

COMMITTEE ON WAYS and MEANS
Subcommittee on Social Security

regarding

“Impact on Recipients of the Mandate for Direct Deposit of Social Security Benefits”

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Testimony of:

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on behalf of:
the **low-income clients of the National Consumer Law Center**
and
Consumer Federation of America
Consumers Union, the Policy and Advocacy Arm of Consumer Reports
U.S. Public Interest Research Group

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Mr. Chairman and Members of the Committee, the **National Consumer Law Center**¹ thanks you for inviting us to testify today regarding the impact on recipients of the mandate for direct deposit of Social Security benefits. We offer our testimony here today on behalf of our low income clients, as well as the **Consumer Federation of America**,² **Consumers Union, the Policy and Advocacy Arm of Consumer Reports**,³ and the **U.S. Public Interest Research Group**.⁴

We support Treasury’s proposal to increase substantially the number of recipients of federal benefits receiving the payments electronically. We support Treasury’s laudable goal of saving money, saving trees, and improving the security of the delivery of federal benefits. The 2010 rule mandating electronic deposit should capture a substantial percentage of check payments and transition them easily into the electronic deposit system. The 2010 rule will likely save a substantial amount of the \$125 million Treasury says it currently spends mailing checks to federal benefit recipients.⁵ We agree that there are numerous advantages to receiving electronic deposit for federal benefit recipients.

However, even while electronic deposit is right for *most* recipients, it is not right for *all* recipients. There must be an articulated waiver procedure disclosed and accessible to the minority of

¹ The **National Consumer Law Center, Inc. ® (NCLC) ®** is a non-profit Massachusetts Corporation, founded in 1969, specializing in low-income consumer issues, with an emphasis on consumer credit. On a daily basis, NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC publishes a series of eighteen practice treatises and annual supplements on consumer credit laws, including *Consumer Banking and Payments Law* (4th ed. 2009), which has several chapters devoted to electronic commerce, electronic deposits, access to funds in bank accounts, and electronic benefit transfers. NCLC also publishes bimonthly newsletters on a range of topics related to consumer credit issues and low-income consumers. NCLC attorneys have written and advocated extensively on all aspects of consumer law affecting low-income people, conducted trainings for tens of thousands of legal services and private attorneys on the law and litigation strategies to deal with the electronic delivery of government benefits, predatory lending and other consumer law problems, and provided extensive oral and written testimony to numerous Congressional committees on these topics. NCLC’s attorneys have been closely involved with the enactment of all federal laws affecting consumer credit since the 1970s, and were very involved in the development of rules implementing EFT-99 after its enactment in 1996. NCLC’s attorneys regularly provide comprehensive comments to the federal agencies on the regulations under these laws. This testimony was written by NCLC attorneys Margot Saunders and Lauren Saunders with important input from Rebecca Vallas of Community Legal Services of Philadelphia, Pa.

²The **Consumer Federation of America** is a nonprofit association of over 280 pro-consumer groups, with a combined membership of 50 million people. CFA was founded in 1968 to advance consumers' interests through advocacy and education.

³**Consumers Union, the Policy and Advocacy Arm of Consumer Reports.** Consumer Reports is the world’s largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 8 million subscribers to its magazine, website, and other publications. Its advocacy division, Consumers Union, works for health reform, food and product safety, financial reform, and other consumer issues in Washington, D.C., the states, and in the marketplace.

⁴The **U.S. Public Interest Research Group** is the national lobbying office for state PIRGs, which are non-profit, non-partisan consumer advocacy groups with half a million citizen members around the country.

⁵ See 75 Fed. Reg. 34394, 34399 (June 17, 2010).

recipients for whom direct deposit into a bank account or the Direct Express Card will not work because of factors such as disability or geography.

We also recommend a number of steps to smooth the transition and avoid problems for those recipients who are moving to electronic payments.

