip stores near EBT project areas for EBT transactions.

The food stamp EBT regulations contain minimal language about the need to consider food stamp access for persons shopping outside an EBT area. For example, the

regulations provide that the EBT advanced planning document should include a description of "the number of authorized food retailers bordering the pilot and expanded areas."^{46/} They specifically require (1) that state agencies examine household shopping patterns in the planned EBT project area to determine whether recipients shop outside the area (if they do, states must arrange for terminal deployment in such "border" stores)^{47/} and (2) that food stamp households and retailers be allowed to submit evidence about the need for additional deployment.^{48/} *p236*

As discussed earlier, nothing in the regulations assures compliance or specifies the actions that the state or the federal agency is to take when problems are reported. In fact, USDA has taken the position that terminal deployment at stores across a state's borders be based on "necessity" rather than the recipients' convenience. It leaves to each state to determine when additional deployment is necessary. Needless to say, states are reading the requirement narrowly and are rarely paying to equip routinely shopped border stores before conversion to EBT.

3. Lane Equipage in Food Stores

One concern is that retailers will set up separate lanes to serve EBT customers. The fear is that merchants in larger stores will not equip all or even most checkout lanes with POS terminals that accept EBT, especially those for whom recipients of government benefits are only a small portion of their customer base.

The food stamp EBT regulations prohibit retailers from establishing checkout lanes that are only for food stamp households or recipients of other welfare benefits.^{49/} The regulations also require that participating retailers permit EBT purchases during all hours of store operation.^{50/} The regulations further require that states install a POS device for every checkout lane in any store where food stamp purchases account for at least 15 percent of total food sales.^{51/} Where food stamp business volume is lower, one terminal would have to be supplied for each \$8,000 in monthly redemption activity in stores other than supermarkets and one for each \$11,000 in food-stamp activity in supermarkets.^{52/} Again, however, many states may not be complying with these requirements and lack the staff to monitor individual store practices.

4. Additional Access Points for Cash Benefits

In addressing additional deployment, states must assure that an EBT system does not place undue burdens on recipients needing to access cash benefits. ATM access may not be available to recipients in some areas, and many food retailers are unwilling to offer withdrawal- or cash-back transaction services for free. Convenient and safe locations for cash-assistance recipients to access benefits should therefore be seriously explored.

A few states are considering additional points of access for cash-assistance recipients and have helped deploy devices to allow transactions to pay rent and utility bills at public housing authorities and utility company offices. These devices, however, do not allow recipients to withdraw cash.[/53/](#)

Some states have considered that food stamp retailers restrict the cash-back availability for TANF and the safety issues raised when recipients must obtain cash at one location and carry it to another location to purchase money orders to pay their bills.*p238* For example, the Maryland, Minnesota, and New Jersey EBT projects provide for POS deployment in neighborhood furniture stores, drugstores, and check-cashing establishments. These merchants are willing to accord recipients free and unlimited access to their benefits.[/54/](#) These and other options such as deployment at police stations, post offices, and public libraries should be looked into as ways of increasing safe access to cash benefits.[/55/](#)

5. Security

The isolated location of ATMs that are appendages to the outside of buildings or inside the vestibule of banks (especially in high-crime areas) makes recipients easy targets for muggers. Efforts must be made to deploy unmanned terminals inside stores (including convenience stores with extended hours) and malls and in other well-lit, heavy-traffic areas. No federal or state agency has adequately addressed security issues as they relate to deployment and access.

J. Adequately Meeting Special Needs

The design of an EBT system should address the physical and mental handicaps that require specially equipped ATMs or POS devices. Such devices should include keypads and on-screen messages geared for people with limited reading skills or those with no English literacy. The population for whom EBT is intended is much less likely to have postsecondary education or even to have completed high school than the population for which electronic funds transfer and ATM technology were originally designed.*p239*

USDA has been silent about these matters and has made only passing references to ADA compliance and using representative payees. Agency officials must consult with organizations that work directly with special-needs populations about accommodations that can help smooth the transition to this new delivery system. A smooth transition would help these populations access benefits with little interference with their current level of independence and self-sufficiency.

If governments mandate EBT or other electronic transfer methods as the only means to obtain the benefits for which recipients are eligible, they have a responsibility to set up

such methods as to assure that special needs are reasonably accommodated. Few states have yet to make real efforts to accommodate special-needs groups other than the Spanish-speaking recipient populations in their design of EBT programs. This is illustrated by the numerous problems encountered by the elderly and the disabled and those who are not fluent in either Spanish or English.[/56/](#) *p240*

K. Backup Systems

A way must be found to make sure that backup systems are in place for handling computer glitches and system breakdowns. While no federal agency has addressed the issue of backup systems for obtaining cash benefits, the food stamp EBT regulations recognize the need to provide for manual transactions when an EBT system is down. USDA allows retailers, however, to choose whether to employ these systems.[/57/](#)

The food stamp rules also recognize the need for manual transactions that enable recipients to continue to make food purchases from vendors who are not equipped to handle electronic transactions and do not have immediate access to telephones at the time of purchase.[/58/](#) The rules require that the manual transaction system not be burdensome to the household or to the retailer. But again they do not elaborate on what may be considered "burdensome" or what recourse is available to a merchant or recipient who feels that the manual system is burdensome or in fact not provided.[/59/](#)

The evaluation of the early Texas implementation found an example of yet another security problem with manual transactions. The contractor was not requesting identifying information from the caller during the many times the system was down, and merchants were relying on telephone authorization to proceed with a manual transaction. The evaluator recommended that at a minimum the employee's identification number and store name be obtained to furnish the contractor with an audit trail in the event that retailers or recipients subsequently detected fraud. [/60/](#)

The evaluator of the New Mexico and Minnesota EBT projects also found that the most likely vulnerability to benefit loss in an EBT environment was when a store employee learned a PIN and card number and manually entered the information into a terminal without the client's consent.[/61/](#) The evaluator suggested that a greater *p241* level of security surrounding manual transactions was needed since neither state was basing a decision to reimburse recipients on whether the recipients were at fault for not properly safeguarding their PINs.[/62/](#)

A merchant who permits the use of a manual voucher does so at the merchant's own risk when prior telephone authorization is not received (either because there is no phone access or the phone lines are down).[/63/](#) How many vendors and merchants will allow food stamp recipients to make purchases by using these manual systems is unclear. Recognizing that the risk factor deterred route vendors and farmers' markets from participating in EBT, Maryland paid to equip the vendors with cellular telephones so that

the vendors could obtain authorization and be assured that they would be "paid" for the sales drawn against EBT accounts. The Maryland approach effectively enabled recipients to continue the shopping practices used under the coupon-based system. However, this was determined to be cost prohibitive, and no state has yet come up with a solution satisfactory to alternative food suppliers. As a result, under EBT retailers and nontraditional food suppliers are refusing to use the manual systems, and farmers' markets are ceasing participation in the food stamp program.

L. Staggered Issuance

With the advent of EBT many states for the first time have gone to a system of staggered benefit issuance to ease the burden on the system and the access devices that first-of-the-month issuance for the entire caseload causes. Having separate issuance dates for different segments of the caseload over the course of the month must take into account the needs of the client population and those who will be handling the transactions. Separate dates can be based on last names, digits in the case identification number, and social security numbers and can include factors such as recipients' ability to pay rent and other bills in a timely manner and the impact on car-pooling arrangements made between recipients for shopping and benefit access.

The food stamp EBT rules require that recipients be informed of their benefit availability date but are silent on the issue of staggering of benefit issuance permitted. Many currently operating EBT projects do give recipients written notification of their monthly benefit availability date at the time of their enrollment in EBT.

As indicated in table XXX, most states that stagger cash benefits under EBT have generally done so over a period of no more than five calendar days at the beginning of the month. This has avoided problems with late bill payment charges and serious problems due to a lag in payments in the transition month. Many contractors, retailers, and ATM operators, however, have been pushing for a much broader stagger scheme of anywhere from 15 days and up, which could pose serious problems. The best staggering scheme is the policy adopted by Minnesota. There staggering is started at the end of the previous month so that all recipients have access to their monthly cash benefits no later than the first of the month.

M. Opportunities for In-Person Training

Opportunity must be allowed for in-person hands-on training whenever the EBT system involves full debit card technology to access benefits. In-person training is often the best means for reinforcing important points such as PIN security and ATM safety. It may also ease the transition to the new system by offering experience in using access devices and answering questions.

