DATES: The public hearing originally scheduled for Wednesday, January 13, 1999, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Michael L. Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Friday, October 23, 1998 (63 FR 56878), announced that a public hearing was scheduled for Wednesday, January 13, 1999, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 6011(e) of the Internal Revenue Code. The request to speak comment period for these proposed regulations expired on Wednesday, December 23, 1998.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of January 4, 1999, no one has requested to speak. Therefore, the public hearing scheduled for Wednesday, January 13, 1999, is cancelled.

Michael L. Slaughter,

Acting Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–408 Filed 1–7–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Chapter II

RIN 1505–AA74

Possible Regulation Regarding Access to Accounts at Financial Institutions Through Payment Service Providers

AGENCY: Fiscal Service, Treasury.

ACTION: Advance Notice of Proposed Rulemaking (ANPRM).

SUMMARY: The Debt Collection Improvement Act of 1996 (the ''Act'') requires that, subject to waiver, all federal payments (other than tax payments) made after January 1, 1999 shall be made by electronic funds transfer (''EFT''). It also mandates that the Secretary of the Treasury (''Treasury'') ensure that individuals required by the Act to receive their payments electronically have an account at a financial institution, with access to such an account at a reasonable cost and with the same consumer protections with respect to the account as other account holders at the same institution. Treasury has issued a rule implementing the Act. Treasury is also designing an electronic transfer account (''ETA SM'') for which any individual who receives a federal benefit, wage, salary, or retirement payment shall be eligible, and that may be offered by any federally-insured financial institution that enters into an ETA SM Financial Agency Agreement with Treasury; Treasury has asked for public comment on the proposed ETA SM.

Separately, certain financial institutions have entered into arrangements with nondepository payment service providers, such as check cashers, currency dealers and exchangers, and money transmitters, whereby recipients of electronic federal payments deposited into a non-ETA SM account at the financial institution may gain access to these payments through payment service providers. These service providers are not themselves eligible to maintain deposit accounts or to receive electronic deposits directly from the government. Treasury is seeking comment on whether it should propose regulations regarding these arrangements, and if so, what the content of such regulations should be.

DATES: Written comments are encouraged and must be received on or before April 8, 1999.

ADDRESSES: Comments should be mailed to the Office of the Fiscal Assistant Secretary, U.S. Department of the Treasury, Room 2112, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. Comments received on this ANPRM will be available for public inspection and copying at the Department of the Treasury Library, Room 5030, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. To make an appointment to inspect comments, please call (202) 622–0990.

FOR FURTHER INFORMATION CONTACT: Roger Bezdek, Senior Advisor for Fiscal Management, Office of the Fiscal Assistant Secretary, at (202) 622–1807; or Gary Sutton, Senior Counsel, Office of the General Counsel, at (202) 622–0480.

SUPPLEMENTARY INFORMATION:

I. Background

Section 31001(x) of the Act requires that all federal payments [1] made after January 1, 1999 be made by EFT, unless Treasury grants a waiver. The Act further mandates that Treasury ensure that all individuals required by the Act to receive their payments electronically have an account at a financial institution, with access to such an account at a reasonable cost and with the same consumer protections with respect to the account as other account holders at the same institution. Treasury's final rule implementing this mandate, 31 CFR Part 208 (''Part 208''), provides that any individual who receives a federal benefit, wage, salary, or retirement payment shall be eligible to open an ETA SM, and that the ETA SM may be offered by any federally-insured financial institution that enters into an ETA SM Financial Agency Agreement with Treasury.[2]

At this time, more than two-thirds of federal payment recipients receive their payments electronically, primarily by Direct Deposit.[3] However, there are millions of recipients of federal payments that do not have an account at a financial institution and are therefore not positioned to receive their payments by Direct Deposit. Treasury is designing the ETA SM primarily to afford these recipients a safe, reliable, and economical means of accessing their federal electronic payments in compliance with the requirements of the Act. Treasury recently published a notice and request for comment regarding the proposed ETA SM (''ETA SM Notice'').[4] As is more fully described in the ETA SM Notice, the proposed ETA SM will:

