

**Comments
by the
Consumer Federation of America
and the
National Consumer Law Center
on behalf of its low-income clients
and
Consumers Union
National Association of Consumer Advocates
to the
Social Security Administration
Regarding the
Use of Master and Sub Accounts and
Other Account Arrangements for the Payment of Benefits
Docket No. SSA 2008-0023**

June 20, 2008

The **Consumer Federation of America**¹ and the **National Consumer Law Center**² (on behalf of its low-income clients) along with the national organizations listed

¹ **Consumer Federation of America (CFA)** is a nonprofit association of some 300 national, state, and local pro-consumer organizations created in 1968 to represent the consumer interest through research, advocacy, and education. Jean Ann Fox, Director of Financial Services, co-wrote these comments. Factual information and examples used in these comments are on file with CFA.

² 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 sixteen practice treatises and annual supplements on consumer laws, including Consumer Banking and Payments Law (3d ed. 2005), 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 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 specifically 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. Margot Saunders, co-author of the NCLC's Consumer Banking and Payments Law manual, as well as a co-author and contributor to several other NCLC publications, co-wrote these comments.

below -- which represent low-income recipients of Social Security and SSI income – submit these comments to the Social Security Administration:

- Consumers Union³
- National Association of Consumer Advocates⁴

Introduction

We very much appreciate the initiative that the Social Security Administration (“SSA”) has shown by requesting comments on the use of master-sub account agreements along with other financial arrangements which may be hurting recipients of social security and SSI benefits. The beneficiaries of these federal funds currently have tens of millions of dollars each year improperly deducted from their benefits by fringe financial service providers. As SSA implicitly recognizes in the Request for Comments, these arrangements are exorbitantly expensive, harmful to recipients – with no redeeming features – and entirely unnecessary as a way to deliver benefits to recipients.

Federal benefit recipients are being charged steep fees for direct deposit arrangements and loans based on receipt of exempt federal funds. Check cashers and loan companies partner with a handful of banks and intermediaries to provide “direct deposit” of Social Security and SSI payments through accounts accessible only through the third party financial service provider, such as check cashers and small loan companies. These master/sub account arrangements are expensive and deny recipients control of their exempt funds. Also, recipients who have opened regular bank accounts to receive direct deposit are now susceptible to exorbitantly priced credit -- payday loans – which capture huge portions of these federal funds designed to be used for the necessities of recipients.

Our comments will deal with the following issues raised by SSA’s Request:

- I. The Law Requires that SSA Benefits Funds are Available Exclusively for the Support of Recipients.** The law already establishes that the arrangements targeted by SSA are either explicitly illegal under the law, or – at the least -- violate the spirit of protection intended for these benefits.

³**Consumers Union** is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education, and counsel about goods, services, health and personal finance, and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union’s income is solely derived from the sale of Consumer Reports, its other publications and services, and from noncommercial contributions, grants, and fees. In addition to reports on Consumers Union’s own product testing, Consumer Reports regularly carries articles on health, product safety, marketplace economics, and legislative, judicial, and regulatory actions that affect consumer welfare. Consumers Union’s publications and services carry no outside advertising and receive no commercial support.

⁴The **National Association of Consumer Advocates** (NACA) is a non-profit corporation whose members are private and public sector attorneys, legal services attorneys, law professors, and law students, whose primary focus involves the protection and representation of consumers. NACA’s mission is to promote justice for all consumers.

- II. Master/Sub Accounts Should Not Be Permissible For Financial Service Providers.** An examination of the current use of master-sub accounts by non-bank financial service providers illustrates both the gouging of recipients for a) fees to deliver the funds to recipients, and b) credit charges for the exorbitantly priced credit products which capture significant portions of the benefits.
- III. Treasury Could Have Avoided This Problem.** EFT-99 – the 1996 law mandating that all federal payments be made electronically by 1999 – has facilitated the gouging of low-income recipients by alternative financial service providers.
- IV. Recipients Should Be Protected from Payday Loans.** Banked recipients are now eligible to pay triple-digit interest for single payment loans based on access to the account into which exempt funds are deposited. We provide illustration of the high cost and adverse impact of payday loans on low-income recipients of social security and SSI benefits.
- V. Answers to Questions Posed by SSA.**

I. Social Security Benefits Are Intended for the Exclusive Use of Recipients – Not for Their Creditors.

Taxpayer funded Social Security benefits and SSI benefits were intended by Congress to be used exclusively for the benefit of recipients to ensure a minimum subsistence income. These federal benefits are targeted to ensure minimum subsistence income to elderly, disabled, orphaned and widowed Americans to lift them out of poverty.

To preserve federal benefits for the intended recipients, Congress explicitly provided that the SSA benefits cannot be “transferable or assignable.” The Social Security Act specifically says:

The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.⁵ (Emphasis added.)

What words could be used to make these protections any clearer?

The courts processing the competing interests of recipients and their creditors have repeatedly articulated the underlying reasons for these protections: (1) to provide the debtor with enough money to survive; (2) to protect the debtor’s dignity; (3) to afford a means of financial rehabilitation; (4) to protect the family unit from impoverishment; and (5) to spread the burden of a debtor’s support from society to his creditors.⁶

Indeed, as the SSA knows well, most recipients of Social Security Act funds are the families’ best hope to avoid impoverishment. Most recipients are vulnerable due to low income, disabilities, age, or all three. For example four-fifths of all Old Age Survivors and Disability Insurance (“OASDI”) beneficiaries are aged 62 or older, including 35 percent who are aged 75 or older. Disabled workers, survivors or dependents make up about 14 percent in the 18 to 61 year age range while six percent are children. Over half of all adults receiving monthly Social Security benefits are women (56 percent vs. 44 percent men) and about one-fifth of women receive survivor benefits.⁷

Almost nine percent of all U. S. children receive part of family income from Social Security. Almost half of these 6.5 million children under the age of 18 receive benefits as dependents of deceased, disabled, or retired workers and the other 3.4 million live with

⁵ Social Security Act, at 42 U.S.C. § 407(a).

⁶ See, e.g., *In re Johnson*, 880 F.2d 78, 83 (8th Cir. 1989) (Minn. law); *North Side Bank v. Gentile*, 129 Wis. 2d 208, 385 N.W.2d. 133 (1986); *Vukowich, Debtors Exemption Rights*, 62 Georgetown L.J. 779 (1974).

⁷ http://www.socialsecurity.gov/policy/docs/chartbooks/fast_facts/2007/fast_facts07.html

relatives who receive SSA. These funds lift 1.3 million children out of poverty.⁸ SSA benefits are especially important to African America and Hispanic children.⁹

These protected federal funds are an important portion of family income for most recipients, in some cases making up the total income. The average income for non-married Social Security recipients in 2005 dollars was \$14,561.¹⁰ The monthly Social Security check is about \$990 or less than \$12,000 a year, indicating that over ninety percent of income for recipients comes from the exempt funds provided through Social Security.

The Supplemental Security Income (“SSI”) program guarantees a minimum level of income for needy aged, blind or disabled individuals, acting as a safety net for people with limited resources. Eighty-three percent of SSI recipients were disabled or blind in 2006.¹¹ As of January, 2007, seven million individuals received \$435 monthly on average from SSI. About 2.27 percent of the US population received SSI in 2006.¹² SSI recipients are predominantly women (57 percent overall) but women account for almost 70 percent of recipients aged 65 and older.¹³

Despite the purposes of these benefits, financial service providers have found new ways to tap into exempt funds for high fee delivery programs to unbanked recipients and to repay exorbitantly expensive loans by extracting exempt funds deposited into bank accounts held by recipients.

II. Master/Sub Accounts Should Not Be Permissible For Financial Service Providers

As SSA recognizes, it has the power to stop much of the harmful financial activity caused by high cost financial service providers simply by limiting which payees are permitted to engage in the master/sub account relationship. We have no reason to believe that these relationships cause harm in the following circumstances:

- Investment accounts
- Nursing homes
- Religious orders

However, the use of Master/Sub accounts should be limited to these specific exceptions.

