AMERICAN
BANKERS
ASSOCIATION

1120 Connecticut Avenue, N.W.
Washington, D.C.
20036

EXECUTIVE DIRECTOR
GOVERNMENT RELATIONS
Edward L. Yingling
202/663-5328

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

Dear Ms. Johnson:

The American Bankers Association ("ABA") appreciates the opportunity to submit our comments on the Treasury Department's request for comment on a new regulation dealing with the direct deposit of all federal disbursements ("EFT-99"). The proposed rule governing the EFT-99 program was published in the Federal Register of September 16, 1997. The proposal describes how the Financial Management Service (FMS) will implement EFT-99 with authorized agents, Electronic Transfer Accounts, waivers and the use of third-party entities. ABA generally supports the proposal of the Financial Management Service to convert paper federal disbursements to electronic deposits.

The ABA brings together all elements of the banking community to represent the interests of this rapidly changing industry. Its membership – which includes community, regional, and money center banks and holding companies, as well as savings associations, trust companies, and savings banks – makes ABA the largest banking trade association in the country.

The transition to a system of virtually all-electronic government payments will have a tremendous impact on millions of people who receive government benefits and venders that do business with the government. It will catapult both the federal government and the private sector into the era of electronic banking, resulting in electronic payments totaling more than $700 billion annually. Making the process work as smoothly as possible is a very high priority for the banking industry.

The Treasury Department's rule will be the "road map" that will guide the implementation process of EFT-99. Overall, ABA's response to the proposed rule is quite positive. The Treasury Department should be commended for its efforts to move forward to accomplish the goal of the electronic funds transfer provisions of the Debt Collection Improvement Act.

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EFT-99 addresses three large segments of federal government payees: benefit recipients who have bank accounts; benefit recipients who do not have bank accounts; and federal government contractors. Payments of all kinds are included in this initiative ranging from Social Security, Railroad Retirement and other income-type payments, to federal vendor payments for everything from defense contracts to janitorial services. Federal law requires that after January 1, 1999, all federal disbursements, with limited exceptions, will be made by electronic transfer.

The largest segment of the EFT-99 initiative is individuals receiving benefit payments who already have a bank account. By the end of 1998, each depository institution customer who now deposits a paper federal benefit check will have to designate a financial institution into which the benefit will be deposited. Moreover, since July 26, 1996, all new benefit recipients have been required to receive their payment by direct deposit.

The second segment is individuals receiving benefits who do not have a bank account. Treasury estimates there are some 10 million individuals who receive federal cash benefits every month who do not have an account relationship with a depository institution. Benefit payments to these individuals average $400 a month. This is the group which is of most concern during the transition to electronic delivery, and it is perhaps the most difficult to reach.

The third segment of the EFT-99 initiative consists of payments to federal government contractors. In addition to making all payments to federal government vendor by direct deposit, depository institutions receiving the payments will be required to deliver the remittance information contained within the addenda records attached to the financial transaction to their customers. This process is commonly referred to as electronic data interchange (EDI). The banking industry is making efforts to become EDI-capable so that the important remittance information can be passed on to federal government contractors. ABA is cooperating with the EC Company (Palo Alto, California) in an effort to provide software and network services which will allow both the banks and their small- to medium-sized corporate customers to become EDI-capable for as little as $500 per year. The National Automated Clearinghouse Association (NACHA) has changed its operating rules to require, by September 18, 1998, that all banks be able to deliver remittance information in "human readable form" within 48 hours of receiving the payment. The feed-back we have had from our bankers indicates that this requirement will not be a problem for the vast majority of institutions.

This comment letter will discuss three aspects of the proposed rule that we believe deserve the most intensive review and discussion to ensure that the implementation of EFT-99 is as smooth as possible: public education, the use of waivers, and design of the electronic account that will be made available for recipients without a depository account.

Public Awareness, Education, and Training

While an education plan is not actually included in the proposed rule, it is critical to the success of the Treasury's overall efforts. We simply cannot overemphasize the need to inform and educate both depository institutions and federal payment recipients about how EFT-99 will affect them. This is especially important for recipients without a depository account, but there are also many individuals with deposit accounts who will be reluctant to move to direct deposit.

We believe that the Treasury must take the lead in making the public aware of the impending changes in the way payments will be made in the future, and in educating and training benefit recipients. The field hearings held over the past several months made it very clear that many benefit recipients are not comfortable with the changes inherent in EFT-99. Without a significant investment in education and training at the local level, the transition to EFT is likely to proceed far more slowly than anticipated. If this is the case, the Treasury will not realize the full potential savings that were the reason for moving to EFT in the first place. Education and training at the local level is, therefore, an extremely important component of the implementation plan. ABA is willing to work with the Treasury, interested consumer groups, and other financial institutions to help recipients understand how the new system will work. But we also urge Treasury to consider how to channel resources to those community-based groups which can work directly with benefit recipients to provide the necessary one-on-one training.

