



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

December 18, 1997

Cynthia L. Johnson, Director
Cash Management Policy and Planning Division
Financial Management Service
U.S. Department of the Treasury
Room 420
401 14th Street, S.W.
Washington, D.C. 20227

Re: Notice of Proposed Rulemaking, 31 CFR Part 208

Dear Ms. Johnson:

The Federal Trade Commission ("Commission") appreciates this opportunity to comment to the Department of the Treasury ("Treasury") on its proposed rule to implement the Debt Collection Improvement Act of 1996 ("Act"). The Act, which was passed as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104-134), requires the use of electronic funds transfer ("EFT") for all Federal payments, with the exception of tax refunds, starting January 2, 1999.⁽¹⁾ This program -- commonly known as EFT '99 -- seeks to make the process of transmitting Federal payments more efficient and, at the same time, bring into the mainstream of the financial system those millions of Americans who receive Federal payments and who currently do not use the financial system to receive funds, make payments, save, borrow or invest.⁽²⁾ The Commission submits the following comments on Treasury's proposed rule.

I. Introduction

The Commission has wide-ranging jurisdiction over credit-related consumer protection matters pursuant to numerous statutes and trade regulation rules. In addition, Section 5 of the Federal Trade Commission Act prohibits unfair or deceptive acts or practices. One specific statute that the Commission enforces that is relevant to Treasury's proposal is the Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. § 1693 et seq. The EFTA and its implementing Regulation E cover a variety of electronic fund transfers involving consumers' asset accounts, such as transactions at automated teller machines and debit-card purchases.⁽³⁾ In addition, the Commission is involved in electronic payments issues as a member of the Consumer Electronic Payments Task Force, an interagency task force created by Treasury Secretary Rubin.⁽⁴⁾

The Commission supports Treasury's goals in implementing the Act. These goals include making certain that recipients have access to their funds at a reasonable cost; providing appropriate consumer protection; ensuring that the system delivers payments and information accurately, conveniently, and in a timely manner; and significantly increasing recipients' participation in the country's financial system.⁽⁵⁾ Treasury's proposal goes far to ensure that these goals will be met. The Commission supports the proposal, and offers the following additional comments.

II. Definition of Authorized Payment Agent

The Act requires each recipient of Federal payments required to be made by EFT to designate one or more financial institutions or other authorized agents to which such payments shall be made.(6) The proposed rule defines "financial institution" to mean a depository institution, such as a bank, credit union, or savings association.(7) A significant issue is what the Act means by "authorized payment agent" and similar terms. Treasury proposes to limit the definition of "authorized payment agent" to selected representatives of recipients who are physically or mentally incapable of managing their payments. Thus, under the proposed definition, an "authorized payment agent" is any individual or entity that is appointed or otherwise selected as a representative payee or fiduciary, under regulations of the Social Security Administration, the Department of Veterans Affairs, the Railroad Retirement Board, or other agency making Federal payments, to act on behalf of an individual entitled to a Federal payment.(8) h-1

that they are familiar with other, perhaps less costly, options which might foster competition. For example, financial institutions might offer consumers inexpensive electronic banking accounts accessible through automated teller machines and point-of-sale devices.⁽¹³⁾ In addition, for consumers who do not designate a financial institution for receiving payments or obtain a waiver from such requirement, Treasury will provide access to an account at a reasonable cost.⁽¹⁴⁾ Unless consumers are aware of such options and their associated costs, they will be ill-equipped to choose the best means of obtaining their Federal payments. For this reason, the Commission supports Treasury in its efforts to educate consumers fully and early about their options.⁽¹⁵⁾

III. Hard ship Waivers

The Act authorizes Treasury to waive the requirement to make Federal payments by EFT for individuals for whom compliance imposes a hardship.⁽¹⁶⁾ Treasury proposes to determine hardship waivers based upon three categories.

First, Treasury's proposed rule would not allow hardship waivers for individuals who have an account with a financial institution and who became eligible for a Federal payment on or after July 26, 1996 ("newly-eligible recipients"). According to Treasury, newly-eligible recipients have been receiving their payment by EFT, in accordance with the

before July 26, 1996, would not be required to receive payment by EFT where the use of EFT would impose a hardship due to either a physical disability or a geographic barrier. For example, a waiver would be available to a recipient with a physical disability who currently has an arrangement with a nearby grocery store to cash his or her monthly check, but would have great difficulty traveling even a short distance to get the payment by EFT. Similarly, a waiver

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obtain such account services through a competitive process that will select one or more entities to act as Treasury's agent to provide these services. The proposed regulation seeks comment on the design of these Federally-provided accounts, and notes Treasury's preliminary view that each recipient should have an individual account at a Federally-

innovative responses to those issues, consistent with the needs of a developing market." 62 Fed. Reg. 19173, 19174 (1997).

5. 62 Fed. Reg. at 48714.

6. 31 U.S.C. § 3332(g). According to Treasury's proposal, the Act uses three terms

-- "authorized payment agent," "authorized agents," and "agent" -- to refer to the same entity or entities, although it does not define the terms. 62 Fed. Reg. at 48716.

7. 62 Fed. Reg. at 48717.

8. Id. at 48716-17, 48725.

9. Proposed § 208.6 addresses account requireme

22. 31 U.S.C. § 3332(i)(2). In the event that systems are developed that would permit non-financial institutions to receive Federal payments directly, see Part II, supra, the Commission encourages Treasury to enhance competition in the market for involuntary accounts by permitting qualified non-financial institutions to bid to provide such accounts.

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