

# **Comments of The National Consumer Law Center on Food Stamp Program: Electronic Benefits Transfer Benefit Adjustments**

Submitted to United States Department of Agriculture Food and Nutrition Service (RIN: 0584-AC61)

On behalf of our low income clients, the National Consumer Law Center<sup>[1]</sup> is pleased to take this opportunity to comment on the proposed rules allowing adequate notice of adjustments and a change in the fair hearing procedure. The proposed changes to the rules are basically appropriate, and we applaud the Department of Agriculture for making these changes so gingerly. We caution, however, that these alterations to recipients' due process rights should not be the basis for future infringements, and we further suggest some essential refinements in several specific areas of these regulations: 1) the definition of system error should be specific and clear; 2) the types of information that must be included within the contemporaneous notice provided to the recipients should be spelled out in the regulations more specifically; and 3) necessary error resolution procedures should be developed for application to electronic benefit transfers of foods stamps.

Food Stamp recipients need to have maximum choice about where they can shop. Some have special dietary needs that cannot always be met by large supermarket chains, and require access to their benefits at small specialty stores or farmers markets, where on-line EBT may not be available. Others may not have dietary restrictions limiting their choice of grocers, but may live in communities not served by the large food chains that are more likely to provide POS access. Thus, the proposed rules are important for the purposes of accommodating merchants who otherwise may be reluctant to conduct EBT transactions and need assurances that they will be paid in a timely manner should they opt to participate in the EBT system.

## **1) Definition of System Errors**

First, the regulations must include a specific definition of "system error" which results in an out-of-balance settlement condition. Secondly, the definition should only include computer or mechanical errors, not human errors which result from the merchant's incorrect entry of the amount to be debited. Examples of system error should include errors that can be made at a variety of processing points, beginning with the merchant and ending with the State. Some of those errors may arise as a result of a technical, non-human malfunction, such as a computer crash or software glitch. Other errors may be a technician's incorrect input (as opposed to the merchant's mistake). For example, in a case where a merchant receives telephone authorization for a manual transaction, and the processor fails to input the

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proper information into the system, the merchant should be able to obtain immediate credit to his account once the error has been determined. These appear to be the kinds of errors contemplated by the proposed rules and this should be stated more clearly.

Other errors, which occur as a result of the merchant's mistakes, should not receive special status allowing for an exception from the general advance notice procedures. For example, where a merchant has input \$1.20 but the proper amount to be debited should have been \$12.00, the exception for system errors should not apply.

The exceptions from due process and advance notice proposed in these regulations should only apply to situations where all parties involved in the transaction can readily agree there is no dispute, because the system simply broke down during the transaction.

The current rules requiring prior notice and a hearing should explicitly still apply in situations of most human errors (by the merchant) to prevent attempts at automatic adjustments of alleged overpayments or electronic debiting of benefits without prior notice or hearing rights. There is a body of law in public benefits that over the years has established prior notice and hearing rights before an agency can recoup an alleged overpayment or take any other action that results in the reduction of a family's needs based benefits, other than for reasons having to do with an across the board cut in coverage or benefit levels.<sup>121</sup>

But some state EBT programs have not recognized the effect of these requirements and have included system designs that provide for automatic electronic debiting whenever there appears to be reason to adjust the amount of the benefits due. *A clearly stated prohibition of this activity should be included in these rules. In other words, only system errors should be allowed to be corrected without advance notice, not merchant error.*

Third, the definition of "system error" should specifically include the situation where the recipient's account has been incorrectly posted with too low an amount -- too much money was incorrectly debited from the recipient or too few food stamp benefits were credited to the account. Recipients will suffer immediate hardship from the loss of funds incorrectly removed from their account as well as from system errors that incorrectly credit the monthly food stamp allotment, and thus should be entitled to an immediate correction of such system errors.

Finally, the reference in 274.12(f)(4)(ii) allowing the State agency to make adjustments to benefits which occur as the result of system error for "auditable" out-of-balance settlement conditions should explicitly place the burden of proof on the merchant to

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<sup>121</sup>

prove the appropriate debit amount. This burden is implicit in the proposed regulation, but should be made explicit.

## **2) Contemporaneous Notice Must Be Specific**

The contemporaneous notice provided to the recipient of the adjustment must be explicit in detailing the reasons for the adjustment and the right to a hearing and immediate re-credit of the adjusted amount. For example, the contemporaneous notice should include:

- 1) The date and time of the original transaction that led to the alleged out-of-balance settlement condition;
- 2) The name and location of the merchant involved;
- 3) The amount wrongly debited and the amount which should have been debited;
- 4) The new balance as the result of the adjustment;
- 5) The recipient's rights to a hearing, and the immediate re-crediting of the adjusted amount in the case of a dispute over the incorrect debit.

## **3) Additional Error Resolution Procedures Needed**

We applaud the Department's establishment of a five day time period to resolve disputes regarding system errors. However, we strongly urge the Department to develop error resolution procedures for all disputes relating to the delivery of food stamp benefits electronically. There is a need to develop procedures with respect to both the adequacy and timeliness of complaint handling. The proposed regulation takes a small step in that direction by providing at least that all system errors be corrected within five business days. However, much more needs to be done.

### **A. Statement of the problem**

It simply is not enough to provide recipients with a toll free phone number they can call to report problems. The contractors in several states are no longer even accepting calls made from a pay phone now that the FCC allows pay phone owners to charge recipients of toll free calls a processing fee, thus inhibiting recipients ability to promptly report errors or problems that may warrant a lock being placed on further access to the accounts.