⁸ Joni Lavery and Virginia P. Reno, “Children’s Stake in Social Security,” National Academy of Social Insurance, No. 27, February 2008, page 1.

⁹ Ibid, page 6.

¹⁰ Social Security Administration calculations from the March 2006 Annual Social and Economic Supplement to the Current Population Survey.

¹¹ http://www.socialsecurity.gov/policy/docs/chartbooks/fast_facts/2007/fast_facts07.html#oasdi

¹² http://www.ssa.gov/OACT/ssir/SSI07/exec_sum.html

¹³ http://www.socialsecurity.gov/policy/docs/chartbooks/fast_facts/2007/fast_facts07.html#oasdi

All other Master/Sub account relationships for the processing of electronic payments or physical delivery of SSA benefits should be prohibited.

Who is Affected

About four million Social Security and SSI recipients are unbanked and unable to benefit from the speed and safety of direct deposit of federal benefits into personal bank accounts. Many unbanked recipients still receive paper checks and pay check cashers an average of 2.44 percent of the face value of the check to cash them monthly.¹⁴

As the number of unbanked recipients using check cashers to cash their government checks has fallen – due to the drive to deliver federal benefits through direct deposit per EFT'99 and the ongoing Treasury efforts to reach unbanked federal benefit recipients – check cashers looked for and found alternative ways to retain those customers.¹⁵

Treasury requires that electronic transfer of federal benefits be deposited into an account in the recipient's name at a federally insured financial institution.¹⁶ Intermediaries such as check cashing outlets have developed programs with banks to offer direct deposit/check or debit card hybrids to maintain their business of cashing or delivering benefits checks. Indeed, based on the check cashing industry's own data, it appears the check cashing outlets have *increased* their business among Social Security recipients.¹⁷

According to the industry data, for check cashing customers who receive benefit payments through delivery services, sixty-seven percent of SS benefit payments and sixty-one percent of public assistance benefits were accessed through master/sub accounts established through check cashers. Information from the Comptroller of the Currency supports these high estimates: approximately one fifth of unbanked consumers received

¹⁴ For a \$1,002 SS check, a recipient pays \$24.45 a month or almost \$300 a year just to turn the government-issued check into spending money, according to a CFA 2006 survey of check cashing outlets. Jean Ann Fox and Patrick Woodall, "*Cashed Out: Consumers Pay Steep Premium to 'Bank' at Check Cashing Outlets,*" Consumer Federation of America, November 2006.

¹⁵ Komar Storey, Charlene, "EBT Programs May Boost Business," *Cheklis*, Fall 1998, page 6.

¹⁶ National Consumer Law Center, *Consumer Banking and Payments Law* (3d ed. 2005), page 244.

¹⁷ The trade association FiSCA (an acronym for "Financial Services Center of America" which represents check cashers) asked its customers in October 2007 about the financial products and services they generally use. *Seven percent of check cashing customers reported using Social Security benefit payment services in 2006, up from three percent in 2000.* Another five percent reported accessing public assistance benefits at check cashers, banks or credit unions, up from three percent in 2000. Patricia J. Cirillo, Cypress Research Group, "Survey of Key FiSCA Member Organizations on Transaction Volumes," Attachment 1, October 2007, slide 20.

income through electronic benefits transfer sent electronically and automatically to a check cashing outlet or other nonbank location.¹⁸

Despite federal efforts to persuade recipients to open bank accounts for the receipt of electronically deposited funds, some recipients still do not have accounts. Some third party providers have partnered with banks to offer third-party direct deposit accounts that are marketed by and operate over the counter at check cashing outlets and other financial services companies. This product uses the master/sub account arrangement permitted by SSA to deliver exempt federal benefits to recipients through third-parties. Under this arrangement, beneficiaries were supposed to have complete access to their funds and the arrangements could be revoked by the beneficiary at any time.²⁰ However, according to the terms of these financial service master/sub accounts, SSA's guidelines are not being followed. The actual experiences of recipients confirm this.

When the Arkansas Attorney General directed check cashers making payday loans in Arkansas to cease making loans that exceed the constitutional usury cap of 17%, the Pine Bluff Fast-N-Easy store closed its doors. The sign on the building listed the check cashing services it had provided, with "Direct Deposit Program" listed first. A hand-written sign stated: "Notice Direct Deposit Customers. We have gone out of business due to state mandate and no longer doing direct deposit. Please contact the Social Security Office (Main Post Office) for Direct mailing of your check to you. Sorry for the inconvenience & thanks."¹⁹

Advertisements Promise Illusive Benefits.

Ads tout faster access to Social Security or SSI benefits for recipients who sign agreements setting up direct deposit accounts at the corner check cashing outlet or small loan company. Compared to paper checks that come in the mail, recipients will receive funds a few days sooner when they go to a storefront. Yet that time advantage disappears after the first payment since federal funds are delivered on a regular monthly schedule. Other benefits claimed for direct deposit services are to avoid theft or loss of mailed checks. Yet these hybrid accounts do not bring consumers into mainstream banking relationships and do not usually provide account privileges, such as the right to use the bank's ATMs or branches.

Banks set up a master account to receive exempt funds in the name of the recipient. The beneficiary goes to the check cashing outlet and pays to receive and then cash the "check" printed to deliver the sub account funds or to have funds loaded onto a prepaid debit card. Fees are charged to set up the account, to deliver each payment, and to cash

¹⁸ Dunham, Constance R., Senior Financial Economist, Economic and Policy Analysis Department, Office of the Comptroller of the Currency, "The Role of Banks and Nonbanks in Servicing Low- and Moderate-Income Communities," Federal Reserve of Chicago, *Proceedings*, April 2001 at 35.

¹⁹ Photo by H. C. Klein, taken April 22, 2008, on file with CFA.

²⁰ "SSA investigates direct deposit arrangements involving high-interest payday lenders," CCH Unemployment Insurance, June 16, 2008, <http://hr.cch.com/news/uiss/061608a.asp>, visited June 16, 2008

each check. The direct deposit accounts offered by check-cashers simply convert the electronic payment of benefits back into a paper check. When the benefits are delivered by debit card, recipients are provided a stored value card which appears not be covered by Reg E protections which provide limits on liability for unauthorized transfers, procedures to resolve disputes, disclosures, and other substantive protections.

The direct deposit accounts through check cashers provide significantly less protection than a federal benefit recipient would receive using a regular bank account. . Under SSA policy, once the funds are deposited into the master account of the check casher, it is the check casher's responsibility to make funds available to the recipient. If the funds were deposited into the correct master account at the bank, the SSA will require the recipient to deal directly with the check casher if there is an allegation of non-delivery.²²

Master/Sub Account Direct Deposit Banks and Intermediaries Programs

Non-bank financial service outlets – the check cashers, money transmitters and loan companies – must partner with cooperating banks to provide the direct deposit programs. The specific details of the arrangements between the few banks that provide these services to high cost financial service providers are described in detail in Appendix A. However, the key characteristics of these arrangements include:

A legal services organization in Philadelphia reported that several clients were not able to access federal benefits at check cashing outlets. In one instance, the check cashing store unilaterally decided that the recipient owed the store money and then refused to turn over the monthly benefits check. SSA referred her back to the check cashing store to resolve the problem which took three months. Another client sought assistance when she thought the government had reduced her benefits. It turned out that the check casher simply had stopped turning over the state supplemental payment to the client's federal SSI benefits. The bank and the check casher claimed that the money had been erroneously placed in another individual's account.²¹

1. The recipients have no control over the delivery of the SS benefits through the master/sub accounts. The benefits are provided to the recipient either as a cashier's check or loaded onto a debit card. The amount of the benefit is always reduced *first* by the fees charged for this service. Recipients must then pay to cash the check or to use the debit card.
2. Multiple fees are deducted from the recipient's funds to pay to open the account, to handle the deposit and to print the check. Recipients then must pay to cash the check. Additional, monthly account and per use fees are deducted for debit card use.
3. The agreements signed by recipients specifically permit the bank as well as the electronic fund's agent to deduct loan payments as well as other costs before the

²¹ Memo, Kerry Smith, Community Legal Services of Philadelphia, September 2006, on file with CFA.

