

Testimony before the Subcommittee on Financial Institutions and Consumer
Credit
U.S. House of Representatives regarding

**The impact of Treasury's Proposed
Regulation under the
"EFT 99" Provisions of the Debt Collection
Improvement Act of 1996
On the Poor, the Elderly and the
"Unbanked"**

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Presented by: Margot Saunders, Managing Attorney, National Consumer Law
Center, also on behalf of the
Consumer Federation of America, National Community Reinvestment
Coalition, and Organization For A New Equality

Ms. Chairman and Members of the Subcommittee, the National Consumer Law Center⁽¹⁾ thanks you for inviting us to testify today regarding the implications of EFT 99 on the unbanked recipients of federal payments. We offer our testimony here today on behalf of our low income clients, as well as the Consumer Federation of America,⁽³⁾ the National Community Reinvestment Coalition,⁽⁴⁾ and the Organization for A New Equality.⁽⁵⁾ This is an issue in which we are all vitally interested, because the limited income of so many low income recipients of federal payments will be affected so directly by the decisions that Treasury makes in the Final Regulations. Unfortunately, unless Treasury makes significant changes in the Final Regulations we are convinced that low income recipients of Social Security, SSI and Veterans Benefits will be harmed.

Given the thoughtful and comprehensive nature of the questions posed to witnesses in this Committee hearing, we will provide most of the information in the form of answers to those questions. However, there are four crucial points we wish to emphasize on behalf of our low income clients:

- The goal of bringing the unbanked into the financial mainstream will not be achieved by these regulations. By refusing to regulate the "voluntary" accounts established by recipients to comply with the new law, Treasury has chosen to establish a system which will push many unbanked recipients of federal payments into the arms of the unregulated, unsupervised wing of the financial services industry: the check cashers, the finance companies and other fringe bankers. This is very harmful for the residents of low income communities.

- Treasury's Proposed Regulations fail to provide waivers for persons with mental disabilities, literacy problems and language barriers. Treasury's proposal to disallow waivers for persons on the basis of mental disabilities, literacy problems, and language barriers will create serious problems for many federal recipients.
- Critical questions of cost and real access to banking services are still undetermined in the design of ETA. The design of the account provided to the unbanked by Treasury is completely undetermined at this point; yet the attributes of the account, who will be entitled to the account, the cost to recipients, and the extent to which the banks providing the account will expand their presence in the low income community are all crucial issues which still must be addressed.
- There are no protections against attachment, garnishment and set-off. Despite the clear protections in federal law against attachment and garnishment of Social Security, Supplemental Security Income (SSI) and Veterans' Benefits, numerous consumers do not use banks because they are afraid their limited funds will be taken by judgment creditors. Providing crystal clear prohibitions against attachment and set-off of funds in EFT accounts would bring many consumers back into the financial mainstream. Treasury's proposed regulations do not address these issues.

Answers to Chairman Roukema's Questions

Question # 1

A large number of the comments that were provided in response to Treasury's September 16, 1997 proposed rule indicated that the criteria for hardship waivers is too narrow. Please explain if and how the criteria for waivers should be expanded.

Answer # 1

The scheme proposed by Treasury of allowing recipients to self-certify their eligibility for a hardship exemption so as to continue to receive payment by check rather than EFT is good, in so far as it goes.⁽⁶⁾ Treasury anticipates that "a waiver from payment by EFT will be automatic and based solely on the individual's certification."⁽⁷⁾ Serious hardships will be caused, however, to many federal recipients because the criteria for hardship waivers are far too narrow. There will be one of two adverse results: either 1) federal recipients will be forced to surrender a level of independence, and be subjected to unacceptable charges and abusive practices they would not have encountered in the check based environment; or 2) they will have to lie on their self-certification waiver to avoid expensive or inaccessible electronic deposits -- a result which should not be encouraged by a federal regulation.

A. No Waivers Are Provided for Those with Mental Disabilities, Literacy Problems or English Fluency Issues.

Treasury ignores the legislative history on the hardship exemption in the Act by excluding from the enumeration of qualifying criteria:

- mental handicap,
- educational hindrances,
- language problems,
- financial hardship if the recipient has a bank account, and
- *any* criteria whatsoever, if the recipient has a bank account and becomes eligible for the federal payment after July 26, 1996.