The food stamp EBT rules require that households be trained before the implementation of EBT and during its ongoing operation. The rules specify hands-on training on the use of POS devices; consideration of the special needs of recipients who have limited English-speaking abilities or physical or mental handicaps; *p236* and written materials at appropriate grade levels and language for all recipients and addressing matters including client rights.⁶⁴ However, here again USDA has begun liberally to grant waivers permitting states to handle training through the provision of written materials that are mailed out to recipients as long as the materials state that additional training is available upon request.⁶⁵

N. Providing Written Materials

Providing handouts is very important. A single EBT pamphlet with all the information regarding the system and recipients' rights and responsibilities may be a useful reference for recipients. However, discrete handouts that recipients may carry with them or post in a convenient location at home are also needed.

One such handout should include step-by-step instructions on how to use an ATM. Even with hands-on training at the training site, some people need something to build up their confidence, especially if the ATM instructions are not easily comprehensible. They also need a handout that includes telephone contact numbers and information about what to do if their card is stolen or ATM rejected. The handout should include information on how to do a telephone balance inquiry and what to do if the recipient gets to the ATM and cannot remember how to do a transaction. Minnesota was probably the first state to address this concern by developing a series of wallet-size cards that recipients may carry with them. Several states have since followed this example. The cards contain simple step-by-step reminders for using ATMs and POS devices.

Although the Electronic Fund Transfer Act⁶⁶ does not apply to EBT transactions, // its requirements regarding notice of rights and obligations in the electronic transfer of money illustrate what the basic requirements in the EBT environment should be.⁶⁷ Recipients should be given complete written information about their rights and responsibilities in an EBT environment. The information should include advice about safeguarding cards and PINs; policies about PIN selection, card replacement, obtaining account information, access fees, conversion to coupons, reporting errors or problems; and the type of responses to expect.

Extension to EBT of this principle of full disclosure is very important. Most currently operating EBT projects have not been supplying to recipients any written materials containing this type of detailed information about rights and responsibilities, notwithstanding that the food stamp *p244* rules require them to do so.⁶⁸ In fact, most states' written materials are woefully inadequate. I have yet to see material from a single state that comes close to providing all the information recipients need to know about EBT

in a form that complies with the food stamp rules on literacy levels and meeting the special needs of certain populations.

O. Protection Against Losses from Stolen Benefits

Policies must be developed to minimize the risk of EBT increasing benefit losses due to theft and to provide for relief from the losses that do occur. In the paper-based system states are not required to replace losses of cash sustained after negotiation of a benefit check or losses of food stamp coupons after receipt. As harsh as these rules are in the current system, their effects increase by converting to an EBT system that both requires recipients to carry more cash on their person and exposes them to new forms of third-party fraud over which they have no control.

In the paper-based system most cash-assistance recipients have to obtain cash for the full amount of their benefits when they negotiate their benefit checks. However, many frequently cash their checks at locations where they can pay bills directly or purchase money orders. As a result, even if they are robbed after negotiating their check, they do not lose the full amount of their grant. EBT participants often have to carry the cash needed for bill paying from the site where they access their benefits to another location.

The amount of cash benefits susceptible to loss through robbery would be significantly minimized if (1) additional free transactions were allowed so that recipients could limit the amount of cash they had to carry away from a transaction, (2) the electronic purchase of money orders through debits to the account were allowed, and (3) devices for accessing cash benefits at locations where recipients may pay bills directly or purchase money orders were deployed. These locations should include check-cashing establishments, banks, post offices, utility companies, and housing authority offices.[/69/](#)

Even if states were to implement such steps fully, policies to assure replacement of stolen cash would still be needed because these steps cannot eliminate theft. They do not address the threat of the electronic theft of benefits, whether by an unscrupulous store employee, a greedy representative payee, a dishonest state agency or contractor employee, or a *p245* computer hacker who breaks the security code and manages to divert funds.[/70/](#)

Concerns about recipients possibly abusing the system by claiming false or repeated losses should be dealt with by building safeguards into the system. Such requirements could mandate that a police report and/or submission of a sworn statement accompany claims. Other safeguards that could be taken to minimize the cost of repeated claims include (1) taking the number of prior claims by a recipient into account when determining the validity of subsequent claims, (2) placing persons who make repeated claims within a certain time frame in protective-payee status or returning them to a paper-based system, (3) requiring a recipient to absorb some small share of the loss, (4) requiring a recipient to obtain prior telephone authorization before accessing benefits, and

(5) limiting the recipient to the use of specified POS devices for accessing cash benefits after a certain number of claims were made and reimbursed.

P. Problem Handling and Error Resolution

Procedures with respect to both the adequacy and timeliness of complaint handling need to be developed. Having a toll-free phone number for recipients to report problems is simply not enough. This is true especially because contractors in several states no longer even accept calls made from a pay phone now that the Federal Communications Commission allows pay-phone owners to charge processing fees for toll-free calls. A set of procedures regarding the specific steps to be taken once an initial report of an error or loss of funds from the account is received must also be established. The procedures should include information about how a claim is to be investigated.

For the most part those receiving needs-based assistance have no financial reserves to fall back on. Therefore any problems associated with misdirected or otherwise missing benefits should be resolved promptly. To the maximum extent possible, within 24 hours of receipt of a reported problem the system should **p246** correct errors that result in the loss of benefits.

When state welfare officials argued to Congress that the Electronic Fund Transfer Act should not apply to EBT systems, they urged that dispute resolutions involving debits or deposits to EBT accounts be governed by existing dispute procedures of the applicable government benefit programs. The officials failed to acknowledge that many of these programs did and do not have procedures to address timely the problems that arise from issuing benefits electronically. To date no state EBT contract or policy materials provide adequate procedures for resolving errors.[/71/](#)

Another error of omission in many state EBT contracts is that the core specifications of toll-free numbers to report problems do not address the needs of recipients who are hearing impaired or speak a language other than Spanish or English and call only for bilingual services. These errors continue despite numerous complaints over the years about EBT systems already in place.[/72/](#) **p247**

Recipients calling to report problems should be given such information as the name or identification number of the person taking their call and the control number assigned to the call so that they are able to prove that they did report problems. Although many federal and state officials agreed on the need for this type of protection, no state has yet provided for such protection in its EBT contract.

Q. Continuation of Due Process Rights

Already existing due process protections should be enforced to prevent the automatic adjustment of alleged overpayments, attachment, and the electronic debiting of funds without prior notice and hearing rights. A body of public benefits law requires prior notice and hearing rights before an agency may recoup an alleged overpayment or take other action that reduces needs-based benefits if the reduction is for reasons other than an across-the-board cut in coverage or benefit levels.^{73/} But some designers of EBT projects do not recognize these requirements and have suggested system designs that allow automatic electronic debiting when there appears to be a reason to adjust the amount of benefits due.^{74/}

Recipients of needs-based assistance often lack the resources to pursue court challenges and are unable to forgo needed benefits while waiting for court decisions. States must ensure therefore that existing due process procedures are made available to a recipient who is dissatisfied with an initial determination that an account should be debited. If a state's EBT system has the contractor assume initial responsibility for handling disputes involving the loss or theft of benefits from an EBT account, a state's due process procedures should apply. An aggrieved recipient must have the right to appeal a contractor's determination by using the agency's fair hearing process.

R. Transaction Receipts

Uniform procedures must be set up to assure that recipients receive written information about transactions. The information should identify the source of the transaction, the amount involved, and the amount remaining in an account if a recipient wants this information. It would enable recipients to keep track of what is left and to determine whether the account was correctly credited and/or debited. There should be a written receipt for every EBT transaction the recipient initiates.

Systems should be designed to assure that recipients are able to see the balance remaining in their accounts on receipts generated at manned access devices. Recipients need this option because balance information remains in the merchant's possession, thus creating potential issues of privacy and security.

There seems little reason not to provide this option. Knowledgeable industry sources indicate that further modifying the software program to permit the customer to make the choice is neither costly nor difficult. This option also would address the concerns of those who believe that requiring the balance information to appear would necessitate dual systems to cover EBT and other debit customers. The latter may well object to having their bank balances appear on a receipt printed at a staffed device, thus defeating one of the primary goals of both the states and the Federal EBT Task Force--keeping EBT costs down by piggybacking on the existing commercial debit infrastructure.

S. Availability of Written Transaction Histories

In addition to receiving a written record of ATM and POS transactions, recipients should be able to get a detailed transaction history if they desire a complete record of all the transactions over a specified period. Procedures must be **p248** developed for producing transaction histories when requested by recipients. These must be made available in a timely manner and at no cost to the recipient. Recipients must be fully apprised of their right to this information and how it can be obtained.