²² Social Security Administration Programs Operations Manual System (POMS) § GN 02406.025(b)(1)

recipient has access to the funds. There are also contract provisions that require all fees to be repaid to the bank and its partners before the recipient can terminate direct deposit.

4. These arrangements also include credit features such as cash advances or overdraft loans. Loans are always repaid in full out of the next direct deposited benefit. These small loans typically cost triple-digit interest rates. Because payment in full is deducted from the next benefit payment, recipients then start the next month short of funds, and frequently renew the loan month after month. Cash advance or overdraft loans function as wage assignments on protected exempt funds.

Recommendation: *Social Security Administration should terminate the use of Master/Sub accounts which deliver federal benefits through financial intermediaries.*

III. Treasury Could Have Avoided This Problem.

EFT-99 – the 1996 law mandating that all federal payments be made electronically by 1999 – has facilitated the gouging of low-income recipients by alternative financial service providers. Despite years of outreach and product development and promotion, a significant number of federal benefit recipients

conduct their financial transactions outside the banking system. Federal officials estimate that twenty-eight percent of Social Security recipients or 2.1 million people and fifty-nine percent of SSI recipients, or 1.8 million people, do not have bank accounts. Of the unbanked SSA recipients, fifty-four percent are under 64 years old, and 28 percent are African American, twelve percent are Hispanic, and sixty-three percent have household incomes of less than \$20,000.²⁴

Under EFT-99, Treasury was required to develop regulations to ensure that recipients were not injured by the requirement for electronic deposit of federal funds. These regulations were to ensure access at a reasonable cost, with consumer protections, applicable to all accounts designated by recipients to receive federal payments electronically:

A Philadelphia SSI recipient who received \$576.40 per month was caught in this debt trap. The Bank deducted \$9.95 per month for the direct deposit account and \$2.95 to the check casher for printing out the check, reducing his benefits to \$566.50. The check casher also charged a fee to cash the bank's cashier's check. When he began taking out cash advances, the bank and check casher deducted \$20 from the loan proceeds, providing him with a cashier's check for a \$180 loan. Each month the loan was repaid from the proceeds of the next SSI direct deposit leaving him short \$200. Repeatedly a new loan was issued. The bank and the check casher siphoned off \$660 from his exempt SSI payments for use of \$180 for 33 months.²³

²³ River City Bank account summary, dated March 9, 2006 for client of Philadelphia Community Legal Services, on file with CFA.

²⁴ Electronic communication from Sally Phillips, FMS, Treasury, received June 12, 2008 by CFA.

(I) Regulations under this subsection shall ensure that individuals required under subsection (g) to have *an account at a financial institution . . .*

(A) will have *access* to such an account at a *reasonable cost*; and

(B) are given the same *consumer protections* with respect to the account as other account holders at the same financial institution.²⁵

(Emphasis added.)

In addition to the statutory requirements, Treasury's regulations governing the direct deposit system require that benefit payments may be deposited *only into accounts at a financial institution in the name of the recipient*.²⁶ **Master/sub account arrangements do not meet the requirements under the statute or Treasury's regulation.**

Minimum attributes for an account at a financial institution include:

- the ability to access the money in the account *from the financial institution itself* (use of a teller, the ATM or both) not just at the check casher or loan company in a master/sub account arrangement
- the ability to withdraw money from the account in increments; and
- the ability to leave money in the account in order to build up savings.

Only having access to funds through an intermediary is not “access.” The same consumer protections should at least provide the full complement of protections required by the Electronic Funds Transfer Act (commonly referred to as “Reg E”).²⁷ These protections should be available to the recipient from the moment federal money is electronically deposited into the account until the money is in the hands of the recipient. Treasury capped rates for ETA accounts at \$3 per month. No such cap applies to third party direct deposit accounts. (See Direct Deposit Programs, Appendix A)

Treasury issued 31 CFR Section 208 as its sole means of complying with this mandate.²⁸ However, in a bow to Congressional pressure, in 1999 Treasury asked the

²⁵ 31 U.S.C. ' 3332(i).

²⁶ 31 CFR 208.6, 210.5.

²⁷ The Electronic Fund Transfer Act, 15 U.S.C., § 1693 *et seq.*

²⁸ Initially, in an effort to “bank” the unbanked recipients, Treasury developed an Electronic Transaction Account which is subsidized by the federal government and provides low cost bank accounts for direct deposit. About four hundred banks offer the ETA at approximately 11,000 branches. Less than one hundred thousand accounts are active, providing access to ETA accounts for just 2.5 percent of the unbanked check recipients. For unbanked recipients who have not elected to use the ETA account, about twenty percent cash their check at a check casher or payday lender, while the other eighty percent cash their checks at banks or grocery stores. Electronic communication from Sally Phillips, FMS, Treasury, received June 12, 2008 by CFA.

question, whether more protections were necessary by issuing an ANPRM.²⁹ The goal – as required by the EFT 99 mandate – was both to facilitate the cost savings resulting from direct deposit, and to ensure that this cost savings was not at the expense of the most vulnerable recipients of federal payments.

In that ANPRM Treasury publically acknowledged the legal justification and the moral imperative for regulating access to federal benefits through payment service providers. However, despite the extensive comments provided by these authors and numerous other representatives of low and moderate income recipients of federal benefits,³⁰ Treasury went no farther. No further consideration was given – at least in any public forum – for protecting this nation’s most vulnerable recipients of federal benefits from the greed and opportunism of financial providers.

Hence, the problems so well illustrated in the Wall Street Journal article last February³¹ persist – even though all of these issues were predicted.

The issue – back in 1998 and 1999, as well as now – is how to deliver federal benefits electronically to the millions of recipients who remain unbanked. In the late 1990s, apparently Treasury and SSA thought the partnership with fringe lenders was an appropriate tool to ensure electronic deposit. Today – with the advent of Treasury’s new Direct Express Debit MasterCard – none of these relationships are necessary.

Had Treasury met its obligations ten years ago, the Social Security Administration would not have to address problems inherent to master/sub account arrangements for delivery of federal benefits. Treasury – then as now – need only prohibit financial institutions accepting electronic deposits of federal payments from contracting with payment service providers to be conduits for the delivery of federal payments. Treasury adopted such a prohibition when it established Electronic Transfer Accounts.³²

²⁹ Advance Notice of Public Rulemaking, 31 C.F.R. Chapter II, RIN 15055--AA74, Possible Regulation Regarding Access to Accounts at Financial Institutions Through Payment Service Providers, Comments Due April 8, 1999.

³⁰ See, Comments by the National Consumer Law Center and the Consumer Federation of America, on behalf of a broad coalition of low income groups, on Treasury’s ANPRM, April, 1999. http://www.consumerlaw.org/issues/electronic_benefits/access_to_accounts.shtml; Also see, Comments by National Consumer Law Center and Consumer Federation of America to the Treasury on Proposed Rule 31 CFR 208, on behalf of a broad coalition of low income groups. http://www.consumerlaw.org/issues/electronic_benefits/fifi_com.shtml.

³¹ Ellen Schultz and Theo Francis, *Social Insecurity: High Interest Lenders Tap Elderly, Disabled*, Wall Street Journal, February 12, 2008, A1.

³² In the ETA public notice, Treasury said: “financial institutions offering ETAs, would be prohibited under the ETA Financial Agency Agreement from entering into arrangements with non-financial institutions to provide access to ETAs other than access through a national or regional ATM/POS network. Treasury is concerned that such arrangements may be confusing or misleading to recipients and, therefore, will not permit financial institutions to enter into such arrangements with respect to offering of the ETA.” 63 *Fed. Reg.* 64823 (Nov. 23, 1998).