- Be an individually owned account at a federally-insured financial institution,
- Be available to any individual who receives a federal benefit, wage, salary, or retirement Payment, regardless of whether the individual already has an account at a financial institution,
- Accept only federal electronic payments,

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[1] The Act defines ''federal payments'' to include federal wage, salary, retirement, and benefit payments and vendor and expense reimbursement payments. Payments under the Internal Revenue Code of 1986 are excluded. 31 U.S.C. § 3332(j)(3) (Supp. 1998)

[2] 63 FR 51490 (Sept. 25, 1998). Part 208 generally defines ''financial institution'' as any ''insured bank,'' ''mutual savings bank,'' ''savings bank,'' or ''savings association,'' as each term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), any ''insured credit union'' as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752), or any agency or branch of a foreign bank as defined in section 1(b) of the International Banking Act, as amended (12 U.S.C. 3101). 31 CFR § 208.2(k).

[3] Direct Deposit is the EFT payment mechanism by which federal payments are sent through the Automated Clearing House (ACH) system to an account at a financial institution established by the recipient. 31 CFR Part 210.

[4] 63 FR 64820 (Nov. 23, 1998).

• Permit a minimum of four withdrawals per month, included in the monthly fee, at the financial institution's offices and/or proprietary automated teller machines (''ATMs''), at the financial institution's option,

• Be subject to a maximum fee of $3.00 per month, and

• Provide the same consumer protections that are available to other account holders at the financial institution.

Financial institutions will be prohibited by Treasury's Financial Agency Agreement from entering into arrangements with nondepository payment service providers to provide access to ETAs SM. The ETA SM Notice also requests comment on three other features that are not currently part of the proposed ETA SM, to determine whether any or all should be added to the ETA SM at the option of the financial institution and at additional cost, if any, to the account holder: payment of interest on balances, allowing deposits of other electronic funds, and allowing ACH debit capability.

II. Payment Service Providers

The vast majority of financial institutions already offer Direct Deposit directly to federal payment recipients. Moreover, it is anticipated that many financial institutions will offer ETAs SM to recipients. In addition, however, in anticipation of the Act's EFT requirement, a number of financial institutions are offering or planning to offer Direct Deposit services that involve prearranged linkages with nondepository providers of financial services such as check cashers, currency dealers and exchangers, and money transmitters (''payment service providers'').[5] Payment service providers comprise a number of diverse businesses that vary greatly in size; they include large, publicly held companies that are in the business of providing money transfers, money orders, and related payment services on a nationwide basis, as well as small businesses that operate from a single location. Many of these businesses offer check cashing in conjunction with other financial products, such as ''payday loans.''[6] Moreover, many such businesses may offer other nonfinancial products and services to the same customers (*e.g.*, as a convenience or grocery store or liquor store). However, a common element that these payment service providers share is that they are not subject to comprehensive federal regulation,[7] and are generally subject only to limited regulation, if any, at the state level.

These arrangements between financial institutions and payment service providers typically involve the establishment of an account in the name of the recipient at a financial institution into which the recipient's payment is deposited, followed by the transfer of the payment to a commingled account in the name of the payment service provider, and in which the recipient's interest may not be fully covered, if at all, by federal deposit insurance. The recipient then accesses the payment at an outlet of the payment service provider, where the recipient is given either cash or a check. Typically the recipient is charged an enrollment fee and a monthly fee for the service, and, if applicable, a check cashing fee. Although these arrangements vary considerably with respect to access to payments, fees charged, applicability of federal deposit insurance, and disclosures, customers of these services usually must access their payments through the payment service provider rather than directly through the depository institution that receives the Direct Deposit, must withdraw the entire amount of the federal payment rather than a portion thereof, and often must pay significant fees.

The following are descriptions of some arrangements between payment service providers and financial institutions, either in existence or under development, of which Treasury is aware:

• In one arrangement, the federal payments of recipients who enroll in the program are initially deposited into a federally insured account of the recipient at the participating financial institution. These payments are immediately transferred to a trust account at the financial institution that contains the federal payments of all recipients who enrolled at a particular check casher. A recipient's only means of accessing his funds is by obtaining a check at the check casher where the recipient enrolled, in the full amount of the federal payment. The recipient may then cash the check at the check casher or elsewhere. An enrollee may obtain a monthly statement at the check casher or by mail, at his option. The cost for the program is $1.60 per federal payment, plus a check cashing fee.

