REGULATORY ALERT

NATIONAL CREDIT UNION ADMINISTRATION
1775 DUKE STREET, ALEXANDRIA, VA 22314

DATE: **December 1998** **NO.: 98-RA-8**

TO: **All Federally Insured Credit Unions**

SUBJECT: **Electronic Transfer Act**

The purpose of this regulatory alert is to bring to your attention the public comment opportunity regarding the features that will be required for Electronic Transfer Accounts.

The Debt Collection Improvement Act of 1996 (Act) amends 31 U.S.C. 3332 to provide that, subject to the authority of the Secretary of the Treasury to grant waivers, all Federal payments, other than payments under the Internal Revenue Code, must be made by electronic funds transfer (EFT) beginning January 2, 1999. The Department of the Treasury (Treasury) published a final rule implementing this mandate, 31 CFR Part 208 (Part 208) on September 25, 1998. Part 208 provides that any individual who receives a Federal benefit, wage, salary, or retirement payment is eligible to open an Electronic Transfer Account at any Federally-insured financial institution that elects to offer an Electronic Transfer Account.

The preamble to the final rulemaking indicated that Treasury would separately publish for comment a notice of the proposed features of the Electronic Transfer Account. The attached notice describes proposed features of the Electronic Transfer Accounts and provides an opportunity for further public comment. In addition, it requests comments on whether three other features that are not part of the basic Electronic Transfer Account should be added, at the option of the financial institution.

You may access the notice, and respond electronically via the internet at http://www.fms.treas.gov/eft/eta/. A copy of the notice and ETA Main Page from the internet are attached to facilitate your review.

Please note that all comments should be directed to the Department of the Treasury address as identified in the notice. All comments must be received by January 7, 1999.

Once the Treasury has evaluated the comments, they will publish a notice in the Federal Register setting forth the required features for Electronic Transfer Accounts.

Sincerely,

/S/

Norman E. D'Amours
Chairman

Attachments

Monday
November 23, 1998

Part VI

Department of the Treasury

Fiscal Service

Electronic Transfer Account; Notice

DEPARTMENT OF THE TREASURY

Fiscal Service

RIN 1510–AA56

Electronic Transfer Account

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed Electronic Transfer Account features; request for comment.

SUMMARY: The Debt Collection Improvement Act of 1996 (Act) amends 31 U.S.C. 3332 to provide that, subject to the authority of the Secretary of the Treasury to grant waivers, all Federal payments, other than payments under the Internal Revenue Code, must be made by electronic funds transfer (EFT) beginning January 2, 1999. The Department of the Treasury (Treasury) published a final rule implementing this mandate, 31 CFR part 208 (Part 208), on September 25, 1998. 63 FR 51490. Part 208 provides that any individual who receives a Federal benefit, wage, salary, or retirement payment is eligible to open an Electronic Transfer Account, or ''ETASM,'' at any Federally-insured financial institution that elects to offer ETAsSM''. The preamble to the final rulemaking indicated that Treasury would separately publish for comment a notice of the proposed features of the ETASM. This notice describes proposed features of the ETASM and provides further opportunity for public comment. In addition, it requests comment on three other features that are not part of the basic ETASM to determine whether they should be added to the ETASM at the option of the financial institution and at additional cost, if any, to the account holder. After evaluating the comments received, Treasury will publish a notice in the **Federal Register** setting forth the required features for ETAsSM.

DATES: Written comments on the proposed account features must be received no later than January 7, 1999.

ADDRESSES: Comments should be sent to 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. Comments also may be submitted electronically via e-mail to eta.comments@fms.sprint.com or by filling out the ETASM comment form available on the EFT website at http://www.fms.treas.gov/eft/eta/. The final rule for Part 208, the proposed rule for Part 208 (208 NPRM), and comment letters received in response to the 208 NPRM, including comments on the ETASM and a summary of comments received in response to the specific ETASM-related questions raised in the 208 NPRM, are available on the Financial Management Service's EFT website at http://www.fms.treas.gov/eft/. Comments received on this ETASM notice will be available for public inspection and downloading at the website address shown above and for public inspection and copying at the Department of the Treasury Library, Room 5030, 1500 Pennsylvania Avenue, N.W., Washington, D.C. To make an appointment to inspect comments, please call (202) 622–0990.