The 2010 version of Treasury's rules governing direct deposit radically changed the landscape for check recipients of federal benefits.⁶ The Debt Collection Improvement Act of 1996 (commonly referred to as "EFT 99") required that, by January 1, 1999, all federal government agency payments except for IRS refunds must be transmitted electronically.⁷ When the law (EFT 99) was first implemented in 1999, Treasury ameliorated the law's mandate for electronic delivery of all federal payments with generous and self-implementing waivers to ensure that the requirement for electronic delivery of payments did not cause hardship for recipients. The Treasury Department's initial implementation of the mandate flipped the presumption of the law and essentially made electronic delivery entirely optional for recipients.⁸ This leniency was entirely changed in December 2010 when the Treasury Department began a new, hard-line approach requiring all recipients of federal benefits to receive their payments electronically by 2013.⁹

We are very concerned that, as Treasury pushes the most vulnerable of federal recipients into the arms of banks and prepaid card providers, Treasury must adhere to its obligation to make sure that these accounts are safe for people to use. Additionally, Treasury needs to finish the job it started with the excellent Garnishment Rule¹⁰ and protect recipients from the double whammy of garnishment of entire bank accounts for old child support obligations owed to the state agencies.

We are appreciative of Treasury's important efforts to deal with the hurdles and difficulties facing recipients facing the transition from paper checks to electronic deposit. These include the steps Treasury has already taken to address the fact that many recipients do not have – and cannot obtain – standard bank account to receive their benefits; the very real dangers of garnishment of benefits directly from bank accounts by debt collectors; and some of the issues with prepaid cards. However, as much as Treasury has done, there is still more to do.

In these comments, we urge Treasury to recognize several crucial areas in which action is still necessary:

1. The need for a better system for waivers from the direct deposit requirement. While we agree that the waiver formula need not be nearly as lenient as it has been in the past, the current system is neither transparent nor workable. It threatens to leave those most in need of waivers without reasonable access to them, and will also increase the burden on the

⁶ 31 C.F.R. Part 208; 75 Fed. Reg. 80315 (Dec. 22, 2010).

⁷ 31 U.S.C. § 3332. *See also* 31 C.F.R. § 208.1.

⁸ It was entirely within the discretion of the recipient to determine whether he or she qualified for a hardship waiver. The paying agency had no part in deciding whether a recipient is eligible for the hardship exception. 31 C.F.R. § 208.4(a) (1998). With the December 22, 2010 change in the regulations, this provision has now been deleted.

⁹ 31 C.F.R. 208.4; 75 Fed. Reg. 80315 (Dec. 22, 2010).

¹⁰ Garnishment of Accounts Containing Federal Benefit Payments, 31 C.F.R. pt 212 (2011).

Direct Express Card of dealing with recipients who simply cannot cope with electronic payments. The number of recipients who need waivers is a relatively miniscule percentage of all recipients. But for these, waivers should not be insurmountable, as the current system effectively makes them.

2. It is necessary to close the loophole in the Garnishment Rule which permits old child support debts owed to the state to leave elderly or disabled recipients completely destitute, raided of every last penny, for months.
3. The rules applicable to prepaid cards eligible to receive federal benefits must be clarified and strengthened to ensure that a) the prohibition against predatory credit attached to the cards is not evaded through credit styled as overdraft; b) Treasury's rules are enforceable and enforced; and c) prepaid card providers do not deceive seniors into believing that private-label cards are Direct Express cards.
4. The burgeoning problems of identity theft of direct deposit of benefits are completely addressed.

I. The waiver system must be more transparent and more lenient for the small population who still need to receive paper checks.

Imagine that you are an 88-year-old retiree collecting Social Security benefits as your sole source of income. You have for years received your benefits by paper check. You have never had a bank account, because you don't trust banks. You have a sixth grade education and aren't so good at reading. But checks have served you well for years. You are comfortable cashing a check and paying your rent, monthly bills, and other expenses with money orders and cash. All of a sudden you start receiving notices in the mail from the United States Treasury Department. You can't really understand them, because they're complicated and contain a lot of legalese. You call the toll-free number on the notices and ask for more information. You're told you can no longer get your trusty paper check as you have for all these years – now you have to switch to electronic payments. Panic and confusion set in....

