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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

September 5, 2018

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

Re: Use of Electronic Benefit Cards at
Prohibited Locations
Report 2018-F-15

Dear Commissioner Roberts:

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, we have followed up on the actions taken by officials of the Office of Temporary and Disability Assistance (Office) to implement the recommendations contained in our audit report, *Use of Electronic Benefit Cards at Prohibited Locations* (2016-S-52) issued on July 10, 2017.

Background, Scope, and Objective

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 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. According to data provided by Office officials, approximately 25.3 million transactions, totaling about \$1.3 billion, were made from January 1, 2017 to July 31, 2018 – an average of 1.33 million EBT transactions per month.

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).¹ In addition, the Act requires states to report annually to the Department of Health and Human Services (HHS) on the implementation

¹ 42 USC §608(a)(12).

of policies and practices related to restricting use of TANF assistance in EBT transactions at the prohibited locations.² 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 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).

Our initial audit report examined whether the Office had sufficient policies and practices to identify and prohibit EBT card transactions at prohibited locations, and thereby comply with applicable federal and State laws. The audit report concluded that the Office had adopted appropriate policies and practices, was monitoring EBT transactions in accordance with procedures it reported to HHS for preventing TANF cash assistance from being used at prohibited locations, and was referring identified violations to the appropriate governing authority. While we found the Office’s monitoring of EBT transactions to be adequate, we identified certain strategic refinements that could help the Office to better monitor transactions and identify violations. The Office also assigned responsibility for monitoring to its Bureau of Audit and Quality Improvement – a management function that is incompatible with independent appraisal of operations.

The objective of our follow-up was to assess the implementation, as of August 31, 2018, of the three recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found that the Office has made progress addressing the issues identified in our original audit. Of the three recommendations contained in our initial audit report, two have been implemented and one has been partially implemented.

Follow-Up Observations

Recommendation 1

Develop comprehensive data analysis testing of monthly transactions, focusing on repeated violations at the same potentially prohibited location.

Status - Implemented

Agency Action - Since our initial audit, the Office has developed comprehensive data analysis testing of monthly transactions. In April 2018, the Office began examining Gaming and OTB transactions retroactively to November 2017. Also in 2018, it began reviewing transactions with surcharges exceeding normal and customary fees, because high surcharges are often associated with liquor stores or adult-oriented establishments.

² 42 USC §609(a)(16).

The Office is in the process of incorporating adult-oriented establishments into its monthly data analysis process, developing a new interface to track referred transactions, and planning to complete a geocoding development process for use in determining transaction-specific name and address locations. Additionally, the Office has made changes to the data analysis process, making it less ad hoc and more formalized, adding policies and procedures, a data source list, and a flow chart of the process. The Office is also focusing on repeated violations at the same potentially prohibited locations, where referrals to oversight agencies have already been made.

Recommendation 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.

Status - Implemented

Agency Action - The Office is now performing monthly reviews of out-of-state transactions to identify activity at potentially prohibited locations. Once it identifies these types of transactions, the Office requests voluntary compliance directly from the potentially prohibited locations (because out-of-state locations are technically exempt from New York State requirements). The Office did not determine if other states have identified potential abuses at New York State locations, saying that other states take different actions with respect to out-of-state transactions at potentially prohibited locations. For example, some states focus on clients while others focus on businesses. The Office's actions meet the intent of our original recommendation.

Recommendation 3

Reassign responsibility for EBT cash transaction monitoring to achieve both effective supervision and the independence of the internal audit function.

Status - Partially Implemented

Agency Action - Since our original audit, the Office has made some progress with regard to this recommendation. The internal audit function reassigned a portion of the EBT cash transaction monitoring to a Program unit. However, the internal audit function continues to perform the remaining monitoring, including research and recommending to the Office's counsel transactions to be referred to SLA or the Gaming Commission, or to be acted on in some other manner. We maintain the need for reassignment of the full responsibility of EBT cash transaction monitoring to achieve both effective supervision and the independence of the internal audit function.

Major contributors to this report were Wayne Bolton, Cheryl Glenn, Brendan Reilly, and Lisa Whaley.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issue discussed in this report. We also thank the management and staff of the Office for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Mark Ren
Audit Manager

cc: Kevin Kehmna, Office of Temporary and Disability Assistance
Division of the Budget