FOR FURTHER INFORMATION CONTACT: Sally Phillips, Senior Financial Program Specialist, at (202) 874–7106; Matthew Friend, Financial Program Specialist, at (202) 874–6754; Natalie H. Diana at (202) 874–6950; Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, at (202) 874–6590; or Margaret Marquette, Attorney-Advisor, at (202) 874–6681.

SUPPLEMENTARY INFORMATION:

A. Background

Section 31001(x) of the Act provides that, subject to the authority of the Secretary of the Treasury to grant waivers, all Federal payments, other than payments under the Internal Revenue Code, must be made by EFT beginning January 2, 1999.

The Act authorizes the Secretary of the Treasury to waive the requirement to make Federal payments by EFT for individuals or classes of individuals for whom compliance imposes a hardship; for classifications or types of checks; or in other circumstances as may be necessary. In addition, the Act requires Treasury to ensure access to an account at a financial institution for individuals who are required to have an account because of the EFT mandate. Treasury must ensure that access is provided at reasonable cost and with the same consumer protections that are provided to other account holders at the same financial institution.

On September 25, 1998, Treasury issued as a final rule Part 208, which implements the mandatory EFT requirement of the Act. 63 FR 51490. Part 208 provides, in part, that payment by EFT is not required where an individual determines, in his or her sole discretion, that payment by EFT would impose a hardship due to a physical or mental disability or a geographic, language, or literacy barrier, or would impose a financial hardship. An automatic waiver is granted for all individuals who do not have an account at a financial institution and who are eligible to open an ETASM until the ETASM becomes available.

In addition, Part 208 provides that any individual who receives a Federal benefit, wage, salary, or retirement payment shall be eligible to open an account called an ETASM at any Federally-insured financial institution that chooses to offer ETAsSM. The ETASM will be made available to maximize opportunities for individuals receiving Federal payments electronically to have access to an account at reasonable cost and with the same consumer protections as other account holders at the same financial institution.

In the 208 NPRM published on September 16, 1997, under Section E of the Section-by-Section Analysis, ''208.5—Access to Account Provided by Treasury,'' Treasury invited comment on several questions related to the ETASM and stated that it would publish proposed terms, conditions, and attributes of the account for further comment. 62 FR 48714, 48721. Based on the comments received, Treasury has developed a listing of ETASM attributes, which are the subject of this notice. This notice is limited in scope to a discussion of the ETASM; it does not address other provisions of the 208 NPRM. Those provisions are discussed in the final rulemaking for Part 208, which was published in the **Federal Register** on September 25, 1998.

Final Part 208 reflected a significant change in Treasury's approach to the ETASM from what was proposed in the 208 NPRM. The 208 NPRM indicated that it was Treasury's intention to solicit bids from organizations interested in providing an account that would include certain specific attributes determined by Treasury. At the time the 208 NPRM was published, Treasury proposed to obtain account services through a competitive process that would select one or more entities to act as Treasury's financial agent within predefined geographic areas. After evaluating the comments received and conducting further research,[1] however, Treasury considered two alternative approaches for offering the account. These two approaches were the subject of public meetings held on May 21, 1998, for the purpose of obtaining comments from consumer and

[1] Treasury contracted for a study related to account features and distribution network options for the ETASM. A copy of the study is available at the Financial Management Service's EFT website at http://www.fms.treas.gov/eft/eta/.

community-based organizations and from financial institutions.[2]

The first approach involved selecting a small number of financial institutions to act as Treasury's financial agents in providing ETAs℠. These financial agents would then sign up local financial institutions to market and originate ETAs℠. The second approach involved publishing standards for providing the ETA℠, including account attributes, and allowing any Federally-insured financial institution that chooses to offer ETAs' to act as Treasury's financial agent to provide the ETA℠ in accordance with these standards and subject to terms set forth in an ETA℠ Financial Agency Agreement between Treasury and the financial institution. The agreement would provide that ETAs℠ offered by the financial institution must meet the criteria described in the **Federal Register** notice listing the required ETA℠ features and would set forth the circumstances in which a financial institution may close an account for fraud or other reasons.

