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Ms. Cynthia L. Johnson
Director, Cash Management Policy and
Planning Division
Financial Management Service
U.S. Department of the Treasury
Room 420
401 14th Street, SW
Washington, DC 20227

Dear Ms. Johnson:

The Credit Union National Association is pleased to comment on the Treasury Department's proposal to implement Section 31001(x) of the Debt Collection Improvement Act of 1996 (PL 94-134), which requires federal benefit payments, except for payments under the IRS Code, to be provided to recipients electronically by January 1, 1999. The proposal appeared in the *Federal Register* September 16, 1997. These comments supplement the statement of Mr. Stan Hollen, Chairman of CUNA's Subcommittee on Payments, October 14 in Dallas, Texas during the Treasury Department's hearing there on the proposal. The Credit Union National Association (CUNA) represents over 90% of the nation's more than 11,500 state and federal credit unions.

CUNA applauds the Treasury Department for agreeing to our request that another proposal be issued early next year that provides more details, particularly regarding the account for recipients who do not currently have a financial institution and the agency's bidding process for designated financial institution agents. As discussed below, we believe many of the issues raised by the agency in the current proposal are difficult if not impossible to address without a clearer picture of the characteristics of the "default" accounts Treasury envisions and the requirements institutions must meet to participate successfully in the bidding process. We look forward to the opportunity to provide additional comments regarding these essential issues.

CUNA commends the Treasury for two other steps it has taken as part of its efforts to implement the Act: the agency's public hearings held in several locations around the country in October and early December, and its public awareness initiatives, including the program November 21 in Washington, DC which brought together financial institution representatives, community activists, and other consumer groups to discuss how best to reach recipients who do not currently have an account. We also appreciate the Treasury's

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willingness to meet with us to discuss how CUNA and credit unions can help Treasury educate those individuals regarding the benefits of using a financial institution, as well as to discuss our operational concerns with the pending proposal.

As we have stated repeatedly to Treasury in previous comment letters, meetings with agency officials, in our statement at the Dallas hearing, and in our statement to the House Banking Committee in late September, CUNA recognizes the difficult task assigned to Treasury regarding the implementation of the Act for individuals who do not have an account. We strongly agree with Under Secretary John Hawke that access to "a low-cost, safe account" for these individuals should be provided in "the most effective means" possible. Nonetheless, we have strong reservations as well as many unanswered questions regarding the current proposal, which are discussed below. We urge the Treasury Department to address these issues and incorporate our recommendations in the next proposal.

**It Is Possible For Treasury To Meets Its Statutory Requirements Without The ETA Program**

Under the proposal, individuals who do not designate a financial institution will be provided an electronic transfer account (ETA) by the Treasury Department. CUNA's Subcommittee on Payments has discussed this issue at length on different occasions over the course of several months. The Committee strongly endorses the Treasury's goal of bringing as many of the recipients who do not have an account as possible into the financial institution mainstream. However, CUNA's Payments Subcommittee questions whether the ETA is necessary to attain that goal, whether it is even possible to activate an ETA program within two years as proposed and whether the Treasury Department has made its implementation of the Act needlessly complicated with the introduction of the ETA.

Under the statute, "all federal payments made after January 1, 1999, shall be made by electronic funds transfer" (Sec. 31001x(1)(f)(1)). The only exception to this directive is that: "The Secretary of the Treasury may waive application of this subsection to payments....for individuals or classes of individuals for whom compliance imposes a hardship; ...for classifications or types of checks; or...in other circumstances as necessary." To implement the requirement that payments be made electronically, the statute provides: "Each recipient of Federal payments required to be made by electronic funds shall ... designate 1 or more financial institutions or other authorized agents to which such payments shall be made..."

Of course, Treasury has reviewed these provisions at length and has concluded that the establishment of an ETA program is necessary for those recipients who do not designate an account. However, we believe it is unclear that the statute requires an ETA. Rather, it directs recipients to designate the institution to which their payments would be transmitted and does not direct the Treasury to designate the institution, even if the individual fails to do so. It does contemplate a waiver system under which eligible recipients would be able to continue receiving paper checks.

