



January 8, 2020

Honorable Melissa Huerta
Chairwoman, Human Services Committee
California State Senate
State Capitol
Sacramento, CA 95814

RE: Sponsor & Support SB 33 (Skinner) EBT Purchases Consumer Protections

Dear Chairwoman Huerta:

I am writing on behalf of the Western Center on Law and Poverty as a co-sponsor in support of Senate Bill 33 (Skinner) which will require California to take three steps in response to recent changes in federal law relating to the Electronic Benefit Transfer (EBT) system and forthcoming regulations expected to be issued by the United States Department of Agriculture (UDA) following the completion of a pilot of EBT online purchases.

Specifically, SB 33 will achieve the following. It will require the department to convene a workgroup of interested stakeholders no later than February 1, 2021, to make recommendations to the department on how to prepare the EBT system to accommodate online purchases and to provide the workgroup technical assistance and assign staff to assist the workgroup in carrying out its responsibilities. The bill would require the department to review and analyze all recommendations and, by December 1, 2021, report to the Legislature regarding the recommendations. The bill would authorize the workgroup to continue meeting from January 1, 2022, to January 1, 2023, to monitor the implementation of the Online EBT system and to develop recommendations on additional topics and assist the department, the Legislature, or both, to improve the EBT system experience of public benefit recipients in California.

Background on Electronic Benefit Transfer

CalFresh, referred to nationally as the Supplemental Nutrition Assistance Program (SNAP), benefits are required by federal law to be distributed only through EBT.ⁱ Pursuant to state law, CalWORKs benefits must also be distributed using the EBT system except for when a recipient has elected to receive their monthly grant through a direct deposit to their banking account. Most counties chose to also have General Assistance or General Relief payments distributed using the EBT system.ⁱⁱ In addition to these benefits, the state issued Work Incentive Nutrition Supplement (WINS)ⁱⁱⁱ benefit and a once-annual utility assistance benefit^{iv} are also issued using EBT.

Since very few CalWORKs recipients elect direct deposit, the large majority of cash and food benefits are issued their monthly grant through the Golden State Advantage EBT card. To withdrawal benefits or make a purchase using these benefits, a cardholder simply swipes this card



through a point-of-sale (POS) device, or uses the card at an automated teller machine (ATM) and, after they enter their Personal Identification Number (PIN) they can access their cash grant or CalFresh food benefits. Sometimes there is a fee charged to cardholders for the withdrawal of cash benefits or for checking a balance, but an increasing number of banks have offered free access to EBT recipients^v and federal law prevents a fee from being charged with CalFresh benefits are being used to purchase food.

California's EBT system has some of the most comprehensive protections and financial empowerment tools in the country. These protections have been made stronger through several pieces of state legislation enacted as new challenges for safe, affordable distribution of benefits through EBT emerged.^{vi} The upcoming changes to EBT require the same advanced planning and thoughtful policymaking.

Changes to EBT Coming Soon - Pilot of Online EBT & Congressional Oversight Removed

On February 7, 2014, President Barack Obama signed the House Resolution 2642 Conference Report (P.L. 113-79)^{vii} known as the Agricultural Act of 2014, enacting several provisions of law impacting the Supplemental Nutrition Assistance Program (SNAP), known as CalFresh in California. This bill included many technical changes to the program, some of which never even got a hearing. One of these was a mandate that the United States Department of Agriculture (USDA) conduct a pilot to test the feasibility and implications of allowing retail stores to accept SNAP benefits through online transactions. The goal of the pilot is to ensure that the foundational infrastructure necessary for running SNAP transactions online operates in a safe and secure manner.^{viii} The Act required the USDA to report back to Congress following the pilot. On September 15, 2016, FNS released a request for retailer volunteers (RFV)^{ix} to solicit applications for a two-year SNAP Online Purchasing Pilot (Pilot). The pilot was awarded in January of 2017.^x

On December 20, 2018, President Donald J. Trump signed House Resolution 2 (P.L. 115-334), the Agriculture Improvement Act of 2018. Section 4001 of the Act It requires nationwide implementation of the online acceptance of SNAP benefits after the pilots required in the 2014 Farm Bill are implemented and would no longer require a report to Congress on the matter. (Section 4001).^{xi} This provision also amended the definition of a retail food store to include online entities. This means that the Trump Administration could implement a nationwide approval for online SNAP EBT without any way for Congress or California to know if the pilot overlooks important consumer issues.

A Farm Bill implementing memo published by the USDA states, "FNS intends to incorporate Information from the pilots through rulemaking."^{xii} It does not say which information will be incorporated and it doesn't reference any stakeholder review or harm reduction strategies. There are no consumer advocates participating in the pilot process and California's consumer-conscious state and county administrators are not privy to the details of the pilot. So, we have little understanding of the process and Western Center is very concerned that an approval of online EBT purchases by the Trump Administration will be wrought with short term and long-term consequences that will negatively impact low-income consumers who rely on the program to prevent hunger and basic needs deprivation.



What Changes to EBT Could Bring

Online grocery shopping has been a reality for many years for consumers using mainstream forms of bank and payment cards. If expanded to consumers using EBT payment, it might make the program more able to meet the needs of elderly and disabled recipients, who often cannot easily go out to shop for groceries. It will also be beneficial for those that lack consistent access to transportation, are caregiving or live in areas considered to be food deserts.