As we articulated ten years ago, Treasury has the mandate to prohibit master/sub account arrangements. Master/sub account arrangements between banks and fringe financial service providers should not be permitted under EFT-99 for four reasons:

- 1) Recipients are exposed to and marketed expensive and abusive products and services such as cash advance loans, high cost home equity loans, even rent to own transactions.
- 2) Recipients are charged high fees for accessing their federally protected benefits.
- 3) There would be no incentive to banks to offer the far more recipient-friendly ETA accounts that include with fee caps if the banks can collect unlimited fees through third-party accounts.
- 4) If Treasury permits non-regulated payment service providers to control access of federal benefit payments to those in low income communities, the financial apartheid that already exists in this nation will simply be extended.³³

Recommendation: SSA should insist to Treasury that it complete the work that it began when it issued the ANPRM in 1999, and prohibit financial institutions accepting electronic deposits of federal payments from contracting with payment service providers to be conduits for the delivery of federal payments.³⁴

IV. High Cost Lending to Social Security Recipients

Social Security recipients who have standard bank accounts are also vulnerable to high cost financial service providers. Both payday loans and direct loans with automatic debit features function as automatic assignment of Social Security benefits by allowing these lenders direct access to the funds once they are deposited into the bank account. Each month, the lenders extract payment for their loans directly from the account, leaving the recipients with the reduced balance on which to make ends meet. The problems caused by the direct access high-cost lenders have to SSA benefits have considerably worsened

³³See, Comments by the National Consumer Law Center and the Consumer Federation of America, on behalf of a broad coalition of low income groups, on Treasury's ANPRM, April, 1999.
http://www.consumerlaw.org/issues/electronic_benefits/access_to_accounts.shtml

³⁴ The statute clearly provides Treasury with the legal authority to regulate the arrangements for the electronic delivery of federal payments through financial institutions.³⁴ Indeed, the plain reading of the statute indicates that Treasury must regulate -- one way or the other -- to protect individuals required under subsection (g) to have an account at a financial institution . . . @ Regulating to prohibit payment service providers is the cleanest and simplest method of accomplishing this statutory mandate. Such a regulation can be justified because of the lack of access to accounts, the lack of consumer protections, and the clearly unreasonable costs imposed upon recipients in the arrangements which are already in place.

since EFT-99 has encouraged so many low-income recipients to have bank accounts to enable direct deposit.

Payday loans are small cash advances for less than \$1,000, typically in the \$300 to \$500 range, based on the borrower's personal check or electronic access for the amount of the loan and the finance charge. To get a payday loan, a borrower must have an open bank account, a source of income, and identification. Loans are due and payable in full on the borrower's next payday and typically cost 390 to 780 percent annual percentage rate (APR) for two-week terms. Finance charges are typically expressed as dollars per hundred borrowed, in the \$15 to \$30 per \$100 range. A \$500 payday loan typically costs \$75.

Payday loans are single payment balloon loans. On the next payday, a borrower can bring in cash and "buy back" the check, the check can be deposited for payment, or the borrower can pay only the finance charge and renew the loan for another pay cycle without reducing the principal. Most checks are never deposited and are bought back by customers who are then encouraged to take out another loan.

Case studies on payday loan use by SS and SSI recipients are included in Appendix B.³⁵

Benefit Recipients Pay an Estimated \$860 Million for Triple-digit Payday Loans

The payday loan industry projects \$50.7 billion in annual loan volume through both storefront and online payday lenders, with \$8.6 billion paid by consumers in finance charges.³⁶ The Colorado Attorney General's office reports that ten percent of payday loan customers list "benefits" as their source of income on loan applications.³⁷ This group of consumers includes recipients of state as well as federal benefits. Assuming Colorado is typical of payday lending in other states, "benefit" recipients' share of the payday loan market is \$5 billion in loans, costing \$860 million in finance charges. This may be a conservative estimate. The California Department of Corporations commissioned a study of payday loan customers in 2007. Over twelve percent of surveyed respondents listed a Government assistance check (General Relief/Social Security) as their first or second form of regular income.³⁸ All of the money paid to renew payday loans is diverted from meeting the basic needs of retirees, welfare recipients, veterans, disabled, survivors and dependents.

³⁵ For more information on payday lending, see CFA's website, www.paydayloaninfo.org.

³⁶ Dennis Telzrow and David Burtzlaff, "Payday Loan Industry: Industry Report," Stephens Inc. Investment Bankers, April 17, 2008 at 4.

³⁷ "Payday Lending Demographic and Statistical Information: July 2000 through December 2007," Administrator of the Colorado Uniform Consumer Credit Code, Office of Attorney General, February 4, 2008 at 3.

³⁸ California Department of Corporations – 2007 Payday Loan Study, Applied Management and Planning Group, Table 27: Source of Paycheck or Regular Income for Respondent, page 46. Table 54 noted that 9.1 percent of respondents were retired, the largest occupation listed besides "other."

Payday Loans Hi-Jack Recipients' Bank Accounts with Direct Deposit of Benefits

Securing payment of a debt by the borrower's next Social Security or other exempt federal funds to be deposited in the bank, or electronic authorization to access pay deposited into an account, is the modern banking equivalent of a wage assignment. The Federal Trade Commission ruled decades ago that a wage assignment that could not be withdrawn was an unfair trade practice under the Credit Practices Rule. The FTC Credit Practices Rule outlaws credit contract provisions analogous to check holding, such as wage assignments, confessions of judgment, and the taking of a non-purchase money security interest in household goods. Holding the consumer's signed check is even more advantageous for a lender than holding a confession of judgment. With the check, the creditor goes directly to the bank to collect without filing suit or going to court to get a writ of execution. Since Federal policy is for federal payments to be direct deposited, a loan based on access to the funds that will be deposited into the account on the next payday is very close to a wage assignment.

The Electronic Fund Transfer Act prohibits conditioning the extension of credit on requiring electronic payment of debts for periodic payment loans, but is silent on the single payment electronic payday loan model. Some payday lenders use remotely created demand drafts to collect directly from bank accounts when consumers exercise their rights to revoke access to accounts under the EFTA. Social Security and SSI recipients who sign these contracts lose control of the exempt funds in their accounts.

Payday Lending Fosters Coercive Debt Collection Tactics

Donald and Gail Storer, an elderly couple living in Virginia, both suffer from serious medical problems. Their only income is SSI. They borrowed \$500 from a payday loan store and agreed to pay \$75 per month in finance charges at an APR of 185%. After paying finance charges to repeatedly renew the loan, rising health expenses made it impossible for them to continue. A collector left a taped telephone message stating:

*"This message is for Gail and Donald Storer. This is Check Smart calling again, Mr. and Mrs. Storer. We are not going away. We are going to continue calling, and eventually what is going to happen is our legal department is going to press charges against you. So I would pretty much try to call the Smithfield office to work out a time frame when you will be able to handle the matter at hand. The number is 757-365-9711. You are only hurting yourself."*³⁹

These heavy handed collection tactics were used despite the fact that all of the Storer's SSI income was unequivocally protected by federal law from assignment, levy, garnishment or other legal process.⁴⁰

³⁹ American Arbitration Association Award of Arbitrator, Re: 16 434 R 00441 07, Donald Storer and Gail Storer and Buckeye Check Cashing of Virginia, Inc., issued December 5, 2007.

⁴⁰ Donald Storer and Gail Storer v. Buckeye Check Cashing of Virginia, Inc., d/b/a CheckSmart, Complaint and Demand for Jury Trial, Circuit Court for Isle of Wight County, Virginia, filed with the American Arbitration Association on May 14, 2007.

While Americans no longer need fear that they will be imprisoned for failing to repay a loan, they do fear the criminal consequences of failing to “make good” on personal checks. Our legal system is not supposed to permit incarceration for failure to pay a debt, yet that is what is – often explicitly and generally implicitly – threatened when a payday loan remains unpaid. A federal court in Tennessee ruled that threats to bring criminal prosecution for failure to repay a payday loan constituted an unfair trade practice. The court noted that the lender knew full well that the borrower had no money in the bank at the time the loan was made and could not later claim to be the victim of a fraudulent “hot” check.⁴¹ The court found that the loan did not involve a “bad” check and that threatening to take an action the lender had no legal right to take constituted an unfair or deceptive act. (See Appendix B for more examples.)

