

August 16, 2010

**By electronic delivery to:**

Mr. Walt Henderson  
Financial Management Service  
401 14<sup>th</sup> Street, SW  
Room 400A  
Washington, DC 20227

Re: Financial Management Service Docket FISCAL-FMS-2009-0031,  
Management of Federal Agency Disbursements; 75 Federal Register, 34394-  
34405; June 17, 2010

Dear Mr. Henderson:

The American Bankers Association (ABA)<sup>1</sup> appreciates the opportunity to submit these comments on the Notice of Proposed Rulemaking (NPR) regarding the Management of Federal Agency Disbursements.<sup>2</sup> The NPR proposes amendments to the federal government regulation that describes the responsibilities of federal agencies and recipients with respect to the electronic delivery of payments. It would limit the circumstances where recipients may exempt themselves from receiving electronic funds transfers (EFT) instead of paper checks. Recipients that choose not to receive EFT payments through a direct deposit transaction at a financial institution will be issued a prepaid card to access their funds. The intent of the amendment is to reduce the number of paper checks issued by the federal government.

ABA supports this change of benefit payment policy provided (1) when the recipient has an established banking relationship, the default election is to convert the benefit payment to a direct deposit to that established bank; and (2) the options that recipients are able to elect include direct deposit to reloadable prepaid cards issued by insured depository institutions.

**Overview**

This NPR would amend Title 31 CFR part 208 governing how the federal government manages payments. The federal government proposes to automate the payment

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<sup>1</sup> The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's \$13 trillion banking industry and its 2 million employees. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities. The majority of ABA's members are banks with less than \$165 million in assets. Learn more at [www.aba.com](http://www.aba.com).

<sup>2</sup> 75 Fed. Reg. 34394 (June 17, 2010)

process further by tightening the ineffective waiver process currently in place that allows individual benefit recipients to choose to receive paper checks instead of being required to receive the funds electronically.

This initiative is not new. The effort to migrate all possible federal disbursements to EFT was originally mandated via the Debt Collection Improvement Act passed in 1996. However, during implementation large numbers of benefit recipients claimed that foregoing receiving payment by paper check would cause undue financial hardship and inconvenience. The mandate was weakened and individuals were allowed to self certify that switching to EFT would be harmful, and they were allowed to continue to receive paper checks. At that time, the Financial Management Service (FMS) sponsored a program whereby banks could offer an Electronic Transaction Account (ETA) to benefit recipients. The accounts provided basic services at a low cost to recipients, and FMS compensated the banks. However, this was a voluntary program, and there was not universal coverage across the country.

While FMS has made great strides in increasing the number of payments made via EFT, large numbers of checks are still created each year. According to FMS, in 2009 the Federal government made approximately 750 million payments via EFT while issuing 146 million paper checks. More than 136 million of the paper checks were used to make monthly payments to approximately 11 million individuals receiving Federal benefits. FMS estimates that it would save \$125 million annually by replacing these paper checks with electronic transactions.

FMS is proposing to narrow the circumstances where a recipient can opt to continue to receive a paper check by providing an alternative electronic method available to all recipients, the Direct Express Debit MasterCard. Customers that do not select to receive payments via direct deposit to a bank account will be provided one of these cards instead of a paper check each month. This is a nationwide program, unlike the ETA program, so that all benefit recipients opting out of direct deposit can be issued the card. The Direct Express cards allow recipients to access their funds at a minimal cost. This prepaid debit card preempts recipient claims that accessing funds electronically causes undue financial hardship and inconvenience because it is offered at a low cost on a nation-wide basis in a payment format having a demonstrated history of consumer convenience.

FMS expects payment recipients to benefit from the migration from paper to electronic transactions. The electronic deposits will be credited to accounts on the exact day that is expected and will not be subject to the timing of United States Postal Service delivery. Recipients will not have to make a special trip to a bank or check cashing outlet to convert it to usable currency. Because recipients will no longer be required to carry a paper check or large sums of money after cashing checks, there will be less risk of losing funds or having them stolen. And, payment recipients currently using non-bank check cashing outlets will no longer have to pay a high fee to access their funds.