For the past year, ABA has been assisting the Treasury Department in implementing each of its three electronic banking initiatives. Our efforts to date have included a wide range of activities all aimed at educating the financial services industry on the payment changes and the enhanced roles that depository institutions of all kinds will necessarily play when the initiatives are fully implemented. The ABA has held seminars in over 30 states with the Treasury Department, reaching over 1,200 depository institutions. Each of these day-long seminars covered in detail the three Treasury initiatives (EFT-99, EFTPS, state EBT programs) and electronic banking accounts. The sessions concluded with a discussion of the marketing of electronic services to both bank and non-bank customers, with an emphasis on the opportunities for promoting electronic banking. The Treasury's electronic initiatives have also been a major agenda item in our banker Town Meeting programs. In addition, we have published articles, written to all banks in the United States and hosted senior-level Treasury officials on conference panels and on programs over ABA's television network on this issue. We will continue these educational efforts with our members over the next year.

Depository institutions are already taking steps to move their customers to direct deposit. The Treasury has developed a program to permit the enrollment of individuals for direct deposit through the automated clearing house system. This paperless program, Quick$tarts, is being used by an increasing number of depository institutions and allows a much smoother and faster conversion to direct deposit than a paper-based system.

The education of ***consumers*** is the next major component in the education process. This will be a big job. For example, after 20 years of availability, 67 percent of all Social Security recipients receive their benefit by direct deposit. Under the timetable laid out in EFT-99, the other 33 percent, who now receive a paper check, will have to convert to direct deposit in 13 months. Even higher conversion rates must be made on Supplemental Security Income (SSI), veterans and other income-type benefits. Clearly, a great deal of movement to direct deposit must take place within a relatively short time frame. A substantial effort will be necessary by all parties.

We also have to recognize that some recipients may never be convinced, despite all the evidence, that their benefit can be more safely and efficiently delivered to them by an electronic direct deposit rather than a paper check. Our educational programs must be aimed at alleviating the fears of these recipients to the degree possible. For example, during our banker seminars last spring, we heard time and again stories of individual recipients who had cashed their Social Security check at a bank, looked at the cash and then handed the money back to the teller to be deposited into their account. There was one story about a woman taking the cash home to her husband, only to return a few hours later to deposit the cash into their account. We all must recognize that, in addition to these individuals, there are many others who will be outraged that the federal government would attempt to tell them how they can receive their benefits. Simply put, while we must work hard to educate, motivate and convince individuals to move to direct deposit or to open an account at a financial institution, we must also be realistic in our expectations. There could be considerable resistance as 1999 approaches.

A sizable education and outreach effort will be required to reach the 10 million recipients of federal benefits who do not now have an account at a depository institution. The Treasury Department's consumer study completed this past spring showed that many of those without banking relationships have had bank accounts in the past but have closed the accounts for a variety of reasons. This research also shows that approximately 60 percent of individuals who do not have accounts actually go to a financial institution to cash their benefit checks. The rest cash their checks at grocery stores (20 percent), other retail outlets (12 percent) and check cashers (8 percent). Again, however, we must be realistic. Even though the majority of individuals without accounts are cashing checks at a financial institution, it does not mean that it will be easy to convince these individuals to open a deposit account, even though it may clearly be in their interest to do so for a variety of reasons.

After all, in spite of coming to a depository institution to cash their checks, they have chosen not to open an account. Even working with consumer groups and the Treasury, we are unlikely to reach everyone who needs reaching within the next year.

Further complicating the job of educating benefit recipients is that the specific attributes of the basic account that will be offered by the Treasury (through depository institutions) are not yet determined. In fact it is likely, as the Treasury has acknowledged, that their new Electronic Transfer Account (ETA) may not be up and running by January 1, 1999 (if this is the case, there will be an automatic waiver for all benefit recipients without an account until the ETA becomes available, or January 2, 2000, whichever comes first). It will be difficult for Treasury to design and carry out a comprehensive educational campaign before knowing what the account will actually look like.

Proposed Rule Regarding Waivers

We believe the Treasury's proposal regarding the process for obtaining a waiver that would allow a recipient to continue to receive paper checks is appropriate. It is simple, relying on a self-certification of hardship rather than an application process. This is a prudent and realistic approach, given the magnitude of the effort. The proposed waiver process has the advantage of not requiring an expensive bureaucratic process to review waiver applications.

