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**New York State Office of the State Comptroller**  
Thomas P. DiNapoli

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Division of State Government Accountability

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# **Use of Electronic Benefit Cards at Prohibited Locations**

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## **Office of Temporary and Disability Assistance**

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Report 2016-S-52

July 2017

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# Executive Summary

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## Purpose

The objective of our performance audit was to determine whether the Office of Temporary and Disability Assistance (Office) had sufficient policies and practices to identify and prohibit electronic benefit transfer (EBT) card transactions at prohibited locations, and thereby comply with applicable federal and State laws. Our audit scope period covered March 1, 2014 through December 7, 2016.

## Background

The Office is responsible for supervising programs that provide assistance and support to eligible families and individuals. The Office receives federal funds under the Temporary Assistance for Needy Families (TANF) program to provide benefits and services, and delivers payments from this and other assistance programs (e.g., Supplemental Nutrition Assistance Program) through EBT cards. Recipients can use the cards to make purchases or withdraw cash from a portion of their monthly benefits at participating automated teller machines (ATMs) and point of sale terminals throughout the State.

The federal Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96, Title IV §4004(a), February 22, 2012) (Act), in part, requires states to maintain policies and practices to prevent TANF funding from being used in any EBT transaction at a liquor store, gaming establishment, or adult-oriented establishment in which performers disrobe or perform in an unclothed state for entertainment (prohibited locations).<sup>1</sup> In addition, the Act requires states to report annually to the Department of Health and Human Services (HHS) on the implementation of policies and practices related to restricting use of TANF assistance in EBT transactions at the prohibited locations.<sup>2</sup> For states that fail to comply with this reporting requirement, HHS will reduce their TANF funding by up to 5 percent annually. As the agency in charge of administering TANF funds, the Office is responsible for ensuring the State's compliance with the Act and other associated federal requirements.

The Office monitors EBT activity through its Specialized Fraud Abuse Reporting System (SFARS) database, and is responsible for notifying the State Liquor Authority (SLA) and/or the Gaming Commission (Gaming) of potentially prohibited locations under their authority that improperly accept EBT transactions from public assistance recipients. The Office itself is responsible for all other locations not otherwise covered (e.g., adult-oriented locations that do not serve alcohol). Where there are violations, these governing entities are authorized, under section 151 of the Social Services Law to: impose sanctions, including monetary fines; revoke, cancel, or suspend licenses; and pursue criminal prosecution.

The SFARS database is maintained by the Office of Information Technology Services (OITS). OITS receives EBT transaction data directly from the EBT vendor (Xerox Corp.) and uploads the data into SFARS. According to a data download of EBT cash transactions that the Office provided to

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<sup>1</sup> 42 USC §608(a)(12).

<sup>2</sup> 42 USC §609(a)(16).

us, approximately 37 million transactions, totaling about \$1.9 billion, were made from January 1, 2014 to March 18, 2016 – an average of 1.4 million EBT transactions per month.

## Key Findings

- The Office has adopted appropriate policies and practices to avoid the risk of federal financial penalties. In addition, the Office is monitoring EBT transactions in accordance with procedures it reported to HHS for preventing TANF cash assistance from being used at prohibited locations, and is referring identified violations to the appropriate governing authority.
- We found the Office’s monitoring of EBT transactions to be adequate, but identified certain strategic refinements that could help the Office to better monitor transactions and identify violations.
- We analyzed client card usage at prohibited locations and identified 15 recipients with 20 or more EBT transactions. Of these 15, we identified 7 recipients with 20 or more transactions at the Turning Stone Casino, including 1 recipient with 71 EBT card transactions totaling more than \$3,360.
- The Office assigned responsibility for monitoring to its Bureau of Audit and Quality Improvement – a management function that is incompatible with independent appraisal of operations. The Office’s duty to monitor EBT transactions should be more appropriately assigned to a Program unit and not internal audit.

## Key Recommendations

- Develop comprehensive data analysis testing of monthly transactions, focusing on repeated violations at the same potentially prohibited location.
- Include transactions occurring in other states in monthly reviews, and notify the other states where potential violations are identified.
- Reassign responsibility for EBT cash transaction monitoring to allow for both effective supervision and independence of the internal audit function.

## Agency Response

In response to our draft report, the Office disagreed with our conclusions and asserted that it has implemented EBT restrictions that sufficiently address all legal requirements. However, our recommendations focus on practical and efficient steps the Office can take to further improve the processes already in place, and help prevent more inappropriate transactions from occurring. Further, the Office’s response demonstrates an unwillingness to move beyond minimum legal requirements, and dismisses the notion of trying to expand and/or improve monitoring efforts. This is disappointing, because all government agencies have an inherent responsibility to continually work to improve operations and ensure that limited taxpayer funds are properly spent. That responsibility is particularly important when public funding is used to provide necessary shelter and sustenance for vulnerable families and children. We maintain that Office management should better ensure that EBT support is not compromised by prohibited transactions at liquor stores, casinos, and adult clubs.