Payday Loans Based on Electronic Access to Bank Accounts

SSA is right to be concerned about loan provisions that prevent recipients from terminating direct deposit arrangements or pre-authorized transfers, and thus dissuade beneficiaries from taking actions that they may have the lawful right to take. In some loan contracts, recipients are simply prohibited from cancelling the EFTA arrangement. If the electronic debit is cancelled, the contract permits the creditor to create a demand draft and obtain payment this way.

CashNetUSA’s Deferred Deposit Loan Agreement:

You promise to pay us the Total of Payments...You grant us a security interest in your ECheck/ACH Authorization in the amount of the Total of Payments (the “ECheck/ACH”) which we may negotiate on the Payment Date or thereafter...

*The ECheck/ACH Authorizations set forth in this Loan Agreement are to remain in full force and effect for this transaction until your indebtedness to us for the Total of Payments, plus any NSF fee incurred, is fully satisfied. **You may only revoke the above authorizations by contacting us directly, and only after you have satisfied your indebtedness to us.***⁴² (Emphasis added.)

Another online payday lender Loan Note and Disclosure for a loan costing 3,650% APR included typical terms to prevent borrowers from regaining control of the bank account. If a borrower revokes authorization to electronically withdraw payments from the account, the lender turns the obligation into an unsigned check or demand draft which the borrower cannot cancel. This very fine print was included in a loan agreement for an Arkansas consumer:

⁴¹ Turner v. E-Z Check Cashing, 35 F. Supp. 2d 1042 (M.D. Tenn. 1999)

⁴² <https://www.cashnetusa.com/secure/contract/contract>, July 30, 2007.

*You may revoke this authorization at any time up to 3 business days prior to the due date. However, if you timely revoke this authorization, you authorize us to prepare and submit a check drawn on your account to repay your loan when it comes due...*⁴³

Recommendation: *The Social Security Administration should support federal legislation that prohibits loans based on checks held for future deposit or required electronic access to recipients' bank accounts. Congress has provided this protection to Active-duty Service members and their families.*

V. Answers to Questions Posed by SSA.

Q: Have master/sub account arrangements disadvantaged any beneficiaries, and if so, in what way?

A. Third party direct deposit arrangements with check cashing outlets as a method of delivering federal benefits significantly hurts beneficiaries by charging high fees for a limited use bank account, accessible only at the check cashing or other retail outlet. Instead of owning a full-service bank account or an account accessed by a debit card that can be used at any location, recipients are locked into picking up their “checks” and paying to convert checks to cash. It is unclear if FDIC insurance, Electronic Fund Transfer Act protections and other rights attached to bank account ownership apply to third-party direct deposit arrangements.

Recipients are also disadvantaged when master/sub accounts are used to deliver exempt federal benefits to loan companies that deduct fees and loan payments from the benefits before the residual is made available to recipients. This method of extracting payment as the first priority for use of exempt funds functions is a *de facto* attachment or assignment. Instead of the recipient making choices about the use of scarce funds, the loan payment gets first priority over rent, food, or medical expenses.

Q: To what extent will the elimination of the procedure allowing benefits to be deposited into master/sub accounts create significant costs and burdens on beneficiaries or organizations that currently utilize this account arrangement?

There is no down-side to eliminating the procedure that allows benefits to be deposited into master/sub accounts provided through financial service companies and other retailers. Banks, intermediaries, and high cost financial service outlets are skimming off funds intended to meet the basic needs of federal benefit and pension recipients.

Q: Are there alternative payment procedures that we could offer to ensure that beneficiaries receive their benefits and have control over them?

⁴³ Loan Note and Disclosure, YourCashNetwork.com, dated 3/26/2005, on file with CFA.

A: The Treasury Department has launched the Direct Express Debit MasterCard to provide a relatively low cost direct deposit product for unbanked federal benefit recipients. As of mid-June, 2008, recipients in ten states have access to the card, with the rest of the country to be covered by the end of the summer. Federal funds are direct deposited into the card accounts each month. Cards can be used for purchases, bill payment and to withdraw cash at ATMs and retailers. The Direct Express card has no sign-up fees. Cardholders receive one free ATM cash withdrawal per month and cardholders can get cash back for free with point-of-sale purchases or at bank or credit union tellers. Optional services add modest fees to the cost of using the card.⁴⁴

Treasury contracted with Comerica Bank in Dallas to provide the card. Funds are FDIC-insured. Cards are PIN protected for use at ATMs and at retail point of sale. A lost or stolen card will be replaced. Cards cannot be overdrawn and there are no overdraft loan fees associated with the Direct Express card, a major protection against erosion of exempt funds to repay expensive credit.

Q: Without master/sub account arrangements, would creditors instead require beneficiaries to preauthorize the transfer of their benefits to the creditor when they are deposited into the beneficiary's account?

A. Under terms of the Electronic Fund Transfer Act, it is illegal to condition the extension of credit on a requirement that consumers make payments electronically for loans with periodic payment schedules. A lender may offer a cost advantage to make payments by preauthorized electronic funds transfer but cannot force consumers to use this payment method. Consumers retain the right to revoke authorization for a single payment or for any further payments as long as the borrower's bank is notified in enough time to stop the payment. Under the protections of EFTA and Reg E, federal benefit recipients can take advantage of the convenience of preauthorized electronic payment but retain control of funds in their account.

Q: Do beneficiaries have sufficient control over their benefits when they have elected to automatically transfer their benefits into the account of creditors after the benefits are deposited into the beneficiary's own account?

A. Payday loans are based on a personal check held for future deposit or, in some states, on authorization to make a single electronic debit to the bank account (not protected by the EFTA and Reg E). Most payday loans are repaid in cash with checks deposited to repay the loan only when the lender fails to entice the consumer to come back into the store to renew the loan every payday. Lenders use the unfunded check as a collection device. The payday lender and the consumer's bank will charge a fee for each check returned for insufficient funds. Some states make it a criminal violation for a payday loan borrower to subsequently close the bank account or stop payment on the check used to get

⁴⁴ Press release, "U.S. Treasury Introduces Direct Express Debit Card for Social Security Payments," FMS, U. S. Department of Treasury, issued June 10, 2008.

the loan. Since single-payment payday loans secured by a debit authorization are not covered by the protections of EFTA or Reg E, consumers do not have a clear legal right to revoke authorization for a single debit. In some cases, loan contracts forbid termination of access and in others convert the obligation to a demand draft or unsigned check to withdraw funds from the consumer's account.

Q: How can we address the situation where the lender will not allow the beneficiary to terminate a direct deposit arrangement or a pre-authorized transfer of benefits?

A. SSA should support legislation to prohibit loans to recipients which are secured by paper checks or electronic access to the exempt benefits deposited in a bank account. Congress and the Department of Defense have outlawed such loans made to Active-Duty Service members. The same protection should be extended to veterans, Social Security recipients, SSI beneficiaries and federal retirees. By making such loans null and void, lenders would have a financial incentive to comply with Treasury regulations and/or federal legislation.

Appendix A

There are at least four bank/intermediary services that offer direct deposit of federal benefits through check cashers, loan companies, money transmitters and other retail outlets.

1. Currency Connection/Republic Bank & Trust (RB&T) is a Direct Deposit Program marketed to check cashers and similar entities. Exempt federal funds are delivered to recipients either as cashiers checks or loaded onto a debit card. The RB&T program is targeted to consumers receiving payroll, government benefits (Social Security, SSI-Supplemental Security Income, VA-Veterans Affairs), child support, unemployment, retirement or any other regular direct deposit.

Currency Connection claims customers benefit by receiving payment two to four days earlier than payment is received by mail, by the safety of picking up the check rather than receiving a check in the mail, convenience in picking up the check where it is to be cashed, and FDIC insurance for deposits.⁴⁵ The benefits for check cashers are stated as: “Check cashers can ensure their customers will come back month after month with the Currency Connection DirectDeposit Program. Enroll in this FREE program to become a Republic Bank Electronic Funds Issuer and start increasing your customer retention and overall profitability.”⁴⁶

Currency Connection’s Cashier’s Check fees include \$3 to Republic Bank for the 1st direct deposit per month, plus a \$3 bank fee charged to customers for each additional deposit. The bank’s partner Electronic Funds Issuer (EFI) can charge customers an additional \$1 to \$5 fee for printing a paper check to deliver the funds for a total of up to \$6 per check in addition to the fee to cash the check. Currency Connection does not set limits on the fee check cashers can charge to then cash the paper check.

