4810-35

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 208

RIN 1510-AB26

Management of Federal Agency Disbursements

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final Rule.

SUMMARY:

The Department of the Treasury (Treasury), Financial Management Service (FMS), is amending its regulation to require recipients of Federal nontax payments to receive payment by electronic funds transfer (EFT), effective May 1, 2011. The effective date is delayed until March 1, 2013, for individuals receiving Federal payments by check on May 1, 2011; and for individuals who file claims for Federal benefits before May 1, 2011, and request check payments when they file. Individuals who do not choose direct deposit of their payments to an account at a financial institution would be enrolled in the Direct Express® Debit MasterCard® card program, a prepaid card program established pursuant to terms and conditions approved by FMS. Treasury waives the EFT requirement for recipients born prior to May 1, 1921, who are receiving

payments by paper check on March 1, 2013; for payments not eligible for deposit to a Direct Express® prepaid card account; and for recipients whose Direct Express® card has been suspended or cancelled. In addition, this rule establishes the criteria under which a payment recipient may request a waiver if the EFT requirement creates a hardship due to his or her mental impairment or remote geographic location.

DATES: This rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You can download this rule at the following website: http://www.fms.treas.gov/eft. You may also inspect and copy this rule at: Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. Before visiting, you must call (202) 622-0990 for an appointment. In accordance with the U.S. government's eRulemaking Initiative, FMS publishes rulemaking information on www.regulations.gov. Regulations.gov offers the public the ability to comment on, search, and view publicly available rulemaking materials, including comments received on rules.

FOR FURTHER INFORMATION CONTACT: Walt Henderson, Director, EFT Strategy Division; Natalie H. Diana, Senior Counsel; or Ronda Kent, Senior Counsel, at eft.comments@fms.treas.gov or (202) 874-6619.

SUPPLEMENTARY INFORMATION:

On June 17, 2010, the Department of the Treasury (Treasury), Financial Management Service (FMS), published a notice of proposed rulemaking (NPRM) at 75 FR 34394, requesting comment on a proposed amendment to 31 CFR part 208 (Part 208), which implements the requirements of 31 U.S.C. 3332. Section 3332, title 31, United States Code, as amended by subsection 31001(x)(1) of the Debt Collection Improvement Act of 1996 (Pub. L. 104-134) (Section 3332), generally requires that all Federal nontax payments be made by electronic funds transfer (EFT), unless waived by the Secretary. The Secretary must ensure that individuals required to receive Federal payments by EFT have access to an account at a financial institution "at a reasonable cost" and with "the same consumer protections with respect to the account as other account holders at the same financial institution." See 31 U.S.C. 3332(f), (i)(2). Direct deposit is the primary method used to make EFT Federal payments.

The NPRM proposed to amend Part 208 to require all recipients of Federal nontax payments to receive payments by EFT, effective March 1, 2011, with a delayed effective date of March 1, 2013 for individuals receiving Federal payments by check on March 1, 2011, and for individuals who file claims for Federal benefits before March 1, 2011 and request check payments when they file. Recipients receiving payments by direct deposit prior to March 1, 2011, would continue to do so under the proposed rule.

Treasury's proposed rule stated that a Federal payment recipient could choose to have payments directly deposited to his or her own account at the recipient's financial institution. The NPRM stated that individuals who did not choose direct deposit of their payments to an account at a financial institution would be enrolled in the Direct Express®[1] Debit MasterCard® card program, a prepaid card program established pursuant to terms and conditions approved by FMS. The proposed rule contemplated that, beginning on March 1, 2013, all recipients of Federal benefit and other non-tax payments would receive their payments by direct deposit, either to a bank account or to a Direct Express® card account.

Treasury sought comment on all aspects of the proposed rule, and specifically requested comments regarding (1) exceptional circumstances where specific types of individual EFT waivers could be needed, (2) the costs to recipients for accessing their benefit payments received by paper check compared to those received by EFT, and (3) alternative phase-in approaches.

Treasury is finalizing the proposal in the NPRM to require, in general, that all Federal nontax payment recipients to receive payments by EFT. The March 1, 2011 effective date has been changed to May 1, 2011. There remains a delayed effective date of March 1, 2013, for: (1) individuals receiving Federal payments by check on May 1, 2011; and (2) individuals who file claims for Federal benefits before May 1, 2011 and request check payments when they file. In addition, after consideration of the comments received, Treasury is modifying its proposed elimination of all individual waivers from the EFT requirement. Instead, Treasury will automatically waive the EFT requirement for: (1) a recipient born prior to May 1, 1921, who is receiving Federal payments by check on March 1, 2013; (2) a payment that is not eligible for deposit to a Direct Express® prepaid card account; and (3) a recipient whose Direct Express®

[1] Direct Express® is a registered service mark of the Financial Management Service, U.S. Department of the Treasury. The Direct Express® Debit MasterCard® card is issued by Comerica Bank, pursuant to a license by MasterCard International Incorporated. MasterCard® and the MasterCard® Brand Mark are registered trademarks of MasterCard International Incorporated.

card has been suspended or cancelled. Also, the final rule establishes the criteria under which a payment recipient may request a waiver if the EFT requirement creates a hardship due to his or her mental impairment or remote geographic location.

I. Background

Part 208 sets forth the general rule requiring Federal payments to be made by EFT and the requirements for accounts to which Federal payments may be sent by EFT. "Federal payment" means any nontax payment made by an agency, including, but not limited to, Federal wage, salary, and retirement payments; vendor and expense reimbursement payments; benefit payments; and miscellaneous payments. See 31 CFR 208.2(g). Federal payments include payments made to representative payees and other authorized payment agents. See 31 CFR 210.5(b)(1). For Part 208 purposes, "agency" means any department, agency, or instrumentality of the United States Government, or a corporation owned or controlled by the Government of the United States. See 31 CFR 208.2(a).

As explained in the NPRM, Part 208 provides that any individual who receives a Federal benefit, wage, salary, or retirement payment is eligible to open an Electronic Transfer Account (ETA) at a financial institution that offers such accounts, and establishes the responsibilities of Federal agencies and recipients under the regulation. Part 208 also sets forth a number of waivers to the general requirement that Federal payments be delivered by EFT. See 31 CFR § 208.4. Among the waivers previously included in the regulation were waivers for situations in which an individual determined 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. See 31 CFR § 208.4(a).

Treasury has reviewed the comments received in response to the NPRM, and, as described in more detail below, modified its proposal to eliminate all individual waivers from the EFT requirements. The Secretary's waiver authority remains unchanged, and Federal agencies continue to have the ability to waive payment by direct deposit or other EFT method in the circumstances described in paragraphs (b) through (g) of § 208.4, namely, for situations where the infrastructure in a foreign country does not support EFT, for certain disaster or military situations, for situations in which there may be a security threat or for valid law enforcement reasons, for non-recurring payments, and for unusual and/or urgent situations where the Government would be seriously injured unless payment is made by a method other than EFT. The final rule revises the criteria for the agency waiver related to non-recurring payments, as described below.

II. Summary of NPRM Comments

Treasury received 33 comment letters and 1,087 comments solicited by and sent to a consumer advocate organization via its website. Of the 33 comment letters, three were from consumer advocate groups. One of the groups submitted its comments on behalf of its low-income clients, another consumer advocate organization, and 23 national, state, and local advocates for low and moderate income recipients of Federal benefits. While the consumer advocate groups generally acknowledged the benefits of EFT, all three groups opposed the complete elimination of waivers for individuals for whom EFT might impose a hardship and suggested improvements to the Direct Express® card and changes to the Direct Express® card terms and conditions. In addition, the three groups recommended that Treasury issue consumer protection rules for individuals whose benefit payments are delivered electronically to prohibit predatory loans, the unlawful freezing or garnishing of benefit payments legally exempt from garnishment, and the offsetting of overdraft and other bank fees against benefit payments.

Three comment letters were from associations that represent financial institutions. One commenter supported Treasury's proposal, provided that payments would be delivered, by default, to a recipient's existing bank account and that recipients would be allowed to elect direct deposit to reloadable prepaid cards issued by insured depositary institutions. Another commenter supported Treasury's proposal, including the alternative debit card option, because of the potential cost savings to credit unions. The third association commenter also supported Treasury's proposal and urged Treasury not to include individual waivers in the final rule.

A national electronic payments association and one financial institution submitted comment letters supporting Treasury's proposal. The electronic payments association supported the Direct Express® card as a safe, convenient, and reasonably priced alternative for unbanked Federal benefit recipients. The financial institution urged Treasury to consider expanding its regulations to allow direct deposit of Federal payments to general purpose reloadable prepaid debit cards.

Fourteen attorneys and an association that represents Social Security claimants' representatives recommended that Treasury waive the EFT requirements for attorneys and other representatives who receive fee payments for representing Social Security claimants. The association and the attorneys stated that, when fee monies are electronically deposited into an attorney's account, the attorney does not receive adequate information to determine which client the fee payment is for. In addition, the association and the attorneys stated that many attorneys and other representatives, as associates or employees of a firm, are precluded from accepting direct deposit of representative fees into their own personal bank account. These fee payments must be deposited directly to accounts owned by their firms. This is problematic because the Social Security Administration will only make representative fee payments to individual attorneys or representatives, most of whom are not the owners of their firm's bank account, and therefore cannot accept or direct payments to them.

A national trade association representing neighborhood financial service providers, such as check cashers, remittance servicers, short-term lenders and bill payment providers, did not support Treasury's proposal. It viewed the proposal as depriving Americans of the right of choice with respect to the delivery of Federal nontax payments, disproportionately affecting low- and moderate-income individuals.

Treasury received six comment letters from individual or unidentified commenters with various concerns. One of these commenters, a coordinator of a local Volunteer Income Tax Assistance program, supported the proposed rule, encouraged Treasury to discontinue the ETA program, and suggested modifying the Direct Express® card program to provide at least one surcharge-free automated teller machine (ATM) withdrawal at any ATM. Another commenter, a certified public accountant, raised concerns about whether the proposed rule would create problems if nursing homes are unable to clearly identify the resident for whom a benefit payment has been directly deposited to the nursing home's trust account. Another individual suggested that Treasury clarify that it continues to support the ETA as an option for receiving Federal benefit payments by direct deposit. Another individual suggested that Treasury require financial institutions to allow recipients of Federal funds to obtain the full amount of their payment in one transaction with minimal charge. An individual attorney raised a concern that direct deposit of Social Security disability or SSI benefits could inadvertently lead to disqualification from Medicaid whereas an individual receiving a paper check payment can control when the payment is deposited into his or her account. An unidentified individual opposed the proposed rule primarily because the commenter believed that benefit recipients are entitled to choose to receive their payments by paper check, and did not agree with Treasury's underlying rationale for the proposed rule.

In addition to its own comment, one consumer advocate organization sent Treasury 1,087 comments it solicited and received through its website. Sixty-three of the website commenters expressed support for Treasury's proposed rule, but most of the commenters opposed the proposal for one or more of the following reasons: (1) 845 of the commenters cited a preference for allowing those who wish to continue to receive a paper check to do so (more than 140 of the commenters already receive their payments electronically, but were concerned for others who may choose not to do so); (2) 615 of the commenters cited an objection to bank fees, including Direct Express® card fees, with approximately 482 commenters objecting to requiring a benefit recipient to pay fees to receive a monthly paper statement; (3) 558 commenters cited concerns about requiring benefit recipients to bank online and/or discomfort with adapting to new payment technologies, especially for older benefit recipients; (4) 475 commenters cited concerns about whether electronic banking would lead to increased identity theft; (5) 410 commenters cited concerns about providing bank account information to the Social Security Administration or other Federal agencies; and (6) 134 commenters were concerned about the ability of elderly benefit recipients to change the way they receive their benefit payments. Approximately 125 of the commenters simply expressed general opposition to Treasury's proposal. Other miscellaneous reasons for opposing Treasury's proposal included preference for checks (65 commenters), concerns about EFT processing (13 commenters) and improper garnishment (6 commenters), opposition to prepaid cards (21 commenters), concerns about access to the banking system (35 commenters), need for access to a free account (18 commenters), and hardship (10 commenters).

Finally, three Federal government agencies submitted comments for Treasury's consideration. One agency expressed uncertainty about whether recipients of payments from that agency would qualify for the Direct Express® card. Two agencies raised concerns about making payments to recipients who reside in geographically remote areas with no access to electronic financial services.

III. Treasury's Responses to NPRM Comments

In developing the final rule, Treasury has attempted to implement the requirements of Section 3332 on balance with concerns expressed by different commenters. The final rule essentially adopts the core provisions of the proposed rule, and also makes available several important waivers for individuals in circumstances in which Treasury finds that requiring EFT could create a significant hardship for those individuals. The final rule reflects the view of the commenters who generally agree that receiving payments by EFT is beneficial to recipients and taxpayers for the reasons described in the NPRM and this final rule. Treasury has addressed the concerns raised by those opposed to the EFT requirement, and will continue to monitor carefully whether recipients are subject to additional hardships in the future because of the requirements of this final rule. Treasury's responses to the NPRM comments are as follows.