This example describes some real people. These people are not a huge percentage of the benefit population, but they are an important subset. The current regulatory structure describing the transition to all-direct deposit does not include a reasonable way for this elderly retiree to avoid this panic and confusion. The regulations contemplate that recipients will receive the Direct Express card if they fail to provide bank account information.¹¹

We understand – through informal communication – that Treasury has not been forcing new recipients who object vigorously to use the Direct Express card. It is good that there is some leniency in the system. However, this leniency is not written down and undoubtedly results in uneven application throughout the country – as it is largely dependent on the interactions between recipients and SSA personnel. This is inappropriate. Treasury's regulations need to specifically and clearly provide for a comprehensive and fair system applicable across the board to benefit recipients.

¹¹ This conclusion comes from the confluence of two sections. 31 C.F.R. § 208.9 says: "Each recipient who is required to receive payment by electronic funds transfer *shall* provide the information necessary to effect payment by electronic funds transfer." 31 C.F.R. § 208.7 says: "An agency shall put into place procedures that allow recipients to provide the information necessary for the delivery of payments to the recipient by electronic funds transfer to an account at the recipient's financial institution *or a Direct Express® card account.*" (Emphasis added.)

The 2010 regulation mandating direct deposit removed liberal and self-executing waiver rules that permitted many elderly and disabled recipients to continue receiving their benefits by paper check. While the vast majority of recipients have voluntarily switched to electronic deposit, the population that has resisted doing so to date generally has a good reason: they do not have a bank account; they do not understand or feel comfortable with electronic deposit; they already have workable and affordable methods of receiving their benefits. The federal government, in an effort to save money, is forcing this group of recipients to do something that many of them have good reason for resisting. The savings to the federal government is instead burdening the very population designated to benefit from Social Security, SSI and VA benefits.

Under Treasury's rules, come March 1, 2013, only a tiny portion of recipients will be allowed to continue to receive their benefits by paper checks. Recipients who are receiving their benefits via paper checks on March 1, 2013 and were born before May, 1, 1921 – and are thus over 92 years old as of that date – will be exempt from the requirement of electronic benefit payment, and permitted to continue receiving their benefits by check.

Treasury has recognized that there will still be some people for whom the Direct Express Card will not work. Other than age (over 92 years old as of March 2013), the only grounds for obtaining a waiver are “mental impairment” and “remote geographic region lacking the infrastructure to support electronic transactions.”¹²

The problem is that while these criteria may be appropriate, the actual requirements imposed by Treasury to obtain a waiver based on these criteria include a) calling Treasury and having a conversation about their eligibility for the waiver, b) using the right language to request the waiver form; c) filling out the waiver form, d) having it notarized, and e) sending it in to Treasury.

As a result, of the over 72,000 calls received by Treasury between May 1, 2011 and July 30, 2012 regarding a waiver, only about 14,000 were even sent a waiver packet with instructions. Most alarmingly, only 281 notarized responses were received back by Treasury.¹³ These numbers are a clear illustration that the need for the waiver far exceeds the number of people actually obtaining one.

While the number of beneficiaries who will feel it necessary to apply for a waiver is likely to be relatively small, relative to the total population of beneficiaries, the impact on those unable to adapt will be dire. The burdensome process that Treasury has designed will cause tremendous confusion, anxiety and like some temporary loss of benefits to the elderly and disabled population whose welfare is intended to be enhanced by the payment of Social Security benefits.

There are a variety of issues that would fall under the rubric of mental impairment such that a hardship waiver should be applicable:

¹² 31 C.F.R. § 208.4(a)(1)(vi) and (vii) respectively.

¹³ Information provided from a Congressional Staffer based on a recent meeting with Treasury representatives.

