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IMPLEMENTATION OF EFT REQUIREMENTS

HEARING

BEFORE THE

SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

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IMPLEMENTATION OF EFT REQUIREMENTS

WEDNESDAY, JUNE 20, 2001

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON FINANCIAL SERVICES,
Washington, DC.

The subcommittee met, pursuant to call, at 3:00 p.m., in room 2220, Rayburn House Office Building, Hon. Sue W. Kelly, [chairwoman of the subcommittee], presiding.

Present: Chairwoman Kelly; Representatives Tiberi, Gutierrez, Inslee, Moore and Shows.

Chairwoman KELLY. The hearing of the House Financial Services Subcommittee on Oversight and Investigations will come to order. Without objection, all Members' opening statements and answers to their questions then will be made part of the record.

Good afternoon. We are here to examine the status of electronic funds transfer requirements of the Debt Collection Improvement Act of 1996, known as the EFT 99 program.

The purpose of this hearing is to examine how far we have come in moving toward a checkless system for paying Federal salaries, pensions, vendor payments, and Social Security benefits, and whether or not the change has reduced costs as was promised when the Act was passed.

We will also discuss the use of electronic transfer accounts, (ETAs) that allow low- and middle-income Federal payment recipients who do not have bank accounts to receive their funds electronically.

The ETA can be the first step for the unbanked toward participating in the financial system, and a lifetime of sound money management and personal savings toward that first house, a child's education, and a secure retirement.

Further utilization of ETA accounts should save the Government money, ensure speed and efficiency of the distribution of Government benefits, save a beneficiary's time, increase the security of beneficiaries' benefits and provide a sector of the population who have been without bank accounts with this necessary service.

This program, should its full potential be realized, can be a winner for all involved. We need to ensure that the program is reaching the population it needs to reach. And in order to do so, we should investigate who is not using this service and why.

In addition, we need to ask what problems these accounts pose to the beneficiaries, the banks, and the Government, so that we may ensure adequate steps can be taken to correct any problems that may be occurring.

Finally, we need to investigate what the fraud level is with these accounts, and what steps might be taken to stop such problems.

The Ranking Member of the Subcommittee, Mr. Gutierrez of Illinois, and I, are committed to the long-term success of the EFT and ETA programs.

To ensure that the greatest amount of Federal payments are made electronically, and all eligible recipients who want to open ETAs can do so, we are today asking the General Accounting Office (GAO) to start a comprehensive review of the EFT program and of the use of ETAs.

At this point, I would like to let Members of the subcommittee and the subcommittee staff know that it is my intention to enforce the 5-minute rule, and I would appreciate their cooperation in this.

At this time, I would like to turn to the Ranking Member, Mr. Gutierrez, my good friend who is also very interested in the success of this program.

Mr. Gutierrez, your opening statement.

[The prepared statement of Hon. Sue W. Kelly can be found on page 22 in the appendix.]

Mr. GUTIERREZ. Good afternoon, and thank you, Chairwoman Kelly, for holding this important hearing. I was very proud that you and I were able to send this letter out from the Committee on Financial Services to get a GAO report so that we can work in a bipartisan fashion. I think that's the first step to get information from all the relevant sources. I look forward to continuing working with you in this endeavor. I think it's extremely important.

I would like to start by commending the Department of the Treasury for its continued efforts in helping bring into the mainstream of our financial system the millions of Federal payment recipients who currently do not have bank accounts.

Today, we have a series of witnesses who are going to bring us up to date with the progress of the EFT 99 Program and the status of ETAs.

I would like to welcome Mr. Donald Hammond from the Department of the Treasury and Ms. Margot Saunders from the National Consumer Law Center.

I would also like to welcome my friend, Mr. Richard Carrión, President and CEO of Banco Popular de Puerto Rico and Banco Popular, whose vision and foresight has played an instrumental role in the success of Banco Popular being the number one ETA provider in the United States and in Puerto Rico, a success story I think that this subcommittee has to examine very, very carefully.

They've obviously shown how it can be done, and so I'm excited to hear his testimony and his insight and his vision as to how he's getting it done there.

ETAs offer a unique opportunity to fill consumer protection voids, increase the attractiveness of the account for those outside the banking mainstream, and build positive relationships between banks and communities they serve, not requiring a minimal monthly balance to maintain an ETA, except as provided by State or Federal law, setting a maximum fee of $3 per month, providing a monthly statement, and making ETAs voluntary are important inclusions that demonstrate commendable sensitivity to many low-in-

come Federal payment recipients who must live on what is essentially a fixed income.

However, I believe there are some flaws with current requirements of the ETAs. One of the problems is that it sets a minimum number of ATM and tele-transactions that consumers must do in a month, and it also leads to the financial institution, rather than the account holder, deciding whether to use a teller, an ATM, or both.

Prospective ETA account holders average 61 years of age. ATM usage decreases with age and only 33 percent of consumers over 64 years of age use an ATM card. Therefore, teller access is an important factor in encouraging the use of ETAs by these prospective account holders.

It is also a crucial factor in assuring that the goal of bringing those without bank accounts into the mainstream financial system is realized.

ETA prospectives are not likely to enroll in a pure debit card product. For this group, the branch is their primary choice for any type of transaction. Therefore, it should be up to the account holder, not the financial institution, to decide whether to use an ATM or a teller.

Another concern is that the ETA does not provide means for account holders to pay bills. Consequently, they must withdraw cash and then purchase a money order.

These and other issues really do have a detrimental effect. An important aspect of implementing the Act and establishing ETAs is the confidence of recipients in the system. It is vital that the unbanked receive effective, targeted education about the availability of the account and how to use it.

Recipients should be given clear and understandable information about the nature of the account, associate fees, free items, additional fees, types of transactions that are allowed. Any educational effort must consider potential cultural and language barriers that could inhibit understanding of the ETA in the unbanked population.

For this reason, it's important to ensure that informational materials are provided and customer service lines are available in a wide variety of languages.

I thank you again for coming here today, and I look forward to hearing the testimony. And I thank you, Madam Chairwoman.

Chairwoman KELLY. Thank you very much, Mr. Gutierrez. With unanimous consent, I would like to include a copy of the letter to the GAO in the subcommittee record.

[The information referred to can be found on page 23 in the appendix.]

Our first witness today is Mr. Donald V. Hammond, Fiscal Assistant Secretary of the United States Treasury Department. Mr. Hammond was named Fiscal Assistant Secretary on September 28th, 1998. As Fiscal Assistant Secretary, he provides policy oversight for the Financial Management Service and the Bureau of the Public Debt.

Assistant Secretary Hammond chairs the Treasury Working Group on implementing the statutory mandate for the EFT program.

Assistant Secretary Hammond also serves as the Treasury's liaison with the Federal Reserve System in its capacity as the Government's fiscal agent.

Mr. Hammond, we welcome you here today. We welcome your testimony on the EFT and the ETA programs. Without objection, your entire written testimony will be included in the record, and we invite you to begin your 5-minute oral summary now, and I will notify you when you have about a minute remaining by just simply tapping a little bit with this handle.

[Laughter.]

Chairwoman KELLY. Please proceed, sir.

Mr. HAMMOND. OK. Thank you very much.

STATEMENT OF DONALD V. HAMMOND, FISCAL ASSISTANT SECRETARY, U.S. DEPARTMENT OF THE TREASURY

Mr. HAMMOND. Good afternoon Chairwoman Kelly, Ranking Member Gutierrez. Thank you for the opportunity to appear before you today to discuss Treasury's efforts to implement the electronic funds transfer, or EFT, requirement of the Debt Collection Improvement Act of 1996, the DCIA.

The DCIA requires the Federal Government to issue most payments via EFT and directs Treasury to ensure that any recipients who are required to receive payment electronically have access to an account at a financial institution at a reasonable cost and with the same consumer protections as other account holders at the same financial institution.

We believe the program thus far has been very successful, resulting in approximately 80 percent of all Federal payments currently being made electronically and generating considerable efficiencies for the Federal Government, financial institutions, and payment recipients.

In fact, the reduction in the number of check payments alone, since the end of fiscal year 1995, has saved the Federal Government almost $250 million and will generate recurring savings each year.

We expect to expand on these accomplishments by increasing our percentage of electronic payments in the future.

I commend the subcommittee for its continued interest in and support of increasing the Government's usage of electronic payments in a way that balances the interests of our payment recipients and the cost to Government operations.

Treasury intends to continue with the implementation of this important initiative in the same manner going forward.

In developing the EFT rule, Treasury followed four principles. The interest of recipients should be of paramount importance. Treasury's policies should maximize private sector competition for the business of handling Federal payments in order to promote the greatest possible convenience, flexibility, efficiency and security.

Recipients, especially those having special needs, should not be disadvantaged by the transition, and recipients without accounts at financial institutions should be brought into the mainstream of the financial system to the greatest extent possible.

As a result, the EFT rule emphasizes recipient choice through an accommodative waiver policy formulated for the purpose of minimizing hardships to Federal recipients.

Treasury is confident that this balanced approach supports the goals of the program, and the widespread use of EFT by payment recipients indicates broad acceptance of EFT by the public.

Through the DCIA and the Government's education and outreach programs, we have made tremendous progress in the conversion of check payments to EFT among Treasury and non-Treasury disbursed agencies.

A couple of examples are noteworthy. Today, nearly 8 out of every 10 Social Security and Veterans Administration benefit payments, and 98 percent of all Federal salary payments, are made electronically.

Half of all Supplemental Security Income (SSI) payments are currently electronic, compared to just 24 percent for fiscal year 1995.

We attribute our success to our public education effort, our efforts to publicize and explain the requirements of the DCIA and Treasury rules to key stakeholders and our efforts to assist agencies operationally in converting more payments to EFT.

The most complex and challenging task that has confronted us in increasing the number of EFT payments, is how to meet the needs of the millions of Federal payment recipients who do not have an account at a financial institution.

Despite our waiver policy in keeping with the DCIA's intent for access to a reasonable cost account, Treasury designed the low-cost electronic transfer account, or ETA. The ETA is being voluntarily offered by federally-insured financial institutions that choose to offer the account, subject to the terms and specifications prescribed by the Treasury.

We anticipate that we will have a national presence of over 600 ETA providers with more than 16,000 locations by the end of this year.

As of April 2001, Federal payment recipients have opened almost 11,000 ETAs. We project that the number of ETAs opened will gradually increase over the next few months, and substantially in the years to follow.

With regard to education, in fiscal 1997, Treasury began developing a comprehensive public awareness and education campaign to inform Federal payment recipients of their options under the EFT legislation and to promote the safety and reliability of EFT.

The components of the campaign included development and distribution of printed materials, an educational video, public service advertising for radio, television and print media, public relations activities and a precedent-setting grassroots community outreach initiative.

To expand EFT 99 public awareness to a grassroots level, Treasury developed a regional network for its public education efforts. Through that network, we reached over 1400 local organizations and held more than 3500 consumer sessions through the grassroots campaign.

With regard to ETA-specific activities, during the past 18 months, we have brought together providers and community groups

in order to expand our marketing opportunities and increase awareness of the program.

Let me now turn to costs and savings. Costs to implement EFT 99, including portions of the ETA program, from fiscal 1997 to 2001 are approximately $21 million. The public education campaign that I just described has cost approximately $18 million over the same period, with most of the funds expended in the first 3 years.

Specifically for the ETA, we have reimbursed financial institutions approximately $100,000 and project an additional $155,000 in the year to come.

Our costs for the Federal Reserve Bank of Dallas, who is our fiscal agent in this endeavor, have been $2.7 million. Therefore, total program costs have been $24 million.

In return, we have received——

In summation——

[Laughter.]

Mr. HAMMOND.——What we've received from these expenditures is an annual savings of 140 million checks accumulating to $580 million, an annual recurring savings of at least $70 million a year going forward.

In addition we've saved in excess of $41 million through a decrease in fraudulent checks. We believe the program has been a tremendous success. We look forward to its continuation. And I look forward to the questions from the panel.

[The prepared statement of Donald V. Hammond can be found on page 31 in the appendix.]

Chairwoman KELLY. We thank you very much, Mr. Hammond.

We have been joined by Mr. Shows. Mr. Shows, have you an opening statement of any kind?

Mr. SHOWS. No. Thank you.

Chairwoman KELLY. Thank you very much.

Mr. Hammond, one of the reasons for converting paper checks to electronic funds transfer is to reduce the costs associated with fraud and paper checks.

What are the risks of fraud with the ETAs, and—well, let's just stop right there. What are the risks of fraud with these ETAs?

Mr. HAMMOND. We think that the risk of fraud with an ETA is actually slightly less than the risk of fraud with a conventional bank account. We designed the ETA to try to minimize the risk of fraud, understanding that financial institutions are very concerned about that important component of their costs.

As a result, the ETA only offers additional deposits at the discretion of the offering financial institution. We limit the types of transactions. For example, there's no check writing against the ETA permitted as check management was both an issue that was a concern to the recipient population, but also a concern to the financial institutions offering the accounts.

Obviously, you can't design any product in today's day and age that totally eliminates the risk of fraud. And, in all honesty, the ETA has some incidence. We think the account is designed to minimize that incidence and to give the financial institution offering it the opportunity to close the account if it has been abused.

Chairwoman KELLY. Can an individual who is not eligible open an ETA?

Mr. HAMMOND. An individual could open—if I understand the question correctly—an individual who would not be a Federal benefit recipient, they can attempt to open an ETA. In fact, we've had cases, particularly on the West Coast, where accounts have been opened by members of the public who do not receive a recurring Federal payment.

What we quickly discover though, through the financial institution, is that when no Federal payment is direct deposited into the account, the institution then closes the account based on non-eligibility.

So there have been cases where it's happened. It's been a relatively small percentage of the accounts that have been opened, and there is an easy way for the institution to verify their eligibility and to close the account.

Chairwoman KELLY. And you find that's working?

Mr. HAMMOND. Yes.

Chairwoman KELLY. I'm wondering if you could submit to the subcommittee any recommendations the Treasury might have for amending the Act or regulations to further advance the EFT to other Government programs.

For example, on the business side of Government, Treasury has really made dramatic strides in converting Federal payments to vendors from paper checks to the EFT.

I'm wondering if you've also made progress in converting to electronic bill presentment? In other words, can the Federal Government bill directly to the vendor and have the vendor pay through the account?

Can all of that happen electronically? I'm interested obviously in paper reduction and also in an anti-fraud mechanism.

Mr. HAMMOND. We would be happy to get you some legislative recommendations or proposals, specifically addressing the business processes.

The aspects of Federal procurement and making that an all-electronic process have been a very high priority of both the Procurement Executives Council, as well as OMB, for some time.

It's a very difficult process, because it involves every aspect of the organization's management as well as the vendor community, but it is something that is very high on the management initiatives of the Administration going forward, but I can get you some more information on that.

[The information referred to can be found on page 42 in the appendix.]

Chairwoman KELLY. And perhaps we can also ask the GAO to take a look at it. Do you think it would offer any major savings or efficiency in the Federal procurement programs if we were able to get that put together?

Mr. HAMMOND. Absolutely. I think you can see an example of the kind of efficiency that you can find in Federal procurement from the adoption of the Government credit card program a couple of years ago, and the number of steps it has reduced in the procurement process for small purchases, the efficiency that it has created on the bank end processing for paying those bills, you can, through electronic processes for larger procurements, where a credit card

would not be an appropriate payment mechanism, presumably extract similar, or maybe even greater, savings.

Chairwoman KELLY. I'm a little concerned about the fact the subcommittee has tried to get information from the Treasury on how the ETA program is working. Although the Treasury can tell us how many ETA accounts have been opened, they are not able to tell us apparently who is opening them, or whether they are Social Security retirees or VA beneficiaries. Treasury apparently can't even tell us how many ETAs have been opened for residents just in the City of New York, even though we know that there are thirteen banks offering them there.

And you, at Treasury, have to pay each bank $12.60 for every account. We haven't been able to find out from Treasury, except anecdotally, why people refuse to open an ETA.

Apparently, Treasury also doesn't know how long an ETA may be opened and whether or not some of these accounts, after being opened with $12.60 paid by the Federal Government, are quietly closed and converted to a regular account.

These are questions we can ask the GAO in its study, but I really have to ask if you can also give us some answers to questions like these. Without more detailed data on how the program is working, I don't know how we can accurately assess its effectiveness.

And also, any other issues that you think the GAO should analyze during their review, and what data you would like to see come out of it.

You don't have to answer that verbally right now. I just want you to answer that in writing or in discussions with the staff.

I think it's interesting the fact that only 11,000, less than 1/10 of 1 percent of the people eligible have opened an account, even after we've mailed, done a lot of public education. It tells me that something may not work, and doesn't that tell you something may not be working with these accounts?

We'll hear testimony from someone who will testify later who has done a great deal of outreach in making these accounts work. It seems to me that maybe the outreach isn't working. And I'd like to have some more explanation about that.

Also, I want to know what Treasury is able to do to beef up its ability to monitor the programs.

So there are some questions, just a big block.

I've run out of time. I'm going to time limit myself also, and we will move now to Mr. Gutierrez.

[The information referred to can be found on page 43 in the appendix.]

Mr. GUTIERREZ. Thank you, Madam Chairman. I'm going to follow up right where you ended.

Mr. Hammond, thank you for being here this afternoon.

There are approximately 10 million unbanked recipients in the United States of America. Only 11,000 ETA accounts have been established since ETA became available in 1999.

So we have a pool of 10 million people. I don't even want to estimate what the percentage is. I didn't do the percentage, but 11,000 out of 10 million people. That means there are 10 million people that are still getting their checks in the mail after the program has been implemented.

To what do you attribute the numbers? I mean, I know that the Chairperson has asked you, and I certainly look forward to your comments in writing, but if you could just enlighten us this afternoon, what's going on?

Mr. HAMMOND. Sure. There are a couple components to that response. First, that the ETA is really a two-step program. The first was to interest financial institutions in offering the account, market it to the financial institutions such that there would be an account structure available.

As a result, outreach to the ultimate recipient population had to lag the enrollment of financial institutions who are not only interested in offering the account, but also prepared to offer it in their systems environment at that point in time.

It would make no sense for us to market the account before the accounts were available in a particular county, only to have consumers go ask questions and find out it wasn't available.

Once we got a critical mass of recipients available in an area, then we began to market the account to the ultimate recipient population.

Now keep in mind, we're marketing two messages at the same time. We're marketing the message EFT and electronic payment and the availability of the option of the ETA account.

We do find that as our numbers continued to increase, we suspect that a significant number of unbanked recipients of that original 10 million person estimate have signed up for some sort of account relationship.

I use, as an example, the Supplemental Security Income (SSI) program. In composing that original estimate of 10 million unbanked recipients, we estimated that 50 percent of SSI recipients were unbanked.

Today, 50 percent of SSI recipients receive electronic payment.

Mr. GUTIERREZ. So what do we need to do to have that same kind of success story with the 10 million population?

I understand what you're doing with the financial institutions. Has there been a lag in the number of financial institutions that wish to engage in the program?

Mr. HAMMOND. I think it's more a question of the timing, and we were a little unfortunate in our timing of rolling out the account in that, at the time of initiation, the preparations for the Y2K systems conversions.

Mr. GUTIERREZ. How many financial institutions in the United States of America, of the 10,000 banks, FDIC-insured, offer this service?

Mr. HAMMOND. Right now approximately 600.

Mr. GUTIERREZ. Six hundred out of 10,000. You think maybe that's a little bit of our problem?