Treasury seems to have ignored the explicit intent of Congress, as evidenced in the Legislative History, to use hardship waivers to ease the transition to an electronic payment system:

The Secretary of the Treasury is given broad discretion to waive the requirements of this section to avoid imposing a hardship on a beneficiary. Congress expects the Department of the Treasury to promulgate regulations addressing such hardship waivers and to consider various factors in defining hardship. Congress recognizes that adherence to these provisions may be difficult for a variety of beneficiaries. We are concerned that individuals who have geographical, physical, mental, educational, or language barriers or as a result of natural or environmental disasters will not be able to receive benefits. Recipients in this category include small businesses as well as individuals. Waivers should be provided in order to minimize disruptions to any beneficiary.⁽⁸⁾

Under the proposed regulations, none of these conditions would be just cause for the granting of a waiver from the EFT requirement. Only physical handicap, geographic barrier, or financial hardship for the unbanked, would qualify as a hardship criteria. The rationale offered by Treasury for this decision in the preamble to the proposed regulations evidences a lack of true understanding or compassion for the populations that would be affected.

Mental Disability. Treasury simply states that waivers would not be required for persons with a mental disability. The rationale offered is that those who have a mental disability that makes them incapable of managing their own funds would have a representative payee appointed for them by the applicable program agency and such payee would presumably be able to handle an EFT payment arrangement unless he or she individually met one of the other exemption criteria.⁽⁹⁾ There are several very important considerations that Treasury leaves out of its overly simplistic justification. First, there are a very large number of recipients with mental impairments

who are quite capable of managing their own funds in a check based system and who, absent a transition to an electronic delivery system, could function independently without the need of turning their finances over to a representative payee. Some of these recipients may simply be unable to remember a PIN; others may have a limited ability to think conceptually and, while they can count out money to make purchases or even write checks to pay bills, cannot deal with abstract benefits they cannot see and feel. It is simply unconscionable to say that, because the government wants to save some money, such individuals should now have to put someone else in charge of their funds and give up that level of control over their own lives.

The second consideration that Treasury ignores is that there is already a great difficulty in finding persons or entities willing to serve as representative payees for those government benefit recipients who are truly incapable of managing their own funds. In some parts of the country there is a thriving business of individuals and agencies that sell their services to be a representative payee to persons who can not otherwise find someone. By forcing even more people into a situation where they will have to have a representative payee in order to receive their government benefits, Treasury will in effect be supporting the growth of this industry that takes money out of the pockets of some of our neediest citizens without any tangible benefit to the program recipients.

A final consideration ignored by Treasury's justification for its position is the possible risk of loss of benefits to recipients if they are forced into a representative payee situation. The Reg E⁽¹⁰⁾ limitations on consumer liability for losses that are associated with the use of a valid card and PIN do not apply if those benefits are accessed by a representative payee who misappropriates the funds for his own use. Thus, there would be no protection for recipients who felt compelled to pay some stranger to serve as their representative payee so that they could get their government benefits only to find that such person wiped out their accounts and moved on.

Limited Literacy Skills and English Fluency. Treasury's proposed rule also does not envision permitting a hardship waiver on the basis of educational level, limited literacy skills, or lack of fluency in English. Here Treasury argues first that these factors do not pose any barriers unique to an EFT delivery mechanism as opposed to a check system.⁽¹¹⁾ Such an assertion is again simply untrue. Many persons who fall within one of these categories can in fact operate in a paper based environment, sometimes alone and sometimes with the help of friends and family, even if they cannot read or write or are not fluent in English. It does not take an ability to read or write to sign a check with an "X" or an ability to read English to sign your name on the back of a check. It does on the other hand require an ability to read English or one of the other limited languages that may be available on a POS or ATM screen to negotiate an electronic debit of funds. It is those who are not literate and/or fluent in English that are most likely to end up with an electronic debit only account. It is these populations who will not otherwise

have a relationship with a bank and therefore will not even be able to avail themselves of teller assistance when they cannot negotiate the ATM.