• A second arrangement establishes a federally insured account at a financial institution affiliated with the service provider for each recipient enrolled in the program. After the financial institution receives a federal payment and credits it to the recipient's account, the amount is immediately transferred to a pooled account at an unaffiliated financial institution in the name of the payment service provider, in which each recipient's interest is not federally insured. Recipients in the program may withdraw the amount of the federal payment (in full or in part) and check the available balance at any office of the payment service provider, as well as at any ATM included in a participating network. The charges for the program include a $4.00 enrollment fee, a $5.50 monthly maintenance fee, and a $1.00 fee for each withdrawal or balance inquiry.

• In a program being developed, a recipient could enroll at any check casher that is a member of a national trade association. The participating financial institution would establish a federally insured account subject to Regulation E[8] to receive each enrollee's federal EFT payment. The recipient could withdraw the amount of the federal payment (in full or in part) from his account at any participating check casher through a point-of-sale device, or at any ATM of the financial institution or of any participating network, but not at the financial institution's offices. The fees for the program would be determined by each check casher.

A number of concerns have been articulated regarding financial institutions entering into these kinds of arrangements with payment service providers, with respect to delivery of federal payments. The concerns include that these arrangements could result in recipients being charged excessive fees for accessing their electronic federal payments; that by participating in such arrangements, the recipients may lose the benefit of certain consumer

[5] Subject to limited exceptions, Part 208 requires that electronic Federal payments must be deposited into a financial institution account ''in the name of the recipient.'' The exceptions to this requirement are limited to payments to an ''authorized payment agent,'' which includes a representative payee or fiduciary under the regulations of the agency making the payment, or to an investment account established through a broker-dealer or investment company registered with the Securities and Exchange Commission. 31 CFR § 208.6. These types of entities are therefore not considered ''payment service providers'' in the context of this ANPRM.

[6] *See* ''The Growth of Legal Loan Sharking: A Report on the Payday Loan Industry,'' Consumer Federation of America, November 1998.

[7] Although not directly relevant to this ANPRM, Treasury's Financial Crimes Enforcement Network (FinCEN), in connection with its anti-money laundering program, has proposed regulations under the Bank Secrecy Act (''BSA'') requiring that ''money services businesses,'' a category that includes, among others, check cashers, currency dealers and exchangers, and money transmitters, register with FinCEN (as mandated by the BSA), and that certain of these businesses file reports of suspicious activities. 62 FR 27890, 27900 (May 21, 1997).

[8] 12 CFR Part 205.

protections, such as federal deposit insurance, that they would otherwise have as an account holder at the financial institution; and that recipients may not be adequately informed of the fees they may incur or the protections they may forego by entering into these arrangements. Some have pointed out that many payment service providers offer other products, such as short term, high rate advances known as ''payday loans,'' to their customers, that may subject them to substantial payments, fees, or other risks. Some have argued that, if the amount of the federal payment is immediately transferred out of the recipient's financial institution account into a payment service provider account, and the recipient cannot withdraw less than the entire amount of the federal payment from the account or maintain the account separately from the relationship with the service provider, then the recipient in fact may not have an ''account'' at a financial institution in any meaningful sense. Others have argued that, if the recipient cannot access his federal payment directly at the financial institution but may do so only at an outlet of the payment service provider, the recipient may not have ''access'' to an account at a financial institution. In addition, the arrangements in which the payment service provider prints its own check for the recipient are contrary to the goal of replacing paper checks with electronic payments. However, others have noted that payment service provider arrangements provide access to funds for recipients residing in areas underserved by banks and other financial institutions, including low and moderate income and rural areas.

As Treasury announced in the ETA℠ Notice,[9] a financial institution that offers the ETA℠ may not enter into arrangements whereby a recipient of an electronic federal payment may access an ETA℠ through a payment service provider. In addition, Treasury has urged the federal bank regulatory agencies to take steps to ensure that the institutions they regulate take responsibility for full and fair disclosure of all fees charged by the parties involved in arrangements whereby recipients access federal EFT payments deposited in non-ETA℠ accounts through payment service providers, as well as the legal relationships involved and the applicability of federal deposit insurance. Moreover, Treasury continues to explore ways to facilitate access to federal EFT payments in areas underserved by financial institutions; these include working with other public entities to expand ATM access in these areas.