We believe that a regulation which requires individuals to select a financial institution to which their funds would be transmitted, and also provides for waivers similar to many of the waiver provisions Treasury is already proposing, would satisfy the directives of the statute in a manner which is simpler and probably more cost effective than the ETA default account system Treasury is contemplating. Of course, we would strongly encourage Treasury to continue its proactive initiatives to educate recipients who do not have an account about the benefits of traditional financial institutions, and we want to continue working with the agency to provide such individuals with information about credit unions, even if the agency implements the ETAs.

In previous comment letters we have stated that credit unions should be allowed to serve individuals outside their fields of membership for purposes of providing the ETA. Credit unions providing ETAs would comprise a very small group, all of whom would have chosen voluntarily to provide these accounts and would have sophisticated technological capabilities. If Treasury decides to require all recipients to designate a financial institution or obtain a waiver and does not proceed with the ETA program as we suggest, credit unions should not be required to provide accounts for individuals outside their fields of membership. Also, any institution designated by a recipient should be allowed to obtain a waiver from providing the account, if that institution can show it does not have the capabilities to provide an account similar to one other recipients are receiving. For example, an institution should be able to receive a waiver if it does not offer ATM access. In that case, the recipient would simply designate another financial institution.

The proposal indicates that if a recipient chooses a financial institution, the account provided would not have the same "reasonable cost" and "consumer protections" that would apply if Treasury provides the account through a designated financial agent. If Treasury requires recipients to designate an institution or obtain a waiver as we are supporting, we believe that those accounts should be provided at a reasonable cost and that the consumer protections that apply to other similar accounts should be provided. Treasury should address the scope of these protections as well as the issue of "reasonable costs" in its final regulation, based on the comments it receives from interested parties and working with the financial institution regulators. Rather than a predetermined amount, "reasonableness" should be reflect several factors, including the institution's costs for providing the account and comparable charges for similar accounts at the institution and in the community. Institutions should meet reasonable cost and consumer protection requirements at the time accounts are established and as long as the accounts are active.

However, rather than having Treasury monitor the application of these provisions, we recommend that the respective financial institution regulatory agencies be given that task and be required to report to Congress annually on how their institutions are complying with these benchmarks regarding accounts to which government benefits are transmitted. If Treasury determines that it should implement the ETA program, we believe institutions

chosen should, of course, provide accounts at reasonable costs and with consumer protections, and that the banking agencies and Congress should monitor compliance with these requirements. The final rule should provide that regarding ETAs, institutions will not be able to charge more than reasonable costs which will be determined by several factors, including the institution's anticipated costs. The final rule should also state that reasonable fees will be a key issue Treasury considers when it selects a designated financial agent.

Even though we feel Treasury may want to reconsider the ETA, if Treasury goes forward with the ETA program CUNA will support it and some credit unions will want to participate in the bidding process to become a designated financial agent. Below is a brief depiction of but one way that credit unions might participate. However, we have a number of concerns about the proposal as its relates to the ETA, which are also addressed below.

**Credit Union Participation**

Whether or not Treasury proceeds with the ETAs, accounts which accept electronically-transmitted benefits should only be provided through regulated financial institutions, such as credit unions.

There are several ways in which the credit unions system could be utilized to provide benefit payments to recipients under Treasury's proposal. Corporate and natural person credit unions could work together to distribute payments. Under this scenario, U.S. Central, the nation's largest corporate credit union which provides an array of correspondent services for credit unions, would be Treasury's first point of contact for receiving federal payments to be distributed through credit unions. U.S. Central would be responsible for transmitting payments to participating credit unions, which upon receipt would distribute the funds to the accounts of members/recipients. Recipients could have access to their funds through ATM and POS outlets that are connected to the national credit union EFT network, as well as branches. This network allows cardholders to have access to their funds throughout the country and around the world. Credit unions participating in shared branching networks and/or large credit unions with extensive branches and ATM/POS capabilities could also be tapped to receive payments directly from Treasury and provide them to their members/recipients.

Despite technological capabilities and the desire to reach out, educate and serve individuals who do not have an account, field of membership requirements may limit the number of ETA recipients that credit unions might be able to serve. Under the Federal Credit Union Act, a credit union may only provide services to members, and an individual may not have an account at a credit union unless he or she is a member (12 USC 1759). (There is an exception under the Act for community development (low income) credit unions which may accept nonmember deposits, 12 USC 1757(6)). The field of membership issue is particularly uncertain as a result of the pending Supreme Court case, NCUA et al v. First National Bank and Trust Co et al. A decision is expected in the first quarter of next year.