## **Other Related Audits/Reports of Interest**

[Office of Temporary and Disability Assistance: Benefit Eligibility Assessment Process \(2015-F-28\)](#)

[Office of Temporary and Disability Assistance: Oversight of Homeless Shelters \(2015-S-23\)](#)

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**State of New York**  
**Office of the State Comptroller**

**Division of State Government Accountability**

July 10, 2017

Mr. Samuel D. Roberts  
Commissioner  
Office of Temporary and Disability Assistance  
40 North Pearl Street  
Albany, NY 12243

Dear Commissioner Roberts:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively. By so doing, it provides accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Use of Electronic Benefit Cards at Prohibited Locations*. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller*  
*Division of State Government Accountability*

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This report is also available on our website at: [www.osc.state.ny.us](http://www.osc.state.ny.us)

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## Background

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The Office of Temporary and Disability Assistance (Office) is responsible for supervising programs that provide assistance and support to eligible families and individuals. The Office receives federal funds under the Temporary Assistance for Needy Families (TANF) program to provide benefits and services, and delivers payments from this and other assistance programs (e.g., Supplemental Nutrition Assistance Program [SNAP]) through electronic benefit transfer (EBT) cards. Recipients can use the cards to make purchases or withdraw cash from a portion of their monthly benefits at participating automated teller machines (ATMs) and point of sale terminals throughout the State.

The federal Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96, Title IV §4004(a), February 22, 2012) (Act), in part, requires states to maintain policies and practices to prevent TANF funding from being used in any EBT transaction at a liquor store, gaming establishment, or adult-oriented establishment in which performers disrobe or perform in an unclothed state for entertainment (prohibited locations).<sup>3</sup> In addition, the Act requires states to report annually to the Department of Health and Human Services (HHS) on the implementation of policies and practices related to restricting use of TANF assistance in EBT transactions at the prohibited locations.<sup>4</sup> For states that fail to comply with this reporting requirement, HHS will reduce their TANF funding by up to 5 percent annually. As the agency in charge of administering TANF funds, the Office is responsible for ensuring the State's compliance with the Act and other associated federal requirements.

The Office monitors EBT activity through its Specialized Fraud Abuse Reporting System (SFARS) database. To accomplish its monitoring efforts, the Office uses a variety of data sources in addition to the address and location information provided by its EBT vendor to identify prohibited locations. Additionally, the Office conducts periodic targeted sample reviews of EBT transactions in its EBT data warehouse to monitor compliance with restrictions. The Office is responsible for notifying the State Liquor Authority (SLA) and/or the Gaming Commission (Gaming) of potentially prohibited locations under their authority that improperly accept EBT transactions from public assistance recipients, and is itself responsible for all other potentially prohibited locations not otherwise covered (e.g., adult-oriented establishments that do not serve alcohol). Where there are violations, these governing entities are authorized, under section 151 of the Social Services Law to: impose sanctions, including monetary fines; revoke, cancel, or suspend licenses; and pursue criminal prosecution.

The SFARS database is maintained by the Office of Information Technology Services (OITS). OITS receives EBT transaction data directly from the EBT vendor (Xerox Corp.) and uploads the data into SFARS. According to a data download of EBT cash transactions that the Office provided to us, approximately 37 million transactions, totaling about \$1.9 billion, were made from January 1, 2014 to March 18, 2016 – an average of 1.4 million EBT transactions per month.

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<sup>3</sup> 42 USC §608(a)(12).

<sup>4</sup> 42 USC §609(a)(16).



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## Audit Findings and Recommendations

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We determined the Office has adopted appropriate policies and practices to comply with the Law to avoid the risk of federal financial penalties. The Office worked closely with SLA and Gaming to coordinate implementation of the EBT transaction restrictions statewide. Prohibited locations were properly informed of the restrictions on EBT card usage and potential penalties, and received specific instructions on how to block the use of EBT cards. Further, the Office distributed notices of the restrictions to all recipients and issued a directive to local districts for further dissemination. The Office also updated its recipient handbook and posted the new information to its website.

In addition, the Office monitored EBT transactions in accordance with procedures it reported to HHS for preventing TANF cash assistance from being used at prohibited locations, and referred potential identified violations to the appropriate governing authority.

We found the Office's monitoring of EBT transactions to be adequate. At the same time, however, we identified certain strategy refinements that could help the Office to better monitor transactions and identify violations. In addition, we note that the Office assigned responsibility for monitoring to its Bureau of Audit and Quality Improvement – a management function that is incompatible with independent appraisal of operations. According to the State Comptroller's Standards for Internal Control in New York State Government, internal auditors should avoid operational responsibilities or other activities that may impair their independence. The Office's duty to monitor EBT transactions should be more appropriately assigned to a Program unit (and not to internal audit).

### Monitoring EBT Transactions

#### *Identifying Prohibited Locations*

The Office's monitoring processes include monthly reviews of EBT transactions to identify prohibited locations, including:

- A comparative analysis of known prohibited locations and addresses for a random sample of 25 EBT transactions in the SFARS, excluding certain low-risk transactions (e.g., those at SNAP-authorized locations, which sell groceries for home preparation and consumption); and
- Ad hoc monitoring, including database searches of retailer names based on key words such as "liquor," "beer," and "casino" and comparing search results against a list of known addresses of prohibited locations.

During the two-year period March 1, 2014 (after the Law became effective) through March 18, 2016, the Office identified 217 transactions, totaling \$12,876, by 71 potentially prohibited (could be prohibited or allowable) locations. The Office's location-focused monitoring has been successful in identifying new potentially prohibited locations. However, due to its limited scope, such monitoring does not identify existing prohibited locations that continue to accept EBT transactions.



