



COMMUNITY LEGAL SERVICES
OF PHILADELPHIA

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Special Committee on Aging

Hearing regarding

**“Social Security Payments Go Paperless: Protecting Seniors
from Fraud and Confusion”**

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with assistance from:
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on behalf of:

the low-income elderly and disabled clients of Community Legal Services, Inc.
and
National Consumer Law Center
National Senior Citizens Law Center
SeniorLAW Center

“Social Security Payments Go Paperless: Protecting Seniors from Fraud and Confusion”

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Mr. Chairman, Madame Ranking Member, and Honorable Members of the Committee:

Thank you for the opportunity to testify today regarding the problems faced by low-income beneficiaries of federal benefits in the switch to electronic benefit payment. I offer testimony here today on behalf of the low-income elderly and disabled clients of **Community Legal Services, Inc.**,¹ as well as the **National Consumer Law Center**,² the **National Senior Citizens Law Center**,³ and the **SeniorLAW Center**.⁴

Treasury’s effort to significantly increase the number of recipients of federal benefits who receive their benefits electronically has been enormously successful. However, while electronic deposit may be advantageous for most recipients, it is not right for *all* recipients. Treasury is required by the statute authorizing electronic deposit of federal benefits to avoid harming the vulnerable seniors and people with disabilities who receive federal benefits in the course of switching from paper checks to electronic deposit. We appreciate Treasury’s efforts to deal with the hurdles facing recipients in this transition—including providing alternatives to bank accounts; addressing the dangers of garnishment of benefits from bank accounts by debt collectors; as well as some of the issues with prepaid cards. However, there is still a great deal more to do. Many vulnerable seniors and individuals with disabilities have suffered significant hardship from fraud and theft due to insufficient protection of electronic deposit methods. Many more have experienced confusion and anxiety due to pressure to give up their trusted paper checks. While a waiver option is technically available, the needlessly burdensome process that Treasury has designed for requesting a waiver has rendered the option inaccessible to the very populations it was intended to help, leading to temporary loss of benefits for the elderly and disabled population whose economic well-being Social Security benefits are intended to enhance, rather than jeopardize.

I appreciate the opportunity to testify today regarding the following problems and recommendations:

- **Fraud and theft of benefits via electronic deposit must be addressed.**
- **The process for requesting a waiver must be transparent and accessible for the small but vulnerable population who still need to receive paper checks.**
- **Treasury’s rules for prepaid cards eligible for the receipt of federal benefits need to be strengthened to protect vulnerable consumers from predatory practices.**
- **The Direct Express card’s customer service must be accessible for seniors, people with disabilities, and individuals with limited education and financial literacy.**
- **Treasury’s Garnishment rule should be strengthened to protect vulnerable Social Security and SSI beneficiaries from wholesale loss of their income.**

¹ **Community Legal Services, Inc. (CLS)** was established in 1966 as an independent 501(c)(3) organization to provide free legal services in civil matters to low-income Philadelphians. Since its founding, CLS has served more than one million clients who could not afford to pay for legal representation and who would have faced a variety of devastating ends without dedicated, knowledgeable attorneys on their side. CLS attorneys also engage in policy advocacy at the local, state and national level on behalf of low-income individuals.

² The **National Consumer Law Center, Inc. (NCLC)** is a non-profit Massachusetts Corporation, founded in 1969, specializing in low-income consumer issues, with an emphasis on consumer credit. NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. Margot Saunders, an attorney with NCLC, provided important input to this testimony.

³ Since 1972, the **National Senior Citizens Law Center (NSCLC)** has worked to promote the independence and well being of low-income elderly and persons with disabilities, through advocacy, litigation, and the education and counseling of local advocates.

⁴ **SeniorLAW Center** is an independent 501(c)(3) legal services agency founded in 1978 by members of the Philadelphia Bar Association to protect the legal rights and interests of Philadelphia’s needy, elderly residents.

I. The problems of fraud and theft of benefits via electronic deposit must be addressed.

“Hijacking” of federal benefits from individuals who receive their benefits via electronic deposit methods—in which fraudsters divert an individual’s benefits to another payment method without the beneficiary’s knowledge or consent, using the beneficiary’s personal information such as name, date of birth, and Social Security number—has become increasingly widespread. Great hardship can result for beneficiaries who fall victim to such hijacking. Many recipients of Social Security and Veterans’ Benefits rely on their benefits as their primary or sole source of income. They rely on them to keep a roof over their heads, put food on the table, and afford needed and often life-sustaining medications. Loss of one or more months of benefits due to electronic theft can lead to very real hardship for an already vulnerable population.

