

**THE SUPPORTING STATEMENT FOR APPROVAL OF THE INFORMATION
COLLECTION ASSOCIATED WITH STATES' REPORTS ON POLICIES AND
PRACTICES REQUIRED BY P.L.112-96**

Specific Instructions

A. Justification

1. Circumstances Making the Collection of Information Necessary

This information collection is necessary to respond to provisions in the Middle Class Tax Relief and Job Creation Act of 2012 (P.L. 112-96) requiring states (including the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands) receiving TANF grants to maintain policies and practices as necessary to prevent assistance provided under the program from being used in any electronic benefit transfer transaction in any liquor store; any casino, gambling casino, or gaming establishment; or any retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment

Because section 4004 of P.L. 112-96 (attached) includes a new TANF penalty, the Administration for Children and Families (ACF) will need to regulate the new reporting requirement and related penalty. As part of this requirement, each state is required to submit an annual report to ACF to demonstrate that it has implemented and maintained the required policies and practices in order to avoid a penalty of five percent reduction in its State Family Assistance Grant (SFAG). P.L. 112-96 required states to submit their first reports to ACF by February 22, 2014 (within two years of the enactment). Because the regulation for implementing Section 4004 of P.L. 112-96 was not finalized by February 22, 2014, ACF provided guidance to states to submit their first report by February 22, 2014 to ensure that they would not be subject to the statutory penalty. All states submitted reports by this deadline and ACF imposed no penalties. Hereafter, states will submit reports describing the policies and practices required by 45 CFR 264.60 and section 4004 of P.L. 112-96 in the Annual Report On TANF Programs under 45 CFR 265.9(b). As provided at 45 CFR 265.10, this report is due November 14th of each fiscal year, which is the same time as the fourth quarter TANF data report is due.

2. Purpose and Use of the Information Collection

ACF will use the information provided in this information collection to determine whether to impose the penalty of five percent reduction in the SFAG authorized by section 409(a)(16) of the Social Security Act, as amended by section 4004 P.L. 112-96.

ACF has added an additional section on EBT policies and practices to Attachment A of the Annual Report On TANF Programs (attached, OMB Control Number 0970-0311). ACF requires that states submit a description of their EBT policies and practices via this form. The states' description must include the following information: (1) procedures for preventing the use of TANF assistance via electronic benefit transfer transactions in any

liquor store; any casino, gambling casino, or gaming establishment; and any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment; (2) how the state identifies the locations specified in the statute; (3) procedures for ongoing monitoring to ensure policies are being carried out as intended; and (4) how the state plans to respond to findings of non-compliance or program ineffectiveness.

3. Use of Improved Information Technology and Burden Reduction

Under regulation (45 CFR 265.6) states are required to submit reports electronically to reduce the burden. ACF has created an Online Data Collection (OLDC) system through which states submit their annual reports.

4. Efforts to Identify Duplication and Use of Similar Information

ACF has identified no alternative sources of similar or duplicate information. Program staff, through extensive contacts with organizations and individuals in both the private and public sectors, knows that there are no similar data available.

5. Impact on Small Businesses or Other Small Entities

The Secretary certifies under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this proposed regulation—including its information collection requirements—will not result in a significant impact on a substantial number of small entities. We note that any impact on businesses emanates from statutory mandate and the policies that states adopt in implementing the statutory requirement. ACF sought information related to concerns of businesses resulting from restrictions on TANF EBT access when we released a Request for Public Comment on April 25, 2012. A limited number of commenters addressed this issue, and most conveyed that they are not aware of any concerns at this time. In fact, the Western Center on Law and Poverty stated that in California, which prohibits TANF EBT access to 12 location types, many banned businesses expressed support for the policy. One commenter, the Electronic Funds Transfer Association (EFTA), did however summarize concerns of EBT vendors, such as Xerox and J.P. Morgan. EFTA stated that EBT vendors have expressed concerns over the expense of implementing the new requirements and noted that any system modifications that may be required would be extra-contractual for the processors and their states; despite the financial opportunity this presents, EBT vendors say that such modifications are not cost beneficial for either them or the states.

In order to address these concerns, ACF has drafted the proposed regulations in a manner that minimizes the impact on businesses, including small businesses, by providing states flexibility when implementing policies and practices that comply with the new requirements. In particular, states have the flexibility to implement approaches that do not place significant burden or impose large costs on their EBT vendors, small

businesses, or any one particular party. Therefore any costs resulting from policies under which states require action by small entities, including small businesses, are the result of choices states make when implementing the statutory requirements.

The primary impact of this proposed regulation is on state governments. State governments are not considered small entities under the Act.

6. Consequences of Collecting the Information Less Frequently

P.L. 112-96 requires states to report to ACF/HHS that they have implemented and maintain policies and practices to prevent TANF assistance from being used in any electronic benefit transfer transaction in any liquor store; any casino, gambling casino, or gaming establishment; or any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment. In order for ACF/HHS to determine whether a state not only implements, but also maintains, the required policies and practices, states are required by statute to submit reports on an annual basis. The statute requires a penalty of five percent reduction in state's SFAG for FY 2014 and "each succeeding fiscal year in which the State does not demonstrate that such State has implemented and maintained such policies and practices" (section 409(a)(16)(A) of the Social Security Act, as amended by section 4004(b) of P.L. 112-96). Collecting the information less frequently will impede us from complying with our statutory responsibility to determine whether states are maintaining the required policies and practices, and assessing whether a state is subject to a penalty.