As indicated in final Part 208, based on the comments received on the 208 NPRM and at public meetings and on geographic and economic data and analysis, Treasury decided to pursue the second approach to make the ETA℠ available to payment recipients. Representatives from both consumer organizations and financial institutions indicated that, while this approach does not ensure complete geographic coverage because no financial institution will be required to offer the ETA℠, it encourages participation by financial institutions of all sizes. In addition, of the two approaches, it provides the greater opportunity for market competition. As a result, this approach will likely encourage competing financial institutions to offer lower cost accounts than might otherwise be offered. This approach also may minimize the impact of automated teller machine (ATM) surcharging by allowing recipients greater choice in selecting an ETA℠ at a conveniently located financial institution that offers the account. Moreover, research data indicate that the majority of check recipients are located in a relatively small number of geographic locations. Under the second approach, it is more likely that more than one financial institution will provide ETAs℠ in those areas where check recipients are geographically concentrated, thereby further increasing competition among financial institutions and increasing choice among recipients living in those areas.

In order to maximize the number of financial institutions that choose to offer ETAs℠, Treasury proposes to offer financial institutions financial compensation to establish and market the account. Treasury proposes to reimburse each financial institution that offers the ETA℠ a one-time fee per account established to offset the costs of setting up the account. Recent studies show that these set-up costs, which typically include costs to enroll and work with customers and the cost of issuing an on-line debit card, average approximately $12.60 per account.[3] As an added incentive to financial institutions and to offset imputed marketing, training, and education costs, Treasury is considering compensating participating financial institutions an additional amount for each ETA℠ opened above designated minimum threshold numbers of accounts.

Treasury seeks comment on whether, for purposes of compensating financial institutions, a distinction should be made between ETAs℠ opened by individuals who already have an account at a financial institution and those who do not have an existing account, i.e., should Treasury compensate financial institutions for opening an ETA℠ for an individual who already has an existing account? If a distinction is made, how should the basis for that distinction be determined? In addition, Treasury seeks comment from financial institutions on the extent to which the proposed compensation arrangements will increase the number of financial institutions providing ETAs℠ and on the most appropriate way to establish the minimum thresholds.

Treasury will maintain and make publicly available to recipients and program agencies a list of participating ETA℠ providers. In addition, financial institutions offering ETAs℠ will be permitted to display prominently a logo to be supplied by Treasury indicating that the ETA℠ is available at that financial institution.

B. Summary of ETA℠ Attributes

After considering the comments received, Treasury proposes that the ETA℠ account have the following attributes, which would be set forth in an ETA℠ Financial Agency Agreement between Treasury and the financial institution offering the account. Specific attributes are explained in more detail below. As proposed, the ETA℠ would:

- Be an individually owned account at a Federally-insured financial institution;
- Be available to any individual who receives a Federal benefit, wage, salary, or retirement payment;
- Accept only electronic Federal benefit, wage, salary, and retirement payments;
- Be subject to a maximum price of $3.00 per month;
- Have a minimum of four cash withdrawals per month, to be included in the monthly fee, through a) the financial institution's proprietary (on-us) ATMs, b) over-the-counter transactions at the main office or a branch of the financial institution, or c) any combination of on-us ATM access and over-the-counter access at the option of the financial institution;[4]
- Provide the same consumer protections that are available to other account holders at the financial institution, including, for accounts that provide electronic access, Regulation E protections regarding disclosure, limitations on liability, procedures for reporting lost or stolen cards, and procedures for error resolution;
- For financial institutions that are members of point-of-sale (POS) networks, allow POS purchases at no additional charge by the financial institution offering the ETA℠, as well as cash withdrawals and cash back with purchases, consistent with current commercial practice;
- Require no minimum balance, except as required by Federal or State law; and
- Provide a monthly statement.

