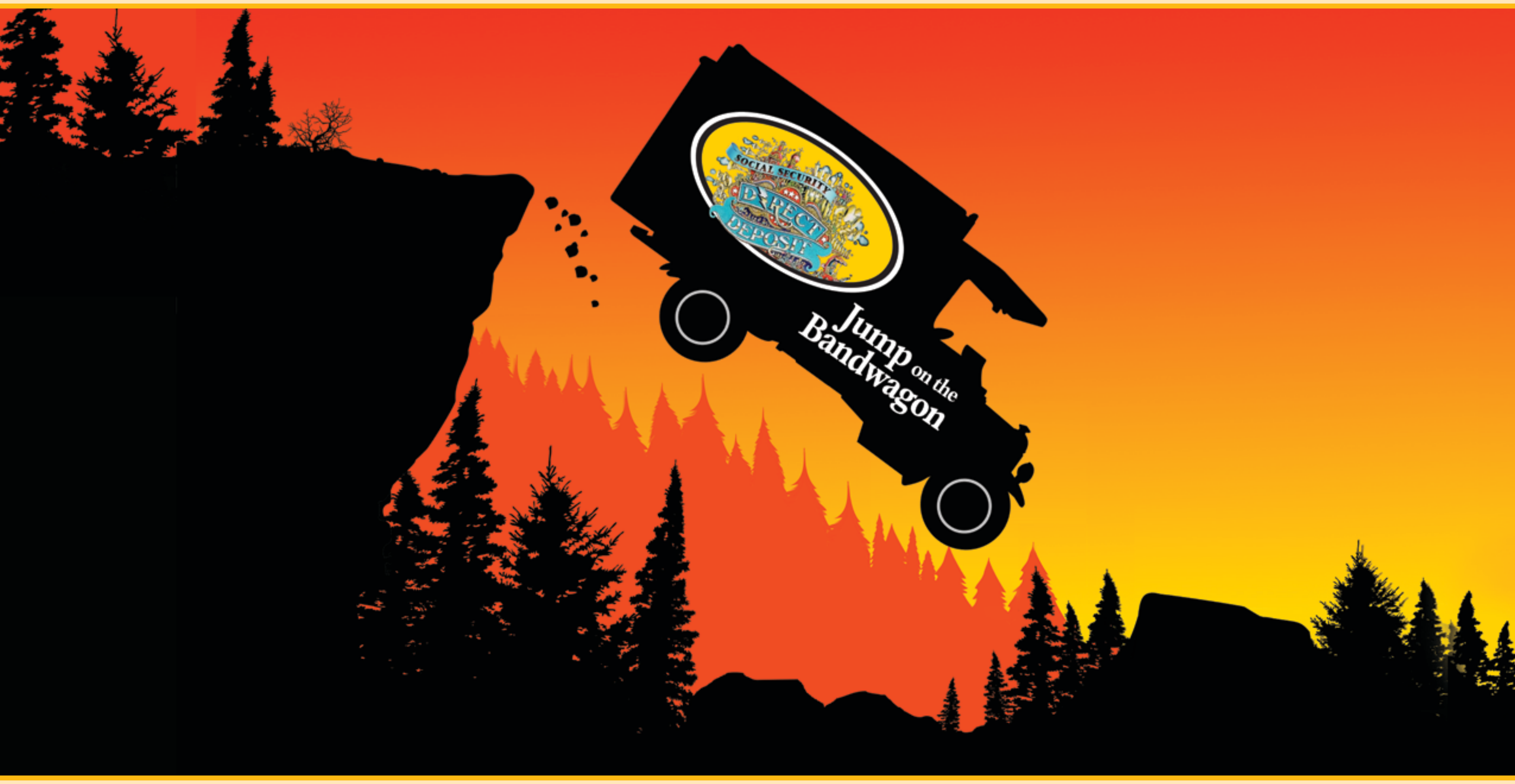
RUNAWAY BANDWAGON

HOW THE GOVERNMENT'S PUSH FOR DIRECT DEPOSIT OF SOCIAL SECURITY EXPOSES SENIORS TO PREDATORY BANK LOANS



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July 2010

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ACKNOWLEDGMENTS

Rick Jurgens, an investigative reporter and advocate at NCLC, contributed research and editorial content.

We would also like to thank Carolyn Carter of NCLC for her valuable guidance, feedback, and editorial review; Lauren Saunders of NCLC for sharing her expertise; Ana Lucia Hurtado and Tamar Malloy of NCLC for their editorial assistance; and Julie Gallagher for designing and formatting the report and its accompanying graphics and tables.

This report was funded in part by the Retirement Research Foundation. NCLC thanks the Foundation for its support. However, the findings and conclusions presented are those of the authors alone and do not necessarily reflect the views or position of the Foundation.

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INTRODUCTION & SUMMARY

In 1996, when the federal government initiated efforts to shift recipients of federal payments to direct deposit, it had good intentions: to save the government billions of dollars in check processing costs, spare millions of trees from being cut down to make paper checks and envelopes, and deliver federal payments to beneficiaries more safely and efficiently.[1]

Unfortunately, this 14-year drive has had unintended and devastatingly expensive consequences for some seniors. Large numbers of elderly, previously unbanked recipients of federal benefits became bank customers in order to receive direct deposit of Social Security benefits. That exposed these seniors' funds to a new financial peril: fee-based overdraft protection. By the early 2000s, overdraft protection was a huge source of profit for banks.[2] Seniors and other recipients of Social Security are now key customers for these exorbitantly expensive programs.[3]

Now in 2010, the federal government is stepping up its push to shift the remaining 2.1 million Social Security recipients and 1.8 million Supplemental Security Income ("SSI") recipients[4] who still receive paper checks to electronic deposit. However, absent significant changes to proposed Treasury Department regulations, this renewed push is likely to inflict more financial harm on low-income seniors and other benefits recipients.

This new threat is even greater as new federal regulations take effect that will restrict banks' ability to generate revenue from fee-based overdraft loan programs. Anxious to fill the projected void in their profits,[5] banks are likely to turn to another expensive product that generates revenue from low-income, elderly, and other vulnerable customers: bank payday loans.[6]

Banks do not put the onerous "payday" label on these products. Instead, they are marketed as "account advances" or with similar

[1] 31 U.S.C. § 3332(f), (i)(2).

[2] Leslie Parrish & Peter Smith, Ctr. for Responsible Lending, Shredded Security: Overdraft Practices Drain Fees from Older Americans 2 (2008), *available at* http://www.responsiblelending.org/overdraft-loans/research-analysis/shredded-security.html. The figures in this report have been updated. *See* Ctr. for Responsible Lending, Quick Facts on Overdraft Loans (2009), *available at* http://www.responsiblelending.org/overdraft-loans/research-analysis/quick-facts-on-overdraft-loans.html.

[3] Leslie Parrish & Peter Smith, Ctr. for Responsible Lending, Shredded Security: Overdraft Practices Drain Fees from Older Americans 6-7 (2008), *available at* http://www.responsiblelending.org/overdraft-loans/research-analysis/shredded-security.html. The figures in this report have been updated. *See* Ctr. for Responsible Lending, Quick Facts on Overdraft Loans (2009), *available at* http://www.responsiblelending.org/overdraft-loans/research-analysis/quick-facts-on-overdraft-loans.html.

[4] Management of Federal Agency Disbursements, 75 Fed. Reg. 34394, 34395 (proposed June 17, 2010) (to be codified at 31 C.F.R. pt. 208).

[5] *See, e.g.,* Fair Isaac Corp. (FICO), Insights: White Papers, Opting In or Out: Protecting Revenue Under Overdraft Reform 3 (2009), *available at* http://www.fico.com/en/FIResourcesLibrary/Insights_Opting_In_or_Out_2578WP.pdf (advising banks that they "can expect a significant financial impact to their income statement through changes in non-interest income" thus "new product development" is necessary).

[6] *See* Jeff Plungis, *Banks May Use Payday-Style Loans to Replace Lost Overdraft Fees*, Bloomberg News, Feb. 23, 2010, http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a25EweZDVeAU.

innocuous labels. But bank "account advance" products amount to payday loans[7] in all but name: cash loans to holders of bank accounts that receive direct deposits of benefits or other income.

Like fee-based overdraft, these "account-advance" or "bank payday loan"[8] products hit borrowers with astronomical fees or interest rates, offer nearly instant access, and require quick repayment. Despite the extraordinary expense of these loans to borrowers, they pose little or no risk to the banks. This lack of risk stems from a key component of these products: they give banks direct access to borrowers' accounts, so if the borrower does not repay the loan within the (generally) 35-day time limit, the bank simply reaches into the borrower's bank account and takes the money.

As a result, even after the much-heralded restrictions on overdraft lending take effect, banks will still provide high-cost, short-term loans to seniors and other vulnerable customers.

The number of seniors eligible for the bank payday loans through bank accounts and prepaid debit cards will almost certainly increase within the next several years as the federal government increases the pressure to move all federal beneficiaries to direct deposit. The Treasury Department has proposed a rule that would make it almost impossible for seniors to opt out of direct deposit and receive paper checks, thereby propelling more seniors into bank accounts.[9] A second proposed rule would allow Social Security benefits to be deposited onto prepaid debit cards[10] that operate as substitutes for bank accounts.[11] Some of those cards include payday loan features.[12]

Ironically, even as the Treasury Department's push to eliminate paper checks drives seniors into the arms of high-cost lenders, Treasury has also been working hard to protect those same seniors from garnishments issued by judgment creditors.[13] In the spring

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[7] Traditional payday loans are short-term high-cost loans secured by post-dated checks or agreements to debit electronically borrowers' bank accounts. *See generally* NAT'L CONSUMER LAW CTR., THE COST OF CREDIT § 7.5.5 (4th ed. 2009).

[8] This report refers to this category of products as "bank payday loans"-- except when referring to specific products, in which case the bank's own label is used-- to connote their similarities with payday loans made by non-bank storefront and internet lenders.