However, some commenters have urged Treasury to go further, and also to regulate arrangements between financial institutions and payment service providers whereby a recipient of an electronic federal payment accesses a non-ETA℠ account at such a financial institution through a payment service provider, such as those described above. Treasury did not regulate these arrangements when it adopted Part 208, but noted in its adopting release that it would monitor their development.[10]

In light of the concerns regarding these arrangements described above, Treasury is considering whether rulemaking is necessary or appropriate with respect to such arrangements, and if so, what the content of such regulations should be. In considering these questions, Treasury is endeavoring to ensure that federal payment recipients have access to their funds at a reasonable cost and with the same consumer protections as other account holders at the same financial institution, to increase use of EFT for federal payments in order to reduce cost to the federal government, and to increase participation by federal payment recipients in the country's financial system.

III. Issues for Comment

Treasury is seeking comment on the following questions:

- Should Treasury regulate or prohibit arrangements between financial institutions and payment service providers in which electronic federal payments are deposited into a recipient's non-ETA℠ account at a financial institution but made available to the recipient through a payment service provider?
- Do such arrangements deny the recipient either: (a) an account at a financial institution, (b) access to such account, (c) access at a reasonable cost, or (d) the same consumer protections with respect to the account as other account holders at the same institution?
- Should all payment service providers be subject to regulation, or only a particular subset, and if only a subset, what is the basis for such distinction?

Commenters are asked to cite specific evidence supporting their position, *e.g.*, data showing that the fees charged recipients by payment service provider arrangements (either generally or with reference to specific types of payment service providers or specific recipients) are or are not reasonable; that specific consumer protections, such as federal deposit insurance or Regulation E coverage, are given or denied to such persons; or the extent to which the recipient may or may not have either an account at a financial institution, or access to such account, under such arrangements.

Treasury is also seeking comment with regard to the nature of any regulation that may be appropriate for payment service provider arrangements. As noted above, a range of suggestions have been made as options for Treasury to consider; these generally fall into two broad categories. Under one category, Treasury would generally prohibit arrangements between financial institutions and payment service providers whereby electronic federal payments received at such institution are accessed by the recipient through a payment service provider. For example, some have urged that Treasury could require all financial institutions that receive federal Direct Deposit payments for account holders to become Treasury Financial Agents and prohibit these kinds of arrangements with payment service providers in their Financial Agency Agreements. Alternatively, it has been suggested that, under certain circumstances, Treasury could adopt regulations that would prohibit financial institutions that receive Direct Deposit from entering into these kinds of arrangements with payment service providers.

Under the second broad category noted above, Treasury could promulgate rules to delineate further the requirements relating to financial institution accounts required by the Act for receipt of federal electronic payments. Treasury might approach this by establishing minimum requirements for the receipt of electronic federal payments by defining in a regulation terms such as ''account,'' ''access,'' ''reasonable cost,'' and ''consumer protection,'' in the context of the Act. For example, Treasury might determine that, for purposes of the Act, an ''account'' must have certain core attributes, which could include the ability of the account holder, at the account holder's option, to maintain the account and to retain a federal payment in the account, notwithstanding any arrangement with any third party, and to withdraw less than the entire amount of a federal payment made to the account. Similarly, Treasury might determine that, in order to have ''access'' to an account, for purposes of the Act, a recipient must be able to access the account at an office or ATM of the financial institution, notwithstanding any access that may

[9] 63 FR 64820, 64823 (Nov. 23, 1998).

[10] 63 FR 51490, 51498 (Sept. 25, 1998).

exist through a payment service provider. In addition, it is suggested that Treasury could use its rulemaking authority to determine a ''reasonable cost'' for a financial institution account, considering a variety of factors and circumstances. Finally, Treasury could determine that, to satisfy the ''consumer protection'' requirement of the Act, a financial institution must at least provide its recipients with federal deposit insurance (in the cases where the institution is federally insured) and the benefits of Regulation E.