7. Special Circumstances Relating to the Guidelines of 5 CFR 1320.5

As discussed in "Circumstances Making the Collection of Information Necessary" above, P.L. 112-96 requires each state to submit an annual report to ACF or face a penalty of five percent reduction in its TANF grant. The first reports were due by February 22, 2014 (within two years of the enactment of P.L. 112-96), and annually on February 22 thereafter. However, the necessary regulation for implementing Section 4004 of P.L. 112-96 was not finalized by this due date, and ACF provided guidance to states to submit their first reports to ensure that they will not be subject to the statutory penalty.¹ All states submitted their reports on time and ACF did not impose any penalties.

ACF will have the appropriate OMB approval prior to the next round of information collection. ACF published a notice of proposed rulemaking on February 6, 2014, with a comment period of 90 days. ACF reviewed and made revisions to the regulations based

¹ Relevant ACF guidance documents are available at:

<http://www.acf.hhs.gov/programs/ofa/resource/policy/im-ofa/2012/im201202/im201202>

<http://www.acf.hhs.gov/programs/ofa/resource/q-a-ebt-transactions>

<http://www.acf.hhs.gov/programs/ofa/resource/tanf-acf-pi-2013-03>

on public comments received through the closing date for comments, May 7, 2014. In response to comments on the proposed reporting requirements, as discussed in “Comments in Response to the Federal Register Notice and Efforts to Consult Outside the Agency,” ACF added an EBT section to the Annual Report On TANF Programs under 45 CFR 265.9(b). The next Annual report is due November 14, 2015, and thus, ACF did not require states to submit an EBT report on February 22, 2015, as was required in the NPRM. ACF provided guidance to states via email that they should follow the standard reporting requirement deadline for fourth quarter or annual reports as specified in the federal regulations at 45 CFR 265.10, and submit the annual EBT report for FY 2015 no later than 45 days following the end of the federal fiscal year (see attached).

8. Comments in Response to the Federal Register Notice and Efforts to Consult Outside the Agency

The NRPM, *Temporary Assistance for Needy Families Programs: State Reporting on Policies and Practices to Prevent Use of TANF Funds in Electronic Benefit Transfer Transactions in Specified Locations*, was published in the federal register on February 6, 2014, with a 90-day comment period deadline of May 7, 2014. In the NPRM, we required that states annually submit an EBT report describing their policies and practices in the following four areas: 1) identifying locations; 2) preventing the use of TANF assistance via EBT transactions; 3) monitoring; and 4) enforcement of compliance. A variety of entities, including states, the National Association of State TANF Administrators (NASTA), the Center for Law and Social Policy (CLASP), and the Center of Budget and Policy Priorities (CBPP), commented on this reporting requirement.

Commenters raised concerns regarding the proposed requirement that states submit a separate annual EBT report in addition to the existing required reports. They recommended ACF use the state plan or Annual Report On TANF Programs to collect the required information on EBT programs and policies. We agreed that the Annual Report On TANF Programs would be a sufficient reporting mechanism. Thus, we require states report EBT policies and practices in their Annual Report On TANF Programs under 45 CFR 265.9(b), rather than submit a separate annual EBT report.

In regard to the four content areas, two commenters agreed with our proposed framework and believed it would support the integrity of the program; other commenters argued that following this requirement would be labor intensive, cost prohibitive, and contrary to the philosophy of state flexibility in a block grant program. Some argued that states should have the flexibility to develop policies and practices best suited to them, which might not match the four stated areas. One state argued that requiring that reports address these four areas exceeded statutory authority and suggested that the four specific areas serve as suggestions for state policy rather than requirements. This commenter

further suggested that we could require states to report on all four specified components, but allow states to determine whether to establish policies in these areas or not. If a state chose not to, it would assert that in the report. One commenter characterized these four specific components as requirements beyond those in the statute, and that they should not be made mandatory.

We disagreed with the suggestion that requiring this reporting exceeds statutory authority, as the statute provides us the authority to reduce a state's block grant if the "Secretary determines, *based on the information provided in State reports*, that any State has not implemented and maintained such policies and practices." ACF still requires that states include the four areas in their reports, but we changed the descriptions of the third and fourth to be clearer about what these terms mean. Instead of "monitoring," we changed the third component to "ongoing monitoring to ensure policies are being carried out as intended;" and instead of "enforcement of compliance," we changed the fourth component to "plans to respond to findings of non-compliance and/or program ineffectiveness." This way, we do not imply that specific practices, such as monitoring of transaction reports, are required. At the same time, reports must describe how states will review and evaluate the policies and practices implemented, and correct any particular aspects that are not leading to the intended results. This way, we do not imply that specific practices, such as monitoring of transaction reports, are required. At the same time, reports must describe how states will review and evaluate the policies and practices implemented, and correct any particular aspects that are not leading to the intended results.