Juliet came to CLS last fall, desperate for help. She is 57 years old and from West Philadelphia. She has received Social Security benefits since being seriously injured in a car accident, and also suffers from emphysema, gout, and other health conditions. Her roughly \$700 in monthly Social Security benefits are her only source of income. She initially enrolled in a NetSpend prepaid debit card to receive her benefits because she “did not trust banks.” After having her benefits hijacked from that card, and anxiously hoping to prevent her benefits from being stolen again in the future, she switched to Direct Express. But in a cruel twist, the Direct Express card offered no greater protection: between 2011 and 2012 she had six months of her benefits hijacked from her Direct Express card. Without her sole source of income, she was twice evicted from two separate apartments after being unable to pay her rent—and in the process, she lost her precious Section 8 housing voucher. Without a rental subsidy, she has been unable to afford market rent on her \$700 monthly income. She remains homeless today—and has yet to see a dollar of the money that was stolen from her. The first time her benefits were hijacked, she sought help from the Social Security Administration—but was told she needed to contact Direct Express. She did, and was told by a customer service representative that she needed to file a “fraud incident report” describing what had happened. She did—but to no avail. After repeated attempts to follow up via the Direct Express telephone customer service line, she was told that her claim had been investigated and that it was “closed.” After protesting this decision—her benefits had been stolen from her; how was this fair?—she was threatened by a Direct Express customer service representative that if she continued to press her case, they would prosecute her.

Juliet is just one of many who have sought help from CLS, desperate to regain what has been stolen from them. Other legal services and advocacy organizations that work with seniors and low-income individuals, as well as media around the country have reported countless instances of benefits hijacking. One small legal services organization in Georgia saw four cases of benefits hijacking among their low-income clients in just a few months. A Minnesota legal services advocate reports:

My client was enrolled in Direct Express. However, my client never received a Direct Express card. My client contacted Social Security and eventually received a check. The Direct Express card was never located. Social Security later stated that my client had supposedly received 13 payments in 2010. In contacting Direct Express, they stated that no money was ever placed on the card. After passing this information on to Social Security, they did an in-depth review of the client’s file. After multiple phone calls, they acknowledged their errors and dropped the request for repayment.

An elderly couple in Bokeelia, Florida reports the following:

Dana's husband Edward is 89 and on oxygen 24 hours a day. Early in 2013 they received a letter from SSA saying their "Social Security payments would be deposited to the account that they had indicated." They thought nothing of this because the letter was very generic; they figured it meant that their benefits would continue to be deposited into the same account as they had been for the past six years. They didn't know anything was wrong until they got a call from Wells Fargo saying they were behind on their mortgage. (Their mortgage is automatically paid each month after the Social Security direct deposit occurs.) They called the credit union and learned that the Social Security deposit had not come through for February 2013. They called SSA, but SSA would not provide them with any information over the phone, even though they had their credit union on the line. They were told they had to go into SSA office. When Dana tried to make an appointment, they were told the first available appointment was in two weeks—even though it was an emergency. SSA was able to issue an emergency check. But in the period between missed February deposit and the deposit of the emergency check, Wells Fargo tried to pull their mortgage payment six times. The couple was charged a \$35 fee by Wells Fargo, plus a \$29 overdraft fee by the credit union, each time this happened. (The credit union eventually waived the fees, but Wells Fargo "wouldn't work with us at all"—and they ended up paying over \$200 in fees.)

In a new twist, "mySocialSecurity" appears to be offering another means for fraudsters to hijack Social Security benefits from vulnerable seniors and people with disabilities. Designed as a tool for workers and beneficiaries to access information about their current or future benefits, and launched in January 2013, mySocialSecurity also unintentionally opened up a route for thieves to divert benefits away from vulnerable beneficiaries. In response to widespread reports of identity theft and benefit hijacking via mySocialSecurity, SSA has already taken significant steps and implemented heightened security measures in mySocialSecurity to reduce the likelihood of its being used to perpetrate identity theft against beneficiaries in the future. SSA should continue to monitor mySocialSecurity to evaluate the effectiveness of the newly implemented security measures.