While several states indicate in their request for proposal or other materials that the contractor is expected to be able to provide a 60-day transaction history to a recipient upon request, as required by USDA,[/75/](#) only Missouri includes information about obtaining this transaction history in its client-training materials.[/76/](#) Several states violate the food stamp rules in that they specify that only an oral accounting of the last ten transactions will be given to a recipient who requests more than a simple balance statement.

T. The Need for Interoperability

National interoperability between diverse state EBT systems should be federally mandated, and recipients should have a right to expect such accommodations. Portability of benefits has existed since the inception of both the Food Stamp Program and direct federal benefit programs such as social security and Supplemental Security Income. More fundamental, not to mandate interoperability would infringe on a basic right of U.S. citizens--the right to travel freely anywhere within the country. Federal agencies that authorize the delivery of benefits through EBT systems must assure that recipients can access these benefits from anywhere in the country at no additional cost, regardless of the number of recipients involved or the costs of insuring portability of benefits..

In the paper-based food stamp system a recipient at any authorized food stamp retailer in the entire country may use benefits issued in one state. The portability of food stamp benefits is critical to migrant farmworkers and other seasonal workers whose employment requires frequent moves across state lines. Portability also enables entire households or individual household members to retain benefit access when they have to leave the area temporarily to look for work, to take care of a family member, or to visit relatives. Moreover, it recognizes the reality that, in many areas along state borders, crossing state lines to shop is the norm. Providing portability allows a greater freedom of choice--optimizing the purchasing power of the limited funds available to such households by giving them the freedom to shop across state and county lines to take advantage of sales, lower prices, or lower taxes on consumables purchased with other funds.

There is no justification for impinging on the right to shop freely at an authorized food stamp retailer solely because the method of issuing benefits has changed. This is true

especially when the benefits are uniform across the contiguous United States and amounts are based on household size and income and not on the state in which a recipient lives or shops. The lack of interoperability defeats the Food Stamp Act's purpose, which is "to alleviate such hunger and malnutrition" by permitting "low-income households to obtain a more nutritious diet through normal channels of trade."^{77/} Restricting the use of benefits in the state of a recipient's choice hinders households from obtaining nutritious diets through normal channels of trade. The Act explicitly calls for national eligibility standards.^{78/} To require national eligibility standards but not require a uniform, interoperable benefit delivery system is illogical. Congress could not have been contemplating that result when it called for uniform eligibility standards.

Furthermore, a long line of court cases addresses policies that violate the right to travel freely across state lines. The right of free interstate travel has roots in **p249** a number of provisions of the Constitution and "inheres in the concept of a union."^{79/} These principles have been consistently reinforced through the years.^{80/}

Given that federal agencies have an obligation to enforce and uphold the Constitution and that the Constitution protects the right to travel, it is incumbent upon the agencies to mandate nationwide interoperability of EBT and to assure further that the costs associated with universal access not be passed on to recipients. Passing the costs on to recipients would violate directly the Constitutional guarantee of free travel. For the agencies mandating EBT to leave it to the states to work out the issue of interoperability is simply not acceptable because this insures considerable future problems.^{81/}

U. Combining All Benefits on One Card

While the advantages to both the government and recipients of combining all government benefits to which a household may be entitled on a single debit card are fairly self-evident, there are some concerns with such an approach. Combining all benefits on one card increases the amount of the loss a recipient can suffer if the account is fraudulently accessed or the recipient is coerced into making a forced transaction. Such a system enables other household members to access benefits that are intended for the exclusive needs of a single household member. Another concern relates to the issue of transaction limits. Imposing limits on transactions becomes more egregious if cash benefits from different programs are combined on a single card.

V. The Need for Alternatives

Alternatives to EBT need to be aggressively pursued. Many of us in the advocacy community have long supported efforts to encourage the offering of lifeline banking services to low-income people interested in establishing a banking relationship. We

welcome the creation of options such as "Direct Deposit Too" accounts for the receipt of benefits.

Those most in need of low-cost banking services are the recipients of needs-based cash-assistance benefits. Such needs are not limited to the elderly or those who receive direct federal benefits. All cash-assistance recipients must have assurances that they are to be given information about these alternatives when the paper-based system is converted and that they can avail themselves of such alternatives.^{82/}

Footnotes

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/1/Much of the state-specific information included in this article is based on materials from local advocates. The National Consumer Law Center and I would like to have materials about electronic benefit transfer (EBT) implementation in states not described here as well as updates or corrections on the information cited. Materials should be sent directly to me at 416 Deerfield Ave., Silver Spring, MD 20910. When sending materials, please indicate whether you are willing to be publicly listed as an advocate contact for your state, and include your E-mail address if you have one. I would like to include the names of more local contacts in future materials. I work with Margot Saunders, managing attorney of the National Consumer Law Center's Washington, D.C., office on EBT and electronic funds transfer (EFT) issues. The center is a consultant for lawyers and others on consumer issues affecting low-income Americans. This article was supported in large measure by a grant from the California Consumer Protection Foundation. Any positions or opinions expressed herein, as well as any errors in factual representations, are solely mine and in no way should be taken as reflecting the views of the funding source.

/2/Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, Sec. 825(a)(1), codified at 7 U.S.C Sec. 2016(i)(1).

/3/Id.

/4/The only existing federal consumer protection provisions governing state EBT programs are those promulgated by the U.S. Department of Agriculture (USDA) in its Food Stamp Program regulations found primarily at 7 C.F.R. Sec. 274.12. The only other federal-level structure is that contained in the optional EBT operating guidelines developed by the EBT Council of the National Automated Clearing House Association

(NACHA). However, NACHA's EBT council does not include recipient representatives, and it does not publish for public comment its operating guidelines or other policy materials. Moreover, these guidelines focus almost exclusively on the technical specifications for a uniform operating system and do not address policy issues related to consumer protections.

/5/Some states and localities involved in EBT initiatives have reached out to include recipients' advocates from the earliest planning stages and included recipients' representatives of on EBT advisory committees as equal partners with state agency representatives and the private sector to shape the project to recognize the needs and concerns of all affected parties.

/6/In the paper system recipients of food stamps and Women, Infants, and Children program benefits have had to do without needed items because their vouchers were lost or stolen. Muggers tend to know where recipients pick up their food stamp benefits or when benefits are due to arrive in the mail. These muggers also know that recipients are likely to have coupons or vouchers on their persons on the issuance day and that many cash-assistance recipients have more money on them on benefit-issuance days because, without bank accounts, they have no place to keep benefits "on deposit" for future access.

/7/However, the question of whether such losses of cash benefits are increased or decreased may depend on the location of cash machines and whether recipients will be able to make incremental withdrawals. E.g., to the extent that recipients currently have access to bill-paying services where they negotiate their cash-benefit checks, their risk of loss would be greater if they were required to access those benefits at sites without such services.

/8/Recipients claim they are less likely to make impulse purchases when shopping and less likely to be pressured by family members to buy additional items when they do not have all their cash or food stamp benefits on their person. However, such a benefit to recipients may be lost if EBT systems are designed effectively to prohibit recipients from making incremental withdrawals.

/9/Americans with Disabilities Act, 7 C.F.R. Sec. 274.12 (h)(4)(i)(G) (1990).

/10/Information obtained from untitled and undated table summarizing status of states' EBT waiver requests provided by USDA's Food and Consumer Services office, March 1998.

/11/Iowa Dep't of Human Service EBT Request for Proposal Sec. 3.1.8.3 (updated Dec. 24, 1997); Letter from Johanna Berg, Minn. EBT Program Manager, to Barbara Leyser (May 12, 1998).

/12/State records from Missouri showed that approximately 1 percent of the 115,000 food stamp recipients who were switched to EBT as of January had not accessed their food stamp benefits for at least 90 days and the vast majority were either elderly or disabled.

Missouri was the first state to survey this population to determine why they were not accessing their benefits. The survey of 900 elderly and disabled food stamp recipients who had not accessed their benefits for at least 90 days found that over 40 percent reported that they liked to save up the relatively small monthly allotments they received for major grocery shopping trips and did not realize that under the EBT system benefits would be moved off line if the account had no activity for 90 days. According to press reports, the state plans to tell recipients that if they inform the state in writing that they want their benefits to accumulate before accessing them, the state will keep the accounts active beyond the 90-day cutoff period. More troubling is that nearly one-third of those surveyed indicated that they had not accessed their benefits because they did not understand how to use the new system. Survey Finds Recipients Stockpile Food Stamps, KAN. CITY STAR, May 22, 1998.

/13/Office of Public Affairs, Dep't of the Treasury, Treasury News (June 25, 1998) (press release).