Our transaction-focused analysis of all EBT cash transaction data for the same period identified 183 in-state potentially prohibited locations and 3,483 transactions totaling \$225,778 (see Exhibit). The majority of the improper transactions at potentially prohibited locations were mostly unidentified and unaddressed by the Office. Of the 3,483 transactions our analysis identified, the Office had identified only 197 (5.7 percent) totaling \$11,628.

Further, of the 183 potentially prohibited locations, 71 (39 percent) were, prior to the transactions, identified by the Office as a potentially prohibited location. Most (69) of the 71 potentially prohibited locations were under SLA authority. Of the 69 SLA-referred locations, 32 (46 percent) accounted for 514 transactions, totaling more than \$29,000, that occurred after the Office referred these potentially prohibited locations to SLA. One potentially prohibited location had previously been reported to SLA two times by the Office.

While the Office has no responsibility for overseeing SLA's handling of locations under its authority, the inordinate number of SLA-referred locations with repeat violations is a concern. Recurring activity could be an indication of deficiencies in policies and procedures, and should be addressed by the Office and SLA.

To test the accuracy of our findings, we conducted unannounced visits to a judgmentally selected sample of 106 potentially prohibited locations from a list of 189 potentially prohibited locations that we initially identified from our transaction-focused analysis of all EBT cash transactions. We did not identify ourselves as Office of the State Comptroller auditors during these visits. Six locations (6 percent) had closed or moved since the transaction. Of the remaining 100 locations, we verified that 90 (90 percent) were, in fact, prohibited locations. We also found the following:

- Two locations advertised the acceptance of EBT cards on their ATMs.
- Three locations were willing to allow a point of sale EBT transaction in spite of the law restricting this activity.
- When asked if they accept EBT cards, two locations were unsure, and a third location suggested using the EBT card in the ATM located on the premises.

Subsequent to our unannounced visits, Gaming provided us with the addresses of prohibited locations under its authority. We ran these addresses against the EBT cash transaction data and identified 652 additional transactions totaling \$61,066 from five retailers. The following table presents a summary of the potentially prohibited locations that we identified, along with the number of transactions and dollar amounts.

**Summary of In-State Potentially Prohibited Locations Identified  
March 1, 2014 – March 18, 2016**

<b>How We Identified Them</b>	<b>Unique Locations</b>	<b>Number of Transactions</b>	<b>Total Dollar Amount</b>
Initial Analysis of EBT Cash Transactions	189	4,868	\$199,453
Removed After Site Visit Determined Not Prohibited Location	-11	-2,037	-34,741
Additional Prohibited Locations Provided by Gaming	5	652	61,066
<b>Totals</b>	<b>183</b>	<b>3,483</b>	<b>\$225,778</b>

We also analyzed client card usage at prohibited locations and identified 15 recipients with 20 or more EBT transactions. Of these 15, we identified 7 recipients with 20 or more transactions at the Turning Stone Casino, including 1 recipient with 71 EBT card transactions totaling more than \$3,360. While New York State Law does not authorize any client-focused penalties and actions, it does not prohibit the Office from contacting recipients to better inform them about the restrictions on the locations where they may access their benefits. However, it is the Office's policy not to contact clients regarding violations. Gaming officials told us that while the EBT restrictions apply to casinos located on Tribal property, Gaming does not have the authority to enforce the restrictions. However, Gaming officials stated that they notified the casinos on Tribal property of the EBT restrictions.

It is unreasonable to expect that the Office will identify every EBT transaction that occurs at a prohibited location. Nonetheless, we believe the Office can refine its data analysis methods and focus on prohibited locations that repeatedly allow the use of EBT cards in violation of the law. The Office should specifically identify those prohibited locations with repeated violations and notify the governing agencies of the number of transactions, and the period of time covered by these transactions, so that the governing authorities can better pursue proper actions against these prohibited locations.

*EBT Transactions at Out-of-State Prohibited Locations*

Our analysis of out-of-state EBT transactions identified more than 1,360 transactions, totaling more than \$71,400, at 556 potentially prohibited locations. Of these, 19 locations had 10 or more transactions, with one having as many as 54 transactions. As the agency over the EBT program, the Office is responsible for monitoring all EBT transactions wherever they occur – whether in state or out of state. The Office, however, only monitors in-state transactions because they have no authority over locations outside the state, and as a result, governing authorities in other states, which are subject to the same federal requirements, are not being informed of transactions at prohibited locations in their jurisdictions. As the only entity able to identify New York State EBT transactions in other states, it is within the Office's capability to notify governing authorities in those other states of potential improper transactions. Without intervention, these

potentially prohibited locations may be violating the federal law without consequence. Further, better communication with counterparts in other states could result in reciprocal information that would help the Office better identify higher-risk locations in New York State and improve overall compliance.

## **Incompatible Duties**

The Office has assigned responsibility for monitoring EBT transactions to its Bureau of Audit and Quality Improvement – a management function that is incompatible with the independent nature of the Bureau and the State Comptroller’s Standards for Internal Control in New York State Government (Standards). According to the Standards, internal auditors should avoid operational responsibilities or other activities that may impair their independence. The Office’s duty to monitor EBT transactions should be more appropriately assigned to a Program unit (and not to internal audit).