Mr. HAMMOND. Well, except I think we have some encouraging signs in that there are some very large financial institutions who are committed to the program that give us great geographic reach. Bank of America is now rolling it out in all their branches. Wells Fargo is completing their roll-out of the program. FirStar, which has just recently merged with U.S. Bank, increases the penetration throughout the Midwest, and the upper Midwest, and then Bank One.

So, I think you can't necessarily look to just the absolute number. You want to look to the reach and where they hit the geographic portions.

Mr. GUTIERREZ. But we're still at 600 of 10,000 financial institutions?

Mr. HAMMOND. Yes, we are.

Mr. GUTIERREZ. Some have probably reached smaller communities, larger communities. Geography must have something to do with this. In terms of languages the people speak, cultural.

I mean, where are the, especially all of the different kinds of financial institutions that can out as long as they are FDIC-insured?

Shouldn't we start maybe looking at some regulations, since there are some that are obviously on the leading edge, and we're going to hear from one soon, that other financial institutions are bound to encourage, either through regulations or through a change?

Because otherwise I have a funny feeling that they're just not going to be involved in the program and we're going to stay at that 600 level. Six hundred to 10,000, it's not a lot, it's 6 percent of all the financial institutions.

Mr. HAMMOND. Well, I think you make some very good points. I think the question we've got in designing the product was, one, to make it so that financial institutions truly had to be interested in offering the account.

As you'll see later on, the success that Banco Popular has enjoyed requires a real commitment by the offering financial institution.

To simply require an institution to offer this account and expose themselves to a new product offering, is something that really should be voluntary.

Mr. GUTIERREZ. Let me, just so that I can continue, because the sign says "sum up" and I have to. I have the luxury of being here and watching the sign light up.

It says "stop."

Real quick, just in coordination with the Chairwoman's request, please look at what steps can be taken to increase the number of financial institutions from the 600 to the 10,000 eligible FDIC-insured institutions. What we can do to expand that, and what measures have worked in the past specifically, as you said with the Social Security checks, and what is the plan to get the other 10 million; roadblocks, obstacles, and how we're going to overcome that.

I know we're going to learn a little bit about that in a minute, and as we're into the private sector, maybe you might want to have a consulting contract with Banco Popular to expedite your process.

Thank you, Madam Chair.

[The information referred to can be found on page 45 in the appendix.]

Chairwoman KELLY. Thank you, Mr. Gutierrez.

I know that we can again ask the GAO to investigate the issues that you've raised.

I'm just going to use the privilege of the Chair to do one follow-up with my colleague's question.

And that is, I want to know if you're partnering to present this to the public with any minority-owned radio, TV stations, with any minority-owned print, any print mechanisms to advertise ETAs?

Because as we were talking just before we began the hearing, we both recognized that one of the problems that people have is a fear of the mechanics themselves. Many people fear a machine, the use of that kind of machine.

The second thing is that people cannot utilize the machines because of language barriers.

What is your outreach?

Mr. HAMMOND. We've done a lot of outreach.

Chairwoman KELLY. With minority stations?

Mr. HAMMOND. Very definitely. In fact, our public service announcement materials were prepared in both English and Spanish and the print materials were, in fact, produced in a number of other languages. I think I can get the answer for you explicitly for the record, but I believe it was in 16 different languages at one point in time.

Chairwoman KELLY. And you advertised in that, or you just printed things?

Mr. HAMMOND. We've used no paid advertising as part of our program. Quite honestly, that's a factor of cost.

Chairwoman KELLY. Have you used public service announcements?

Mr. HAMMOND. Yes, we have. And we found that we had some success with print, actually substantial success with print advertising, limited success with radio, and from a personal standpoint, somewhat disappointing success with television PSA advertising. And I think that's consistent with Government programs in general.

[The information referred to can be found on page 46 in the appendix.]

Chairwoman KELLY. Well, we thank you very much, Mr. Hammond. I know that both Mr. Gutierrez and I have further questions. We will submit them to you in writing, because I will hold the record open for 30 days. There are no more questions, but I know there will be these additional questions and we'll have 30 days for Members to submit those questions to the witnesses and get those responses placed in the record.

Mr. Hammond, I'm going to excuse you with the subcommittee's great appreciation for your time. We really appreciate your being here.

Before I empanel the second group to speak, I want to say to the people standing here at the door, there are seats so why don't we just take a moment while Mr. Hammond leaves this table, and feel free to walk through here and sit down. You don't have to stand for the second half of this hearing.

Thank you very much, Mr. Hammond.

Mr. HAMMOND. My pleasure, and we'll have the responses to you very timely.

Mr. GUTIERREZ. Thank you, Mr. Hammond.

Chairwoman KELLY. For the purposes of the introduction of our first witness, I am going to turn that privilege over to my Ranking Member, Mr. Gutierrez.

Mr. GUTIERREZ. Thank you very, very much. I really appreciate the distinct privilege and honor of going out of the regular order and allowing me to make these introductions.

Our second panel consists of Mr. Richard L. Carrión, the President, Chairman of the Board, and CEO of Banco Popular of Puerto Rico and Popular Incorporated, the holding company that holds Banco Popular, and Ms. Margo Saunders, Managing Attorney for the National Consumer Law Center.

First, Mr. Carrión. Banco Popular is the largest bank in Puerto Rico and one of the largest in the United States and throughout Latin America. Banco Popular North America, a subsidiary of Banco Popular, Banco Popular Incorporated, is the largest Hispanic bank in the United States.

It operates over 100 branches in the continental USA, including over 30 in New York, and I might say gaining quickly in Chicago.

Mr. Carrión is President of the Committee for the Economic Development of Puerto Rico, a member of the Executive Committee of the Puerto Rico Banking Association, President of Banco Popular Foundation, and a member of the International Olympic Committee.

He received a Bachelor's degree from Wharton School of Finance and Commerce, and an MS in Management Information Systems from the Massachusetts Institute of Technology.

During Mr. Carrión's tenure at Banco Popular, he was the driving force to implement the ATM system throughout the branch network in Puerto Rico and the United States, as well as successful electronic services to facilitate banking transactions.

In fact, Banco Popular Puerto Rico is ranked first in the entire Nation as the bank with the largest number of electronic transfer accounts. It is precisely this expertise in this field that makes Mr. Carrión's testimony so relevant for today's hearing.

Mr. Carrión, we are especially pleased that you are here to discuss your outstanding performance in opening ATAs, and we deeply appreciate your traveling from Puerto Rico to be with us today.

Chairwoman KELLY. Thank you very much.

Before I introduce our next witness, I want to say that I have given Aníbal Acevedo-Vilá, my colleague who is a Member of Congress from the Commonwealth of Puerto Rico, the subcommittee privilege of sitting with us today, and we welcome you.

Next we have, as a witness, Ms. Margot Saunders. Margo Saunders is the Managing Attorney of the National Consumer Law Center (NCLC).

Since 1969, the National Consumer Law Center has been providing legal services, attorneys, and others representing low-income clients, with technical and legal consulting, training and publications that cover all major topics in consumer law.

Since its' founding, the NCLC has established itself as the Nation's consumer law specialist, making its' legal expertise available to low-income clients, private and legal services attorneys, and to State and Federal agencies.

Ms. Saunders has been the managing attorney there since 1991. She is a prolific writer and a witness on consumer issues. She's also been a member of the Federal Reserve Board's Advisory Coun-

cil, and Chairperson of the North Carolina Bar Committee's Consumer Credit Committee.

She received her law degree from the University of North Carolina Law School.

We thank you both for joining us here today to share your thoughts on this issue.

Without objection, your written statements will be made part of the record. You will each be recognized for 5 minutes in summary of your testimony. And once again, I remind you, if you go over, I will remind you.

So we thank you very much, and we will begin with you, Mr. Carrión.

STATEMENT OF RICHARD L. CARRIÓN, CHAIRMAN OF THE BOARD; PRESIDENT AND CEO, BANCO POPULAR DE PUERTO RICO

Mr. CARRIÓN. Thank you, Madam Chairperson and thank you Congressman Gutierrez and Congressman Acevedo-Vilá for being here and for your kind words.

My name is Richard Carrión. I am President and CEO of Popular, Inc., and Banco Popular Puerto Rico. Banco Popular Puerto Rico was founded on October 5th——

Chairwoman KELLY. Mr. Carrión, I'm sorry to interrupt, but could you pull that microphone closer?

Mr. CARRIÓN. I sure will.

Chairwoman KELLY. It's difficult for those in the back of the room to hear you.

Mr. CARRIÓN. It that better?

Chairwoman KELLY. Better.

Mr. CARRIÓN. Banco Popular Puerto Rico was founded on October 5th, 1893, when Puerto Rico was still under Spanish domination. We have assets exceeding $28 billion and we are the oldest and largest financial institution on the island.

We are also the 35th largest bank holding company in the United States and 8th in Latin America.

The bank operates over 200 branches in Puerto Rico, 100 in the continental United States, as well as the U.S. and British Virgin Islands.

We also operate several subsidiaries including Popular Mortgage, Popular Securities, Popular Leasing in Puerto Rico and we also have a presence in over 30 U.S. States with our Equity One Mortgage Subsidiary, Popular Cash Express, Banco Popular National Association and Banco Popular North America, the largest Hispanic bank in the mainland.

Throughout its history, Banco Popular has embraced several institutional values upon which we have based our business objectives generation after generation.

Two of those values are innovation and social responsibility. We are particularly proud of our initiatives to convert the so-called unbanked segment of the population in Puerto Rico, as well as in the continental United States.

In the 1950s, Banco Popular put in place an outreach program serving then-isolated communities with mobile units, buses, a fleet

of buses that then operated as bank branches throughout the island.

We introduced Farmers Home Administration loans in Puerto Rico and we are still one of the five Small Business Administration lenders in the continental United States.

Two months ago, we launched a new product: "Acceso Popular" and a new outreach program: "El Banco en al Comunidad" or "The Bank in the Community," also directed to converting the unbanked segment.

Moreover, since its inception, Banco Popular de Puerto Rico has ranked first in the entire Nation as the bank with the largest number of electronic transfer accounts, or ETAs—4,349 as of May.

Likewise Banco Popular North America ranks fourth after Banco Popular de Puerto Rico, Firstar Bank-Milwaukee and Wells Fargo & Co., San Francisco.

Another Popular, Inc. subsidiary, GM Group, is in charge of processing electronic payments of the U.S. Department of Agriculture Nutrition Assistance Program to over 450,000 beneficiaries in Puerto Rico.

Individual benefits are electronically accessed through our network of 624 ATMs on the island, a network we have owned and operated since 1983.

Several years later, we also introduced the point-of-sale technology and we currently own and operate over 40,000 terminals. Both initiatives have been responsible for a dramatic transformation of consumer behavior in Puerto Rico.

In the year 2000, our ATMs and point-of-sale terminals processed 184.9 million electronic transactions. Our clients averaged 11 transactions a month at our point-of-sale terminals, and 9.6 at our ATM network, a user pattern that doubles the U.S. average.

In total, our clients conduct 76 percent of all their transactions electronically, which represents the highest usage of electronic banking in the entire United States.

In Puerto Rico, Banco Popular owns and operates the local ATM and POS switching networks. This allows us to provide free and unlimited access to the ATM and POS networks since the marginal cost of processing these additional transactions is extremely low.

I believe this has been one of the principal reasons for the success we've had with the ETA and other similar products in Puerto Rico.

If the U.S. Federal Government and the U.S. Congress are committed to the expansion of ETAs and EFTs in general, there are two areas on which it should focus.

One, access to the national ATM networks. Some mechanism must be found to enable a lower cost of access to the ATM network for these account holders. While I instinctively recoil from mandated subsidies or additional regulations, I think that a voluntary agreement can be reached with the major ATM networks.

Again, the marginal cost of processing these additional transactions is small and it is in the long-term interest of these networks to promote a shift toward electronic transactions.

Second, a check-cashing or money exchange industry. There are currently over 10,000 check-cashing locations in the United States. They are the primary providers of basic financial services to the

unbanked, mostly check-cashing, money transmission and bill payment.

I would urge this subcommittee to include them in your discussions.

And for the record, I will mention that our subsidiary, Popular Cash Express, currently operates 87 check-cashing locations in the U.S.

It is imperative that we recruit the support of these institutions in promoting electronic transactions among their clients and re-evaluate both the Bank Secrecy Act and anti-money laundering regulations that currently curtail this industry's possibilities of growth and of servicing the unbanked population.

Madam Chairperson, as telecommunications redefine the banking industry, we need to move forward in providing equal access to this technology.

Thank you, Madam Chairperson.

[The prepared statement of Richard L. Carrión can be found on page 47 in the appendix.]

Chairwoman KELLY. And I thank you, and I thank you for observing the 5-minute rule.

Ms. Saunders.

STATEMENT OF MARGOT SAUNDERS, MANAGING ATTORNEY, NATIONAL CONSUMER LAW CENTER, WASHINGTON, DC.

Ms. SAUNDERS. Madam Chairwoman and Mr. Gutierrez, thank you for inviting us here today to testify.

I offer my testimony today on behalf of our low-income clients as well as the Consumer Federation of America and Consumers Union.

Treasury has accomplished a great deal of good things in the past few years regarding implementation of EFT 99. We especially applaud them for the excellent waiver system that they adopted.

They have aggressively ensured that no recipient is led to believe that a bank account is necessary to receive Federal benefits, which was a tremendous concern originally. There was a lot of misinformation out there.

The Treasury has adopted an excellent education program. We are hearing from all around the country from our local communities and our partners, that the education effort Treasury has engaged in is really a leader in the Government efforts.

The design of the ETA account is excellent in many ways. We especially like that it's open to all Federal recipients regardless of credit status, that it appropriately limits fees for basic services—and this is very important—that it prohibits attachment by judgment creditors for all exempt proceeds in the account. And we believe that is of significant importance to many of our clients.

However, we do think there is a problem with the ETA in that it does not provide any payment mechanisms for recipients, and it does not limit charges for additional services.

As you have already noted, the ETA account has currently only opened 11,000 new accounts. Whether this is 1/10 of 1 percent, which is my math on that, or some higher number, it's clear that the ETA account has not begun to reach its full potential.

We in the consumer community feel strongly that a number of things have to be done differently. One big problem the Treasury has already acknowledged is the lack of regulation of the method of receiving all Federal payments.

Treasury has said in its regulations that all Federal payments must be deposited in an insured financial institution, in an account established in the name of the recipient.

However, Treasury has not required that the recipient actually have access to that account directly. As a result, many check-cashers and other fringe bankers, unregulated financial service providers, have established accounts through their own storefronts. While we don't have any idea of the actual number of these relationships, we believe that it is a substantial number of low-income recipients of Social Security and SSI benefits who receive their Federal benefits through the check casher.

I indicated in my written testimony just a few examples of how much this can cost a low-income recipient. For example, in Philadelphia, in one of several programs offered, recurring monthly recipient fees are typically charged to access $500 of monthly benefits that total approximately $234 a year. On a yearly basis, half-a-month's benefits is being spent on accessing the benefits through the check-cashers.

Why is this a problem? We think it's not only a problem because of the fees necessary to access the Federal payments, but it is also a problem because it feeds these recipients into the other onerous services that these financial services alternative fringe bankers are providing, such as payday loans, and other sources of high cost credit.

We think the law is absolutely clear. The Treasury has the mandate to provide access to an account at a financial institution at reasonable cost to all recipients. That's what the law says, that's what Congress said when it adopted the DCIA.

But I'm afraid that the establishment of the ETA, as good as it is, does not fulfill Treasury's obligations under the law.

I've run out of time. I don't want to see that stick, so I will stop there.

Chairwoman KELLY. You still have a little time if you want to take it.

Ms. SAUNDERS. I've supplied you with lots of paper, and if you have any questions, I'd be glad to answer them.

[The prepared statement of Margot Saunders can be found on page 52 in the appendix.]

Chairwoman KELLY. Thank you very much. We appreciate your testimony.

I'd like to begin the questioning actually by utilizing your testimony and addressing Mr. Carrión.

Ms. Saunders raised the issue of banks partnering in with check-cashers in which a Federal benefit is electronically transmitted to a bank, and then the beneficiary withdraws the benefit at a check-casher.

Does Banco Popular have a product like this?

Mr. CARRIÓN. No, we don't. We're aware that is done, but we don't have that product.

Chairwoman KELLY. Would that be a helpful thing?

Mr. CARRIÓN. What I think would be helpful is to take advantage of the fact that there are 10,000 locations where these accounts could be opened—ETA or similar type of account—could be opened.

And I would use that infrastructure and I would bring them into the discussion rather than leave them out.

Chairwoman KELLY. You'd like to see us bring the check-cashing industry into the ETA account system?

Mr. CARRIÓN. Yes, I would.

Chairwoman KELLY. If I understand you correctly.

Ms. Saunders suggests that we should then, if we were to do that, subject the check cashing industry to Federal regulation in order to increase that usage and also to make sure that everything works properly. Do you agree with that?

Mr. CARRIÓN. Far be it from me to request Federal regulation of anything, but I would say that insofar as the specifications for the product that is to be offered should be mandated by the Treasury in the same way that the specifications for the ETA product through banks was mandated by Treasury, and that means inevitably regulating the costs and the revenues that are associated with that product.

Chairwoman KELLY. Well, as you probably know in New York, the check-cashers are pretty heavily regulated.

Mr. CARRIÓN. Yes, they are.

Chairwoman KELLY. It's one of the States where we do have regulation on the check cashing industry, and it does work.

I'm wondering, though, with regard to that, what improvements you would like to suggest to the ETA program itself?

Mr. CARRIÓN. Well, as I mention in my testimony, I think the main factor of our success in Puerto Rico, and we've also had success in the United States, but our main factor in Puerto Rico has been the fact that we own and operate the ATM network, and that we have really not charged for access to that network. I think that is a big part.

Obviously, the outreach programs and the communications and education associated with those programs have been a part of our history and it's something that we continue to do, and that it has been a large part of our success here in the States where we are actually in those communities and we do spend a lot of time and resources on the outreach.

Chairwoman KELLY. You mentioned that you thought a voluntary agreement could be reached with the networks?

Do you think it could work?

What kind of a process or structure do you think you would envision there?

Mr. CARRIÓN. There are two major and several regional ATM networks, and they're all owned by banks. I think the fact is that we are moving away from the paper-based system which imposes higher costs on the banking system and moving toward an electronic system which essentially has a very low marginal cost associated with it.

I think this would be very positive and convince the networks to do it.

There is also using the Community Reinvestment Act (CRA), these kinds of things, to stimulate this kind of activity. I think it would be helpful, as well.

Chairwoman KELLY. I'd like both of you, just quickly, to answer what issues you think you would like to see the GAO review and what data you think that it would be helpful to have them determine so that we can get a better handle on this situation.

Let me just ask both of you that question.

Ms. SAUNDERS. I think there is still some controversy over how many unbanked Federal recipients there are. And I think actually clarifying that question would be helpful.

But you've already asked that and I think that's the most important question.

I would like to find out how many check-cashers and alternative service providers actually have established these relationships. And if we're talking about a few thousand, then I don't need to spend all my time worring about it.

But if we're talking about tens of thousands, as we believe, then it becomes an altogether different matter, so I think that's the primary other question.

We have an alternative way that we have long proposed to Treasury to address this problem, and I don't know if the efficacy of that proposal is something that might be within GAO's purview.

But if I could explain it, you might be interested.

Chairwoman KELLY. Well, I think that's something that the subcommittee and I would be very interested in talking with you about it later, and we could perhaps develop something for GAO.