## ABA Position

ABA would support the amendments to amend Title 31 CFR part 208 if the following two changes were made in the final rule. First, when the recipient has an established banking relationship, the default election should be to convert the benefit payment to a direct deposit to that established bank. Second, the options that recipients are able to elect should include direct deposit to reloadable prepaid cards issued by insured depository institutions.

The benefits to the federal government are clear: reducing the number of paper checks could provide \$125 million per year in savings. The recipients of the payments will benefit, because electronic payments are far superior to paper checks in terms of security and the certainty of receiving credit on the proper date. Recipients will be allowed to choose whether to establish, or re-establish, a relationship with a financial institution to receive payments via direct deposit or to choose the Direct Express card.

The NPR provides a discussion in the summary and supplementary information describing the process whereby federal benefit recipients will be offered a choice between receiving payments via direct deposit to an established bank account or via the Direct Express card. Recipients that don't choose direct deposit to a bank account will be automatically enrolled in the Direct Express Card program.

However, the discussion in the summary is not consistent with the proposed revised language in sections 208.6 and 208.7 of the proposed amendment to the rule.

### **Section 208.6 Availability of the Direct Express Card.**

“Any individual who receives Federal benefit, wage, salary, or retirement payment shall be eligible to open a Direct Express card account. The offering of a Direct Express card account shall constitute the provision of EBT services within the meaning of Public Law 104-208”

### **Section 208.7 Agency Responsibilities**

“Each agency shall put in place procedures that allow each recipient to provide the information necessary for the delivery of payments to the recipient by electronic funds transfer to an account at the recipient's financial institution, or to sign up for a Direct Express card account to be held by the recipient.”

Section 208.6 allows, but does not require Federal benefit recipients to open Direct Express card accounts. In fact, Public Law 104-208 specifically states in Section 333.6 (a)(1) “Electronic Benefits Transfer (EBT) is a safe, reliable, and economical way to provide benefit payments to individuals **who do not have an account at a financial institution.**”

The language in proposed Section 208.7 does not discuss agency responsibilities if a benefit recipient does not indicate a preference for receiving funds. The summary and supplemental discussions suggest that a “non-response” would default to receiving payment via the Direct Express card, but that position is not reflected in the proposed regulation.

It appears that Public Law 104-208 provides the authority to mandate electronic benefits payments by alternate means **if a recipient does not have a bank account**. But, the Supplementary Information provided with the NPR indicates that an estimated 4.3 million Federal benefit recipients currently have relationships with financial institutions, but have selected to receive paper checks. We do not believe that these recipients with existing relationships at financial institutions should be enrolled in the Direct Express card account program by default if they do not respond to agency requests to provide bank account information to facilitate a direct deposit transaction. It would be far more efficient, and less confusing for the recipient, to rely upon the recipient’s existing banking relationship.

Benefit recipients’ failure to respond affirmatively to agency solicitations for direct deposit conversion is not an indication that they want to stop using their bank as the depository of their benefit checks. Both the law and human nature agree that requiring people to receive benefits other than by paper check does not override a recipient’s existing banking relationships and deposit account preferences.

ABA recommends that prior to the March 1, 2013, effective date for existing federal benefit recipients, FMS and the federal agencies should identify the federal benefit recipients with existing banking relationships who have not provided banking information to facilitate direct deposit or who have not actively chosen to receive benefits through the Direct Express card. This population of federal benefit recipients should be contacted directly by FMS and/or the federal agencies to determine their preferred method of receiving payments. Further, FMS and/or the federal agencies should research the transaction history of each paper check deposited by a federal benefit recipient to determine if that recipient has a relationship with the financial institution that processed the check.