## **Recommendations**

1. Develop comprehensive data analysis testing of monthly transactions, focusing on repeated violations at the same potentially prohibited location.
2. Include transactions occurring in other states in monthly reviews, and notify the other states where potential violations are identified. Determine if other states have identified potential abuses at locations in New York State.
3. Reassign responsibility for EBT cash transaction monitoring to achieve both effective supervision and the independence of the internal audit function.

## **Audit Scope, Objective, and Methodology**

The objective of our audit was to determine whether the Office had sufficient policies and practices to identify and prohibit EBT transactions at prohibited locations, and thereby comply with the applicable federal and State laws. The audit covered the period March 1, 2014 through December 7, 2016.

To accomplish our audit objective and determine whether associated internal controls over the monitoring of EBT transactions at prohibited locations were adequate, we reviewed Office policies and procedures as well as State and federal laws, interviewed Office and OITS officials and employees, and performed data analysis and reviewed documentation related to the Office’s monitoring activities. We also met with officials from SLA and Gaming. In addition, we contacted an official from both HHS and Xerox Corp., the State’s EBT vendor. We also reviewed the Xerox Corp. EBT contract. In addition, we conducted site visits to 106 of 189 potentially prohibited locations identified by our risk-based transactional data analysis to assess their level of compliance with the law. For efficiency, we selected sites to visit in part based on their proximity to one another.

We identified ATMs within the locations, and inquired as to whether they accepted EBT cards for point of sale transactions. However, we were unable to assess the accuracy, completeness, and reliability of the Office's data due to certain restrictions imposed on our access, as discussed below.

Our data analyses are based on a data download of EBT cash transactions provided to us by the Office for the period January 1, 2014 to March 18, 2016. The Office provided us a reconciliation attestation that the data they gave us contained all the records and amounts that were in SFARS for the same period. Generally accepted government auditing standards (GAGAS) require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. According to GAGAS, auditors should assess the sufficiency and appropriateness of computer-generated information.

However, during the audit, the Office did not grant us access to SFARS to perform independent reliability testing of the data download the Office provided to us, so we could not obtain reasonable assurance that the download was complete for the specified time period. As such, we could not verify the reconciliation attestation made by the Office. Furthermore, we note that the Office's reconciliation contained several discrepancies compared with the data download (specifically, in certain EBT cash transactions), and in some cases, the Office provided vague or incomplete support for these discrepancies. Without access to the SFARS, we were unable to assess and determine whether the EBT cash transactions given to us for our audit were accurate and complete.

We conducted our performance audit in accordance with generally accepted government auditing standards, except as noted above. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. With the exception of the limitation on our ability to validate the reliability of computer data discussed in the previous paragraph, we believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating threats to organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

## Authority

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This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

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## Reporting Requirements

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We provided a draft copy of this report to Office officials for their review and formal comment. We considered their comments in preparing this final report, and a complete copy of their response is attached to it, along with our embedded rejoinders to address a range of misleading and/or inaccurate Office statements. Overall, officials reiterated many of the positions they took during the audit's fieldwork, disagreeing with our conclusions and asserting that they have sufficient policies and practices in place to satisfy the minimum requirements of both federal and State law as well as identify most EBT card transactions made at prohibited locations, such as liquor stores, casinos, and adult clubs. Our recommendations focus on practical and efficient steps the Office can take to further improve processes already in place, and possibly prevent more inappropriate transactions from occurring.

The Office's response demonstrates management's broad unwillingness to move beyond the minimum legal requirements, and generally dismisses the notion of expanding and/or strengthening its monitoring efforts. All government agencies have a responsibility to continually strive to improve their operations and ensure that limited taxpayer funds are well spent. That responsibility is particularly important when large amounts of public funding are used to provide necessary shelter and sustenance for vulnerable families and children.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Office of Temporary and Disability Assistance shall report to the Governor, the State Comptroller, and the leaders of the Legislature and its fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where the recommendations were not implemented, the reasons why.

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## Contributors to This Report

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### Vision

A team of accountability experts respected for providing information that decision makers value.

### Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

## Exhibit

### EBT Transactions at Potentially Prohibited Locations March 1, 2014 – March 18, 2016

County	Number of Locations	Number of Transactions	Total Value
Albany	9	62	\$3,508.23
Bronx	15	156	8,670.20
Broome	1	40	2,361.00
Cattaraugus	3	10	867.50
Chemung	1	1	2.15
Clinton	1	9	682.50
Columbia	1	2	184.00
Dutchess	1	1	122.25
Erie	21	1,025	47,756.00
Genesee	1	70	4,446.50
Herkimer	1	2	140.45
Kings	11	109	7,999.01
Monroe	12	154	9,392.31
Nassau	19	550	40,143.52
New York	10	87	4,192.54
Niagara	2	13	446.50
Oneida	3	642	59,657.20
Onondaga	6	20	1,595.67
Ontario	2	4	49.94
Orange	8	53	3,696.48
Orleans	1	3	41.56
Oswego	1	20	1,420.00
Queens	15	122	7,132.55
Rensselaer	1	14	895.50
Richmond	4	4	149.71
Saratoga	1	7	665.10
Schenectady	2	4	169.50
Schuyler	1	11	792.25
Steuben	2	18	1,083.00
Suffolk	18	117	7,075.55
Sullivan	2	46	3,114.00
Tioga	1	1	62.50
Ulster	3	91	5,525.75
Westchester	3	15	1,736.96
<b>Grand Totals</b>	<b>183</b>	<b>3,483</b>	<b>\$225,777.88</b>

Note: Counties not listed did not have any identified transactions at potentially prohibited locations.