- people with mental disabilities who cannot comprehend the idea of money on a small piece of rectangular plastic and who cannot obtain a bank account;¹⁴
- people with emotional disabilities – such as an anxiety disorder – who are incredibly anxious about when their prepaid card is actually loaded with benefits;¹⁵
- people with moderate senility issues, who cannot remember how to use a prepaid card or check their balance.

Almost by definition a person with mental impairments will not have the wherewithal to complete the complex set of steps required (calling, discussing, asking, filling out the form, having it notarized). They also may not have formally diagnosed impairments and may be unaware of their impairments or unwilling to acknowledge them.

Moreover, if a recipient lives in a place which lacks “the infrastructure to support electronic transactions” it is highly unlikely that such a place would have ready access to a notary public, who are becoming increasingly scarce and hard to find. These inherent difficulties are evident in the very few number of people who have qualified for a waiver.

A simple system for allowing waivers – as we propose below – may permit some who might not really qualify to slip through the cracks. But the consequences are minimal—a few dollars a year to continue to mail paper checks. According to Treasury, the *annual* cost of mailing each recipient the check each month is approximately \$11.36.¹⁶ The costs of policing a waiver system for unwarranted waiver claims would far exceed these minimal costs.

As Treasury notes, receiving paper checks for their retirement income is very important to some recipients.¹⁷ For \$11.36 a year, is it really too much for seniors to ask of their government to allow them to receive their hard-earned pensions that way?

The number of recipients who will continue to need paper checks will undoubtedly decrease each year. As more people retire who regularly use electronic money, there will be much less resistance to both electronic deposit and the Direct Express Card. Also, more electronic access points will be made available in even the most out of the way places.

We conducted an informal survey of over 670 attorneys and advocates who identify themselves as lawyers and advocates for seniors. This group includes people from every state in the nation. Their clients are recipients of both Social Security and SSI. We explained the 2010 waiver system and asked the attorneys to provide us an estimate of what percentage of their clients who still receive paper check would be likely to see to take advantage of this waiver procedure.

¹⁴ Many people are shut out of the banking system, for reasons including the costs associated with having a banking account, fears of overdraft and the costs associated with those programs, or past difficulties with bank accounts, such that no bank will provide them an account.

¹⁵ For example, one recipient has apparently called approximately 1800 times to check his balance. The Comerica representative who related that story acknowledged that the recipient likely has a mental disability.

¹⁶ Treasury says it spent \$125 million delivering paper checks to 11 million benefit recipients in 2009. That works out to be \$11.36 per recipient per year, or \$.95 for each check to each recipient. *See* 75 Fed. Reg. 34394, 34399 (June 17, 2010).

¹⁷ *See* 75 Fed. Reg. 34394, 34401 (June 17, 2010).

There were two trends in the responses. For those that represented clients in urban and suburban areas, the estimates were that only 5 to 15% of the recipients currently receiving checks would request a waiver. This means that of the 11 million people who are currently still receiving paper checks who live in urban or suburban areas, these advocates estimate that 85 to 95% would *not* request a waiver.¹⁸

However, for those whose clients live in remote areas of the nation, the estimates were much higher – because of the lack of access to both banks and ATMs. Some of the comments received:

Montana: The majority of Montana is a rural and frontier state. You're asking people seventy and older to accept a direct deposit. A high percentage of our seniors don't use or trust debit cards and prefer their federal benefits are sent directly to them. With baby boomers, the percentage decreases considerably. In the remote parts of Montana which is frontier, this will be a struggle at best. There are few ATM's.

Alaska: I take turns providing charitable legal advice to elders in the South-Central area of Alaska. Elimination of the waiver availability certainly will create a hardship for some of those people, and more so for the people in bush Alaska who often have no bank nor bank representative nor a place to use a credit card. The only reliable communication source for countless rural Alaskans is the United States Postal Service which continues to be in places so remote you cannot imagine them unless you've been up here. My guess, and it is just that, would be 10 to 30 percent [would want a waiver].