Elizabeth, an 84-year-old resident of Orlando, Florida, had no knowledge of any change until she received her bank statement for January, 2013, and saw that her Social Security had not been deposited. She called SSA and they said they couldn't help her over the phone. She visited her local SSA office and was told the problem would be resolved "within 10 days." They were able to correct her bank account information and she started receiving Social Security payments going forward—but the missed payment never showed up. This started a cycle where she'd call SSA, and SSA would tell her she could expect to see the missed payment in "3-5 days"—but the money wouldn't come. She would then receive a letter from Treasury saying that SSA had passed her information along, and Treasury has looked into the matter and confirmed that the payment was deposited to a GE Capital account, and if she had any more questions, she could contact SSA. Then she'd contact SSA, and they'd tell her they were "investigating" and she could expect payment "in 3-5 days." Still, the money wouldn't come, and she'd get the same letter from Treasury again. This cycle repeated no less than three times. It "was like banging my head against the wall." She finally got the money back almost six months later, after Senator Nelson's office got involved.

Seniors and people with disabilities are often prime targets for identity theft. They can be particularly vulnerable because they may be homebound or otherwise have limited mobility and frequently rely on helpers to manage their financial affairs. Protecting beneficiaries against theft of their

vital benefits must be a top priority for Treasury and the Social Security Administration. As the most vulnerable of federal recipients are pushed into the arms of banks and prepaid card providers, Treasury must adhere to its obligation to make sure that these accounts are safe for people to use.

II. The process for requesting a waiver must be transparent and accessible for the small but vulnerable population who still need to receive paper checks.

Imagine that you are an 88-year-old retiree collecting Social Security benefits as your sole source of income. You have for years received your benefits by paper check. You have never had a bank account, because you don't trust banks. You have a sixth grade education and aren't so good at reading. But checks have served you well for years. You are comfortable cashing a check and paying your rent, monthly bills, and other expenses with money orders and cash. All of a sudden you start receiving notices in the mail from the United States Treasury Department. You can't really understand them, because they're complicated and contain a lot of legalese. You call the toll-free number on the notices and ask for more information. You're told you can no longer get your trusted paper check as you have for all these years – now you have to switch to electronic payments. Panic and confusion set in...

This example describes many real people. These individuals are not a huge percentage of the benefit population, but they are an important subset. Yet the current regulatory structure describing the transition to electronic deposit does not include a reasonable way for many elderly retirees and people with disabilities to avoid this panic and confusion.

While nearly 97 percent of Social Security beneficiaries have now switched from paper checks to electronic deposit, the remaining three percent⁵ that have resisted doing so to date generally have a good reason: they do not have a bank account; they do not understand or feel comfortable with electronic deposit; they already have workable and affordable methods of receiving their benefits. Yet in the course of Treasury's effort to approach 100 percent conversion to electronic deposit—for no clear reason—this group of seniors and people with disabilities is being pressured to do something that many of them have understandable reasons for resisting.

Under Treasury's rules, effective March 1, 2013, only a tiny portion of recipients is supposed to be permitted to continue receive their benefits by paper check. Recipients who were still receiving their benefits via paper checks on March 1, 2013, and who were born before May, 1, 1921—and are thus over 92 years old as of that March 1, 2013—are supposed to be exempt from the requirement of electronic benefit payment and thus permitted to continue receiving paper checks.

Treasury has recognized that in addition to those over age 92, there will be some people for whom electronic benefit payment will not work. For this group, narrow criteria were established for determining who would be eligible for a waiver from electronic deposit. Other than age, the only grounds for obtaining a waiver are “mental impairment” and “remote geographic region lacking the infrastructure to support electronic transactions.”⁶

Whether or not the criteria themselves are appropriate, the process that Treasury has developed for beneficiaries to request a waiver based on these criteria is both burdensome and hidden. It requires a beneficiary to: a) call a special Treasury hotline, b) have a conversation about why electronic deposit will

⁵ Some one-half of the three percent, or about 2.5 million Social Security beneficiaries who still receive a paper check are believed to be representative payees and institutions such as nursing homes.

⁶ 31 C.F.R. § 208.4(a)(1)(vi) and (vii) respectively.

not work for her, c) invoke certain magic language to request the waiver form, d) complete the waiver form, e) mail it back to Treasury, and (hopefully) f) have the request approved.