I have run out of time, but I think, Mr. Carrión, perhaps with the indulgence of my colleague, perhaps he would be willing to allow you to answer that question also.

Mr. CARRIÓN. Well, I think you've all proposed the right questions. I would look at the difference in the profile in terms of socioeconomic profile, ethnic profile of recipients that are currently signed up for the ETA and those that are not signed up, and look at the difference amongst them.

And of course, our database is open for whatever help we can provide in this matter.

Chairwoman KELLY. Thank you very much.

Mr. Gutierrez.

Mr. GUTIERREZ. Thank you. Well, I just want to go over some things because, as I understand it, Banco Popular of Puerto Rico currently has more than 4,000 ETAs. The approximate number of ETAs opened in my home State of Illinois is 500, and that includes 40 banks in Illinois that currently provide these accounts to consumers.

Now this is only 500 accounts opened and there are 12.3 million people in Illinois, compared to 3.8 million in Puerto Rico. Of those 12.3 million, almost 2 million are Social Security recipients and nearly 1 million are recipients of Veterans Administration benefits.

I guess we have a lot. I simply raise the issue just to compare a State to financial institutions to a population which is ⅓ the population with many more people participating and yet such a higher rate. So I think Mr. Carrión, if you would open up your books to us in terms of showing us who it is that's getting engaged and

maybe, you know, the education. Sometimes I can get a little sensitive.

I know that technology and fear of technology, and something that has nothing to do particularly with education is that I have a Bachelor's degree, but my daughter who is in seventh grade uses the computer. I always think it's going to break down on me.

Chairwoman KELLY. My husband can't turn one on.

Mr. GUTIERREZ. You know, so I mean just technology, education, understanding and anything that you have insight.

I think also it's important to understand, given my own personal experience, because I think Mr. Carrión has explained why his program works, it's because they go out into the community and they actually do the outreach.

You know, we don't have a CRA problem with Banco Popular, because Banco Popular is opening and expanding branches throughout Chicago, Houston, in Florida, in New Jersey, in areas where, quite honestly, before were under-served communities.

I think part of the solution here is to get the 600 financial institutions that are already in the program, congratulate them, give them incentives and then figure out how we get the other 9400 FDIC-insured institutions to do what Banco Popular has already done in terms of doing that.

And I would just like to say that part of, I think, making this work—and I may be wrong, and once we get the information about just who it is who is signing up and who isn't signing up, Madam Chairman, and you and I will talk about that in terms of their education level, in terms of their social standing—is trust that people have.

I have a feeling that a lot of people are staying away because they would rather still have that piece of paper in their hand at the end of the month, because they don't trust the financial institution to take that piece of paper away from them.

And so we may have to gear ourselves especially to—you know, we're talking about Veterans, we're talking about Social Security recipients. They tend to be older. They come from a different time. And maybe we should examine how it is, trust.

Because I know one of the things that, if you were in Puerto Rico, when you think about Puerto Rico and you think of the different icons of the Puerto Rican society and culture, and I'm sure the resident commissioner will share on this, is that when my mom and dad went from Puerto Rico to Chicago, and they saw Banco Popular, they went there.

They went there because they saw it as an institution that they knew and had learned about and trusted. And so I think that's part of the success that I think Mr. Carrión has been very good about not telling us, because I'm sure he's very proud of it.

But I'll tell you that's why I think part of the reason Banco Popular is part of the society and if it's part of the society and the makeup of the society in terms of financial, in terms of philanthropic and other kinds of endeavors and it's part of the fabric of a society, then people tend to sign up.

That's why I think people sign up.

Thank you.

Chairwoman KELLY. Thank you very much.

I would like to go now to Mr. Moore.

Mr. Moore, thank you for joining us. Have you any questions?

Mr. MOORE. I have no questions. I hate to come into a hearing late. Not hear what's gone before. Madam Chairman, thank you for the invitation for questions. I apologize for coming in late. I had another hearing earlier and I don't like to come into hearings in the middle of a hearing and then ask questions that may have been asked, so thank you very much.

Chairwoman KELLY. I'm holding the record open for 30 days, should you have some.

Mr. Tiberi.

Mr. TIBERI. Ditto.

Chairwoman KELLY. Thank you both.

Mr. Acevedo-Vilá do you have anything you would like to say?

Mr. ACEVEDO-VILÁ. I just have one question and one comment. Welcome Mr. Carrión and Ms. Saunders.

As Louis just said, Banco Popular is part of the Puerto Rican society. It's my bank. I've been using this for the last 50 years. I have never seen a paycheck for the last 10 years, and now I don't even issue checks anymore, because I pay almost everything through the internet. So it's really a success story.

But I have a question. You point out the fact that you don't charge customers when they use ATMs because you own them. But, other banks have ATMs in Puerto Rico, don't they?

Mr. CARRIÓN. Yes.

Mr. ACEVEDO-VILÁ. And they don't charge either, because they are following you?

Mr. CARRIÓN. Yes.

Mr. ACEVEDO-VILÁ. So that's also very important.

I live half of the time here, half of the time in Puerto Rico, and I'm shocked whenever I go here and have to use any card, and they charge me $1 or $1.50.

In Puerto Rico, even if you go using this one, to another one that is not owned by Banco Popular, they don't charge you.

Why? Because they have basically established the lead, and everybody's following.

Chairwoman KELLY. Thank you very much.

I must say that I am very impressed with what Banco Popular has been able to do in this regard, and we do thank you for taking your valuable time, Mr. Carrión.

And Ms. Saunders, also, I know you are a busy woman.

We thank both of you.

If there are no more questions then, the Chair notes that some Members may have additional questions, and as I stated before, they may wish to submit them in writing, so without objection, the hearing record is going to remain open for 30 days.

The second panel is now excused with the subcommittee's great appreciation for your time.

And this hearing is adjourned.

Mr. CARRIÓN. Thank you, Madam Chair.

[Whereupon, the hearing was adjourned.]

A P P E N D I X

June 20, 2001

OPENING STATEMENT OF

CHAIRWOMAN REP. SUE KELLY

SUBCOMMITTEE ON OVERSIGHT & INVESTIGATIONS
COMMITTEE ON FINANCIAL SERVICES

"Implementation of EFT requirements of the Debt Collection Improvement Act of 1996 and the use of ETAs"

JUNE 20, 2001

Good afternoon. We are here to examine the status of the Electronic Funds Transfer requirements of the Debt Collection Improvement Act of 1996, known as the EFT 99 program. We want to see how far we have come in moving towards a checkless system for paying federal salaries, pensions, vendor payments, and Social Security benefits, and whether the change has reduced costs, as was promised when the Act passed.

We will also discuss the use of Electronic Transfer Accounts, or ETAs, that allow low and middle-income federal payment recipients who do not have bank accounts to receive their funds electronically. The ETA can be the first step for the unbanked towards participating in the financial system and a lifetime of sound money management and personal savings towards that first house, a child's education, and a secure retirement.

Use of ETA accounts should ensure rapid and efficient distribution of government benefits, save the recipients a lot of time, increase the security of their benefits, and provide a sector of the population who have been without bank accounts with this necessary service. This program can truly be a win –win – win for all involved. We need to ensure that this program is reaching all those it needs to reach, so we should investigate who is not using this service and why. In addition, we need to ask what problems these accounts pose to the recipients, the banks, and the government. Finally, we need to investigate if any fraud is occurring with these accounts and what steps might be taken to stop all of the problems.

The ranking member of the Subcommittee, Mr. Gutierrez of Illinois, and I are committed to the long-term success of the EFT and ETA programs. To ensure that federal payments are made electronically and all eligible recipients who want to open ETAs can do so, we are today asking the General Accounting Office to start a comprehensive review of the EFT program and the use of ETAs.

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June 20, 2001

The Honorable David M. Walker
Comptroller General
U.S. General Accounting Office
441 G Street, N.W.
Washington, DC 20548

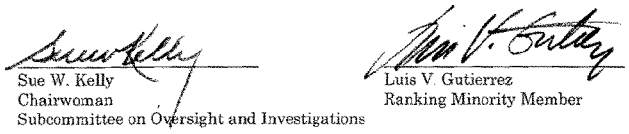
Dear Comptroller Walker:

The Debt Collection Improvement Act of 1996 mandated that all Federal payments, except tax refunds, were to be made by electronic transfer by January 2, 1999. Such payments include government benefits such as Social Security or Supplemental Security Income. The U.S. Treasury's Electronic Funds Transfer Program (EFT 99) provided a means to implement the act. Through this program, the Treasury created a type of bank account called the Electronic Transfer Account (ETA) to encourage Federal benefits recipients who do not have bank accounts (unbanked) to receive payments by electronic means. However, beneficiaries still have the option to continue to receive a check if receiving payments electronically would cause them a hardship. If beneficiaries do not take any action to sign up for direct deposit, this would be considered an invocation of a waiver. Because the EFT 99 program can offer significant cost savings and increased efficiency to the Federal government, we are concerned about how the degree of participation and extent of promotional efforts have impacted the success of the program.

Accordingly, we request that GAO assess the extent to which Federal benefits recipients are participating in the EFT 99 program and the actions that the Treasury has taken to promote the program. Your study should include, but not be limited to, an assessment of available data on the number of unbanked recipients of Federal benefits; the Federal benefits EFT and check volumes; and the existence and status of ETA usage. You should also evaluate the reasons and practices the Treasury uses in determining Federal benefits recipients eligible for hardship waivers. Further, you should determine the obstacles for greater participation in the EFT 99 program, such as the limitation on deposits into ETAs, and assess the steps that the Treasury is taking to address these obstacles. You should also determine whether the savings to the Federal government would be greater if bill presentment were demanded in electronic format as well. Such information can help Congress ensure that the goal to reduce costs by having payments switched from paper checks to less expensive electronic transfers is being met.

Should you or your staff have any questions or need additional information, please contact Mr. Andrew R. Cochran, the committee's senior counsel for oversight and investigations, at (202) 226-3632.

Yours truly,



Sue W. Kelly
Chairwoman
Subcommittee on Oversight and Investigations

Luis V. Gutierrez
Ranking Minority Member

QUESTION FOR THE RECORD SUBMITTED ORALLY BY CONGRESSWOMAN SUE W. KELLY OF NEW YORK

TREASURY AND THE CHECK CASHING INDUSTRY

The Treasury Department does not routinely deal with the check cashing industry and has had only limited interaction with it. However, Treasury has conducted research on the industry as the result of its EFT and money laundering programs. We have learned that check cashing is a large and significant industry, that it has been growing rapidly over the past two decades, and that it may provide some useful financial services to certain portions of the underserved population. Nevertheless, the industry's business practices and pricing structure are not uniform and vary widely across industry segments and geographic regions. It is thus difficult to generalize about the industry.

TREASURY AND THE CHECK CASHING INDUSTRY: BACKGROUND

Since the beginning of the EFT and ETA programs in 1996, Treasury has maintained a strong interest in ongoing developments in the check cashing industry, primarily for two reasons:

- First, check cashers initially wanted to participate in the DCIA program requiring that all Federal payments be disbursed electronically.

- Second, Treasury is seeking to assist unbanked Federal benefit recipients to participate in the contemporary financial services industry, but, at present, many of these recipients utilize check cashers as their primary financial service providers.

Over the past several years, Treasury has been proactive in monitoring the industry, meeting with industry representatives, conducting appropriate research, formulating policy, and, where appropriate, intervening. Actions that Treasury has taken include:

- In 1998, the Undersecretary for Domestic Finance sent a letter to financial institution regulators stressing the importance of voluntary disclosure to customers covering all aspects of arrangements with nondepository providers of payment services, such as check cashers.

- In January 1999, Treasury issued an Advance Notice of Proposed Rulemaking (ANPR) regarding access to accounts at financial institutions through nondepository payment service providers -- such as check cashers. Comments were received from a large number of consumer groups and community organizations, the Chicago FRB, financial institutions, nondepository payment service providers, state government offices, Federal agencies, and others. Some of the comments favored regulating or prohibiting nondepository payment service provider participation in the receipt or distribution of Federal electronic payments, while others favored such participation.

- In July 1999, Treasury issued the ETA Notice, which precludes participation of check cashers in the ETA program.

- We have conducted a financial literacy campaign in conjunction with the Financial Services Education Coalition, and produced the widely utilized workbook "Helping People in Your Community Understand Basic Financial Services." Part of this workbook discusses the advantages and disadvantages of utilizing check cashers, in comparison to other types of financial service providers.

- We have completed a large amount of research on unbanked federal benefit recipients, the fringe banking and financial services sector (including the check cashing industry), third party providers, and related issues.

- We have held 100 meetings on EFT '99, the ETA, and check cashing industry issues in Washington with public interest groups and industry representatives, and have held regional meetings with community based organizations around the country. We have also met periodically with Congressional staff to discuss issues related to the check cashing industry.

- We have monitored the third party provider products being developed and marketed and, when necessary -- as in the case of Western Union and the Delaware Bank Card -- intervened to ensure that adequate disclosure is being made and that misleading marketing practices are not being utilized.

- FINCEN, as part of its efforts to combat money laundering, has issued a regulation requiring check cashers, money transmitters, currency exchanges, and related third parties to register with the Federal government.

- Treasury attorneys have intensely analyzed whether the DCIA could be interpreted to allow Treasury to regulate in some fashion certain aspects of all accounts into which federal payments are deposited electronically-- including accounts at check cashers.

- At the request of Senator Sarbannes, we drafted two regulations dealing with Federal regulation of the check cashing industry: One dealing with disclosure and one with the terms and conditions of arrangements between financial institutions and check cashers, whereby recipients of electronic federal payments deposited into a non-ETA account at the financial institution may gain access to these payments through check cashers.

- Initiated a joint research project with the Chicago FRB focussing on issues relating to the unbanked and to financial access for low and moderate income persons. A major priority of this research will be the check cashing industry.

Treasury's interest in the check cashing industry has been motivated by the fact that some non-bank providers of payment services, such as check cashers, have entered into linkages with depository institutions to provide their customers with access to Federal payments made by Direct Deposit. Customers who sign up for such services access their accounts via the check casher through a variety of arrangements, and may be exposed to substantial fees, or risk having their funds left uncovered by deposit insurance. Usually, these arrangements do not typically provide direct access to an account at the bank itself.

The arrangements developed are not homogenous, and differ considerably with respect to access, costs, disclosure, marketing, and other attributes. Treasury is concerned about the costs and

structure of some of these relationships and is also concerned that government payment recipients may be misled into signing up for such payment access services on the basis of misinformation. Consumer groups and some members of Congress feel that such arrangements subvert the intention of EFT '99, and believe that Treasury should find a way to prohibit or at least regulate such relationships. Some of these arrangements also make it more difficult for SSA to respond to recipients' claims of nonreceipt of benefit payments. Further, some check cashers offer predatory lending products, such as payday loans and rent-to-buy, to their customers.

As noted, the ETA Notice prohibits check cashers from participating in the ETA program. However, at present, there is no Federal regulation of check cashers outside of the ETA program and, except in limited cases, no Federal oversight of arrangements between financial institutions and check cashers. State regulation of the industry is uneven. For example, while 24 states regulate check cashers, only 12 regulate the fees charged to cash checks. Treasury has been reluctant to view EFT '99 as a mandate to regulate the prices and conditions of financial service products. Any such initiative would not only raise policy questions, but would also pose enormous logistical challenges and face serious legal hurdles.

Treasury recognizes that check cashers often provide badly needed services to an underserved, low income population -- services frequently not offered by financial institutions. Some check cashers offer reasonably priced access to financial services and fill a void created by the absence of financial institutions in certain geographic areas. In addition, some states have traditionally used check cashers to distribute state benefits, such as food stamps.

The basic problem is the lack of financial institutions and ATMs in underserved inner city and rural areas. Banks have abandoned these areas and very often the only financial service providers available are check cashers. Further, check cashers often offer better service to the target populations than do banks, service that includes longer hours, personal relationships, and multi-lingual staff.

Finally, Treasury is concerned that if we succeed in discouraging the use of check cashers by Federal benefit recipients to receive their payments and fail to address the root cause of the problem -- the lack of financial institutions and access points in underserved areas, all we will have done is to prevent millions of persons in underserved areas from receiving their payments electronically. These persons will continue to receive their Federal benefits via paper check and, in many instances, will continue to take these checks to check cashers to obtain cash.

Opening Statement of

Chairman Michael G. Oxley

Committee on Financial Services

Subcommittee on Oversight and Investigations

"Implementation of EFT requirements of the Debt Collection Improvement Act of 1996 and the use of ETAs"

June 20, 2001

I want to commend the Chairwoman of the Subcommittee, Mrs. Kelly, for undertaking this oversight hearing today on the implementation of what has come to be known as "EFT 99" -- the electronic funds transfer provisions of the Debt Collection Improvement Act of 1996.

The oversight function of Congress is not always fully appreciated unless it makes front page news. Yet it is a critical ongoing responsibility of this body to ensure that the executive branch implements the laws passed by Congress fully and fairly. At this five year milestone for EFT 99, I think it appropriate for the Committee to undertake precisely this kind of oversight and take full inventory of what is working and what is not. I welcome our distinguished witnesses and look forward to hearing their views.

Without getting into the details on how the program is working, I would like to make a general observation on EFT 99. Simply put, it is hard to find another congressional initiative that so well serves the interests of the taxpayer, the government, and the consumer, all at the same time.

First, the American taxpayer is a major beneficiary of EFT 99. According to information provided to the Committee by the Treasury Department, paper check volume has dropped by a total of 581 million checks since FY 1995. Based on the difference between the cost of issuing a paper check and the cost of making an electronic transfer, that means a cost savings of over $240 million.

Second, the federal government is also a major beneficiary. EFT 99 is making federal payment programs simpler, more secure and more efficient. Again, according to Treasury, at the same time that check volume has decreased generally, the number of forged, altered, and counterfeit checks has decreased by nearly 79,000 since FY 1995. This resulted in a $40.9 million decrease in losses associated with check fraud. In addition, because EFT 99 also applies to the business side of government, major strides are

being made in converting millions of Federal payments for goods and services from paper check to EFT.

Finally, EFT 99 is a big plus for the consumer. Millions of recipients of federal check payments are learning about the benefits of electronic funds transfer through a Treasury-sponsored public education campaign. As a result, many federal beneficiaries are signing up for regular direct deposit at local financial institutions. Those that don't qualify – for credit or other reasons – for a traditional bank account now have access to a new federally -designed and -subsidized electronic transfer account (ETA). Many of the "unbanked" in this country are low-income, elderly, or disabled, and the ETA can be a gateway to bring these individuals into the financial mainstream in this country.

I look forward to hearing what progress has been made in bringing the benefits of 21st Century electronic banking to all Americans. Thank you.

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

For immediate release:
June 20, 2001

Testimony of

DONALD V. HAMMOND
FISCAL ASSISTANT SECRETARY
U.S. DEPARTMENT OF THE TREASURY

Before the

HOUSE COMMITTEE ON BANKING AND FINANCIAL SERVICES
SUBCOMMITTEE ON GENERAL OVERSIGHT AND INVESTIGATIONS

INTRODUCTION

Chairwoman Kelly and Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss Treasury's efforts to implement the electronic funds transfer (EFT) requirement of the Debt Collection Improvement Act of 1996 (the DCIA). The DCIA requires the Federal government to issue most payments, except tax refunds, via EFT after January 1, 1999 and gives the Secretary of the Treasury the authority to prescribe regulations and to grant waivers from the requirement to receive payments electronically. The DCIA also directs Treasury to ensure that any recipients who are required to receive payment electronically have access to an account at a financial institution at a reasonable cost and with the same consumer protections as other account holders at the same financial institution.