Treasury welcomes comments on the above attributes. Treasury also seeks comments on three other features that are not part of the basic ETA℠ to determine whether any or all of the features should be added to the ETA℠ at the option of the financial institution and at additional cost, if any, to the account holder. These features—payment of interest on balances; allowing deposits of other electronic funds; and providing pre-authorized Automated Clearing House (ACH) debit capability—are discussed in Section D of this notice.

[2] A summary of comments provided at the meetings held on May 21, 1998, is available at the Financial Management Service's EFT website at http://www.fms.treas.gov/eft/eta/.

[3] Cost estimates taken from Economic Waterfall Analyses, Dove Associates, Inc., June 1998. A copy of the analyses is available at the Financial Management Service's EFT website at http://www.fms.treas.gov/eft/eta/.

[4] Financial institutions may provide additional withdrawals at no charge or for a fee.

C. Discussion of Proposed ETA℠ Attributes

Individual Account/Availability

The ETA℠, as proposed, would be an individually owned account established at a Federally-insured financial institution. A financial institution that chooses to offer ETAs℠ would be required to make an ETA℠ available to any recipient of a Federal benefit, wage, salary, or retirement payment who requests an ETA℠, unless the institution is prohibited by law from maintaining an account for the recipient (for example, where a recipient does not meet a credit union's field of membership requirements). As mentioned above, financial institutions that choose to offer ETAs℠ would be permitted to close an ETA℠ in certain circumstances to be delineated by Treasury. However, financial institutions would not be permitted to deny an ETA℠ to any eligible recipient.

By requiring that these accounts be held at Federally-insured financial institutions, Treasury can ensure that ETA℠ holders' funds are being deposited into accounts that have Federal deposit insurance. Federally-insured financial institutions are subject to comprehensive Federal regulation and oversight through examinations for safety-and-soundness and compliance with consumer protection laws.

Deposits

Treasury is proposing to limit the types of funds that may be deposited to an ETA℠ to electronic Federal benefit, wage, salary, and retirement payments. Permitting financial institutions to accept electronic deposits of other types of payments in addition to Federal benefit, wage, salary, and retirement payments to the ETA℠ would have implications with respect to the potential attachment of funds in the account. As discussed more fully below, a number of consumer and community-based organizations that commented on the proposed rule pointed out that many individuals do not utilize accounts at financial institutions because they fear that funds deposited to such accounts will become subject to attachment by creditors.

Most Federal benefit payments, including Social Security benefits, Supplemental Security Income benefits, Veteran's benefits, and Federal Railroad Retirement benefits, are protected from attachment and the claims of judgment creditors by Federal law, subject to certain limited exceptions.[5] The U.S. Supreme Court has held that Federal benefit payments remain exempt from attachment after they are deposited in a bank account.[6] Where all of the funds deposited into an account are exempt Federal benefits, most courts have held that the account itself is wholly exempt from attachment. If exempt funds are commingled with funds from other sources in a bank account, the exempt funds generally continue to be protected from attachment. However, courts have held that the burden of proving that particular funds in an account are not subject to attachment is on the depositor. Courts in different jurisdictions have used different accounting methods to determine whether funds in an account are considered to be exempt or nonexempt.

Limiting the types of funds that can be deposited to an ETA℠ would facilitate a recipient's ability to defend against impermissible attachments. Treasury expects that, although Federal wage, salary, and retirement payments, in addition to Federal benefit payments, could be deposited to an ETA℠, the majority of ETAs℠ would be utilized for the receipt of Federal benefit payments only. In those cases, ETAs℠ would not be subject to attachment, with limited exceptions (e.g., for child support obligations). If other types of payments were allowed to be deposited to an ETA℠, however, those payments would be subject to attachment, and the burden would be on the account holder to defend against the attachment.