Treasury has reported conflicting sets of statistics on how many waivers have been requested, responded to, and approved. As of September 2012, Treasury informed Congressional staff that of the over 72,000 calls received between May 1, 2011 and July 30, 2012 regarding a waiver, only about 14,000 were ever sent a waiver packet with instructions. Most alarmingly, only 281 notarized responses were received back by Treasury.⁷ Nearly a year later, Treasury has provided Congressional staff with supposedly updated yet very different numbers, reporting that between May 1, 2011 and May 31, 2013, 3,903 waivers were requested, 2,209 completed packets were returned, and 2,079 waivers were granted based on geographic hardship or mental impairment. Treasury also reports that during May 1, 2011 and May 31, 2013, 3,107 individuals were granted “automatic” waivers based on age.

Whichever set of numbers we look to, these figures illustrate the inaccessibility of the system for those who need waivers. More than 300,000 Social Security beneficiaries are age 92 or older.⁸ It is simply incomprehensible that just one percent of those elderly individuals have received what are supposed to be automatic waivers. In all of Florida, just 102 elderly individuals were granted waivers based on age, and just 32 individuals based on mental impairments. In Maine, just 11 elderly individuals were granted waivers based on age and 10 individuals based on mental impairments. Surely the number of individuals in need of waivers far outstrips these miniscule figures. So what is it that makes waivers so difficult to access? The following are some of the primary problems:

- **The waiver option is not clearly communicated to beneficiaries.** There has been a tremendous amount of news coverage regarding the electronic benefit mandate and March 1, 2013 deadline to switch. Treasury began sending extremely strongly worded notices to paper check recipients about a year before the deadline, telling them in large, bold print that they were “out of compliance with federal law.” By comparison, Treasury’s mailings and the Frequently Asked Questions section of Treasury’s GoDirect website provide in small print, buried beneath hundreds of multi-syllabic, legalistic words about the “requirement” to switch, that “exceptions to Treasury’s rule may be granted in rare circumstances.”⁹ In response to advocates’ concerns regarding the low visibility of the waiver option, the Social Security Administration included similar language on their website as well, with a link to the GoDirect FAQs.¹⁰ Individuals are directed to call a specified Treasury hotline “for more information.”
- **The waiver form is not publicly available.** It is not available online, in Social Security field offices, or elsewhere, and in fact each individual form that Treasury generates in response to a request contains a unique tracking number. In practice, any beneficiary wishing to request a waiver must contact Treasury, formally request a new blank form, complete and return it, and wait for a response. This tightly-controlled process prevents advocates from obtaining blank copies of the form to assist their clients in requesting waiver—as we do with so much else in the course of dealing with federal agencies. Blank forms not mailed out specifically by Treasury through their highly controlled process—even if completed fully and signed by the beneficiary—will not be accepted.

⁷ Information provided from a Congressional Staffer based on a meeting with Treasury representatives in 2012.

⁸ Social Security Administration, Office of the Actuary, “Number of Primary Beneficiaries by Age,” available at <http://www.ssa.gov/oact/progdata/benefits/primaries.html> (last accessed June 13, 2013).

⁹ About GoDirect, “Frequently Asked Questions”, available at <http://www.fms.treas.gov/godirect/about-faq/#exceptions> (last accessed June 13, 2013).

¹⁰ Social Security Administration, “Social Security Direct Deposit,” available at <http://www.ssa.gov/deposit/index.htm> (last accessed June 13, 2013).