We believe the program thus far has been very successful resulting in approximately eighty percent of all Federal payments currently being made electronically and generating considerable efficiencies for the Federal government, financial institutions and payment recipients. In fact, the reduction in the number of check payments alone since the end of FY'95 has saved the Federal government almost $250 million and will generate recurring savings each year. We expect to expand on these accomplishments by increasing our percentage of electronic payments in the future.

I commend the Subcommittee for its continued interest in and support of increasing the government's usage of electronic payments in a way that balances the interests of our payment recipients and the cost of government operations. Treasury intends to continue with the implementation of this important initiative in the same manner going forward.

BACKGROUND

Treasury has been making electronic payments since the 1970s when it began an EFT program known as Direct Deposit, an electronic payment method used largely by individuals receiving benefit, salary, and other Federal payments. In the intervening years, EFT payments have expanded to include electronic wire transfers and card and other emerging technology electronic payments. In the fiscal year preceding the DCIA (FY'95), approximately half of all Treasury disbursed Federal payments were made electronically.

In April 1996, the DCIA was enacted into law. Under the DCIA, agencies were required to convert from paper-based payment methods to EFT in two phases in accordance with regulations to be issued by the Treasury. These regulations were issued on July 26, 1996 and September 25, 1998. During the first phase, recipients who became eligible to receive Federal payments on or after July 26, 1996 were required to receive such payments electronically subject to waivers under the Act. The July 26, 1996 interim rule, which was in effect through January 1, 1999, implemented this requirement.

The second phase began on January 2, 1999. Beginning on that date, all Federal payments, except payments under the Internal Revenue Code, are to be made by EFT unless eligible for a regulatory waiver. On September 25, 1998, Treasury published in the Federal Register a final rule [31 CFR Part 208 (EFT rule)] prescribing the implementation of the program effective January 2, 1999. The EFT rule was issued after consideration of testimony received at four (4) public hearings and review of 212 comment letters received from financial institutions,

consumer and community based-organizations, Federal payment recipients, and other key stakeholders.

The EFT rule establishes the circumstances under which waivers are available, provides certain requirements for accounts to which Federal payments may be sent electronically, and sets forth the responsibilities of Federal agencies and recipients under the regulation. The rule also provides that any individual who receives a Federal benefit, wage, salary, or retirement payment is eligible to open a low-cost account designed by Treasury, called the Electronic Transfer Account (ETA), at a financial institution that offers such accounts. I will be discussing the ETA in more detail later in my testimony.

In developing the EFT rule, Treasury followed four principles: (1) the interests of recipients should be of paramount importance; (2) Treasury's policies should maximize private sector competition for the business of handling Federal payments in order to promote the greatest possible convenience, flexibility, efficiency, and security; (3) recipients, especially those having special needs, should not be disadvantaged by the transition to EFT; and (4) recipients without accounts at financial institutions should be brought into the mainstream of the financial system to the greatest extent possible.

The EFT rule emphasizes recipient choice through an accommodative waiver policy formulated for the purpose of minimizing hardships to Federal payment recipients. Any individual Federal payment recipient may invoke a hardship waiver and continue receiving a check. Payment recipients assess their own eligibility for a hardship waiver. Moreover, agencies are prohibited from withholding, suspending, or delaying a payment if a recipient does not designate a financial institution into which electronic payment may be sent and does not actively invoke a hardship waiver. Treasury is confident that this balanced approach supports the goals of the program as more and more individuals become familiar with EFT over time. Indeed, the widespread use of EFT by Social Security recipients and other Federal benefit recipients indicates broad acceptance of EFT by the public.

EFT99 RESULTS TO DATE

Electronic Funds Transfers (EFT)

Treasury makes approximately 85% of all Federal government payments, with the remaining payments being made primarily by the Department of Defense. As a result of the DCIA and Treasury's and other agencies' education and outreach programs, the government has made tremendous progress in the conversion of check payments to EFT among Treasury and non-Treasury disbursed agencies. In FY 2000, the Federal government issued over one billion payments on behalf of civilian and defense agencies, including benefit, salary and vendor payments as well as tax refunds, grants, loans, and other payments. Seventy-nine percent (79%) of those payments were electronic payments.

Federal payments are being made electronically in remarkable numbers, as evidenced by the following:

- Today, nearly eight out of every ten Social Security (SSA) and Veterans Administration benefit payments, and 98 percent of all Federal salary payments are made electronically.

- Newly eligible SSA beneficiaries are enrolling in EFT at a rate of approximately 85 percent.

- The number of Federal vendor payments made electronically has grown to 82 percent from only 10 percent for FY 1995.

- Half of all Supplemental Security Income payments are currently made electronically compared to 24 percent for FY1995. These payments are issued primarily to a population that has traditionally been unbanked.

- Even the percentage of Federal tax refund payments made electronically, payments not required by the DCIA to be made electronically, have more than tripled since the beginning of the program with 29 percent being made electronically in FY2000, compared to eight percent for FY 1995.

	FY 1995	FY 2001 through April 2001
Treasury Disbursed Payments		
Salary	90%	98%
Benefit Payments	54%	75%
Vendor Payments	10%	59%
Miscellaneous Payments	30%	43%
Total Treasury-Disbursed Payments, Excluding Tax Payments	55%	76%
Tax Payments	8%	29% (FY'00actual)
DOD Disbursed Payments	86%	96%
Total Government-wide Payments	63%	80%

We attribute our success to our public education effort, our efforts to publicize and explain the requirements of the DCIA and Treasury rules to key stakeholders, and our efforts to assist agencies operationally in converting more payments to EFT.

Electronic Transfer Account (ETA)

The most complex and challenging task that has confronted us in increasing the number of EFT payments is how to meet the needs of the millions Federal payment recipients who do not have an account at a financial institution. Despite our waiver policy, in keeping with the DCIA's intent for access to a reasonable cost account, Treasury designed the low cost Electronic Transfer

Account, or the ETA. The ETA is being voluntarily offered by federally insured financial institutions that choose to offer the account subject to the specifications prescribed by Treasury.

Treasury is committed to providing opportunities for those individuals without an account at a financial institution, thus allowing them to join the financial services mainstream and receive the benefits of electronic payment. We consider the ETA to be an important potential stepping stone to full service banking relationships while providing a safe, reliable, and low-cost alternative to recipients who receive federal benefits.

We anticipate that we will have a national presence of over 600 ETA providers with more than 16,000 locations by the end of this year. Some of the larger certified ETA provider banks, including Firstar, FleetBoston, Banco Popular, and Fifth Third Bank, have rolled out the ETA in all of their branches. Well Fargo has rolled out the ETA in all branches except those in California. Bank One will complete its roll out by October of this year. Also by October, Bank of America will offer the ETA at all of its 4,400 locations in 21 states and the District of Columbia. Firstar, recently merged with US Bank Corp, anticipates it will begin offering the ETA in its US Bank branches by the end of the year.

As of April 2001, Federal payment recipients have opened 10,913 ETAs. We project that the number of ETAs opened will gradually increase over the next few months with more substantial increases next year for the following reasons:

- As I mentioned a moment ago, several large financial institutions with multiple locations will be coming on board over the next six months, thus increasing coverage across the country and in the ten top check volume states.

- Awareness of the availability and benefits of the ETA will continue to grow among Federal benefit check recipients as a result of the distribution of approximately 10 million ETA check inserts which promote Direct Deposit and the ETA as alternatives to receiving checks.

Additional ETA check inserts will be sent to recipients in locations where ETA providers begin offering the ETA.

- SSA sent direct mailings to approximately 1.8 million check recipients in nine states in November 2000 and April 2001. Another 850,000 check recipients in five additional states are scheduled to receive letters in June of this year. These letters promote both Direct Deposit and the ETA as alternatives to receiving checks. For example, the SSA direct mailings to one million recipients in Illinois, Iowa, and Kentucky in November 2000 resulted in about 35,000 new EFT enrollments

It is important to realize that Treasury's major objective is to increase EFT payments and to reduce the number of paper checks issued, and this objective is being achieved. The ETA is a means to achieve this end. Based on anecdotal feedback from some ETA providers, many individuals eligible to open an ETA may be choosing instead to open a traditional account, and this is also a favorable result.

PUBLIC EDUCATION

In FY1997, Treasury began developing a comprehensive public awareness and education campaign to inform Federal payment recipients of their options under the EFT legislation and to promote the safety and reliability of EFT. The components of the campaign included development and distribution of printed materials, an educational video, public service advertising for radio, television, and print media, public relations activities, and a precedent setting grassroots community outreach initiative.

To expand EFT99 public awareness to a grassroots level, Treasury developed a regional network for its public education efforts. Treasury and contractor personnel, as well as five competitively selected community-based organizations, were established on-site in each of five regions of the country to work with local grassroots organizations on how to promote EFT as

well as basic financial skills to their constituents. More than 1,400 local organization training sessions and 3,500 consumer sessions have been held throughout the grassroots campaign.

More than 12 million copies of various educational and marketing materials have been distributed throughout the campaign. One product, a financial literacy handbook, was developed in conjunction with the Financial Services Education Coalition that was formed as a result of the EFT99 initiative and distributed to thousands of communities across the nation. Representatives from community-based organizations, financial trade associations, and government agencies jointly developed this basic financial services training kit for local community educators to use at the grassroots level in educating Federal payment recipients on how to use mainstream banking services.

With regard to ETA specific activities, during the past 18 months we have worked to bring together both ETA providers and local community-based organizations to encourage collaborative marketing opportunities for reaching potential ETA customers. Community outreach enables us to reach more individuals to promote the benefits and availability of the Direct Deposit and the ETA. In addition, Treasury has already mailed approximately 10 million ETA inserts with benefit checks to recipients in 28 states and Puerto Rico during the past 18 months. We anticipate that additional ETA check inserts will be sent to recipients in new states as more ETA provider branch locations begin to offer the ETA.

We also continue to meet regularly with SSA on EFT99 issues and worked with the agency to develop a letter to its benefit check recipients encouraging the use of Direct Deposit for those individuals who have bank accounts and the ETA for those who do not currently have or have been unable to obtain an account. As mentioned previously, more than 1.8 million letters have been sent to nine states, with additional mailings planned for later this year. We are encouraging SSA to continue its direct mail campaign to check recipients in additional states.

In addition, among other activities, Treasury is:

- maintaining a website on the EFT requirement and the ETA program;
- continuing ongoing efforts to promote Direct Deposit including providing materials to financial institutions, Federal agencies, and the public;
- speaking and exhibiting at conferences and other forums on the benefits of Direct Deposit and the ETA;
- publishing EFT/ETA newsletters for financial institutions, community organizations and other stakeholders; and
- continuing to assist certified and potential ETA providers in implementing the ETA program.

PROGRAM COSTS AND SAVINGS

Costs to implement EFT99, including portions of the ETA program, from FY1997 to FY2001 are approximately $21 million. The public education campaign that I just described has cost approximately $18 million over the past five years, with most of those funds used in the first three years of the campaign. The remaining funds have been used to develop and publish Treasury's EFT rule and ETA account attributes; educate Federal agencies and other key stakeholders on the EFT rule and ETA features; and work with and assist financial institutions offering the ETA.

Specifically for the ETA, amounts spent as reimbursement to ETA providers for account setup costs totaled approximately $98,000 in FY2000 and are projected to be $155,040 in FY2001. In addition, the Federal Reserve Bank (FRB) of Dallas, in its capacity as fiscal agent, enrolls financial institutions in the ETA Program, has created a database of financial institutions that have been certified as ETA Providers, and manages an Internet web site, an ETA Call Center, and a Voice Response Unit, a toll-free telephone number that can be used to obtain locations of ETA providers by five digit zip code. Costs, including the cost to develop and maintain the

database, website, call center and VRU, totaled slightly more than $2.7 million through May of this year. Therefore total program costs through May 2001 have been $24 million.

What have we received from these expenditures? Since FY1995, annual Treasury-disbursed check volume has decreased by more than 140 million checks. Based on the differential between the cost of making a check payment and the cost of making an EFT payment this decrease has resulted in cumulative savings to date from increased electronic payments of nearly $250 million. In addition to the savings already received, since these payments continue on into the future, recurring savings will result for the life of the payment stream. Based on current check volume percentages when compared to where we were at the end of FY'95, we estimate recurring, annual federal government savings of approximately $70 million per year. These savings were estimated on the assumption that the level of electronic payments will remain constant. Obviously, we plan on doing better than that. Additional savings to be realized from the ETA will accrue over time as savings from the conversion to EFT surpass initial ETA start up costs. These costs include $12.60 paid to financial institutions per account opened as a reimbursement for account setup. Treasury expects to recoup that cost for each account in approximately two and one half years after it is opened, based on a monthly EFT conversion savings per account of slightly more than 41 cents.

Additionally, since check volume has decreased generally, the number of Treasury disbursed forged, altered, and counterfeit checks has decreased by nearly 79,000 since FY 1995. This has resulted in a cumulative $41 million dollar decrease in potential losses associated with check fraud.

CONCLUSION

In conclusion, overall EFT99 implementation has been a tremendous success and continues to proceed well. Implementing the program provides us an important opportunity to deliver the high quality of service that our customers deserve, lower the cost of government to American taxpayers, and help Federal payment recipients without accounts take advantage of the benefits of electronic payments.

I appreciate the opportunity to report on the progress of the EFT99 program and I will be pleased to answer any questions the Subcommittee may have.

Responses to Questions for the Record to Donald Hammond, Fiscal Assistant Secretary, Department of the Treasury From the June 20, 2001 Hearing Before the Subcommittee on Oversight and Investigations of the House Committee on Financial Services

Question: **I'm wondering if you could submit to the Committee any recommendations the Treasury might have for amending the Act or regulations to further advance the EFT to other government programs. For example, on the business side of government, Treasury has really made dramatic strides in converting federal payments to vendors from paper checks to the EFT. I'm wondering if you've also made progress in converting to electronic bill presentment? In other words, can the federal government bill directly to the vendor and have the vendor pay through the account? Can all of that happen electronically? I'm interested obviously in paper reduction and also in an anti-fraud mechanism.**

Answer: The Treasury's Financial Management Service (FMS) is providing Federal agencies with a means for electronic bill presentment called Pay.gov, which is an Internet collections infrastructure that centralizes government-wide collections and reporting functionality. Pay.gov is an extension of the lockbox and general collection services currently provided to agencies, and is designed as a portal that consolidates and integrates collection services with all Federal agencies. It provides four main services: Secure forms (on-line applications and bills); fraud prevention (fraud scoring, PIN/Password management, and authentication of individuals and accounts); transactions (EFT, digital cash); and reporting (XML, flat file, online).

Pay.gov is more than a collections or billing tool for the procurement community, for it includes business models such as consumer to government (for example, the purchase of Mint coins), business to government (paying FCC fees), individual services such as the authentication of individuals, and electronic bill presentment and payment (such as for the repayment of SBA loans).

Question: **The Committee has tried to get information from Treasury on how the ETA program is working. Although Treasury can tell us how many ETA accounts have been opened, they are unable to tell us apparently who is opening them, whether they are social security retirees or VA beneficiaries.**

Treasury can't tell us how many ETAs have been opened for residents of New York City even though you know that you have 13 banks offering them there and you have to pay those banks $12.60 for each account.

You can't tell us - except anecdotally - why people refuse to open an ETA.

Apparently, Treasury also doesn't know how long an ETA may be opened and whether some of these accounts, after being opened at $12.60 each, are quietly closed and converted to a regular account. I suppose these are questions for GAO to answer in its study, but I have to ask:

- **Without more detailed data on how this program is working, how can we accurately assess its effectiveness?**
- **What other issues do you think GAO should analyze during their review and what data would you want to see come out of it?**
- **Doesn't the fact that only 11,000 - less than 1% of those eligible – have opened such an account, even after mailings and public education, tell you that something is not working?**
- **What is Treasury prepared to do to beef up its ability to monitor this program?**

Answer: Treasury believes that it is premature to assess the effectiveness of the ETA Program, as we will not have a national presence of ETA providers until later this year, and we have not yet completed targeted marketing efforts promoting the ETA and Direct Deposit to Federal payment recipients. Our strategy for rolling out the ETA is to increase and intensify marketing efforts as geographic coverage increases.

It is also important to reiterate that the overall objective of the DCIA is to increase the use of EFT. EFT growth in areas receiving check inserts and direct mailings promoting Direct Deposit and the ETA indicates that many check recipients without bank accounts may be choosing to open traditional Direct Deposit accounts over the ETA. This is also a desired result, as the ETA is targeted primarily towards individuals who cannot open a traditional account at a financial institution. Even opening an ETA, only to close it and open a traditional direct deposit account, serves Treasury's goals of promoting EFT and providing the ETA as a stepping stone to mainstream financial services.

Treasury realized early on that designing an account that recipients would want to open and that financial institutions would want to offer would be a complex undertaking. As a condition of being reimbursed the $12.60 set-up fee, financial institutions are required to report the number of ETAs opened and closed, and the reason that the account was closed if closed by

the financial institution. Financial institutions are not required to determine and report to Treasury why recipients close an ETA even if recipients willingly indicate the reason. There is also no requirement on the part of the financial institutions to track the type of Federal payment being deposited into an account electronically. These additional reporting requirements would likely cause an administrative burden on the financial institution and result in system programming costs to the financial institution. This could result in fewer financial institutions offering the account. In addition, efforts by Treasury to obtain and maintain information about Federal payment recipients, independent from records required to make payments, may be viewed as a violation of recipients' right to privacy.

We cannot determine the number of accounts opened in New York City because we do not require interstate banks to report the number of accounts opened by branch, but instead, allow them to report aggregate numbers. Some of the interstate banks provide an informal report of ETAs opened by state. Although this information will help us to identify an approximate number of ETAs opened in each state, more detailed information (e.g. ETAs opened in a metropolitan area) may be difficult to obtain voluntarily.

Treasury's intention for the ETA was to design a banking product very similar to those offered by financial institutions. We accept the signed ETA Financial Agency Agreement (FAA) as the institution's acknowledgment that it will offer the ETA as prescribed. Treasury monitors financial institutions' compliance with the requirements of the ETA Program by: 1) confirming reported ETA activity (i.e., the number of accounts opened and closed); 2) ensuring that ETA Providers open and close ETAs in accordance with the ETA FAA; and 3) conducting periodic meetings with ETA Providers to discuss issues or concerns about the Program, review account disclosure information, and provide assistance in promoting the ETA. If there is a consumer complaint about a particular ETA Provider, FMS follows up with that institution to clarify the requirements of the Program and ensure that those requirements are being met.

ETAs are not currently being opened in large numbers. We believe that the ongoing public education campaign with its focus on community outreach and education, together with increased availability of ETA provider branches by more and more large financial institutions, will result in a significant growth in the number of accounts opened beginning early next year. In May of 2001, over 10,000 calls were made to the ETA Call Center and Voice Response System seeking information on the locations of ETA providers. In addition, we have formed strategic partnerships with consumer organizations, community groups and ETA providers in the high check volume areas where there are sufficient numbers of ETA provider branch locations to discuss collaborative efforts to educate recipients and assist them in converting their payments to EFT. The rate of growth for new ETAs in calendar year 2000 was 600 per month, but since the beginning of calendar year 2001, as larger financial institutions began to implement the ETA, the rate has increased to a monthly average of nearly 900 new accounts opened.