Some consumer and community-based organizations pointed out that statutes protecting Federal benefit payments from attachment are not necessarily construed to prohibit a financial institution that maintains an account from setting off obligations of the depositor against the account. Specifically, several courts have held that statutes prohibiting attachment do not affect a bank's right to set off a depositor's obligations to the bank[7] against an account into which benefit payments have been deposited, on the grounds that a bank's exercise of its right of set off does not constitute "execution, levy, attachment or other legal process."[8] For this reason, some commenters urged Treasury to prohibit financial institutions that establish ETAs℠ from exercising any right of set off against an ETA℠.

Treasury recognizes that it is not clear under existing case law that Federal statutes prohibiting the attachment of Federal benefit payments would prohibit a financial institution that offers ETAs℠ from debiting an ETA℠, without the account holder's consent, for fees, loan payments, or other obligations owed by the account holder to the financial institution. Treasury expects that financial institutions offering ETAs℠ will market other products and services to recipients. While Treasury encourages financial institutions to offer recipients banking products and services to further Treasury's goal of bringing persons without accounts into the financial mainstream, Treasury is concerned that financial institutions might offset fees and obligations related to such products against ETAs℠. Many recipients depend on their benefit payments to meet day-to-day living expenses. In light of the special nature of payments deposited to ETAs℠ and the vulnerability of benefit recipients to any unexpected reduction in the funds available in their account, Treasury intends, through the ETA℠ Financial Agency Agreement, to prohibit institutions that elect to offer ETAs℠ from exercising any right of set off against an ETA℠, with the exception of the monthly account fee or charges for additional withdrawals from the ETA℠.

Cost to Recipient

Treasury proposes that financial institutions that choose to offer ETAs℠ would be permitted to charge a monthly fee not to exceed $3.00 per month. Treasury will evaluate the appropriateness of this pricing from time to time, and will make adjustments periodically as warranted. All attributes listed in the "Summary" section of this notice must be included within the monthly fee to the recipient.

In general, consumer and community-based organizations favored the establishment of a maximum monthly fee for the ETA℠. In their comments on the 208 NPRM, these organizations expressed a concern that the price, if left to financial institutions, might be out of reach for those recipients for whom traditional account fees are too high. These organizations indicated that cost is one of the main reasons some

[5] *See* 42 U.S.C. § 407(a); 42 U.S.C. § 1383; 38 U.S.C. § 530; and 45 U.S.C. § 231m(a). The prohibition against attaching such funds is subject to certain exceptions, including to satisfy child support and alimony obligations. *See, e.g.*, 42 U.S.C. § 659.

[6] *Philpott* v. *Essex County Welfare Board*, 409 U.S. 413, 416 (1973).

[7] A bank may exercise a right of set off against an account only for obligations owed by the depositor to the bank itself, and not for obligations of the depositor to third parties, such as child support or general creditor claims.

[8] *See Frazier* v. *Marine Midland Bank*, 702 F. Supp. 1000 (W.D.N.Y. 1988)(citing *In re Gillespie*, 41 Bankr. 810 (Bankr. D. Colo. 1984)).

recipients choose not to open an account at a financial institution.

In their comments, financial institutions expressed support for an approach in which the institutions themselves would determine the monthly account fee. They stated that only by allowing the institutions offering the ETA℠ to determine fees would they be able to develop accounts at the lowest possible cost. They also indicated that more financial institutions would participate if fees were unregulated.

Treasury research indicates that the average monthly cost of providing an account with the attributes listed in this notice, including a reasonable profit, falls within the $3.00 maximum price. Research data also indicate that, while some recipients cash their checks for free, recipients who pay to cash checks pay anywhere from one percent to six percent of the amount of the check for this service.[9] Based on the average Federal benefit payment, recipients could pay anywhere from $6.50 to $39.30 to cash a check.