1. Retain Paper Check as a Payment Option

Many commenters voiced a preference for Treasury to allow recipients the choice of a paper check as a way to receive their Federal payments. Treasury recognizes that the paper check has been an important Federal payment instrument for at least 150 years. Treasury also recognizes that choice, as expressed by many of the commenters, is an important American value. While Congress mandated that all non-tax payments be made electronically, Part 208 continues to offer payment recipients the choice of how to receive their payments in an electronic format. Payment recipients have many financial account options available to them, and in fiscal year 2010, more than 80% of all non-tax payment recipients selected their own accounts for the purpose of receiving payments by EFT. Further, Congress conditioned its mandate on Treasury making available to payment recipients an account at a financial institution "at a reasonable cost" and with "the same consumer protections with respect to the account as other account holders at the same financial institution." See 31 U.S.C. 3332(f), (i)(2).

The Direct Express® card, which is now a nationwide option for most Federal benefit recipients, meets these statutory account requirements. There are no monthly fees and most services are free, so it is possible for an individual to use the Direct Express® card for free. There are no fees for cardholders to sign up for or activate the card; receive deposits; make purchases at retail locations, online or by telephone; get cash at retail locations and financial institutions; or check the card's balance at an ATM, by telephone or online. Transaction history and other account information are available at no cost online or by telephone, but if desired, a cardholder may receive a monthly paper statement for $ .75 per month. There are no fees for declined transactions and, in rare instances when overdrafts occur, there are no overdraft fees.

Cardholders can choose to receive free automated text, email or telephone "low balance" alerts or "deposit notifications" when money is deposited to their card account. Cardholders may close their Direct Express® card account at any time without a fee. There are no inactivity fees and there is no charge for bank teller cash withdrawals at MasterCard® member banks. The free services and minimal fees are fully disclosed on the Direct Express® website (www.USDirectExpress.com), in materials available to interested applicants, and in materials that are sent to new cardholders along with the card. Fee and features information are also available by calling the Direct Express® toll-free call center.

Cardholders may make purchases anywhere Debit MasterCard® is accepted, including millions of retail locations worldwide, online, or by telephone. The Direct Express® card provider does not impose any limits on the number of transactions a cardholder may conduct with a card. Similarly, cardholders may make cash withdrawals and check their account balances at ATMs. A cardholder is allowed one free ATM cash withdrawal for every federal payment the cardholder receives, valid until the end of the month following the month of receipt. For subsequent ATM cash withdrawals, a cardholder pays a fee to the card issuer of $.90 per ATM withdrawal in the United States. ATM owners often charge ATM users additional fees, known as "surcharge fees;" however, a Direct Express® cardholder may make cash withdrawals at more than 53,000 Direct Express® card surcharge-free network ATMs without paying any surcharge fees. The Direct Express® card surcharge-free ATM network consists of ATMs owned by a variety of entities who have agreed to offer surcharge-free ATM access to Direct Express® cardholders. Cardholders are provided with information on how to recognize the various logos that identify a surcharge-free ATM, the Direct Express® card website has an ATM locator feature to assist cardholders in finding a surcharge-free ATM, and cardholders may call the customer service department with any questions on how to locate a surcharge-free ATM. The Direct Express® card provider does not impose a daily limit for ATM withdrawals, although many ATM owners do set limits on the maximum amount of cash that may be withdrawn by any debit cardholder. ATM owners' daily ATM withdrawal limits typically range from $200 to $1,000.

Direct Express® cardholders are protected by the Federal Reserve Board's Regulation E (12 CFR part 205, which implements the Electronic Funds Transfer Act (Regulation E)), which generally provides certain protections to a cardholder whose card is lost or stolen, subject to reporting requirements. In fact, Direct Express® cardholders have 90 days to report unauthorized transactions rather than the typical 60 days offered by most financial institutions. Card balances are covered by deposit insurance by the Federal Deposit Insurance Corporation (FDIC) to the extent allowed by law and Direct Express® cardholders are not at risk for an improper garnishment or the related freezing of funds in the card account. More information about the Direct Express® card, including a list of all fees and the terms and conditions of card use, can be found at www.USDirectExpress.com.

In light of the choices available to payment recipients, as well as the benefits of electronic payments to recipients and the Government, Treasury believes it is appropriate to make all Federal nontax payments electronically.

2. Provide Limited Waivers from EFT Requirement.

a. Limited Waivers for Hardship Based on Mental Impairment and Geographic Barriers.

In its NPRM, Treasury requested comments about "examples of exceptional circumstances where specific types of individual EFT waivers could be needed, even with the availability of the Direct Express® card for Federal benefit recipients." See 75 FR 34394, at 34395. After review and consideration of all of the comments, Treasury agrees with those commenters who urged Treasury to reconsider its proposed elimination of individual waivers from the EFT requirement for claims of hardships due to mental disability or geographic barriers. Treasury does not agree, however, that such reconsideration should be extended to the elimination of waivers related to physical disability, language or literacy barriers, or where payment by EFT would impose a financial hardship. None of the commenters provided specific examples of how physical disability or language or literacy barriers would make receiving payments by EFT more difficult than receiving payments by paper check and Treasury does not find any basis for maintaining a waiver for such conditions. In addition, although several commenters urged Treasury to consider that any fees charged for use of the Direct Express® card could create a financial hardship, the Direct Express® card is structured in such a way that it may be used at no cost to the payment recipient, thus minimizing a beneficiary's risk of incurring a financial hardship to receive and use his or her benefits. Treasury recognizes that more education regarding how to use the card for free is needed and is expanding its program to provide such information to Direct Express® cardholders in various ways, including direct mail, informational pictorial brochures, online videos, and more.

One consumer advocate organization urged Treasury to retain a paper check option for those who articulate a "legitimate" reason for receiving payments by paper check, including physical or mental disability that makes it difficult to use a debit card; difficulty accessing funds without incurring fees, costs, or inconvenience; availability of a less expensive and more beneficial alternative using a paper check; dispute with the participating financial provider of the debit card; concerns over privacy or financial security; literacy and technology barriers; and need to accommodate assistance provided by a representative payee or family member. This commenter proposed that Treasury accept individuals' statements about the need for a paper check without inquiry or review. Another consumer advocate organization similarly urged Treasury to reconsider its proposal to eliminate individual waivers with respect to people with mental disabilities, emotional disorders, or other disabilities making the use of the Direct Express® card difficult; people who live in rural areas, or even inner city areas, where there is not ready access to banks and automated teller machines (ATMs); and other hardships that make both a bank account and the Direct Express® card unusable for the payment recipient. This organization also suggested that Treasury not review waiver requests because the costs of policing a waiver process would far outweigh the costs associated with letting recipients who would not qualify for a waiver receive a paper check. Another consumer advocate organization also objected to the elimination of the provision allowing recipients to determine on their own whether they qualify for a waiver to obtain their Federal payments by paper check. Unlike the other two consumer advocate organizations, this organization urged Treasury to offer the broadest waiver possible to allow any individual who wants his or her payments by paper check to receive them that way.

After reviewing the comments, Treasury has reconsidered its proposed elimination of the waivers related to mental disability and geographic barriers. A consumer advocate organization commented on the need to provide a waiver for individuals who have mental or emotional disabilities, for example, someone with an anxiety disorder that makes it difficult to receive benefits electronically, but not by paper check. Another commenter cited his parents with poor memories stating that having their payments deposited electronically would simply add to their confusion and problems in taking care of their own finances. In recognition of individuals within the payment recipient population who may have mental impairments that do not hinder their ability to manage their financial transactions using checks or cash, but for whom EFT would present a significant hardship, Treasury is retaining a waiver from the EFT requirement for an individual payment recipient for whom EFT would impose a hardship because of his or her inability to manage a bank account or prepaid debit card due to a mental impairment. Treasury notes that, in those cases where a beneficiary suffers from a mental disability necessitating the appointment of a representative payee, the representative payee is the "recipient" of a Federal payment under this rule. In those cases, it is the condition of the representative payee and not the beneficiary that is the determining factor as to whether a waiver is appropriate.

Two Federal agencies cited the need to consider the inability of payment recipients who live in remote and less developed areas of the country to access their payments electronically. For example, according to one agency, many recipients of Individual Indian Money payments live in remote and less developed areas such as Alaska and on reservations throughout Indian Country in an environment lacking many amenities including public infrastructure such as roads and convenient access to providers of goods and services. The other agency noted that Regional

Advisory Council members appointed under the Alaska National Interest Lands Conservation Act (ANILCA) travel to council meetings held in off-roadway bush villages where it is highly unusual for most village merchants to have the infrastructure to accept charge cards. These villages are cash economies with check cashing capabilities, but no ability to process electronic financial transactions. In its comment, one consumer advocate organization cited the lack of access to banks and ATMs in the majority of Montana, rural parts of Alaska, and some rural parts of Missouri. The fact that an area is rural or remote does not necessarily preclude the use of electronic financial services. As these examples demonstrate, it is the combination of being in an area that is rural or remote plus being in an area lacking the transportation or other infrastructure (for example, access to the Internet and online banking) necessary to access electronic financial services. Therefore, Treasury is including in the final rule a waiver from the EFT requirement for an individual recipient who lives in a remote area lacking the infrastructure to support electronic financial transactions.

Under this final rule, to assert one of these two waivers based on mental impairment or geographic barrier, a Federal payment recipient is required to provide to Treasury a written certification supporting his or her request, in such form as Treasury may prescribe. The individual is required to sign the certification before a notary public, or otherwise file the certification in such form that Treasury may prescribe. Treasury will publish guidance describing the waiver process.

b. <u>Automatic Waivers for Recipients Born Prior to May 1, 1921 Who Are Receiving Federal Payments by Check on March 1, 2013; for Payments Not Eligible for the Direct</u>

Express® Card; and for Recipients Whose Direct Express® Card Has Been Suspended or Cancelled.

In addition to the limited waivers from the EFT requirement for hardship claims due to mental impairment and geographic barriers, Treasury has added automatic waivers for: (1) a recipient born prior to May 1, 1921, who is receiving Federal payments by check on March 1, 2013; (2) a payment that is not eligible for deposit to a Direct Express® prepaid card account; and (3) a recipient whose Direct Express® card has been suspended or cancelled.

Many commenters were concerned about the ability of elderly check payment recipients to adapt to electronic money technologies. For example, one consumer advocate organization explained that "[p]eople who are older are more likely to be unaccustomed to or uncomfortable using the technology involved in electronic disbursements." An individual commenter noted: "Many of us older people do not understand and get confused by this paperless society . . ." On the other hand, another commenter believed that paper checks cause problems for older people noting that through her work as a coordinator of a Volunteer Income Tax Assistance program in Missouri, she has "witnessed firsthand the hardships that . . . elderly . . . individuals face when a Treasury Check is lost or misdirected through the mail." Many senior citizens receive their benefit payments electronically, and are very capable of managing their finances electronically.

In recognition of the concerns raised by the commenters about the elderly, Treasury has established an automatic waiver from the EFT requirement for recipients born prior to May 1, 1921, who are receiving Federal payments by check on March 1, 2013. According to the Social Security Administration, almost 80% of Social Security recipients who will turn 80 years old in 2011 receive their payments electronically. By comparison, fewer than 72% of Social Security recipients who will turn 90 years old in 2011 receive their payments electronically. Further, for most of the population of elderly benefit recipients, the EFT requirement is not effective until March 2013, giving Treasury, Federal agencies, community organizations, and others more than two years to educate individuals so they may become comfortable with and adapt to the requirement. Between the publication of the final rule and the effective date for current check recipients, Treasury will work with Federal agencies and various organizations to educate all affected individuals, including the elderly and long-time check recipients, about how to use direct deposit or the Direct Express® debit card.

Treasury has also waived the EFT requirement for any payment that is not eligible for a Direct Express® card account and for those payment recipients whose Direct Express® card has been suspended or cancelled by the card issuer due to improper, fraudulent, or unauthorized use. The Direct Express® card program currently accepts Social Security, SSI, and Veterans compensation and pension benefit payments, as well as Railroad Retirement benefit, Black Lung benefit, and civil service retirement benefit payments. If a recipient receives a payment for which the Direct Express® card is unavailable (for example, an Individual Indian Money payment or a pension benefit payment), then the individual is automatically exempt from the EFT requirement for that payment type. Once the card becomes available for the payment type, then the recipient will be required to switch to an EFT payment option. If the individual also receives other types of Federal payments that are accepted by the Direct Express® card, those payments remain subject to the EFT requirement.