Treasury's next argument is that whatever problems EFT may pose for these segments of the population are merely a "short-lived" "transitional hurdle" that it asserts will be overcome by targeted educational programs.⁽¹²⁾ Since, to the best of our knowledge, Treasury has no plans to offer any in-person training on how to use debit card technology or on how to shop around for low cost bank accounts that will permit direct deposit, it is unclear how they plan to "educate" this population to get them through the transition. The printed materials they appear to be relying on most heavily for their educational campaign will be of little use to those who cannot read the materials, nor is there any indication that they will be made available in anything other than a very limited number of languages. Public service announcements, the other major vehicle Treasury plans to employ, are unlikely to provide much in the way of substantive information. It is certainly unrealistic for Treasury to count on already over-extended and under-funded community based organizations to take on the role of educating and training those among the 10 million unbanked recipients of direct federal benefits who are out there who will need such assistance because of their educational or language problems.

It is not enough to note, as Treasury does in the preamble to the proposed regulations, that in some areas ATMs and POS terminals offer language options other than English⁽¹³⁾ as this does nothing to answer the question of whether on-screen messages in the appropriate language are in fact available to those who need them where and when they need them. The obvious answer is "no" if your primary language is something other than Spanish or English.

Moreover, Congress specifically instructed Treasury to address the problems that recipients with these handicaps have in transitioning to an electronic system. Simply saying that the problems are not problems, is not addressing them, it is ignoring them. There will be, as Congress recognized, significant difficulties faced by recipients with mental problems, and literacy and English fluency barriers in this changed environment. There is simply no justification for excluding these populations from the ability to seek a hardship waiver.

B. No Waivers Are Available to Those with Bank Accounts Who Become Eligible for Federal Benefits after July 26, 1996.

No waivers are available whatsoever for recipients who become eligible for federal payments after July 26, 1996 who have bank accounts. Treasury's justification for this is slim:

Treasury's proposal to tie the availability of a waiver for an individual who has a bank account to the date an individual became eligible for the federal payment is based on a review of its experience, and the experience of the

agencies responsible for the vast majority of Federal payments, during phase one The SSA . . . reports that approximately 76% of the recipients who became eligible to receive Social Security and Supplemental Security Income payments since July 26, 1996, are receiving payment by EFT.⁽¹⁴⁾

There are several problems with this justification. One: We have heard reports from recipients that they are being told when they go into SSA offices and apply for benefits that they must have a bank account.⁽¹⁵⁾ So recipients are going out and obtaining new bank accounts -- whether or not they can afford them -- solely because they are led to believe that obtaining one is a prerequisite to qualifying for federal benefits. Recipients should not be misled in this way. Congress never intended that unbanked new recipients be pressured into obtaining bank accounts for the sole purpose of qualifying for federal payments, especially when there is no federal oversight of the costs for the accounts established just for receipt of federal benefits. The fact that as a result of this misinformation, many new recipients are signing up for EFT, and are obtaining bank accounts in the process, cannot be a reasonable basis for disallowing hardship waivers to this population.

The second problem is if only 76% of the recipients who become eligible are receiving payment by EFT, what about the rest? This means that 24% of new recipients are NOT signing up for EFT. How does Treasury propose to handle them? In its discussion of the hardship waiver, Congress made no distinction between individuals based *on when they become eligible for federal benefits*:

(2)(A) The Secretary of the Treasury may waive application of this subsection to payments--

(i) for individuals or classes of individuals for whom compliance imposes a hardship;⁽¹⁶⁾

New recipients need waivers based on physical, geographic, mental, English fluency, and literacy reasons as much as other recipients. There should not be any distinctions based on when eligibility for federal benefits occurred. Moreover, this proposed system of waivers makes no allowance for future changes in the circumstances of a recipient. For example, if a recipient moves from one area in which banks are accessible to another in which they are not, the recipient should be able to claim a geographic hardship. Or if a recipient becomes non-ambulatory and can no longer walk to the bank, the physical hardship waiver should always be available. Further, if banks merge, close branches, or fees and charges increase to an unaffordable amount, recipients need to be able to claim hardship waivers.

Finally, having different waiver criteria based on the date of eligibility for federal payments confuses and unnecessarily complicates the already difficult educational process. Also, as the years go by, this distinction becomes more arbitrary and unreasonable.

