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America's Community Bankers®

April 8, 1999

Office of the Fiscal Assistant Secretary
U.S. Department of the Treasury
Room 2112
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Re: Possible Regulation Regarding Access to Accounts at Financial Institutions Through Payment Service Providers
64 FR 1149 (January 8, 1999)

Dear Sirs or Mesdames:

America's Community Bankers ("ACB") welcomes the opportunity to respond to the Department of the Treasury's ("Treasury") advanced notice of proposed rulemaking regarding the possible regulation of access to accounts at financial institutions through payment service providers.[1] ACB is the national trade association for 2,000 savings and community financial institutions and related business firms. The industry has more than $1 trillion in assets, 250,000 employees and 15,000 offices. ACB members have diverse business strategies based on consumer financial services, housing finance and community development.

The Treasury is seeking comment on whether it should propose regulations regarding arrangements between financial institutions and nondepository payment service providers for electronically depositing federal payments into a non-electronic transfer account ("ETA^{SM}"). In general, ACB believes that the Treasury's aim should be to support and enforce a predictable, minimalist and consistent regulatory framework for the distribution of federal payments. Moreover, Treasury's priority should be to structure the ETA^{SM} in a way that satisfies the statutory access, cost and consumer protection provisions of the Debt Collection Improvement Act of 1996 ("Act").[2]

ACB believes that such an account should be competitively positioned compared to other distribution methods such as those offered through nondepository payment service providers. Additionally, ACB suggests that the Treasury provide adequate consumer information to assist federal payment recipients in making educated choices about their federal payment delivery method options. It is ACB's position that a competitively positioned ETA^{SM} coupled with a consumer awareness campaign may obviate the need for regulatory constraints on relationships

[1] 64 Fed. Reg. 1149 (Jan. 8, 1999).
[2] Pub. L. 104-134, 110 Stat. 1321 (Apr. 26, 1996).

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between financial institutions and payment service providers. A detailed analysis of this issue follows.

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. It also mandates that the Secretary of the 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. In an effort to comply with the requirements of the Act, the Treasury has expended significant resources crafting the components of the ETA℠. There has been no shortage of input from consumer groups, financial services providers, trade groups, such as ACB, and other interest groups in response to the Treasury's requests for comments on the management of federal agency disbursements[3] and more specifically, the proposed ETA℠ features.[4]

The Treasury notes that the vast majority of financial institutions already offer electronic direct deposit programs to federal payment recipients.[5] Moreover, the Treasury anticipates that many financial institutions will offer ETAs℠ to recipients.[6] If the ETA℠ design project works as intended, the voluntary migration of recipients to ETA℠ disbursement should be very satisfactory. Finally, properly designed ETAs℠ may influence consumer choice away from other distribution methods, especially those with higher costs and fewer consumer protections.

In a related development, certain financial institutions have entered into arrangements with nondepository payment service providers, such as check cashers, currency dealers and money transmitters, whereby recipients of electronic federal payments deposited into a non-ETA℠ account at the financial institution may gain access to these payments through payment service providers. The Treasury is concerned 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 protections, such as federal deposit insurance, that they would otherwise have as an account holder at a financial institution; and that recipients may not be adequately informed of the fees they may incur or the protections they may forgo by entering into these arrangements.[7]

ACB does not endorse these types of payment relationships. However, ACB also does not favor regulations that impede an institution's and a consumer's ability to make financial decisions. ACB finds it significant that, in the past, the Treasury also has voiced its opposition to widespread regulation of the prices of deposit services voluntarily obtained by recipients in a

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[3] 62 Fed. Reg. 48714 (Sept. 16, 1997).
[4] 63 Fed. Reg. 64820 (Nov. 23 1998).
[5] 64 Fed. Reg. 1150 (Jan. 8, 1999).
[6] Id.
[7] Id.

competitive marketplace.[8] Furthermore, the Treasury explained that "regulating all accounts opened voluntarily by federal payment recipients would create a significant burden on bank regulatory agencies and the banking industry and would interfere with the functioning of the market for financial services."[9] ACB agrees with the Treasury's observation that broad brush price regulation would interfere with the functioning of the market for account services and be contrary to the best interests of consumers. Just as the provision of the ETA℠ should be a positive factor in CRA examinations, arrangements that take advantage of unsophisticated consumers via unsavory counterparties could be a negative element.