Further, under the terms and conditions of the Direct Express® card program, the card issuer reserves the right to suspend or cancel the Direct Express® card for reasons such as cardholder breach of the account terms and conditions, multiple cardholder claims of unauthorized transactions, a card being used for an unlawful purpose, or other similar reasons. Treasury agrees that the card provider needs to retain the right to suspend or cancel an individual's card account in these types of cases, and recognizes that in the few instances where suspension or cancellation occurs, the payment recipient may have no other way to receive his or her payment except by a paper check.

c. Elimination of Waivers Based on Hardship Due to Physical Disability, Language or Literacy Barriers, or Where Payment by EFT Would Impose a Financial Hardship.

Given the availability of the Direct Express® card and Treasury's expansion of its public education campaign describing how to use the Direct Express® card, physical disability, language or literacy barriers, and fees no longer present hardships requiring waivers from the EFT requirement.

i. Physical Disability. As noted above, Treasury requested specific examples of the types of hardships that could make it difficult to use EFT as compared to a paper check, but none were cited by the many commenters. While Treasury recognizes that not all physical disability barriers have been eliminated, the Americans With Disabilities Act of 1990, Pub. L.101-336 (Jul. 26, 1990), and the advent of many services that benefit the physically disabled, such as accessible transportation, public accommodations, and online banking, have generally rendered receiving benefit payments by EFT no more difficult than receiving payments by paper check. In some cases, EFT payments may even be easier for the recipient. With the elimination of this waiver, Treasury recognizes that for those who are physically disabled, the ability to travel in remote and rural areas may be limited, but considers this to be more a hardship due to a geographic barrier, described above, than solely because of a physical disability. In addition, as suggested by two commenters, Treasury is working with the Direct Express® card provider to determine the feasibility of providing cardholders with an additional convenience card that could be loaded via the Internet or by telephone with a cardholder-determined amount of funds for use by a caregiver or relative to make purchases on behalf of the cardholder.

ii. Language Barriers. None of the commenters urged Treasury to continue the waiver from the EFT requirements based on hardship due to language barriers. All of the Direct Express® cardholder materials are in English and Spanish, and the Direct Express® card provider offers both English and Spanish support through its automated telephone service and its customer service representatives. Callers may choose to speak with a customer service representative in either language. In addition, the Direct Express® card provider offers real-time free interpreter services in virtually any language a caller requires. For example, in September 2010, the Direct Express® card provider handled customer service calls in 19 different languages in addition to English, including languages such as Mandarin, Urdu, Tagalog, and Tigrinya.

iii. Literacy Barriers. None of the commenters specifically urged Treasury to continue its waiver based on hardship due to literacy barriers, although several commenters alluded to the difficulties people have due to a lack of basic literacy skills. For example, one commenter noted that the constituents she works with in a poor, rural area of Georgia are often barely literate and deal with cash because they understand it. Treasury recognizes that lack of basic literacy skills hinders many in managing their financial affairs, and understands the challenges associated with moving some individuals to payment by EFT from payment by paper check. The delayed effective date of the rule for those currently receiving paper checks to March 2013, gives

Treasury additional time to expand its public education efforts related to EFT options. Among other things, through its Go Direct® campaign, Treasury will work with more than 1,800 partners who know their communities best to help educate check recipients about the benefits of direct deposit, the options for receiving payments electronically, and how to safely and cost-effectively use the Direct Express® card. With the assistance of its partners, Treasury is able to tailor its education efforts to meet the differing needs of local communities.

Treasury especially recognizes the need for and importance of expanded cardholder education for existing and new Direct Express® cardholders. While Treasury recognizes that the current pool of Direct Express® cardholders may not resemble future Direct Express® cardholders in either demographic characteristics or attitudinal variables, according to research conducted in March 2009 (Direct Express – Cardholder Satisfaction and Usage Survey, OMB Control No. 1510-0074), 95 percent of Direct Express® cardholders are satisfied with the card. [2] Eight in ten satisfied cardholders cite convenience, safety or immediate access to money as reasons for their satisfaction. Eighty-six percent of those surveyed said they would recommend the card to a friend or family member who receives Federal benefits. Despite this high satisfaction rate, Treasury believes that many Direct Express® cardholders may be unaware of important features that promote proper card usage and reduce fees, such as the availability of free text message alerts on their cell phones when a deposit is made or when their balance is low, the surcharge free ATM network, the ability to get cash back at point-of-sale (POS) locations for free, or even the ability to make purchases at retail locations for free. Using its research,

[2] Summaries of all of the surveys conducted by or on behalf of Treasury that are cited in this rulemaking may be found at www.fms.treas.gov/eft.

including recent research conducted with respect to cardholder education materials sent to approximately 7,000 newly enrolled Direct Express® cardholders who receive Veterans compensation and pension benefit payments, Treasury will develop materials, such as informational pictorial brochures, and methods for further educating benefit recipients as necessary, and as suggested by several commenters.

In addition, Treasury continues to work with its Go Direct® partners to promote financial education. For example, through its partnership with the Federal Deposit Insurance Corporation (FDIC), the Go Direct® campaign is working to raise awareness of the value of financial education through the FDIC's award-winning Money Smart financial education program. The Money Smart program is a comprehensive financial education curriculum designed to help individuals outside the financial mainstream enhance their financial skills and create positive banking relationships. Many Go Direct® campaign partners have used the Money Smart curriculum in their financial education efforts, including banks, credit unions, law enforcement and crime prevention organizations, aging and senior organizations, library systems, and community and disability organizations.

iv. Financial Hardship. Many commenters suggested that the cost of receiving payments electronically is higher than receiving payments by paper check for many benefit recipients, and expressed concern that Treasury's EFT requirement will create a financial hardship for many of America's most vulnerable population. Treasury's goal is to provide Federal beneficiaries and other payment recipients with a low-cost option for receipt of Federal payments, which goes beyond the requirement in Section 3332 that Treasury make available an account at a "reasonable cost." See 31 U.S.C. 3332(i)(2)(a). In addition to low-cost accounts available from financial institutions and other financial service providers around the country, Federal payment recipients have at least one low-cost option – the Direct Express® card–and many recipients potentially have a second option–the Electronic Transfer Account (ETA), an account developed by Treasury in 1999. Although the ETA is not available on a nationwide basis and does not include some of the more useful features that have become available with prepaid debit cards in recent years (thus making the Direct Express® card a more cost-effective and useful option in most cases), the ETA continues to meet the needs of some benefit recipients and will continue to be available.

The Direct Express® card offers a user-friendly low-cost option for Federal benefit payment recipients (see Direct Express® card fee tables below). The account fees are structured so that even those cardholders without access to surcharge-free ATMs can use their cards for free because they can access their funds through free POS purchases either in-store or online, can get cash back for free at retail locations, and can get cash for free at any MasterCard® member financial institution. The Direct Express® surcharge-free ATM network has more than 53,000 surcharge-free ATMs, and the Direct Express® card program provider continues to identify opportunities to expand the network further.

While many commenters expressed concern about having to pay fees to the Direct Express® card provider, or pay fees to receive a paper statement, Treasury believes that these fees are generally lower than costs that could be imposed for cashing a Treasury check and managing financial transactions on a cash basis. The Direct Express® fee tables are as follows:

Standard Free Services	
Service	**Fee**

Purchases at U.S. merchant locations	FREE
Cash-back with purchase	FREE
Cash from bank tellers	FREE
Customer Service calls	FREE
Web account access	FREE
Deposit notification	FREE
Low balance notification	FREE
Card replacement-One free per year	FREE
ATM balance inquiry	FREE
ATM denial of service	FREE
ATM cash withdrawal in the U.S. including the District of Columbia, Guam, Puerto Rico, and US Virgin Islands. Surcharge by ATM owner may apply.	One free withdrawal with each deposit to your Direct Express® Card Account.*

* For each federal government deposit to your Card Account, Comerica Bank will waive the fee for one ATM cash withdrawal in the U.S. The fee waiver earned for that deposit expires on the last day of the following month in which the deposit was credited to the Card Account.

The ONLY Fees You Can Be Charged	
Optional Service	**Fee**
ATM cash withdrawals after free transactions are used in U.S. including the District of Columbia, Guam, Puerto Rico, and U.S. Virgin Islands. Surcharge by ATM owner may apply.	$0.90 each withdrawal (after free transactions are used)
Monthly paper statement mailed to you	$0.75 each month
Funds transfer to a personal U.S. bank account	$1.50 each time
Card replacement after one free each year	$4.00 after one (1) free each year
Overnight delivery of replacement card	$13.50 each time
ATM cash withdrawal outside of U.S. Surcharge by ATM owner may apply.	$3.00 plus 3% of amount withdrawn
Purchase at Merchant Locations outside of U.S.	3% of purchase amount

The low fees and nationwide availability of the Direct Express® card more than satisfy the statutory requirement of 31 U.S.C. 3332 for Treasury to make available an account at a financial institution “at a reasonable cost” and with “the same consumer protections with respect to the account as other account holders at the same financial institution." See 31 U.S.C. 3332(f), (i)(2).

A recent report comparing fees for general purpose reloadable prepaid cards helps illustrate the low cost of using a Direct Express® card. A consumer advocate organization conducted a case study showing the wide variations in fee structures for four prepaid card products. See, "Prepaid Cards: Second-Tier Bank Account Substitutes," Consumers Union (September 2010) (http://www.defendyourdollars.org/pdf/2010PrepaidWP.pdf). Using a sample consumer scenario,[3] the report stated that, for the four prepaid card products studied, monthly fees ranged from $15.45 to $43.75 for the first and second months of card use. In contrast, as shown in Figure 1, below, a Direct Express® cardholder under the same scenario would spend no more than $ .90 per month if using surcharge-free ATMs (one free ATM withdrawal per deposit, with a $ .90 per ATM withdrawal charge after that), and no more than $7.89 per month if no surcharge-free ATMs were used, assuming the average $2.33 surcharge fee per withdrawal cited in the 2010 checking study by bankrate.com (http://www.bankrate.com/finance/checking/banks-taking-a-bigger-bite-with-atm-fees.aspx).[4] There is no online bill paying service currently offered in the Direct Express® card program, so a cardholder would pay his or her own bills directly to the vendor or retailer, with no fee being charged by the provider. The Direct Express® card provider does not impose charges for POS purchases, balance inquiries, or for receiving a deposit.

[3] The sample consumer scenario in the cited report consisted of a cardholder making the following transactions in a month: three ATM withdrawals, three bill payments (rent, utilities, phone), eight point-of-sale purchases (groceries and meals once a week), weekly balance inquiry, and two deposits.

[4] The consumer scenarios used in the cited report assumed that the cardholder did not incur any ATM surcharge fees.

Fig. 1: Direct Express® Card Fees: Sample Scenario

Direct Express® Card Transactions	Fees (with no ATM surcharge)	Fees (with ATM surcharge of $2.33)
1st ATM withdrawal (free with 1st deposit)	FREE	$2.33
2nd ATM withdrawal (free with 2nd deposit)	FREE	$2.33
3rd ATM withdrawal	$ .90	$3.23
Three bill payments	FREE	FREE
Eight POS	FREE	FREE
Weekly Balance Inquiry	FREE	FREE
Two Deposits	FREE	FREE
TOTAL	$ .90	$7.89

In addition, the Direct Express® card does not have any monthly fees, fees for activating the card, or fees for customer service calls, which can drive up costs of other prepaid card products. By educating Direct Express® cardholders to learn how to avoid multiple ATM withdrawals, cardholders can quickly learn how to incur no monthly fees whatsoever.

The regulatory impact assessment, below, contains additional scenarios describing the Direct Express® card fees based on card usage.

Costs incurred to use the Direct Express® card can compare favorably to the cost of cashing a check and conducting necessary cash transactions. While some individuals may be able to cash government checks at no cost, there are often fees of up to $20 or more for cashing a check, according to Treasury's research in 2007 (SSA & SSI Check Recipient Survey, OMB Control No. 1510-0074). Check recipients may also incur money order and postage costs to pay bills that are not incurred with the Direct Express® card.

3. Suggested Changes to Direct Express® Card Program. Various commenters suggested a number of ways that the Direct Express® card should be changed.

a. ATM Cash Withdrawal Fees. A few commenters suggested a range of ways to maximize a cardholder's ability to access his or her cash from an ATM for free. Suggestions ranged from providing cardholders with at least one surcharge-free ATM withdrawal to providing free unlimited ATM withdrawals and expanding the current surcharge-free network. Treasury's current Direct Express® card offers sufficient opportunities for a cardholder to access his or her cash without incurring a fee. The Direct Express® card program offers one free ATM withdrawal for each deposit received. The free withdrawal is valid until the last day of the month following the month of receipt of the deposit. Thus, if a cardholder receives two deposits in January 2011, the cardholder is entitled to two free ATM cash withdrawals that are good until February 28, 2011. In addition, cardholders may obtain cash at retail locations and bank tellers without incurring a fee. The Direct Express® card provider does not impose limits on the number of cash back or teller transactions a cardholder may conduct, although merchants may impose a limit on the amount of cash back a cardholder may receive.