Based on this information, Treasury believes that the $3.00 maximum monthly fee should provide incentives both to financial institutions to offer the account and to recipients to sign up for the account. Treasury recognizes, however, that not all financial institutions may elect to offer the ETA℠ account and not all recipients may find the account attractive. Accordingly, recipients may elect to continue to receive a check if the ETA℠ is unaffordable or the financial institutions offering the account are not conveniently located, or for another reason, by relying on a financial, geographical, or other hardship waiver provided in Part 208.

Access to Funds and Balance Information

As proposed, access to funds and balance information may be provided by ETA℠ providers through one of three methods: (1) Electronically through ATMs or other electronic means, (2) over-the-counter at ETA℠ provider main office or branch locations, or (3) through a combination of electronic and over-the-counter transactions. Any method may be used at the option of the financial institution as long as a minimum of four cash withdrawals are provided within the $3.00 monthly fee. A financial institution may offer additional withdrawals at no cost or at an additional fee to the account owner.

It is expected that over-the-counter cash withdrawals either automatically include an account balance or will include an account balance if requested by the recipient. Treasury further assumes that on-us ATM cash withdrawals generally will produce a transaction receipt that includes the balance of the account. Balance information will be available on the required monthly statement, discussed below. Balance information also may be included as part of a financial institution's customer service program, to be offered to the ETA℠ account holder at the ETA℠ provider's discretion.

In their comments on the 208 NPRM, consumer and community-based organizations stated that some recipients may not be able to use ATMs because of mental, language, literacy, or other barriers and may be forced to rely on hardship waivers. These organizations explained that these recipients, who may otherwise have been interested in a basic low-cost ETA℠, effectively will be denied an opportunity to transition into the financial services mainstream because of this inability to use ATMs. As an alternative to ATMs, these organizations suggested that ETA℠ providers offer over-the-counter access to funds, such as through a teller. A large association representing older Americans commented that its constituency, in some cases, will have difficulty using an ATM. This commenter also called for an option for over-the-counter transactions.

A credit union association commented that many smaller credit unions do not have ATMs and if ETAs℠ were to be accessed solely by electronic means these credit unions would be precluded from offering ETAs℠. The association argued that these credit unions are otherwise in a good position to provide the accounts because of their locations in smaller communities and because they already offer low-cost accounts. A consumer organization commented that many smaller community banks also do not have ATMs.

It is Treasury's objective to provide recipients with as many options for accessing funds as can be provided within the constraints of a low monthly fee. Allowing over-the-counter transactions would give financial institutions added flexibility in designing an account based on their capabilities and their customers' needs. Treasury expects that allowing over-the-counter transactions will increase the number of financial institutions that elect to offer ETAs℠ and the number of recipients who sign up for an ETA℠ and thereby bring more recipients into the financial services mainstream.

In determining the number of cash withdrawals to include in the monthly account fee, Treasury weighed the advantages of providing multiple cash withdrawals against their cost, recognizing that the more transactions provided, the higher the monthly cost. Treasury used cost data developed for it by an outside contractor (see footnote 1) in reaching its determination.

The reference in the list of attributes to a ''minimum'' number of cash withdrawals is intended to permit a financial institution, within the ETA℠ structure, to offer additional cash withdrawals as long as the first four withdrawals are included within the $3.00 maximum price. Additional withdrawals may be subject to fees that are the responsibility of the recipient. Additionally, if the account is accessed through a network ATM owned by another institution, the account holder will be responsible for any charges assessed by the ATM owner.

For accounts that offer electronic access, such electronic access is proposed to be on-line electronic access only. Providing off-line electronic access almost certainly would raise the cost of an account to a payment recipient. Furthermore, as pointed out by some consumer organizations, limiting access to on-line electronic access only will reduce the possibility of overdrafts and associated fees.

In addition, 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 the offering of the ETA℠.

Treasury continues to explore ways to expand access to the ETA℠ in areas underserved by financial institutions. These efforts include working with other public entities to expand ATM access.