# Agency Comments and State Comptroller's Comments



## Office of Temporary and Disability Assistance

ANDREW M. CUOMO  
Governor

SAMUEL D. ROBERTS  
Commissioner

BARBARA C. GUINN  
Executive Deputy Commissioner

June 5, 2017

Mr. John Buyce  
Audit Director  
Office of the State Comptroller  
Division of State Government Accountability  
110 State Street, 11<sup>th</sup> Floor  
Albany, New York 12236-0001

Re: Draft Report 2016-S-52

Dear Mr. Buyce:

I write to respond to the Office of the State Comptroller (OSC)'s draft audit report entitled "Use of Electronic Benefit Cards at Prohibited Locations." OSC concluded that the Office of Temporary and Disability Assistance (OTDA) has sufficient policies and practices in place to identify and prohibit Electronic Benefit Transfer (EBT) card transactions at prohibited locations, and accordingly satisfies both federal and state law. OSC recognized OTDA's adoption of policies and practices which comport with all legal requirements, as well as OTDA's successful coordination of EBT restrictions statewide.

OSC then made three recommendations. However, OTDA disagrees with these recommendations because they do not comport with existing federal and state laws and regulations, and fail to recognize that OTDA has already implemented numerous policies and practices with respect to EBT restrictions.

**I. OTDA Disagrees With OSC's Recommendations That OTDA Should Develop More Comprehensive Data Analysis Testing of Monthly Transactions and Increase its Activity With Respect to Other States.**

**A. OTDA Already Aggressively Monitors EBT Transactions and Properly Identifies Prohibited Locations.**

As already demonstrated to OSC, the State has aggressively implemented the EBT restriction rules through a wide range of activities. These steps sufficiently address the EBT restriction requirements. The following are examples of legislation, policies and procedures proposed, supported, or created by OTDA:

- Chapter 58 of the Laws of 2014, effective May 30, 2014, explicitly sets forth the Gaming Commission's authority to impose financial and licensing penalties against establishments that accept an EBT card at a prohibited location. With regard to casinos and gaming establishments, violation of these provisions will subject the venue to the possible revocation, cancellation or suspension of their license(s).

- On May 6, 2014, the Gaming Commission notified all racetracks, off-track betting facilities, video lottery agents, bingo commercial lessors and licensees that conduct bingo of the State statutory requirements and potential penalties.
- On May 29, 2014, emergency rules went into effect to enable the Gaming Commission to implement sanctions on prohibited locations subject to its oversight for failure to comply with Chapter 58 of the Laws of 2014.
- With OTDA's assistance, the Gaming Commission continues to identify prohibited locations subject to its oversight and directs such entities to block EBT cards at their locations. The Gaming Commission conducts periodic reviews of its licensees to ensure compliance with law, and enforces compliance through its authority to sanction a regulated party or to limit, suspend or revoke a licensee's license.
- OTDA sent an informational letter to establishments that were identified as potentially providing adult-oriented entertainment but that are not subject to oversight by the State Liquor Authority (SLA) to inform them of changes in the law and the potential of fines and penalties for non-compliance.
- In January and April of 2014, the SLA issued three advisories to its regulated entities outlining the steps that should be taken in order to block purchases from EBT accounts in their prohibited venues. Notices were sent to every household in receipt of cash assistance to inform them of the new restrictions, and the EBT brochure was revised to reflect the new information.
- OTDA has submitted all required federal plans timely and completely and has notified all clients of the EBT restrictions.
- OTDA has worked with national organizations and continues to provide direct assistance to retailer locations who have implementation questions.

In addition to these legislative and policy guidelines, OTDA's monitoring and referral processes at the transactional level are both robust and effective. As cost effective best practices are identified, OTDA also plans to continue implementing new procedures. The processes already in place include:

- Every month, OTDA reviews a full week of EBT transactions (averaging over 300,000/week) comparing the merchant names and addresses of the transactions to multiple known and potentially prohibited location lists. Any potentially prohibited locations are referred to the appropriate oversight agency.
- These monthly reviews include all NYS client EBT transactions, regardless of where they occurred in compliance with federal rules.
- In compliance with our federally approved plan, OTDA also conducts a detailed review of specifically sampled cases.
- OTDA also conducts periodic large scale reviews of potentially restricted locations by matching EBT transaction data against data sets of liquor licenses, gaming locations and adult entertainment establishments.

- Since the inception of EBT restrictions, OTDA has continually refined and enhanced its monitoring processes in a fiscally responsible manner and based upon best practices.