We believe that the Treasury Department, working with the National Credit Union Administration Board, should consider whether, for purposes of providing electronic government payments to individuals who do not currently have an account through an ETA, credit unions should be allowed to serve individuals outside their fields of membership if they so choose. Because ETAs involve public funds and participating institutions would be agents of the Treasury, we firmly believe the Department has the authority to allow credit unions to offer such services to recipients outside their fields of membership ( 12 USC 1767).

In addition, Treasury should consider how it could best utilize the Federal Reserve's payments delivery mechanisms to enhance the efficiency of federal electronic delivery and ETAs. For example, the Treasury could provide recipient payments to the Fed, which in turn could credit them to the Fed accounts of institutions providing the ETAs. These institutions would then distribute the funds to their recipient account holders. The Fed should also serve as a safety net and process ETA transactions that cannot be settled elsewhere.

**Concerns about the Proposal**

The proposal does not provide details of the ETA, although the questions that the agency poses to commenters provide some clues as to how Treasury plans to design the account. One of our major concerns is to ensure that consumers have local access to their funds. Based on the information accompanying the proposal regarding the accounts for delivery of benefits, we are not certain Treasury shares this concern.

Under Treasury's proposal, the agency will request bids from interested financial institutions to serve as designated financial agents. These agents will provide ETAs for recipients who do not have an account. We have strong reservations about this process. While Treasury has indicated it wants to work with all types of financial institutions, too many questions are unresolved at this point regarding the ETAs and what will be expected of designated agents. Before institutions know with certainty that they want to participate, they need to know in much greater detail what will be required of them. Also, if Treasury proceeds with the ETAs, the final regulation should allow all types of financial institutions to participate, as long as they have the capabilities to offer an account that meets the requirements of the Debt Collection Improvement Act.

**Waivers**

Under proposed Section 208.10, the Secretary of the Treasury would be able to waive "any provision(s) of the regulations...in any case or class of cases." This language is undoubtedly derived from the Act, which states the Secretary may waive the requirement for payments to be made electronically for several reasons, including "in other circumstances as may be necessary" (Sec. 31001(x)(f)(2)(A)). This language in the proposal appears to be very broad

and more expansive than the statutory provision. We believe the final regulation should provide that the Secretary will only utilize this authority in emergency or extraordinary circumstances, which should be enumerated in the regulation. Absent exigent circumstances, such as technological disasters resulting in the inability of the government to provide recipients their payments electronically, Treasury should provide notice and opportunity for comment to interested parties when it anticipates waiving provisions of the regulation.

The statute also provides that application of the requirement to receive payments electronically should be "for individuals or classes or individuals for whom compliance imposes a hardship" (Sec. 31001(x)(f)(2)(A)(I). The statute does not define hardship and Treasury's proposal would not allow waivers based on mental disabilities, educational level, language barriers or inability to read. Treasury notes that the legislative history acknowledges these impediments may limit an individual's ability to receive electronic payments. Treasury has not provided any compelling reasons why individuals with such impairments should be excluded, and we urge Treasury to include them as recipients who would be eligible for a waiver under the final regulation.

**Treasury's Questions**

The proposal raises a number of questions Treasury would like commenters to address. These include:

* Should each recipient have access to his or her account via a plastic debit card at any location of that institution, including any ATM or POS that accept transactions by that institution?

If this characteristic is required, many credit unions would not be able to offer an ETA. Nonetheless, institutions that want to provide ETAs should be willing to offer the recipient/account holders access via a debit card. The debit card should not be the only means of accessing the account and the individual should be able to write checks or come into the institution for a withdrawal or assistance with the account if he or she chooses.

* Treasury asks for input on how the geographic regions should be drawn for purposes of selecting designated financial agents to provide ETAs.

One system Treasury could employ would be to divide the country basically into the same areas as the 12 Federal Reserve Bank regions. In each region, Treasury could utilize one or more institutions to receive payments on behalf of its own account holders and also act as an intermediary which would transmit payment information to several other institutions in the region that are account holding institution. Such a system, for example, might work with U.S. Central Credit Union serving the Kansas City Federal Reserve District as Treasury's agent.

* What are bidding institutions' expectations concerning the average balance in the account and the benefits of any "float" that might accrue to the institution?