The proposed rule gives the discretion for using a waiver to any benefit recipient receiving benefits prior to July 26, 1996, who has an account and who perceives that a direct electronic deposit would cause a hardship due to a physical disability or difficulty in traveling to a financial institution. The ABA agrees with this interpretation, leaving the definition of a physical disability or geographic hardship to the benefit recipient to determine.

In addition to the physical or geographic hardships discussed above, individuals who do not have an account with a financial institution are eligible to use financial hardship as an additional reason to obtain waiver. Many questions were raised in the field hearings as to whether the circumstances under which a waiver could be issued should be expanded. In particular, there were several requests that the Treasury consider including in the definition of hardship limited literacy skills and lack of fluency in English. We understand that these problems are not specific to EFT – they make it difficult for recipients using paper checks as well as electronic payments. But until EFT becomes more generally used and better understood, electronic payment may be more difficult for those with limited literacy or language problems. Therefore, the Treasury may want to consider expanding the definition of hardship to cover these circumstances.

We agree with the Treasury's proposal that benefit recipients who became eligible after July 26, 1996, and who have an account at a financial institution, should not be eligible for broad waivers. The successful implementation of EFT-99 will certainly be facilitated by requiring that all new benefit recipients with deposit accounts receive their benefits by direct deposit.

Ultimately, success in moving to direct deposit will depend on two things: First, a good educational effort to make people aware of and comfortable with the process; and second, well-designed electronic accounts that provide good service at a reasonable cost. These two factors will help ease the anxieties of benefit recipients and will minimize the use of waivers. Over time, the transition process will move forward and the goal of delivering all – or almost all – federal payments by EFT will be achieved.

Proposed Rule Regarding Electronic Delivery of Federal Benefits

The proposed rule envisions an Electronic Transfer Account (ETA) that will accept direct deposit of federal benefits and provide access to these funds for individuals without a deposit account. The ETA will be offered on a regional basis by depository institutions contracting with the Treasury Department. We believe that this is the correct approach. Depository institutions are uniquely positioned to provide ETA services, and competitive bidding for the Treasury contract will help ensure that recipients have access to the best services at a reasonable price.

Moreover, we strongly agree with Treasury's interpretation in the proposed rule that the statute does not give Treasury the authority to regulate prices of deposit services that are ***voluntarily obtained*** by federal benefit recipients in a competitive marketplace. Such attempts to regulate prices would place Treasury in the untenable position of assessing the "reasonableness" of thousands of accounts offered by depository institutions in thousands of locations across the country, and would create a large, unnecessary, and costly burden for both Treasury and depository institutions. And worst of all, this process – like other attempts at price setting and product design by government – simply will not work. It would result only in an administrative nightmare, as the government attempted to look at the thousands of combinations of price, product design and location. Inevitably, such an effort would increase costs, reduce service and cut off innovation.

The combination of the Treasury's ETA and the wide variety of competitive accounts offered by individual depository institutions will provide recipients of government payments with a great many choices of deposit services at reasonable cost without the need to regulate large segments of the financial services industry.

More broadly, ABA believes that the development of fully electronic accounts is extremely important not only for implementation of the EFT-99, but also for many current bank customers, whether they receive government benefits or not. In August of this year, we wrote to Secretary Rubin and Chairman Greenspan urging a review of existing regulations to facilitate the development of reasonably priced electronic accounts. We will continue to work with Treasury and others to adapt the current regulations, which were designed for a paper-based system, to make them more appropriate in an electronic environment.

Since the Treasury's proposed rule was published for comment in September, there has been considerable concern over the cost and design of the ETA. Many consumer groups and individual recipients are understandably anxious about where and how they will be able to access their funds and what fees may be imposed. The fact that the specific attributes of the ETA have not yet been developed is clearly adding to the anxiety of many benefit recipients.

Cost Issues

One concern is that moving to electronic delivery of federal benefit payments will end up costing recipients more than they currently pay. Certainly, it is not the intent of EFT-99 to place an additional cost on benefit recipients. But it is important to recognize that even with a paper check, benefit recipients do not conduct their financial business without some cost.

For example, if an individual goes to a financial institution, retail establishment or check casher to cash a check, a fee may be charged; and if money orders are needed to pay rent, utilities, telephone or other monthly obligations, a fee will be charged for these services as well. Consumer groups have not estimated what these costs may be, but for an individual who cashes one check and uses three money orders per month, a total monthly cost of $9.00 (free check cashing and $3.00 per money order) to $15.00 (3 percent check-cashing fee on a $400.00 check and $1.00 per money order) seems a reasonable approximation. The point is that most individuals incur some costs even under the current system. Only those few individuals who currently cash their checks for free and pay their bills with cash pay nothing under the current system, and these individuals can get a waiver based on financial hardship, continue to receive a paper check and not have to change their current practices.