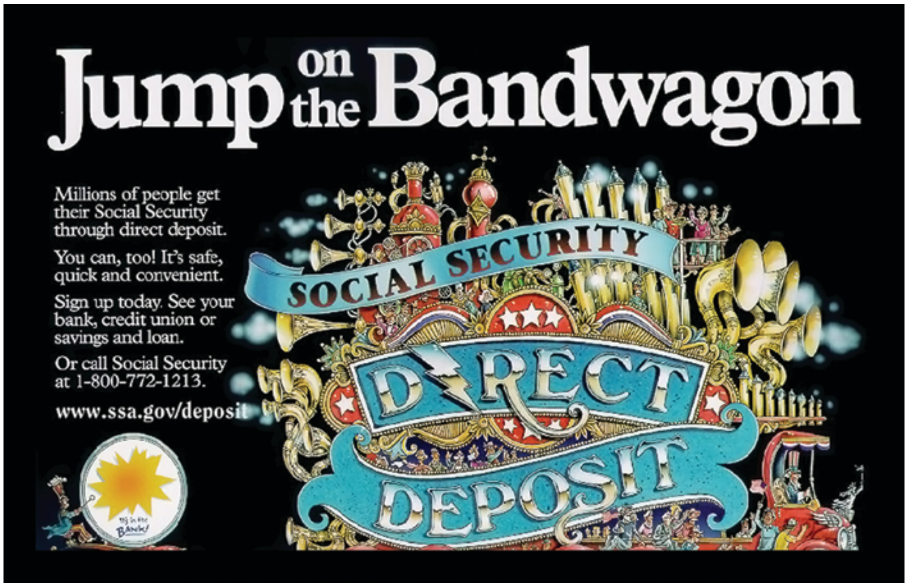
[9] Management of Federal Agency Disbursements, 75 Fed. Reg. 34394, 34395 (proposed June 17, 2010) (to be codified at 31 C.F.R. pt. 208).

[10] This report refers to the universe of reloadable electronic vehicles into which recipients can deposit their benefits with the shorthand "prepaid debit cards" to distinguish them from debit cards tied to bank checking accounts.

[11] Federal Government Participation in the Automated Clearing House, 75 Fed. Reg. 27239, 27244-45 (proposed May 14, 2010) (to be codified at 31 C.F.R. pt. 210).

[12] Under the terms of the proposed rule issued May 14, 2010, federal payments will be required to be either directly deposited into a bank account owned by the recipient, deposited onto the government sponsored Direct Express card, or deposited onto other prepaid debit cards that meet certain criteria. None of the criteria will preclude the use of prepaid debit cards which are tied to bank payday loan products. *See* Federal Government Participation in the Automated Clearing House, 75 Fed. Reg. 27239 (proposed May 14, 2010) (to be codified at 31 C.F.R. pt. 210). Currently, both MetaBank and Urban Trust Bank offer a prepaid card that is available at check cashing and other outlets and appears to include a payday loan feature.

[13] As Social Security and other government benefits are necessary for recipients to maintain a basic level of subsistence, federal law prohibits these benefits from seizure by creditors. 42 U.S.C. § 407 (Social Security); 42 U.S.C. § 1383(d)(1) (SSI); 38 U.S.C. § 5301(a) (VA benefits).



"Jump on the Bandwagon"—slogan from a 1997 Social Security Administration ("SSA") poster encouraging recipients to use direct deposit.[15]

of 2010, the Treasury Department, along with several other federal agencies, proposed a well-considered and thorough rule requiring banks to protect direct-deposited federal benefits from seizure to satisfy garnishment orders by judgment creditors.[14]

The purpose of this report is to highlight the continuing—and increasing—threat to the recipients of federal benefits from high-cost, short-term loan products issued *by the institutions which are the repositories for those federal benefits.* The report examines the illogic of the federal agencies' recognition, on the one hand, of the need to protect those benefits from third-party judgment creditors, while on the other hand, failing to propose any meaningful protections against the pernicious loan products offered by banks to their customers with checking accounts or prepaid cards. The report concludes that the federal government must take responsibility for ensuring that the bank accounts and prepaid debit cards into which Social Security and other federal benefits are deposited will not bleed seniors and other recipients of vital subsistence resources.

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[14] Garnishment of Accounts Containing Federal Benefit Payments, 75 Fed. Reg. 20299, 20299-314 (proposed Apr. 19, 2010) (to be codified at 5 C.F.R. pts. 831, 841; 20 C.F.R. pts. 350, 404, & 416; 31 C.F.R. pt. 212; 38 C.F.R. pt. 1). *See* Comments on the Proposed Garnishment Rule from the Nat'l Consumer Law Ctr. et al. (June 18, 2010), *available at* http://www.nclc.org/images/pdf/other_consumer_issues/exempt_public_benefits/comments-treasury-june2010.pdf (discussing the merits of and the need for some changes to the proposed rule).

[15] U.S. Social Security Admin., Social Security History, SSA History Archives, *available at* http://www.ssa.gov/history/directdep2.html.

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I. SOCIAL SECURITY BENEFITS SAVE SENIORS FROM POVERTY.

All too many Social Security recipients experience life as a struggle to survive. They face relentless increases in the costs of essentials such as medical care and housing.[1] Social Security, a social insurance program that seniors have paid into during their working lives, constitutes a critical lifeline for many. "Nearly half of all seniors would be living below the poverty line were it not for Social Security."[2] In 2009, the Social Security Administration paid more than $680 billion in retirement, disability, and supplemental income benefits to 56 million recipients.[3] As of December 2009, about 37 million of those recipients were aged 65 or older.[4]

However, researchers have found that even with Social Security income "close to four of five senior households [still] do not have sufficient economic security to sustain them through their lives."[5] Most government benefits payments are relatively small. The average monthly Social Security retirement payment as of December 2009 was only $1,164.30.[6] Yet many recipients—especially those with low incomes, few savings, and little or no coverage by private pensions—depend upon those benefits to buy food, shelter, medicine, and other items necessary for survival. In 2008, Social Security benefits accounted for more than 88% of all income received by the poorest 40% of the senior population.[7]

To preserve federal benefits for their intended recipients, Congress provided that the benefits cannot be seized to pay debts, as such seizures would result in the loss of subsistence funds. The Social Security Act says:

> The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and *none of the moneys paid or payable*

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[1] *See, e.g.,* Deanne Loonin & Elizabeth Renuart, *The Life and Debt Cycle: The Growing Debt Burdens of Older Consumers and Related Policy Recommendations*, 44 Harv. J. on Legis. 167, 171 (Winter 2007); West Virginia Ctr. on Budget & Pol'y et al., Long Term Care Partnership, and Wider Opportunities for Women, Elders Living on the Edge: When Basic Needs Exceed Income in West Virginia 1, 1 (2010), *available at* http://www.wvpolicy.org/downloads/WV_Elder_Policy_Brief060210.pdf (explaining that "today's elders are pressured by increasing housing, health care, food and utility expenses while the value of their assets and their incomes are eroded by weaknesses within the economy").

[2] Deanne Loonin & Elizabeth Renuart, *The Life and Debt Cycle: The Growing Debt Burdens of Older Consumers and Related Policy Recommendations*, 44 Harv. J. on Legis. 167, 170 (Winter 2007).

[3] U.S. Gov't Accountability Office, GAO-09-24, Social Security Administration: Service Delivery Plan Needed to Address Baby Boom Retirement Challenges 5 (2009).

[4] Judi Papas, U.S. Social Security Admin., Fast Facts and Figures About Social Security, 2009, at 30 (2009), *available at* http://www.socialsecurity.gov/policy/docs/chartbooks/fast_facts/2009/fast_facts09.pdf.

[5] Tatjana Meschede, Thomas M. Shapiro & Jennifer Wheary, Living Longer on Less: The New Economic (In)Security of Seniors 1 (2009), *available at* http://iasp.brandeis.edu/pdfs/LLOLReport.pdf (using a Senior Economic Security Index comprised of housing costs, healthcare expenses, household budget, home equity, and household assets to evaluate seniors' economic situation).

[6] U.S. Social Security Admin., Monthly Statistical Snapshot (Dec. 2009) (on file with author).

[7] *See* Employee Benefit Research Institute, EBRI Databook on Employee Benefits, *Chapter 7: Sources of Income for Persons Aged 55 and Over, Updated October 2009*, Tbl. 7.5, *Sources of the Older Population's Income by Income Quintile*, *available at* www.ebri.org/pdf/publications/books/databook/DB.Chapter%2007.pdf .

or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.[8]

The statutes governing the distribution of other federal benefits, such as VA benefits, similarly articulate that these funds are to be free from attachment or garnishment or other legal process.[9]

[8] 42 U.S.C. § 407(a) (emphasis added).

[9] 42 U.S.C. § 407(a). The protections are similar in the other federal statutes governing federal benefits:

VA benefits: Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. 38 U.S.C. § 301(a)(1).

Railroad Retirement benefits: Except as provided in subsection (b) of this section and the Internal Revenue Code of 1986 [26 U.S.C.A. § 1 et seq.], notwithstanding any other law of the United States, or of any State, territory, or the District of Columbia, no annuity or supplemental annuity shall be assignable or be subject to any tax or to garnishment, attachment, or other legal process under any circumstances whatsoever, nor shall the payment thereof be anticipated. 45 U.S.C. § 231m.

Federal Retirement program benefits: An amount payable under subchapter II, IV, or V of this chapter is not assignable, either in law or equity, except under the provisions of section 8465 or 8467, or subject to execution, levy, attachment, garnishment or other legal process, except as otherwise may be provided by Federal laws. 5 U.S.C. § 8470.

II. SOCIAL SECURITY BENEFITS ARE GOING TO PAY FOR HIGH-COST, SHORT-TERM LOANS.

The crystal-clear policy articulated in the federal laws establishing the benefit programs protects these funds from being seized to pay debts involuntarily through garnishment and attachment. Yet banks, when extending credit through payday loan programs, claim the right to seize these protected funds to repay the payday loans.