Other options have also been suggested; these include the imposition by Treasury of enhanced disclosure obligations by financial institutions regarding the products being offered,[11] and the enactment of additional state or federal legislation regulating some or all payment service providers. Alternatively, some have suggested that, rather than focusing on the attributes of the financial institution account, regulations should be directed at ensuring that the aggregate fees that may be charged recipients of federal EFT payments are ''reasonable.''

Treasury invites comments on all the above options and suggestions as to how Treasury might implement them, as well as suggestions as to any other type of measure that the commenters believe would be appropriate for these arrangements, including any factual and legal bases therefor. Treasury also requests that any comments address the following issues: Should a suggested regulation be directed at all payment service providers, or limited to a particular subset, and if limited, what is the basis for making such a distinction? What effect would any such regulation have on the Direct Deposit program generally? How could such regulation be limited so as not to disrupt the many types of standard account arrangements, such as preauthorized debits, that are in wide use and do not give rise to the possible abuses that are the focus of this ANPRM? Would the prohibition or regulation of payment service provider arrangements limit or expand the ability of federal payment recipients to access their funds, if such measure would significantly impede or preclude the functioning of such arrangement? How would such regulation further Treasury's objectives, including helping federal payment recipients access federally insured depository institutions, reducing government costs, and improving the payment system?

It has been determined that this ANPRM does not constitute a ''significant regulatory action'' for purposes of E.O. 12866. Treasury specifically requests comments on the costs and benefits of the regulatory approaches discussed in this document, and the economic impact such approaches may have on small businesses.

Comments received in response to this ANPRM will be reviewed and considered by Treasury in preparation for possible further action in connection with the issues discussed herein.

This ANPRM is issued under the authority of 31 U.S.C. 321 and 3332.

Dated: January 4, 1999.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 99–354 Filed 1–7–99; 8:45 am]

BILLING CODE 4810–25–P

[11] As noted above, Treasury has already urged the federal bank regulators to endeavor to ensure that the banks they regulate take responsibility for full and fair disclosure of all fees charged by all the parties involved in these kinds of arrangements, the legal relationships involved, and the applicability of federal deposit insurance. Some have suggested that Treasury could amplify this request by adopting a regulation requiring such disclosure.

DEPARTMENT OF THE TREASURY

Customs Service

31 CFR Part 1

Privacy Act of 1974; Implementation

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, Customs has determined to exempt a system of records, the Seized Asset and Case Tracking System (SEACATS) Treasury/ Customs .213 from certain provisions of the Privacy Act. The exemptions are intended to increase the value of the system of records for law enforcement purposes, to comply with legal prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the system of records.

DATES: Comments must be received no later than February 8, 1999.

ADDRESSES: Comments (preferably in triplicate) may be submitted to the U.S. Customs Service, Office of Regulations and Rulings, Disclosure Law Branch, 1300 Pennsylvania Ave. NW., Washington, DC 20229. Comments will be available for inspection and copying at the Disclosure Law Branch, 1300 Pennsylvania Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ellen Mulvenna, Office of Information and Technology, U.S. Customs Service, (202) 927–0800.

SUPPLEMENTARY INFORMATION: This computerized database will permit the retrieval of information as part of a redesigned work process improving the way the Office of Information and Technology uses technology to maximize efficiency. The purpose of the newly proposed system of records is to provide Customs and the Treasury Executive Office of Asset Forfeiture with a comprehensive system for tracking seized and forfeited property, penalties and liquidated damages from case initiation to final resolution. The system includes investigative reports relating to seizures and other law enforcement matters. Authority for the system is provided by 5 U.S.C. 301; and Treasury Department Order No. 165, Revised, as amended. Pursuant to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury is publishing separately in the **Federal Register** a notice of a system of records entitled Treasury/Customs .213 Seized Assets and Case Tracking System (SEACATS). This system of records will assist Customs in the proper performance of its functions under the statutes and Treasury Department Order No. 165 cited above.

Under 5 U.S.C. 552a(j)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of: (a) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release and parole and probation status; (b) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (c) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision. In addition, under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the