



Office of Temporary and Disability Assistance

ANDREW M. CUOMO
Governor

SAMUEL D. ROBERTS
Commissioner

BARBARA C. GUINN
Executive Deputy Commissioner

October 10, 2017

Mr. Brian Reilly
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, New York 12236

Re: Office of the State Comptroller's Final Report
(#2016-S-52) "Use of Electronic Benefit Cards at
Prohibited Locations"

Dear Mr. Reilly:

As required by Section 170 of the Executive Law, this is the New York State Office of Temporary and Disability Assistance's (OTDA) response to the above-mentioned final report. This response will also be sent under separate cover to the Governor, the State Comptroller, and to leaders of the Legislature and fiscal committees.

As background, the Office of the State Comptroller (OSC) conducted a year-long review of OTDA's compliance with State and federal rules restricting access to Public Assistance (PA) funds at certain locations. In its final audit report, OSC determined that OTDA:

- has adopted appropriate policies and practices to comply with the law and by doing so has avoided the risk of federal financial penalties;
- worked closely with the State Liquor Authority and the Gaming Commission to coordinate implementation of the Electronic Benefit Cards Transaction (EBT) restrictions statewide;
- properly informed prohibited locations of the restrictions on EBT card usage and potential penalties, providing specific instructions on how to block the use of EBT cards;
- communicated the EBT restrictions to PA recipients by distributing notices to all recipients; by issuing a directive to local districts for further dissemination; by updating OTDA's recipient handbook; and by posting information about the new restrictions to our website;
- monitored EBT transactions in order to prevent public assistance from being accessed at prohibited locations, and referred potential violations to the appropriate governing authority.

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. Indeed, it found that OTDA was 100% compliant with federal and state rules regarding EBT restrictions and that NYS merchants were over 99.99% compliant with those rules. OSC issued three recommendations in its final report, to which OTDA responds as outlined below.

Recommendation 1

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

OTDA has already implemented this recommendation where appropriate. Throughout this audit and in the response to the draft report OTDA explained in great detail its monitoring processes while pointing out the limitations in determining what is, in fact, a “prohibited” location. With these limitations in mind, OTDA’s monitoring of monthly transactions, including review of potential repeat violations at prohibited locations, is both robust and effective. Simply put, OTDA conducts all monthly monitoring as described in our federally-approved plan. The monitoring includes reviewing transactions at all previously-identified, potentially prohibited locations, so it is unclear why OSC would include this recommendation. OTDA has always referred potentially prohibited locations to the appropriate oversight agency. OTDA is continually enhancing its monitoring approach and will implement cost effective changes as necessary.

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.

OTDA has already implemented this recommendation where appropriate and cost effective. OTDA has reviewed EBT transactions occurring in other states each month since the monitoring process began in 2014, and will continue to so. However, OSC’s recommendation that OTDA review and restrict out-of-state transactions in the manner expressed would be prohibitively expensive to the State of New York while providing no offsetting monetary benefit and is therefore contrary to federal guidance on this topic set forth at 81 FR 2092-01, 2101 (Jan. 15, 2016). Specifically, that Final Rule recognized the infeasibility and cost ineffectiveness of restricting transactions in other states and, therefore, considered notice to recipients to be sufficient to meet restriction requirements. While we disagree with the specifics of this particular recommendation, we note that we have recently sent letters to certain out-of-state merchants seeking their voluntary compliance. OTDA is continually enhancing our monitoring approach and will implement cost effective changes as necessary and as allowed by federal laws and rules.

Recommendation 3

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

OTDA has already implemented certain aspects of this recommendation and stands by its position as stated in its response to the draft audit report. Contrary to OSC’s assertions, OTDA’s monitoring of EBT transactions is shared among three areas- Legal Affairs, Employment and Income Support Programs and Audit and Quality Improvement (AQI). The functional operation of the monitoring process is appropriately located in AQI, as was recently confirmed by two separate independent peer reviews in 2011 and 2016. OTDA passed each review with the highest mark possible. Recent changes to peer review standards would not alter their conclusions. That said, over the last year, AQI has begun implementing technical changes to the data matching process whereby the data matches will be run by the Technical System’s Audit unit within AQI, rather than by the director. This will remove the AQI director from the direct monitoring role and any claimed impairment of organizational independence. We disagree with OSC’s recommendation to otherwise change OTDA work processes, given the success of this monitoring program. This success is due to the continual communication among the three OTDA units and the cooperation and assistance of the State Liquor Authority and the Gaming Commission.

Finally, OTDA takes issue with OSC's expression of "disappointment" with OTDA's alleged "unwillingness to move beyond minimum legal requirements." OTDA has set up a strong system for monitoring compliance with EBT restrictions, communicating those restrictions to recipients and coordinating with other state agencies on implementation and enforcement. OTDA reiterates its position set forth in its response to the draft audit report that we disagree with certain recommendations as they were based upon fundamentally flawed methods and assumptions, were contrary to OTDA's statutory/regulatory authority, would harm legitimate EBT access for some of OTDA's most vulnerable clients, or were not otherwise cost effective. OTDA will continue to explore improvements to its methods and remains willing to make cost-effective enhancements when warranted, but must also act within its authority while mindful of its core mission and responsibilities to New Yorkers.

We trust that these comments are responsive to the recommendations cited in OSC Final Audit Report 2016-S-52.

Sincerely,

A handwritten signature in black ink that reads "Sam Roberts". The signature is fluid and cursive, with the first name "Sam" and last name "Roberts" clearly distinguishable.

Samuel D. Roberts
Commissioner

cc: Barbara Guinn
Krista Rock
Kevin Kehmna
Nancy Maney
Jeff Gaskell