Banks claim that the prohibitions against seizure—through garnishment and attachment, which apply to debts owed to third parties—do not apply when the bank is also the creditor. As a result, when banks make payday loans, Social Security and other beneficiaries are vulnerable to the same dangers from seized benefits as result from attachment and garnishment. Instead of functioning as financial safe havens for these essential benefits, banks make high-cost, short-term loans and then take the loan repayment and exorbitant fees *directly out of the supposedly protected Social Security benefits—a step that federal law appears to prohibit.*[10]

There are three ways in which banks threaten Social Security and other benefits:

1. The well-known, declining, but still thriving *overdraft protection plans;*

[10] There is a legal distinction between the seizure of benefits to satisfy a garnishment or attachment order of a third-party creditor and the seizure of benefits by the repository of those benefits. The latter situation requires the operation of the bank's use of its common law and contractual power of set-off. The legality of a bank's use of the power of set-off is examined more fully in section III *infra.*

2. The less well-known but very costly *bank payday loan programs;*
3. The expansion of *bank payday loans to holders of prepaid debit cards.*

All are threats from FDIC-insured, federally regulated banks and savings and loan associations. These high-cost, short-term loan products—fee-based overdraft programs and bank payday loans—share nearly identical basic characteristics with the predatory payday loans offered by the non-bank payday lenders that are ubiquitous in storefronts in many states and on the Internet.

1. How Fee-Based Overdraft Works

Among bank products and services that pose hidden perils to customers, the most well-known are fee-based overdraft programs. Under these programs, banks cover the amount of a check, point of sale (POS) debit card purchase, or ATM withdrawal when there are insufficient funds in the customer's bank account.[11] Banks charge the customer a fee, typically around $35,[12] each time they cover an overdraft. Some banks also charge a daily fee if a customer's account balance remains negative. Banks then take some or all of the customer's next deposit to repay themselves the amount covered, the one-time fee, and the daily fee (if applicable).

A typical overdraft product carries an Annual Percentage Rate ("APR") [13] of 1,820%.[14] The customer is unlikely to realize the true cost of a fee-based overdraft loan, as banks take advantage of loopholes in the Truth in Lending Act to avoid APR disclosures.[15]

Fee-based overdraft loans have *much in common* with standard payday loans:

- Both require the customer to give the lender direct access to a bank account for credit to be extended. Payday lenders obtain this access by having the borrower write a post-dated check or sign an electronic debit agreement, while banks simply deduct the loan amounts,

[11] *See* Nat'l Consumer Law Ctr., The Cost of Credit § 7.5.6.1 (4th ed. 2009).

[12] This fee continues to be typical even as banks prepare for the new opt-in overdraft regime. *See* Consumer Federation of America, Consumers Warned Not to Opt In as Banks Market Expensive Debit Card Overdraft Fees (2010), *available at* http://admin.consumerfed.org/elements/www.consumerfed.org/File/PR_CFA_Big_Bank_Overdraft_Opt-In062910.pdf.

[13] References to the APR in this report are to the APR as calculated according to the federal Truth in Lending Act. The Truth in Lending Act APR is a uniform way to determine the true cost of a loan. It is expressed as a percentage and includes most of the fees and charges associated with the loan, as well as the interest to be earned over the term. *See* 15 U.S.C. §§ 1605, 1606. The APR has been the credit cost yardstick in this country for forty years and aims to provide an apples-to-apples comparison of the cost when consumers shop. *See* Elizabeth Renuart & Diane Thompson, *The Truth, The Whole Truth, and Nothing but the Truth: Fulfilling the Promise of Truth in Lending*, 25 Yale J. on Reg. 181, 186–91 (2008); Matthew A. Edwards, *Empirical and Behavioral Critiques of Mandatory Disclosure: Socio-Economics and the Quest for Truth in Lending*, 14 Cornell J.L. & Pub. Pol'y 199, 211–15 (2005).

[14] *See* Consumer Federation of America, Consumers Still At Risk from Bank Overdraft Loans (2009), *available at* http://www.consumerfed.org/elements/www.consumerfed.org/file/OD%20Big%20Bank%20Reforms%20PR%20FINAL%2010%205%2009.pdf (calculating this APR based on a $100 overdraft at a $35 fee extended for a week).

[15] *See* Nat'l Consumer Law Ctr., The Cost of Credit § 7.5.6.2 (4th ed. 2009).

plus fees, from the accounts consumers hold at their institutions.[16]

- Both carry exorbitant APRs in the triple or quadruple digits.[17]
- Both require repayment in one lump sum, as opposed to a more manageable installment plan.[18]
- Neither includes an evaluation of the borrower's ability to repay the loan and, as a result, both products are often unaffordable.

The products have some differences as well. Payday loans have a fixed term: they are due on the customer's next payday. By contrast, overdraft loans come due immediately and the bank seizes the funds directly from the customer's account as soon as a deposit is made.[19]

[16] *See generally* Consumer Federation of America, Consumers Still At Risk from Bank Overdraft Loans (2009), *available at* http://www.consumerfed.org/elements/www.consumerfed.org/file/OD%20Big%20Bank%20Reforms%20PR%20FINAL%2010%205%2009.pdf (explaining this and other similarities).

[17] *See generally* Consumer Federation of America, Consumers Still At Risk from Bank Overdraft Loans (2009), *available at* http://www.consumerfed.org/elements/www.consumerfed.org/file/OD%20Big%20Bank%20Reforms%20PR%20FINAL%2010%205%2009.pdf (explaining this and other similarities).

[18] *See generally* Consumer Federation of America, Consumers Still At Risk from Bank Overdraft Loans (2009), *available at* http://www.consumerfed.org/elements/www.consumerfed.org/file/OD%20Big%20Bank%20Reforms%20PR%20FINAL%2010%205%2009.pdf (explaining this and other similarities).

[19] *See generally* Consumer Federation of America, Consumers Still At Risk from Bank Overdraft Loans (2009), *available at* http://www.consumerfed.org/elements/www.consumerfed.org/file/OD%20Big%20Bank%20Reforms%20PR%20FINAL%2010%205%2009.pdf (explaining this and other differences).

Another difference is that payday loans require the customer to apply affirmatively, either at a brick and mortar store or over the Internet.[20] Banks, however, have historically enrolled customers automatically in fee-based overdraft programs.[21] This meant that some customers were unaware that they were being given a loan until the fees showed up on their account statements. Under new federal regulations that take effect during the summer of 2010,[22] bank customers must affirmatively opt in to be covered by fee-based overdraft protection plans for ATM or one-time debit card transactions that put an account in the red.[23] However, the new regulations still allow banks to make overdraft loans even when the customer has not specifically agreed to the program, for example, when the customer incurs an overdraft by writing a paper check.[24]

Overdraft fees have represented a huge source of revenue to banks. In 2008, banks and credit unions received almost $24 billion in fee-based overdraft revenue—a 35% increase from two years earlier.[25] When non-

[20] *See* Nat'l Consumer Law Ctr., The Cost of Credit §§ 7.5.5.2, 7.5.5.4 (4th ed. 2009).

[21] *See* Nat'l Consumer Law Ctr., The Cost of Credit §§ 7.5.6.1 (4th ed. 2009).

[22] Reg. E, 12 C.F.R. § 205.17(c)(1); 74 Fed. Reg. 59,033, 59,040 (Nov. 17, 2009). Banks must be in compliance by July 1, 2010 for new accounts and by August 15, 2010 for existing accounts. For additional information about the new rule, please see Nat'l Consumer Law Ctr. Reports, Consumer Credit and Usury Edition (Nov.-Dec. 2009).

[23] 74 Fed. Reg. 59,033 (Nov. 17, 2009).

[24] Reg. E, 12 C.F.R. § 205.17(b)(1); 74 Fed. Reg. 59,033, 59,040 (Nov. 17, 2009).

[25] Leslie Parrish, Ctr. for Responsible Lending, Overdraft Explosion: Bank Fees for Overdrafts Increase 35% in Two Years 4-5 (2009), *available at* http://www.responsiblelending.org/overdraft-loans/research-analysis/overdraft-explosion-bank-fees-for-overdrafts-increase-35-

sufficient fund (NSF) fees for bounced checks were included along with overdraft fees, one analysis estimated that the total revenue to banks and credit unions in 2008 was in excess of $34.7 billion.[26] According to a 2009 report, consumers "spend about the same amount on overdraft fees as they do on fresh vegetables every year, and only a little less than they do on fresh fruit."[27]

Many overdraft fees are paid out of Social Security funds. The Center for Responsible Lending estimates that adults aged 55 and over pay $6.2 billion a year in overdraft fees.[28] Within this group, those receiving at least half of their income from Social Security (of all types, but not including Supplemental Security Income) pay almost $1.4 billion each year in overdraft fees.[29]

Making the conservative assumption that overdraft expenses of recipients came equally from their Social Security and other income, *at least $700 million of Social Security benefits has gone to pay overdraft fees each year.* This estimate is conservative because direct-deposited Social Security funds are more likely than non-direct deposited sources of income to go toward overdraft fees because they are, by definition, going into the consumer's bank account. Banks can then help themselves to these funds immediately upon their addition to the account. By contrast, consumers can choose whether to put non-direct deposited income into their accounts or keep it elsewhere, thus making it less vulnerable to going to pay overdraft fees.

2. How Bank Payday Loans (a/k/a "Account Advance" Products) Work

For at least fifteen years, some banks have offered other high-cost, short-term loan products, generally referred to as "account advances," that closely resemble payday loans. In recent months, bank payday loans made to bank account holders and to holders of prepaid debit cards (described in more detail below) have become increasingly prominent in the marketplace. Banks offering these products include large institutions like Wells Fargo as well as smaller institutions, such as Guaranty Bank. The chart below sets forth an overview of the key terms of bank payday loan products.