C. Financial Hardship Waivers Are Not Available to Recipients Who Have Accounts.

Treasury proposes to disallow any waiver based on financial hardship to those with bank accounts. This might not be so disastrous if Treasury were ensuring that the bank accounts which recipients are securing are: a) accessible through the financial institution, b) at a reasonable cost, and c) have consumer protections, as the law requires. Yet, Treasury is engaging in a massive public education effort designed to promote direct deposit for federal recipients, and many recipients are under the impression that obtaining a bank account is a prerequisite to qualifying for federal benefits.⁽¹⁷⁾ Additionally, the fringe bankers themselves are launching an ambitious campaign to maintain and increase their business, by telling federal recipients that they must have electronic deposit.⁽¹⁸⁾ Also, some recipients who seek accounts at banks are being denied them because of their credit history.⁽¹⁹⁾ The result of all this is tremendous confusion by unbanked recipients about whether they need to go out and obtain their own accounts, and what will happen to their federal benefits if they do not.

The combination of these three factors -- the failure to tell recipients that they may qualify for a waiver of the EFT requirement only if they *do not* have a bank account, and the complete failure to regulate the bank accounts that recipients obtain in order to receive benefits, combined with the heavy advertising campaign by the fringe bankers to establish electronic accounts through them -- is clearly in derogation of Congress' intent to protect low income recipients from expensive consequences of the EFT mandate. Congress explicitly said:

The Secretary of the Treasury is given broad discretion to waive the requirements of this section *to avoid imposing a hardship on a beneficiary.* (Emphasis added.).⁽²⁰⁾

Also, what about all the recipients who may have an affordable bank account now, for which the institution raises prices, or if the financial circumstances of the recipient changes, such that an account is no longer affordable? Surely recipients who find themselves unable to afford bank accounts should be able to qualify for this waiver based on financial hardship as well.

The absolute prohibition against a waiver based on financial hardship for anyone who has a bank account is far too broad, and clearly outside the parameters of Congress' intention for Treasury to design a waiver system "to avoid imposing a hardship on a beneficiary." Waivers should be available to everyone based on financial hardship, regardless of whether they have an account at the time they became eligible for the federal payment, or when EFT went into effect.

Considering the concerns of recipients as well as the business needs of financial institutions, please describe your suggestions for the design of an electronic transfer account, including a reasonable monthly service charge, the number of permissible transactions, degree of accessibility to ATMs and any other basic services. Who should have access to an ETA account?

Answer #2

The ETA Should Be Available to Any Recipient Of Federal Benefits. Under the proposed rules Treasury contemplates that the ETA will *only* be provided to

"an individual [who] either certifies that he or she does not have an account with a financial institution, or [who] fails to provide information pursuant to Sec. 208.8⁽²¹⁾

Inexplicably, Treasury proposes to *not* provide the only accounts regulated for reasonable costs and consumer protections to individuals who already have accounts. Thus, all of the following recipients are prohibited from participating in these regulated, limited fee, and protected accounts:

- 1) Those who were misled into believing that they had to have an account to qualify for or maintain their federal benefits; ⁽²²⁾
- 2) those who were good citizens and responded to the insistent advertisements from the Social Security Administration that they had to obtain an account and signed up for a bad one through a check casher or even an account with a bank that does not work for them for some reason or another; or
- 3) those who may already have an account with a financial institution but find that it is too expensive or inconvenient.

We are led to believe that the reason that Treasury will not provide the ETAs to those already with accounts is because Treasury does not want to compete with the private sector. Treasury cannot have it both ways. Treasury should not be in the business of providing accounts if it does not want to compete for those accounts. Congress expressly required Treasury to ensure that recipients do not suffer as a result of the EFT 99. Treasury seems most concerned that the private sector not suffer as the result of EFT 99. If Treasury is concerned about competing with financial institutions for business then the simple solution is for Treasury *not* to offer an ETA. Rather, Treasury should establish a baseline of minimum consumer protections that would apply to all accounts established to access federal money, *as Congress mandated*.

Further, it is entirely unreasonable to assume, as Treasury does, that recipients of federal benefits, who rely on their monthly checks for subsistence will close existing bank accounts to become eligible for the ETA.

To qualify for an ETA, a recipient would be required to close an existing account, obtain and send in the Treasury waiver form, then be assigned an ETA, all within one month. This would be necessary to ensure the federal benefit payments arrive in a timely manner. The process is complicated and unwieldy. How many *sophisticated consumers* would trust the combined bureaucracies of the federal government and two financial institutions to make a transfer of an essential payment from one institution to another on timely basis? Imagine the consternation of a fairly unsophisticated recipient who is facing this prospect as the only way to obtain the ETA.