FMS could develop and propose to implement an appropriate process for determining the existing banking relationship of recipients. For instance, FMS might apply a rule such as, if a federal benefit recipient deposits a check for six consecutive months at one financial institution, then a direct deposit payment to that institution on behalf of that recipient should be considered the default account.<sup>3</sup> Simply not providing information upon request to facilitate a direct deposit transaction should not result in a default selection of the Direct Express card. The default election for federal benefit recipients with an existing relationship to a financial institution should be direct deposit to their account at that institution.

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<sup>3</sup> If the preferred account test were not met, then the recipient would be issued the Direct Express Card. This is just a suggestion for determining the default bank account. FMS has time to consider a different default decision rule. ABA is prepared to contribute to that development and consideration process.

Second, the NPR discusses the options for receiving electronic payments from the federal government to include direct deposit to an account at a financial institution and the Direct Express card. However, in the past ten years many individuals have opened prepaid debit card accounts. Many of these debit card accounts allow funds to be reloaded through direct deposit. A benefit recipient that does not have a traditional bank account, but does have a reloadable prepaid debit card account, should be made aware that they can receive federal benefit payments via that prepaid debit card. ABA is concerned that if that option is not explicitly made clear when payment arrangements are being discussed between recipients and the federal agency, then recipients may not understand that they can use their existing reloadable prepaid debit card for this purpose. ABA recommends that FMS make clear that federal benefit recipients may choose to receive payments via direct deposit to existing or new accounts at financial institutions, via payment to an existing reloadable prepaid debit card accounts, or via the Direct Express debit card.

In addition to the two critical issues raised previously in this comment letter, ABA has two other recommendations that we believe would enhance the effectiveness of the proposal.

The NPR will affect the cash management practices of financial institutions across the country directly if they have a direct relationship with federal benefit recipients and will be receiving funds; or indirectly if their ATMs are used by customers from other financial institutions, reloadable prepaid card holders, or Direct Express card holders to withdraw funds. Federal benefit recipients receive payments from a large number of programs, including the Social Security Administration, Social Security Insurance, civil service retirement, railroad retirement, Black Lung benefits, and Veterans benefits. The NPR contains some information on SSI payments, but the upcoming demographic shifts, such as Baby Boomer retirement increasing SSI payment volume, suggest that more detailed information on payment flows would be beneficial. To ensure that financial institutions are prepared for the shift from paper checks to electronic deposits and to facilitate proper cash management levels at branches and ATMs to serve the federal benefit recipients ABA recommends that FMS provide detailed estimates related to the dollar volume of the migrating payments and the dates when these payments will be made across all federal benefit programs.

The NPR suggests a very fast implementation timeline, mandating EFT payments for new federal benefit recipients beginning on March 1, 2011. Beginning on that date, recipients filing for benefit claims will be required to receive those funds via EFT. Existing federal benefit recipients would be required to migrate to electronic payments by March 1, 2013. To assure a smooth implementation, FMS should be prepared to conduct a comprehensive publicity campaign to educate future federal payment recipients, as well as those currently receiving payments, about the change in policy. All of the options available to the federal benefit recipients should be made known to them before they meet with federal agency officials to submit a claim for benefits. This is very important, because the NPR indicates that of the 11 million individual recipients

receiving checks in 2009, 4.3 million of them have bank accounts. These individuals would not be required to establish a new relationship with a financial institution in order to comply with the new requirement. ABA recommends that FMS conduct a nationwide education campaign to inform all current and future benefit recipients of the upcoming changes to federal disbursement policy, beginning as soon as possible.

We appreciate your consideration of these views and would be happy to provide any additional information that you would find helpful. We would also like to offer our assistance, and the input of our member banks, in developing a consumer education program that will inform federal benefit recipients of the new requirements and the range of options available to them to receive payments electronically.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen K. Kenneally". The signature is fluid and cursive, with the first name "Stephen" and last name "Kenneally" clearly legible.

Stephen K. Kenneally  
Vice President  
Center for Regulatory Compliance