(Text continues on page 16.)

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in-two-years.html.

26 Bretton Woods, Inc., Fee Analysis Update of Bank and Credit Union Non-Sufficient Funds and Overdraft Protection Programs 4 (2009), *available at* http://www.cfsa.net/downloads/Bretton%20Woods%20NSF-OD%20Fees%20Analysis%20Final_2010.pdf.

27 Leslie Parrish, Ctr. for Responsible Lending, Overdraft Explosion: Bank Fees for Overdrafts Increase 35% in Two Years 4-5 (2009), *available at* http://www.responsiblelending.org/overdraft-loans/research-analysis/overdraft-explosion-bank-fees-for-overdrafts-increase-35-in-two-years.html.

28 Leslie Parrish & Peter Smith, Ctr. for Responsible Lending, Shredded Security: Overdraft Practices Drain Fees from Older Americans 2 (2008), *available at* http://www.responsiblelending.org/overdraft-loans/research-analysis/shredded-security.html. The figures in this report have been updated. *See* Ctr. for Responsible Lending, Quick Facts on Overdraft Loans (2009), *available at* http://www.responsiblelending.org/overdraft-loans/research-analysis/quick-facts-on-overdraft-loans.html.

29 Leslie Parrish and Peter Smith, Ctr. for Responsible Lending, Shredded Security: Overdraft Practices Drain Fees from Older Americans 6 (June 18, 2008), *available at* http://www.responsiblelending.org/overdraft-loans/research-analysis/shredded-security.html. The figures in this report have been updated. *See* Ctr. for Responsible Lending, Quick Facts on Overdraft Loans (2009), *available at* http://www.responsiblelending.org/overdraft-loans/research-analysis/quick-facts-on-overdraft-loans.html).

Bank Payday Loan Products

Six banks offer high-cost loans to customers with checking accounts or prepaid debit cards.

BANK	PRODUCT NAME	COST AND FEE STRUCTURE	MINIMUM LOAN	MAXIMUM LOAN	DISCLOSED APR*	ACTUAL APR**	MINIMUM DURATION
Fifth Third Bank, Cincinnati, OH	Early Access	Transaction fee of $1 per every $10 borrowed (10% of amount of cash advance). No late payment or over-the-credit limit penalties.	$1	The lesser of $500 or half of combined monthly direct deposits of $100 or more, rounded up to next multiple of $20. Calculation based on 3 month average.	120%	261%	None.
U. S. Bank, Minneapolis, MN	Checking Account Advance	$2 per $20 borrowed (10% of amount of cash advance).	$20, or amount (rounded to nearest $20) required to erase negative balance in account.	The lesser of $500 or half of the total direct deposits listed on most recent checking account statement rounded up to the next $20.	120%	261%	None.
Wells Fargo Bank, San Francisco, CA	Direct Deposit Advance	$2 for each $20 borrowed (10% of amount of cash advance). $35 late fee if not repaid by specified due date.	$20	One half of "monthly qualified deposit" income rounded up to the nearest $100, but no more than $500. Also, no more than $300 in first month of eligibility or after lapse of qualified deposit income. Maximum credit reduced by $100 after 12 consecutive months of advances, and by an additional $100 each month of additional advances.	120%	261%	Until next direct deposit.

Bank Payday Loan Products *(continued)*

MAXIMUM DURATION	ELECTRONIC REPAYMENT TERMS AND OPTIONS	NON-ELECTRONIC REPAYMENT OPTIONS	DIRECT DEPOSIT REQUIREMENT	OTHER
35 days	Repayment is automatically deduced from next direct deposit of $100 or more. Will not be deducted from other deposits. If next direct deposit does not repay in full, whole deposit will be seized. If balance is not paid in full by 35th day from direct deposits, balance will be deducted from account, even if doing so overdraws account and leads to overdraft fees.	Manual repayment at any time.	Must have received direct deposit of $100 or more in two of previous four consecutive months to a Fifth Third checking account held by an individual adult, in good standing for six months, and not subject to legal process or being charged off. One of the direct deposits must have been received in the 35 calendar days before getting an account advance.	No application required. Offer limited to eight states: OH, KY, TN, MI, IL, FL, IN. MO. May lose eligibility in certain situations, including: ineligible for 30 days after borrowing up to amount of credit limit in 6 consecutive months; ineligible for 60 days if account overdrawn for 10 or more consecutive days or 20 or more times in the previous 2 months.
35 days	Repayment is automatically deduced from next direct deposit of $100 or more. Will not be deducted from other deposits. If next direct deposit does not repay in full, whole deposit will be seized. If balance is not paid in full by 35th day from direct deposits, balance will be deducted from account, even if doing so overdraws account and leads to overdraft fees.	Manual repayment at any time.	Must have received one direct deposit of at least $100 in two consecutive statement cycles, including one no more than 35 days prior to account advance, to a checking account in good standing held by an individual adult, open for at least six months and not subject to legal process or being charged off.	No application necessary if eligiblity criteria are met. May lose eligibility in certain situtations, including: eligibility suspended for 90 days after getting advances in 9 consecutive statement cycles; until account has a zero or positive balance if checking account overdrawn for 5 consecutive business days; until overdrafts are reduced if checking account overdrawn "an excessive number of times." Account advance agreement terminates automatically after failure to take advance for 12 consecutive statement cycles. Social Security is listed as an example of a direct deposit.
35 days, except under "Payment Plan."	Repayment is automatically deducted from next direct deposit of $100 or more. Will not be deducted from other deposits. If next direct deposit does not repay in full, whole deposit will be seized. If balance is not paid in full by 35th day from direct deposits, balance will be deducted from account, even if doing so overdraws account and leads to overdraft fees. Payment plan option available in some states: repayment in $100 increments when any direct deposit of $100 or more is received, instead of full repayment with each direct deposit; access is suspended while balance is repaid. To qualify, advances must have been taken in at least 5 consecutive statement periods and outstanding balance must be $300 or more (not including fees). If no direct deposits of $100 or more are made into checking account for 35 days, or it has been 35 days since the last $100 payment, account will be automatically debited for full amount outstanding, even if it overdraws account and leads to overdraft fees.	Repayment by mail in some states after payment of one-time set up fee of $100, subject to $35 late fee if not repaid by due date. $100 fee will be charged again if borrower moves from payment by mail back to automatic repayment then back to payment by mail again. Payment by mail option also allows for payments to be made by phone.	Checking account must be held by an individual adult, be in good standing, and not subject to legal process. Account must receive at least one recurring electronic direct depost of $100 or more every 35 days from an employer or outside agency, which could include a recurring payroll or other benefit related income or a special one time, non-repetitive electronic deposit. Account must have completed a full statement cycle with a qualified deposit to be eligible for an advance. An interruption in qualified deposit income will make account ineligible for the service.	Qualify for advance when qualified direct deposit made into checking account in good standing. Advances suspended while in Payment Plan. May lose eligibility in certain situations, including: no access for 6 days if account overdrawn for 7 consecutive days; eligibility suspended for 90 days if overdraft created by automatic repayment is not paid in full within 8 days; eligibility permanently discontinued if there is fraud or a bankruptcy petition. Binding aribitrarion with American Arbitration Association. ATM access suspended 2/22/10. Credit limit may be reduced down to $0 if advances have been taken for 12 or more consecutive statement periods, but will be re-instated after no advances for one statement period.

Bank Payday Loan Products *(continued)*

BANK	PRODUCT NAME	COST AND FEE STRUCTURE	MINIMUM LOAN	MAXIMUM LOAN	DISCLOSED APR*	ACTUAL APR**	MINIMUM DURATION
Urban Trust Bank, Lake Mary, FL	Elastic	$2.50 transaction fee for each $20 borrowed (12.5% of amount borrowed). Also, $2.50 per $20 extension fee plus pay off of at least 10% of most recent Elastic Cash draw from line of credit for Elastic Pay repayment option.	$0	Up to $500 at determination of Urban Trust Bank.	Not disclosed.	326%	None; can repay in full at any time.
MetaBank, Storm Lake, IA	iAdvance	$2.50 transaction fee for each $20 borrowed (12.5% of amount borrowed). No fees for late or early payments.	$20	Credit limit determined by bank.	150%.	326%	Until next direct deposit.

Bank Payday Loan Products *(continued)*

MAXIMUM DURATION	ELECTRONIC REPAYMENT TERMS AND OPTIONS	NON-ELECTRONIC REPAYMENT OPTIONS	DIRECT DEPOSIT REQUIREMENT	OTHER
After 10 consecutive months with an outstanding balance, borrower is ineligible for additional draws of Elastic Cash until balance reaches $0.	Borrower may schedule electronic payments. If borrower does not make minimum payment by due date, a payment of at least 10% of outstanding Elastic Cash balance from most recent draw is automatically deducted from transaction account (called "Elastic Pay" amount). Note that there are fees associated with Elastic Pay option. Any amount electronically transferred directly into transaction account can be used for this automatic repayment.	Borrower may make payment by mail. But if borrower does not make minimum payment by due date, same automatic deduction applies as it does for electronic repayment.	Must be at least 21 and have a regular source of income or benefits deposited to a transaction account: a bank checking account (not necessarily with Urban Trust Bank), ElasticCard (from Urban Trust Bank), or other prepaid debit card issued by provider under agreement with Urban Trust Bank. Checking account, ElasticCard, or other prepaid debit card must not be frozen or subject to legal process.	Borrowers must meet Urban Trust Bank's underwriting standards and complete application online. Borrowers will find out "right away" if they are approved. Elastic Credit terminates after 12 consecutive months without use. Forced arbitration by American Arbitration Association or JAMS, The Resolution Experts, but limited in California. Elastic Card is a prepaid Visa debit card; Cardholder Agreement says that card can be loaded via direct deposit by government agency. Deposits onto Elastic Card are FDIC insured. Elastic Credit application asks about Social Security/Disability and Retirement/Pension income; states that you don't have to be employed to qualify for this line of credit but must have regular income.
35 days	Repayment is automatically deducted from next direct deposit from any source to prepaid card. If next direct deposit doesn't repay in full, bank will automatically deduct amount owed from any funds on prepaid card, including future deposits, until repayment made in full.		Must be age 18 or older and have a prepaid card that receives direct deposit of wages, other income, or benefits at intervals of no more than 35 days in qualifying dollar amounts. Prepaid card must be eligible for iadvance (AccountNow, NetSpend Visa Prepaid Card, Jackson Hewitt ipower Visa Prepaid Card, MiCash Prepaid MasterCard, MoneyGram Visa Prepaid Card, as well as some payroll cards). These prepaid debit cards are issued by MetaBank under licenses from the Visa or MasterCard networks; some of these cards are co-branded with other financial services companies. Eligible for advance after at least one such direct deposit has been made.	Application required; borrowers can then have "money available to you in seconds." Up to 10 transactions per day. Note that AccountNow and NetSpend direct deposit forms instruct borrower to give the form to her employer or benefits provider, while the Jackson Hewitt form just mentions payroll administrator.