Missouri: In Missouri, we are guesstimating that between 10% and 20% of recipients are receiving checks. Of these, at least half would probably be interested in an opportunity to take advantage of such a waiver as suggested in your email. With many rural areas in our state, seniors do not always have a financial institution nearby. And, many seniors today grew up during the depression and are still reluctant to putting their money into banks. In the more rural areas, few places accept plastic of any kind so usage of the Direct Express Card would be limited.

Because Treasury's current waiver procedure requires the recipient to do something proactive, and because the alternative to the waiver (the Direct Express Card) will work well for many benefit recipients, the overwhelming response we received indicates only a small minority of the current check receiving recipients would take advantage of the waiver procedure. But it will be incredibly important for this minority to have the opportunity to be able to continue to use checks.

If 10% of the current check recipients take advantage of the waiver, then Treasury's costs of delivering benefits by check will decrease by 90%: a reduction from \$125 million to \$12.5 million. This by itself will represent a huge savings.

The relatively small amount still spent on delivering paper checks to a dwindling number of recipients who will need checks does not make it cost effective to establish any new bureaucratic apparatus to review waivers and approve them. There need be no new costs associated with certifications and appeals.

Procedure for Waiver

The purpose of permitting waivers from the electronic payment requirement is to avoid having vulnerable beneficiaries suffer from the deprivation of their life-supporting retirement and disability benefits. The waiver process should appropriately take into account the needs of the

¹⁸ See 75 Fed. Reg. 34394, 34401 (June 17, 2010) (stating that 11 million recipients still got checks in 2009).

beneficiaries who will be unable to adapt to electronic payment, and be structured in a way to ensure meaningful access to waivers for those who need them. Such a process should involve Social Security Administration (or Veterans Administration) personnel who have direct contact with beneficiaries, enabling beneficiaries to request waiver verbally to SSA/VA personnel. SSA/VA personnel could then write up and submit the request to Treasury, vitiating the need for the beneficiary to complete a confusing form – and the burden of having it notarized – along with their recommendation to approve or deny the request.

Involving SSA/VA personnel, who are already accustomed to working directly with beneficiaries, in this way would also simplify customer service to limited English proficient beneficiaries, who will be unable to complete an English form.

Additionally, Treasury should make the availability of the waiver known clearly and conspicuously to benefit recipients, in all of its mailings and advertisements regarding the switch to Direct Deposit. The information about the waiver should be concisely explained in a way that sets out the grounds available for the waiver and explains how to obtain the waiver.

II. Unresolved issue with child support collections directly from poverty-level SSI or Social Security payments to bank accounts.

The Treasury rule on garnishments protects exempt federal benefits directly deposited into bank accounts from garnishment by debt collectors, effective May 1, 2011.¹⁹ However, some recipients still risk loss of these essential benefits when the bank account garnishment originates from a past-due child support debt owed to a state agency.²⁰

The Social Security Administration is already required by statute to withhold up to 65% of a Social Security recipient's benefits for past-due child support if requested by a state child support enforcement agency. Yet Treasury's interim garnishment rule allows that same state agency, after receiving this substantial percentage of the benefits before they are issued to the recipient, to seize the entire remainder once it is deposited into the recipient's bank account.

SSI payments, which are aimed at those in poverty, by law cannot be administratively offset. Yet SSI payments are often improperly seized from bank accounts through the child support enforcement quarterly bank matches. These payments are seized even if the recipient's only income is poverty level SSI or the balance of Social Security payments after 65% has already been garnished, and even when the payments are not needed to support children.

State agency enforcement orders are often for children who are long grown, and the amounts due have been grossly swollen because of high interest rates applicable to these debts, which are often decades old. This leaves the recipients completely destitute, often relying for daily sustenance on the grown children for whose benefits the original debts were incurred. Funds on Direct Express cards may also be similarly accessible for back-due child support.

¹⁹ Garnishment of Accounts Containing Federal Benefit Payments, 31 C.F.R. pt 212 (2011).