Acceptance of any new product takes time and resources. Awareness of the availability and benefits of the ETA will continue to grow among Federal benefit recipients as a result of distribution of ETA check inserts and as the large financial institutions begin to offer and market the ETA in all their locations. We are confident that in the short to medium term, growth rates will continue to rise as availability and public awareness increases.

Question: **...please look at what steps can be taken to increase the number of financial institutions from the 600 to the 10,000 eligible FDIC-insured institutions, what we can do to expand that, and what measures have worked in the past specifically as you said with the Social Security checks and to see what the plan is to get the other ten million; roadblocks, obstacles, and how we're going to over come that.... Maybe you might want to have a consulting contract with Banco Popular to expedite your process.**

Answer: Financial institution participation in the ETA Program is voluntary. We have five of the largest financial institutions in the country participating in the ETA program: Bank of America, Bank One, Firstar, Wells Fargo and FleetBoston. The branch locations of these institutions provide significant ETA coverage nationwide, although certain geographic areas have limited or no coverage. When we launched the program in September 1999, we sent brochures and ETA information to all financial institutions to encourage them to participate in the program. With the help of the Federal Reserve Banks, we held more than 20 ETA educational seminars for financial institutions. We published articles in trade newsletters and worked with state and national financial trade organizations to promote the program to their members. There are two main reasons that financial institutions choose not to participate in the program: 1) the ETA is not a profitable account for the financial institution, and 2) the financial institution already offers a low cost account and does not see a need to have a similar, competing product. As previously stated, as long as a financial institution promotes direct deposit to potential customers, and those customers sign up for direct deposit, we will achieve our overall objective of increasing the number of EFT payments.

We do not believe that financial institutions should be required to offer the ETA. We have taken numerous actions to encourage financial institutions to offer and promote the ETA. We believe that after Bank of America and Bank One have completed their roll-out schedules, and the newly merged branches of U.S. Bank Corp begin offering the ETA, we will have sufficient coverage nationwide to meet the needs of the majority of check recipients. We are continuing discussions with representatives of larger financial institutions to encourage them to become ETA providers. If they agree to do so, ETA coverage in some of the underserved areas will be expanded.

Our experience with existing ETA providers indicates that the financial institution must make a commitment to actively promote the ETA to be successful in gaining ETA enrollments. We continually encourage ETA providers through letters, flyers, newsletters, and by telephone to advertise the availability of the ETA and to promote the ETA to potential customers. Some financial institutions are more willing than others to actively promote the ETA.

Question: **[Who are you] partnering with to present this to the public with any minority-owned radio, TV stations, with any minority-owned print, any print mechanisms to advertise ETAs?**

Answer: The ETA print public service advertisement (PSA) campaign began in October 2000. The ETA print PSA was distributed to approximately 9,000 English publications and 400 Spanish publications. As of the end of March 2001, more than 550 ETA print PSAs were placed in over 250 cities throughout 45 states and the District of Columbia. The total circulation for the ETA print PSA through March was almost 5 million.

Special outreach efforts were directed toward seniors and minorities including Native Americans through national organizations such as the National Council of La Raza, National Urban League and First Nations Development. We targeted faith-based organizations, Hispanic and African American publications and media, as well as E-zines (web based publications targeted to seniors) and free community publications.

Materials were printed in English and Spanish, with fact sheets printed in four additional languages (Chinese, Korean, Russian, and Vietnamese). We also produced some material in audio, braille, and in an Easy-to-Read format to reach lower literacy recipients.

The ETA campaign has included two releases of television public service announcements (PSAs), two rounds of recorded radio PSAs and two rounds of "live announcer read" radio PSAs as well, print media PSAs, transit (bus and subway) advertisements and outdoor (billboard) advertisements in selected markets.

BANCO POPULAR

Testimony
of the President and CEO of
Popular, Inc. and Banco Popular de Puerto Rico
before the House Finance Services Committee
June 20, 2001

Thank you Madam Chairperson.

My name is Richard L. Carrión
and I am the President and CEO of Popular, Inc. and
Banco Popular de Puerto Rico.

Banco Popular de Puerto Rico was founded
on October 5, 1893.
With assets totaling **$28 billion,**
it is the oldest and largest financial institution
on the island.
It is also the **35th** largest bank of the United States
and ranks **8th** in Latin America.

The Bank has **200** branches in Puerto Rico, **100** in the continental United States, as well as in the US and British Virgin Islands.

The Corporation operates several subsidiaries, including Popular Mortgage, Popular Securities and Popular Leasing in Puerto Rico. Meanwhile, we have presence in over **30** US States with Equity One, Popular Cash Express, Banco Popular National Association and Banco

Popular North America, the largest Hispanic bank of the mainland.

Throughout its history Banco Popular
has embraced several institutional values
upon which we have based our business objectives
generation after generation.

Two of those values are innovation and social responsibility.

We are particularly proud of our initiatives to convert the so-called "unbanked" segment of the population in Puerto Rico, as well as in the continental United States.

In the **1950**'s Banco Popular put in place an outreach program serving isolated communities with mobile units, a fleet of buses that then operated as bank branches throughout the island.

We introduced FHA loans in Puerto Rico and we are still one of the top **10** SBA lenders in the continental USA.

Two months ago we launched a new product: "*Acceso Popular*" and a new outreach program: "*El Banco en la Comunidad*" or *The Bank in the Community*, also directed to convert the unbanked.

Moreover, since its inception, Banco Popular de Puerto Rico has ranked first in the entire nation as the Bank with the largest number of Electronic Transfer Accounts "ETAs". (**4,349** - May 2001)

Likewise, Banco Popular North America ranks fourth, after Banco Popular de Puerto Rico,
Firstar Bank-Milwaukee
and Wells Fargo & Co.-San Francisco.

Another Popular, Inc. subsidiary,
GM Group, is in charge of processing electronic payments of the USDA Nutrition Assistance Program to over **450,000** beneficiaries in Puerto Rico.

Individual benefits are electronically accessed through our network of **624** ATMs on the island; a network we own and put in place in **1983**.

Several years later we also introduced the Point of Sale (POS) technology and we currently own over **40,500** terminals. Both initiatives have been responsible for a dramatic transformation of consumer behavior in Puerto Rico.

In the year **2000** our ATMs and POS terminals processed **184.9** million electronic transactions. Our clients averaged **11** transactions a month at POS terminals and **9.6** at our ATM network… a user pattern that doubles the US average.

In total, our clients conduct **76%** of all their transactions electronically, which represents the highest usage of electronic banking in the entire United States.

In Puerto Rico, Banco Popular owns and operates the local ATM and POS switching networks. This allows us to provide free and unlimited access to the ATM and POS networks since the marginal cost of processing these additional transactions is extremely low. I believe this has been one of the principal reasons for the success we've had with the ETA and other similar products in Puerto Rico.

If the US Federal Government and the US Congress are committed to the expansion of **ETA**s, and **EFT**s, there are two areas on which it should focus:

1. Access to the national ATM networks – some mechanism must be found to enable a lower cost of access to the ATM network for these account holders. While I instinctively recoil from mandated subsidies or

additional regulations, I think that a voluntary agreement can be reached with these networks. The marginal cost of processing these additional transactions is small and it is in their long-term interest to promote a shift towards electronic transactions.

2. The Check-cashing or Money Exchange Industry – There are currently over 10,000 check-cashing locations in the United States. They are the primary providers of basic financial services to the unbanked, mostly check-cashing, money transmission and bill payment. I would urge this committee to include them in your discussions. For the record, I will mention that our subsidiary, Popular Cash Express, currently operates 87 check-cashing locations in the US.

It is imperative that we recruit support of these institutions in promoting electronic transactions among their clients and reevaluate both BSA and Anti-Money Laundering regulations that currently curtail this industry's possibilities of growth and of servicing the unbanked population.

Madam Chairperson, as telecommunications redefine the banking industry, we need to move forward in providing equal access to the new technology.

Thank you Madam Chairperson.

Testimony before the

COMMITTEE ON FINANCIAL SERVICES

Subcommittee on Oversight and Investigations

regarding the

EFT Requirements of the Debt Collection Improvements Act of 1996

and the

Use of ETAs

June 20, 2001

Testimony written and presented by:

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also on behalf of:

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Consumers Union
U.S. Public Interest Research Group

Testimony before the
Subcommittee on Oversight and Investigations
regarding the
EFT Requirements of the Debt Collection Improvements Act of 1996 and the Use of ETAs

Madame Chairwoman and Members of the Committee, the **National Consumer Law Center**[1] thanks you for inviting us to testify today regarding the implementation of EFT-99 and its effect on the unbanked recipients of federal payments. We offer our testimony here today on behalf of our low income clients, as well as the **Consumer Federation of America,**[2] **Consumers Union,**[3] and the **U.S. Public Interest Research Group.**[4] This is an issue in which we are all vitally interested.

Treasury has accomplished a considerable amount on EFT 99 in the past few years. Treasury has established an excellent waiver system by which federal recipients can opt out of electronic payments and the Department has aggressively ensured that no recipient is led to believe that it is necessary to have a bank account in order to receive federal payments -- which was a real problem in the early stages of this program. The design of the ETA account is also excellent in many ways, but flawed in others. The ETA account is appropriately open to all federal recipients regardless of credit status; the account appropriately limits fees for basic services, and prohibits attachment of exempt benefits from the claims of judgment creditors. However, the account is defective in that it does not provide any payment mechanisms for recipients, does not limit charges for additional services, and is clearly not attractive to the banks because they are not marketing it, as is evident from the fact that only 11,000 recipients currently use it. Treasury should also be applauded for its comprehensive grass-roots education efforts to provide basic financial literacy information to low income and unbanked federal recipients.[5]

However, Treasury has failed to finish the job – it still must regulate the check cashers and other payment service providers in their delivery of federal benefits. In 1999, Treasury took the first step in

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[1]The **National Consumer Law Center** is a nonprofit organization specializing in consumer issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys, as well as community groups and organizations, from all states who represent low-income and elderly individuals on consumer issues. As a result of our daily contact with these advocates, we have seen examples of predatory practices against low-income people in almost every state in the union. It is from this vantage point – many years of dealing with the abusive transactions thrust upon the less sophisticated and less powerful in our communities – that we supply these comments. We have led the effort to ensure that electronic transactions subject to both federal and state laws provide an appropriate level of consumer protections. We publish and annually supplement twelve practice treatises which describe the law currently applicable to all types of consumer transactions.

[2]The **Consumer Federation of America** is a nonprofit association of over 280 pro-consumer groups, with a combined membership of 50 million people. CFA was founded in 1968 to advance consumers' interests through advocacy and education.

[3]**Consumers Union** is the publisher of Consumer Reports.

[4]The **U.S. Public Interest Research Group** is the national lobbying office for state PIRGs, which are non-profit, non-partisan consumer advocacy groups with half a million citizen members around the country.

[5] As part of its obligations to implement EFT 99, Treasury has engaged in an extensive education program, enlisting the expertise and contacts of the low income and community organizations throughout the nation. Thousands of pamphlets, guides, fact sheets and brochures on financial literacy, translated into multiple languages have been distributed in an impressive effort to provide important financial information to the unbanked. Many believe that Treasury's educational program should be a model for similar efforts by Treasury and other federal agencies to combat these problems in the future.

this process by publishing an Advance Notice of Proposed Rulemaking[6] ("ANPRM") on the issue. In that ANPRM Treasury publically acknowledged the legal justification and the moral imperative for regulating access to federal benefits through alternative payment service providers. To provide comprehensive information and analysis to Treasury for its consideration of the ANPRM, the National Consumer Law Center and Consumer Federation of America conducted exhaustive research among our local legal services programs and affiliated local consumer organizations. Our comments were joined by twenty other state and national organizations representing low and moderate income consumers. More importantly, our comments drew from information supplied by our affiliates in twenty four states.[7]

ETA Accounts Do Not Meet the Statutory Mandate for Protection of Unbanked. When EFT-99 was first passed,[8] in all of the discussions in Congress and within the Treasury Department, the 10 million unbanked recipients of federal benefits were noted.[9] According to Treasury, as of April, 2001, there were only slightly more than 11,000 ETA accounts established.[10] **This means that only one tenth of one percent of the population for whom the ETA account was designed is currently using it.** Something is wrong.

As representatives of low and moderate income consumers, with close ties to communities across the nation, we can affirm to you certain facts. One, the lack of success for the ETA account is *not* because mainstream financial institutions have changed their patterns and are now providing services to many of the remaining 9,989,000 federal recipients. Two, banks and other mainstream financial service providers continue to segregate their services for low income customers. Three, much of the problem stems from the fact that Treasury has allowed check cashers and other alternative financial service providers to deliver the necessary services to many low income federal recipients.

While Treasury has mandated that federal payments will only be deposited into bank accounts established in the name of the recipient, that does not adequately protect recipients. Too many federal recipients have signed up to receive their federal payments *through* check cashers and other fringe bankers. **This means that although the federal payment is deposited into a federally insured financial institution it can only be *accessed* through the check casher.**

The recipients who have signed up with the payment service providers to receive their federal payments have only gained additional costs and lack of choice each month as to where to cash the

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[6] 31 C.F.R. Chapter II, RIN 15055--AA74.

[7] Our comments on the ANPRM, along with the summary of the lengthy appendices to those comments, are attached to this testimony as Appendix. The factual information asserted in this testimony is based on the information previously provided Treasury in these comments.

[8] EFT 99 was mandated by § 31001(x) of the Debt Collection Improvements Act of 1996.

[9] *See, e.g.* Treasury's Rule 31 C.F.R. § 208 in the discussion regarding § 208.5:
"It is estimated that approximately 10 million individuals who receive Federal payments do not have an account at a bank, savings association, savings bank, or credit union, and, therefore, cannot receive payment by Direct Deposit."

[10] Conversation with Cathy Donchatz of Treasury's FMS department, June 13, 2001.

check.[11] These recipients have also become excellent prospects for the other high cost products of the payment service provider, such as payday loans,[12] rent to own contracts, pawn transactions, sales of lottery tickets, and liquor. The result is that the federal payment simply ensures that the recipient becomes a captive customer of that fringe banker, without any realistic opportunity to go elsewhere if treated unfairly.

Payment services providers should not be supported by the federal government and permitted to be conduits for federal payments. As this non-regulated industry is allowed to be a conduit of federal payments, the financial problems in the low income communities continue to be ignored. Consider just two examples from the many supplied in our comments to Treasury's ANPRM:

Miami, Florida

Of the ten check cashers and rent to own dealers contacted in Miami, eight[13] have the capacity to set up electronic accounts. The terms vary. The majority charge a percentage fee plus a flat monthly fee. The percentages vary between 1% and 10% of the check amount. The flat fee is between $3 and $5 monthly. In one example, the recipient's federal check is deposited in the store's own bank which charges the recipient $1.50, plus $10 per $500 of the benefit check amount. Thus, for no extra convenience or services, the recipient's total monthly cost on a $500 benefit check is $11.50.

This store also allows recipients to establish Western Union accounts. For each federal benefit deposited to one of these accounts, $14 is deducted from the account. All the recipient gets for this fee is the ability to receive their benefits in one lump sum at any Western Union outlet.

Philadelphia, Pennsylvania

There are a number of alternative providers of electronic access to federal benefits in Philadelphia. Each one seems to be vying to be the most expensive.

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[11]A study by the New York Office of the Public Advocate found that a check cashing customer with an annual income of $17,000 will pay almost $250 a year at a check cashing business for services that would cost $60 at a bank. According to a recent study of fringe banking in Milwaukee: "Customers pay far more for services provided by a check cashing business than they pay for the same services at a conventional bank. Fees for cashing payroll checks nationwide generally range between one percent and three percent of the face value of the check. For personal checks the range was generally between 1.7 percent and 20 percent, averaging around 8 percent. In some instances, however, fees and interest rates have been reported as high as 2000 percent. Squires & O'Connor, *"Fringe Banking in Milwaukee: The Rise of Check Cashing Businesses and the Emergence of a Two-Tiered Banking System,"* 34 Urban Affairs Rev. 126 (1998). The Federal Reserve Bank of Kansas City reported that a family with a $24,000 annual income using a check cashing business will spend almost $400 in fees for services that would cost under $110 at a bank."

[12] Payday loans are generally provided by check cashers who agree to cash a post-dated personal check with the understanding that it will not be deposited until the customer's next payday. *See, e.g.* Pressey, Debra, *"Payday Loan Industry Proliferating,"* The News-Gazette, November 11, 1998. (A couple on disability due to mental illness owed seven payday loans to four lenders at the same time for a total of $1,440, more than their combined monthly income. One loan cost 1,825% APR.)

[13]This information was supplied in April, 1999.

At one check casher, opening the account is free, and the monthly service fee is $10.95, plus $2.95 for each benefit deposited. A recipient who receives two benefit checks, for example Social Security and SSI, would pay monthly fees of $16.85, totaling $202.20 annually. For an additional $1 a month, recipients can access their money through other ATMs. It is unknown what the ATM charges are. As of April, 1999 there were no payday loans yet, but the company was working to establish these in conjunction with the federal payments. This is despite the fact that payday loans are illegal in Pennsylvania.

At another provider, there is also no fee to establish the account. The monthly fee is 2.5% of each benefit deposit. The use of any ATM other than the place the arrangement was entered into requires a surcharge of $1.50, in addition to the foreign bank's fee (which are in the range of $1.00 to $3.00). Assuming a recipient receives benefits totaling $500 a month, and has three withdrawals, two of which are at places other than this check casher's (with a foreign bank surcharge of $2.00), the cost per month would be $12.50 + $3.50 +$3.50 = $19.50, or 3.9% of the benefit amount. Annual costs would be $234.00.

One program in Philadelphia is offered through both check cashers and pawnbrokers. This program provides a cornucopia of high priced financial services, many of which appear to be illegal under state law. Opening this electronic account is free. After the fixed monthly charge of $2.50, the additional monthly charges vary based on the type of access desired:

1) If the client only uses the payment service provider through whom the account was established, the money can be withdrawn in increments at a cost of $1.00 for each withdrawal.
2) If the client wants an ATM card, the "silver" card costs $10.95 a month -- in addition to the $2.50 fixed monthly fee. In addition to the $1 to $3 surcharge imposed by the banks' ATM machine (there is no home bank ATM for these customers), the check casher receives a fee of $2.00 per transaction. Each ATM withdrawal will cost recipients between $3.00 and $5.00.
3) For the client who desires to borrow against the federal benefit, there is a "gold" card at a cost of $20.95 a month, in addition to the $2.95 a month. The transaction fees are the same as for the silver card. But we do not know the fees for the credit extension on the federal payment.[14]

Under this program, the client is required to sign a form stating that the monthly statements required by the Reg E[15] to be provided by the bank are sent to the check casher. No phone number is available to recipients who have questions about their benefits or their accounts or the fees charged them.

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[14] Under Pennsylvania law the maximum interest permitted for small loans is 23.57% a year. Under the PNC example, assume that the bank allowed one half of the monthly deposit to be made available in the second half of the month, and that the *only* charge for this would be the additional $10 for the "gold card." Thus a $10 fee would be charged for a $250 extension of credit for 14 days (a relatively low priced loan compared to most payday loans). The APR on this extension of credit equals 250%.

[15] Reg E is promulgated by the Federal Reserve to implement the consumer protections of the Electronic Fund Transfer Act, 15 U.S.C. §1693 et seq.