/14/In fact, at least some officials involved in designing the scheme for the Southern Alliance of States originally envisioned just such a system for direct federal benefit recipients who are part of that project. E.g., the original plan was that when claimants went in to apply for Supplemental Security Income or social security benefits, they would first be asked about receiving those benefits via direct deposit. If they declined direct deposit, they were then to receive literature about EBT with their award letter and told that their benefits would be issued by this means unless they affirmatively requested mail issuance of a monthly check instead. The requirement to opt out affirmatively was ultimately dropped from the project design.

/15/57 Fed. Reg. 11220-21 (Apr. 1, 1992).

/16/Alabama, Alaska, Arizona, Arkansas, Colorado, Georgia, Hawaii, Idaho, Illinois, Kansas, Kentucky, Minnesota, North Dakota, South Dakota, Oklahoma, Oregon, Pennsylvania, and Utah.

/17/Recipients agree that fees and surcharges might not raise the same issues if they were imposed only where recipient participation in EBT was not mandated or for transactions in excess of a reasonable number of free transactions. In both cases they could avoid transaction costs by withdrawing from the system or by limiting the number of automatic teller machine (ATM) transactions.

/18/That the current paper-based system forces some to do so (in the form of check-cashing fees) is not an excuse for continuing such deprivation.

/19/Only a handful of states have successfully taken action to prevent EBT recipients from being subjected to ATM surcharging fees. See table elsewhere with this article.

/20/The table (id.) shows states imposing ATM fees that range from \$.40 per transaction to as much as \$1, with surcharges then tacked onto these amounts. Some entity is clearly

making a profit off these higher-end transaction fees. The average cost of an ATM transaction is \$.27 (see Community Banks Face Increase in Electronic Financial Transactions, HOUS. BUS. J., June 22, 1998), while the cost of an ATM withdrawal transaction ranges between \$.35 and \$.75 and of an ATM balance inquiry between \$.18 and \$.50 (NATIONAL AUTOMATED CLEARING HOUSE ASS'N EBT COUNCIL, COMMERCIAL POS AND ATM TRANSACTION FEES, attachment A (Jan. 1997)).

/21/E.g., why not start by looking at ways to cap the profits the commercial sector may make from EBT at either the government's or the recipient's expense? The large volume of transactions that an EBT system brings to transaction processors and switch networks places the government in an excellent position to negotiate for a discounted processing rate. Getting a discounted rate might eliminate the need to assess any recipient transaction fees or surcharges, raise the number of free transactions that can be permitted before imposing a fee, or at least reduce the amount of the fee or surcharge a recipient may have to incur.

/22/7 U.S.C. Sec. 274.12(f)(1).

/23/ The NACHA EBT Council report, supra note 20, also cites Bank Network News as having found that the cost of processing a point-of-sale (POS) transaction ranges from \$.07 to \$.125, while that of a POS balance inquiry ranges from \$0 to \$.08.

/24/To complicate the matter even further, another condition of many POS fee structures is that retailers treat their EBT customers making debit purchases no differently from regular commercial customers. Several states have agreements specifically providing that retailers who routinely allow free cash back to commercial debit customers must allow recipients to debit their EBT cash account for more than their purchase and to get free cash back. Here again some unrealistic expectation seems to be that recipients will be able to find out what the store's general policy is, know that they must be treated the same as other customers, and know that they can seek redress if they feel the merchant is treating them in a discriminatory manner. The state agency or its contractor is required to set up an elaborate system to monitor stores, investigate claims of alleged discrimination, and impose penalties on stores violating the conditions of the retailer agreement.

/25/Alabama, Alaska, Arkansas, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Kentucky, Maine, Massachusetts, Minnesota, Missouri, New Hampshire, New York, North Carolina, Oregon, Rhode Island, Tennessee, Texas, and Washington have all received waivers and may issue EBT cards through the mail.

/26/This is the case in at least Colorado, Connecticut, Massachusetts, and possibly New York.

/27/ When retailers in Texas were questioned about their perception of EBT participants' performance, their second most frequent negative comment was that many recipients had written their assigned personal identification number (PIN) on the card's sleeve in order to remember it and avoid embarrassment at the checkout counter. EMPIRICAL

MANAGEMENT SERVS., STATE OF TEXAS COMPTROLLER OF PUBLIC
ACCOUNTS EBT SYSTEM SHAKEDOWN FINAL REPORT 29 (Jan. 31, 1995).

/28/7 C.F.R. Sec. 274.12(e)(1)(ii).

/29/To date, waivers permitting PIN assignment have been granted to Alabama, Alaska, Arkansas, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Iowa, Kentucky, Massachusetts, Minnesota, Missouri, New Hampshire, New York, North Carolina, Oregon, Rhode Island, Tennessee, and Texas. Arizona apparently was also granted this waiver but has chosen not to use it.

/30/One of the better states in this regard is California, where state law requires that whenever an institution, authorized representative, or other third party is issued an EBT card, either in lieu of or in addition to the recipient, the third party must have a separate card and PIN. The recipient must be given the option to designate whether restrictions apply to the third party's access to the recipient's benefits. WELF. & INST. CODE Sec. 31, ch. 3, art. 3, ¶ 10072(e), pt. 1, div. 9, as added by AB 1542 (1997). The state statute further provides that, at the option of the recipient head of household, multiple EBT cards are to be issued to each adult member of the unit. *Id.* Connecticut's EBT program provides that, in cases involving the use of an authorized representative, two cards may be issued for the household with the authorized representative card having a distinct PIN from that of the household head. Northeast Coalition of States EBT Contract Sec. 3.8. The welfare department may issue an EBT card with its own PIN to an authorized shopper at the request of the head of the food stamp household; the head of the household may restrict the card to access of the food stamp benefits only so that the cash benefits are not jeopardized just because the household head needs someone else to do the grocery shopping. CONN. ASS'N FOR HUMAN SERVS., EBT IN CONNECTICUT: WHAT PROVIDERS NEED TO KNOW 4 (June 1997). In Kansas each payee on a case is issued a separate card and selects his or her own PIN. Access can be controlled to each account, so each payee may have access restricted to only one account or have access to both accounts. The primary payee also may choose which account(s) any alternate payee can have access to. KAN. FOOD STAMP MANUAL Sec. 9103 (Mar. 1997). In addition to having an alternate payee or representative payee removed or changed, a recipient may temporarily block a payee's access to the recipient's benefits by calling the customer service number and requesting that the payee's card status be changed to inactive until the recipient requests that such status be changed back to active. *Id.* Sec. 9108. Oregon provides that separate EBT cards and PINs may be issued to the recipient and up to three alternates at one time. Letter from Gary Weeks, Director, Oregon Department of Human Resources, to Multnomah Disability Services Advisory Council (July 18, 1997). At the other extreme are states (e.g., Illinois and New Mexico) that provide for the issuance of only one EBT card and PIN per case either to the payee or the representative payee but never to each or to more than one adult in the assistance unit. ILL. DEPT OF PUBLIC AID POLICY MEMORANDUM 4 (Jan. 1, 1997); N.M. REQUEST FOR PROPOSAL 71-665-48-13512, Sec. VI.D.7.j (July 25, 1997).

/31/In virtually all states recipients are first required to call the contractor's customer-service line to report the need for a card replacement and/or PIN change. In some states the replacement card and/or PIN are then mailed to the recipient, although in a couple of states recipients are allowed to choose a new PIN over the phone by using a special procedure that encrypts their selection so that no one on the receiving end is able to identify the number selected. In other states, after making the call, recipients must personally go to a designated location to pick up the new card and select a new PIN. This is usually done at the local welfare offices, but some large cities such as Washington, D.C., and New York City have only two locations where a recipient may obtain a replacement card or PIN.

/32/7 C.F.R. Sec. 274.12(f)(5)(ii).

/33/Three days are allowed for replacement in Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Minnesota, North Dakota, New Hampshire, South Carolina, and South Dakota; five days in Alabama, Arkansas, Florida, Georgia, Indiana, Kentucky, Missouri, North Carolina, Tennessee, Wisconsin, and Wyoming.

/34/Conversion of any other voucher-type benefits, such as those of the Women, Infants, and Children program, must also be provided for when the recipient of such benefits will be leaving the EBT project area but retains eligibility for the voucher benefits remaining in the EBT account.