After using available free withdrawals, Direct Express® cardholders who choose to withdraw additional cash from an ATM are charged a fee by the Direct Express® card provider of $ .90 per withdrawal. The card provider does not impose any limits on ATM withdrawals. If the cardholder withdraws cash from an ATM that is not in the Direct Express® network, the ATM owner may charge the cardholder an additional fee, known as a "surcharge," which can range from $1.00 to $3.50 or more. If the cardholder uses one of the more than 53,000 Direct Express® surcharge-free ATMs, the cardholder can avoid a surcharge fee. The Direct Express®

card provider continues to look for ways to expand the network, and Treasury will continue to educate current and new cardholders about alternative ways to get cash without paying a fee and how to use their card to pay for goods and services.

b. Free Monthly Paper Statements. Several commenters stated a preference for paper statements at no cost to the cardholder. Currently, Direct Express® cardholders may obtain transaction and balance information for free by calling a customer service number or visiting the Direct Express® secure website. Upon request, the Direct Express® card provider will send a cardholder a paper transaction history at no cost. In addition, cardholders may sign up for free text message, phone call, or email alerts when they receive a deposit or reach a low balance amount pre-determined by the cardholder. If a cardholder prefers a monthly paper statement, the provider charges a fee of $ .75 per month. Because not every cardholder desires or would use a paper statement, and because transaction and balance information is available via different mechanisms, Treasury has determined that the cost of paper statements should be borne by those who want them. While other bank accounts may offer free monthly paper statements, as one commenter noted, these bank accounts generally also require credit checks and minimum balances, and have other requirements that hinder the ability of recipients to obtain accounts, none of which are required to open a Direct Express® card account. Two commenters suggested that the Direct Express® card program at a minimum offer a free annual paper statement for those who do not elect to receive electronic or monthly paper statements. The Direct Express® card provider currently makes available a cardholder's complete transaction history, upon request and at no cost. Therefore, Treasury believes that it has adequately addressed concerns related to free monthly statements.

c. Encourage Opt In Election at Enrollment Time of Method for Receiving Transaction Information. One commenter suggested that cardholders who sign up for a Direct Express® card be given the opportunity at enrollment to elect to receive paper statements, text messages, or electronic mail messages with transactions and balance information. Treasury explored this suggestion, but determined that it is not feasible at this time given that many of the Direct Express® card enrollments are handled by the respective Federal benefit agency when the beneficiary is applying for his or her benefit. Treasury is exploring the use of additional mailings to cardholders to ensure that cardholders are aware of their options for receiving transaction and balance information.

d. Provide Additional Convenience Card. Two commenters suggested that the Direct Express® card program provide cardholders with the option of allocating a discrete amount of their funds to a second convenience card. The cardholder could then give this card to a caregiver or relative who could use it to make purchases for the cardholder. In this way, the cardholder would not have to turn over his or her primary card to the caregiver or relative and trust the caregiver or relative not to use all of the funds. Treasury supports this suggestion as a way to mitigate a cardholder's risks and is working with the Direct Express® card provider to determine the feasibility and cost of providing this option.

e. Provide Access to Checks. Two commenters suggested that the Direct Express® card program provide cardholders with the ability to write checks. Treasury has explored this suggestion, but is concerned that adding such an option could potentially increase fraud opportunities, add complexity to the card program, and increase costs to the cardholder. Instead, Treasury will educate cardholders on how to avoid the need to use checks by making purchases with the debit card, and if checks are necessary, where to find low-cost money orders. In addition, MasterCard has an initiative aimed at increasing acceptance of its card products by property managers. As part of this initiative, Treasury and MasterCard are working together to emphasize to property managers the importance of accepting the Direct Express® card for rent payments.

f. Ability to Reload Cards With Non-Federal Funds. Two commenters suggested that the Direct Express® card program be expanded to allow cardholders to deposit funds other than Federal payments to their card account. Treasury does not plan to implement this suggestion at this time because of the increased cost to the Direct Express® card program, increased opportunity for fraud, and added complexity for cardholders. Treasury has plans to expand the card program to include as many Federal payments as possible.

With respect to the broader need for more safe, low-cost financial account options, Treasury is exploring the feasibility of offering general purpose accounts to low- and moderate-income tax refund recipients and encouraging initiatives for financial products and services that are appropriate and accessible for millions of Americans who are not fully incorporated into the financial mainstream, as authorized by the "Improving Access to Mainstream Financial Institutions Act of 2010," enacted as Title XII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L.111-203, Jul. 21, 2010). The FDIC also is encouraging the banking industry to offer safe, low-cost transaction and basic savings account products for low- and moderate-income customers with its Model Safe Accounts Pilot (http://www.fdic.gov/consumers/template/).

g. Changes to Terms and Conditions of the Direct Express® Card Program. Three commenters suggested changing some of the terms and conditions of the Direct Express® card program. One suggestion was to change the title of the Direct Express® card program provider's terms and conditions document to "Notice of Rights and Obligations." Other suggestions were to prohibit terms that waive a cardholder's right to a jury trial or to bring a class action lawsuit; to allow disputes to be governed by the laws of the state in which the cardholder resides, rather than the State of Michigan, which is where the Direct Express® card provider is located; not to require that the recipient contact the merchant prior to cancelling a preauthorized transfer; to make clearer when the time to dispute a charge begins; make clearer that garnishments are not permitted, except as authorized by law (for example, to collect delinquent taxes or child support); and to improve the protections under Regulation E. Treasury will review the terms and conditions and, at a minimum, will ask the Direct Express® card provider to clarify the language regarding dispute time frames and garnishments. At this time, Treasury does not plan to implement the remaining suggestions, which would result in additional costs to the Direct Express® card program, and perhaps even preclude Treasury from offering a valuable low-cost account option for those beneficiaries who prefer a prepaid debit card over a bank account. For example, allowing lawsuits involving the Direct Express® card program to be based on various choice-of-law provisions would increase costs for the program to an unacceptable level, leaving a large number of Federal benefit recipients without any cost-effective option for enjoying the safety and convenience of direct deposit. Requiring the Direct Express® provider to cancel a preauthorized debit before the cardholder has contacted the merchant could leave cardholders vulnerable to cancellation of needed goods or services because of a lack of understanding about the need to make alternative payment arrangements for necessary services, such as utilities. The Direct Express® card provider follows standard industry practices, except that with respect to the protections afforded under Regulation E, the Direct Express® card provider offers an extended time period within which to dispute a transaction from the industry standard of 60 days to 90 days. Treasury believes it has obtained the best possible terms and conditions for an account that provides the most cost-effective, consumer-friendly terms available. Treasury will, however, continue to work closely with the Direct Express® card provider to identify and suggest improvements to the program. Even though satisfaction with the Direct Express® card program among current cardholders remains very high at 95% (Direct Express -- Cardholder Satisfaction and Usage Survey, March 2009, OMB Control No. 1510-0074), Treasury is committed to taking all feasible and cost-effective steps to improve the program because the agency recognizes that current users may be different than future users in their demographic characteristics or attitudes towards the use of prepaid debit cards. In addition, it should be noted that, at any time, benefit recipients may choose direct deposit to their bank account rather than the Direct Express® card.

h. Cardholder Education. Several commenters suggested that Treasury should do more to educate beneficiaries about their payment options, and specifically about the Direct Express® card features, fees, and terms. One commenter suggested that the Direct Express® card program customer service be improved to make it easier to reach an operator. Another commenter suggested that cardholders should be provided with a wallet size information card, noting that "[t]hough the information on the Direct Express® card is generally quite good, it could be improved." As mentioned previously, Treasury will be launching its expanded cardholder education campaign immediately to ensure that information about the Direct Express® card and how to use it are easily accessible to the beneficiary population for whom the card is intended. As part of its education effort, Treasury is in the process of working with the Direct Express® card provider to develop a wallet size information card for cardholders and pictorial brochure with information on how to use the card. In addition, Treasury works continuously with the Direct Express® card provider to maximize and improve customer service. For example, when Treasury and the provider learned of the difficulties cardholders were having in reaching a live customer service representative, the provider modified its telephone system and automated messages to make contact with a live representative easier from a cardholder's perspective. Among other things, Treasury's plans for cardholder education include direct mail and other communications explaining how to use the card to make purchases, pay bills, get cash back, as well as information about how to check balances and transaction history. As appropriate, Treasury will work with its 1,800 Go Direct® partners to further enhance its cardholder education efforts.

4. Regulation of the Banking Industry and Prepaid Cards. Several commenters suggested that Treasury take steps to improve consumer protections associated with financial services products. One commenter suggested that Section 3332 requires Treasury to take steps to ensure that any account established by an individual to comply with the EFT requirement is available at a "reasonable cost" and stated that Treasury is not complying with the statutory mandate by providing access to one account at a reasonable cost. Treasury disagrees. The statute does not require Treasury to ensure than any account chosen by a Federal payment recipient's must comply with the Section 3332(i) requirements. The provision requires that Treasury regulations ensure that individuals "required . . . to have an account" have "access to

such an account at a reasonable cost" and with "the same consumer protections with respect to the account as other account holders at the same financial institution" (emphasis added). The Direct Express® card account is an account that meets the statutory requirements.

Nonetheless, Treasury is committed to taking steps to resolve several concerns raised by commenters. With respect to protecting Federal beneficiaries from unlawful freezing and garnishment of protected benefits, Treasury and the four major benefit paying agencies – Office of Personnel Management, Railroad Retirement Board, Social Security Administration, and Department of Veterans Affairs – will soon publish a joint final rule. See, Notice of Proposed Rulemaking, Garnishment of Accounts Containing Federal Benefit Payments, 75 FR 20299, Apr. 19, 2010. The rule will help ensure that garnishment-exempt benefit payments in an account are not improperly seized, by requiring financial institutions to exempt from freezing or seizure a defined amount equivalent to benefit payments deposited to an account prior to a financial institution's receipt of a garnishment order. This new rule will protect benefit recipients where benefit payments are directly deposited to an account at a financial institution.

In response to comments related to allowing Federal payments to be delivered to "safe" prepaid card accounts, Treasury is publishing, on this date, an interim rule amending 31 CFR part 210 (Part 210 Interim Rule), which generally requires that a Federal direct deposit payment be delivered to a deposit account at a financial institution in the name of the recipient, subject to certain exceptions. The Part 210 Interim Rule allows Federal payments to be deposited to an account accessed through a prepaid card or similar card that meets the following requirements, as more fully described in the interim rule: the account funds are insured by the Federal Deposit Insurance Corporation or National Credit Union Share Insurance Fund to the extent permitted by law, the account does not have an attached line of credit or loan feature that triggers automatic repayment from the card account, and the issuer of the card account provides the cardholder with the same protections under Regulation E required to be provided for payroll card accounts (12 CFR 205.18).

Several other concerns raised by commenters relating to the regulation of bank overdraft fees, account advances offered by financial institutions, and setoff of fees owed by account holders are outside the scope of this rule.

5. Delay Effective Dates. Two commenters urged Treasury to delay the proposed effective dates for EFT payments under the NPRM. One consumer advocate organization suggested a delay "until there is a greater confidence that people are prepared to switch to electronic disbursements," but did not specify a date for implementation. This commenter urged more time for education noting that some people shifting to electronic payments will need far more education or counseling than others. Another commenter suggested a delay to 2020. As explained in the NPRM, Treasury has accounted for the unique issues raised for converting current check recipients to electronic payments by delaying the implementation date for those individuals to March 1, 2013. Between now and 2013, Treasury plans a robust campaign to educate people about the EFT requirement, EFT options and costs, how to use EFT, and more. Treasury agrees with commenters who recommend a strong education campaign, and as noted above, plans to utilize and expand its existing network of Go Direct® partners in order to provide outreach and sufficient information to all affected beneficiaries. Therefore, Treasury does not

believe that there is a need to further extend the effective dates proposed in the NPRM, except that Treasury is delaying the initial effective date from March 1 to May 1, 2011.

6. Provide Waiver for Attorney Fees for Social Security Cases. An organization that represents Social Security claimants' representatives and a number of attorneys who represent Social Security claimants recommended that Treasury exempt attorneys' fee payments from the EFT requirements for two main reasons. First, the individual attorneys or representatives receiving the fee payment are not the "owners" of their firm's bank account, and in some cases, are therefore precluded from electronically depositing their fee payment to the firm's account. This is problematic in these cases because the Social Security Administration does not currently make representative fee payments directly to the firm's account, nor recognize firms as representatives. Secondly, many attorneys state that their banks are unwilling or unable to provide all of the information needed to identify the client on whose account the deposit was made. This second point is also raised by an individual concerned that nursing homes would similarly be unable to identify the resident to which a direct deposit payment belongs.