The cost of the account to the recipient should be the most important factor in the design of the ETA for needs-based recipients. Cost would be less critical if Treasury were willing to permit the majority of the currently unbanked to claim a waiver from ETA on the basis of financial hardship, as most of these individuals are now able to have checks cashed at little or no cost.⁽²³⁾

One of the major reason some recipients have avoided establishing bank accounts is because they cannot afford the fees and have found alternative means for cashing their benefit checks.⁽²⁴⁾ For low income recipients living on fixed incomes any new expense is in fact a financial hardship. Accordingly, we would urge that Treasury waive all fees for a basic ETA for all unbanked recipients of needs based federal benefits and that some sort of sliding fee scale be established for all other recipients based on their actual monthly income.

By offering a menu of services, decisions about cost can be made by the individual recipients. Encouraging saving should be included among the goals to be met by the ETA.

The account should be structured to provide a basic withdrawal service at the lowest possible cost, with additional service charges for additional features. Many recipients will want nothing more than basic withdrawal services and should not be required to pay routine monthly fees for services they never or rarely use. Those who want additional services can shop around for them and then decide whether to obtain them on their own or elect to have them provided as part of their ETA at an additional cost.

No fewer than four ATM withdrawals should be included in the base price of the account plus a reasonable number of ATM balance inquiries, as well as an unlimited number of POS transactions including withdrawals. In the absence of ATM availability, the same general rules should apply to teller withdrawals. Recipients who use the ATMs of the financial agent with whom the account has been established or any of its subcontractors, on a more frequent basis than for four withdrawals a month, should be charged no more than the actual cost of the transaction to the financial agent.⁽²⁵⁾

Surcharging should be prohibited for all ETA transactions at either ATMs or

POS devices, whether they are owned by the account provider or not. There is already precedent for such a position as several states expressly prohibit surcharging for EBT transactions or have otherwise worked out arrangements with the business sector to waive surcharges for such transactions.

Question # 3

Do you feel that the definition of an "authorized payment agent" should be broader than only financial institutions? What do you view as the risks and benefits that are associated with allowing nonfinancial institutions to participants in the process?

Answer # 3

The definition of "authorized payment agent" should be exactly as Treasury has proposed. In writing the proposed rules, Treasury was cognizant of the lack of consumer protections and inherent risks that would flow from allowing non-financial institutions to be the conduits of federal payments for some recipients. In proposed rule 208.2(b), Treasury quite appropriately defined "authorized payment agents" as 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.

As Treasury has appropriately recognized, there are no adequate safeguards to protect federal recipients from loss of funds if others were allowed to be authorized payment agents. Fringe bankers, such as check cashiers, finance companies, and others, do business in the low income community because of the large profits that they can make. Expensive services, extraordinarily high fees, and abusive transaction terms are standard business practices for these alternative providers. They have succeeded because of the vacuum created by the absence of banks from these communities. These fringe bankers make no reinvestment of their substantial profits back into the communities. They charge as much for financial services as the regulatory structure - or lack of regulation - allows. And the low income residents of the community gain little benefit other than the specific service provided from their presence. If this non-regulated industry is allowed to be the conduit of federal payments, the financial problems in the low income communities will not only continue to be ignored, they will be exacerbated.

Low income advocates fear the use of alternative financial providers as conduits largely because of the other services that will undoubtedly be sold to the recipients. If recipients must go through the doors of the fringe bankers at least one time each month, it is very likely that they will fall prey to the expensive -- and unregulated -- other financial products of these fringe bankers, such as check cashing,⁽²⁶⁾ payday loans,⁽²⁷⁾ high cost home

equity loans, even rent-to-own transactions. While recipients may always be able to opt for these services if they care to, they should not be required to go through the doors of these alternative providers every single month in order to obtain their federal entitlement.

Question # 4

Public awareness of EFT '99 is considered as an integral component for successful implementation. Do you feel current efforts to increase public awareness is sufficient? If not, what efforts could be made by government agencies, financial institutions, community groups, or other parties to provide for a smooth transition?

Answer # 4

We have a real problem here. Treasury and the Social Security Administration have proceeded with the implementation of EFT '99 in a piecemeal fashion. Both agencies have initiated a massive public education campaign to inform people of the mandates of EFT '99, and to encourage voluntary compliance with the direct deposit requirements. The problem is that as a number of critical issues have not yet been determined, a great deal of *misinformation* has been provided to federal recipients.

