

"New Rules on Protection and Electronic Payment of Social Security"

Lauren Saunders, Managing Attorney of the National Consumer Law Center's Washington D.C. Office
Margot Saunders, of Counsel to the National Consumer Law Center

Rick Jurgens & Jessica Hiemenz
National Consumer Law Center

National Elder Rights Training Project for the National Legal Resource Center.
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Presenter – Margot Saunders



- Margot is currently “of counsel” to the National Consumer Law Center, after serving as Managing Attorney of the Center’s Washington office from 1991 to 2005.
- Margot has testified before Congress on dozens of occasions regarding a wide range of consumer law matters, including predatory lending, payments law, electronic commerce, and other financial credit issues.
- Margot often serves as an expert witness for legal services and private attorneys, as well as several state attorneys general, providing opinions on predatory lending, banking issues, electronic benefits, servicing and credit math issues.
- In 1991, Margot was the second recipient of the Vern Countryman Award.

Presenter – Lauren Saunders



- Lauren Saunders is the managing attorney of NCLC's Washington office.
- She directs NCLC's Washington efforts, contributes to several NCLC manuals, and handles a number of issues including prepaid cards.

New Rules on Protection and Electronic Payment of Social Security & Other Federal Benefits

May 11, 2011 - Webinar
National Consumer Law Center
Lauren Saunders
Margot Saunders

Sponsored by Funding from AOA

What we will cover:

- Transition from paper checks to electronic payments.
- The Direct Express Card.
- Private prepaid cards that qualify for deposit of federal payments.
- New rules protecting federal benefits from garnishment.

No More Checks

- EFT-99 (passed in 1996) push for electronic delivery of federal payments
- Past 15 years, electronic deposits *encouraged* but not mandated (easy qualify waiver system)
- Now 80% of all federal payment recipients use their own accounts to receive payments

No More Checks

- New mandate – effective May 1, 2011 – requires electronic deposit of all non-tax payments for **NEW** recipients.
- Existing recipients have until March 1, 2013 to switch over.
- Few waivers and exceptions

Federal Payments Covered:

Virtually everything but tax refunds

- Social Security
- Supplemental Security Income
- Veterans benefits
- Wages for federal employees
- Military, railroad and other retirement benefits
- Black lung payments
- Indian Trust Fund payments
- Etc...

No More Checks

- ALL Recipients who file for benefits after May 1, 2011 must receive electronically *unless* qualify for waiver
- Waivers only permitted for –
 - Mental impairment
 - Remote geographic area lacking infrastructure to support electronic financial transaction

No More Checks

- Requests for waiver must be made in writing
- To Treasury
- With a *certification* regarding the need for the waiver
- *Certification* not yet defined term
- Request must be attested to before a notary

No More Checks

- Recipients receiving benefits as of May 1, 2011 *by check* may continue checks until February 28, 2013
- After March 1, 2013, unless they qualify for a waiver, must receive payment electronically

No More Checks

- Special rules for recipients born before May 1, 1921 (over 90 years old now).
- If they are receiving payments by check on February 28, 2013, they can continue receiving payments by check after that date

No More Checks

- Rules are applicable to Rep Payee (requirements for electronic deposit as well as waivers)
- *Not applicable to* –
 - Non-recurring transfers (such as attorneys fees for SS cases) where a) expectation that no more than 1 payment that year to recipient, and b) remittance data is not available from recipient's bank
 - Payments not eligible for Direct Express Card
 - Payments to recipients who have been excluded from Direct Express Card

No More Checks

- If no bank account information is provided by recipient, Treasury will supply recipient with a Direct Express Card
- Recipients can also choose their own prepaid card so long as provider satisfies certain requirements

No More Checks

- 31 C.F.R. § 208
- 75 Fed. Reg 80315 (Dec. 22, 2010)
- Our comments on proposed rule –
http://www.nclc.org/images/pdf/banking_and_payment_systems/comments-on-mandatory-deposit-2010.pdf.

Questions on the elimination of
paper checks?

What is a “Prepaid Card”?