Currency Connection’s debit card fees include \$19.95 to set up the account and a monthly \$19.95 service fee. ATM transactions at Republic Bank & Trust terminals are free, but RB&T charges \$2 each time a customer uses another bank’s ATM plus deductions are made for whatever the “foreign” ATM charges. Point-of-sale or balance inquiry fees are \$1 each.⁴⁷

Both the bank and the check casher/loan company gain direct access to deposited exempt funds to pay fees or make loan payments before the recipient has access to federally-protected funds for living expenses.

Currency Connection touts its service to loan companies to “**enhance(s) collection efforts for in-house lending.**”⁴⁸ The contract signed by benefit recipients with RB&T authorizes

⁴⁵ https://www.ccrbt.com/check_faqs.aspx, last visited February 14, 2008.

⁴⁶ https://www.ccrbt.com/check_products.aspx, last visited February 14, 2008.

⁴⁷ https://www.ccrbt.com/card_faqs.aspx, last visited June 11, 2008.

⁴⁸ https://www.ccrbt.com/check_products.aspx, “Benefits to Check Cashier”

both the bank and the EFI to withdraw funds from the deposit to repay obligations to either the bank or the check casher/loan company. The Agreement states:

*You agree that the Bank may, unless prohibited by law, debit funds from your Account to pay all or portions of any amounts you may owe the Bank or your EFI. You acknowledge that the Bank may set-off against your Account in order to recover any ineligible benefits or payments you may have withdrawn if the Bank is obligated to return the funds to the entity that originates your payment (“Direct Deposit Originator”). Either you, or the Bank may transfer or close your Account at any time. Upon Account closure, the Bank will return to you the available balance in your Account less any fees or charges, claims, set-offs, or other amounts you owe the Bank or EFI.*⁴⁹
(Emphasis added.)

ACE Cash Express, a large check cashing/payday loan provider, has a private label version of Currency Connection, branded CheckDirect, which delivers Social Security, SSI, VA and retirement benefits via a cashier’s check or a prepaid debit card.⁵⁰ Store fliers display an image of a US Treasury Social Security, SSI and VA check: “Get your check up to three days earlier than by mail. Avoid the hassle of a lost or stolen check. Pick up and cash your check at over 1,000 locations offering ACE CheckDirect.”⁵¹ Ace check cashing fees vary, depending on state fee caps. A volunteer was told by an Arkansas ACE outlet that 2 percent is charged to cash the paper check generated from the Check Direct account. For a recipient receiving \$800, it would cost \$21.95 monthly just to access Social Security funds via CheckDirect (\$3 RB&T fee, \$2.95 for ACE to print the check plus \$16 to cash the check.)

RB&T Currency Connection Debit Card Program also provides an optional “Overdraft Protection” Feature which turns the direct deposit delivery card into a credit instrument.⁵² Currency Connection Overdraft Shield fees cost 25 percent of each overdraft per payment period up to a maximum of \$100. It is available to Currency Connection customers who receive at least \$400 per payment deposited into Republic Bank & Trust. **A Social Security recipient who elected the Overdraft feature would be charged at least 300% APR for a cash advance**, assuming the loan was outstanding for a full month. A recipient who overdrew on the card a week before the next SSI deposit was due would pay 1,300 percent APR (\$25 per \$100 borrowed for one week). Overdraft loans are repaid out of the next deposit into the account.⁵³ This gives the bank first claim on exempt funds.

⁴⁹ ACE CheckDirect Deposit Account Application and Agreement, acquired 2008, on file with CFA.

⁵⁰ http://www.acecashexpress.com/ss_directdeposit.php, last visited February 14, 2008.

⁵¹ ACE CheckDirect flier, picked up at Arkansas outlet, February 2008. On file with CFA.

⁵² <http://www.electrobanking.com/users/serview.asp?xss'ElectroBanking&suid'515&page> ‘... Last visited April 29, 2008.

⁵³ AMsource Currency Connection FAQ, on file with CFA.

Recipients can also borrow from RB&T when their funds are delivered via cashier's check. The standard Currency Connection Cashier's Check which is generated by the non-bank partner includes a Truth in Lending box to disclose the amount financed, the finance charge, total of payments, and the Annual Percentage Rate. Fine print states that borrowers will not be entitled to a refund of any part of the prepaid finance charge.⁵⁴

2. Dollars Direct (River City Bank)

River City Bank of Kentucky offers a direct deposit program to check cashers through its Dollar\$\$\$ Direct program. The bank's marketing materials to check cashers explain:

Only banks can offer direct deposit. UNTIL NOW!

*Now YOU can offer direct deposit to your customers! The Dollar\$\$\$ Direct program makes it possible for these "unbanked" individuals to continue receiving and cashing their checks while complying with the government's wishes to go paperless... You can establish a check printing fee from \$0 - \$9.99 for each check that you print. Also, providing direct deposit will keep your customers coming back to you each and every month!*⁵⁵

River City Bank Dollar\$\$\$ Direct delivers exempt funds by either a cashier's check or a debit card. The direct deposit agreement permits the bank to deduct fees for both River City Bank and the Electronic Funds Distributor (EFD) before exempt funds are made available to the recipient.⁵⁶ Once the funds have been transferred from the bank to the check casher or other outlet, the bank takes no responsibility for failure of their partner to correctly deliver the check to the payee.⁵⁷

Fees and charges: I authorize the Bank to deduct from the proceeds of my monthly or other periodic disbursement, all fees and charges related thereto as described in the Dollar\$\$\$ Direct account disclosures and fee schedule. I further authorize the Bank to pay all

⁵⁴ *Id.*

⁵⁵ <http://www.dollars-direct.com/> visited May 2, 2006.

⁵⁶ "Fees and Charges: I authorize the Bank to deduct from the proceeds of my monthly or other periodic disbursement, all fees and charges related thereto as described in the Dollar\$\$\$ Direct account disclosures, and fee schedule. I further authorize the Bank to apply all of the fees and charges due to the EFD upon receipt by the Bank of the Direct Deposit." CITE

⁵⁷ Application-Authorization-Certification-Agreement, Terms and Conditions of the Account, Deposits and Withdrawals, accessed at <http://www.debitcardone.com> June 16, 2008. "I hereby appoint the EFD as my agent for purposes of receiving from the Bank and delivering to me my monthly or other periodic check(s). I hereby release, absolve, and forever discharge the Bank from any and all liabilities whatsoever as a result of (e) the failure of the EFD to deliver my monthly or other periodic check(s) to me; or (ii) the fraudulent endorsement or negotiation of my monthly or other periodic check(s). In the event of the occurrence of the events described at (i) and (ii) of this paragraph, I acknowledge that the only claims I have are against the EFD, and not the Bank."

*of the fees and charges due to the EFD upon receipt by the Bank of the Direct Deposit.*⁵⁸

The Dollar\$\$\$ Direct fee schedule includes the following:

Account Setup Fee	\$14.50
Cashier's Check Fee	\$ 2.95 (for each check issued for first deposit) \$ 1.95 (for each subsequent payment deposited)
Dollar\$\$\$ Direct Debit Card	
Monthly Service Charge	\$10
Transaction fee	\$ 1
Overdraft Privilege Fee	\$ 7.50 ⁵⁹
Cash Advance Fee	\$10

Dollar\$\$\$ Direct's debit card comes with an overdraft "privilege" of up to \$250 over the account balance⁶⁰, enabling recipients to borrow from the bank by overdrawing the account. A River City Bank web page cached by Google from February 9, 2006 explains its cash advance program to check cashers and other outlets as a loan product.