For many years it was technologically impossible to use EBT cards online due to the requirement that every EBT electronic transaction include a customer-entered personal identification number (PIN). Signature transactions and purchase 'pre-authorization' are not allowed in the EBT environment. The government programs that use EBT are exempt from certain requirements of Regulation E which governs consumer protections for credit and commercial debit cards. As a result, if someone steals a recipient's EBT benefits, unless state law dictates otherwise, they are not required to be replaced. Therefore, the PIN is viewed as the ultimate form of identification in the EBT world. Secure PIN-entry requires an American National Standards Institute (ANSI) compliant device that can encrypt the PIN using the Data Encryption Standard (DES) algorithm from the point of entry. Computer keyboards and mobile devices are not ANSI-compliant for PIN-entry. Until a few years ago, all secure online PIN solutions required special user hardware and/or software and were impractical. Online purchases made with a commercial credit or debit card typically required the customer to enter a card verification value (CVV) to prove that they have the card in their possession. EBT cards do not have CVVs. Most Internet Retailers still do not accept PIN-based transactions but only commercial branded debit cards like signature-based credit cards for online transactions. The online EBT purchase pilot has been tasked to figure out strategies to overcome many of these hurdles so that the USDA can issue guidance for all retailers.

Western Center advocates have been told that the pilot will encompass SNAP EBT and TANF EBT. It is not clear whether the Secretary of USDA would have the authority to authorize purchases to be made online for TANF, as TANF is a block granted program and the authority to issue benefits via EBT has been relegated, for the most part, to the states. The only place where that is not the case is in the TANF EBT Restrictions established by Section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012, which added two new sections at 45 CFR 264.60 and .61.

California Has Long Been Leader in Establishing Strong EBT Protections

California has the strongest laws in the country protecting EBT consumers. The Welfare and Institutions Code has long required the right to direct deposit and since 2013, they have been protected from theft caused by electronic skimming. More than half of California's CalFresh recipients who are elderly, disabled or homeless have access to restaurants where they can purchase prepared food. It only makes sense that California's legislators would anticipate the coming online purchase capacity of the EBT system and establish some standards protections for some of the poorest consumers in the state who are, because they live in poverty, are more likely to experience hunger when there is even a small disruption in grocery access. These Californians are also more likely, due to their very low incomes, to live with poor health and be susceptible to



food borne illnesses. Finally, low-income California consumers are frequently the target of predatory sales practices and are the least prepared to overcome even slight impacts in their financial solvency that can result. So not only does it make sense that California would lead the way in establishing protections for EBT online consumer purchases, it is our responsibility to do so, with the physical and financial health of the poorest California consumers on the line.

Urge Support for SB 33

Approximately 4 million low-income Californians have an EBT card in which they receive CalFresh benefits and more than 350,000 very poor families with children receive CalWORKs basic needs grants through EBT. These families depend on both cash assistance and food benefits to prevent hunger and basic needs deprivation. Establishing the protections proposed in SB 33 will ensure that when the Trump Administration moves to allow for online EBT purchases, low-income CalFresh and cash assistance recipients will be extended these essential protections. For these reasons our organization is proud to sponsor and support SB 33 and urges your Aye vote.

Sincerely,

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CC: Members of the Senate Human Services Committee
Honorable Nancy Skinner, California State Senate (Author)

ⁱ An Advocates Guide To EBT in California by Jessica Bartholow and Deborah Garcia found at:

<http://consumersunion.org/pdf/EBT-report-1102.pdf>

ⁱⁱ California EBT Client Website. Available at: https://www.ebt.ca.gov/caebtclient/ reciplogin_client.jsp

ⁱⁱⁱ ACL NO. 13-71 <https://www.cdss.ca.gov/lettersnotices/EntRes/getinfo/acl/2013/13-71.pdf> and ACL NO. 14-83

<http://www.cdss.ca.gov/lettersnotices/EntRes/getinfo/acl/2014/14-83.pdf>

^{iv} ACL NO. 14-54: <http://www.cdss.ca.gov/lettersnotices/EntRes/getinfo/acl/2014/14-54.pdf>

^v ACWDL (Feb 13, 2019) <http://www.cdss.ca.gov/Portals/9/ACWDL/2019/ACWDLSURCHARGEFREE.pdf?ver=2019-02-14-074115-127>

^{vi} AB 1614 (Stone, 2015), AB 2035 (Bradford, 2012), AB 1280 (Pérez, 2012)

^{vii} 2014 Farm Bill <http://thomas.loc.gov/cgi-bin/bdquery/z?d113:H.R.2642>:

^{viii} <https://www.fns.usda.gov/snap/online-purchasing-pilot>

^{ix} The USDA RFV: <https://fns-prod.azureedge.net/sites/default/files/snap/onlinepurchasing-rfv.pdf>

^x USDA Announcement of pilot award: <https://www.usda.gov/media/press-releases/2017/01/05/usda-announces-retailer-volunteers-snap-online-purchasing-pilot>. The retailers include Amazon, Dash's Market, FreshDirect, Hy-Vee, Inc., Safeway,

ShopRite, Wal-Mart Stores, Inc., and Wright's Markets, Inc. The states anticipated to be part of the pilot are Alabama, Iowa, Maryland, Nebraska, New Jersey, New York, Oregon, and Washington.

^{xi} Food Research and Action Center (FRAC) Farm Bill Summary: <http://frac.org/wp-content/uploads/2018-farm-bill-conference-report-analysis.pdf>

^{xiii} Farm Bill Implementing Memo: <https://fns-prod.azureedge.net/sites/default/files/Farm-Bill-Information-Memo.pdf>