- Basically a debit card without the bank account.
- Funds held in a pooled master account with subaccounts for individuals.
- Visa or MasterCard branded, usable like any other debit card.
- Offered by banks and nonbanks (i.e., Green Dot MoneyCard marketed by WalMart).

Direct Express Card

- Issued by Comerica Bank under contract with Treasury.
- Began in 2008.
- Lower fees, better protections than any private prepaid card.



Direct Express ATM Network

- 50,000 network ATMs



Standard Free Services

Transaction Type	Service Fee
Purchases at U.S. merchant locations	Free
Cash-back with purchase	Free
Cash from bank tellers	Free
Customer Service calls	Free
Web account access	Free
Deposit notification	Free
Low balance notification	Free
Card replacement – One free per year	Free
ATM balance inquiry	Free
ATM denial	Free
ATM cash withdrawal in the U.S. including the District of Columbia, Guam, Puerto Rico, and U.S. Virgin Islands – Surcharge by ATM owner may apply	1 Free withdrawal with each deposit to your Card Account.*

** For each Federal Government deposit to your card account, we will waive the fee for one ATM cash withdrawal in the U.S. The fee waiver earned for that deposit expires on the last day of the following month in which the deposit was credited to the card account.*

The Only Fees on Direct Express Card

\$ 0.90	ATM fee, after the first free withdrawal per deposit (plus surcharges)
\$ 0.75	Automatic monthly paper statement
\$ 1.50	Automated telephone (IVR) transfers to another account
\$ 4.00	Replacement card after one/year
\$13.50	Expedited delivery of replacement card
\$ 3.00	International ATM withdrawals
3%	International purchases/withdrawals

Tips on Direct Express Card

- Get **free cash** at network ATMs (once per deposit), at teller window at any MasterCard bank, or cash-back from a purchase
- Sign up for **free deposit and low balance alerts** by telephone, email or text message
- Sign up for **paper statements** (\$0.75/mo)

For more on the Direct Express Card

- <http://www.fms.treas.gov/directexpresscard>
- <http://www.USDirectExpress.com>
- Call (888) 544-6347

Private Prepaid Cards Previously Ineligible for Federal Payments

- Regulations permitted deposit of federal payments only to accounts “in name of recipient.”
- Rules were widely ignored.
- Prepaid cards, nursing homes, etc. accepted federal payments.
- Check cashers, other scammers set up master/subaccount arrangements.

Prepaid Cards Now EligibleWith Conditions

- FDIC insurance on pass-through basis to consumer.
- Voluntary compliance with Regulation E payroll card rule.
- No line of credit or loan agreement triggering automatic repayment.
- Interim Final Rule. Comments were due April 25.

Reg E for Payroll Cards

- Same basic protections as bank accounts:
 - Unauthorized charges
 - Error resolution
 - Opt-in overdraft fee rules
- Paper statements not required
 - Must make balance available by phone and at electronic terminal
- Direct Express Card has similar protections, but longer time to dispute unauthorized charges

No Lines of Credit Triggering Automatic Repayment

- Aimed at protecting SS/SSI from payday, “account advance” on prepaid cards.
 - CheckSmart prepaid card issued by Urban Trust Bank is used to make payday loans while evading Arizona usury laws
 - Netspend iAdvance credit line shut down, has been revamped
- Interim rule needs to be tweaked to prevent evasion

Sample Fees on Prepaid Cards

- Monthly fee (usually waived if direct deposit)
- ATM fees
- ATM balance inquiries
- Denied transactions
- Overdraft fees
- Customer service calls, even to automated menu
- Inactivity
- POS return fee

=> Direct Express has far fewer fees than any private prepaid card.

No Other Subaccounts Eligible for Federal Payments

- Rule coming soon permitting deposit to master accounts for nursing homes, religious orders.
- Treasury needs to crack down on illegal master/subaccounts still out there.
- IG identified 35,705 payments/mo to check cashers, etc.; 63% of recipients minority, 45% had mental disabilities.
- High-volume states: California, Georgia, Illinois, New York, and Pennsylvania

Consider Direct Deposit to a Bank Account

- But overdraft fees may still be a problem.
- No protections against abusive credit products like bank payday (“account advance”: Wells Fargo, US Bank, Fifth Third).
- Monthly, other bank fees going up.
- Banks may steer lower income consumers to prepaid cards.
- New garnishment protections.