- **Individuals who call the Treasury hotline must convince the call center representative to send them the waiver form.** This is far more difficult than it sounds. Calls to the hotline listed on Treasury’s notices regarding the electronic benefit mandate are routed to a special Dallas call center whose staff are specifically charged with persuading callers to switch to electronic benefit deposit. In the course of trying to assist my clients, I have personally experienced how difficult it can be to get a call center rep to agree to mail out a waiver packet—and *I am an attorney*. Even a beneficiary who knows to ask for a “waiver form” or “waiver packet” (the magic language) can be refused. Some call center reps must first be persuaded that the beneficiary will meet the criteria for waiver before agreeing to send the form.
- **Many individuals, particularly seniors, may not have formally diagnosed mental impairments, may be unaware of their impairments, or unwilling to acknowledge them.** But without attesting to a mental impairment—first verbally on the phone when requesting the waiver form, and then on paper, if and when the form is mailed out—they will be unable to receive a waiver (unless they have a geographic hardship). Anxiety about using a bank and/or debit card, or lack of understanding/lack of ability to adapt to electronic benefit payment is not enough. The current system thus risks leaving many of those most in need of waivers without access to them, causing needless hardship, confusion and anxiety to vulnerable seniors and people with disabilities.
- **Until February 2013, the form was required to be notarized.** The notary requirement presented a tremendous additional burden for a vulnerable, low-income population. Treasury reports that the notary requirement was abandoned in February 2013 in response to advocates’ (and the Social Security Administration’s) concerns; however, the form still contains a space calling for a notary seal and signature.¹¹ If beneficiaries are not specifically instructed by call center reps that the notary requirement is no longer in force, they will reasonably believe that notarization is required to complete the form.
- **Waiver forms may never be sent out.** Advocates seeking to assist low-income clients in requesting waivers report many cases in which forms have never been received by the requesting beneficiary. Knowing this, I have attempted to request that the form be sent to me as my client’s attorney, so that I will know if and when it arrives and ensure that it is completed and returned—and had my request refused by call center reps (*no, the form must be sent to the beneficiary*). Advocates in other states report similar experiences. Blocking advocates in this way makes it impossible to assist low-income clients with severe anxiety and other mental impairments that make it difficult for them to call and request waiver on their own behalf.

The purpose of permitting waivers from the electronic payment requirement is to avoid having vulnerable beneficiaries suffer deprivation of their life-supporting retirement and disability benefits. The waiver process should appropriately take into account the needs of the beneficiaries who will be unable to adapt to electronic payment, and be structured in a way to ensure meaningful access to waivers for those who need them. If the process for requesting waiver will involve completion of a form, that form should be made readily and publicly available. Advocates should not be blocked from assisting clients who need help.

The current system is neither transparent nor workable, and fails to take into account the needs of the population for whom waivers are supposed to exist. Many people, due to the mental impairments that make them in need of a waiver in the first place, will not have the wherewithal to navigate this complex, multi-step process successfully. The number of recipients in need of waivers will be a relatively miniscule percentage of all recipients—but the process for requesting a waiver must not be insurmountable, as the existing system makes it. Preventing individuals from accessing waivers is also likely to increase the

¹¹ According to a Treasury official, as of May 24, 2013, the form still contained a space calling for notary seal and signature.

burden on the Direct Express card of dealing with recipients who simply cannot cope with electronic payments.

As previously noted, just three percent of Social Security beneficiaries continue to get paper checks. This share will only dwindle as the current population of beneficiaries ages out and is replaced by a generation that has grown up in the computer age. Why is Treasury so determined to reach 100%? Why not just let this tiny subset continue to receive paper checks? According to Treasury, the *annual* cost of mailing each recipient the check each month is approximately \$11.36.¹² As Treasury itself notes, receiving paper checks for their retirement income is very important to some recipients.¹³ Is \$11.36 a year really too much to ask, so that a miniscule fraction of seniors and people with disabilities can continue to receive their hard-earned pensions in a way they understand and with which they feel comfortable?

III. Treasury's rules for prepaid cards eligible for the receipt of federal benefits must be strengthened and enforced to protect vulnerable beneficiaries.

The Treasury-sponsored Direct Express card has many reliable and positive features, as well as strict limits on the fees that can be charged recipients to access their funds.¹⁴ However, there are a plethora of private label cards that can also be used to receive federal benefits electronically. These cards are only loosely regulated by Treasury. According to Treasury rules, a private label card can receive direct deposit of federal benefits so long as the card:

- Provides that the funds will be held in an account at an insured financial institution;¹⁵
- Meets the requirements for pass-through deposit insurance by the FDIC or the National Credit Union Fund;¹⁶
- Is not “attached to a line of credit or loan agreement” under which repayment from the account is triggered upon delivery of the Federal payments;¹⁷ and
- Provides the holder of the card with all of the consumer protections that apply to a payroll card account under the Electronic Funds Transfer Act (“EFTA”).¹⁸

These protections are important but too limited. Currently the EFTA does not directly apply to most prepaid cards (except to payroll cards). To the extent that card providers “voluntarily” submit to the EFTA, as the provisions themselves do not apply to these products, it is not clear that consumers actually have any enforceable rights. Moreover, neither the EFTA, nor its implementing regulation—“Regulation E”—fully addresses the issues facing benefit recipients using prepaid cards to receive their federal benefits.