/35/7 C.F.R. Sec. 274.12(f)(6)(i). Moreover, USDA has granted waivers to the following states to permit them to convert remaining food stamp benefits to cash for recipients moving out of the state once the state has implemented EBT statewide: Alaska, Alabama, Arkansas, Colorado, Connecticut, Georgia, Hawaii, Idaho, Kentucky, Massachusetts, Maine, Michigan, Minnesota, Missouri, North Carolina, New Hampshire, New York, Oregon, Rhode Island, and Tennessee. After the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 similar waiver requests from Arizona, Florida, Illinois, Indiana, Pennsylvania, and Wisconsin were all denied.

/36/57 Fed. Reg. 11231 (Apr. 1, 1992).

/37/7 C.F.R. Sec. 274.12(f)(6)(i).

/38/E.g., Idaho provides that recipients are permitted up to three benefit conversions for food stamps per year for temporary absences from the EBT area so long as they are not solely for shopping convenience of a participant who is not absent from home. Idaho Administrative Procedure Act 16, tit. 3, ch. 20, Sec. 240 (1997). Illinois's policy permits up to two such conversions per year but requires that requests for such conversion must be made in writing by using a specified state form and then gives the state three business days following receipt of the completed form to issue the coupons ILL. DEPT OF PUBLIC AID POLICY MEMORANDUM 17-18 (Jan. 1, 1997). Kansas policy provides that recipients who are temporarily leaving the state for vacations or family emergencies may convert their food stamp benefits to coupons but instructs workers to log each

conversion and consider referral for possible fraud investigation based on the frequency of such conversion requests. KAN. FOOD STAMP MANUAL Sec. 9111 (Mar. 1997).

/39/7 C.F.R. Sec. 274.12(f)(6)(ii).

/40/Id. Sec. 274.12(f)(6)(iv).

/41/7 U.S.C. Sec. 2016(i)(3)(A).

/42/First, there need to be formalized criteria for determining what is more than a "minimal" disruption of access, or what constitutes a "significant" increase in food or transportation costs. Second, there must be an established process to obtain the facts necessary to determine whether these criteria are met. Indeed, USDA, at least, appears to admit the need for some fact gathering. The statement accompanying the final rule indicated that state agencies would be required to examine shopping patterns to establish needs for terminal deployment within the project area, as well as in border areas. 7 U.S.C. Sec. 2010(i)(3)(A). However, this intention was never properly translated into the food stamp EBT regulations.

/43/7 C.F.R. Sec. 274.12(g)(2).

/44/ Beginning with the Southern Alliance of States EBT project, the government took the position that where food stamp retailers without commercial POS devices are unwilling or unable to purchase or lease them, the contractor was responsible "for ensuring adequate recipient access to food stamp benefits in accordance with agency rules." Southern Alliance of States Prototype IEI, ch. II, Sec. II.4.ix, as amended June 30, 1995. The document elsewhere specifies that the contractor will need to assure that POS terminals are available in a "sufficient" number of food retailers to provide access to food stamp benefits by recipients. Here again standards of adequacy or sufficiency are undefined. The only mention of terms such as "adequate" or "sufficient" in relation to access to cash benefits is a statement that "[t]he government reserves the right to deploy terminals to perform cash withdrawal, purchase, and/or food stamp transactions to ensure adequate access to all benefits by every recipient." Id., ch. II, Sec.II.4.ix. The solicitation then goes on to state: "(a) for those food retailers who do not arrange for commercial POS services, the contractor is to propose a plan that provides access to the EBT system under current food stamp regulations while at the same time minimizing the cost to the government for providing such access, and (b) for retailers with less than \$100 per month in food stamp sales, access may be provided through manual voucher transactions." Id. ch. IV, Sec. II.A.1.ii.

/45/Alabama, Arkansas, the District of Columbia, Florida, Georgia, Kentucky, Missouri, North Carolina, and Tennessee have or will so limit the type of POS equipment the government will install for retailers.

/46/7 C.F.R. Sec. 274.12(c)(1)(i).

/47/Id. Sec. 274.12(g)(4)(ii)(C).

/48/Id. Sec. 274.12(g)(4)(ii)(D).

/49/Id. Sec. 274.12(g)(4)(i).

/50/Id. Sec. 274.12(f)(9).

/51/Id. Sec. 274.12(g)(4)(ii)(A).

/52/Id. Sec. 274.12(g)(4)(ii)(B).

/53/Connecticut, the District of Columbia, Massachusetts, Maryland, New Jersey, New York, and Rhode Island have made such arrangements.

/54/Some of the better provisions in this regard are as follows: In California counties must take all "reasonable measures" to ensure that recipients have access to their benefits under EBT. WELF. & INST. CODE Sec. 31, ch. 3, art. 3, ¶ 10072(c), div. 9, as added by AB 1542 (1997). In Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont the contractor is required to deploy an adequate number of free POS devices to food retailers and at other locations to assure that recipients have ready access to their food stamp and cash benefits. Northeast Coalition of States EBT Contract Secs. 3.10, 2.6.1.5. In Minnesota, in areas with low ATM density, the state and the contractor solicit POS cash-only sites, including check cashers, to provide convenient client access to cash. Berg, *supra* note 11. In New York state law requires both that (a) there be a sufficient number of access points in each local social service district to ensure an adequate distribution of EBT services, including a specific requirement to establish access points at a broad range of businesses and community facilities such as community centers, senior centers, educational and job skills training sites, and local housing authorities, and (b) there be published a list identifying the number and location of access points within each social services district or subdivision at the time of EBT implementation in such district with a further requirement to seek and accept public comment on the adequacy of recipient access within such district. S. 5788 (N.Y. 1997), Sec. 144-a (adding a new section 21-a to the social services law), Sec. 144-b (adding a new subdivision 19 to Sec. 131 of the social services law).

/55/ Some states are taking the opposite stance and are restricting the locations where recipients can access their cash benefits. The worst example is Texas, where legislation was passed last year (a) specifying that Temporary Assistance for Needy Families benefits may be used only to purchase goods and services considered essential and necessary for the welfare of the family, including food, clothing, housing, utilities, child care, and incidentals such as transportation and medicine or medical supplies or equipment, and (b) providing that EBT cash withdrawals from such benefits may be made only at the customer service department of a provider of one of these "essential and necessary" goods or services and not at the provider's POS terminal. H.B. 1439 (Tex. 1997) (adding a new Sec. 31.0355 to HUM. RES. CODE, subchapter B, ch. 31). In

Colorado state law provides that only those businesses that offer products or services related to the purpose of the public assistance benefits shall be permitted to participate in EBT through the use of POS devices and specifically prohibits clients from accessing cash benefits through ATMs or POS devices located in licensed gaming establishments, in-state simulcast facilities, racing tracks, commercial bingo facilities, stores or establishments in which the principal business is the sale of firearms, or retail establishments licensed to sell alcoholic beverages. COLO. REV. STAT. Sec. 26-2-104(2)(a) (1997). Minnesota law expressly prohibits recipients from accessing their cash benefits at any ATM or POS terminals located in any establishment that receives at least 50 percent of its gross revenues from the conduct of gambling. MINN. STAT. Sec. 256.9831 (1997).

/56/One of the best pieces to detail the various problems encountered by those with special needs is Marjorie Valbrun's *Advocates for Disabled Cite Flaws in Welfare ATM System*, PHILA. INQUIRER, Mar. 1, 1998. While no state can be cited as a model for best practices in this area, some of the features that some states have incorporated into their EBT programs to address some of the issues raised can be summarized: In Arizona any client requesting one-on-one training is supposed to receive individual training from a trained staff member. ARIZ. DEP'T OF ECON. SEC., EBT PROJECT, UPDATE ON THE ARIZONA EBT PROJECT (Apr. 1998). In California counties must ensure reasonable access for recipients who demonstrate an inability to use the EBT system because of disability, language, lack of access or other barrier. WELF. & INST. CODE Sec. 31, ch. 3, art. 3, ¶ 10072(d), pt. 1, div. 9, as added by AB 1542 (1997). In Colorado state statute required that in the development and implementation of EBT the state was to consult with representatives of those persons, agencies, and organizations that would be affected by EBT, specifically including recipients, to assure that the service is "as workable, effective, and efficient as possible.". COLO. REV. STAT. Sec. 26-2-104(2)(a) (Year?). In Florida all training materials as well as customer service is available in Creole, in addition to English and Spanish, and the customer service unit is also equipped to handle teletype (TTY) devices. In Georgia, according to a newspaper report, special efforts are being made to reach elderly recipients who may not be comfortable with the technology or be uncomfortable about not receiving checks anymore; also, the literature to recipients about the conversion to EBT is printed in six different languages; *Government Benefits: Paper's Out, Plastic's In*, AUSTIN 360: COX INTERACTIVE MEDIA, May 25, 1998 <www.austin360.com:80/tech/stories/05may/25/xcard25/htm>. In Illinois client training is to include hands-on experience using both ATM and POS devices and one-on-one training for all persons who express a need for it. ILL. DEP'T OF PUBLIC AID POLICY MEMORANDUM 21 (Jan. 1, 1997). The customer service phone line has TTY access. *Id.* at 9. In Massachusetts recipients residing in rest homes, institutions, or drug or alcohol treatment facilities will continue to receive their cash benefits via check rather than EBT. MASS. DEP'T OF TRANSITIONAL ASSISTANCE FIELD OPERATIONS MEMO 97-13 at 15 (Feb. 10, 1997). In Minnesota client training materials are available in alternative forms including Braille, large print, and audiotape. There is TTY access to the customer service phone line. *HOW TO USE YOUR MINNESOTA EBT CARD* (Feb. 6, 1998). The customer service help desk has access to the AT & T language line to support non-English-speaking clients. Berg, *supra* note 11.