The ETA Accounts Do Not Comply with Congress's Mandate to Protect the Unbanked. When Congress passed EFT-99, it was clear in its mandate to Treasury that this statute be used as a means to bring unbanked federal recipients into the banking system. In the statute, all federal recipients are required to designate a financial institution to receive the electronic deposit of federal payments:

> (g) Each recipient of Federal payments required to be made by electronic funds transfer shall --
>
> (1) designate 1 or more financial institutions . . . to which such payments shall be made; . . .[16]

Treasury is then required to provide regulations to ensure access at a reasonable cost, with consumer protections. These regulations must apply to all accounts designated by recipients to receive federal payments electronically:

> (i) Regulations under this subsection *shall ensure that individuals required under subsection (g) to have an account at a financial institution . . .*
>
> *(A) will have access to such an account at a reasonable cost; and*
>
> *(B) are given the same consumer protections with respect to the account as other account holders at the same financial institution.*[17]
>
> (Emphasis added.)

If all recipients are to be covered by the requirements of subsection (i), then Treasury has the obligation to establish basic requirements for all accounts at financial institutions into which federal payments will be deposited. This regulation would have to establish a standard for regulators of financial institutions to evaluate whether accounts which receive federal payments meet the requirements of the federal law. Treasury has not done so. Establishing the voluntary ETA without ensuring that all of the accounts provided to federal recipients are *accessible* and *at reasonable cost* fails to comply with this mandate. Too many otherwise unbanked federal recipients have been sucked into the underworld of check cashers and other payment service providers.

By allowing check cashers and other payment service providers to be a part of the process of electronically delivering federal payments to recipients, Treasury allows an additional cost to be assessed recipients who do not have bank accounts. The recipient then must pay two financial service providers (the check casher and the bank whose account the benefits are deposited), which will double -- or worse -- the costs of the delivery system. There is no way that Treasury can meet the statutory mandate of "reasonable cost" and allow payment service providers to be a part of the delivery system. Once banks are prohibited from using payment service providers to market accounts to federal recipients the banks will find new ways of maintaining this source of profit. But the prices should be lower, because they would not have to share them with anyone else.

The legislative history shows that Congress intended to protect the unbanked by requiring *access to bank accounts.* The only rational reading of the law and the Congressional history requires Treasury to ensure the usage of banks throughout the process -- from initiating the account to withdrawal of the

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[16] 31 U.S.C § 3332(g).

[17] 31 U.S.C. § 3332(i).

money.

> Since this section will require participating beneficiaries to obtain a *bank account*, Congress expects the Secretary of the Treasury *to work vigorously* to accommodate the needs of the unbanked recipients through such means as . . . implement through the private sector *consumer owned bank accounts* where recipients access their funds by debit card or other means, rather than through traditional account features, such as checking. (Emphasis added.)[18]

There is a simple way to meet the statutory mandate to regulate for *access, account, consumer protections and reasonable cost* : prohibit payment service providers from being part of an arrangement with financial institutions for the electronic delivery of federal payments.

In summary, there are five significant reasons why Treasury must regulate these alternative service providers:

1) Recipients are captive customer for expensive "other" services. If recipients must go through the doors of the fringe bankers at least one time each month to access their federal benefits, it is very likely that they will fall prey to the expensive -- and unregulated -- other financial products of these fringe bankers, such as check cashing, payday loans, high cost home equity loans, even rent to own transactions. While recipients may always be able to opt for these services if they care to, they should not be required to go through the doors of these alternative providers every single month in order to obtain their federal entitlement. If fringe bankers are allowed to sign recipients up for the electronic receipt of federal payments, these recipients become captive customers. It becomes much more difficult for unsophisticated, often illiterate, recipients to exercise choice and do business with different, less oppressive, financial services providers.

2) Access to Federal payments becomes very expensive. The basic arrangements made to deliver the federal payments to recipients by fringe bankers are uniformly far more expensive than the cost for equivalent services directly through a bank. Also, the arrangements often provide no additional service or convenience to the recipient as compared to the continued direct receipt by the recipient of a paper check. Attached to this testimony is our comments to Treasury's ANPRM; this document provides extensive details regarding the high costs of the arrangements between check cashers and banks for the delivery of federal payments.

3) Banks have no incentive to offer ETAs. So long as banks are permitted to make money from the delivery of federal payments *through* payment service providers, rather than by providing services directly, they will have no incentive either to provide the ETAs being pushed by Treasury, or even to design their own accounts for low income recipients to access their federal payments.[19]

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[18] 142 *Cong. Rec.* H48721.

[19] In our 1999 comments to Treasury's ANPRM we detailed the arrangements of a number of national banks engaged in these arrangements, although in many cases we were unable to tie the check casher and retail store arrangements to each bank sponsor. The banks involved include **Delaware Bank,** which has an ATM program that (continued...)

4) Perpetuates financial apartheid. If Treasury permits non-regulated payment service providers to control access of federal benefit payments to those in low income communities, the financial apartheid that already exists in this nation will simply be extended. Already, middle and upper income Americans enjoy the safety and convenience of a highly regulated banking industry that provides competitive prices and is closely supervised to limit improper activities. Many poor people, on the other hand, are relegated to fringe bankers who are unregulated, unsupervised, and routinely charge exorbitant rates in the uncompetitive financial services market that exists in the low income community. Congress and Treasury originally envisioned EFT 99 as an opportunity to further the use of mainstream banking in low income communities. Allowing fringe bankers to serve as conduits not only fails to advance that admirable goal, it makes it more difficult to achieve.

5) Violates Treasury's Legal Mandate. The statute establishing EFT 99 clearly provides Treasury with the legal authority to regulate the arrangements for the electronic delivery of federal payments through financial institutions. Indeed, the plain reading of the statute indicates that Treasury must regulate -- one way or the other -- to protect "individuals required under subsection (g) to have an account at a financial institution . . ." Regulating to prohibit payment service providers is the cleanest and simplest method of accomplishing this statutory mandate. Such a regulation can be justified because of the lack of access to accounts, the lack of consumer protections, and the clearly unreasonable costs imposed upon recipients in the arrangements which are already in place.

Conclusion:

As advocates of low income people, and of consumers generally, we agree that electronic transfers can be a more efficient and safer method of receiving payments than the paper check based system. However, the additional advantages of the electronic system quickly evaporate if recipients have higher costs, unanticipated risks, and greater potential losses, *as will clearly occur unless Treasury prohibits financial institutions from contracting with payment service providers for the delivery of federal payments.*

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[19](...continued)
recipients sign up for at check cashers. There is a $19.95 set up fee, $9.95 monthly fee and .95 charge from this bank for all ATM withdrawals. This bank also offers what they call "overdraft" protection for all federal recipients, including Social Security and SSI recipients. For any overdraft incurred during the month, a flat fee of $19.95 is charged for that month, in addition to all other charges. These arrangements are made available through check cashers in New York, Pennsylvania, Delaware and other northeastern states. Other banks involved in these activities include **Corus Bank, Chicago, Illinois,** which was formed by check cashers for check cashers; **Pacific State Bank** which uses Quick Access, available through check cashers and rent to own stores, and charges a fee of $3 per transaction; **Republic and Trust Bank** runs a program called Benefits Express which makes funds available through check cashers, liquor stores, and rent to own stores, and has a bank fee of $2.95 per withdrawal with no apparent limit on the payment service providers' fees; **River City Bank** has a program called Dollars Direct providing electronic deposits through check cashers, pawnbrokers and tax preparers. The bank charges the customer a fee of $2.95 per check. **Citibank** has a program with the National Association of Check Cashers of America which uses an ATM card program which also allows POS purchases. **PNC Bank** has a program through check cashers and pawnbrokers with a sliding scale of fees in Philadelphia.

Comments to the Treasury on ANPRM
31 C.F.R. Chapter II
RIN 15055--AA74
Possible Regulation Regarding
Access to Accounts at Financial Institutions
Through Payment Service Providers

These comments, written by the **National Consumer Law Center**[1] are also provided on behalf of the **Consumer Federation of America,** as well as the following national, state and local groups representing elderly and low income consumers:

- **Community Legal Services of Philadelphia**
- **Community and Economic Development Association of Cook County, Inc.**
- **Consumer Action**
- **Consumer Law Center of the South**
- **Florida Legal Services**
- **Gateway Legal Services in St. Louis, Missouri**
- **Legal Aid Society of Dayton, Ohio**
- **National Center on Poverty Law**
- **National Consumers League**
- **National Legal Aid and Defenders Association**
- **North Carolina Justice and Community Development Center**
- **Northeast Missouri Client Council for Human Needs, Inc.**
- **Oregon Law Center**
- **Organization for a New Equality**
- **Texas Legal Services Center**
- **U.S. PIRG**
- **Virginia Citizens Consumer Council**
- **Welfare Law Center**
- **Woodstock Institute** [2]

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[1]The **National Consumer Law Center** is a nonprofit organization specializing in consumer issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys, as well as community groups and organizations, from all states who represent low-income and elderly individuals on consumer issues. As a result of our daily contact with these advocates, we have seen examples of predatory practices against low-income people in almost every state in the union. It is from this vantage point--many years of dealing with the abusive transactions thrust upon the less sophisticated and less powerful in our communities--that we supply these comments. We publish and annually supplement twelve practice treatises which describe the law currently applicable to all types of consumer transactions. These comments are written by Margot Saunders, Managing Attorney of NCLC's Washington office.

[2]The **Consumer Federation of America** is a nonprofit association of some 250 pro-consumer groups, with a combined membership of 50 million people. CFA was founded in 1968 to advance consumers' interests through advocacy and education. CFA's address is 1424 16th Street, NW, Suite 604, Washington, DC 20036.
Community Legal Services, Inc. is a legal services program representing low income individuals and groups in Philadelphia, Pennsylvania.
Community And Economic Development Association of Cook County, Inc. is the largest not for profit community action agency in the nation. It works in the communities of suburban Cook County, Illinois.
Consumer Action is a California based consumer education and advocacy organization, serving consumers since 1971.
The **Consumer Law Center of the South** is a nonprofit public interest organization incorporated in Georgia. Established in 1995, its mission is to advocate for consumer protection through consumer education, legislative reform, involvement in the regulatory process, and litigation support.

Through the publication of this Advance Notice of Proposed Rulemaking, Treasury has publically acknowledged the legal justification and the moral imperative for regulating access to federal benefits through payment service providers. This is a critical step that Treasury has taken. Although the publication purported to be only a request for information regarding whether and how Treasury should regulate the check cashers and other payment service providers in their delivery of federal benefits, Treasury itself has answered many of the questions posed. Treasury has perfectly articulated the law in a way that dictates that these arrangements be regulated. Further, by outlining the details of some of these arrangements, Treasury has sketched out the reasons why it is so important -- to both comply with the law and as good public policy -- for these arrangements to be regulated.

The crucial question that remains, however, is the form of the regulation of accounts using payment service providers. The above listed organizations, representing low and middle income consumers throughout the U.S., believe that there is also a simple answer to this question: these arrangements should be prohibited. Treasury can accomplish this flat and complete prohibition of these arrangements in just the same way as Treasury has proposed for ETA providers.[3]

Florida Legal Services, is a not-for-profit statewide public interest law firm which advocates for the interests of poor people in Florida. FLS is the state support center for legal services and legal aid offices throughout Florida. FLS provides technical support, co-counseling, training, and educational publications.
Gateway Legal Services in St. Louis, Missouri is a non-government-funded, non-profit legal aid organization which provides legal services to lower-income clients.
Legal Aid Society of Dayton, Ohio, provides civil legal services to low income residents of Dayton.
The **National Center on Poverty Law,** formerly National Clearinghouse for Legal Services, is a not-for-profit communications, advocacy, and policy organization that fosters and develops creative approaches to policy research, development, analysis, and advocacy on issues affecting low-income communities located in Chicago, Illinois.
The **National Consumers League** is America's pioneer consumer organization. NCL is a private, non-profit membership organization dedicated to representing consumers.
National Legal Aid and Defender Association is the national membership organization representing civil legal services and indigent criminal defense programs.
North Carolina Justice and Community Development Center is a non-federally funded non-profit organization advocating for low-income people in North Carolina.
Northeast Missouri Client Council for Human Needs, Inc. This organization monitors legislation impacting on low income people, and provides consumer and welfare information through a newsletter and community legal education.
Oregon Law Center in Portland, Oregon, provides a full range of civil legal services to low income Oregonians.
The **Organization for a New Equality** (O.N.E.) is a multi-racial organization whose top priority is expanding economic opportunity to people who have historically been excluded from the economic mainstream.
Texas Legal Services Center is the legal support project for legal services programs in Texas. TLSC provides statewide assistance to the elderly poor through its Legal Hotline for Older Texans and also administers the EFT-99 public education subcontract for the Austin/Kansas City Region.
U.S. PIRG is the national lobbying office for state Public Interest Research Groups. PIRGs are non-profit, non-partisan consumer and environmental advocacy groups with offices around the country.
Virginia Citizens Consumer Council is a statewide consumer advocacy organization, headquartered in Richmond.
The **Welfare Law Center** is a national legal and policy organization located in New York City, which works with and on behalf of low income people to ensure that adequate income support is available when necessary to meet basic needs and foster healthy individual and family development.
Woodstock Institute is an organization working for residents of low and moderate income communities in Chicago, Illinois.

[3] 63 *Fed. Reg.* 64820 (Nov. 23, 1998).

Treasury has acknowledged that Congress has provided it with the authority to regulate the payment service providers, and Part III of these comments will address this legal mandate in more detail. The issue posed by the ANPRM seems more to be *whether* Treasury should regulate in this way.

We believe the law not only allows, but compels Treasury to regulate payment service providers. These comments are divided into three parts:

I. The activities of payment service providers in the low income communities should compel Treasury to exclude them from the delivery of federal payments.

II. Factual examples from around the nation illustrate the current problems federal recipients have receiving federal payments through payment service providers.

III. Treasury has a legal mandate to prohibit financial institutions from entering into arrangements with payment service providers to deliver federal payments.

I. The activities of payment service providers in the low income communities should compel Treasury to exclude them from the delivery of federal payments.

Treasury should prohibit financial institutions accepting electronic deposits of federal payment from contracting with payment service providers to be conduits for the delivery of federal payments. The form of the regulation should mirror Treasury's prohibition for financial institutions offering the ETA.[4]

If Treasury refuses to limit the conduits of federal payments to regulated financial institutions, unbanked federal benefit recipients will undoubtedly be harmed. We can look at the historical activities of check cashers, pawnbrokers, rent to own dealers and other unregulated fringe bankers and predict clearly what will result if they are permitted to continue acting as conduits for federal payments: high fees and onerous terms. These actors have made clear their business practices.

Minimal regulation of the financial services provided in the low income community has unequivocally resulted in high prices, abusive practices, and the loss of property, choice and convenience to the poor. Fringe bankers, such as check cashers, finance companies, and others, do business in the low income community because of the enormous profits that they can make.

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[4] In the ETA public notice, Treasury said: "financial institutions offering ETAs, would be prohibited under the ETA Financial Agency Agreement from entering into arrangements with non-financial institutions to provide access to ETAs other than access through a national or regional ATM/POS network. Treasury is concerned that such arrangements may be confusing or misleading to recipients and, therefore, will not permit financial institutions to enter into such arrangements with respect to the offering of the ETA." 63 *Fed. Reg.* 64823 (Nov. 23, 1998).

They have no commitment to the community, either by statute (as the Community Reinvestment Act requires of banks) or by charter (as credit unions require of themselves) or by tradition (their owners do not live in the community). Expensive services, extraordinarily high fees, and abusive transaction terms are standard business practices for these alternative providers. They have succeeded financially because of the vacuum created by the absence of banks from these communities. These fringe bankers make no reinvestment of their substantial profits back into the communities. They charge as much for financial services as the regulatory structure, or lack of regulation, allows. And the low income residents of the community gain little benefit other than the specific service provided from their presence.

If this non-regulated industry is allowed to be a conduit of federal payments, the financial problems in the low income communities will not only continue to be ignored, they will be exacerbated. Low income advocates fear the use of alternative financial providers as conduits for federal payments for four significant reasons:

1) Other services. If recipients must go through the doors of the fringe bankers at least one time each month to access their federal benefits, it is very likely that they will fall prey to the expensive -- and unregulated -- other financial products of these fringe bankers, such as check cashing,[5] payday loans,[6] high cost home equity loans, even rent to own transactions. While recipients may always be able to opt for these services if they care to, they should not be required to go through the doors of these alternative providers every single month in order to obtain their federal entitlement. If fringe bankers are allowed to sign recipients up for the electronic receipt of federal payments, these recipients become captive customers. It becomes much more difficult for unsophisticated, often illiterate, recipients to exercise choice and do business with different, less oppressive, financial services providers.

2) High charges for federal payments. The basic arrangements made to deliver the federal payments to recipients by fringe bankers are uniformly far more expensive than the cost for equivalent services directly through a bank. Also, the

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[5] According to a recent study of fringe banking in Milwaukee: "Customers pay far more for services provided by a check cashing business than they pay for the same services at a conventional bank. Fees for cashing payroll checks nationwide generally range between one percent and three percent of the face value of the check. For personal checks the range was generally between 1.7 percent and 20 percent, averaging around 8 percent. In some instances, however, fees and interest rates have been reported as high as 2000 percent. Squires & O'Connor, "*Fringe Banking in Milwaukee: The Rise of Check Cashing Businesses and the Emergence of a Two-Tiered Banking System,*" 34 Urban Affairs Rev. 126 (1998). A study by the New York Office of the Public Advocate found that a check cashing customer with an annual income of $17,000 will pay almost $250 a year at a check cashing business for services that would cost $60 at a bank. The Federal Reserve Bank of Kansas City reported that a family with a $24,000 annual income using a check cashing business will spend almost $400 in fees for services that would cost under $110 at a bank." (Citations omitted).

[6] Payday loans are generally provided by check cashers who agree to cash a post-dated personal check with the understanding that it will not be deposited until the customer's next payday. *See, e.g.* Pressey, Debra, "*Payday Loan Industry Proliferating,*" The News-Gazette, November 11, 1998. (A couple on disability due to mental illness owed seven payday loans to four lenders at the same time for a total of $1,440, more than their combined monthly income. One loan cost 1,825% APR.)

arrangements often provide no additional service or convenience to the recipient as compared to the continued direct receipt by the recipient of a paper check.

3) No incentive to banks to offer ETAs. So long as banks are permitted to make money from the delivery of federal payments *through* payment service providers, rather than by providing services directly, they will have no incentive either to provide the ETAs being pushed by Treasury, or even to design their own accounts for low income recipients to access their federal payments.

4) Perpetuates financial apartheid. If Treasury permits non-regulated payment service providers to control access of federal benefit payments to those in low income communities, the financial apartheid that already exists in this nation will simply be extended. Already, middle and upper income Americans enjoy the safety and convenience of a highly regulated banking industry that provides competitive prices and is closely supervised to limit improper activities. Many poor people, on the other hand, are relegated to fringe bankers who are unregulated, unsupervised, and routinely charge exorbitant rates in the uncompetitive financial services market that exists in the low income community. Congress and Treasury originally envisioned EFT 99 as an opportunity to further the use of mainstream banking in low income communities. Allowing fringe bankers to serve as conduits not only fails to advance that admirable goal, it makes it more difficult to achieve.

For once, let us learn from experience. The experience in the low-income communities around the nation is that fringe bankers have developed sophisticated and ingenious techniques for taking money from the poor.