¹² Treasury says it spent \$125 million delivering paper checks to 11 million benefit recipients in 2009. That works out to be \$11.36 per recipient per year, or \$.95 for each check to each recipient. See 75 Fed. Reg. 34394, 34399 (June 17, 2010).

¹³ See 75 Fed. Reg. 34394, 34401 (June 17, 2010).

¹⁴ One free ATM withdrawal is permitted per month and, if not used, the free withdrawal carries over until it is used. After free ATM withdrawals have been exhausted for the month, any subsequent ATM withdrawal has a \$0.90 fee. No fee is charged for cash withdrawals at the teller window of a MasterCard member bank—a vast majority of banks are members—or for cash back from a retail transaction. Foreign ATMs outside the Direct Express card network may impose a surcharge in addition to ATM withdrawal fees charged by the card issuer itself. The Direct Express card network currently includes approximately 50,000 ATMs throughout the country. Periodic statements are not automatically provided. For \$0.75 per month, recipients can sign up for regular monthly statements. Paper statements provided on an “ad hoc request” basis are free, and there appears to be no limit on the number of such “ad hoc” requests a recipient can make. Recipients can check their balances by means of the telephone, on the Internet, or at an ATM. They can also sign up for automated text, e-mail, or telephone messages to alert them about deposits and low balances. These messages are free, apart from any charges imposed by the cell phone provider.

¹⁵ 31 C.F.R. § 210.5(b)(5)(i)(A).

¹⁶ 31 C.F.R. § 210.5(b)(5)(i)(B).

¹⁷ 31 C.F.R. § 210.5(b)(5)(i)(C).

¹⁸ 31 C.F.R. § 210.5(b)(5)(i)(D).

One low-income senior who came to CLS for help getting back a lost month of Social Security benefits received his benefits on a private label card that restricted cardholders to making withdrawals from an ATM located in a specific check-cashing store. He had sought to withdraw his full monthly benefit of over \$700 – but the machine failed to dispense any money. He pleaded with the store employees but was told he had to file a claim with the private label card. He called the customer service line and pleaded with the customer service representative, but was told he could not get the money back because he could not “prove” to their satisfaction that no money had been dispensed (as commonly occurs with faulty ATMs, the receipt that the machine spit out said he had made a withdrawal for some \$700). With Social Security benefits as his sole source of income, being without any funds for a full month meant dire hardship for this senior.

What good is “voluntary” compliance with Reg E if it is neither enforced nor enforceable?

Another low-income Social Security beneficiary who sought help from CLS had also lost nearly a full month of benefits. She, too, received her benefits via a private label card—Rush Card Debit—and had been the victim of benefit-hijacking. When she called the card company to report fraud and seek to get her money back, she was told that all they could do was return to her the balance still on the card (about \$100); the much larger amount that had already been withdrawn by the fraudster (about \$700) was “lost” and could not be returned to her, she was told.

Treasury should promulgate and enforce stronger, clearer rules to ensure that vulnerable beneficiaries are not harmed by private label cards that are currently able to evade Regulation E and EFTA protections.

Also alarming, some check cashing stores appear to be marketing their cards as “Direct Express” or “Social Security benefit” cards, or referring to them as “Direct Deposit.” In one brazen example, an ACE Cash Express store in North Philadelphia had a sign up for several months that read: “Get your Direct Express card here.”

An elderly Social Security recipient came to CLS seeking help in activating a NetSpend prepaid card. He had not been able to activate it himself and as a result had not been able to access his needed Social Security benefits for over a month. He believed that “SSA” had told him to buy a “temporary” prepaid card from a check-cashing store to use “until his permanent Direct Express card came in the mail.” But he had been unable to activate the card. It took a legal aid attorney three days of repeated calls and faxes to MetaBank / NetSpend to help this gentleman get his card activated. By the time the attorney was successful, the gentleman’s benefits had already been sent back to Treasury and he had to wait to have his benefits reissued by his local SSA office via another payment method.

Treasury should promulgate rules to ensure that seniors are not misled into confusing a private label card—which often have higher fees and can be much more costly to use—for the Treasury-sponsored Direct Express card.