Consumer Protections

ETAs℠ will be subject to those consumer protections available to other account holders at the same financial institution. This requirement is in accordance with the Act's statutory mandate to ensure that recipients ''are given the same consumer protections with respect to the [ETA℠] as other account holders at the same financial

[9] Percentages taken from the Survey of Commercial Check Cashing Rates, Chaddsford Planning Associates, June 12, 1997.

institution.'' This means, for example, that an ETA℠ will be subject to the Truth in Savings Act disclosures found in Regulation DD (12 CFR Part 230). Also, an ETA℠ that provides electronic access will be subject to Regulation E (12 CFR Part 205), i.e., the ETA℠ holder will be provided with disclosure of terms and conditions of the account, limitations on the holder's liability for unauthorized transfers, and procedures for reporting lost or stolen cards and for error resolution.

POS

For those accounts that provide electronic access, the proposed ETA℠ would allow for POS withdrawals and purchases that are consistent with current commercial practice. Studies show that more and more merchants are offering on-line POS purchases with cash back. This means a recipient can withdraw funds at the same time he or she is making a purchase using a debit card at a POS terminal. Some merchants offer cash withdrawals with no purchase required. However, ETA℠ holders should be aware that POS withdrawals, in some cases, may be subject to fees by merchants offering POS transactions. The recipient is responsible for any fees imposed by the merchant; however, under the proposed ETA℠, there would be no additional fees for these transactions imposed by the financial institution providing the ETA℠.

Minimum Balance

Except in limited circumstances discussed below, the ETA℠ would have no minimum balance requirement. The average monthly dollar amount for Federal benefit payments is approximately $650, and a majority of recipients withdraw most of their funds within the first five days of deposit. Requiring a minimum balance would effectively reduce the amount of the benefits available to the recipient to pay bills and make other subsistence purchases. The only exception to this required attribute is where a minimum balance is mandated by Federal or State law. For example, in the case of credit unions, under 12 U.S.C. 1759, a Federal credit union member must subscribe to at least one share of stock.

Monthly Statement

The ETA℠, as proposed, would have a monthly statement. Treasury is aware that under Regulation E, when government benefits are delivered electronically to a recipient, a periodic account statement may not be required if the recipient has access to account information through other specified means. *See* 12 CFR 205.15. Treasury also is aware that the cost of providing a monthly statement necessarily will be included in the monthly account charge to recipients. Treasury believes, however, that it is important to provide recipients with a monthly statement, particularly since the ETA℠ allows for POS withdrawals and purchases, and account balances are often not provided in connection with such transactions. In addition, providing a monthly statement would provide account balances that may not be available to a recipient if the ETA℠ provider does not offer daily 24-hour telephone customer service for account balance inquiries.

D. Discussion of Other Features

Treasury is requesting specific comment on three additional features that are not included in the list of basic ETA℠ attributes. Treasury is interested in obtaining feedback to determine whether any or all of these other features should be added at the option of the financial institution and at additional cost, if any, to the recipient. These features are (1) paying interest on account balances, (2) allowing for additional electronic deposits, and (3) providing for third-party ACH payments.

Each of the additional features offers potential benefits to some portion of eligible Federal payment recipients. Therefore, permitting these features may encourage more recipients to sign up for an ETA℠, potentially resulting in increased long-term savings to the Government. These additional features also may help to create a useful intermediate step for those without accounts at financial institutions in their transition to the financial services mainstream. For these reasons, if these features are permitted to be offered by financial institutions as part of the ETA℠, Treasury would consider whether to reimburse a financial institution an additional set fee per ETA℠ providing for such features.

There may be, however, potential disadvantages and costs associated with these additional features. Many financial institutions commented that the ETA℠ should be designed as a basic account that could be easily offered by any financial institution and easily understood by recipients. Variation in ETA℠ features may be confusing to recipients and more difficult to market as a standard product. Additionally, variation in the features of the ETA℠ may make it harder to protect the ETA℠ mark and ensure that the mark is used only by those financial institutions that have entered into an ETA℠ Financial Agency Agreement. Adding features, even as options, poses the risk that financial institutions will not be willing to participate, or that recipients who already have an account at a financial institution may switch to a low-cost ETA℠.

