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 [(3)]

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.[(4)]

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.[(5)]

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. 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,[(6)] payday loans,[(7)] 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 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.[(8)] 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 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,[(9)]

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[(10)] 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[(11)] 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:

* 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.(12)

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.

<u>Shelby, North Carolina</u>

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 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.[(13)]

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.

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.[(14)]

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.

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.[(15)]

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.[(16)]

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.

<u>The Outrage of Payday Loans Provided on Federal Payments</u>

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.[(17)] 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.

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.[(18)]
- 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.[(19)]

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,[(20)] 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.
- 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.[(21)] 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 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; . . .[(22)]

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.[(23)] (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 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[(24)] 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:

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.[(25)]

Although fear of administrative burden cannot be the rationale for an agency's failure to regulate as Congress intended,[(26)] 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.)[(27)]

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.

The statute clearly provides Treasury with the legal authority to regulate the arrangements for the electronic delivery of federal payments through financial institutions.[(28)] 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.*

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.)

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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. [(2)]

2. The National Consumer Law Center, Inc. (NCLC) is a nonprofit Massachusetts corporation founded in 1969 at Boston College School of Law and dedicated to the interests of low-income consumers. NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government and private attorneys across the country. *Cost of Credit* (NCLC 1995), *Truth in Lending* (NCLC 1996) and *Unfair and Deceptive Acts and Practices* (NCLC 1991), three of twelve practice treatises published and annually supplemented by NCLC, and our newsletter, *NCLC Reports Consumer Credit & Usury Ed.*, describe the law currently applicable to all types of consumer loan transactions. - -- -- '

3. 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.

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.

4. 63 *Fed. Reg.* 64820 (Nov. 23, 1998).

5. 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).

6. 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).

7. 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.)

8. 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).

9. 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.)

10. 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

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

12. 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.

13. Nelson v. River Valley Bank & Trust 334 Ark 172 (1998).

14. 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.

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

16. 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%.

17. *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.")

18. 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.

19. *See* 42 U.S.C. � 407; 42 U.S.C. � 1383; 38 U.S.C. � 530; and 5 U.S.C. � 8346.

20. 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.

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

22. 31 U.S.C � 3332(g).

23. 31 U.S.C. � 3332(i).

24. The Electronic Fund Transfer Act, 15 U.S.C. � 1693 *et seq.*

25. 62 *Fed. Reg.* 48723 (Sept. 16, 1997).

26. *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).

27. 142 *Cong. Rec.* H48721.

28. 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).