²⁰ For a full discussion of this issue, see, Saunders and Tyler, *Past, Present and Future Threats to Federal Safety Net Benefits in Bank Accounts*, 16 N.C. Banking Inst. 43, University of North Carolina School of Law Banking Institute, March, 2012.

The law does not permit either VA benefits or SSI funds to be seized for past-due child support. However, the current version of Treasury's Garnishment rule does not protect these benefits from being seized when they have been deposited in bank accounts for past due child support enforcement orders.

There are two potential remedies for this problem. One is for Treasury's Garnishment Rule to clearly protect benefits from past due child support orders, as the proposed rule did. Benefits could still be accessed through direct garnishment through the payor agency, just not through the bank account. The second is to mimic the solution recently proposed in New York state for all benefits paid by the SSA. The state child support office determines from the SSA who is receiving benefits and removes these obligors from the bank-match program. Of course this rule also needs to be made applicable to VA benefits, as well.

III. Treasury's rules for prepaid cards eligible for the receipt of federal benefits need to be clarified and strengthened.

The Treasury-sponsored Direct Express card has many reliable and positive features, as well as strict limits on the fees that can be charged recipients to access their funds.²¹ However, there are a plethora of private label prepaid cards which can also be used to receive federal benefits electronically. These cards are loosely regulated by Treasury. According to Treasury rules, private label prepaid cards can receive direct deposit of federal benefits so long as the card –

- Provides that the funds will be held in an account at an insured financial institution;²²
- Meets the requirements for pass-through deposit insurance by the FDIC or the National Credit Union Fund;²³
- Is not “attached to a line of credit or loan agreement” under which repayment from the account is triggered upon delivery of the Federal payments;²⁴
- Provides the holder of the card with all of the consumer protections that apply to a payroll card account under the Electronic Funds Transfer Act (“EFTA”).²⁵

²¹ One free ATM withdrawal is permitted per month and, if not used, the free withdrawal carries over until it is used. After free ATM withdrawals have been exhausted for the month, any subsequent ATM withdrawal has a \$0.90 fee. No fee is charged for cash withdrawals at the teller window of a MasterCard member bank—a vast majority of banks are members—or for cash back from a retail transaction. Foreign ATMs outside the Direct Express card network may impose a surcharge in addition to ATM withdrawal fees charged by the card issuer itself. The Direct Express card network currently includes approximately 50,000 ATMs throughout the country. Periodic statements are not automatically provided. For \$0.75 per month, recipients can sign up for regular monthly statements. Paper statements provided on an “ad hoc request” basis are free, and there appears to be no limit on the number of such “ad hoc” requests a recipient can make. Recipients can check their balances by means of the telephone, on the Internet, or at an ATM. They can also sign up for automated text, e-mail, or telephone messages to alert them about deposits and low balances. These messages are free, apart from any charges imposed by the cell phone provider.

²² 31 C.F.R. § 210.5(b)(5)(i)(A).

²³ 31 C.F.R. § 210.5(b)(5)(i)(B).

²⁴ 31 C.F.R. § 210.5(b)(5)(i)(C).

²⁵ 31 C.F.R. § 210.5(b)(5)(i)(D).

These protections are important but limited. Currently the EFTA does not directly apply to most prepaid cards (except to payroll cards). To the extent that card providers “voluntarily” submit to the EFTA, as the provisions themselves do not apply to these products, it is not clear that consumers actually have any enforceable rights. Moreover, neither the EFTA, nor its implementing regulation – Regulation E – fully address the issues facing benefit recipients using prepaid cards to receive their federal benefits.

Additionally, we have heard reports of check cashing stores marketing their cards as “Direct Express” or “Social Security benefit” cards, or referring to them as “Direct Deposit.” One advocate in Philadelphia has seen signs in front of ACE Cash Express in North Philadelphia, which read “Get your Direct Express card here.”