Questions on the Direct Express
Card or the rules for direct deposit
to other prepaid cards?

Protecting Federal Benefits in Bank Accounts

- Vastly strengthens protections for exempt federal benefits deposited into bank accounts
- Applicable to state and federal banks and credit unions
- Requires procedure in *every case in which bank receives a garnishment order*

Protecting Federal Benefits in Bank Accounts

- Protects following federal *exempt* benefits:
 - Social Security
 - SSI
 - Veterans Benefits
 - Railroad Retirement and Railroad Unemployment Benefits
 - Federal Employee Retirement

Protecting Federal Benefits in Bank Accounts

- Does *not* protect –
 - Military pay or retirement benefits
 - Coast Guard payments
 - Other federal agencies (i.e., federal wages paid through USDA)
- If the payments are exempt from garnishment, then the rule will apply once the payor agencies issue regulations to trigger inclusion in protections of the rule

Protecting Federal Benefits in Bank Accounts

- Garnishment orders from the federal government (i.e., taxes, federally guaranteed student loans) or state child support enforcement agencies are not covered by the rule.
- Garnishment orders from private child support collectors are covered and are treated as any other debt.

Protecting Federal Benefits in Bank Accounts

- Upon receipt of garnishment order, bank looks to see if required Notice from federal agency or state child support agency is included
- If “yes” then, garnishment proceeds without protections for federal funds in the account
- We hope to change this as it applies to child support agencies’ garnishment of SSI benefits

Protecting Federal Benefits in Bank Accounts

- Then bank determines if within the previous two months any exempt Federal benefits have been *electronically* deposited into the customer's account.
- If “no” – garnishment proceeds normally under state law.

Protecting Federal Benefits in Bank Accounts

- If “yes” then bank calculates “protected amount”
- “Protected amount” is calculated by determining the lesser of –
 - The sum of all exempt benefits electronically deposited into that account in the previous 2 months, or
 - The balance of the account on the day the review is conducted.

Protecting Federal Benefits in Bank Accounts

- If account contains a protected amount, the cannot freeze, or otherwise restrict the account holder's "full and customary" access to that amount.
- Bank is required to provide the same degree of access to the account as was provided before the bank received the garnishment order.

Protecting Federal Benefits in Bank Accounts

- If there is a protected amount in the account, bank must send a Notice describing what has happened and how consumer can protect exempt, but seized funds
- Bank is protected from liability for contempt citations, penalties, or other action by creditor

Protecting Federal Benefits in Bank Accounts

- Self-Executing Protection – debtor not required to do anything to protect exempt funds up to the protected amount
- Creditor cannot challenge the exempt status of any funds within the protected amount
- Debtor can follow state procedures to protect exempt funds that have been seized.

Protecting Federal Benefits in Bank Accounts

- Commingled funds and co-owners make no difference on protected status of funds
- No cap on amount of benefits protected
- Determination is entirely based on sum of exempt benefits deposited into *each* account within 2 months
- Lump sum in account protected only if deposited electronically within 2 month period
- No protections for funds transferred between accounts

Protecting Federal Benefits in Bank Accounts

- Example
 - Monthly SSA benefit of \$1500 deposited on 5th day of each month
 - Left over funds for lump sum deposited 1 year ago of \$4000
 - Monthly deposit of state pension of \$350
 - Each month recipient spends full income of \$1850
 - Garnishment order comes in October 10

Protecting Federal Benefits in Bank Accounts

- Example, continued
 - Protected amount will be determined by looking back 2 months from 1 or 2 days after garnishment order received
 - Here lookback period will begin on October 12
 - Funds in account are \$4000 plus \$1500 plus \$350 minus \$550 (spent) = \$5300