"Fringe banking" is an entire industry devoted to doing business in the low-income community, which has proliferated largely as a result of the deregulation of interest rates and loan terms in many states since the 1980's. Many of these providers constantly push the envelope in terms of the legality of their practices--they keep charging exorbitant fees until made to stop. All too often, the abusive practices are not technically illegal, but exceed the bounds of common decency.[7] Establishing any one of the purveyors of this high cost credit as the conduit of federal payments sanctions and stimulates these types of transactions. The federal government should be in the business of discouraging high cost lending, not providing means to facilitate it.

We do not propose that fringe bankers be prohibited from providing *any* access to federal money, just not be the primary or sole access for any federal recipient. It should not be the check casher that establishes the account, or makes money off of the account, or markets the account for a bank. Nothing should prohibit check cashers from establishing ATM or POS devices on

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[7]The legal standard applicable to judge these transactions thus becomes one of "unconscionability." Unconscionability generally refers to a transaction "which is so one sided that only one under delusion would make it and only one unfair and dishonest would accept it." *See*, Cobb v. Monarch Finance Company, 913 F.Supp 1164, 1179 (N.D.Ill. 1995).

their premises and selling recipients all of the products and services that are now currently offered. The key distinctions between this and allowing alternative financial providers to be contractors with financial institutions for the delivery of federal electronic payments are:

1) If recipients can only receive their federal payments through "financial institutions" as currently defined by Treasury, they will be pulled into the mainstream banking system, and thus provided with much less expensive means to access their federal money, opportunities for savings, as well as alternative (and less expensive) sources for credit.

2) Recipients who establish a direct relationship with a bank, but who nevertheless choose to access their money through a check casher or a money transmitter, will still have the choice every month of where to obtain their funds-- they would not have to go to the check cashers to receive their federal payments.

3) The banks receiving the federal payments will have a greater source of funds as a basis for community reinvestment back into the low income community, whereas the check casher has no such obligation.

In support of a regulation of arrangements between financial institutions and payment service providers, "commenters are asked to cite specific evidence supporting their position . . ." We cite such evidence below, but before delving into the details, there is merit to a discussion of how much evidence is enough to justify such a regulation.

In previous comments submitted to Treasury on Proposed Rule 31 CFR 208, we provided literally 14 pounds of paper documenting the unreasonable fees charged and the often abusive practices engaged in by alternative financial service providers throughout the nation. The appendix to our previous comments included extensive examples documenting unconscionable fees and charges, abusive practices, as well as the complete absence of consumer protections *when there is no state or federal regulation.* These examples were provided in:

- state and federal court decisions
- published books
- law review articles
- scholarly analyses
- statements of U.S. Senators
- Congressional testimony
- newspaper articles, and
- magazine reports.

In the one year period since we filed the previous comments, numerous new cases, studies, and news stories have appeared documenting the abuses to poor people by the purveyors

of high cost financial services. With the exception of one study,[8] the twenty six part appendix attached to these comments is all new, and supplements the extensive documentation we filed on Proposed Rule 208. These new pieces themselves illustrate the problem of allowing alternative financial service providers to be the conduits for federal payments.

It is the intent of the parties submitting these comments, as well as those previously submitted on Proposed Rule 208, to show that *Treasury's failure to prohibit unregulated financial services providers to be conduits of federal payments would be illegal, and clearly at cross purposes with Congress' express and clear design of the EFT mandate.*

Comments of others[9] filed on this ANPRM also include extensive analyses of alternative financial services and the high costs imposed on poor people by these services. Combined, these comments, with the appendices and the comments of others, extensively document[10] the unfair business practices of check cashers, rent to own companies, and other fringe bankers who might serve as payment service providers if such arrangements were to be permitted.

Arrangements between financial institutions and payment service providers for the delivery of electronic payments are still relatively new. While these arrangements are legal now, clearly the existence of the ANPRM indicates that they may not remain legal. As a result, many payment service providers may be waiting to enter the business until all questions of legality and structure have been determined. More to the point: *the current arrangements of payment service providers must be judged in light of the fact that these practices are ongoing now, while their legality is still being evaluated.* Therefore, the practices and fees being charged now are but the tip of the iceberg: these are the practices and fees that the payment service providers believe will withstand governmental scrutiny. If there is no prohibition, or a lack of adequate regulation, undoubtedly the practices will become even more unfair and the fees more onerous.

II. Factual examples from around the nation illustrate the current problems federal recipients have receiving federal payments through payment service providers.

We have received information from legal services offices, community organizations, and other groups working with low income people from dozens of communities in twenty four states and the District of Columbia, including:

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[8] Fox, Jean Ann, "The High Cost of 'Banking' at the Corner Check Casher: Check Cashing Outlet Fees and Payday Loans," Consumer Federation of America, August 1997, Updated September 1997. (Nonbanked consumers and convenience users of check cashing outlets pay a high price for converting checks into cash due to inadequate state laws and enforcement. Some check cashers and other entities make short-term loans at triple digit interest rates by lending money on post-dated checks.)

[9] Notably the comments of the Offices of Attorneys Generals from several states includes a scholarly analysis of the effect of fringe banking on the low income community

[10] *See* Summary of Appendices for a full description of the documentation provided with these comments regarding the business practices of fringe bankers.

*	Alabama	*	Arkansas
*	Arizona	*	California
*	District of Columbia	*	Florida
*	Georgia	*	Illinois
*	Indiana	*	Hawaii
*	Kentucky	*	Maine
*	Maryland	*	Massachusetts
*	Missouri	*	Mississippi
*	Nebraska	*	New York
*	North Carolina	*	Ohio
*	Pennsylvania	*	South Carolina
*	Texas	*	Virginia
*	Washington		

In some communities, advocates were unable to find check cashers or rent to own dealers who admitted to being involved in electronic deposits. We received many comments from advocates who said the payment service providers were very rude when asked the question of whether electronic deposit of federal funds was available. More alarmingly, advocates found they were often unable to obtain clear information. When they asked the costs of accounts, they were often provided inconsistent information. Written materials were rarely available, and when they were available they were generally not helpful -- even to the lawyers reviewing them for basic information about the costs and terms of the accounts.[11]

In the situations described below, recipients who have signed up with the payment service providers to receive their federal payments have gained only additional costs and a lack of choice each month as to where to cash the check. These recipients also become excellent prospects for the other high cost products of the payment service provider, such as payday loans, rent to own contracts, pawn transactions, sales of lottery tickets, and liquor. The result is that the federal payment simply ensures that the recipient becomes a captive customer of that fringe banker, without any realistic opportunity to go elsewhere if treated unfairly. Payment services providers should not be supported by the federal government and permitted to be conduits for federal payments.

Shelby, North Carolina

At one check casher, the electronic account has no up-front charge, there is a $1 monthly fee to the bank, a $1.95 monthly fee to the check casher, and a $1.05 distribution fee for the check. This totals $4 a month for the recipient to receive a paper check at the check casher's

[11]The lack of availability of helpful, written materials should not lead Treasury to conclude that requiring disclosures about the fees and terms of these accounts would be sufficient regulation. The opposite is the case. The population that is most likely to use payment service providers is least likely to have the literacy skills necessary to process written disclosure information. More importantly, even with full disclosure, low income recipients generally feel they have little actual choice but to accept the onerous terms of the financial services provided to them by fringe bankers. Disclosures more often than not lead to feelings of helplessness, rather than empowerment. Disclosures should always be required. But disclosures alone should not be considered adequate regulation.

office. Then the recipient must pay 3% to cash the check. On a benefit check of $500, this would result in a total fee of $19, or 3.8% of the recipient's income per month. On an annual basis this mushrooms to $228.

Miami, Florida

Of the ten check cashers and rent to own dealers contacted in Miami, eight currently have the capacity to set up electronic accounts. The terms vary. The majority charge a percentage fee plus a flat monthly fee. The percentages vary between 1% and 10% of the check amount. The flat fee is between $3 and $5 monthly. In one example, the recipient's federal check is deposited in the store's own bank which charges the recipient $1.50, plus $10 per $500 of the benefit check amount. Thus, for no extra convenience or services, the recipient's total monthly cost on a $500 benefit check is $11.50.

This store also allows recipients to establish Western Union accounts. For each federal benefit deposited to one of these accounts, $14 is deducted from the account. All the recipient gets for this fee is the ability to receive their benefits in one lump sum at any Western Union outlet.

Fayetteville, Arkansas

Two check cashers have established electronic accounts through Western Union Benefits' Quick Cash Program. There is an enrollment charge of $4 per benefit and a transaction charge of $7 per benefit check deposited.

Payday loans are allowed on federal benefits, and the charge is $15 per $100 borrowed. This results in an APR of 391%. It should be noted that in Arkansas, payday lending is clearly illegal. There is a state constitutional limit on interest rates, and a recent federal court decision confirmed this limit on interest rates.[12]

San Fernando Valley, California

Eight different check cashers and other payment service providers were surveyed. Several do not accept electronic deposits, others do. A typical arrangement is the Western Union program, in which $7.50 is deducted from each benefit deposited electronically in the account. The recipient is provided a paper check, and the check casher charges 1.5% of the face amount to cash its own check. If a client receives a combination of benefits, both Social Security and SSI (a fairly typical scenario), totaling $500, the client would pay $22.28 just to get the cash from the federal benefit (a 4.5% fee). On an annual basis, these fees would be $267.36, or more than one half of a month's income.

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[12] Nelson v. River Valley Bank & Trust 334 Ark 172 (1998).

Another check casher accepts federal payments electronically, and only charges 1.75% of the check amount to cash the payment -- or $8.75 on $500. This store also will allow the use of the scheduled federal deposit to secure a payday loan. The fee for a payday loan on a scheduled federal deposit is 15% of the amount borrowed for a two week period, plus a $10 processing fee. On a loan advance of $200 for two weeks, this would be a 520% APR.

St. Louis, Missouri

The only fringe bankers that could be found that accepted federal payments electronically were Western Union outlets. To use the Western Union ATM feature, $19.95 is charged to establish an account, plus monthly charges of $9.95. Western Union receives a .95 fee for each ATM transaction, and there do not appear to be any non-foreign ATMs. Banks in the area charge between $1.00 and $3.00 to non-customers for ATM usage. So there could be as much as a $3.95 charge for each ATM withdrawal.

The result for a client with a $500 monthly income, ignoring the initial fee to establish the account, assuming three withdrawals with a $2.95 fee each (the average fee), would be a net cost per month of $18.80, or 3.8% of the monthly benefit. On an annual basis these fees total $225.60.

Baltimore, Maryland

One retail store in this city kindly permits the recipients to establish electronic accounts for free and only charges a monthly fee of $5.00. It cashes checks for free with the purchase of goods, but encourages layaways.[13]

Another program in Baltimore operates through a liquor store which charges a flat fee of $2.95 per month for the electronic deposit, provides a paper check to the recipient, and then cashes the check for a fee of 1% for amounts of $800 or less, 1.5% for $801 to $2,999.

Grenada, Mississippi

A supermarket in this small town allows electronic deposit of federal checks. Only $4.95 is charged for each deposit, and nothing is charged to cash the check so long as a purchase is made.

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[13] Layaway is an arrangement with a retail store whereby a chosen item is removed from the general merchandise and kept for the customer to pay off the price. The customer must pay the full purchase price before the merchandise can be taken home. Occasionally a fee is charged, and the programs are generally unregulated. However, the cost to customers for layaways are almost always less expensive than credit.

Philadelphia, Pennsylvania

There are a number of alternative providers of electronic access to federal benefits in Philadelphia. Each one seems to be vying to be the most expensive.[14]

At one check casher, opening the account is free, and the monthly service fee is $10.95, plus $2.95 for each benefit deposited. A recipient who receives two benefit checks, for example Social Security and SSI, would pay monthly fees of 16.85, totaling $202.20 annually. For an additional $1 a month, recipients can access their money through other ATMs. It is unknown what the ATM charges are. There are no payday loans yet, but the company is working to establish these in conjunction with the federal payments. This is despite the fact that payday loans are illegal in Pennsylvania.

At another provider, there is also no fee to establish the account. The monthly fee is 2.5% of each benefit deposit. The use of any ATM other than the place the arrangement was entered into requires a surcharge of $1.50, in addition to the foreign bank's fee (which are in the range of $1.00 to $3.00). Assuming a recipient receives benefits totaling $500 a month, and has three withdrawals, two of which are at places other than this check casher's (with a foreign bank surcharge of $2.00), the cost per month would be $12.50 + $3.50 +$3.50 = $19.50, or 3.9% of the benefit amount. Annual costs would be $234.00.

One program in Philadelphia is offered through both check cashers and pawnbrokers. (The bank providing this program is believed to be PNC Bank.) This program provides a cornucopia of high priced financial services, **many of which appear to be illegal under state law**. Opening this electronic account is free. After the fixed monthly charge of $2.50, the additional monthly charges vary based on the type of access desired:

1) If the client only uses the payment service provider through whom the account was established, the money can be withdrawn in increments at a cost of $1.00 for each withdrawal.
2) If the client wants an ATM card, the "silver" card costs $10.95 a month -- in addition to the $2.50 fixed monthly fee. In addition to the $1 to $3 surcharge imposed by the banks' ATM machine (there is no home bank ATM for these customers), the check casher receives a fee of $2.00 per transaction. Each ATM withdrawal will cost recipients between $3.00 and $5.00.
3) For the client who desires to borrow against the federal benefit, there is a "gold" card at a cost of $20.95 a month, in addition to the $2.95 a month. The transaction fees are the same as for the silver card. But we do not know the fees for the credit extension on the federal payment.[15]

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[14] *See* the comments filed by Community Legal Services of Philadelphia, Pa. for a more extensive discussion of some of these programs.

[15] Under Pennsylvania law the maximum interest permitted for small loans is 23.57% a year. Under the PNC example, assume that the bank allowed one half of the monthly deposit to be made available in the second half of the month, and that the *only* charge for this would be the additional $10 for the "gold card." Thus a $10 fee would

Under this program, the client is required to sign a form stating that the monthly statements required by Reg E to be provided by the bank are sent to the check casher. No phone number is available to recipients who have questions about their benefits or their accounts or the fees charged them.

The Outrage of Payday Loans Provided on Federal Payments

The hot new growth market for financial services in low income communities at the end of the 20th century is payday lending. These small, short term, very high rate loans go by a variety of names: "payday loans," "cash advance loans," "check advance loans," "post-dated check loans" or "delayed deposit check loans." Typically, a borrower writes a personal check payable to the lender for the amount he wishes to borrow plus the fee. Fees for payday loans are most often a percentage of the face value of the check or a fee per $100 loaned. In a payday loan, both the lender and the borrower know that sufficient funds to cover the check are not available when the check is tendered. The check casher agrees to hold the check until the consumer's next payday, usually up to two weeks. At that point, the consumer can either redeem the check with cash or a money order, permit the check to be deposited, or renew the loan by paying another fee. Payday lenders charge the same fee to rollover the loan.

Payday loans are very high priced credit. The annual percentage rate -- APR -- varies depending on the fee and how long the check is held before being deposited or redeemed. For a $100 loan for a seven-day period under Iowa's law, the APR is 780%; for a five-day period the rate is 1,034%.

Use of a personal check makes collection very easy for a lender. Consumers can be frightened into paying up to avoid criminal prosecution for bad check charges or civil litigation for triple damages. Use of the criminal process gives payday lenders a collection tool that no other creditor enjoys.

Payday lending thrives because of peoples' desperation. A typical borrower might need $200 to borrow two weeks before the next check is due. The fees will typically be $40 for this two week loan. At the end of the two weeks, if the borrower doesn't have $200 to make the check good, another $200 must be borrowed, at a cost of another $40. The borrower thus begins a spiral of flipping very high cost loans, because the alternative is unaffordable -- to do without the whole monthly income or be criminally prosecuted for writing a bad check. A recent study found that the typical payday loan is flipped eleven times.[16] If this $200 loan were rolled over eleven times, the total fee would be $440, double the amount of cash received, for an extension of credit lasting 22 weeks.

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be charged for a $250 extension of credit for 14 days (a relatively low priced loan compared to most payday loans). The APR on this extension of credit equals 250%.

[16] *See* Appendix 14, Anderson, Mark, "*Cash Poor, Choice Rich,*" Sacramento Business Journal, January 8, 1999. ("An industry study found that the average payday loan customer makes 11 transactions a year, which shows that once people take an advance, they put themselves behind for quite some time.")

The fact that payday loans are currently being made in several states around the nation *secured by the guaranteed electronic receipt of a federal payment* should be adequate illustration for the absolute necessity to exclude payment service providers from the delivery system for federal payments. Consider this:

- Payday loans are being made *now on federal deposits*, at astronomical interest rates, even while Treasury is considering whether to permit these providers to continue as conduits for federal payments.
- These payday loans are being made in states where they are currently, unequivocally illegal.[17]
- These payday loans are secured by the electronic deposit of Social Security, SSI benefits and Veterans Benefits -- which is clearly illegal under the federal law. Each benefit program specifically prohibits the assignment of these benefits.[18]

These payment service providers are thumbing their noses at state and federal regulators, at consumer advocates, at the news media, and at Treasury. They are anticipating that their effective lobbying techniques will again prevail,[19] and despite their pernicious activities, they will be permitted to continue bleeding low income people of their federal payments.

Banks Engaged in Arrangements with Payment Service Providers

We found that a number of national banks are engaged in these arrangements, although in many cases we were unable to tie the check casher and retail store arrangements to each bank sponsor.

- Corus Bank, Chicago, Illinois, was formed by check cashers for check cashers, mostly, but not exclusively, in Illinois. No fee to establish the account initially is charged. The bank charges $1.10 for Illinois residents and $1.50 for out of state residents per withdrawal. There does not appear to be a limit on what the check casher can charge.

- Pacific State Bank has a program called Quick Access, which used to be run by Beneficial National Bank. Access to funds is available through check cashers and rent to own stores. The bank fee is $3 per transaction and recipients can receive checks two to four days early. There is no limit on the payment service providers' fees.

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[17] For example, in Arkansas and Pennsylvania, there are caps on small loans of 17% and 23.57% respectively. Twenty states have specific payday loan legislation including: California, Colorado, D.C., Florida, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, Nevada, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Washington, Wyoming.

[18] *See* 42 U.S.C. § 407; 42 U.S.C. § 1383; 38 U.S.C. § 530; and 5 U.S.C. § 8346.

[19] Although only twenty states currently specifically permit payday lending, the National Check Casher Association announced at its October conference that its top priority is to make it legal in more states. Currently there are industry sponsored payday bills pending in Alabama, Arizona and Hawaii.

- Republic and Trust Bank runs a program called Benefits Express which makes funds available through check cashers, liquor stores, and rent to own stores. They told us they were currently investigating payday loans. The bank fee is $2.95 per withdrawal. No apparent limit on the payment service providers' fees.

- River City Bank has a program called Dollars Direct providing electronic deposits through check cashers, pawnbrokers and tax preparers. The bank charges the customer a fee of $2.95 per check. It is unknown what the payment service providers' fees are.

- Citibank has a program with the National Association of Check Cashers of America which is currently only available in a few states. This is an ATM card program which also allows POS purchases. Information on bank fees was not available, although there is no limit on the fees charged by check cashers.

- PNC Bank has a program through check cashers and pawnbrokers with a sliding scale of fees described above in the entry for Philadelphia.