In New Mexico client training is to include provisions for recipients who are Spanish speaking, Navajo speaking, illiterate, or disabled. N.M. REQUEST FOR PROPOSAL 71-665-48-13512, Sec. 3.9.46 (July 25, 1997). In Oregon while the state relies primarily on mail issuance of the EBT cards and PINs as well as the training materials, pick up of the card and PIN at the local welfare office is permitted for persons without a mailing address and for those who have an unsafe mailing address. Some allowances are made both for the self-selection of a PIN for persons having difficulty remembering the assigned number and for focused EBT in-person training for special groups, such as people with cognitive or mobility impairments or who are non-English speaking. Letter from Maurice Walker, EBT Coordinator, Oregon Department of Human Resources, to Multnomah Disability Services Advisory Council (July 31, 1997). Wisconsin is requesting potential contractors for an alternative pricing quote on camera-ready training materials and dubbed videos in Hmong, Russian, Cambodian, Laotian, Vietnamese, and French. Wis. Request for Information No. CP-1717 (Jan. 6, 1998) (attachment C).

/57/7 C.F.R. Sec. 274.12(e)(2)(v), (h)(3)(ii)(D), (h)(4)(ii)(A), (l). Over half of the recipient complaints about the early phases of the Texas EBT project and about one-fourth of the retailer complaints were related to system problems. While this may be attributed to project start-up, and system problems can be assumed to be virtually eliminated once the shakedown is completed, this has not proven to be true. An independent evaluation of both the St. Paul, Minnesota, and Albuquerque, New Mexico, EBT projects commissioned by USDA, and conducted several years after those projects had been in place, found that 44 percent of the recipients in New Mexico and 31 percent in Minnesota reported at least one incident of system or equipment failure in the six months before the interview, and 25 percent and 17 percent of recipients in the respective sites reported making at least one backup transaction during this same period. Also, 37 percent of recipients in New Mexico and 21 percent of those in Minnesota reported having to use a terminal in another lane because the one in the lane they were in was not working, and a full 10 percent of recipients in both sites reported having to go to another store to complete their shopping trip because the equipment was not working in the first store. ABT ASSOCIATES, THE IMPACTS OF THE STATE-INITIATED EBT DEMONSTRATIONS ON THE FOOD STAMP PROGRAM 200, 211, 213 (June 1993). (Since this evaluation looked only at the experiences of food stamp recipients, what the experiences were for those trying to access their cash benefits at either POS devices or ATMs is not known.)

/58/7 C.F.R. Sec. 274.12(g)(1)(i).

/59/The food stamp EBT regulations are in fact devoid of any standards for the operation of manual systems. E.g., such basic safeguards as requiring that retailers submit manual vouchers to the agency or its contractor for payment and prohibiting them from directly accessing the food stamp account through POS devices, or otherwise, for payment on a manual voucher are lacking. Similarly no steps are taken to ensure that the purchaser is the account holder and that the agency or its contractor can identify the appropriate account to debit when the voucher is submitted for payment. Steps that can be taken include requiring the imprinting of the debit card on the manual voucher, or otherwise

obtaining sufficient information beyond the recipient's signature, without risking an invasion of the account's security or the recipient's privacy.

/60/EMPIRICAL MANAGEMENT SERVS., *supra* note 27, at 32.

/61/ABT ASSOCIATES, *supra* note 57, at 100.

/62/*Id.* at 102-3.

/63/7 C.F.R. Sec. 274.12(g)(1)(i).

/64/*Id.* Sec. 274.12(f)(10).

/65/Texas was the first state to be granted such a waiver. Other states (Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Iowa, Idaho, Kentucky, Massachusetts, Maine, Minnesota, Missouri, North Carolina, New Hampshire, New York, Oregon, Rhode Island, Tennessee, Vermont, Washington, and Wisconsin) have since been granted waivers, by USDA, to permit use of the mailing of written materials to recipients as the primary means of training. In granting the Texas waiver, USDA's only stipulations were that the state had to offer "'face-to-face' training to any recipient who requests it or to anyone [the department] identifies having problems using the EBT system" and that the training site be "readily accessible" to all recipients in a defined service area. Unfortunately offering the opportunity to view a video on how to use the EBT system is now considered enough to meet this standard. Many of these states offer limited opportunities for recipients to receive in-person training; whether those recipients who would like to receive such training have any meaningful opportunity to do so is questionable.

/66/15 U.S.C. Sec. 1693.

/67/See 12 C.F.R. Sec. 205.15(d)(2). Despite vigorous opposition from advocates, the states persuaded Congress that allowing the protections of the Electronic Fund Transfer Act provided to consumers when they choose to access their money electronically would amount to an unfunded mandate by Congress on the states. So there are no federal protections on the electronic access of benefits for welfare recipients except those required by USDA in the food stamp regulations.

/68/7 C.F.R. Secs. 274.12(f)(1)-(f)(10).

/69/E.g., Connecticut, the District of Columbia, Massachusetts, Maryland, Minnesota, New Jersey, New York, and Rhode Island all provide for deployment of access devices at many of these additional sites, including, at housing authorities and utility companies, equipment that can be used solely for the payment of rent or utility bills, but much more can be done in this area. No state is aggressively trying to provide for electronic purchase of money orders through ATMs or POS devices to cut down on the amount of cash a recipient must carry away from the machine.

/70/Security experts in the EFT field have identified four major sources of problems that pose significant threat of loss to those operating in an EFT/EBT environment: (1) Insider fraud affects switches, ATMs, and POS devices. Examples range from an employee of the switch or another contractor learning how to breach security procedures, policies, and equipment, to a third party dialing into a POS device with the collusion of a store employee and programming the unit to store card numbers and PINs to be downloaded to a remote personal computer for use in creating counterfeit cards, to a merchant employee crediting duplicate charges and pocketing the funds generated by the phony charges. (2) Counterfeit fraud involves an outsider fraudulently obtaining account numbers and PINs to create counterfeit debit cards and gaining access to a consumer's funds. Examples range from those using high-powered equipment to observe individuals inputting their PINs at an ATM keypad and then matching those PINs to discarded ATM receipts, to college students setting up a phony ATM that captured PIN and account information, thereby enabling them to create counterfeit cards and withdraw \$90,000 from cardholders' accounts before being caught. (3) The card holder is either coerced into withdrawing funds from the account and turning them over to someone else or robbed at the ATM following a voluntary withdrawal of funds. (4) A family member or representative payee who knows a card's PIN takes the card and, unauthorized, uses it to his or her own benefit. The Federal Reserve Board took action in March 1995 to reduce the first two risks. An amendment to Regulation E permits the printing of a truncated card number on the receipts generated by access devices to prevent thieves from obtaining the account number from either the discarded customer receipt or the store copy of the receipt printed at a POS device. Whether EBT operators, who are not subject to Regulation E, will adopt this practice to protect recipients is unknown. If EBT were optional for recipients, rather than mandatory, the issue of who bears the costs of the risks imposed by conversion to an EBT system could be resolved by each recipient deciding which system-EBT or paper based-offered the better potential for safeguarding benefits, although even then government ought to attempt to reduce the risks in either system. However, if recipients are not given a choice, government is obligated to ensure that risks are not increased and to provide for relief from unavoidable risks.