The Social Security Administration recently announced that it will include an "addenda record" to display identifying information with all direct deposit fee payments sent to representatives. See, Social Security Administration letter at http://fms.treas.gov/greenbook/ssarep.pdf. The Social Security Administration encourages receiving financial institutions to pass through to their account holders, as quickly as possible, pertinent information. In this way, attorneys and other representatives of Social Security claimants will be able to identify the purpose of the payments. In addition, the Social Security

Administration may, in the future, recognize firms which might help address the difficulties in using EFT for representative fee payments.

In order to mitigate these difficulties, and until these issues are more fully addressed, Treasury recognizes the need to modify one of the waivers that may be exercised by a paying agency, rather than Treasury, in § 208.4(f) regarding non-recurring payments. As the commenters pointed out, some attorneys and representatives may receive multiple payments in a given year for the multiple clients they represent before the Social Security Administration, and thus do not meet the technical definition of a recipient of a non-recurring payment in § 208.4(f) ("Where the agency does not expect to make more than one payment to the same recipient within a one-year period, i.e., the payment is non-recurring"). To address this, Treasury is modifying § 208.4(f) to allow Federal paying agencies to waive the EFT requirement for payments made to the same recipient in a single year when these payments are not made on a regular, recurring basis and remittance data explaining the purpose of the payments is not readily available from the recipient's financial institution receiving the payment by EFT.

Treasury encourages paying agencies to contact Treasury, before invoking this waiver, to discuss various ways that remittance data can be made available to payment recipients, which may negate the need for a waiver. Treasury discourages the use of this waiver by agencies, and expects the waiver to be employed on an exception basis and only until expanded remittance data is more widely available to attorneys and other representatives. In addition, Treasury notes that there are many options for receipt of remittance data for vendors, and therefore does not expect agencies to use this waiver to exempt vendor payments from the EFT requirements.

Treasury is removing the requirement that agencies determine that the cost of making an EFT payment exceeds the cost of making a payment by check, as it may not be possible for an agency to make this determination.

7. Privacy and Identity Theft Concerns. Many commenters raised concerns about electronic banking leading to an increased risk of identity theft. Typically, the comments expressed concern about identity theft through online banking. This rule does not mandate any requirement to bank online. Many financial institutions, including the Direct Express® card provider, offer online banking services as a convenience, but account holders are not required to use these services.

None of the comments specifically articulated exactly how this rule would increase a payment recipient's risk of identity theft. Based on Treasury's experience with paper checks and electronic payments, receiving payments by direct deposit decreases rather than increases the risk of identity theft. As noted in the NPRM, in fiscal year 2009, more than 670,000 Social Security and SSI checks were reported lost or stolen. In fiscal year 2010, more than 540,000 checks were reported as lost or stolen. In fiscal year 2009, Treasury investigated more than 70,000 cases of altered or fraudulently endorsed checks, totaling $64 million in estimated value, and in fiscal year 2010, Treasury investigated almost 50,000 cases totaling $93 million in estimated value. People intent on committing fraud can use a stolen Treasury check, along with other stolen or fake identification documents, to open an account in the recipient's name or otherwise impersonate a check payee. A Treasury check that has been endorsed, but not cashed, offers further opportunities for identity theft.

In addition to identity theft concerns, many commenters expressed concern about their privacy and were opposed to having to disclose their banking information to the Federal Government. Federal agencies are subject to the Privacy Act of 1972, 5 U.S.C. § 552a, which strictly governs the collection of personal information from individuals, as well as the maintenance and disclosure of the information. Among other things, Federal agencies are restricted in how they may use personal information, such as bank account information, and must ensure that the information is not disclosed in an unauthorized way. Except in limited circumstances or with proper consent, bank account information provided by individuals to agencies for the purpose of receiving payment by direct deposit may be used and disclosed only for that purpose. For an example of agency regulations implementing the Privacy Act of 1972, see Treasury's regulations at 31 CFR part 1, subpart C.

With respect to customer account information held by a financial institution, including Direct Express® card account information, the Government is precluded from receiving any customer-specific account information from a financial institution, and the financial institution is precluded from providing any customer-specific account information to the Government, without the account holder's consent or without first following a process that provides the account holder with an opportunity to object to any disclosure, generally for law enforcement purposes. See, Right to Financial Privacy Act, 12 U.S.C. §§ 3401, et seq.

8. Continue to Offer the ETA. A couple of commenters urged Treasury to continue to offer the ETA option for those beneficiaries who opt for this account to receive their benefit payments by direct deposit. Treasury continues to offer the ETA as an alternative to the Direct Express® card. It is also an option for unbanked Federal benefit recipient seeking a safe,

affordable banking relationship. Currently, the ETA is offered by 392 financial institutions with over 53,000 branch locations. The ETA program has over 121,000 account holders who receive Federal benefit payments. Although the ETA is not available on a nationwide basis and does not include some of the more useful features that have become available with prepaid debit cards in recent years, it continues to meet the needs of some benefit recipients in certain regions of the country. Treasury has no plans to eliminate the ETA option and continues to support the ETA through its call center and website. It should be noted, however, that Treasury is directing more of its resources to educating beneficiaries about the Direct Express® card since the card is available nationwide, provides more useful features than the ETA, and may be used more cost-effectively than an ETA. Information about ETAs may be found at www.eta-find.gov.

9. Require EFT to Existing Bank Accounts. An association that represents financial institutions suggested that when a recipient has an established banking relationship, the default election should be to convert the benefit payment to a direct deposit to that established bank account. Through its Go Direct® campaign, Treasury encourages financial institutions to work with their own customers who receive Federal benefit and other payments by paper check on converting to payment by direct deposit. The Go Direct® campaign communicates the many benefits to financial institutions that encourage their customers to convert to direct deposit, which include increasing a financial institution's customer base and customer loyalty, operational and transaction-based cost savings, and reduction of check fraud. See www.godirect.org. Absent clear instructions from a payment recipient, Treasury is unable to ascertain with certainty whether a payment recipient has a current bank account to which payments should be directed. Therefore, Treasury allows each recipient to have payments

electronically delivered to an account at a financial institution of his or her choice since the recipient is in the best position to determine the most cost-effective and desirable account option for receipt of his or her Federal payments.

IV. Final Rule

As explained above and in the regulatory impact assessment below, Treasury is revising its NPRM proposal to address the comments we received regarding elimination of all individual waivers from the EFT requirement. Under the final rule, the EFT requirement will not apply to (1) payment recipients born prior to May 1, 1921, who are receiving Federal payments by check on March 1, 2013; (2) payments that are not eligible for deposit to a Direct Express® prepaid card account established pursuant to terms and conditions approved by FMS; and (3) payment recipients whose Direct Express® card has been suspended or cancelled. In addition, an individual payment recipient may request a waiver from the EFT requirement if the EFT requirement would impose a hardship because of the inability of a recipient to manage an account at a financial institution or a Direct Express® card account due to a mental impairment or because a recipient lives in a remote geographic location lacking the infrastructure to support electronic financial transactions. Payment recipients requesting a waiver are required to provide to Treasury a written certification supporting their request, in such form as Treasury may prescribe. The certification requires a recipient to identify the basis for his or her request and provide a brief explanation of how the exception applies to his or her situation. The recipient shall sign the certification before a notary public.

V. Section-by-Section Analysis

New § 208.2(c) adds a definition for "Direct Express® card" as meaning the debit prepaid card issued to recipients of Federal benefits by Treasury's financial agent pursuant to requirements established by Treasury. The Direct Express® card features are explained in the NPRM, in this rulemaking, and on the Direct Express® card website at www.USDirectExpress.com.

Redesignated § 208.2(e) (formerly § 208.2(d)) clarifies that the definition of "electronic benefits transfer" includes disbursement through a Direct Express® card account. As has been the case, "electronic benefits transfer" (EBT) continues to include, but is not limited to, disbursement through an ETA℠ and a Federal/State EBT program.

Section 208.4(a) is divided into two paragraphs (a)(1) and (a)(2). It is noted that, in cases where a representative payee has been designated by the benefit paying agency and is receiving payments on behalf of a beneficiary, the representative payee is the "individual" for purposes of § 208.4(a). Redesignated § 208.4(a)(1) is revised to allow waivers where an individual:

(i) is receiving a Federal payment by check prior to May 1, 2011. In such cases, the individual may continue to receive those payments by check through February 28, 2013;

(ii) files a claim for a Federal payment prior to May 1, 2011, and requests payment by check at the time he or she files the claim. In such cases, the individual may receive those payments by check through February 28, 2013;

(iii) was born prior to May 1, 1921, and is receiving Federal payments by check on March 1, 2013;

(iv) receives payments that are not eligible for deposit to a Direct Express® card account. In such cases, those payments are not required to be made by electronic funds transfer, unless and until such payments become eligible for deposit to a Direct Express® card account;

(v) is ineligible for a Direct Express® card because of suspension or cancellation of the individual's card by the Financial Agent;

(vi) has filed a waiver request with Treasury certifying that payment by electronic funds transfer would impose a hardship because of the individual's inability to manage an account at a financial institution or a Direct Express® card account due to a mental impairment, and Treasury has not rejected the request;

(vii) has filed a waiver request with Treasury certifying that payment by electronic funds transfer would impose a hardship because of the individual's inability to manage an account at a financial institution or a Direct Express® card account due to the individual living in a remote geographic location lacking the infrastructure to support electronic financial transactions, and Treasury has not rejected the request.

New § 208.4(b) requires payment recipients requesting a waiver from the EFT requirement because of a mental impairment or remote geographic location to provide Treasury with a certification, in writing, supporting their request in such form that Treasury may prescribe. The individual shall attest to the certification before a notary public or otherwise file the certification in such form that Treasury may prescribe. A payment recipient requesting these types of waivers will be required to provide identifying information, such as name, address, and Social Security number, as well as a short statement supporting the reason for the waiver request. Unless Treasury rejects the request, the recipient will not be required to comply with the EFT requirement. As noted above, in cases where a representative payee receives payments on behalf of a beneficiary, the representative payee is the individual requesting the claim based on the representative payee's circumstances. Treasury will be publishing additional guidance regarding the waiver process.

The Secretary's waiver authority remains unchanged, and Federal agencies continue to have the flexibility to waive payment by direct deposit or other EFT method in the circumstances described in redesignated paragraphs (a)(2) through (a)(7) of § 208.4 (formerly paragraphs (b) through (g)), namely, for certain payments to payees in a foreign country where the infrastructure does not support EFT, for certain disaster or military situations, for situations in which there may be a security threat or for valid law enforcement reasons, for non-recurring payments, and for unusual and/or urgent situations where the Government would be seriously injured unless payment is made by a method other than EFT.

Treasury is revising redesignated paragraph (a)(6) of § 208.4 (formerly paragraph (f)) which previously allowed Federal paying agencies, rather than Treasury, to waive the EFT requirement for payments that are non-recurring, i.e., no more than one payment to the same recipient within a one-year period. Under the revised rule, the waiver exists for payments made to the same recipient in a single year when these payments are not made on a regular, recurring basis and remittance data explaining the purpose of the payments is not readily available from the recipient's financial institution receiving the payment by electronic funds transfer. As mentioned above, agencies should make limited use of this waiver and should use this waiver only after discussions with Treasury to rule out other ways in which remittance data can be made available.

Section 208.6 is revised to remove the provisions for the general account requirements for Federal payments made electronically to an account at a financial institution. These requirements are contained in 31 CFR § 210.5 and do not need to be duplicated in Part 208. Revised § 208.6 states that any individual who receives a Federal benefit, wage, salary, or retirement payment will be eligible for a Direct Express® card account.

Section 208.7 is revised to state that agencies shall put into place procedures that allow recipients to provide the information necessary: (i) for the delivery of their payments by EFT to an account at a financial institution, or (ii) to enroll for a Direct Express® card account. Agencies no longer need to notify individuals about their right to invoke a hardship waiver. FMS will provide guidance and work with agencies to ensure that they have the information they need to effectively explain the rule, available waivers, direct deposit, and features and fees of the Direct Express® card.

Section 208.8 is revised to state that payment recipients are required to provide a Federal agency with the necessary information to receive payments electronically. To receive a payment by direct deposit to an account at a financial institution, a recipient will need to provide his or her account information. To enroll for a Direct Express® card account, a recipient will need to provide sufficient demographic information to allow for an account to be established, including information needed for identity verification purposes.

Section 208.11 is revised to conform to the technical revision and delete the reference to § 208.6.

Appendices A and B containing Model ETA^{sm} Disclosure Notices are removed because they no longer apply. ETA^{sm} accounts remain available from financial institutions that continue to offer them. For more information about ETA^{sm} accounts, visit www.eta-find.gov.

VI. Procedural Analysis

Regulatory Planning and Review

It has been determined that this regulation is a significant regulatory action as defined in Executive Order 12866 in that this rule would have an annual effect on the economy of $100 million or more, and this rule raises novel policy issues arising out of the legal mandate in 31 U.S.C. 3332. Accordingly, this final rule has been reviewed by the Office of Management and Budget. The Regulatory Impact Assessment prepared by Treasury for this regulation is provided below.