Bank Payday Loan Products *(continued)*

BANK	PRODUCT NAME	COST AND FEE STRUCTURE	MINIMUM LOAN	MAXIMUM LOAN	DISCLOSED APR*	ACTUAL APR**	MINIMUM DURATION
Guaranty Bank, Milwaukee, WI	Easy Advance	$25 non-refundable application fee for each advance sought, regardless of whether advance is approved. Fee deducted from checking account as soon as application processed.	$200	With direct deposit, the lesser of $400 or half of the average direct deposits to account in each of the last 3 months; without direct deposit, $200.	Approximately 230% on a $360 advance if the entire balance of the advance was outstanding for 11 days, but notes that application fee is not technically a finance charge under the federal Truth In Lending Act.	217%	Until next direct deposit or any deposit of $100 more (if borrower is not a qualified direct deposit customer).

* Disclosed APRs for Fifth Third Bank, US Bank and MetaBank appear to be based on an advance with a 30-day duration using a 360-day year.

** Actual APR is computed based on a borrower obtaining a $300 advance with a 14-day duration, comparable to a closed-end loan of the same duration using a 365-day year, except that for Guaranty Bank the actual APR is computed based on a borrower obtaining a $325 advance (netting $300 in cash after the upfront application fee) with a 14-day duration, comparable to a closed-end loan of the same duration using a 365-day year.

Fifth Third Bank Information: Fifth Third Bank Early Access Terms & Conditions., posted on-line at https://www.53.com/wps/wcm/connect/resources/file/eb73bc0f40e98b6/EAX_TC_051710.pdf?MOD=AJPERES.

U.S. Bank Information: U.S. Bank Checking Account Advance Agreement, posted on-line at https://www4.usbank.com/internetBanking/en_us/transfer/CheckingAcctAdvanceTerms.jsp.

Wells Fargo Bank Information: Direct Deposit Advance Service Agreement and Product Guide, posted online at https://www.wellsfargo.com/checking/dda/; customer's account statement.

Urban Trust Bank Information: Elastic Credit from Urban Trust Bank, Agreement and Terms and Conditions, posted on-line at http://www.urbantrustsuccess.com/success_card_rebrand/elastic_terms.html); Elastic Card, posted on-line at http://www.elastic.com/HowItWorks.aspx.

MetaBank Information: http://www.myiadvance.com/faq.aspx; http://www.myiadvance.com/eligible-cards.aspx.

Guaranty Bank Information: http://www.guarantybanking.com/easyadvance.aspx; Easy Advance Summary Guide and Service Agreement, posted on-line at http://www.guarantybanking.com/SiteContent/5871/terms%20and%20conditions%202-23-10%20gb.pdf.

Bank Payday Loan Products *(continued)*

MAXIMUM DURATION	ELECTRONIC REPAYMENT TERMS AND OPTIONS	NON-ELECTRONIC REPAYMENT OPTIONS	DIRECT DEPOSIT REQUIREMENT	OTHER
35 days	Repayment is automatically deducted from next direct deposit of $100 or more or any deposit of $100 or more (if borrower is not a qualified direct deposit cusomter). If next direct or other deposit does not repay in full, whole deposit will be seized. If balance is not paid in full by 35th day, the balance will be deducted from the account, even if doing so overdraws account and leads to overdraft fees.		Not required. Considered to have direct deposit if in each of the previous 3 months account received a direct deposit of $75 or more from employer, a governmental agency or other payor. Direct deposits may include both recurring and one-time deposits, such as a tax refund. Must be age 18 or above. Must have checking account (personal, individual, or joint) in good standing open for 120 days that received at least $500 in deposits (of at least $75 each) in each of the last three months. Must not be in bankruptcy and account must not be subject to legal process.	"Approvals are instant with no paper work [sic] to complete." May lose eligibility in certain situations, including: access suspended until positive balance is restored and maintained for at least six days if account is overdrawn for 7 consecutive business days. After 12 consecutive advances, not eligible for advance for 35 days after 12th advance repaid in full. Forced arbitration of disputes.

Account advance products look just like payday loans, except they are offered directly by banks. Account advance products typically work as follows.[30] First, the customer asks her or his bank for an "advance" of funds, which the bank schedules to deposit into the customer's account. Provided the customer meets minimal eligibility criteria, such as direct deposits of a certain frequency and amount, the bank automatically advances the funds. The bank then repays itself in full for the advance plus the fee by taking some or all of the customer's next deposit. If this deposit is insufficient to repay the bank in full, the bank keeps taking subsequent deposits.[31] If deposits within 35 days do not fully cover the loan plus the fees incurred, the bank simply overdraws the customer's account to repay itself. The bank's withdrawals often leave the account with insufficient funds to cover checks the consumer has written, leading to a cascade of overdraft fees.

"Advance" amounts are usually capped at $500 and cost at least $10 per $100 loaned. While banks *do* disclose *sample* account advance APRs to consumers, the disclosed rate is generally 120%. However, the *actual cost* incurred by the customer depends on the length of time the loan is outstanding: the shorter the repayment time, the higher the APR.[32] For example, under the terms of Wells Fargo's Direct Deposit Advance product, the actual APR can be as high as 1,825%, as demonstrated by an analysis of the account of one borrower who took out an account advance with a two-day duration (see Appendix B).

The new limitations on overdrafts, which will require affirmative consumer opt-in for banks' overdraft loan programs, will likely reduce banks' overdraft fee revenues, perhaps by 27% to 34%.[33] Banks are likely to push customers toward bank account advance loans to replace this lost revenue,[34] making these high-cost, predatory loans a growing threat to seniors. Because most seniors receiving Social Security benefits do so via direct deposit,

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[30] *See* Ctr. for Responsible Lending, Mainstream Banks Making Payday Loans 3, 11 (Feb. 2010), *available at* http://www.responsiblelending.org/payday-lending/policy-legislation/regulators/Mainstream-banks-making-payday-loans.html. *See also* Nat'l Consumer Law Ctr., Bank Payday Loans . . . They're Baaaaaaaack (June 2009), *available at* http://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/pr_prepaid_payday_loans.pdf.

[31] Some banks offer other repayment options, but these are limited in term and availability.

[32] *See* Ctr. for Responsible Lending, Mainstream Banks Making Payday Loans 1, 4 (Feb. 2010), *available at* http://www.responsiblelending.org/payday-lending/policy-legislation/regulators/Mainstream-banks-making-payday-loans.html.

[33] One study has concluded that "about 73% of the nation's overdraft business is secure, leaving only 27% of the business at risk." Sara Lepro, *Overdrafts' Demise May Be Overblown*, Am. Banker, May 17, 2010. Another analyst has estimated that banks' and credit unions' income from overdrafts will decrease by a minimum of $7.3 billion in 2010 or 34%. Bretton Woods, Inc., Fee Analysis Update of Bank and Credit Union Non-Sufficient Funds and Overdraft Protection Programs 5 (2009), *available at* http://www.cfsa.net/downloads/Bretton%20Woods%20NSF-OD%20Fees%20Analysis%20Final_2010.pdf.

[34] *See, e.g.*, FICO, Opting In or Out: Protecting Revenue Under Overdraft Reform 3 (July 2009), *available at* http://www.fico.com/en/FIResourcesLibrary/Insights_Opting_In_or_Out_2578WP.pdf (advising banks that they "can expect a significant financial impact to their income statement through changes in non-interest income" thus "new product development" is necessary). *See also* Jeff Plungis, *Banks May Use Payday-Style Loans to Replace Lost Overdraft Fees*, Bloomberg News, Feb. 23, 2010, http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a25EweZDVeAU.

they will likely be a key target for increased marketing of bank payday loan products. Indeed, payday lenders have long welcomed the opportunity to make loans to Social Security and other benefit recipients because these recipients have regular sources of income that can be tapped for repayment.[35] The activities of payday lenders who solicit Social Security beneficiaries to take out high-interest loans have already been noticed by the Social Security Administration.[36]

Many low- and moderate-income seniors are now enduring a recession which has exacerbated long-standing financial pressures that result from rising living costs, diminished savings, and insecure incomes.[37] To survive, many are forced to borrow money to meet essential expenses, making them more vulnerable to the marketers of bank payday loans.[38]

3. *How Bank Payday Loans to Prepaid Debit Card Holders Work*

At least two banks, Urban Trust and MetaBank, offer expensive, payday loan like account advances through prepaid debit cards issued by them, sometimes in conjunction with other financial services providers.

Prepaid debit cards are used by many recipients of Social Security and other federal benefits. Some of those recipients are not permitted bank accounts because of past troubles with banks, while others choose not to use banks for one reason or another.