**B. OSC Misunderstands the EBT Restriction Rules, Includes Faulty Data and Conflates Location Restrictions with Transactional Restrictions.**

OTDA strongly disagrees with OSC's presentation of EBT transactional data in the report. As drafted, it leads to the conclusion that OTDA is not properly referring potentially prohibited locations to the appropriate oversight agency. This is incorrect. Specifically, OSC's focus on transactional data illuminates OSC's misunderstanding of laws and regulations applicable to EBT transactions. The multi-agency referral process that resulted from legislation is *location*, not transaction, focused. That is, the law prohibits the use of EBT cards at certain locations and provides penalties that may be imposed on these businesses by the appropriate oversight agency only after a determination is made by the oversight agency that the location was, indeed, prohibited. Thus OSC's focus on transactions rather than locations leads to the inaccurate result that OTDA "identified only 197" of the 3,483 transactions. Rather, OTDA reviewed and identified well over 2,000 of the transactions cited by OSC, while another approximately 700 transactions were determined by OTDA as not actionable.

**State Comptroller's Comment** – The Office's assertion is incorrect. In fact, the auditors fully understood the prescribed EBT rules and restrictions, and acknowledge the distinction between location restrictions and transactional restrictions. Nevertheless, we maintain that there is a firm relationship between location restrictions and transactional restrictions, which the Office tends to overlook in its response. Moreover, a major audit conclusion, based on detailed testing and analysis, was that the Office should place additional attention on locations (whether in New York or other states) with apparent patterns of improper EBT card use.

Also, at the time our audit fieldwork ended, the Office had identified only 197 of the 3,483 transactions cited in the report for review. If Office personnel identified and reviewed materially larger numbers of the transactions in question sometime after we brought them to the attention of the Office, we support such efforts.

The process OTDA has in place, which tracks state law, is in fact rigorous and fully compliant with relevant standards. Per applicable statutory requirements, OTDA monitors transactions for the purpose of identifying *potentially* prohibited locations and then refers these locations to the appropriate oversight agency (the Gaming Commission or State Liquor Authority) to determine if the suspect location flag was, in fact, improper. The relevant oversight agency then takes action against the business owner, if warranted. Under the law, if the oversight agency determines that the location is prohibited, the location is issued a warning letter advising that any future EBT access at the location will result in fines or penalties.

OTDA rejects OSC's conclusion that despite these rigorous processes, OTDA should nonetheless, after an initial referral, continue to report each subsequent transaction at that location to the oversight agency during the pendency of the investigation. This would be counter productive because the key question of the inquiry is whether the location itself (no matter how many potential violations occur there) is in fact a prohibited location. The process OTDA has in place is set up to answer *that* question such that once reported, the oversight agency is charged with investigating to determine if the location is in fact a prohibited location or not, and if so it must take appropriate action against the location.

**State Comptroller's Comment** – The Office's assertion is incorrect. In fact, our report does not conclude that the Office should, after an initial referral, continue to report each subsequent transaction at a prohibited location to the oversight agency during the pendency of an investigation. Rather, as previously noted, our report concluded that the Office should place additional attention on locations with apparent patterns of improper EBT card use.

OSC's report also contains significant additional errors, such as:

- On page 8, OSC includes in its totals 779 transactions for \$41,416.72 for the period March 1, 2014 to May 29, 2014. This amount should be removed from the totals as our state law did not become effective until May 30. OTDA had no authority to act on any potentially prohibited location prior to such date and should not be criticized for the same.

**State Comptroller's Comment** - In fact, the applicable federal law became effective February 22, 2014. States were responsible to be in compliance with federal law by that date.

- The prohibition against the use of EBT cards in casinos, is not applicable to casinos located on Indian lands, unless this provision is specifically addressed in a tribal-state compact. This is not addressed in the Nation-State Compact between the Oneida Indian Nation of New York and the State of New York, therefore the Turning Stone Resort and Casino should not be included in the list of illegal usage sites. OSC improperly included an additional 534 transactions for \$51,132 from the Turning Stone Casino. OTDA and the Gaming Commission have taken the appropriate steps to try to prevent these transactions, but have no enforcement ability at this location.
- OSC double counts certain locations and includes locations that were already determined not to be prohibited by the appropriate oversight agency.

OSC incorrectly asserts that OTDA's "monitoring does not identify *existing prohibited locations* that continue to accept EBT transactions." See, OSC report at p. 6. In fact, OTDA's process does identify repeat transactions at previously-referred locations; those locations pending review are compared each month to the EBT transaction review data. However, no action can be taken until a determination has been made that the venue is in fact a prohibited location. OTDA and the oversight agencies are legally required to ensure that each situation is afforded a full and robust inquiry. There are multiple parties' interests at stake in this process: the State, the taxpayers, the EBT card user, and the business owner. In order to make sure each party gets fair treatment in the system, the relevant oversight agency must first conduct a thorough review, the business owner must be given a chance to respond to that review, and a final determination must be made by the oversight agency. Once the location is found to be prohibited, and OTDA identifies any subsequent transactions, OTDA may then issue a second referral. This is a time-consuming process that OSC has failed to take into account when it re-counts an establishment that has already been identified as a potentially prohibited location and awaits further action.

**State Comptroller's Comment** – We identified locations that continued to process EBT transactions for over a year after the Office had referred them to oversight agencies for enforcement action. It is critical that the Office keep these oversight agencies informed of apparent ongoing improprieties so they may assess whether additional investigative and enforcement actions are warranted.