Summary of estimated benefits and costs

Benefit	$117 million
Cost	Not estimated
Net Benefits	Not estimated

The analysis used nominal dollars in 2010.

1. Description of Need for the Regulatory Action

a. Statutory and Regulatory History

As discussed in the Regulatory Impact Assessment in the NPRM, this rulemaking is necessary to expand compliance with the electronic funds transfer (EFT) provisions of section

3332, title 31 United States Code (Section 3332). In 1996, Congress enacted subsection 31001(x)(1) of the Debt Collection Improvement Act of 1996 (Pub. L. 104-134) (DCIA), which amended Section 3332 to generally require that all nontax Federal payments be made by EFT, unless waived by the Secretary of the Treasury (Secretary). The Secretary must ensure that individuals required to receive Federal payments by EFT have access to an account at a financial institution "at a reasonable cost" and with "the same consumer protections with respect to the account as other account holders at the same financial institution." See 31 U.S.C. 3332(f), (i)(2).

To implement Section 3332 as Congress intended, Treasury promulgated 31 CFR part 208 (Part 208). Part 208 sets forth requirements for accounts to which Federal payments may be sent by EFT; provides that any individual who receives a Federal benefit, wage, salary, or retirement payment is eligible to open an Electronic Transfer Account (ETA) at a financial institution that offers such accounts; and establishes the responsibilities of Federal agencies and recipients under the regulation. Part 208 also sets forth a number of waivers to the general requirement that Federal payments be delivered by EFT. See 31 CFR § 208.4.

In conjunction with the initial publication of Part 208, Treasury developed the ETA, a low-cost account offered by participating financial institutions for those individuals who wish to receive their Federal payments by direct deposit. The ETA was established with the intention that it would eventually become available nationwide, and thereby comply with the statutory mandate that any person required to receive payment by EFT have access to an account at a financial institution at a reasonable cost and with standard consumer protections. However, the ETA is not available nationwide, and, as a result, does not meet the statutory requirement related to account access.

Any financial institution that wishes to offer the ETA may do so by entering into a financial agency agreement agreeing to offer the ETA in accordance with the terms and conditions established by Treasury. See Notice of Electronic Transfer Account Features, 64 FR 38510 (July 16, 1999). A participating financial institution must open an ETA for any individual who requests one, with some limited exceptions, provided that the individual authorizes the direct deposit of his or her Federal benefit, wage, salary or retirement payments. A financial institution may charge an account fee of up to $3.00 per month, and may charge other account-related fees as usually and customarily charged to other retail customers. ETA cardholders must be allowed to withdraw funds at least four times per month without incurring fees. Checks are not offered with ETAs. Account holders access their funds through online debit at ATM, commonly referred to as "PIN debit," and through POS networks. Offline (signature) debit is not permitted. Treasury pays a participating financial institution a fee of $12.60 for each ETA account established.

The hardship waivers in Part 208 prior to this rulemaking were necessary because the ETA was not (and is not) available to all benefit recipients across the country. In addition, because the ETA does not permit signature debit and does not include bill payment capability as a required feature, the ETA cardholders have limited options in paying for goods and services with an ETA. They cannot use the ETA, for example, to make online and telephone purchases. The limited payment capability of the ETA resulted in a need for hardship exceptions for geographic, financial, and physical disability reasons, since individuals might not have convenient or feasible access to physical POS or ATM locations. Moreover, the ETA allows monthly and other fees which, although limited, could still pose a financial hardship for some benefit recipients. This meant that a waiver for financial hardship was also necessary.

Since its inception in 1999 through September 2010, only 251,941 ETA accounts have been opened, and, as of September 2010, there are only 121,191 active ETA accounts. Anecdotal evidence suggests that, with some exceptions, the ETA is not a cost-effective product for financial institutions. According to a 2002 report by the Government Accountability Office (GAO), although many financial institutions believed that the ETA was a good product for the target market, the financial institutions were reluctant to offer the account because they did not see the product as profitable. See, "Electronic Transfers: Use by Federal Payment Recipients Has Increased but Obstacles to Greater Participation Remain," GAO-02-913, page 31 (Sept. 12, 2002) (www.gao.gov/new.items/d02913.pdf). From the consumer perspective, reasons for lack of interest include the inability to write checks, limited availability of ETAs, lack of awareness of ETAs, a difficult enrollment process, and a personal preference for doing business without a bank account. Id., at 35-36.

GAO has issued at least two reports on the Federal Government's efforts to increase the use of electronic payments rather than checks. See, for example, 2002 GAO report cited above, and "Electronic Payments: Many Programs Electronically Disburse Federal Benefits, and More Outreach Could Increase Use," GAO-08-645 (June 23, 2008) (www.gao.gov/new.items/d08645.pdf). In these referenced reports, GAO recognizes the advantages of electronic payments, but also recognizes the two major historical obstacles to removing the Part 208 individual waivers. First, there are a high number of check recipients who do not have a bank account or who lack convenient access to an account at a reasonable cost with appropriate consumer protections. GAO-02-913, pages 16-24 (Sept. 12, 2002); GAO-08-645, pages 19-20, 33 (June 23, 2008). Second, consumer concerns about the improper freezing and seizure of Federal benefit funds typically exempt from garnishment has led to resistance to Treasury's efforts to remove the Part 208 individual waivers to EFT requirements. GAO-08-645, pages 20-22.

b. <u>Technology Changes in the Banking Industry</u>

As discussed in the Regulatory Impact Assessment in the NPRM, the technological developments and widespread acceptance of debit and prepaid card products during the last decade have made it feasible and advantageous for Treasury to revise its existing implementing regulation to expand the scope of individuals subject to the EFT requirements. Specifically, the development and implementation of the Direct Express® card, a MasterCard® prepaid debit card developed by Treasury exclusively for Federal benefit recipients, means that Treasury can now comply with the requirement of Section 3332 to ensure that individuals required to receive Federal payments by EFT have access to an account at a financial institution that is reasonably priced and subject to standard consumer protections.

Reloadable prepaid debit cards, which were a small specialty product in the 1990s, are now widely available and can be used at a vast number of merchant locations across the country, not only to purchase goods and services, but also to obtain cash through cashback transactions at POS locations. With the expansion of the Internet and other technological advances, consumers have the ability to make online purchases with a debit card, as well as the ability to pay for goods and services over the telephone, resulting in the mitigation of some past obstacles to electronic payment acceptance. Even for those without access to the Internet, or who buy goods and use services from vendors who do not accept debit card payments, debit cards can be used to purchase money orders, thereby eliminating the step of having to cash a check or carry large amounts of cash to complete necessary financial transactions.

The “2007 Federal Reserve Payments Study, Noncash Payment Trends in the United States: 2003-2006,” sponsored by the Federal Reserve System (released December 10, 2007) (www.frbservices.org/files/communications/pdf/research/2007_payments_study.pdf), highlights the growing acceptance of debit cards in the United States. According to the study, debit cards now surpass credit cards as the most frequently used payment type. The Federal Reserve noted that the highest rate of growth was in automated clearing house (ACH) payments, which grew about 19 percent per year, followed closely by debit card payments. The annual use of debit cards increased by about 10 billion payments over the survey period to 25.3 billion payments in 2006, an annual growth rate of transactions of 17.5% from 2003 to 2006. Many financial service providers offer general prepaid branded reloadable cards intended for recipients of wages, incentive or bonus payments, state benefits and child support payments, and other types of high volume or regularly recurring payments. Many states offer or require the use of electronic payment cards for those who receive state benefits, such as temporary assistance to needy families.

Treasury’s experience with offering electronic payment card products dates back to 1989, and illustrates how Treasury’s products have evolved and how acceptance of these products has grown. In 1989, Treasury offered a debit card product, known as the SecureCard, on a pilot basis in Baltimore, Maryland, at no cost to SSI recipients. The undeveloped nature of the POS system at that time presented the primary challenge in that pilot. To make the card useful, Treasury installed POS equipment at various local merchants, at a substantial cost to the Government. In 1992, Treasury initiated the Direct Payment Card pilot for Social Security and SSI recipients in Texas, which had a better developed POS infrastructure, and subsequently extended the pilot to Social Security recipients in Argentina. From 1992 through 1997, approximately 46,000 recipients enrolled, and the program was well-received by recipients. Building on the success of the Direct Payment Card pilot, in 1996, Treasury joined a Federal-State electronic benefits transfer (EBT) program known as the Benefit Security Card program. The Benefit Security Card was offered to Federal and/or state benefit recipients in eight southeastern states, known as the Southern Alliance of States, which included Alabama, Arkansas, Florida, Georgia, Kentucky, Missouri, North Carolina, and Tennessee. Treasury's Benefit Security Card program allowed benefit recipients to access their Federal and/or state benefits via a single debit card. When Treasury terminated the card program in January 2003, approximately 51,000 Federal benefit recipients were enrolled in the program. Although customers were pleased with the product, Treasury and most states were concerned about cardholder costs, which were scheduled to increase at the time Treasury terminated the program. At the end of 2006, Treasury initiated a small Direct Express® card program to gauge the market for a branded debit card, reloadable only with Federal benefit payments. As part of the pilot, Treasury sent letters to 35,000 Social Security and SSI check recipients in Chicago and southern Illinois, offering them the opportunity to sign up for a Direct Express® card to receive their Federal benefit payments electronically. In addition, Treasury included information about the program in check envelopes mailed to all Illinois Social Security and SSI check recipients. The card features offered for the pilot program were similar to the current Direct Express® card product, although the fees were slightly higher.

2. <u>Provision</u>

Treasury is implementing this rule in two phases. The first phase would require all new benefit recipients to sign up for direct deposit to a bank account of the recipients' choice or to a Direct Express® card account, beginning May 1, 2011. The second phase would begin on March 1, 2013, at which time all recipients of Federal benefit and other nontax payments would receive their payments by direct deposit, either to a bank account or to a Direct Express® card account.

Those receiving their benefit payments by check before May 1, 2011, could continue to do so through February 28, 2013, after which those recipients would convert to direct deposit. For Federal benefit recipients, this means that individuals who file claims for Federal benefits before May 1, 2011, and who request check payments when they file, would be permitted to receive payments by check through February 28, 2013. Individuals who file claims for benefits on or after May 1, 2011, would receive their payments by direct deposit. Individuals receiving their payments by direct deposit prior to May 1, 2011, would continue to do so.

In this final rule, Treasury waives the EFT requirement for recipients born prior to May 1, 1921 who are receiving Federal payments by check on March 1, 2013, for payments that are not eligible for deposit to a Direct Express® card account, and for recipients whose Direct Express® card has been suspended or cancelled. In addition, this rule allows a recipient to request a waiver from the EFT requirement on the basis that EFT would impose a hardship because of the recipient's inability to manage an account at a financial institution or a Direct Express® card account due to a mental impairment, or because the recipient lives in a remote geographic location lacking the infrastructure to support electronic financial transactions. The waiver request is considered effective unless Treasury rejects the request.

3. Baseline

a. Amount of Federal Disbursement

The baseline amount of Federal disbursement described in the NPRM is updated as follows. In fiscal year 2010, Treasury disbursed almost 85% of its nontax payments electronically, or more than 793 million payments. Despite the general requirement that Federal payments be made electronically, and Treasury's efforts to persuade check recipients to convert to direct deposit, Treasury nevertheless continues to print and mail many millions of checks each year, at a substantially higher cost to the Government than if those payments were delivered by EFT. For example, of the approximately 143 million checks disbursed for nontax payments, in fiscal year 2010, more than 130 million of them were Federal benefit checks mailed to almost 11 million benefit recipients, causing avoidable payment-related problems for many check recipients, and resulting in extra costs to taxpayers of more than $117 million that would not have been incurred had those payments been made by EFT. Social Security (retirement, disability, and survivors benefits) and SSI payments represent more than 92 percent, or approximately 120 million, of those benefit check payments. The remaining 10 million benefit check payments are made to recipients of civil service retirement, railroad retirement, Black Lung, and Veterans benefits. Although the direct deposit payments rate has increased since 1996, when it was 58%, the rate has climbed only slowly since fiscal year 2005 when it first reached 80%.

b. Affected Population

As noted above, in fiscal year 2010, Treasury disbursed 130 million checks to almost 11 million benefit recipients. Treasury estimates that approximately 4 million of those recipients do not have bank accounts.

Treasury recognizes the demographic differences between payment recipients who are more willing to accept direct deposit and those who are not. Treasury also recognizes that there are a variety of reasons why check recipients do not switch to direct deposit. Because the majority of its check payments are made to Social Security and SSI recipients, Treasury's research focuses on this population. During implementation of its rule, Treasury will continue its research efforts to ensure that the needs of all check recipients are adequately addressed and take appropriate action.