ACB suggests, however, that the regulation of payment service provider/financial institution relationships would have a chilling effect on market competition. ACB suggests that instead of new regulations, a policy statement be promulgated that would advise institutions of business practices the Treasury may find objectionable. A carefully crafted policy statement could guide institution executives into making decisions that enhance profitability without sacrificing access, consumer protections or reasonableness in costs.

As a practical matter, it may be difficult, if not impossible to design regulations that encompass all forms of electronic disbursement methods. For example, future technological developments may give rise to alternative forms of currency or distribution channels. ACB suggests that if the Treasury were to impose a strict regulatory framework on this nascent environment, one possible consequence may be the stifling of beneficial growth. Conversely, if during this formative period, the Treasury monitors federal payment disbursement activities and promulgates guidance rather than rules, the Treasury may enable the development of a fully mature market.

The Treasury has stated that one of its domestic policy objectives is to encourage individuals who do not have an account at a financial institution to move into the financial services mainstream.[10] The Treasury has been working with regulatory agencies and financial institutions on educational efforts designed to encourage individuals to open an account at a financial institution so that they can receive their federal payments by direct deposit.[11] ACB urges the Treasury to continue to promote the availability of direct deposit, depository-institution-designed, electronically accessible accounts, and the option for federal payment recipients to open ETAs.℠ A public awareness campaign describing the cost, access, and security features of the ETA℠ may be more effective than attempting to develop, promulgate and enforce regulations that govern every conceivable delivery method. It would be a daunting task to police every direct deposit recipient to ensure that a check-cashing arrangement that, objectively viewed, seems unambiguously disadvantageous has not been entered into with a high fee check casher. Outreach with community groups that could publicize the high cost of these service providers could act as a valuable check on proliferation of such relationships among less sophisticated consumers. The high fees on check cashing may be only one aspect of predating

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[8] Id. at 48723.
[9] 63 Fed. Reg. 51498 (Sept. 25, 1998).
[10] 62 Fed. Reg. 48721 (Sept. 16, 1997).
[11] Id.

pricing of these fringe operations. There is likely to be substantial overlap with the ultra-high-cost 'payday lending' industry. ACB believes that the light thrown on this type of operation by education rather than regulation for ETA[SM] target customers could have valuable spin-offs in other ways that a cumbersome regulation would not.

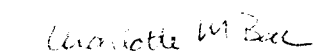
Informed consumers will gravitate towards accounts that satisfy their particular access, cost and consumer protection requirements. The Treasury should begin its public awareness campaign by explaining that the proposed ETA[SM] structure is far less costly and offers more conveniences than any of the alternative delivery examples mentioned in the advanced notice of proposed rulemaking.[12]

Though this comment letter has taken at least a skeptical and probably an adverse view of the level of fees for disbursements by unregulated check cashers, it is at least theoretically conceivable that some such entity in some location actually does provide a reasonably priced financial access service to recipients in underserved areas. In that event, the community outreach and public awareness effort could be useful in attracting attention to this program and, again, a more efficient solution provided. Finally, as a practical matter, since the ETA[SM] card does have the functionality of a regular debit card in accessing ATMs not owned by the issuing depository, ETA[SM] accountholders will have access to the ATMs that are now commonly found in such locations. Unless this functionality is to be disabled, consumers cannot be completely protected from making bad choices. That possibility is the downside to their enhanced freedom to make good choices.

Conclusion

ACB generally supports the Treasury in its efforts to facilitate the electronic disbursement of federal payments. ACB requests that the Treasury be flexible in its approach to this new statutory mandate. ACB hopes that the Treasury will provide appropriate guidance but will not curtail new activities by imposing new regulatory restrictions. The current advance notice of proposed rulemaking is an example of how difficult it is for the agency to develop a regulation broad enough to encompass all possibilities in a relatively new area. ACB appreciates the opportunity to comment on this important matter. If you have any questions about the positions discussed in this comment, please contact Brian Smith, Director of Policy and Economic Research at (202) 857-3118.

Sincerely,



Charlotte M. Bahin
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[12] 64 Fed. Reg. 1150 (Jan. 8, 1999).