Protecting Federal Benefits in Bank Accounts

- Look at 2 months previous – back to August 12
- Two months of SS benefits deposited (Sept 5 and Oct. 5)
- Protected amount will be 2 times SS benefit of \$1500 – or \$3,000
- Difference between amount in account (\$5,300) and protected amount (\$3,000) will be seized to satisfy garnishment order -- \$2,300 seized by bank

Protecting Federal Benefits in Bank Accounts

- Example, continued
 - Bank garnishment fee of \$100 is subtracted from the un-protected funds
 - \$2,200 is seized to satisfy garnishment order
 - Recipient is provided a notice from the bank informing her of protected amounts, seized amounts, and state procedures to claim exemptions in seized funds

Protecting Federal Benefits in Bank Accounts

- Under most state laws, pension funds are exempt from garnishment
- Lump sum SSA distribution retains protection under Section 407
- If recipient uses state court procedure, she should be able to obtain release of seized funds
- It is not clear whether she will be able to obtain release of bank's garnishment fee
- Bank's garnishment fee cannot be taken from protected funds, but it is not prohibited from exempt funds

Protecting Federal Benefits in Bank Accounts

- Continuing garnishments prohibited against accounts with protected amounts in them
- State law is preempted on this point
- Repeat servings of the same garnishment order are to be ignored by bank

Protecting Federal Benefits in Bank Accounts

- Weaker state laws are preempted
- Stronger state laws are to be honored
 - Pennsylvania protects first \$10,000 of any account containing exempt benefits
 - California protects up to \$2,700 of directly deposited SS benefits
 - NY protects flat \$2,500 within 45 days

Protecting Federal Benefits in Bank Accounts

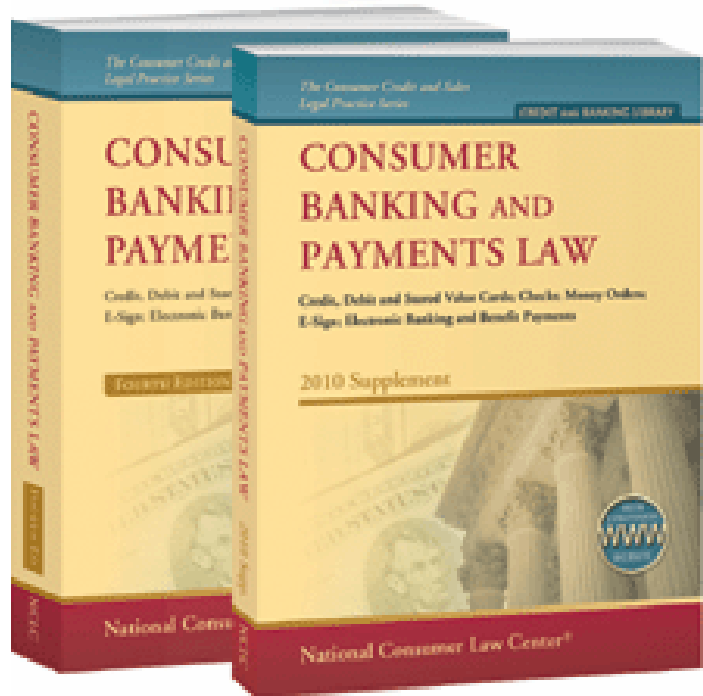
- Next steps –
 - 1) We will try to convince Treasury that SSI funds must be protected from garnishment for child support
 - 2) 42 USC 659(a) shows that SSI is not available for child support and alimony
 - 3) Pass state laws that
 - Provide same protections from seizure for benefits exempt only under state law, such as pensions
 - Improve procedures for claiming exempt funds in bank accounts

Protecting Federal Benefits in Bank Accounts

- Interim Rule – Comments due May 24, 2011
- Effective May 1, 2011
- 76 Fed. Reg. 9939 (Feb. 23, 2011)
- 31 C.F.R. §§ 212.1 to 212.12.

Questions on new garnishment rule
or anything else?

For More Information on Protections and Electronic Payment of Social Security



*4th Edition & Supplement
of the Definitive Treatise
and the NCLC Reports
Newsletter:*

- *Exemption Public Benefits (under
Other Consumer Protection
Issues)*
 - *Prepaid Debit Cards (under
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