One elderly man came to Community Legal Services in Philadelphia seeking help in activating his NetSpend prepaid card. He had not been able to activate it himself and as a result had not been able to access his needed Social Security benefits for a month. He believed that “SSA” had told him to buy a “temporary” prepaid card from a check cashing store to use until his “permanent” Direct Express card came in the mail. But he had been unable to activate the card. It took a legal aid attorney three days of repeated calls and faxes to MetaBank/NetSpend to help this gentleman get his card activated. By the time she was successful, his benefits had already been sent back to the Treasury Department and he had to wait to have his benefits reissued by his local SSA office via another payment method.

Treasury should promulgate rules to ensure that seniors are not misled into confusing a private label card for the Direct Express card.

Some private label prepaid cards remain a source of high cost credit. Treasury’s regulation on prepaid cards bans direct deposit of benefits to prepaid cards that carry a line of credit or loan agreement that is automatically repaid by the next federal deposit.²⁶ This is an important protection, but some payday and overdraft loan programs attached to prepaid cards appear to believe they are not covered.²⁷

Some lenders may be encouraging violations of the Treasury rule with a wink and a nod. One purveyor of a payday loan that is tied to a prepaid card²⁸ requires consumers to click a box in the fine print to affirm: “I understand that Federal Law prohibits the use of Federally deposited funds in the calculation of my SureCashXtra loan. I also understand that Federal Law prohibits the use of Federally deposited funds to pay the principal, the fee, or any other aspect of my SureCashXtra

²⁶ 31 C.F.R. § 210.5(a)(5)(C).

²⁷ For example, the CheckSmart Insight Prepaid Card, which offers payday loans in the guise of overdraft fees at \$0.15 per \$1 negative balance, claims: “Your card is not a credit card and does not directly or indirectly access any credit feature or line of credit.” <https://www.checksmartstores.com/services/ohio/> (footnote) (last visited July 15, 2012).

²⁸ The funds are drawn on automatically if there are insufficient funds when an ATM withdrawal or purchase transaction is initiated. The FAQs explain: “Each branded prepaid debit card has a transaction processor that evaluates and completes ATM and Point of Sale Signature transactions that are performed on their cards. The transaction processor for your prepaid card must allow SCX to be enabled on their system.” <https://mysurecash.com/FAQ.aspx> (last visited 7/23/12).

loan.”²⁹ And yet nowhere in the FAQs does the lender say that the consumer is not eligible if she receives Social Security, SSI or other federal payments on the prepaid card. The person enrolling must merely “have at least 90 days of recurring direct deposit history on the qualifying prepaid card.”³⁰

Moreover, some lenders may feel that the prohibition in Treasury’s rule does not apply to extensions of credit styled as overdraft loans. For example, the payday lender CheckSmart has been using prepaid cards to evade payday laws in at least two states, Arizona and Ohio, and probably others. CheckSmart’s own card-based payday loans have taken two forms. The first form is styled as overdraft coverage. If the consumer opts in, transactions that exceed the card balance will be approved for an “overdraft protection service fee” of 15% of the negative balance (\$15 per \$100). The second form of prepaid card payday loan, which may have been recently discontinued, allowed consumers to get an advance of wages or public benefits for a “convenience transfer fee” of \$3.50 per \$28.50 advance (yielding \$25 net credit, for fees of \$14 per \$100) plus 35.9% interest. The loans require direct deposit of public benefits or wages to the prepaid card and are repaid by the next deposit, as soon as a day or two later. The annual rate for a 14-day loan is 390% to 401%. These 400% loans are offered in states that have usury caps of 28% to 36%.

Both forms of these loans are credit and should be covered under current Treasury rule; it should not matter whether the lender labels its agreement as a “deposit agreement” instead of a loan agreement, or labels its fee a “transfer” or “load” fee rather than a finance charge. But in order to clarify the rule and prevent further evasions, Treasury should tighten its rule prohibiting direct deposit of benefit to prepaid cards that have loan features.

