

CRS Report for Congress

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“EFT’99:” Electronic Federal Payments; Waiver Policy

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Summary

The Debt Collection Improvement Act of 1996 (P.L. 104-134) requires all federal payments (other than IRS tax refunds) to be made by electronic funds transfer (EFT) beginning January 1999. Regulations issued by the Department of the Treasury will implement the law now commonly referred to as EFT’99. The law provides the Treasury with broad authority to define exception categories and grant waivers. On September 11, 1997, the Treasury published a proposed rule to implement EFT’99 and allowed 90 days for public comment. Many of the 212 comment letters received involved the waiver provisions, most of them requested a broader, more flexible waiver policy. On September 25, 1998 the Treasury issued a final rule which included an amended waiver policy. This report will not be updated. For additional background on the law and its implementation please see *EFT’99: Mandatory Electronic Federal Payments for Consumers*, CRS Report 97-697, by Pauline Smale.

Background

The electronic funds transfer (EFT) initiative is part of the Debt Collection Improvement Act of 1996. That law (P.L. 104-134) was enacted on April 26, 1996. The Act is part of an ongoing effort to reduce the cost of government. The EFT initiative requires all federal payments, excluding IRS tax refunds, to be made electronically by January 1999. This requirement is commonly referred to as EFT’99. The law provided the Treasury with the authority to define exception categories and grant hardship waivers. The implementation of EFT’99 will have a significant impact on companies that do business with the government, consumers, federal agencies, and financial institutions. The focus of this report is on the development of the waiver provisions for individual recipients.

The federal government’s chief disbursing officer is the Financial Management Service (FMS) bureau of the Treasury Department. The FMS issues over 850 million payments each year totaling more than \$1 trillion. Payments are disbursed under a variety of federal programs

including Social Security; Department of Veterans Affairs Compensation and Pension; Civil Service Retirement and Disability; Federal Wages and Salaries; Supplemental Security Income; Railroad Retirement Board; and Black Lung (disability payments).

EFT'99 requires the Treasury to develop implementing regulations. The Treasury does have the authority to delay implementation if an acceptable program is not in place by January 1999. In addition, the Department was provided with the authority to grant waivers based on recipient hardship or where otherwise necessary. Striking a balance between taxpayer cost savings from electronic payments and protecting the payment recipient from disruption or hardship has proven a difficult challenge to the Treasury. The focus of this report is on the development of the final waiver provisions that are included in EFT'99 regulations.

The Treasury and federal agencies have been working for years to educate and convince consumers to accept and use (electronic) direct deposit for federal payments. Direct deposit as a method of payment, increases transaction security, reduces opportunities for crime, improves payment time-frames and saves the Treasury, and therefore the taxpayer, money. The Treasury estimates the average cost of issuing a paper check at 43 cents, while the average EFT payment costs less than 2 cents. The FMS estimates that electronic payment could save the federal government as much as \$100 million a year in processing and postage costs.

For many individual recipients of federal payments, EFT'99 will require little if any adjustment. As of October 1998, 74% of Social Security payments and 72% of all FMS disbursements were being made electronically. The acceptance and use of electronic technology in banking and retailing has grown rapidly over the last decade. Future recipients are thought likely to be familiar with direct deposit as well as other EFT systems, and consequently will readily accept electronic deposit of their federal payments.

A major challenge to the Treasury Department came from trying to accommodate two segments of the consumer recipient population; those having special needs that could be disadvantaged by the transition to electronic payments and the "unbanked" (individuals without a relationship with a depository financial institution). An estimated 18 percent of all federal benefit recipients, 10 million individuals, are "unbanked". Those qualifying as special needs recipients could include the elderly, individuals with physical, mental, educational or language barriers, low-income individuals, homeless veterans, and those living in remote or rural communities. The "unbanked" and special needs populations overlap. Prior to rulemaking, the FMS actively sought input from consumer groups and organizations on potential parameters for a waiver policy. In developing a waiver policy, the Treasury worked closely with the federal agencies operating benefit programs to address key policy questions. Comments were also solicited from payment recipients.

The FMS gained insight on waiver concerns from the interim rule issued in July 1996, as required by phase one of EFT'99. The interim rule required new recipients eligible for federal payments after July 25, 1996, to receive the payment by electronic fund transfer. The requirement could be waived if the individual recipient certifies in writing that he or she does not have an account at a financial institution. During the following year, approximately 85% of all new Social Security annuitants had signed up for direct deposit.

Waiver Policy

Provisions of EFT'99 require the Treasury Department to implement the law in two phases. Phase one began on July 26, 1996 with the interim rule covering new payment recipients. Phase two requires all federal payments, other than tax refunds, to be made electronically by January 1, 1999. The Treasury does have the authority to delay implementation if an acceptable EFT program is not in place. The stated goal of the government's chief disbursing officer is to issue payments by a method that will provide the best service to recipients, the lowest possible cost to taxpayers, and the greatest degree of security. The Treasury actively solicited input on all aspects of potential EFT'99 regulation from individuals, consumer organizations, government agencies, financial institutions, and non-bank financial service providers. Establishing the scope of waiver guidelines involved difficult policy questions and concerns.

In September 1997, the Treasury issued proposed regulations and opened a 90-day comment period. The proposed rule did contain waiver provisions but did not contain new account options for the "unbanked". The Treasury announced it was still working on the development of a low-cost account. In addition, the Treasury stated that the new accounts would be called ETAs (Electronic Transfer Accounts) and that the ETAs would be offered through financial institutions. The January 1999 deadline for full compliance was extended until the ETAs are available or January 2000, whichever is earlier.