As mentioned above, the competitive bidding process for the Treasury contract to provide the ETA, and the competition among financial institutions providing low-cost electronic accounts to all their customers – including federal benefit recipients – will ensure that a variety of reasonably priced financial services will be available to all consumers.

Design Issues

The design of the ETA is not specified in the proposed rule, but the proposal does ask some general questions about what the account should look like. We are not prepared at this time to offer specific recommendations on the structure of the ETA. In fact, we believe the specific characteristics of the account must be an integral part of the contract process between Treasury and the bidding depository institutions. However, we do have some suggestions for the conceptual framework around which the account should be structured.

The Treasury's responsibility is to provide recipients with access to federal benefits. This basic responsibility does not change with EFT-99 – what is currently provided by check will now be provided electronically. We do not mean to minimize the size of the task Treasury faces in switching to electronic delivery – but it does help to focus on what the ETA is intended to do. We believe the ETA should be simple and easy to use. It should provide a convenient way for recipients to access their federal benefits, using automated teller machines (ATMs) and point-of-sale terminals (POS).

There has been a great deal of discussion about adding features to the ETA including, for example, third-party payment mechanisms or additional deposit-taking capability. We understand that these features may be attractive to some recipients. However, it is important to recognize three things: First, these features go beyond what is currently provided to benefit recipients in the form of a paper check, and beyond the obligations of Treasury to provide federal benefits. Second, the more features the account has, the more complicated it will be to use, and the more it will cost to provide it. Third, there will be a wide variety of accounts offered by the private sector available to recipients who want additional services. The purpose of the Treasury's ETA should be to offer basic service at reasonable cost. Consumers can choose among the ETA and the private sector accounts to find the combination of service and cost that best suits their needs.

The use of third-party payment agents for federal benefits

Another important issue is whether federal payments can be deposited into an account controlled by someone other than the person entitled to the payment. We agree with the Treasury that this situation raises concerns about the protection of the recipient's interests, and we agree with the conclusion that all federal payments should be made to an account at a financial institution. The Treasury commentary states, in part:

> Specifically, Treasury is concerned about the potential failure of agents to honor their obligations, especially since, except in limited cases, there is no Federal oversight of such arrangements. Additionally, non-financial institutions may not be subject to Federal consumer protection laws. Therefore, defining "authorized payment agent" broadly and permitting Federal payments to be deposited into accounts controlled by a wide range of entities may expose recipients to the credit risk associated with the failure of such authorized payment agents.

The banking industry would like to bring as many individuals as possible into the banking system. We believe we offer good products at competitive prices, meet high standards of safety and soundness, and provide significant consumer protections. Simply put, we believe a depository account will give benefit recipients the best service and the best value.

However, we also understand that there are individuals who, for whatever reason, do not want to deal with a bank. Many of those recipients who do not wish to deal with a depository institution will be able to qualify for a hardship waiver allowing them to continue to receive a paper check. This should take care of the vast majority of those who do not want to deal with a bank.

A related question is whether non-bank firms, such as retailers, check cashers and money transmitters, should be permitted to establish partnership arrangements with a bank to provide access to federal payments for benefit recipients. This would have the advantage of giving individuals who are currently using these firms the option to continue to do so. This is an important consideration – for the Treasury to simply mandate that all recipients must use a bank will clearly cause considerable ill-will. To accommodate recipients who want to use non-bank service providers, the proposed rule allows insured depository institutions to partner with third parties to provide delivery of electronic payments.

We believe this is a reasonable approach. However, it raises several important consumer issues, as well as some operational issues. Banking institutions provide customers with high standards of protection and service. Will the same standards be true of those partnering with banking institutions? The statute specifically requires that all consumer protections be available to benefit recipients. How will compliance with these requirements be enforced on non-depository providers? There is no existing federal regulatory mechanism for overseeing many of these non-bank firms. While some issues may be resolved under contractual agreements, experience will be needed to determine whether these types of arrangements are workable.

We believe that the proposal for allowing partnership arrangements has merit, but we must ensure that all those who provide financial services to federal benefit recipients meet the same high standards of safety and soundness and offer the same consumer protections that are provided by depository institutions. Therefore, we urge Treasury to regularly review third-party distributors to see how these partnership arrangements are working.

Thank you for this opportunity to comment on the proposed rule governing the implementation of EFT-99. We believe the Treasury's proposed rule represents a very reasonable and realistic approach to this mammoth undertaking, and we look forward to continuing to work with you to ensure a successful transition to electronic delivery of federal benefits to individuals and federal payments to government vendors.

Sincerely,

Edward L. Yingling