/71/Some states' limited provisions in this regard are as follows: (1) A California statute requires counties to develop error-resolution procedures. WELF. & INST. CODE Sec. 31, ch. 3, art. 3, ¶ 10072(i), pt. 1, div. 9, as added by AB 1542 (1997). (2) In Florida the customer response unit is to take calls reporting disputed fund balances, write them up, and forward them for investigation; if the investigative unit determines that the complaint is legitimate and that PINs are not involved in the transaction, then recipients are to get the disputed amount recredited to their EBT accounts. Citibank, The Florida Benefit Security Card 20. (3) In Idaho recipients are solely liable for unauthorized fund transfers except those initiated fraudulently by an employee of the state or the EBT contractor or its employee or subcontractor. Idaho Administrative Procedure Act 16, tit. 3, ch. 20, Sec. 005 (1997). (4) In Illinois food stamp benefits lost as a result of the loss or theft of the EBT card and PIN before the report of such loss is not replaced if the loss or theft is due either to the client's mismanagement or to presumed fraud, collusion, or cooperation in fraud. Ill. Reg. 7733 (Sec. 121.94, effective June 1997). (5) In Iowa the contractor shall bear all liability for any losses resulting from errors or omissions including fraud and

abuse on the part of the contractor or its representatives or subcontractors, i.e., any duplicate postings to a recipient account, any losses from transactions performed with cards issued but not activated by the recipient and/or contractor, any losses from funds drawn from an account after the client or state notified the contractor that the card had been lost or stolen, any damages or losses suffered due to the negligence of the contractor, and any damages or losses suffered by fraud or abuse of the Quest (see infra note 81) operating rules. Iowa Dep't of Human Service EBT Request for Proposal Sec. 3.2.2.7.1 (updated Dec. 24, 1997). The contractor is to report problem transactions and disputes: information on the number, type, and time of problem transactions, including inaccurate transactions delineated by the type of problems, e.g., card failure, POS terminal failure, telecommunications disruptions, etc.; the source of the problem, e.g., third-party processor, financial institution, contractor, retailer, or household; and the numbers and types of disputes, how they were resolved and the length of time to resolve them. Id. Sec. 3.2.2.10.3.2. (6) In Massachusetts the contractor, after receiving a report that an ATM dispensed funds improperly, has up to 30 days to investigate the claim and either credit the account or deny the claim while the welfare office must then mail to the recipient a notice of the determination along with a notice of the recipient's appeal rights. MASS. DEP'T OF TRANSITIONAL ASSISTANCE FIELD OPERATIONS MEMO 97-13 at 5 (Feb. 10, 1997). (7) In New Mexico the contractor is to have sufficient resources available to manage normal problem-resolution issues on an expedited basis, with the exception of ATM disputes, which the contractor must resolve within ten business days unless development of ATM pictures is involved. N.M. REQUEST FOR PROPOSAL 71-665-48-135122, pt. A, app. A-A, art. 3, Sec. 3.9.46 (July 25, 1997). (8) In New York the contractor is to conduct a transaction research request whenever a recipient reports a problem such as an ATM misdispense, a double posting of a transaction, an overcharge, or other type of system problem without any specified time line for completing such investigations. NCS Adjustment Processing (undated).

/72/The Direct Payment Card Project in Texas was a model in this area: A special hot-line number was set up for the hearing impaired, and the contractor used the services of international telephone operators as interpreters for any calls that came into the hot line from recipients speaking a language other than one for which the contractor had bilingual staff capabilities. In the state EBT projects Florida, Illinois, Minnesota, and Pennsylvania all provide TTY access, and Minnesota requires access to the AT&T language line to support clients who are non-English speaking.

/73/See *Goldberg v. Kelly*, 397 U.S. 254 (1970); 45 C.F.R. Sec. 205.10(a)(1); 7 C.F.R. Sec. 273.13(a), Sec. 273.15.

/74/In fact, on May 19, 1998, USDA issued a notice of proposed rule making that would amend the food stamp regulations to permit automatic adjustment of a food stamp EBT account to correct a system error or an out-of-balance condition with contemporaneous notice rather than a ten-day advance notice of the proposed adjustment. 63 Fed. Reg. 27511-14(May 19, 1998).

/75/7 C.F.R. Sec. 274.12(f)(2).

/76/Id. Sec. 274.12(f)(10)(i).

/77/7 U.S.C. Sec. 2011.

/78/Id. Sec. 2014(a).

/79/ *Green v. Anderson*, 811 F. Supp. 518 & n.7 (E.D. Cal. 1993), *aff'd*, 26 F.2d 95 (9th Cir. 1994), vacated and remanded on other grounds, 115 S. Ct. 1059 (1995). As stated early on by the Supreme Court: "For all the great purposes for which the Federal government was formed, we are one people, with one common country. We are all citizens of the United States, and as members of the same community must have the right to pass and re-pass through every part of it without interruption, as freely as in our own States. . . ." *Crandall v. Nevada*, 73 U.S. (6 Wall.) 35, 48-49 (1867), quoting from *The Passenger Cases*, 48 U.S. (7 How.) 283, 492 (1849) (Taney, C. J., dissenting); accord *United States v. Guest*, 383 U.S. 758 ("a right so elementary was conceived from the beginning to be a necessary concomitant of the stronger union the Constitution created"). Two years later the Court said, in interpreting the Privileges and Immunities Clause of Article IV: "[I]t gives [citizens of each state] the right of free ingress into other States and egress from them. . . . [W]ithout some provision of the kind . . . the Republic would have constituted little more than a league of States; it would not have constituted the Union which now exists. *Paul v. Virginia*, 75 U.S. (8 Wall.) 168, 180 (1869).

/80/E.g., in *Williams v. Fears*, the Court said: "Undoubtedly the right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty, and the right, ordinarily, of free transit from or through the territory of any state is a right secured by the 14th Amendment and by other provisions of the Constitution." *Williams v. Fears*, 179 U.S. 270, 274 (1900); see also *Twining v. New Jersey*, 211 U.S. 78, 97, (1908) (since "right to pass freely from state to state" is among rights and privileges of national citizenship recognized by Supreme Court, it is also guaranteed by privileges and immunities clause of 14th Amendment against abridgment by the states). In yet another context the Supreme Court observed: "[T]he right to travel is part of the 'liberty' of which the citizen cannot be deprived without due process of law under the Fifth Amendment. . . . [T]hat right was emerging at least as early as the Magna Carta. . . . Freedom of movement across frontiers . . . and inside frontiers as well, was part of our heritage. . . . Freedom of movement is basic in our scheme of values." *Kent v. Dulles*, 357 U.S. 116, 125-26 (1958).

/81/A nationwide model for interoperability, called Quest, has a set of operating rules developed by the EBT Council of the National Automated Clearing House Association. States choosing to accept the operating guidelines may use the Quest logo on their EBT cards. Cards with the logo are then recognized at any ATM or POS device throughout states also agreeing to comply with Quest standards. Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, the District of Columbia, Florida, Georgia, Hawaii, Idaho, Kentucky, Maine, Massachusetts, Minnesota, Missouri, New Hampshire, New York, North Carolina, Pennsylvania, Rhode Island, Tennessee, Vermont, and Washington have all agreed to join the Quest system, but many of the major ATM networks have not

agreed to the Quest rules. Several states have a separate provision requiring some degree of either national or cross-border interoperability. E.g., California calls for interoperability with other states to the maximum extent feasible. Florida and Georgia recipients may use any Honor network ATM in the country to access their benefits as well as those bearing the Quest logo. New Mexico has interoperability with Texas and is trying to add Oklahoma, Colorado, Utah, and Arizona. Texas has interoperability with New Mexico and is working to add Oklahoma. Washington, D.C., mandates interoperability with Maryland, and Wisconsin requires that its contractor make a good-faith effort for interoperability with Minnesota, Illinois, Michigan, and Iowa.

/82/ Most states are doing little to advise recipients about available direct-deposit options or to work aggressively with the financial institutions to increase the availability of direct-deposit accounts. Connecticut, Florida, and Missouri are some of the more aggressive states promoting direct deposit as an option. Connecticut's EBT contract states that all cash-assistance recipients are to be offered a free direct-deposit option with a minimum of four free ATM withdrawals per month or to choose to pay a fee for an enhanced direct-deposit account with additional features in lieu of EBT. Northeast Coalition of States EBT Contract Sec. 3.1. All recipients are required to be fully informed of the various direct-deposit options available to them, and information about the options must be available at each training site. *Id.* Secs. 2.1.11, 3, app. E (Conn. Specific EBT Services Sec. 2.1.12). Presumably these general requirements also apply to all the other states in the Northeast Coalition (Massachusetts, New York, Rhode Island, New Hampshire, Vermont, and Maine). In Florida the contractor is supposed to offer limited service accounts for recipients of cash benefits to permit direct deposit as an EBT option. Monthly service fees are not to exceed \$3. One such account was to be offered by First Union Bank and provide for three free ATM withdrawals per month, unlimited POS access, the ability to make additional deposits via First Union ATMs, full Regulation E coverage with the exception of a monthly statement, and one free card replacement per year. Additional ATM transactions were to cost \$1, as was receipt of an option monthly statement. The contractor is supposed to advise recipients of the various direct-deposit options available to them in lieu of EBT. Southern Alliance of States Core Clarifications 7 (Jan. 23, 1996) (attachment VII). These general requirements presumably apply to the other states in the Southern Alliance of States that include cash assistance in their EBT program (Georgia, Alabama, Arkansas, Kentucky, Missouri, and Tennessee); more than 50 percent of the cash-assistance recipients in Missouri receive their benefits via direct deposit rather than EBT. South Carolina, which has been running a food-stamp-only EBT program for several years is issuing a request for proposal to provide cash benefits via direct deposit with financial institutions and to eliminate the use of EBT for such payments.