Welcome to the Cash Advance Program page. Here you will find information about how direct deposit customers can get Cash Advances on any benefit or payment including SSA, SSI and VA as well as Payroll and Welfare.

What is CAP?

The Cash Advance Program or CAP is a program within the Dollar\$\$\$ Direct program where an EFD (Electronic Funds Distributor) is allowed to print and distribute Cash Advances taken on any recurring payment received by a direct deposit customer. An EFD can offer money anytime to direct deposit customers who simply cannot wait until their next deposit arrives. If the customer qualifies, he or she could receive part of their direct deposit whenever they need it.

Offering Cash Advances to your customers will increase your check printing and cashing volume. Cash Advances are only available as \$200 loans from River City Bank. The bank charges a \$10 fee for each Cash Advance, and we can deduct up to \$10 per Cash Advance for your fee as well. Offering CAP could also increase your customer

⁵⁸ River City Bank Dollar\$\$\$ Direct Application, Authorization, Certification, Agreement. On file with CFA.

⁵⁹ <http://www.debitcardone.com/terms.html>, June 16, 2008. Fee schedule dated 09/03. A version provided by Community Legal Services in Philadelphia, dated 04/07, did not list the Overdraft Privilege Fee, but included a \$10 Cash Advance Fee. On file with CFA.

⁶⁰ <http://www.debitcardone.com/features.html>, visited June 16, 2008.

base since some customers are more interested in the Cash Advance option than they are the direct deposit option. Finally, offering CAP through our program relieves you of the risk involved in loaning funds.”⁶¹

Dollar\$\$\$ Direct agreement permits one cash advance per direct deposit. The APR quoted for a one week loan is 277.44%, and for 28 days as 68.61% APR. If the check casher adds an additional \$10 fee per \$200 loan, the cost of this loan doubles to 554.88% APR for one week and 137.22% APR for 28 days. The APR disclosure the customer sees prior to getting a loan does not include other fees which could be charged by the bank’s store front partner. To get a cash advance, the borrower has to sign over the next direct deposit of exempt federal funds to the bank. The agreement states:

I authorize the bank to access the designated Direct Deposit Account once the direct deposits have been made into the Direct Deposit Account and to disburse the monies deposited therein (less all applicable loan payoffs, fees and charges) as a cashier’s check made payable to me.⁶²

3. Petz Enterprises Quick Acce\$\$ advertises to check cashers that “Giving Money Away has Never Been So Profitable....The majority of your check-cashing customers come to you because they don’t have a checking account. QuickAcce\$\$ allows you to print and cash payroll and benefits checks all in one place, giving your customers the speed and security of direct deposit without having to use a conventional bank while **you get to keep a percentage of every transaction** (emphasis in ad.)⁶³” In a 2005 Petz newsletter, the QuickAcce\$\$ 2004 program was described as follows: “QuickAccess allows your customer’s funds to be directly deposited into a trust account, and you are authorized to print a check made payable to the recipient at your location for the amount of the benefits, less any applicable QuickAccess fees.”⁶⁴

QuickAccess partners with Bank of Agriculture and Commerce in California to receive direct deposit of SS and SSI benefits. Their electronic benefit distribution method is advertised to check cashers, grocery stores, convenience stores, and pawn brokers. Types of benefits processed include Social Security payments, retirement benefits, and payments from more than 27 Federal Entitlement Programs. QuickAccess transaction fees to retail service centers are \$3 per check for all transactions greater than \$10 with no fee for smaller transactions. Retailers are charged \$195 Annual Membership Fee per location with the fee waived for locations with more than twenty-five registered recipients. QuickAccess pays rebate bonuses to service centers of up to fifty cents per check based on monthly

⁶¹ River City Bank – Dollars Direct page, retrieved by Google on Feb. 9, 2006. On file with CFA.

⁶² River City Bank – Dollars Direct Agreement, Cash Advance Product, on file with CFA.

⁶³ QuickAcce\$\$ ad, ChekList, Vol. 10 No. 3, 2007, p. 62.

⁶⁴ Petz Enterprises Newsletter 2005 “What’s Better than Money in the Bank?” available at www.petzent.com.

transaction volume.⁶⁵ We do not have a fee schedule for charges to benefit recipients for receiving their SS or SSI payments at check cashers or other retailers using QuickAccess.

4. First Citizens Bank/FirstNet/Cornerstone Community Bank. In the Wall Street Journal example of Mr. Bevels and the Small Loan Company in Alabama, SSA deposited his exempt federal funds into an account at Cornerstone Community Bank in Chattanooga, TN. Mr. Bevel's funds were immediately deducted to make payments to the Small Loan Company. The bank statement directed inquiries to a phone number for First Citizens Bank's FirstNet operation based in Radcliff, KY. First Citizens Bank describes its "Federal Benefits Program" direct deposit service for loan companies as follows:

*"FirstNet pioneered the first third-party federal benefits payment processing system for the consumer finance industry in 1992. This system allows companies operating as Financial Service Providers to accept and process direct deposits on behalf of federal benefit recipients. This system can also be used for anyone using direct deposit, including non-federal benefits. This service has proven to be beneficial in increasing branch traffic, increasing processing fees, and building customer loyalty. Industries successfully using this: Consumer Finance, Money Transfer. Key Benefits: Increased branch traffic. Increased fee revenue. Availability of funds on opening of business on beneficiary pay date. Flexible movement of funds. Automatic electronic enrollment."*⁶⁶

FirstNet's website further explains the benefits of its "Government Benefits Processing" for loan companies. "The process allows you to provide a safe, secure way for your customers to receive their benefits and **make their monthly loan payment as soon as the benefits become available.** (Emphasis added.)"⁶⁷ The social worker who assisted Mr. Bevels recalls that he had multiple loans at the same loan company, each permitting the loan company's bank to deduct loan payments from his exempt funds, leaving him with about \$200 from the \$600 monthly check to live on.⁶⁸

⁶⁵ <http://www.petzent.com/quickaccess/pricing.asp>, last visited May 22, 2008.

⁶⁶ <http://www.first-citizens.com/allot.asp?IF'fedben.asp&FTR'altfooter.asp>, last visited May 22, 2008.

⁶⁷ <https://www.weballotments.com/fedsys.asp>, visited June 12, 2008.

⁶⁸ Telephone communications with social worker.

Appendix B

Case Studies of Federal Beneficiaries and Harmful Financial Products and Practices

- A Houston, Texas Social Security recipient borrowed \$360 from Cash Express and its True Financial Services, LP partner in a “credit services organization” (CSO) form of payday lending. Finance charge for this loan was \$75.25 (\$3.25 interest to True Financial and \$72 fee to CSO) and the APR 231.20 percent. The loan was issued on August 31, 2007 and was due in full on October 3, 2007 for a payment of \$363.25 due to True Financial Services, LP and \$72 on the same day to Cash Express for its CSO fee. He paid \$72 every month for six months, thinking he was paying down the loan. After paying \$432 back on a \$360 loan, he was told that he still owed the full \$360 amount for loan principal and another CSO fee. The loan was secured by authorization to permit the lender to withdraw funds through the automated clearinghouse system from his bank account. The contract language does not permit the borrower to terminate the ACH authorization:

Automated Clearing House (“ACH”) Authorization. You agree to provide us ACH authorization to debit your checking account (“Account”) at your bank (“Bank”). If you do not pay us on time, either directly or in care of the CSO, you authorize us or our agent, to initiate an ACH debit to your Account for any amount due to us with regard to this loan. You are not authorizing us to initiate ACH debits on your Account to recur at substantially regular intervals. However, Lender or its agent may resubmit an ACH debit up to three times if the debit is not honored by your Bank. You will maintain a balance of available funds in your Account at least equal to the amount due and owing under this Agreement. You understand that your Bank may impose charges for each ACH debit that is not honored by your Bank. You agree that an ACH debit authorized under this Agreement may be combined with an ACH debit that you authorized your CSO to make with regard to your loan.⁶⁹

- A Berea, KY consumer, whose sole income was \$475 to \$620 in monthly SSI benefits for disabilities, got payday loans costing 180% APR and check cashing services from Cash Express LLC. She was required to furnish a post-dated check for the amount of the loan plus the fee. The lender knew that the \$460 loan check constituted more than eighty percent of the borrower’s monthly income, making it likely that loans would be renewed or rolled over on a monthly basis. According to a complaint filed in arbitration, she paid the \$60 finance charge and rolled over the principal numerous times. The monthly fees alone were about ten percent of her income. She became unable to pay her rent and was evicted from subsidized,

⁶⁹ Loan Disclosure and Promissory Note, True Financial Services, LP, on file with CFA.