OSC fails to acknowledge the well-documented challenges of monitoring restricted locations stemming from data quality issues such as inaccurate address locations, lack of merchant codes, inability to determine what items were purchased, inability to connect ATMs to a specific merchant, and inaccurate or incomplete vendor data. As the Government Accounting Organization noted in report GAO-12-535, *“Challenges experienced by states... included difficulties with identifying certain locations that could be prohibited and limitations in available data. For example, the transaction data states receive do not contain information that is accurate or detailed enough for them to identify locations that can potentially be prohibited or restricted...GAO found that the data are insufficient for systematic monitoring.”*

**State Comptroller's Comment** – The GAO report that the Office references was published in 2012 – two years before the EBT requirements went into effect – and is based on analysis of data captured two years before that, in 2010. The report highlights obstacles that states would have to overcome to successfully implement the EBT restrictions. Given technological advances over the past seven years, and the fact that the deficiencies were brought to its attention by federal reviewers so long ago, we believe that Office officials should have significantly improved the quality and integrity of its data by now to enable useful analysis of it.

Despite these challenges, in this audit, OSC has determined that NYS is 100% compliant with federal rules and that our cash transactions are well over 99.99% compliant with the EBT restriction rules. OSC further confirmed OTDA's effectiveness by finding no fraud and *zero dollars* in overpayments.

**State Comptroller's Comment** – Officials assert that our audit draws certain conclusions which it does not in fact make. The objective of our audit was not to identify fraud in the EBT process, nor did we examine transactions for overpayments, and accordingly we made no “determinations” about those matters. Similarly, while we did evaluate the extent of the Office's compliance with federal rules, we did not (and could not) determine the extent that all cash transactions were compliant with these restrictions.

For all of these reasons, OSC's recommendation that OTDA “[d]evelop comprehensive data analysis testing of monthly transactions, focusing on repeated violations at the same potentially prohibited location” is misplaced.

### **C. OSC Mischaracterizes and Misunderstands OTDA's Review of EBT Transactions at Out-of-State Locations**

OTDA disagrees with OSC's recommendations with respect to out-of-state transactions. Under the heading “EBT Transactions at Out-of-State Prohibited Locations” beginning on page 8 of the draft report, OSC incorrectly states that OTDA “only monitors in-state transactions.” OTDA objects to the premise of this section, as OSC did not, and could not, determine what out of state locations are prohibited - OTDA simply does not have data available to allow it to draw conclusions in that area. Moreover, as part of its federally approved monthly review, OTDA reviews all EBT transactions-whether such transactions occur in New York or outside the state.

OTDA has shown that it performed these reviews over the last three years. As such OSC's statement is perplexing and off point.

OSC continues to misapply the federal EBT restriction rules in its analysis of out-of-state transactions. As we have repeatedly informed OSC, each state has been given the discretion to implement the federal requirement in its own way. Some states only focus on and contact clients; others states only focus on and contact locations; still other states contact both clients and locations. For example, one neighboring state reviews transactions and only contacts the clients, as opposed to the businesses involved. The federal rules contain no uniform national standard that would allow NYS to determine the prohibited status of every location in every other state.

Exceptions are also available to the EBT rules to ensure adequate access to funds and Supplemental Nutrition Assistance Program (SNAP) retailers. For example, the federal regulations allow access to an ATM in an otherwise prohibited venue if there are no other ATMs in that specific area. Therefore, it cannot be assumed that a prohibited location in NYS would also be prohibited in another state. In fact, the federal agency responsible for EBT Restriction policy, the United States Department of Health and Human Services: ***“do[es] not require states to maintain a list of affected businesses,” and more importantly, “recognize[s] the infeasibility of restricting transactions in other states.”*** Fed Reg Vol 81 No 10. OTDA is fully compliant with the federal rules relating to out of state transactions. Further actions are unnecessary and potentially wasteful.

Despite these flaws, OSC still recommends that OTDA “[i]nclude transactions occurring in other states in monthly reviews, and notify the other states where potential violations are identified” and also “determine if other states have identified potential abuses at locations in NYS.” OSC does not appear to understand the implications of this recommendation, which would significantly expand OTDA's obligations beyond its authority and would further burden New York State with an oversight role over other states that would be both extremely costly and contrary to federal regulatory intent.

**State Comptroller's Comment** – We acknowledge that federal rules give states considerable discretion in how they implement restrictions. Nonetheless, federal regulations clearly state that: “States are responsible for restricting transactions using state-provided assistance at prohibited locations whether or not the transaction occurs within the state.” (See Federal Register, Vol. 81, No. 10, Section 265.9.) Further, contrary to Office assertion, we did not misapply these rules. The Office focused primarily on what it is mandated to do by law or regulation, and not on what it can do to make the program more successful. The federal regulations recognize it may not always be feasible to directly restrict transactions in other states, and therefore allow other provisions for implementation, including notices to recipients. Accordingly, our recommendation for the Office to increase communication among states is neither costly nor contrary to federal intent, but rather an efficient means of sharing data to further reduce violations.



## II. OTDA Disagrees With OSC's Description of and Recommendations for its Organizational Structure

OSC recommends that OTDA “[r]eassign responsibility for EBT cash transaction monitoring to achieve both effective supervision and the independence of the internal audit function.” OTDA disagrees with this recommendation for two key reasons. First, OSC incorrectly describes the division of duties in this area. OTDA Program and Legal staff are directly involved in this process throughout. The Audit and Quality Improvement (AQI) Director monitors transactions and refers issues to the legal and program areas for resolution.