Review 1998 S-O EBT 10/07/98 8:38 AM 3

About Illinois's Electronic Benefit Transfer System

A young boy's letter to President Clinton on Illinois Link

August 17, 1997

Dear Mr. President:

My name is Roman, and my mother has a disability. The new debit cards that have been introduced in Illinois restrict me from doing simple tasks such as going to a store and purchasing a piece of food when my mother is restricted to a bed. I am not one to complain, but this new debit card is not only hard for my family to use but I also feel that it will make it near to impossible for other families to balance their spending money and food stamps.

This also poses a problem with not being able to take my mother to her doctor in Washington, D.C. We have tried other doctors in our area and they have not been able to treat her competently and we must have access to this doctor.

Almost all of my relatives live in other states, and we cannot afford to meet them and buy our food, and we cannot afford to take these trips without our food stamps.

I am not sure if you can help with any of these problems but I strongly urge and plead that you do address them.

Sincerely yours,

ROMAN DEAN RATHERT

Carbondale, Illinois

[Reprinted from Illinois Welfare News (Sept. 1997).]

Link to Desperation

December 15, 1997

Dear Editor:

I would like to comment on the negative results of the new Illinois Link program and how these results have a keen tendency to escalate the financial difficulties and ultimately punish the already less fortunate.

I am an Illinois Link recipient who lives in the small city of Cairo at the southern tip of the state. My city has only two grocery stores. Prices in these stores are very expensive.

Before Link, I could travel seven miles to Kentucky and save a little on the price of my groceries, but I am now unable to do so because stores there do not accept the Illinois Link card.

Before Link, I could travel nine miles to Missouri and save a little on the price of my groceries, but I am now unable to do so because stores there do not accept the Illinois Link card.

Before Link, I could travel thirty miles to another city in Missouri and shop at the Aldi or Save-a-Lot grocery store and save the equivalent of an entire week's worth of groceries, but I am now unable to do so because neither store accepts the Illinois Link card.

First of all, Illinois Link should not have been so constructed as to defeat the purpose of a food stamp program. It should never be so restricted as to put less food on one's table by dictating and forcing the recipient to buy groceries in a particular state or location. There was no such restriction on the previous paper form of food stamps.

Second, currency is accepted in exchange for groceries anywhere in the United States, while the "Illinois" Link card is accepted only if "Illinois" approves its acceptance in other states. This appears to be discrimination against those who receive food stamps because they do not have enough cash to supply their daily needs. If one is eligible for the Illinois Link card, then one should be able to spend it where and when one chooses.

Third, how is one to pay the cash difference for one's groceries when one's balance is low and is not sufficient to cover the entire purchase? The computer simply relays to the cashier, "Do not dispense goods," even though the customer can pay cash for the difference. What is the probability of groceries ever totaling to one's exact balance on the Link card?

Finally, unless I have missed some vital information, it is obvious to me that the Illinois Link card was not a well-thought-out program even though it was on the drawing board for a long time before its implementation in Cairo on November 1, 1997.

Even though I currently receive the same amount of food stamp benefits as I did before the alleged welfare "reform," I have far less food because I now also have far fewer options as to where I can purchase it.

Illinois Link! What exactly are we being linked to? Illinois needs to return to the drawing board.

It appears there are many links missing in this unrealistic chain, and, unless there is a major change soon in the new reform, the only reality the unfortunate will be linked to is desperation.

JUDY FRITZ

Cairo, Illinois

[Reprinted from Illinois Welfare News (Jan. 1998).]

STATE ELECTRONIC BENEFIT TRANSFER CONTACTS

ALABAMA

State Agency: Bob Waites, electronic benefit transfer (EBT) director, Department of Human Resources, Office of Deputy Commissioner Program, S. Gordon Persons Building, 50 Ripley St., Montgomery, AL 36130; 334.242.1709; fax 334.242.0220.

EBT Account Executive, Food and Consumer Service (FCS), U.S. Department of Agriculture (USDA): Erin McBride.1

ALASKA

State Agency: Marsha Hubbard, EBT project director, Department of Health and Social Services, P.O. Box 110640, 400 W. Willoughby Ave., #302, Juneau, AK 99801; 907.465.3055; fax 907.465.3319; mhubbard@health.state.ak.us.

EBT Account Executive, FCS, USDA: Joyce Kohler.2

ARIZONA

State Agency: Dayne Coffey, EBT Project Site Code 980A, Arizona Department of Economic Security, P.O. Box 6123, Phoenix, AZ 85005; 602.241.9481, fax 602.241.1151.

EBT Account Executive, FCS, USDA: Karen Walker.3

Local Advocate: Dana Newell, Arizona Community Action Association, 2627 N. 3d St., #Z, Phoenix, AZ 85004; 602.604.0640; fax 602.604.0644; danan@azcaa.org.

ARKANSAS

State Agency: Dan Chambers, EBT project director, Arkansas Department of Human Services, Division of County Operations, Office of Program Planning and Development, P. O. Box 1437, Slot 1220, Little Rock, AR 72203; 501.682.8892; fax 501.682.8081; dchambrs@ix.netcom.com.

FCS EBT Account Executive, FCS, USDA: Erin McBride.1

Local Advocate: Megan DeLamar Schroeder, Arkansas Hunger Coalition, P.O. Box 451, Little Rock, AR 72203; 501.374.6675; arhunger@aristotle.net.

CALIFORNIA

State Agency: Chris Dunham, project manager (916.229.4439), and Jan Robinson, assistant (916.229.4449, fax 916.229.4487), Health and Welfare Data Center, 1651

Alhambra Blvd., Suite 100, Sacramento, CA 95816 (For overnight deliveries: 8745 Folsom Blvd. Sacramento, CA 95826). Roberta York, San Bernardino County Department of Social Services, 670 E. Gilbert St., 2d Floor, San Bernardino, CA 92415; 909.388.5950; fax 909.388.5940. Linda Joerden, San Diego County Department of Social Services, 1255 Imperial Ave., San Diego, CA 92101; 619.338.2637; fax 619.338.2734.

EBT Account Executive, FCS, USDA: Karen Walker.3

Local Advocate: Brian Patrick Lawlor, Legal Services of Northern California, 515 12th St., Sacramento, CA 95814; 916.551.2119; fax 916.551.2196; blawlor@earthlink.net. Gail Hillebrand, Consumers Union, 1535 Mission St., San Francisco, CA 94103; 415.431.8747; fax 415.431.0906; hillga@consumer.org.

COLORADO

State Agency: Mark Tandberg (303.866.2535), Jan Finney, (303.866.2928, fax 303.866.5098), Colorado Department of Human Services, 1575 Sherman St., - 3d Floor, Denver, CO 80203.

EBT Account Executive, FCS, USDA: Jane Duffield.4

CONNECTICUT

State Agency: Bob O'Connor, EBT project coordinator, Department of Social Services, 25 Sigourney St., 7th Floor, Hartford, CT 06106-5033; 860.424.5020; fax 860.424.4962; ebtfiscal.dss@po.state.ct.us.

EBT Account Executive, FCS, USDA: Erin McBride.1

Local Advocate: Michael Sullivan, Connecticut Association for Human Services, 880 Assylum Ave., Hartford, CT 06105; 860.951.2212; fax 860.520.4234; msullivan@cahs.org.

DELAWARE

State Agency: Joe Remy (acting), project manager, Delaware Card One Project, Financial Services Administration, Department of Health and Social Services, 1901 N. Dupont Highway, New Castle, DE 19720; 302.577.4875; fax 302.577.4531.

EBT Account Executive, FCS, USDA: David Barnhart.5

DISTRICT OF COLUMBIA

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