- Delaware Bank has an ATM program that recipients sign up for at check cashers. There is a $19.95 set up fee, $9.95 monthly fee and .95 charge from this bank for all ATM withdrawals. This bank also offers what they call "overdraft" protection for all federal recipients, including Social Security and SSI recipients. For any overdraft incurred during the month, a flat fee of $19.95 is charged for that month, in addition to all other charges.[20] These arrangements are made available through check cashers in New York, Pennsylvania, Delaware and other northeastern states.

As Treasury noted in the ANPRM, some of these arrangements involve the delivery of a paper check, others use an ATM card. Some of these arrangements allow the recipients' funds to remain in the individual's own account until withdrawn, others apparently sweep the funds immediately into an account owned by the payment service provider. The accounts are often combined with the opportunity to pledge the federal payment to obtain a payday loan. The consistent feature among the different accounts is the high prices. Again, it should be kept in mind that these accounts are constructed with these onerous terms even while Treasury is contemplating regulating them for cost. One can only imagine how high the costs and how onerous the terms will be if these providers believe they have free rein, if Treasury foregoes regulation.

It really does not matter whether funds are left in the account or swept, whether there is a check delivered to the recipient or a debit card is provided. While some of these programs are clearly worse than others, the costs and terms of all of them are unjustified. A number of these arrangements are bank accounts in many senses of the concept -- the money is left in the account into which it is deposited until it is removed by the recipient at an ATM machine. Presumably not all funds must be withdrawn every month, so that accumulation from month to month is

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[20]If it walks like a duck and quacks like a duck, isn't it duck? This overdraft protection sure sounds like a payday loan.

conceivable. However, these accounts (Citibank's, PNC's and Delaware Bank) are perhaps the most pernicious -- because they are unjustifiably expensive, and are exclusively marketed through check cashers and other payment service providers. Because the payment service providers must receive a cut of each withdrawal, the banks' costs of providing these accounts are unnecessarily swollen.

So long as these banks are permitted to contract with payment service providers to provide access to federal benefits, they have absolutely no incentive to make an ETA or another low cost account available to the unbanked. Allowing this activity turns one of the primary goals of EFT 99 on its head: bringing the unbanked into the banking mainstream becomes even less likely once an account relationship has been established elsewhere.

III. Treasury has a legal mandate to prohibit financial institutions from entering into arrangements with payment service providers to deliver federal payments.

Congress' mandate to Treasury is perfectly clear. First, all federal recipients are required to designate a financial institution to receive the electronic deposit of federal payments:

> (g) Each recipient of Federal payments required to be made by electronic funds transfer shall --
>
> (1) designate 1 or more financial institutions . . . to which such payments shall be made; . . .[21]

Treasury is then required to provide regulations to ensure access at a reasonable cost, with consumer protections. These regulations must apply to all accounts designated by recipients to receive federal payments electronically:

> (I) Regulations under this subsection shall ensure that individuals required under subsection (g) to have *an account at a financial institution* . . .
>
> (A) will have *access* to such an account at a *reasonable cost*; and
>
> (B) are given the same *consumer protections* with respect to the account as other account holders at the same financial institution.[22] (Emphasis added.)

For Whose Benefit Is This Regulation Intended? The first question is "which recipients" of federal payments were intended to be covered by subsection (i): all recipients of federal payments or only those recipients who would not otherwise have an account at a financial institution *but for* the necessity to have an account into which their federal payments can be

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[21] 31 U.S.C § 3332(g).

[22] 31 U.S.C. § 3332(i).

electronically deposited. The question for whose benefit the regulation should be promulgated can be partially addressed by analyzing the necessary components of the two different regulations.

If *all recipients* are to be covered by the requirements of subsection (i), then Treasury has the obligation to establish basic requirements for all accounts at financial institutions into which federal payments will be deposited. This regulation would have to establish a standard for regulators of financial institutions to evaluate whether accounts which receive federal payments meet the requirements of the federal law:

1) *Account.* As Treasury has recognized, an account at a financial institution must have certain attributes, otherwise it is not an account as that term is commonly known. These minimum attributes would include:

- the ability to access the money in the account from the financial institution itself (either through a teller or an ATM or both);
- the ability to withdraw money from the account in increments;
- the ability to leave money in the account, so as to accumulate funds.

2) *Access.* As Treasury has also recognized, the statutory mandate for "access to such an account" must mean something. Only being able to reach one's money through an intermediary, such as a payment service provider, is certainly not access.

3) *Same consumer protections.* At the least, federal depository insurance and full Reg E[23] protections to the recipient must apply from the moment the federal money is electronically deposited in the account until the moment the money is received into the hands of the recipient. The ability to use debit cards at POS devices would also be required if other account holders at the financial institution have this capacity.

4) *Reasonable Cost.* This is perhaps the thorniest issue. What is a reasonable cost for an account at a financial institution? Should the reasonableness of the cost be determined by the market? But if the market were to determine it, then there would be no meaning to the statutory mandate for Treasury to ensure "reasonable cost." "Reasonable cost" is not the same as market cost, as is evident from the evidence provided in these comments. Should the reasonableness of the cost be determined by its relation to the amount of the federal payment? Or should it be determined in absolute terms, as Treasury has proposed for the ETA: dollar limits for monthly fees?

Treasury has already rejected the approach of regulating all accounts established by federal recipients to receive federal deposits:

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[23] The Electronic Fund Transfer Act, 15 U.S.C. § 1693 *et seq.*

> Such a broad interpretation potentially would place Treasury in the position of determining the reasonableness of prices charged by thousand of financial institutions, for a wide variety of account services, to individuals who have account relationships at institutions they have chosen voluntarily.[24]

Although fear of administrative burden cannot be the rationale for an agency's failure to regulate as Congress intended,[25] it does seem to be a more judicious use of regulatory resources to focus the regulatory attention on the unbanked. Indeed, legislative history also tilts in favor of special regulations to protect the unbanked. Moreover, once Treasury begins to regulate all accounts at financial institutions used for the electronic deposit of federal payments for access, cost and consumer protections, how is such a regulation to be enforced? Congress clearly intended to protect the unbanked by requiring *access to bank accounts*. The only rational reading of the law and the Congressional history requires Treasury to ensure the usage of financial institutions throughout the process -- from initiating the account to withdrawal of the money.

> Since this section will require participating beneficiaries to obtain a *bank account*, Congress expects the Secretary of the Treasury *to work vigorously* to accommodate the needs of the unbanked recipients through such means as . . . implement through the private sector *consumer owned bank accounts* where recipients access their funds by debit card or other means, rather than through traditional account features, such as checking. (Emphasis added.)[26]

There is a simple way to meet the statutory mandate to regulate for *access, account, consumer protections and reasonable cost* : prohibit payment service providers from being part of an arrangement with financial institutions for the electronic delivery of federal payments.

If payment service providers are allowed to insert themselves in the process of electronically delivering federal payments to recipients, clearly they will do so only to make money from it. The recipient then must pay two financial service providers, which will double -- or worse -- the costs of the delivery system. There is no way that Treasury can meet the statutory mandate of "reasonable cost" and allow payment service providers to be a part of the delivery system. Once banks are prohibited from using payment service providers to market accounts to federal recipients they will find new ways of maintaining this source of profit. But the prices should be lower, because they would not have to share them with anyone else.

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[24] 62 *Fed. Reg.* 48723 (Sept. 16, 1997).

[25] *See* Reed v. Reed, 404 U.S. 71, 76-77 (1971) (holding that administrative convenience alone did not justify a preferential system of administering statutory benefits); Frontiero v. Richardson, 411 U.S. 676, 688-91 (1973) (same); Califano v. Goldfarb, 430 U.S. 199, 205-07 (1977) (same).

[26] 142 *Cong. Rec.* H48721.

The statute clearly provides Treasury with the legal authority to regulate the arrangements for the electronic delivery of federal payments through financial institutions.[27] Indeed, the plain reading of the statute indicates that Treasury must regulate -- one way or the other -- to protect "individuals required under subsection (g) to have an account at a financial institution . . ." Regulating to prohibit payment service providers is the cleanest and simplest method of accomplishing this statutory mandate. Such a regulation can be justified because of the lack of access to accounts, the lack of consumer protections, and the clearly unreasonable costs imposed upon recipients in the arrangements which are already in place.

Conclusion:

As advocates of low income people, and of consumers generally, we agree that electronic transfers can be a more efficient and safer method of receiving payments than the paper check based system. However, the additional advantages of the electronic system quickly evaporate if recipients have higher costs, unanticipated risks, and greater potential losses, *as will clearly occur unless Treasury prohibits financial institutions from contracting with payment service providers for the delivery of federal payments.*

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[27] The statute itself says: "Regulations under this subsection shall ensure that individuals required under subsection (g) to have *an account at a financial institution* . . ." Further, the Supreme Court has said that deference should be given to an agency's implementation of a statute, Smiley v. Citibank, 517 U.S. 735 (1996) as well as to the agency's interpretation of the statute it is charged with enforcing Chevron, U.S.A. Inc. v. National Resources Defense Council, Inc., 467 U.S. 837 (1984); United States v. Clark, 454 U.S. 555 (1982); Board of Governors of Federal Reserve System v. Investment Company Institute, 450 U.S. 46 (1981).

Summary of Documents in Appendix

Federal check recipients who arrange for electronic delivery of pension, Social Security or Supplement Security Income payments through accounts jointly provided by banks and non-bank financial entities are at risk of abusive lending practices and excessive fees. Rent to own transactions, payday loans, title pawns, and small loans are relatively short-term credit transactions. These lenders want monthly traffic by federal check recipients to pick up their Social Security or Supplemental Security Income payments to provide a steady clientele for high-priced credit. Federal check recipients who receive payments monthly are especially vulnerable to quick and easy credit for lower income citizens who run out of money before they run out of month. Check cashers whose bread and butter business has been cashing government checks are scrambling to find other, more lucrative, ventures to fill in the void left by electronic delivery of state and federal benefits.

Set out below is a list of some of the reports and studies, court decisions, editorials and news articles that describe the products and practices of check cashers, payday lenders, and other fringe bankers. The materials in the Appendix paint a graphic picture of fringe bankers evading usury and small loan interest rate caps, threatening criminal prosecution for nonpayment of loans, and keeping borrowers in perpetual debt. Some of the documents describe the growing political clout, campaign contributions, and lobbying muscle of the fringe banking sector that produces state laws that fail to protect vulnerable consumers.

Appendix 1 Fox, Jean Ann, "The Growth of Legal Loan Sharking: A Report on the Payday Loan Industry," Consumer Federation of America, November 1998. (Report documents the high cost of payday loans made by check cashers, the weak patchwork of state consumer protections, and catalogs private and public litigation and law enforcement.)

Appendix 2 Fox, Jean Ann, "The High Cost of 'Banking' at the Corner Check Casher: Check Cashing Outlet Fees and Payday Loans," Consumer Federation of America, August 1997, Updated September 1997. (Nonbanked consumers and convenience users of check cashing outlets pay a high price for converting checks into cash due to inadequate state laws and enforcement. Some check cashers and other entities make short-term loans at triple digit interest rates by lending money on post-dated checks.)

Appendix 3 Hudson, Mike, "Predatory Financial Practices: How Can Consumers Be Protected?" AARP, Winter 1998. (Report describes the growth and wide variety of predatory financial practices of rent to own stores, pawn shops, small loans, check cashers and payday lenders.)

Appendix 4 "Cash, Credit & EFT '99: Reducing the Cost of Credit and Capital for the Urban Poor," Organization for a New Equality, 1998. (Report analyses the impact of check cashing stores, rent to own, and payday lenders on low income communities. ONE states that fringe banking industry access to the government funds under EFT'99 will open a Pandora's Box and waste the opportunity to bring mainstream financial services to low-income communities.)

Appendix 5 Cardella, Ruth, "Wolf in Sheep's Clothing: Payday Loans Disguise Illegal Lending," Consumers Union Southwest Regional Office, February 1999. (Investigation of payday lending and other subterfuges such as "catalog sales" and "sale-leaseback" show that fringe bankers ignore state usury laws and seek to avoid state credit consumer protections.)

Appendix 6 Hudson, Mike, "Going for the Broke: How the 'Fringe Banking' Boom Cashes in on the Poor," **The Washington Post**, January 10, 1993. (Dependence on check cashers is more costly than using banks and a bad deal for consumers. Car title pawn shops and check cashers making payday loans have been sued for violating usury laws.)

Appendix 7 "Legal Loan-sharking," "Lifeline or anchor?," "Cashing in on the Poor," "Advance to quicksand," "Feeding frenzy," "What will they do?", Editorial series, **Orlando Sentinel**, March 28 - April 2, 1999. (Series of editorials in the Orlando Sentinel paints a graphic picture of the "fleecing of Florida" by title loan companies, check cashers, and payday lenders. Political influence, campaign contributions, and public relations is paid for from the profits made on charging exorbitant rates to low-wage consumers.)

Appendix 8 Order, "Turner v. E-Z Check Cashing of Cookeville, TN, Inc." United States District Court, M. D. Tennessee, January 26, 1999. (Most recent federal court decision on payday lending found that these loans are credit subject to federal Truth in Lending Act contrary to claims by lenders to avoid state usury laws. The order describes the use of threats to bring criminal prosecution for nonpayment of the loan and found that a payday lender cannot prosecute under the Tennessee bad check law.)

Appendix 9 Shinkle, Peter, "Payday loans - Critics call loans 'abusive'; but lenders say they're filling niche," "Legislation so far unable to contain 'unbridled' lenders," **The Advocate**, Baton Rouge, Louisiana, December 27, 1998. (Series of news reports described payday lending abuses by check cashers in Louisiana, including padding the bill with extra fees, concentration of high-cost lenders in minority neighborhoods, repeated roll-overs of payday loans which regulators have been unable to stop, and campaign contributions made to state lawmakers by the industry.)

Appendix 10 Timmons, Heather, "Fast-Growing 'Payday' Loan Business: Convenience or Legal Loan Sharking?", **The American Banker**, March 10, 1999. ("The U. S. Treasury's decision to directly deposit all federal payments this year has check cashers spooked and angling to develop payday loan programs to protect profits.")

Appendix 11 Robertson, Joe, "Consumers Needing Quick Cash are Easy Targets," **Tulsa World**, January 13, 1997. (Small loan laws provide an incentive for lenders to "roll" or renew loans. In Oklahoma, lenders could charge acquisition fees of 10 percent of the loan. One lender refinanced more than 80 percent of its loans.)

Appendix 12 Baldwin, Amy, "Check Cashers Unchecked," **Herald-Leader**, October 19, 1997. (News article describes the two-tier financial system where affluent, well-educated consumers are served by insured, regulated banks and low-income, less-educated consumers use check

cashers and payday lenders at much greater cost. One borrower paid $1,824 over a two-year period to renew a $200 loan every two weeks.)

Appendix 13 Dembeck, Chet, "Check-cashing Fees Bleeding Customers," The **Sunday Capital**, March 7, 1999. (Check cashers in Maryland make payday loans in violation of state small loan interest rate caps and deny that the advances are loans.)

Appendix 14 Anderson, Mark, "Cash Poor, Choice Rich," **Sacramento Business Journal**, January 8, 1999. ("An industry study found that the average payday loan customer makes 11 transactions a year, which shows that once people take an advance, they put themselves behind for quite some time.")

Appendix 15 Pressey, Debra, "Payday Loan Industry Proliferating," **The News-Gazette**, November 11, 1998. (A couple on disability due to mental illness owed seven payday loans to four lenders at the same time for a total of $1,440, more than their combined monthly income. One loan cost 1,825% APR.)

Appendix 16 "Biggest Little Rip-off in Texas," **Austin American-Statesman**, November 13, 1998. (Editorial noted growth in Texas of small loan companies that skirt the small-loan interest rate cap of 85% by claiming their deals are not really loans.)

Appendix 17 Cheek, Duren, "Many Payday Lenders Skirt Law," **Tennessean**, January 24, 1999. (Tennessee reported that more than half of the licensed payday lenders violated state law on disclosures, fee caps and loan splitting. Regulators ordered over $200,000 in refunds but levied no fines. In the nine-month period covered by the Department of Financial Institutions report, 1.2 million loans for over $200 million dollars produced the industry's return on assets of 22.72% and its return on equity of 30.37%.)

Appendix 18 Ivins, Molly, "Banks Muscle In On Loan Sharking," The **Davis Enterprise**, February 28, 1999. (Opinion piece notes that "bank fees are so high that it's not worth having a low-balance checking account. Banks will no longer cash a paycheck if you don't have an account with them even when the check is drawn on that bank....So, it is now big banks underwriting the lobbying efforts to legalize payday loans in 18 states.")

Appendix 19 Locker, Richard, "53% of check loan shops violated Tennessee law," **Commercial Appeal**, January 30, 1999. (Tennessee payday lenders made generous campaign contributions to state lawmakers to support legislation legalizing payday lending. Contributions included $100,000 to the Republican National Committee by the owner of one Tennessee-based company, and smaller contributions to the Tennessee Governor and key legislators.)

Appendix 20 Hendren, John, "Cashing in on 'payday loans'," The **Washington Times**, February 5, 1999. (Eagle National Bank of Upper Darby, Pennsylvania, makes payday loans through Dollar Financial Group in states that outlaw payday loans at triple-digit interest rates. State laws have not been effective in curtailing loan roll-overs.)

Appendix 21 Manor, Robert, "'Payday lenders' draw regulators' attention," **Chicago Sun Times**, November 10, 1998. (A survey of payday loans in Illinois found the average interest rate was 569%. Some lenders claim they are not making "loans" although the paperwork clearly describes a loan.)

Appendix 22 Pyle, Amy, "Consumer Groups Attack 'Payday Loans'," **Los Angeles Times**, February 11, 1999. (California's payday loan law treats companies as check cashers. Payday loan volume in Colorado quadrupled in four years. Check cashing businesses are scrambling to replace lost customers due to more government payments deposited electronically.)

Appendix 23 O'Malley, Chris, "Payday Lenders Profit from Loophole," **Indianapolis Star**, February 21, 1999. (Payday lending in Indiana has grown from $12.7 million loaned in 1994 to $287.7 million in 1998. One customer described paying $903 for a $180 loan. Some payday lenders ask borrowers to sign a release authorizing the lender to electronically deduct payments from their checking accounts. A bankruptcy attorney noted that half the people who seek his help have payday loans.)

Appendix 24 Wells, Rob, "Bank, Check Casher Alliances for Benefit Transfers Stir Debate," **Bloomberg News**, February 25, 1999. (Direct Deposit Plus charges "$2.95 to have the federal government wire Social Security checks to a liquor store, using commercial banks as middlemen to exploit a loophole in federal law, transforming beer stores and check cashing outlets into electronic distribution centers for government welfare and benefit checks." Corus Bank NA and Community Currency Exchange Association of Chicago handled social security check deposits. The bank deducts a fee ranging from $1.10 to $1.60 before transferring the funds into the account at one of the check cashers. One industry analyst estimates that check cashers take in $1 billion annually in fees.)

Appendix 25 Secure Direct Deposit brochure, Community Currency Exchange Association of Illinois, Inc. 1998. (Brochure for the Secure Direct Deposit service of the Community Currency Exchange Association of Illinois, Inc. says Secure check will help stores "Continue cashing checks for Social Security, SSI and other government benefit recipients who choose direct deposit," "protect and even increase your income," and "sell other services to your customers when they come in every month to cash their government check.")

Appendix 26 Woodstock Institute, "Currency Exchanges Add to Poverty Surcharge for Low-Income Residents," Chicago, Illinois, March, 1997. (Low income people are paying significantly more for banking services through currency exchanges than others are paying to banks.)