The public education materials that Treasury and Social Security have disseminated to date seem designed to encourage federal recipients a) to use direct deposit for their federal payments with *existing* bank accounts, and b) to establish new accounts with banks in order to receive the electronic payment of the federal payment. There are significant problems with this approach given Treasury's proposed rules. The public education materials fail to inform adequately recipients of two facts:

- that many recipients may be eligible for hardship waivers from the electronic transfer requirement, or
- that if recipients do establish bank accounts, under Treasury's proposed rules, the recipient will then become *ineligible* for either a financial hardship waiver or the low cost ETA to be provided by Treasury.

This is unfair and an inappropriate result of the public education campaign. As explained above, under the proposed rules none of the account relationships established voluntarily by recipients will be regulated, subject to minimum consumer protection standards, or reasonable cost provisions. Moreover, there is no prohibition in the proposed rules against alternative bankers -- check cashers, finance companies, pawnshops -- from establishing account relationships with banks such that the recipient must go through the alternative banker every month to access their federal payment. Given this *lack* of regulation or cost controls, it is very likely that thousands of low

income federal recipients will establish accounts that have no consumer protections and are very expensive.

However, under the proposed regulations no recipient who has a bank account will be eligible either for the ETA, or for the waiver for financial hardship. The strong encouragement by Treasury to recipients to establish accounts, without informing recipients of the effect of establishing those account seems to be somewhat misleading.

Additionally, we have heard reports from advocates for low income people in several states that applicants for SSI are being told that they must have a bank account in order to qualify for their federal payment. This is flat wrong, and should be stopped.

Question # 5

Please provide comments on any other aspects of Treasury's proposed rule that you would like to share with the Subcommittee.

Answer # 5

We have heard one overwhelming concern from low income recipients of federal payments, and their legal services attorneys: The reason that many low income recipients do not have bank accounts is their fear of losing their limited funds to judgment creditors. Low income elderly and disabled people are particularly vulnerable because of their inability to pay all of their doctor or hospital bills. They deliberately avoid keeping their money in bank accounts to ensure that the bank does not allow their funds to be attached by creditors.

Treasury could go a considerable distance in convincing many recipients of federal payments to feel comfortable in doing business with a bank, if they would assure recipients that their funds would be safe from the claims of creditors. Although many federal payments are protected by law from attachment and the claims of judgment creditors, banks routinely fail to abide by these restrictions. The provision on Social Security is typical of these protections:

(a) 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.⁽²⁸⁾

There are similar provisions in the governing statutes for SSI benefits⁽²⁹⁾ and Veteran's benefits.⁽³⁰⁾ However, the only remedy available for a recipient whose funds have been wrongly attached is to file a lawsuit against the financial institution. That does little good for the recipient who is living month

to month and in dire need of the funds that were wrongly attached. As a result, cautious recipients simply do not allow their funds to be kept in a bank account.

We have notified Treasury of our concerns in this regard and requested that they issue a regulation that flatly prohibits the attachment or garnishment of any funds in an account into which the covered federal funds have been deposited. However, the proposed regulations are completely silent on this point.

Thank you very much for us to testify today on behalf of our low income clients.

1. The National Consumer Law Center is a nonprofit organization specializing in consumer credit issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys around the country, representing low-income and elderly individuals, who request our assistance with the analysis of credit transactions to determine appropriate claims and defenses their clients might have.⁽²⁾

2. The National Consumer Law Center, Inc. (NCLC) is a nonprofit Massachusetts corporation founded in 1969 at Boston College School of Law and dedicated to the interests of low-income consumers. NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government and private attorneys across the country. *Cost of Credit* (NCLC 1995), *Truth in Lending* (NCLC 1996) and *Unfair and Deceptive Acts and Practices* (NCLC 1991), three of twelve practice treatises published and annually supplemented by NCLC, and our newsletter, *NCLC Reports Consumer Credit & Usury Ed.*, describe the law currently applicable to all types of consumer loan transactions. - -- --

3. The Consumer Federation of America is a nonprofit association of some 250 pro-consumer groups, with a combined membership of 50 million people. CFA was founded in 1968 to advance consumers' interests through advocacy and education.

4. The National Community Reinvestment Coalition (NCRC) is the nation's largest CRA (Community Reinvestment Act) membership organization. The goal of NCRC is to increase fair and equal access to credit, capital and banking services. NCRC, representing over 615 national, regional and local community organizations seeks to support and provide tools to build community and individual net worth.