While recognizing that the results of the study is not generalizable to the U.S. population, Treasury's study, "Understanding the Dependence on Paper Checks—A Study of Federal Benefit Check Recipients and the Barriers to Boosting Direct Deposit" (2004), sheds some insight on individuals who choose to receive federal benefits through paper checks (OMB Control No. 1510-0074). The average age of a Social Security check recipient was 66 years old. Sixty-one percent of the Social Security check recipients were female; 39% were male. Thirty-five percent of the Social Security check recipients had not completed high school, while 26% had some college education or beyond. Sixty percent of Social Security recipients were retired; 27% did not have bank accounts; 12% received some other form of government assistance; 27% had a disability.

Comparatively, the average age of a SSI check recipient was 50. Seventy percent of the SSI check recipients were female; 30% were male. Fifty-one percent of the SSI recipients had not completed high school, while 15% had some college education or beyond. Only 21% of SSI recipients were retired; 68% did not have a bank account; 42% received some other form of government assistance, and 42% had a disability.

According to Treasury research in 2007 (SSA & SSI Check Recipient Survey, OMB Control No. 1510-0074), the check recipient population demographics had not changed significantly. The 2007 survey found that 28% of Social Security check recipients did not have a bank account, but that 9% more SSI recipients had bank accounts than in 2004 (in 2007, 59% of SSI recipients did not have a bank account).

The above-referenced Treasury research shows that younger benefit recipients convert to direct deposit at a faster rate than older benefit recipients. Younger benefit recipients who have had their payments for less than a year are signing up for direct deposit at rates that far exceed their proportions in the population. Close to 50% of those Social Security and SSI check recipients who converted to direct deposit had been receiving their benefits for less than one year. Conversely, only 16% of Social Security check recipients and 15% of SSI recipients who had been receiving their payments nine (9) years or longer signed up for direct deposit.

Treasury and the Social Security Administration found that, in fiscal year 2010, 79.1% of new Social Security enrollees signed up for direct deposit either to an existing bank account or to a Direct Express® card account. Since September 2008, the Social Security Administration has been offering new Social Security and SSI recipients the option of signing up for a Direct Express® card, in addition to direct deposit at a financial institution, at the time they enroll for benefits. Social Security is also allowing individuals to sign up at local offices and by telephone. The Direct Express® card has been a major contributor in the decline of Social Security and SSI check payments over the last two years, but has had an especially significant impact on the SSI check payment volume. The average monthly payment amount for an SSI check recipient is \$545, whereas the average monthly payment amount for a Social Security check recipient is \$808 for beneficiaries who receive their payment on the third of the month, and \$915 for all other Social Security check recipients. There has been a year-over-year decrease in SSI checks of 6.91% in March 2010, compared to March 2009, which is significantly greater than the 3.81% decline in March 2009, compared to March 2008. The number of all nontax checks decreased from 148 million in fiscal year 2009 to 143 million in fiscal year 2010.

4. Assessment of Potential Costs and Benefits

a. Potential Costs

There are potential short-term costs associated with the rulemaking. First, there are intangible emotional costs for individuals who are fearful or resistant to direct deposit. In its 2004 research, Treasury learned that there are some key differences among Social Security check recipients, SSI check recipients, and those that receive their benefit payments by direct deposit. Although these differences do not necessarily explain why certain individuals are more resistant than others to receiving payments by direct deposit, the data helps Treasury properly target its public education campaign. For example, because the data described below shows that Social Security check recipients are more likely than SSI check recipients to have a bank account, Treasury can direct its resources to informing Social Security check recipients about the benefits of directly depositing payments to an existing bank account. For SSI recipients who are less likely to have a bank account, Treasury can focus its Direct Express® card information to that population.

Compared to SSI check recipients, Social Security check recipients are older (average age 66), more likely to have a bank account, more likely to be male and retired, less likely to have a disability, less likely to receive some other form of government assistance, less likely to depend on their benefit as their sole source of income, and more likely to be Caucasian. SSI recipients are likely to be younger (average age 50), less likely to have a bank account, more likely to have a representative payee acting on their behalf, more likely to be African-American, more likely to be female, more likely to live in a city, more likely to receive some other form of benefit payment, and more likely to depend on others for assistance with daily chores and errands. Direct deposit recipients are more technologically savvy than either Social Security or SSI check recipients. They are more likely to own a cell phone or to use a personal computer and the Internet. Compared with check recipients, direct deposit beneficiaries responding to the survey were more likely to have confidence in banks, to believe that computers are secure, and to feel that ATMs are safe.

Despite these demographic differences, Treasury has found that the reasons for resistance to direct deposit among check recipients have remained fairly constant over the years. Many people express a desire to see the physical payment in check form. Others feel a greater sense of control when handling checks, and many, especially those receiving SSI, believe that receiving checks helps them to better manage their money and maintain their standard of living. Barriers that need to be overcome can be grouped into four general categories: informational (those who do not understand how direct deposit works); emotional (those who just prefer to receive checks; inertia (those who are receptive to electronic payments, but need to be motivated to sign up); and mechanical (those who do not have bank accounts, and in some cases, do not want bank accounts).

Treasury expects most recipients to pay less for EFT payments than for check payments. While some individuals may be able to cash government checks at no cost, there are often fees of up to $20 or more for cashing a check, according to Treasury's research in 2007 (SSA & SSI Check Recipient Survey, OMB Control No. 1510-0074). The Direct Express® card program is structured so that there are several ways for cardholders to access their funds and use their card without paying any fees. The Direct Express® card account fees compare favorably to those charged by financial service providers offering general purpose reloadable cards, which often charge fees for sign-up, monthly maintenance, ATM withdrawals, balance inquiries, and customer service calls. Cardholders may use their card to make purchases and get cash back at a POS location without paying a fee; obtain cash from any MasterCard® member bank teller window without paying a fee; and make one free ATM cash withdrawal for each benefit payment deposited to the card account (the free ATM cash withdrawal is available until the end of the month following the month of deposit). If the cardholder makes a withdrawal using an ATM within the Direct Express® surcharge-free ATM network, the cardholder will not pay a surcharge fee to an ATM owner. In addition, there are many other features that cardholders can access without paying a fee, including unlimited customer service calls (with or without live operators); optional automated low balance alerts or deposit notifications; and online or telephone transaction history and other account information. There is no fee to sign up for the card, close the account, or to obtain one replacement card per year. Importantly, there are no overdrafts, minimum balance requirements, or credit requirements to sign up for the card. The few fees that are charged for the card include $.90 for ATM transactions after free ATM transactions are used, $.75 per month for optional paper statements, fees for using the card outside the United States, and replacement cards beyond the free replacement card. By way of illustration, sample Direct Express® cardholder scenarios follow:

Fig. 2: Direct Express® Card Fees: Sample Scenario 1

Direct Express® Card Transactions	Fees (with no ATM surcharge)	Fees (with ATM surcharge of $2.33)[5]
1st ATM withdrawal (free with 1st deposit)	FREE	$2.33
Three bill payments	FREE	FREE
Eight POS	FREE	FREE
Weekly Balance Inquiry	FREE	FREE
One Deposit	FREE	FREE
TOTAL MONTHLY FEE	FREE	$2.33

Fig. 3: Direct Express® Card Fees: Sample Scenario 2

Direct Express® Card Transactions	Fees (with no ATM surcharge)	Fees (with ATM surcharge of $2.33)
1st ATM withdrawal (free with 1st deposit)	FREE	$2.33
2nd ATM withdrawal	$ .90	$3.23
Eight POS	FREE	FREE
Weekly Balance Inquiry	FREE	FREE
One Deposit	FREE	FREE
TOTAL MONTHLY FEE	$ .90	$5.56

Fig. 4: Direct Express® Card Fees: Sample Scenario 3

Direct Express® Card Transactions	Fees (with no ATM surcharge)	Fees (with ATM surcharge of $2.33)

[5] The bankrate.com 2010 checking study cited an average $2.33 surcharge fee per withdrawal (http://www.bankrate.com/finance/checking/banks-taking-a-bigger-bite-with-atm-fees.aspx).

1st ATM withdrawal (free with 1st deposit)	FREE	$2.33
Bank Teller Cash Withdrawal	FREE	FREE
Eight POS	FREE	FREE
Weekly Balance Inquiry	FREE	FREE
One Deposit	FREE	FREE
TOTAL MONTHLY FEE	FREE	$2.33

Fig. 5: Direct Express® Card Fees: Sample Scenario 4

Direct Express® Card Transactions	Fees (with no ATM surcharge)	Fees (with ATM surcharge of $2.33)
1st ATM withdrawal (free with 1st deposit)	FREE	$2.33
Purchase Money Order for $700 at US Post Office (USPS) to pay rent	$1.50 (to USPS)	$1.50 (to USPS)
Eight POS	FREE	FREE
Weekly Balance Inquiry	FREE	FREE
One Deposit	FREE	FREE
TOTAL MONTHLY FEE	$1.50	$3.83

Fig. 6: Direct Express® Card Fees: Sample Scenario 5

Direct Express® Card Transactions	Fees (with no ATM surcharge)	Fees (with ATM surcharge of $2.33)
1st ATM withdrawal (free with 1st deposit)	FREE	$2.33
5 additional ATM withdrawals	$4.50	$16.15
One POS	FREE	FREE
Weekly Balance Inquiry	FREE	FREE
One Deposit	FREE	FREE
TOTAL MONTHLY FEE	$4.50	$18.48

Even in Scenario 5, which is not the recommended way to use the Direct Express® card, a cardholder incurs less expense than what some beneficiaries pay to cash their Treasury checks. Treasury expects that, with its expanded cardholder education, fees incurred under Scenarios 1 through 4 would be more typical.

Treasury expects to continue to incur expenditures for the public education related to the implementation of the new rule and to temporarily expand its telephone and online direct deposit enrollment center to accommodate those converting from check payments to direct deposit to comply with the new rule, whether the conversion is to an account at a financial institution or to a Direct Express® card account. However, such expenditures will taper off after the new rule is fully implemented, since direct deposit enrollment in the future will occur at the time of benefit enrollment. Federal benefit agencies may incur costs to temporarily expand customer service centers to accommodate recipients' questions and enrollments until the new rules are fully implemented.

Treasury expects increased costs for its call center and website used to enroll check recipients into direct deposit, although these costs are expected to drop off after 2013, when the rule would be fully implemented. The education costs, estimated at $10 million over the next three years, are costs that Treasury would have incurred even without the rule, and for potentially longer than the next 3-5 years. Similarly, Treasury expects benefit paying agencies to incur some initial costs for customer service training for customer service representatives responsible for educating new enrollees and current check recipients about the new rules, but these costs are expected to be more than offset by the cost savings expected once customer service centers no longer have to respond to individual inquiries related to check problems. The one-time costs to increase customer service capacity at the Treasury enrollment center (both telephone and online) could total as high as $20 million from the effective date of the final rule through 2013. These costs include Treasury's costs for processing waiver requests. After 2013, Treasury expects these costs to drop off significantly.

The Go Direct® campaign, sponsored by Treasury and the Federal Reserve Banks, highlights the need for this educational program. Despite the success of the campaign with more than five million direct deposit enrollments achieved since 2005 as a result of the campaign's activities, an estimated 11 million Federal benefit recipients still receive checks each month. Treasury research shows that the likelihood of current check recipients switching to direct deposit remained generally unchanged from 2004 to 2007, with 55% of banked Social Security check recipients surveyed in 2007 being very unlikely to change to direct deposit, down from 59% in 2004. The percentage of banked Social Security check recipients likely to switch to direct deposit went from 27% in 2004 to 28% in 2007. Comparatively, 40% of banked SSI check recipients were likely to switch to direct deposit in 2007, up only one percentage point since 2004. While Treasury research shows that direct deposit education has a positive impact on the likelihood of a check recipient to switch to direct deposit, the effort is time consuming, administratively burdensome, costly, and resource-intensive. During the period July 2009 through June 2010, Treasury spent $4.5 million on its Go Direct® campaign, and expects to spend another $4 million during the period July 2010 through June 2011. Prior years' costs have ranged from $5 million to $10 million for Treasury to establish and sustain its presence in target markets to promote and encourage check recipients to convert to direct deposit.