Section Eight housing on which she paid rent of \$118 a month. Storage for her furniture cost \$75 per month. Eventually she closed her bank account and offered to make \$25 monthly payments on her \$500 debt to Cash Express. During a visit to discuss payment arrangements, Cash Express offered to cash her SSI check for a fee. The lender refused to return any funds to the consumer, keeping all of her cashed SSI check to pay off the loan, leaving her with no income for the month. This caused extreme emotional distress.⁷⁰

- A Franklin, New Hampshire resident whose only income was from SSI, got a loan from Advance America, expecting to be able to repay the loan with SSI funds after the town welfare office helped with her living expenses. The \$350 loan for one month cost \$70 finance charge and 240 percent APR. When assistance was denied, Advance America refused to provide an extended payment plan. She stopped payment on the check used to get the loan and offered to make \$5 payments. Advance America staff visited her home to demand payment and made repeated telephone calls demanding payment. Despite accepting her \$5 payments, Advance America told her to stop sending the payments and that they would take her to court if she didn't pay in full. Only after a legal services attorney explained the exempt status of SSI funds and the terms of the New Hampshire debt collection law did calls stop.⁷¹
- A Colorado consumer "GM" posted a message to the Arkansas coalition opposing payday lending (www.StopPaydayPredators.org). GM had twelve payday loans open at the same time. He paid interest-only fees until no longer able to do so and was being accused of writing checks on a closed account. His only income is SSI and Social Security benefits. He stated he was "extremely terrified because I know that I won't survive in prison" and saw homelessness as his only way to repay the twelve loans.⁷² Colorado permits payday lenders to charge \$20 per \$100 for the first \$300 loan and \$7.50 per \$100 for loan amounts from \$300 to \$500. A two-week \$300 payday loan costs 520% APR.⁷³
- Peter Dixon, a disabled Virginia resident, whose sole income consists of Social Security Disability Insurance Benefits of about \$700 per month, got payday loans from NFC Payday Advance in Danville. To borrow \$300, Mr. Dixon wrote a bad check for \$345 for a 30-day loan at an APR of 219%. He paid NFC \$45 per month in interest on the original \$300 loan. At the end of twenty months, he had paid \$900 in interest for \$300 principal borrowed but still owed the original balance. In

⁷⁰ Complaint, Riva Banks vs. Cash Express of Tennessee, LLC d/b/a Cash Express LLC, American Arbitration Association in the Commonwealth of Kentucky, filed December 27, 2007.

⁷¹ Electronic communication, Sarah Mattson, New Hampshire Legal Assistance, received by CFA June 2, 2008.

⁷² Electronic communication from H.C. Klein, on posting at www.StopPaydayPredators.org Feb. 24, 2008.

⁷³ See State Information, www.paydayloaninfo.org Click on Colorado on the map for details.

order to pay off the \$345 owed, Mr. Dixon got another payday loan and sold a vehicle.⁷⁴

- Cynthia Wimberly, who was unemployed and had no income, obtained payday loans from Advance America in Arkansas, secured by the Veterans Administration and Social Security benefits provided to her granddaughter. She was charged 150.30% APR for one-month loans which were repeatedly renewed for interest-only payments. When she asked for an extended payment plan to retire the debt, Advance America refused. Nehemiah Bailey, another Arkansas consumer whose only income came from Veterans Administration benefits borrowed \$350 and agreed to repay \$390.37 by the end of the month for a loan costing 150.35% APR. The Advance America contract granted the lender access to funds deposited in the borrowers' bank accounts. If borrowers did not return to the store to "repurchase" the check with cash, the lender would deposit or present the check at a bank to be repaid from funds on deposit in the borrower's account⁷⁵

⁷⁴ Complaint, *Peter Dixon v. NFC Check Cashing Services, Inc., d/b/a NFC Payday Advance*, Circuit Court for the City of Danville, on file with CFA.

⁷⁵ Complaint, *Kelvin White, Cynthia Wimberly, and Nehemiah Bailey vs. Advance America Servicing, et al*, Circuit Court of Ouachita County, Arkansas, May 31, 2007.

Appendix C

Social Security and SSI Beneficiaries Cannot Afford Payday Loans

Consumers who rely on Social Security or SSI for most or all of their income simply cannot afford to repay the typical payday loan in a single monthly balloon payment as illustrated by the chart below. A retiree with \$25,000 in annual income and typical expenses based on the 2006 Bureau of Labor Statistics budget for people in the \$20,000 to \$30,000 per year income range would have a deficit of \$158 after repaying a \$325 payday loan at the end of the month. This income category would apply either to one recipient who gets about half her income from Social Security and half from another source or for two recipients who only receive Social Security. About two-thirds of retirees get half of their income from Social Security, making this scenario fit the majority of SS recipients.

\$25,000 per Year Income Not Sufficient to Repay Payday Loan⁷⁶	
Income: Monthly income before taxes	\$2083
Household Expenditures per month	
Food	\$ 345
Housing/utilities	\$ 896
Transportation	\$ 422
Healthcare	\$ 201
Total Expenditures:	\$1864
Net Paycheck minus essentials:	\$ 219
Average Payday Loan	\$ 325
Average Payment with Interest	\$ 377
Monthly Deficit if payday loan paid on time	\$ -158

Payday Lending is a Debt Trap for Borrowers

Payday loans are claimed by lenders to be once-in-a-blue-moon emergency cash flow tools. The reality has emerged that payday loans foster repeat borrowing and become long term or frequent obligations. A Texas study of a large group of borrowers found that the average borrower had 9.8 loans per year, indicating that payday loan behavior is unlikely to be driven by temporary shocks to consumption needs. Assuming a two-week loan term and an average \$245 loan, borrowers paid \$350 in interest payments for the use

⁷⁶ Analysis by Leslie Parrish, Center for Responsible Lending.
http://www.socialsecurity.gov/policy/docs/chartbooks/fast_facts/2007/fast_facts07.html and
http://www.ssa.gov/policy/docs/quickfacts/stat_snapshot/ and Bureau of Labor Statistics Consumer Expenditure Survey 2006.

of \$245 for less than twenty weeks out of the year.⁷⁷ The Skiba/Tobacman study concludes that “the repeated and persistent borrowing we observe appears difficult to reconcile with temporary shocks to consumption needs,” in contrast to industry claims that payday loans are only used to cover emergencies such as car repair or doctor visits. These researchers also found that applicants who obtained payday loans were about twice as likely to file for bankruptcy within a short period than applicants who were turned down for payday loans.⁷⁸

A loan is “rolled over” when a payday loan is extended for another pay cycle before the loan is again due. The lender collects the finance charge, but the loan principal is not reduced. Some states ban rollovers, but that is easily circumvented. Lenders can allow borrowers to pay off one loan and immediately take out another one, sometimes called back-to-back transactions or serial loans. Although this is nominally a new loan, it has the same financial impact as renewing a loan. Borrowers can effectively roll over a loan by borrowing from a second lender to repay the first or by taking out multiple loans to keep checks from bouncing at loan outlets.

⁷⁷ Paige Marta Skiba and Jeremy Tobacman, at 3. Study reports 9.8 loans for a total of \$2400 and \$350 in interest payments per year. CFA calculated that \$2400 divided by the total number of loans reveals the amount of credit outstanding at one time. Multiplied by the typical two week loan term results in the length of time the average \$245 loan was outstanding.

⁷⁸ Paige Skiba and Jeremy Tobacman, “Do Payday Loans Cause Bankruptcy,” February 19, 2008 at 1.