Institutions should not expect to benefit from the use of recipients' funds in the account, as Treasury has indicated that many of the individuals will likely withdraw their funds soon after they are available each month. Credit unions that want to participate in providing service to individuals currently without an account do not want to take advantage of them as other types of financial institutions might want to do. Rather, credit unions would want to provide affordable services to such individuals and be allowed to charge only those fees that are fair and reasonable. Credit unions would focus on promoting savings vehicles to encourage low income individuals without accounts to accumulate savings.

* Who should pay for the cost of the card (as well as any replacement cards)?

Having the recipient paying a reasonable but not exorbitant cost for the card should be permissible. Replacement cards at a reasonable costs should also be paid for by the consumer. However, charges for issuing original cards or replacement cards should be well within an acceptable range and not viewed as an opportunity to gouge individuals, as surveys by consumer groups have shown some banks have tried to do on other fees.

* Should the cost of the account to the recipient be the most important issue in selecting the designated agent or are there other objectives that should be met, even if costs are increased?

Cost should be an important factor but not the only consideration in selecting an institution to hold ETAs for a region or part of a region. Other factors that should be considered are whether personal service will be provided, what efforts the institution will undertake to help educate recipients about the services of the institutions and protections to which they are entitled (such education is a hallmark of the credit union system); how accessible the funds will be in terms of number and location of ATMs or POS outlets that are available; and how the terms and services for the ETA compare with similar accounts the institution is offering to other consumers.

* Should the account provide only a basic withdrawal service at the lowest possible costs, or provide a range of services at a fixed periodic cost?

This should be decided during the bidding process. Generally speaking, institutions wishing to offer an attractive range of services for the lowest fixed costs should be allowed to service the ETAs.

* What should the limits on withdrawals be and should the final rule address ATM surcharges?

Limits on withdrawals should also be decided during the bidding process. The final rule should address ATM surcharges from the standpoint that whether an institution surcharges might be a deciding factor in Treasury's selection of the designated agents. We recognize that the practice of surcharging is widespread within the commercial banking industry, and we urge Treasury to include in its consumer education initiatives information on how consumer can utilize alternatives, such as many credit unions and grocery stores with POS cash back facilities.

* Should additional electronic deposits be permitted?

Additional electronic deposits should be permitted but not required. Likewise, third party payments should be allowed but not mandated.

* Should the account include a savings feature?

Such a requirement may create compliance problems for an institution with Regulation D, reserve requirements. However, encouraging and helping individuals to save is generally a good idea, particularly for low-income individuals who may not have had the ability to establish a savings account. In an important study, "Beyond Cash and Carry: Financial Savings, Financial Services, and Low Income Households in Two Communities," recently announced by the Consumer Federation of America, Swarthmore College Economics Professor John Caskey calls upon financial institutions to provide low-cost savings accounts with the ability to issue money orders from the account as a means to reduce bounced check fees. Whether an institution offers savings features should be a factor Treasury considers in the bidding process.

We would also like to note that if credit unions are successful in being designated as financial agents that they would make the full range of the services they offer available to the recipient, including savings accounts.

* Whether a broad geographic access to the account is necessary and whether access should be provided in outlets in addition to those provided by the institution, such as through third parties; and

An institution that bids to hold ETAs should be willing and able to provide access to recipients' funds at any outlet its other members or customers are able to use for access to their funds. Whether such an institutions is willing to provide additional access, such as through third parties, and at what price, should be part of the competitive bidding process.

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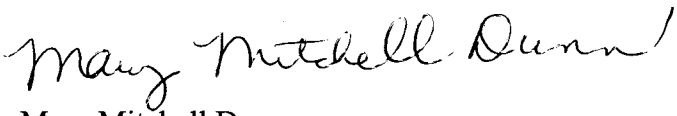
In sum, CUNA questions whether the ETA is required by the statute and whether there is a more straightforward approach to implementing the Act. If, however, Treasury proceeds

with the ETA, CUNA will support Treasury's efforts and continue working with the Treasury so that any credit union which wants to participate in the bidding process will be permitted to do so. We have a number of concerns about the proposal, which we urge Treasury to address in the next proposed regulation.

Again, CUNA appreciates this opportunity to comment on this important proposal. If you have any questions or would like additional information regarding our comments, please do not hesitate to contact us.

Sincerely,



Mary Mitchell Dunn
Associate General Counsel for
Regulatory Advocacy

cc: Treasury Under Secretary John Hawke