**State Comptroller's Comment** – The Office's comments are misleading. Program and Legal staff generally do not review EBT transactions to identify potentially prohibited locations. Their roles are mostly limited to acting upon the results provided to them by the Audit Director.

Second, the independence of OTDA's internal audit function is unquestioned and has been thoroughly proven in several reviews by experts in the field. OTDA's Internal Audit Unit (IA) has been through two recent Internal Audit Quality Assurance peer reviews and has passed each of them with the highest mark possible, including in the Independence and Objectivity Section of the International Standards for the Professional Practice of Internal Auditing. In both of these reviews, the auditors, which included representatives from OSC, found that OTDA's controls ensured adequate independence for the co-located internal audit function. In fact, OTDA's matrix staffing approach has been described as a best practice, with the co-location of AQI and IA staff promoting the efficient and effective use of audit resources.

**State Comptroller's Comment** - Although peer reviews found the Office to be in compliance with standards for independence and objectivity in the past, such standards have changed more recently. In its latest revision, the IIA introduced Standard 1112 – Chief Audit Executive Roles Beyond Internal Auditing. This new standard addresses independence and objectivity and became effective on January 1, 2017. The peer reviews referenced by the Office were done in 2011 and 2016, prior to the new standard. According to the new standard, “The chief audit executive may be asked to take on additional roles and responsibilities outside of internal auditing, such as responsibility for compliance or risk management activities. These roles and responsibilities **may impair, or appear to impair**, the organizational independence of the internal audit activity or the individual objectivity of the internal auditor.” In such situations, safeguards should be taken to limit impairments to independence or objectivity. However, Office management provided no evidence that it had implemented such safeguards.

In addition, the Standards for Internal Control in New York State Government state that “auditor independence also entails refraining from duties that are incompatible with the objective appraisal of operations. Internal auditors should therefore avoid assuming operational responsibilities or engaging in other activities that may impair their independence.” However, the 2011 and 2016 peer reviews of the Office's Bureau of Audit and Quality Assurance noted that “while this structure appears to be effective, impairment to independence may exist as it relates to audits of other units within the Division.” As such, the Bureau's current placement and responsibilities appear to raise independence issues with both sets of applicable Standards.

That said, over the last year, AQI has been moving the monitoring reviews to the Technical System Audit unit, which will remove the AQI director from the direct monitoring role. This, in itself, should alleviate any remaining concerns OSC may have expressed.



### III. OTDA Was Fully Cooperative With OSC

OTDA strongly disagrees with OSC's assertion that it should have been given direct access to the Specialized Fraud and Abuse Reporting System (SFARS) database. Draft Report at 10. OTDA compiles all client EBT transactions in the SFARS database for data analysis and review. Federal confidentiality requirements, specifically, those of the United States Department of Agriculture's Food and Nutrition Service, prohibit OTDA from sharing that information. This issue was decided well before the initiation of the audit, and OSC did not raise this at any time during our audit discussion. In fact, prior to the audit, on November 13, 2015, OTDA provided a very clear explanation of the facts behind this issue, a result that the OSC Manager acknowledged at the entrance conference for this review.

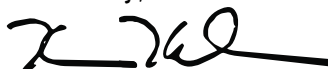
In fact, OTDA fully cooperated in providing OSC with all of the information necessary to establish the reliability of its data. First, OTDA provided millions of records verifying billions of dollars in transactions. Second, OTDA provided a detailed multi-level reconciliation showing that this transaction data was complete and accurate. To support this reconciliation, on January 5, 2017, OTDA arranged a Data Validation meeting where OSC audit staff met with OTDA and the State's Information Technology Services agency (ITS) to run OSC's requested tests on the database. The reconciliation showed that the in-state and out-of-state data sets provided to OSC were complete and accurate at multiple levels. At the conclusion of the meeting, the OSC Audit Supervisor indicated that OSC required no further information other than a screen shot of the test results, which OTDA provided and which satisfied OSC staff. This approach had been discussed and agreed to by OSC during a meeting of the Audit Directors at OSC on November 8, 2016 and confirmed in OTDA correspondence of November 16, 2016 and OSC correspondence of November 17, 2016. OSC also met with ITS database staff responsible for SFARS database loading. Lastly, OTDA informed OSC on multiple occasions that it would help OSC collect additional data from ITS, if needed.

Any allegation by OSC that it did not receive all information necessary to establish the reliability of its data is simply untrue.

**State Comptroller's Comment** – Officials' contention that they did not limit our ability to assess the reliability of EBT transaction data is false. Although Office and OITS officials provided reconciliations and screen captures of data to show that the data was complete, auditors were denied access to the SFARS database that was necessary to evaluate and test its general and application controls. Because the reliability of this data was critical to our audit objective, government auditing standards required that we perform such reliability tests and not rely solely on management's assertions of accuracy and completeness. Thus, we maintain that Office management limited our ability to assess the reliability of EBT transaction data.

If you have any questions concerning our response to the Draft Report, please contact me at (518) 473-6035 or [Kevin.Kehmna@otda.ny.gov](mailto:Kevin.Kehmna@otda.ny.gov).

Sincerely,



Kevin Kehmna, Director  
Audit and Quality Improvement