Payments to many of these unbanked recipients of Social Security and other benefits are distributed by direct deposits through alternative financial providers such as check

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[35] *See* Ellen E. Schultz & Theo Francis, *High-Interest Lenders Tap Elderly, Disabled*, Wall Street J., at A1, Feb. 12, 2008 (documenting payday lenders' tactic of "increasingly targeting recipients of Social Security and other government benefits"); *see also* Colorado Uniform Consumer Credit Code Administrator, Payday Lending Demographic and Statistical Information: July 2000 through December 2008, at 5 (2010), *available at* http://www.coloradoattorneygeneral.gov/sites/default/files/uploads/uccc/DDLASummary2008rev.pdf (citing laborer, office worker, and benefit recipient as the three most common occupations for payday loan borrowers); *Protecting Social Security Beneficiaries from Predatory Lending and Other Harmful Financial Institution Practices: Hearing Before the Subcomm. on Social Security of the H. Comm. on Ways & Means*, 110th Cong. 7-8 (2008) (statement of Jean Ann Fox, Director of Financial Services, Consumer Federation of America), *available at* http://www.consumerfed.org/elements/www.consumerfed.org/file/finance/Jean_Ann_Fox_Testimony_Ways_and_Means_Social_Security_6-24-08.pdf (estimating that as of 2008 Social Security and Supplemental Security Income and other public benefits recipients paid $860 million per year in payday loan finance charges).

[36] Federal Government Participation in the Automated Clearing House, 75 Fed. Reg. 27239, 27243 (proposed May 14, 2010) (to be codified at 31 C.F.R. pt. 210).

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[37] *See, e.g.*, Deanne Loonin & Elizabeth Renuart, *The Life and Debt Cycle: The Growing Debt Burdens of Older Consumers and Related Policy Recommendations*, 44 Harv. J. on Legis. 167, 170-73 (2007) (discussing the squeeze on seniors from decreasing resources and increasing living expenses); West Virginia Center on Budget & Policy, Long Term Care Partnership, and Wider Opportunities for Women, Elders Living on the Edge: When Basic Needs Exceed Income in West Virginia 1, 1 (2010), *available at* http://www.wvpolicy.org/downloads/WV_Elder_Policy_Brief060210.pdf (explaining that "today's elders are pressured by increasing housing, health care, food and utility expenses while the value of their assets and their incomes are eroded by weaknesses within the economy").

[38] *See* Deanne Loonin & Elizabeth Renuart, *The Life and Debt Cycle: The Growing Debt Burdens of Older Consumers and Related Policy Recommendations*, 44 Harv. J. on Legis. 167, 170-73 (2007) (explaining that seniors are "going into debt and filing for bankruptcy in record numbers" and that the debt is often "unaffordable").

cashers.[39] The check cashers and other alternative financial providers in turn provide the federal money to the recipients using a variety of methodologies, including prepaid debit cards.[40]

[39] According to a recent Inspector General's report, which performed a "limited analysis" of the use of non-bank repositories, 35,705 individuals received their SSA payments through non-bank providers. These SSA payments, totaling approximately $25 million, were deposited into accounts held in the name of the provider in nine different banks, and then distributed the funds to the recipients. Office of the Inspector General, Social Security Admin., Old-Age, Survivors and Disability Insurance Benefit Payments Sent to Non-Bank Financial Service Providers, A-06-09-29090, at 5 (2010), *available at* http://www.ssa.gov/oig/ADOBEPDF/audittxt/A-06-09-29090.html.

[40] The market includes a confusing variety of programs used by recipients to access their federal benefits when they do not have bank accounts. Some use private-label debit cards offered by non-banks; some use debit cards which can be used in MasterCard and Visa networks. Other prepaid debit cards are sold by merchants, payday lenders or check cashers, and licensed for use through the MasterCard or Visa networks. The cards are provided to recipients of federal benefits as an alternative means to receive the direct deposits. *See generally* Consumers Union, Prepaid Cards: Second-Tier Bank Account Substitutes (Aug. 2009), available at http://www.defendyourdollars.org/Prepaid%20WP.pdf (analyzing prepaid cards available for this purpose). Some programs are offered through check cashers or small loan companies that require recipients to physically go down to the provider and pick up their check and then pay to have their check cashed. These alternative non-bank distribution systems can be quite expensive for the recipients, who often must pay multiple fees just to access their money. For example, a recipient may be charged separately for all of the following: making each deposit, receiving a paper check in the amount of a benefits payment, cashing that check, and purchasing money orders or other payment products. *See* Office of the Inspector General, Social Security Admin., Old-Age, Survivors and Disability Insurance Benefit Payments Sent to Non-Bank Financial Service Providers, A-06-09-29090, at 6 (2010), *available at* http://www.ssa.gov/oig/ADOBEPDF/audittxt/A-06-09-29090.html.

The advances made by Urban Trust and MetaBank through prepaid debit cards are essentially bank payday loan products, although the mechanics are slightly different. Instead of having a bank account into which benefits or other sources of income are deposited, the borrowers' funds appear to be deposited first into pooled accounts and then onto the debit card. Account advance features, such as MetaBank's *iAdvance* line of credit or Urban Trust's Elastic, transform prepaid debit cards into credit instruments. As with payday loans tied to individuals' bank accounts, the accounts must meet certain criteria, including regular direct deposits, and the bank will typically repay itself for the advance plus the fee from subsequent direct deposits.

III. THE QUESTIONABLE LEGALITY OF BANK AND PREPAID DEBIT PAYDAY LOANS

The legality of these bank and prepaid debit card payday loans is highly questionable in several respects, especially when protected Social Security or other federal benefits are used to repay the loans.

1. Section 207 of the Social Security Act

The first analysis is under Section 207 of the Social Security Act and similar protections in other federal statutes[41] which prohibit garnishment, attachment, or other legal process against Social Security and other federal

[41] 42 U.S.C. § 407 (Social Security); 42 U.S.C. § 1383(d)(1) (SSI); 38 U.S.C. § 5301(a) (VA benefits).

benefits. Banks collect the debts for these loans by deducting the amount due from the borrower's bank account, a procedure called "set-off."

Numerous cases have held that it is illegal for banks to exercise their set-off right against federally exempt funds.[42] Yet, ever since 2003, when the U.S. Supreme Court decided *Washington State Dep't of Health & Human Servs. v. Guardianship Estate of Keffeler*,[43] banks have argued that their use of set-off is explicitly excluded from the protections enumerated in section 207 of the Social Security Act.

The Supreme Court's decision in *Keffeler* is in fact irrelevant to the issue of whether a bank can access the protected funds to repay debts owed to the bank. *Keffeler* did not address the authority of a bank to have preferential treatment over all the recipient's other creditors. *Keffeler* arose from an entirely different situation. There, the Court upheld the State of Washington's self-reimbursement for the maintenance of foster children in its care from the foster children's Social Security benefits. The State was accessing the benefits lawfully by serving as the children's representative payee, and the Court recognized the State's right to fill this important role for its foster children.[44] By contrast, the practice which we are concerned about involves banks taking exempt funds—*without* the explicit legal approval for doing so that exists for representative payees—for the banks' sole benefit, to the clear detriment of recipients.

Moreover, cases both before and after *Keffeler* have specifically held that banks may *not* set off their own claims against exempt federal funds.[45] Indeed, in a post-*Keffeler* reported decision concerning whether Section 207 prohibits a bank from taking exempt funds to pay a debt owed to it, a federal district court analyzed the case law and found that the pre-*Keffeler* prohibition against bank setoffs still applies.[46] To support its rejection of bank set-offs against exempt funds, the federal district court quoted the Tenth Circuit:

> We can see no reason why Congress would, on the one hand, choose to protect

[42] *See, e.g., Tom v. First Am. Credit Union*, 151 F.3d 1289 (10th Cir. 1998) (noting that there is no relevant difference between set-off and garnishment); *Hambrick v. First Security Bank*, 336 F. Supp. 2d 890 (E.D. Ark. 2004) (holding that Social Security's anti-assignment provision prohibited application of bank's set-off provisions in bank customer's agreements with bank); *Marengo v. First Massachusetts Bank, N.A.*, 152 F. Supp. 2d 92 (D. Mass. 2001) (holding that bank's set-off against Social Security funds violated Social Security Act); *In re Brewer*, 2002 WL 32917680 (Bktcy. S.D. Ill., Aug. 15, 2002) (holding that 42 U.S.C. § 407(a) prohibited Credit Union from taking Debtor's Social Security funds regardless of Debtor's prior agreement, which allowed those funds to act as collateral for Debtor's loans from the Credit Union).

[43] *Washington State Dep't of Health & Human Servs. v. Guardianship Estate of Keffeler*, 537 U.S. 371 (2003).

[44] *Id.* at 389-92.

[45] *See, e.g., Tom v. First Am. Credit Union*, 151 F.3d 1289 (10th Cir. 1998) (noting that there is no relevant difference between set-off and garnishment); *Hambrick v. First Security Bank*, 336 F. Supp. 2d 890 (E.D. Ark. 2004) (holding that Social Security's anti-assignment provision prohibited application of bank's set-off provisions in bank customer's agreements with bank); *Marengo v. First Massachusetts Bank, N.A.*, 152 F. Supp. 2d 92 (D. Mass. 2001) (holding that bank's set-off against Social Security funds violated Social Security Act); *In re Brewer*, 2002 WL 32917680 (Bktcy. S.D. Ill., Aug. 15, 2002) (holding that 42 U.S.C. § 407(a) prohibited Credit Union from taking Debtor's Social Security funds regardless of Debtor's prior agreement, which allowed those funds to act as collateral for Debtor's loans from the Credit Union).

[46] *Hambrick v. First Security Bank*, 336 F. Supp. 2d 890 (E.D. Ark. 2004).