ACF now requires that states include descriptions of their EBT policies and practices in the four following areas: (1) procedures for preventing the use of TANF assistance via electronic benefit transfer transactions in any liquor store; any casino, gambling casino, or gaming establishment; and any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment; (2) how the state identifies the locations specified in the statute; (3) procedures for ongoing monitoring to ensure policies are being carried out as intended; and (4) how the state plans to respond to findings of non-compliance or program ineffectiveness.

9. Explanation of Any Payment or Gift to Respondents

No payments and/or gifts will be provided to respondents.

10. Assurance of Confidentiality Provided to Respondents

The information collected is not confidential.

11. Justification for Sensitive Questions

None of the information requested from state agencies is of a sensitive nature.

12. Estimates of Annualized Burden Hours and Costs

ANNUAL BURDEN ESTIMATES

Requirement	Number of Respondents	Yearly Submittals	Average burden per respondent (hours)	Total burden hours
Annual reporting on policies and practices to prevent TANF assistance from being used in electronic benefit transfer transactions in liquor stores; casinos, gambling casinos, or gaming establishments; or any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.	54	1	138	7,452

We have estimated the burden hours for each information collection activity as though they applied to all jurisdictions for ease of discussion and public review.

We estimate the annualized cost of the hour burden to be \$670,680. This is an overestimate since the electronic reporting has decreased paper and mailing expenses. It is based on an estimated average hourly cost of \$90 (including fringe benefits, overhead, and general and administrative costs) for the State staff performing the work multiplied by the estimated 7,542 burden hours.

In addition to the 118 hours ACF has previously estimated for the completion of each annual report, ACF added 20 hours for each due to the revision of the report to add a section for the EBT requirements. ACF reduced the average burden per respondent for the new EBT section of the report from 40 hours in NPRM to 20 hours. States have already planned and initiated the implementation of policy and program changes pertaining to the new EBT requirements and have notified ACF of these changes through their initial EBT reports. Thus, ACF anticipates a reduction in the reporting burden for

subsequent EBT reports. Further, the average burden hours per respondent estimate in the NPRM assumed ACF would require states to submit a separate EBT report in addition to current reports. ACF no longer requires a separate annual EBT report but rather incorporates the EBT report into the Annual Report On TANF Programs.

13. Estimates of Other Total Annual Cost Burden to Respondents and Record Keepers

There are no additional direct monetary costs.

14. Annualized Cost to the Federal Government

We estimate total annual federal burden to be 351 hours. This includes the costs of information collection, development, printing forms, e-mail list compilation and maintenance, e-mailing, editing, calculations, analysis, evaluation, publication of results, technical assistance, and monitoring. Based on an estimated average hourly federal salary of \$100 per hour (including fringe benefits, overhead, etc), the total estimated average annual Federal cost is \$35,100.

15. Explanation for Program Changes or Adjustments

Section 4004 of P.L. 112-96 requires states receiving an SFAG to “maintain policies and practices as necessary to prevent assistance provided under the State program funded under this part from being used in any electronic benefit transfer transaction in any liquor store; any casino, gambling casino, or gaming establishment; or any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.”

Each state is required to submit an annual report to the HHS Secretary on its implementation of policies and practices required by the law. ACF is required to reduce a state’s block grant if the state fails to comply with this reporting requirement or if, based on the information that the state reports, ACF finds that the state has not implemented and maintained the required policies and practices.

16. Plans for Tabulation and Publication and Project Time Schedule

ACF will use the information provided in this information collection to determine whether to impose a penalty authorized by section 409(a)(16) of the Social Security Act. ACF will impose a penalty of not more than five percent of a state’s adjusted SFAG in FY 2014 and each succeeding fiscal year in which the state does not demonstrate it has implemented and maintained the required policies and practices.

ACF will summarize and compile the EBT policies and practices collected in the Annual Report On TANF Programs, and include its summary in its Annual TANF Report to

Congress, required by section 411(b) of the Social Security Act. ACF may also publish the information on our website and/or present its analysis in a webinar. The intent of making the information public is to provide examples of how states are implementing the required policies and practices, highlighting particularly effective approaches to complying with the statutory requirements.

17. Reason(s) Display of OMB Expiration Date is Inappropriate

An OMB expiration date is appropriate, as this information collection makes changes to OMB control number 0970-0004.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

Because the regulation for implementing Section 4004 of P.L. 112-96 was not finalized within two years of this law's enactment date, ACF provided guidance to states to submit their first reports to ensure that they will not be subject to the statutory penalty. All states submitted their reports on time and ACF did not impose any penalties. Since ACF incorporated subsequent EBT reports into the Annual Report On TANF Programs, EBT reports are now due annually on November 14th. This ensures that ACF will have the appropriate OMB approval prior to the next round of information collection.

B. Statistical Methods (used for collection of information employing statistical methods)

Statistical methods are not applicable to this information collection.