



Consumer Federation of America

NATIONAL  
CONSUMER LAW  
CENTER



July 11, 2008

Secretary Henry Paulson  
Mr. Gary Grippio  
Deputy Assistant Secretary for  
Fiscal Operations and Policy  
U. S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

Re: Protecting Recipients of Exempt Federal Funds

Dear Secretary Paulson and Mr. Grippio:

On behalf of the millions of recipients of federal benefits across the nation whose exempt benefits are currently being seized by high cost creditors, the Consumer Federation of America and the National Consumer Law Center respectfully request that the Treasury Department fulfill the requirements of EFT '99.

The law clearly intends that federally exempt benefits be safeguarded from creditors who seize control of funds ahead of the intended recipient. As has been highlighted by recent actions of the Social Security Administration as well as multiple news reports, unbanked recipients of federal benefits are increasingly vulnerable to illegal and exorbitantly expensive seizures of their subsistence income. The Treasury Department recognized these risks when it began a regulatory process in 1999 to consider protection for unbanked federal benefit recipients who access their exempt funds through master/sub account arrangements at payment service providers. (ANPRM 31 C.F.R. Chapter II, RIN 15055-AA74 Access to Accounts at Financial Institutions Through Payment Service Providers.) That process needs to be completed in 2008.

Congress and Treasury mandate that federal payments be made by direct deposit into bank accounts unless the recipient claims a hardship. As detailed in our testimony before the House Ways and Means Subcommittee on Social Security on June 24, a few banks are using check cashers, other retailers, and prepaid debit cards to deliver exempt federal funds to unbanked recipients, charging high fees for second class accounts and denying recipients control over their Social Security and SSI payments. Both the Inspector General for the Social Security Administration and the Federal Deposit Insurance Corporation's witness expressed concern about the role of payment through nonbank entities.

These arrangements are contrary to federal law and policy in at least these aspects:

**1. Federal Exempt Funds Safe From Creditors.** Section 207 of the Social Security Act – like similar sections in the laws governing other federal benefits -- protects these payments from attachment, assignment, garnishment or otherwise taking taxpayer-provided funds meant for the benefit of retirees, the disabled, veterans, and survivors. SSA policy states that “Any arrangement in which the claimant shares control of the funds from his or her benefit with person or entity that has an interest in charging or collecting money from the claimant is an assignment-like situation that violates SSA policy.” The analysis is the same for other federal exempt funds, as well. All contracts for master/sub accounts transfer control over funds to the bank/intermediary and require that exempt funds be used to pay fees and/or make loan payments before the recipient receives funds left over. Several master/sub account products include credit devices that are repaid from deposited funds and prohibit recipients from closing the account until the bank and its non-bank partner collect all fees and payments claimed to be owed. These arrangements constitute assignment of exempt federal funds.

**2. Unbanked Federal Recipients Entitled to First Class Bank Accounts.** EFT’99 specifically requires that accounts which receive direct deposit for federal recipients must be at federally insured financial institutions and that recipients have access to those accounts at reasonable cost and with the same consumer protections as other account holders at the same financial institution. The bank/intermediary agreements and case studies described in our testimony to Ways and Means clearly demonstrate that costs for these programs are not reasonable, recipients do not have control of their funds, and protections are inferior to those provided to mainstream banking customers. The SSA Inspector General estimated that monthly check cashing fees alone drain up to \$1 million from the SSI benefits of 63,065 recipients that are controlled by non-bank financial service providers.

**3. Treasury Prohibited Financial Service Provider Conduits for ETA.** Treasury prohibited financial institutions accepting electronic deposits of federal benefits from contracting with payment service providers to be conduits for the delivery of federal payments when it established Electronic Transfer Accounts. The same rationale that Treasury used to prohibit delivery of ETA accounts through third party providers should be applied to private accounts also used by recipients to receive their federal benefits electronically. If it is unsafe and unwise for ETA accounts to be accessed through third party providers, it is just as unsafe and unwise for other accounts to be accessed through these unregulated providers.

NCLC and CFA provided extensive comments to Treasury in the 1999 ANPRM docket noted above. In addition, we testified before Congress in June 2001 on the implementation of EFT’99 and noted that Treasury had failed to finish the job, ensuring that some federal recipients would become captive customers of fringe providers. Our prediction that recipients would be charged steep fees is born out in the account arrangements included in our testimony and SSA comments file June 20. It is long past

time for Treasury to meet its legal and fiduciary responsibilities to safeguard federal funds intended to benefit recipients and to terminate direct deposit through financial service intermediaries.

In addition, we request that Treasury issue a directive stating that loans may not be conditioned on checks or debits held for future deposit drawn on accounts into which exempt federal funds are delivered. SSA rules state "Any request for direct deposit that assigns or transfers the right to future payments to someone other than the beneficiary constitutes an assignment of benefits." That is exactly the way a payday loan works. Extending credit secured by a personal check held for future deposit or a single debit authorization is the modern version of a wage assignment. The consumer receives a loan, based on signing over direct access to the next direct deposited federal payment into the bank account Congress required. The payday lender takes first claim on the next direct deposit, either by cashing the check immediately or using debit authorization to withdraw funds. We conservatively estimate that benefit recipients spend about \$860 million in exempt federal funds each year for payday loans.

Congress outlawed loans based on personal checks/debit authorization to active-duty military and their families in 2006. Since federal law already safeguards exempt federal payments from assignment or attachment, it would be consistent for Treasury to extend the payday loan ban to all federal benefit recipients.

We have attached our comments to the 1999 ANPRM for your information. Please let us know if we can answer any questions or provide further information.

Sincerely,

Jean Ann Fox  
Director of Financial Services  
Consumer Federation of America

Margot Saunders  
Of Counsel  
National Consumer Law Center

CC: Chairman Michael R. McNulty of House Ways and Means Social Security Subcommittee  
Ranking Member Sam Johnson of House Ways and Means Social Security Subcommittee  
Chairman John F. Kerry, Senate Finance Subcommittee on Social Security, Pensions, and Family Policy

Ranking Member John Ensign, Senate Finance Subcommittee on Social Security,  
Pensions, and Family Policy  
Commissioner Michael J. Astrue, Social Security Administration