The FMS issued a fact sheet on the proposed rulemaking which outlined the waiver provisions. First, individual recipients who began receiving Federal payments before July 26, 1996 could request a waiver if they certify that payment by EFT will impose a hardship due to a physical disability or geographic barrier. Second, individual recipients who certified that they do not have an account with a financial institution and that payment by EFT would impose a hardship due to a physical disability, a geographic barrier, or a financial hardship could request a waiver. Finally, electronic payments would not be required in cases such as military deployment, threats to National Security, or certain situations where EFT is impractical.

During the 90 day comment period, the Treasury received over 200 letters, many of them critical of the waiver provisions. Congressional concerns were expressed during oversight hearings held in September 25, 1997 before the full House Banking Committee and on March 4, 1998 before the Subcommittee on Financial Institutions and Consumer Credit. The Treasury Department received additional feedback when it held a series of hearings in four cities: Dallas, New York, Baltimore, and Los Angeles.

In general, critics of the waiver provisions stated the criteria should be broader and more flexible. Specifically, they argued that waiver guidelines should include mental disabilities, literacy problems, and language barriers. Concern was expressed for elderly recipients who might not be comfortable with the technology involved with an electronic transfer program and the possibility of having to access funds through ATMs (Automated Teller Machines). In addition, various spokesmen felt the financial hardship waiver should apply to all recipients, not just the "unbanked". Consumer advocates have acknowledged that electronic delivery is a safer and more reliable means of payment. At the same time, they state that aggressive education programs and the structure of the Electronic Transfer Accounts will be crucial to the success of EFT'99, particularly for low-income, elderly,

and “unbanked” recipients. In the meantime, they argued that a broad waiver policy would aid in the transition to a more fully implemented electronic initiative.¹

On September 25, 1998, the Treasury published a final rule implementing provisions of EFT’99. The regulation establishes a broad waiver policy emphasizing consumer choice.

Waivers are available for individuals who receive federal payments. A recipient is eligible for a waiver based on financial hardship if the cost of receiving an electronic payment is more than receiving a paper check. In addition, any recipient with a physical or mental disability or a geographic, language, or literacy barrier is eligible for a waiver. The final rule lists other circumstances where electronic payments will not be required. Included on the list are reasons such as military deployment, threats to National Security, or certain situations where electronic payment is impractical. Finally, any “unbanked” recipient will receive an automatic waiver until the Treasury establishes the low-cost ETA's. When the account becomes available, these individuals can choose between that option and continuing to receive a paper check. The final rule makes the low-cost ETA available to all individual recipients of federal payments regardless of whether they have an account at a financial institution.

The EFT’99 regulation makes waivers solely self certifying. Individual payment recipients will make a decision to choose direct deposit, and if they do not sign for electronic payments they will continue to receive a paper check. Federal agencies must notify all check recipients and newly eligible recipients of their options.

On November 23, 1998, the Treasury published for comment the proposed characteristics of the low-cost ETA.² The public comment period on the proposed features closed on January 7, 1999. The Treasury has issued a variety of educational tools as part of a nationwide campaign to educate the public concerning the provisions of P.L. 104-134.

Legislation in the 105th Congress

Congress has closely monitored the Treasury Department’s implementation of P.L. 104-134 (EFT’99). During the 105th Congress several related bills were introduced. The legislation did not specifically address the question of waivers, but instead focused on consumer choice and protection. No further action was taken on the legislation.

Legislation introduced in the 105th included four bills which addressed consumer options. H.R. 156 (English) would exempt benefits payable under the old-age, survivors, and disability insurance program under Title II of the Social Security Act from mandatory EFT. Two similar proposals, H.R. 3099 (McNulty) and H.R. 4405 (Aderholt), would provide individual recipients with the option of continuing to receive their payments by

¹ U.S. Congress. House. Committee on Banking and Financial Services. Review Of Proposed Regulations To Implement EFT ‘99. Hearing, 105th Congress, 1st session. Sept. 25, 1997. Washington G.P.O., 1997. 316 p.

² Information on the proposed features of the ETA can be found on the Treasury’s EFT Web site, <http://www.fms.treas.gov/eft>.

check. The bills require the recipient to provide written notice. S.874 (Faircloth and Shelby) would exempt Social Security and veterans benefits from mandatory EFT unless the recipient requests in writing that payments be made electronically.

H.R. 4311 (Vento) focuses on consumer information, access and protection from fees. The legislation would require federal agencies to provide payment recipients with information in writing concerning alternative EFT payment options including the low-cost ETA currently being developed. Once Electronic Transfer Accounts are established, all individuals would have at least 180 days to choose the new account option. Then in each following year an “open season” of at least 60 days would be held during which individuals could switch to an ETA. The bill also addresses fees in connection with the low-cost ETA. The legislative proposal would guarantee five free electronic transactions per month and after that would limit fees for automated teller machine and point of sale transactions to the national average.

Two additional bills addressed the issue of fees. H.R. 2454 (Franks) would prohibit financial institutions that accept a consumer’s Social Security benefit in the form of a direct deposit from charging a fee when the funds are withdrawn by electronic fund transfer. H.R. 2457 (Franks) provides the same protection from fees for the direct deposit of veterans benefits.