Social Security beneficiaries from creditors who utilized the judicial system, a system that is built upon principles of fairness and protection of the rights of litigants, yet, on the other hand, leave such beneficiaries exposed to creditors who devised their own extra-judicial methods of collecting debts.[47]

2. Electronic Fund Transfer Act

The Electronic Fund Transfer Act (EFTA) prohibits creditors from requiring debtors to authorize electronic fund transfers to repay debts.[48] Yet, in one way or another, all of the products that this report has reviewed essentially permit the bank-creditors unfettered access to the borrowers' bank accounts. Even when the borrower is trying to repay the loan manually (by mail or in person) the product descriptions generally appear to provide no way for the borrower to stop the bank from seizing amounts still due at the end of the loan term (in most cases 35 days after the money was lent).

In a few products, the guidelines do appear to permit the borrower to close down the automatic payment option which permits the bank to seize the balance directly from the account. But this option is only available if 1) the borrower pays a significant fee to exercise this option, and 2) the fee is paid *before* incurring the debt. The product guidelines require that the loan will be repaid using the same terms in existence when the loan was made. The $100 Wells Fargo fee, 20% of the maximum credit limit, is so large that it is highly unlikely that most borrowers will choose to pay it. Moreover, there is no reason to believe that the bank would not still exercise what it generally believes to be its contractual set-off right to seize the funds if the loan was not repaid when due.

As a result, the requirements that existing credit be repaid using the debit method appear to mean that electronic fund transfers to repay the loans are indeed mandatory, and thus in violation of the EFTA.

3. Failure to determine ability to repay

Additionally, banks are prohibited from making loans without first determining the borrower's ability to repay the loan. The regulations governing bank lending by national banks explicitly provide—

> (b) *Standards for loans.* A national bank shall not make a consumer loan subject to this § 7.4008 based predominantly on the bank's realization of the foreclosure or liquidation value of the borrower's collateral, without regard to the borrower's ability to repay, including, for example, the borrower's current and expected income, current and expected cash flows, net worth, other relevant financial resources, current financial obligations, employment status, credit history, or other relevant factors.[49]

Needless to say, banks do not appear to analyze the affordability of these bank payday loans before making the loans. In fact, the typical bank payday loan is *not* affordable—it is made to a person who is already unable to meet current obligations and will be left in even more desperate straits by the payday loan. The only real core criterion for the loans is the receipt of a certain number of recurring

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[47] *Tom*, 151 F.3d at 1292 (citing Crawford v. Gould, 56 F.3d 1162, 1166 (9th Cir. 1995)).

[48] 15 U.S.C. § 1693k(1).

[49] 12 C.F.R. § 7.4008(b).

direct deposits at or above a set dollar amount into a bank account in good standing or onto a prepaid debit card.[50]

The lending rules applicable to national banks are also applicable to state banks regulated by the FDIC.[51] In 2007, the FDIC issued guidelines for the use of state bank charters for payday lending made by non-bank partners.[52] Furthermore, *most, if not all, of these banks' programs appear to violate* the guidelines that govern whenever banks make small loans.[53] These provisions require the bank to:[54]

- Collect fees that bear a direct relationship to origination costs and avoid charges such as annual fees, membership fees, advance fees, and prepayment penalties;
- Offer small-loan credit with APRs of no greater than 36%;
- Encourage principal reduction by structuring closed-end loans to provide for affordable and amortizing payments; open-end loans should require minimum payments that pay off principal;
- Avoid excessive renewals or the prolonged failure to reduce the outstanding balance; and
- Utilize sound underwriting that focuses on a borrower's history with the institution and ability to repay within an acceptable timeframe, though for small loans, documenting the borrower's ability to repay could be streamlined to include basic information, such as proof of recurring income.

[50] *See supra* Part II.2 (displaying a products chart with details about the requirements).

[51] 12 U.S.C. § 1831(a)(1) (stating that a state bank may not engage as principal in any type of activity that is not permissible for a national bank except in two circumstances, both of which are not relevant here).

[52] *See, e.g.* Fed. Deposit Ins. Corp., FIL-14-2005, FDIC Guidelines for Payday Lending (2005), *available at* www.fdic.gov/news/news/financial/2005/fil1405a.html.

[53] Fed. Deposit Ins. Corp., FIL-50-2007, Affordable Small-Dollar Loan Guidelines (2007).

[54] Fed. Deposit Ins. Corp., FIL-50-2007, Affordable Small-Dollar Loan Guidelines (2007).

IV. AN ILLUSTRATION OF THE EXORBITANT COST OF BANK PAYDAY LOANS

Use of high-cost, short-term loans can have devastating effects on consumers, trapping them in a cycle of repeat borrowing and constricting their ability to provide for their basic needs. Rather than help borrowers survive, these loans can push them closer to the financial brink.

Consider the story of Mr. B,[55] who after using Wells Fargo's Direct Deposit Advance program, found himself paying exorbitant interest rates and locked in a cycle of debt that aggravated rather than alleviated financial distress. A review of 39 consecutive monthly statements showed that Mr. B had taken out 24 Direct Deposit Advances, totaling $12,000. These account advance loans had an average duration of just over eight days, with the shortest running just two days and the longest twenty-one days. The finance charges for these short-term loans totaled $1,200, and their effective APRs ranged from 182% to 1,825%.

Ironically, even though account advance loans are marketed as a way of avoiding overdraft fees, Mr. B still ended up paying $676 in overdraft penalties on top of the $1,200 in loan

[55] *See supra* apps. A & B (showing the details of Mr. B's borrowing).

fees. For example, on the last Thursday and Friday of July 2007, eight checks cleared Mr. B's account for a total of $2,976 in withdrawals. That more than erased his previous balance of $2,471. So, on Monday, he took out a Direct Deposit Advance of $500.

Alas, that was too little. Even after the loan, Mr. B's account still had a negative balance of $4.61. When four more checks cleared on Monday, he was socked with $74 in overdraft fees.

Tuesday was worse. A single check for $76 cleared the account, and the bank hit Mr. B with $141 more in overdraft fees. Wednesday brought a bit of relief when three pension checks totaling nearly $3,800 were deposited into the account, erasing a deficit that had climbed to nearly $970. Yet even on that day, the bank assessed another $34 overdraft fee. Additionally, it collected $550 to pay off the principal and finance charge of the $500 Direct Deposit Advance. With a duration of only four days, that loan came at a cost equivalent to a closed-end loan with a 913% APR, counting *only* the Direct Deposit Advance fees and not the overdraft fees.

Note: Appendix C provides a detailed summary of three months of transactions in Mr. B's account, including the expensive sequence in late July 2007.

V. THE DIRECT DEPOSIT PUSH: PAST AND PRESENT

In the past 14 years, the federal government has undertaken a major effort to persuade seniors to open bank accounts and use those accounts to receive direct deposits of Social Security and other federal benefits. The government has promoted bank accounts as a safer way for recipients to receive and maintain their benefits.[56] But our estimate that seniors lose at least $700 million of their Social Security benefits annually to fee-based overdraft loans casts serious doubt on this claim. As long as these predatory bank loans exist, seniors will have good reason to avoid bank accounts, as using paper checks has allowed them to maintain control over their funds and keep banks from helping themselves to vital subsistence payments.

Over most of the life of the Social Security program, the government mailed checks to most benefits recipients. This pattern began to change in 1996. In that year, to cut the costs and reduce the paperwork of benefits distribution, Congress passed a law commonly known as "EFT-99" (Electronic Funds Transfer) requiring that most federal payments except tax refunds be made electronically by January 1999.[57]

The government's efforts to promote direct deposit promised recipients better security and timely payments. For example, in 2005, the Social Security Administration launched a $24-million "Go Direct" marketing campaign to promote direct deposit.[58] The Treasury Department recently estimated that "more than 4.3 million direct deposit enrollments have been achieved since 2005 as a result of the campaign's activities."[59] In June 2010, Treasury estimated that 87% of Social Security benefits

[56] Management of Federal Agency Disbursements, 75 Fed. Reg. 34394, 34395 (proposed June 17, 2010) (to be codified at 31 C.F.R. pt. 208).
[57] 31 U.S.C. § 3332(f)(1).
[58] Mark Hand, *Treasury Taps WS for Direct-deposit Push*, PR Week, Aug. 8, 2005, at 4.
[59] Management of Federal Agency Disbursements, 75 Fed. Reg. 34394, 34395 (proposed June 17, 2010) (to be codified at 31 C.F.R. pt. 208).

and 65% of Supplemental Security Income benefits were issued electronically.[60]

As an alternative for recipients who cannot or will not use bank accounts,[61] Treasury has established the Direct Express card, a low-cost debit MasterCard developed exclusively for federal benefits recipients. The Direct Express card is a good program which provides a simple, inexpensive and, most importantly, safe mechanism by which unbanked recipients of federal benefits can receive their benefits through direct deposit. Users of the Direct Express card can access their funds at little or no cost, there is no possibility for expensive overdraft or other loan products to be added to the card, and garnishment of funds on the card is prohibited.[62]

The Direct Express card does have its drawbacks: other funds cannot be added to the card, checks cannot be easily written from the funds on the card, and there is only one free withdrawal. However, by April 4, 2010, over 1 million eligible recipients of benefits from the Social Security Administration had signed up for the program.[63]

Many recipients still opt to receive their benefits by paper check. In 2003, the government printed and mailed out 170 million checks at an estimated annual cost of $100 million.[64] In April 2010, the Treasury Department estimated that it mailed out 9.5 million Social Security and SSI checks.[65] Despite the decline in volume, the annual cost of mailing paper checks was still estimated at $100 million.[66] In 2009, recipients of Social Security and SSI accounted for more than 92% of the paper benefits checks issued by Treasury.[67]

A Treasury survey found that some check recipients did not want bank accounts because they were "afraid of incurring high fees as a result of having a bank account." [68] At least

[60] *See* U.S. Social Security Admin., Social Security Administration Beneficiaries Trend in Direct Deposit Participation, Percent Direct Deposit (2010), *available at* www.ssa.gov/deposit/GIS/data/Reports/DDTREND2.htm.