IV. Difficulties with the Direct Express Card still must be addressed.

Advocates for recipients have brought numerous concerns to Treasury and the Social Security Administration about the adequacy of the customer service provided by Comerica, the sponsor of the Direct Express card. **We very much appreciate the extensive efforts by both agencies to address these articulated problems. Indeed, the issues we are now seeing are fewer.**

However, there still remain some complaints about the difficulty with resolving customer service problems with the Direct Express card. These include a) reaching a real person, b) convincing the agent to actually do anything, c) having the same problem repeated multiple times. As millions of new users who are uncomfortable with electronic payments are pushed onto the Direct Express card when the March, 2013 deadline becomes a reality, these problems will undoubtedly only worsen.

Direct Express cards will be activated by people who have resisted electronic deposit for years. These are likely to be folks who are not comfortable with the concepts of electronic deposits and electronic transfers, are unlikely to use the Internet, and will likely be confused and anxious about how they will be able to access the money on which they depend to eat and live. While

²⁹ <https://mysurecash.com/Apply.aspx> (last visited 7/23/12).

³⁰ <https://mysurecash.com/FAQ.aspx> (last visited 7/23/12).

customer service calls add to the costs of the Direct Express program, making it impossible to reach an operator is not the answer.

There will be a transition period as people get used to the card and eventually things will get better. This is especially true as the older recipients age out and are replaced by consumers who grew up in the electronic age.

But for those consumers who cannot cope with the Direct Express card without extensive hand holding, everyone may be better off if they are permitted to continue receiving a paper check. This is another reason to liberalize the waiver process.

The invisibility of electronic payments is a real problem for many seniors. Though information is available online, it is important to keep in mind that only a small percentage of elderly people use the Internet on a regular basis, and a smaller group has easy access from home.³¹ According to the latest information available from the Census Bureau, only 31.7% of people over age 65 connect to the internet *anywhere*. This means that it is critical that phone access for assistance to initiate the account, and to handle ongoing questions and concerns, must be made available to recipients by Comerica.

| Selected characteristics | Total (in thousands) | Percent who use a computer | | | Percent who connect to the internet | | | | | | | |
|--------------------------|----------------------|----------------------------|----------------------|------------------------|-------------------------------------|---------|---------|-----------|-------------------|---------------------|-------------------------|--------------------|
| | | Use computer at home | Use computer at work | Use computer at school | Total | At home | At work | At school | At public library | At community center | At someone else's house | At any other place |
| 65 years and over | 38,599 | 40.9 | 9.1 | 0.2 | 31.7 | 29.8 | 6.0 | 0.1 | 2.6 | 0.7 | 2.8 | 1.7 |

As few seniors are likely to monitor their accounts online, Comerica should take a more active role in promoting the option to sign up for monthly paper statements for \$0.75 per month. Many seniors will be more comfortable moving to electronic payment if they can see the money that is deposited and their transaction records. Though they have this option now, most are probably unaware of it.

V. Ensure that the identity theft problems with direct deposit of benefits are completely addressed.

In an alarming new trend, we have heard of a number of cases of hijacking of federal benefits. Apparently the only information necessary to change the direct deposit from one account to another is name, address, date of birth, phone number, and social security number. An example is one small legal services office in Georgia which has four cases of benefits' hijacking. Amazingly, even with the

³¹ U.S. Census. <http://www.census.gov/hhes/computer/publications/2010.html>. Table 1A. Reported Internet Usage for Households, by Selected Householder Characteristics: 2010.

assistance of the local Social Security office, they have been unable to stop the continued theft of some of these benefits.

This is a problem with a simple solution – but one which must be provided. More identifying information must be required before a direct deposit change should be permitted. This also highlights the need for more robust customer service. Elderly benefits recipients who have resisted electronic deposit may have difficulty managing passwords, and at the same time may be particularly vulnerable to identity theft because they rely so much on helpers.

Conclusion.

There is a lot that Treasury and the Social Security Administration have already done to meet the needs of the recipients who are unable or uncomfortable to switch easily to electronic deposit of benefits. There is also still quite a bit more to do.

Thank you for this opportunity to testify today.