Finally, and less directly, financial institutions may experience some costs associated with converting their check recipient customers to direct deposit, but Treasury does not expect this to be a significant burden since financial institutions already enroll a significant number of direct deposit recipients through Treasury's Go Direct® campaign.

b. Potential Benefits

The potential benefits of the rule to the Government and taxpayers are significant. As noted above, in fiscal year 2010, Treasury mailed more than 130 million Federal benefit checks to approximately 11 million benefit recipients, resulting in extra costs to taxpayers of more than $117 million that would not have been incurred had those payments been made by EFT. Without the rule change and given the current trends, the number of checks that Treasury prints and mails each year is expected to increase significantly over the coming years, primarily as a result of the aging of the baby boomer generation. Beginning in 2008, the first wave of 78 million baby boomers became eligible for Social Security benefits. Even as the more technologically-savvy baby boomers enter the rolls, while improving, the direct deposit rate for fiscal year 2010 climbed no higher than 79.1% for new Social Security enrollees. With the increase in retiring baby boomers, Treasury expects to issue approximately 60 million new payments each year to approximately 5 million newly enrolled recipients (based on Social Security Administration actuarial data). Of those 60 million payments, an estimated 9 million would be made by check based on the current overall direct deposit/check ratio (85 percent/15 percent) for Social Security payments. By 2020, the Social Security Administration projects there will be 18.6 million more Social Security beneficiaries than in fiscal year 2009, which would result in more than 223 million additional payments each year. At the current direct deposit/check ratio, this would mean 33.5 million additional checks each year beginning in 2020, at a cost of $31 million each year, leading to a total annual cost of more than $156 million more than if those payments were made by direct deposit.

These projected cost savings do not take into account future increased costs in postage, paper, and salaries; the cost of issuing benefit checks other than Social Security and SSI; or the costs agencies incur in handling inquiries and authorizing replacement checks. For example, the Social Security Administration expects administrative savings resulting from a drop in non-receipt and lost check actions. The Social Security Administration also expects to save money by eliminating the "Payment Delivery Alert System," which is a joint effort among the Social Security Administration, Treasury, and the U.S. Postal Service to locate and deliver delayed Social Security and SSI checks.

Those who receive their payments by direct deposit do not have to worry about a lost or stolen check, or carrying around large amounts of cash that can be easily lost or stolen. Each year, approximately half a million individuals call Treasury to request claims packages related to problems with check payments. For example, in fiscal year 2009, more than 670,000 Social Security and SSI checks were reported lost or stolen, and in fiscal year 2010, more than 540,000 checks were reported lost or stolen. In fiscal year 2009, Treasury investigated more than 70,000 cases of altered or fraudulently endorsed checks, totaling $64 million, and in fiscal year 2010, Treasury investigated almost 50,000 cases, totaling $93 million. When checks are misrouted, lost in the mail, stolen, or fraudulently signed, Treasury must send replacement checks to the recipient. This can result in a delay in payment, especially if fraud or counterfeiting is involved, thereby creating a hardship for benefit recipients who rely on these payments for basic necessities such as food, rent, or medication. In contrast, individuals receiving Federal payments electronically rarely have any delays or problems with their payments. Nine out of ten problems with Treasury-disbursed payments are related to paper checks even though checks constitute only 19 percent of all Treasury-disbursed payments made by the Government.

These projected savings also do not account for the costs that would no longer be incurred by banks and credit unions for cashing checks and reimbursing the Government when there are alterations, forgeries, or unauthorized indorsements of Federal benefit checks. In fiscal year 2009, it cost the banking industry $69.3 million to reimburse the Treasury for checks that had been fraudulently altered or counterfeited, or contained a forged or unauthorized indorsement. In fiscal year 2010, these costs increased to $88 million.

5. Alternative Approaches Considered

Treasury considered three alternative approaches to achieving the benefits of direct deposit other than the approach described in this rulemaking notice.

First, Treasury could have eliminated the individual EFT waivers sooner for everyone, i.e., eliminate the waivers for all benefit recipients on the same effective date, but Treasury was concerned about the impact of such a rule on payment recipients if the amount of time to educate the public about the rule's requirements and benefits was inadequate. It is important for Treasury and benefit agencies to be prepared to respond to recipients' inquiries about the new rules, which requires sufficient time to train agency customer service representatives, educate those affected by the new rules, and to implement any process changes that may be required. Treasury will work closely with the agencies to ensure that implementation requirements are understood and can be addressed in the time frame in the rule.

Second, Treasury also considered phasing in the elimination of the individual EFT waivers over a longer period of time. Treasury is concerned that such a delay results in additional costs to individuals who will be delayed in realizing the benefits of direct deposit. Treasury intends to begin its public education campaign immediately upon the promulgation of this final rule. Treasury will monitor the progress of its campaign, and adjust the campaign as necessary to ensure maximum effectiveness. In addition, a delayed implementation results in additional costs to the Government and taxpayers. For every year that Treasury delays full implementation of the EFT rule, the Government spends at least $117 million more for check payments than it would otherwise spend if recipients were receiving EFT payments.

Finally, Treasury considered eliminating all EFT waivers, and whether to institute a formal application process for individuals seeking to invoke a waiver to the EFT requirement. Treasury is concerned that such an approach would require the unnecessary development of a new bureaucratic infrastructure to process the applications, and would impose administrative burdens on both Government agencies and benefit recipients. After reviewing comments received in response to the NPRM, Treasury retained waivers for recipients born prior to May 1, 1921 who are receiving Federal payments by check on March 1, 2013, for payments that are not eligible for deposit to a Direct Express® card account, and for recipients whose Direct Express® card has been suspended or cancelled. In addition, this rule allows a payment recipient to request a waiver from the EFT requirement on the basis that EFT would impose a hardship because of the recipient's inability to manage an account at a financial institution or a Direct Express® card account due to a mental impairment, or because the recipient lives in a remote geographic area lacking the infrastructure to support electronic financial transactions. Recipients requesting waivers are required to submit a certification with a short statement explaining why they need a waiver. The certification will be signed by the individual requesting the waiver before a notary public, or in such form that Treasury may prescribe. The waiver request is considered effective unless Treasury rejects the request.

The availability of the Direct Express® card negates the need for other individual waivers. Agencies retain the ability to waive EFT requirements for classes of payments for various reasons. Finally, in an unusual or exceptional circumstance, the Secretary has the authority to waive the EFT requirement, but Treasury does not anticipate invoking this authority except in rare situations.

6. Other Issues

a. Financial Agent

Building on the "lessons learned" in previous programs and the Direct Express® card program pilot, Treasury issued an announcement in 2007 seeking a financial institution qualified to act as a Treasury-designated financial agent to provide debit card services for Federal benefit recipients nationwide, through the Direct Express® card program. Treasury has unique legal authority to designate a financial institution as its financial agent to disburse Federal benefit payments electronically, which includes the establishment of an account meeting certain requirements, maintenance of an account, the receipt of Federal payments electronically, and the provision of access to funds in the account on the terms specified by Treasury. See 12 U.S.C. 90; 31 CFR § 208.2. Fifteen financial institutions responded, and after careful review of the applications, Treasury selected Comerica Bank as its agent based on various criteria, including the proposed cardholder fees. Treasury considered, but rejected, selecting multiple financial agents (although it has the option to do so in the future) primarily to ensure that the selected financial agent would be able to maintain a sufficient volume of active accounts in order to cost-effectively sustain a program with the lowest possible cardholder fees. The financial agent selection process used by Treasury enabled Treasury to obtain debit card services with the most value for benefit recipients, including, among other things, better consumer protections than those offered by most prepaid card products, a surcharge-free ATM network of more than 53,000 surcharge-free ATMs, free low balance alerts and deposit notification, unlimited free customer service calls, and the ability to use the debit card product to access Federal benefit payments without incurring a fee. Treasury provides oversight to confirm that its financial agent operates the Direct Express® card program to provide maximum value at a reasonable cost to cardholders. The card program is now available to recipients of Social Security, SSI, Veterans compensation and pension, civil service retirement, and railroad retirement benefit payments. This allows Federal payment recipients to receive multiple types of Federal payments to a single Direct Express® card account.

b. Garnishment

Treasury has also addressed the concerns about the improper freezing and seizure of benefit funds exempt from garnishment. Treasury and the four major benefit paying agencies – Office of Personnel Management, Railroad Retirement Board, Social Security Administration, and Department of Veterans Affairs – published a notice of proposed rulemaking and will soon publish a joint final rule. The rule will help ensure that garnishment-exempt benefit payments in an account are not improperly seized, and will protect benefit recipients where benefit payments are directly deposited to an account at a financial institution.

Regulatory Flexibility Act Analysis

It is hereby certified that the rule will not have a significant economic impact on a substantial number of small entities. The rule applies to individuals who receive Federal payments, and does not directly impact small entities. Accordingly, an initial regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 et seq) is not required.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. We have determined that the rule will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

List of subjects in 31 CFR Part 208

Accounting, Automated Clearing House, Banks, Banking, Electronic funds transfer, Financial institutions, Government payments.

For the reasons set out in the preamble, 31 CFR part 208 is amended to read as follows:

PART 208--MANAGEMENT OF FEDERAL AGENCY DISBURSEMENTS

1. The authority citation for part 208 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 90, 265, 266, 1767, 1789a; 31 U.S.C. 321, 3122, 3301, 3302, 3303, 3321, 3325, 3327, 3328, 3332, 3335, 3336, 6503; Pub. L. 104-208, 110 Stat. 3009.

2. In § 208.2, redesignate paragraphs (c) through (o) as paragraphs (d) through (p), respectively, add new paragraph (c), and revise redesignated paragraph (e) to read as follows:

§ 208.2 Definitions.

* * * * *

(c) Direct Express® card means the prepaid debit card issued to recipients of Federal benefits by a Financial Agent pursuant to requirements established by Treasury.

(d) * * * * *

(e) Electronic benefits transfer (EBT) means the provision of Federal benefit, wage, salary, and retirement payments electronically, through disbursement by a financial institution acting as a Financial Agent. For purposes of this part, EBT includes, but is not limited to, disbursement through an ETA℠, a Federal/State EBT program, or a Direct Express® card account.

* * * * *

§ 208.4 [Amended]

3. Amend § 208.4 as follows:

a. Remove the introductory text;

b. Revise paragraph (a) to read as follows:

* * * * *

(a) Payment by electronic funds transfer is not required in the following cases:

(1) Where an individual:

(i) is receiving a Federal payment by check prior to May 1, 2011. In such cases, the individual may continue to receive those payments by check through February 28, 2013;

(ii) files a claim for a Federal payment prior to May 1, 2011, and requests payment by check at the time he or she files the claim. In such cases, the individual may receive those payments by check through February 28, 2013;

(iii) was born prior to May 1, 1921, and is receiving payment by check on March 1, 2013;

(iv) receives a type of payment that is not eligible for deposit to a Direct Express® card account. In such cases, those payments are not required to be made by electronic funds transfer, unless and until such payments become eligible for deposit to a Direct Express® card account;

(v) is ineligible for a Direct Express® card because of suspension or cancellation of the individual's card by the Financial Agent;

(vi) has filed a waiver request with Treasury certifying that payment by electronic funds transfer would impose a hardship because of the individual's inability to manage an account at a financial institution or a Direct Express® card account due to a mental impairment, and Treasury has not rejected the request; or

(vii) has filed a waiver request with Treasury certifying that payment by electronic funds transfer would impose a hardship because of the individual's inability to manage an account at a financial institution or a Direct Express® card account due to the individual living in a remote geographic location lacking the infrastructure to support electronic financial transactions, and Treasury has not rejected the request.

c. Redesignate paragraphs (b) through (g) as paragraphs (a)(2) through (a)(7). In redesignated paragraph (a)(4), further redesignate paragraphs (1) and (2) as paragraphs (a)(4)(i) and (ii);

d. Revise redesignated paragraph (a)(6) to read as follows:

* * * * *

(a)(6) Where the agency does not expect to make payments to the same recipient within a one-year period on a regular, recurring basis and remittance data explaining the purpose of the payment is not readily available from the recipient's financial institution receiving the payment by electronic funds transfer; and

e. Add new paragraph (b) to read as follows:

* * * * *

(b) An individual who requests a waiver under paragraphs (a)(1)(vi) and (vii) of this section shall provide, in writing, to Treasury a certification supporting that request, in such form that Treasury may prescribe. The individual shall attest to the certification before a notary public, or otherwise file the certification in such form that Treasury may prescribe.

4. Revise § 208.6 to read as follows:

§ 208.6 Availability of the Direct Express® Card.

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

5. Revise § 208.7 to read as follows:

§ 208.7 Agency responsibilities.

An agency shall put into place procedures that allow recipients to provide the information necessary for the delivery of payments to the recipient by electronic funds transfer to an account at the recipient's financial institution or a Direct Express® card account.

6. Revise § 208.8 to read as follows:

§ 208.8 Recipient responsibilities.

Each recipient who is required to receive payment by electronic funds transfer shall provide the information necessary to effect payment by electronic funds transfer.

7. Revise the third sentence in § 208.11 to read as follows:

§ 208.11 Accounts for disaster victims.

*   *   * Treasury may deliver payments to these accounts notwithstanding any other payment instructions from the recipient and without regard to the requirements of §§ 208.4 and 208.7 of this part and § 210.5 of this chapter. *   *   *

8. Remove Appendix A and Appendix B.

Richard L. Gregg

Fiscal Assistant Secretary