Treasury seeks specific comment as to whether the potential advantages of each of the three features outweigh the potential disadvantages. Treasury will consider carefully the comments received, but may decide not to add any of the features if it determines that the potential disadvantages make the features unsuitable for the ETA℠ or the associated cost is determined to be too high. Further, if a decision is made to allow additional features, any financial institution that offers an ETA℠ with the additional features must also make available to recipients an ETA℠ without the additional features.

Regardless of whether any of these other features is added to the ETA℠, financial institutions are encouraged to offer recipients other non-ETA℠ accounts that meet recipients' needs, including accounts that offer features beyond those contained in the ETA℠, such as checking accounts. However, while such accounts may be used for the receipt of Federal payments by EFT, these accounts are not considered to be ETAs℠ and may not be advertised as such.

Interest on Account Balance

Treasury believes that the payment of interest on ETAs℠ could encourage more individuals to sign up for ETAs℠ and could encourage and facilitate savings by low income recipients. In addition, financial institutions could potentially benefit from the higher daily balances that could result from permitting this feature.

However, Treasury research indicates that account balances will likely be drawn down very quickly after deposit and, therefore, interest earnings by recipients could be very small. Additionally, interest accumulated in such accounts may be attachable. Finally, including a savings feature may modestly increase the costs to the financial institution of providing the account. These costs could include interest payments and costs for Truth in Savings Act disclosures and 1099 tax reporting.

Additional Deposits

Permitting financial institutions to accept electronic deposits of other types of payments in addition to Federal benefit, wage, salary, and retirement payments to the ETA℠ would enable broader use of the ETA℠ for deposits and payments from other sources, including matching funds under individual development account programs. This would help to meet Treasury's overall goal of bringing recipients into the financial mainstream. In addition, this could assist financial institutions that might find it difficult to refuse customer requests to deposit other funds into their accounts.

However, as discussed previously in Section C of this notice under the subheading "Deposits," permitting other types of payments to be deposited to the ETASM would have implications with respect to the potential attachment of funds in the account, and could add complexity and expense to the account. If financial institutions were permitted to allow additional payments into the ETASM, Treasury would want to assure that recipients were given appropriate disclosures regarding the possible attachment of funds and would encourage Federal payment agencies to issue clear resolution rules to help recipients and financial institutions determine which funds cannot be attached.

Third-Party ACH Debit

Treasury recognizes that the ability for recipients to initiate preauthorized third-party debit transactions would be a convenient and cost-saving means for recipients to pay recurring bills such as rent, utilities, and cable television. Such a feature could reduce recipients' reliance on money orders and cash, thereby enabling recipients to avoid the cost of money orders, save time expended in traveling to pay bills in cash, and reduce the potential losses and thefts associated with carrying cash to pay bills. Thus, because of the convenience of this feature, more recipients might sign up for ETAsSM and more individuals might be brought into the financial services mainstream.

However, because of differences in clearance mechanisms between ACH debits and ATM withdrawals, permitting ACH debits might result in overdrafts to ETAsSM or rejected transactions, which would result in higher costs both to financial institutions and recipients. Moreover, Treasury is concerned that recipients inadvertently could authorize ACH debit entries to pay for goods and services that are not delivered or are not as represented, thereby incurring unexpected losses. Treasury is aware of some incidents of ACH debit fraud, as well as the difficulties that consumers sometimes encounter in dealing with legitimate merchants, including difficulties in revoking preauthorized debit authorizations. In addition, Treasury believes that the costs of administering the ETASM could increase as a result of the additional customer service burden that would be imposed on financial institutions in dealing with recipient inquiries related to such transactions.

Dated: November 18, 1998.

Richard L. Gregg,

Commissioner.

[FR Doc. 98–31244 Filed 11–19–98; 8:45 am]

BILLING CODE 4810–35–P