Another problem in many of the state EBT programs is that the core specifications with respect to the toll free number recipients are to use to report problems call only for bi-lingual Spanish and English services and do not address the needs of recipients who are either hearing impaired or speak

a language other than Spanish or English, despite numerous complaints about these problems in currently operating EBT systems over the years.<sup>[3]</sup>

We also urge that there be a requirement that recipients calling to report any problem be provided information such as the name or ID number of the person taking their call and the control number assigned the call to serve as proof of the reporting of the problem. Although it appeared in the past that many federal and state officials agreed there was a need for this type of protection, there is no evidence that any states have included such a requirement in their EBT programs.

To the maximum extent possible, once a recipient has succeeded in reporting the problem, the system should provide for correction of errors resulting in the loss of benefits to recipients within 24 hours of receipt of a report of a problem. There must also be an established set of procedures regarding the specific steps that are to be taken once an initial report of an error or loss of benefits from the account is received, including the nature of any investigation of the claim that will be made. For the most part, those receiving needs based assistance have no financial reserves to fall back on. Therefore, there needs to be prompt resolution of any problems associated with misdirected or otherwise missing benefits.

## **B. Suggested error resolution procedures.**

### *I. Consumer Liability for Unauthorized Transfers*

(1) In the case of unauthorized transfer of any funds from an electronic benefit account, the State shall reimburse the recipient for any loss that occurred prior to the report of the loss, except that:

(a) No reimbursement shall be made if the State or its contractor finds recipient fraud; (b) No reimbursement shall be required for losses if the transfer was initiated with a valid access device and PIN, unless force, duress, or coercion was involved and the recipient is willing to pursue prosecution of the person who coerced the transaction.

(2) A recipient of electronic benefit transfers shall have no liability for any unauthorized transfer of benefits from an account once the recipient has notified the State and reported that:

(a) the access device and/or the PIN is missing; or  
(b) the PIN has been compromised and a new PIN must be assigned; or  
(c) the recipient has withdrawn authorization to a person who was previously authorized by the recipient to use the access device.

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(3) A recipient of electronic benefit transfers shall have no liability for benefits that are missing from an account when the loss of benefits is caused by system errors, fraud by third parties (such as contractors, merchants, or hackers), or other circumstances that are beyond the control of the recipient and the recipient has taken appropriate steps to report such loss.

4) No claim for reimbursement of missing benefits may be denied a recipient unless the State or its contractor first conducts an investigation regarding the cause of the missing benefits. If the investigation of the claim cannot be completed within five business days from the time the recipient reports the problem, the State or its contractor shall be responsible for provisionally crediting the recipient's account in the amount of the alleged error unless and until such time as the investigator concludes that no such error occurred.

## *II. Toll-Free Hot Lines*

(1): The State, when providing benefits through EBT, shall provide all recipients with appropriate access to a toll free Customer Service Help Desk hot line. The hot line shall:

(a) be available to recipients 24 hours a day, 7 days a week, and 365 days a year;

(b) be accessible to persons who are non-English speaking or are hearing impaired, and persons who are elderly, have physical or mental disabilities, or are illiterate;

(c) be accessible from any pay phone;

(d) provide callers with a control number and a person's name to use as verification that a report was made;

(e) be capable of taking immediate action to place a hold on the account or make other changes where necessary;

(f) provide callers with the option of talking to a representative as opposed to only a pre-recorded message.

(2) The State shall insure that there is a reporting system which is continually operative and accessible. Once a household reports that their EBT card has been lost or stolen, the State or its contractor shall assume liability for benefits subsequently drawn from the account and replace any lost or stolen benefits to the household. The State or its contractor shall maintain a record showing the date and time of all reports by households that their card has been lost or stolen.

## **Conclusion**

We particularly like the revised rules on **re-presentation**. ♦ The proposal providing for re-presentation in equal monthly amounts not to exceed the greater of \$10 or 10% of the allotment is an improvement for all Food Stamp recipients over the current rules. ♦ NCLC favors this change for the reasons given in the proposal, and also because the existing rule, requiring that the first installment in a re-presentation be \$50 is excessive for families who (by virtue of having qualified for Food Stamp benefits) have an extraordinary need that could be seriously harmed by a \$50 deduction in those benefits all at once.

We also support the proposal to allow adjustments only under specific limited conditions, and to require the immediate re-crediting of accounts pending a dispute.

All errors impede the timely posting of accurate account balances. The proposed regulations appropriately recognize that only actual system malfunctions should qualify for an exception from advance notice procedures. The proposal also appropriately recognizes the importance of the recipients right to make a timely appeal and have the disputed adjustments recredited to the account pending the outcome of the appeal.

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July 24, 1998

Mr. Jeff Cohen  
Chief, Electronic Benefit Transfer Branch  
Benefit Redemption Division  
Food and Nutrition Service  
USDA  
3101 Park Center Drive  
Alexandria, Virginia 22302

Re: Proposed Regulations RIN: 0584-AC61

Dear Mr. Cohen:

Enclosed please find comments of the National Consumer Law Center on the proposed changes to 7 CFR Part 273 and 274 regarding out-of-balance settlements and adjustments. Karen Walker of your staff kindly permitted us to file these comments a few days after the deadline.

If you have any questions, please do not hesitate to contact us. Our Boston office and Barbara Leyser, our EBT consultant (barbaral@clark.net) were primarily responsible for writing these comments on behalf of our low income clients. Thank you for your consideration of these views.

Sincerely,

Margot Saunders  
Managing Attorney

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*1* The National Consumer Law Center is a nonprofit organization specializing in consumer credit issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys around the country who request our assistance with the analysis of financial transactions, in order to determine appropriate claims and defenses their low-income and elderly clients might have.

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

*3* The Direct Payment Card project in Texas was a model in this area: there was both a special hot line number 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, we know that FL, IL, MN, and PA all provide TTY access and that MN requires access to the AT&T language line to support clients who are non-English speaking.