Also cause for concern, some private label prepaid cards remain a source of high cost credit. Treasury’s regulation on prepaid cards bans direct deposit of benefits to prepaid cards that carry a line of credit or loan agreement that is automatically repaid by the next federal deposit.¹⁹ This is an important

¹⁹ 31 C.F.R. § 210.5(a)(5)(C).

protection, but some payday and overdraft loan programs attached to prepaid cards appear to believe they are not covered.²⁰

Moreover, some lenders may feel that the prohibition in Treasury's rule does not apply to extensions of credit styled as overdraft loans. For example, the payday lender CheckSmart has used prepaid cards to evade payday laws in at least two states, Arizona and Ohio, and probably others. CheckSmart's own card-based payday loans have taken two forms. The first form has been styled as overdraft coverage. If the consumer opts in, transactions that exceed the card balance will be approved for an "overdraft protection service fee" of 15% of the negative balance (\$15 per \$100). The second form of prepaid card payday loan, which may have been recently discontinued, allowed consumers to get an advance of wages or public benefits for a "convenience transfer fee" of \$3.50 per \$28.50 advance (yielding \$25 net credit, for fees of \$14 per \$100) plus 35.9% interest. The loans required direct deposit of public benefits or wages to the prepaid card and are repaid by the next deposit, as soon as a day or two later. The annual rate for a 14-day loan was 390% to 401%. These 400% loans were offered in states with usury caps of 28% to 36%.

Both forms of these loans are credit and should be covered under the current Treasury rule; it should not matter whether the lender labels its agreement as a "deposit agreement" instead of a loan agreement, or labels its fee a "transfer" or "load" fee rather than a finance charge. But in order to clarify the rule and prevent further evasions, Treasury should tighten its rule prohibiting direct deposit of benefit to prepaid cards that have loan features.

IV. The Direct Express card must provide meaningful customer service that is accessible and appropriate for seniors, people with disabilities, and individuals with limited education and financial literacy.

Advocates for seniors and low-income consumers have related a number of concerns to Treasury and the Social Security Administration about the adequacy of the customer service provided by Comerica, the sponsor of the Direct Express card. We very much appreciate the extensive efforts by both agencies to address these articulated problems. Indeed, the issues we are now seeing are fewer than in 2011-2012.

However, there still remain some significant problems with customer service for the Direct Express card. Now that millions of new users who are uncomfortable with electronic payments have been pushed onto the Direct Express card in conjunction with the March 1, 2013 deadline to switch, adequate and accessible customer service for cardholders is more important than ever. More can and should be done to ensure that cardholders are able to address problems in accessing their needed benefits.

Meaningfully accessible telephone customer service is vital given the nature of the Direct Express cardholder population. Many Direct Express cardholders are people who have never had a bank account and/or who have resisted electronic deposit for years, accustomed to receiving their benefits via paper check. They are less likely to use or have access to the Internet; they are likely to be less comfortable with the concepts of electronic deposits and electronic transfers; and they are understandably likely to be confused and anxious about how they will be able to access the money on which they depend to eat and live, via a prepaid debit card.

The invisibility of electronic payments is a real problem for many seniors. Though extensive information about the Direct Express card, its features, and other Frequently Asked Questions are available online, it is important to keep in mind that only a small percentage of elderly people use the

²⁰ For example, the CheckSmart Insight Prepaid Card, which offered payday loans in the guise of overdraft fees at \$0.15 per \$1 negative balance, claimed: "Your card is not a credit card and does not directly or indirectly access any credit feature or line of credit." <https://www.checksmartstores.com/services/ohio/> (footnote) (last visited July 15, 2012; when visited on June 17, 2013, site had since been taken down).

Internet on a regular basis, and a smaller group has easy access from home. According to the latest information available from the Census Bureau, only 31.7% of people over age 65 connect to the internet *anywhere*.²¹ An even smaller share of the low-income elderly has internet access. This makes telephone customer service, both for activation, and for ongoing questions and concerns, absolutely critical for the Direct Express cardholder population.

However, the Comerica / Direct Express customer service telephone system is inadequate and inaccessible for many of the individuals the Direct Express card is intended to serve. Customer service representatives are frequently not able to communicate effectively and appropriately with callers who are financially unsophisticated; who are unaccustomed to electronic banking; and who have mental impairments or disabilities. In addition, due to the limitations in the existing telephone system, it is impossible for some beneficiaries to access customer service due to their disabilities—for instance, no accommodations are available for individuals with hearing and speech impairments.