5. The Organization for a New Equality (O.N.E.) is a multi-racial organization whose top priority is expanding economic opportunity to people who have historically been excluded from the economic mainstream. Established in

1985 by the Reverend Dr. Charles R. Stith as a non-profit organization, O.N.E. is working to develop and implement new economic strategies to promote equal opportunity and encourage change.

6. Proposed 31 C.F.R. 208.4.

7. *62 Fed. Reg.* 179 at 48718, September 16, 1997.

8. *142 Cong. Rec.* H 4091.

9. *62 Fed. Reg.* 179 at 48718, September 16, 1997.

10. Reg E is found at 12 C.F.R. 205, implementing the Electronic Fund Transfers Act, 15 U.S.C. 1693 *et seq.*

11. *62 Fed. Reg.* 179 at 48719, September 16, 1997.

12. *Id.*

13. *Id.*

14. *62 Fed. Reg.* 179 at 48718, September 16, 1997.

15. We have heard this about recipients in Massachusetts, Maryland, and California, to name just a few.

16. 31 U.S.C. ♦ 3332(f)(2)(A).

17. We have heard this from advocates in several states.

18. A Minneapolis check casher advertised electronic deposit through a bank, with the delivery of a paper check at the check casher. Total cost each month for a \$500 Social Security check - \$13.95.

19. We have heard this problem from an advocate in Illinois. The client was told that in order for the client's disabled child to receive SSI payments, the mother must establish a bank account. Because of the mother's credit problems, no bank would provide her an account.

20. *142 Cong. Rec.* H 4091.

21. Proposed 31 C.F.R. 208.5.

22. Advocates from several states report that recipients are being misled in this way.

23. The *Mandatory EFT Demographic Study* found that for respondents to the mail survey two-thirds of the unbanked recipients use banks, credit unions or grocery stores to cash their federal checks, 12% get friends or relatives to cash the checks for them, and only 12% pay check cashing outlets to cash their checks; corresponding figures from the telephone survey found 81% of respondents using primarily banks and grocery stores and 8% using check cashing outlets (the telephone survey did not include a comparable question about the use of friends and relatives for check cashing purposes). Thus, the survey results fully support the fact that most unbanked recipients of federal benefits are able to find a way to have their federal checks cashed for free.

24. Findings from the *Mandatory EFT Demographic Study* were that 67% of respondents to the mail survey and 47% of respondents to the telephone survey felt that they did not have enough money to make having a bank account worthwhile while 24% and 40% respectively cited high fees and costs as their primary reason for not having an account.

25. Evaluators of the Maryland EBT Project found that cash assistance recipients averaged 1.7 transactions per \$100 in cash benefits. Given that the basic SSI grant for a single individual will be in excess of \$500 per month by January 1999, it would appear that providing only four free ATM transactions is, if anything, already on the low side.

26. According to a recent study of fringe banking in Milwaukee: "Customers pay far more for services provided by a check cashing business than they pay for the same services at a conventional bank. Fees for cashing payroll checks nationwide generally range between one percent and three percent of the face value of the check. For personal checks the range was generally between 1.7 percent and 20 percent, averaging around 8 percent. In some instances, however, fees and interest rates have been reported as high as 2000 percent. A study by the New York Office of the Public Advocate found that a check cashing customer with an annual income of \$17,000 will pay almost \$250 a year at a check cashing business for services that would cost \$60 at a bank. The Federal Reserve Bank of Kansas City reported that a family with a \$24,000 annual income using a check cashing business will spend almost \$400 in fees for services that would cost under \$110 at a bank." (Citations omitted). Squires and O'Connor, *Fringe Banking in Milwaukee: The Rise of Check Cashing Businesses and the Emergence of Two-Tiered Banking System*. (1997) at 5,6.

27. Payday loans are generally provided by check cashiers who agree to cash a post-dated personal check with the understanding that it will not be deposited until the customer's next payday. "Customers can receive \$50 for a check written in the amount of \$60 and dated 14 days after the cash is provided. ... The effective annual interest rate for this loan is 1,092 percent." *Ibid*, at 11, 12.

28. 42 U.S.C. §407(a).

29. 42 U.S.C. §1383.

30. 38 U.S.C. §5301.