One Social Security beneficiary in Philadelphia who suffers from advanced throat cancer was unable to get through to Comerica to address an interruption in her benefits—it is unclear at this time whether or not her benefits were hijacked, though that is a possibility—because she is unable to speak due to her condition. She tried the automated phone system but could not get the information she needed. She went to her local Social Security office for help but was turned away and told SSA staff are not able to call Comerica for or with beneficiaries, and that she would need to call on her own. Unsure where else to turn, she came to a Philadelphia legal aid organization. An attorney there called in to Comerica with her—but once he got through to a live person, the representative refused to speak with him about the beneficiary's problem because the beneficiary could not provide verbal authorization. She has still not been provided appropriate accommodations.

This sort of story raises special concerns given the protections afforded people with disabilities under Section 504 of the Rehabilitation Act.

There will doubtless be a transition period as older Social Security and other federal benefit recipients age out and are replaced by consumers who grew up in the electronic age. But for today's older beneficiaries who cannot adapt to and cope with the Direct Express card without extensive hand-holding, if at all, everyone may be better off if they are permitted to continue receiving a paper check. This is another reason to liberalize the waiver process.

V. Treasury's Garnishment rule should be strengthened to protect vulnerable Social Security and SSI beneficiaries from wholesale loss of their income.

The Treasury rule on garnishments protects exempt federal benefits directly deposited into bank accounts from garnishment by debt collectors, effective May 1, 2011.²² However, some recipients still risk loss of these essential benefits when the bank account garnishment originates from a past-due child support debt owed to a state agency.²³

²¹ U.S. Census. <http://www.census.gov/hhes/computer/publications/2010.html>. Table 1A. Reported Internet Usage for Households, by Selected Householder Characteristics: 2010.

²² Garnishment of Accounts Containing Federal Benefit Payments, 31 C.F.R. pt 212 (2013).

²³ For a full discussion of this issue, see, Saunders and Tyler, *Past, Present and Future Threats to Federal Safety Net Benefits in Bank Accounts*, 16 N.C. Banking Inst. 43, University of North Carolina School of Law Banking Institute, March, 2012. Note, these issues are still live, even after the publication of the Final Rule on garnishment: [http://www.ofr.gov/\(S\(i3yubnkzlyou1qtxjptqgxmv\)\)/OFRUpload/OFRData/2013-12567_PL.pdf](http://www.ofr.gov/(S(i3yubnkzlyou1qtxjptqgxmv))/OFRUpload/OFRData/2013-12567_PL.pdf).

The Social Security Administration is already required by statute to withhold up to 65% of a Social Security recipient's benefits for past-due child support if requested by a state child support enforcement agency. Yet Treasury's interim garnishment rule allows that same state agency, after receiving this substantial percentage of the benefits before they are issued to the recipient, to seize the entire remainder once it is deposited into the recipient's bank account.

By law, SSI payments, which protect low-income seniors and people with disabilities from the worst effects of poverty, cannot be administratively offset. Yet SSI payments are often improperly seized from bank accounts through the child support enforcement quarterly bank matches. These payments are seized even if the recipient's only income is poverty level SSI or the balance of Social Security payments after 65% has already been garnished, and even when the payments are not needed to support children.

State agency enforcement orders are often for children who are long grown, and the amounts due have been grossly swollen because of high interest rates applicable to these debts, which are often decades old. This leaves the recipients completely destitute, often relying for daily sustenance on the grown children for whose benefits the original debts were incurred. Funds on Direct Express cards may also be similarly accessible for back-due child support.

The law does not permit either VA benefits or SSI funds to be seized for past-due child support. However, the current version of Treasury's Garnishment rule does not protect these benefits from being seized when they have been deposited in bank accounts for past due child support enforcement orders.

There are two potential remedies for this problem. One is for Treasury's Garnishment Rule to clearly protect benefits from past due child support orders, as the proposed rule did. Benefits could still be accessed through direct garnishment through the payor agency, just not through the bank account. The second is to mimic the solution recently proposed in the state of New York for all benefits paid by the SSA. The state child support office determines from the SSA who is receiving benefits and removes these obligors from the bank-match program. Of course this rule also needs to be made applicable to VA benefits, as well.

In closing, we wish to acknowledge that Treasury and the Social Security Administration have made important efforts to meet the needs of the recipients who are unable or uncomfortable to switch easily to electronic deposit of benefits—but the fact is, there remains a great deal left to do. Thank you for the opportunity to testify today regarding this important issue. We look forward to working with the Committee to address the problems described above and minimize fraud and confusion in conjunction with electronic deposit of federal benefits.