[61] Treasury estimates that over 4 million recipients of SSA benefits are unbanked. Management of Federal Agency Disbursements, 75 Fed. Reg. 34394, 34395 (proposed June 17, 2010) (to be codified at 31 C.F.R. pt. 208).

[62] Management of Federal Agency Disbursements, 75 Fed. Reg. 34394, 34397 (proposed June 17, 2010) (to be codified at 31 C.F.R. pt. 208).

[63] Management of Federal Agency Disbursements, 75 Fed. Reg. 34394, 34397 (proposed June 17, 2010) (to be codified at 31 C.F.R. pt. 208).

[64] Fed. Reserve Bank of St. Louis, Understanding the Dependence on Paper Checks: A Study of Federal Benefit Check Recipients and the Barriers to Boosting Direct Deposit 1 (2004), *available at* http://www.fms.treas.gov/eft/reports/EFTResearch7.27.04FINAL.pdf.

[65] Go Direct, Monthly Social Security and SSI Payments by State, Ranked by number of check payments, www.godirect.org/userfiles/file/April%20 2010%20-%20Payment%20Stats%20by%20State.doc.

[66] Go Direct, Monthly Social Security and SSI Payments by State, Ranked by number of check payments, www.godirect.org/userfiles/file/April%20 2010%20-%20Payment%20Stats%20by%20State.doc; *see also* Management of Federal Agency Disbursements, 75 Fed. Reg. 34394, 34403 (proposed June 17, 2010) (to be codified at 31 C.F.R. pt. 208) (estimating that eliminating paper checks would have saved $125 million in FY 2009).

[67] Management of Federal Agency Disbursements, 75 Fed. Reg. 34394, 34401 (proposed June 17, 2010) (to be codified at 31 C.F.R. pt. 208).

[68] A 2003 survey of Social Security and Supplemental Social Security Income recipients who chose to keep receiving paper checks found that many expressed concerns that "having money deposited directly in the bank seemed to them to take away their sense of control." Fed. Reserve Bank of St. Louis, Understanding the Dependence on Paper Checks: A Study of Federal Benefit Check Recipients and the Barriers to Boosting Direct Deposit 1, 4 (2004), *available*

some of those concerns were well founded. Funds direct deposited into bank accounts may be subject to fees for using automated teller machines, overdrafts or account balances that fall below minimum requirements.[69] And direct deposits are not always secure. As a 2008 GAO report warned, "[e]lectronic payments are susceptible to unauthorized use, loss, or theft, just as paper payments, albeit to a lesser extent."[70] Even in 1996, when it adopted EFT-99, Congress recognized that "many payees rely on these payments for their basic subsistence," and directed the Treasury Department to undertake its direct deposit effort with extreme care.[71]

In the spring of 2010, Treasury launched a stronger push for electronic distribution of benefits. As of March 1, 2011, new beneficiaries will only be able to receive their funds by direct deposit.[72] Recipients whose benefits started or were filed before that date will be able to continue getting paper checks, but only until March 1, 2013—less than three years from now. At that time, all Social Security payments will be made electronically, with only very limited exceptions.[73] Recipients who do not arrange for the direct deposit of federal funds directly into a bank account will be provided the Direct Express card.[74]

The details of this complete conversion to direct deposit are being worked out in two proposed rules from the Treasury Department. A proposed rule—published on June 17, 2010, with comments due by August 16, 2010[75]—will make it next-to-impossible for beneficiaries to opt out of direct deposit. Currently, a recipient can get a waiver of the direct deposit requirement "[w]here an individual determines, in his or her sole discretion, that payment by electronic funds transfer would impose a hardship due to a physical or mental disability or a geographic, language, or literacy barrier, or would impose a financial hardship."[76] This flexible standard affords a great deal of individual control; for instance, it allows a beneficiary to receive a paper check and cash it through a relative's account at no cost to herself or himself and with no risk of the funds being taken by banks for high-cost, short-term loans.

at http://www.fms.treas.gov/eft/reports/EFTResearch7.27.04FINAL.pdf.

[69] U.S. Gov't Accountability Office, GAO-08-645, Electronic Payments: Many Programs Electronically Disburse Federal Benefits, and More Outreach Could Increase Use 19 (2008).

[70] U.S. Gov't Accountability Office, GAO-08-645, Electronic Payments: Many Programs Electronically Disburse Federal Benefits, and More Outreach Could Increase Use 30 (2008).

[71] 142 Cong. Rec. H4046, 4091 (daily ed. Apr. 25, 1996) (statement of Rep. Horn).

[72] *See* Carole Fleck, *All Social Security Benefits to go Electronic*, AARP Bull., Apr. 23, 2010, http://www.aarp.org/work/social-security/info-04-2010/all_social_security_benefits_to_go_electronic_.html; *see also* Management of Federal Agency Disbursements, 75 Fed. Reg. 34394 (proposed June 17, 2010) (to be codified at 31 C.F.R. pt. 208).

[73] *See* Carole Fleck, *All Social Security Benefits to go Electronic*, AARP Bull., Apr. 23, 2010, http://www.aarp.org/work/social-security/info-04-2010/all_social_security_benefits_to_go_electronic_.html; *see also* Ed O'Keefe, *Federal Benefits to be Paid Electronically by 2013*, Wash. Post, Apr. 19, 2010, http://www.washingtonpost.com/wp-dyn/content/article/2010/04/18/AR2010041803094_pf.html; Management of Federal Agency Disbursements, 75 Fed. Reg. 34394, 34396 (proposed June 17, 2010) (to be codified at 31 C.F.R. pt. 208).

[74] Management of Federal Agency Disbursements, 75 Fed. Reg. 34394, 34397-98 (proposed June 17, 2010) (to be codified at 31 C.F.R. pt. 208).

[75] Management of Federal Agency Disbursements, 75 Fed. Reg. 34394, 34397-98 (proposed June 17, 2010) (to be codified at 31 C.F.R. pt. 208).

[76] 31 C.F.R. § 208.4(a).

Additionally, the rule proposed June 17, 2010 would limit waiver of the direct deposit requirement to rare circumstances. Waivers will only be available when recipients meet objective criteria, such as presence in a designated disaster area within 120 days of the disaster.[77] There will be no room for meaningful individual determinations about which arrangement—paper check or electronic deposit—best suits recipients' needs.

Another proposed rule—published on May 14, 2010, with comments due by July 13, 2010[78]—will permit the deposit of Social Security and other benefits onto prepaid debit cards with minimal consumer protections. So long as the prepaid cards are protected by FDIC insurance and Regulation E (governing electronic funds transfers), [79] under Treasury's proposal, the cards will be acceptable depositories for federal benefits.

These protections, however, do not adequately address the major concerns surrounding these arrangements. First, at least one bank will make payday loans to holders of prepaid debit cards issued by the bank and co-branded with another financial services company. FDIC insurance protects against the failure of banks, not non-banks in whose name deposits of benefits might be carried at banks. It is unclear what protection, if any, FDIC insurance offers holders of co-branded cards against the loss of their benefits caused by the non-bank. If the co-branding company is a non-bank, and the benefits are carried under this company's name at a bank, then FDIC insurance would not protect against the bankruptcy of this company. This same concern also arises when a bank makes payday loans to holders of prepaid debit cards from card providers with which the bank has an agreement—as at least one bank does—if these providers are non-banks and carry recipients' benefits in their names at banks.

Second, users of prepaid cards will be vulnerable to predatory lending, including the bank payday loans that can be obtained through prepaid cards. Recipients can easily be thrown into spiraling debt and lose access to vital subsistence funds, as banks will simply seize funds from the accounts once the benefits are directly deposited into them if the debts are not paid directly.

The continued promotion of the Direct Express Card[80] does not alleviate concerns about other prepaid cards because benefits recipients may choose any prepaid debit card, not just Direct Express, to receive direct deposits. The government push for direct deposit will create huge marketing opportunities for banks to pull recipients into their expensive, high-cost web of credit products—from overdraft products on bank accounts to the bank payday loans offered on both bank accounts and prepaid debit cards.

VI. RECOMMENDATIONS FOR KEEPING FEDERAL BENEFITS SAFE

As the federal government propels seniors and other benefit recipients into mandatory

[77] 31 C.F.R. § 208.4(c).

[78] Federal Government Participation in the Automated Clearing House, 75 Fed. Reg. 27239, 27239-48 (proposed May 14, 2010) (to be codified at 31 C.F.R. pt. 210).

[79] Federal Government Participation in the Automated Clearing House, 75 Fed. Reg. 27239, 27244-45 (proposed May 14, 2010) (to be codified at 31 C.F.R. pt. 210).

[80] Management of Federal Agency Disbursements, 75 Fed. Reg. 34394 (proposed June 17, 2010) (to be codified at 31 C.F.R. pt. 208). We understand the Federal Reserve Board is contemplating an expansion of Regulation E coverage to include prepaid debit cards such as those discussed in this report.

use of direct deposit, it has an obligation to make sure the direct deposit vehicles—bank accounts and prepaid debit cards—are safe from high-cost loans.

First, bank regulators, in conjunction with the Consumer Financial Protection Bureau that would be established through the pending financial reform legislation, should adopt and enforce meaningful tests to ensure that banks will offer only responsible small-dollar loan products to their customers. The core criteria for such loans should be the following:[81]

- No lending without an evaluation of the recipient's ability to afford the payments on the loan;
- An APR, including fees, of 36% or less;
- A term of at least 90 days, or one month per $100 borrowed, depending on the affordability analysis;
- Multiple installment payments rather than a lump sum repayment;
- A prohibition against securing the loans through electronic access to a bank account—which means that recipients cannot be required to agree to electronic repayment, and for those who have agreed, they should be permitted at any time to stop the bank's access *without cost* from seizing funds from their account.

These criteria will ensure that beneficiaries are able to use bank accounts and prepaid debit cards safely. They will also ensure that precious federal dollars intended to prevent destitution are not transferred directly to financial institutions through exorbitant credit fees and interest.

Second, the Treasury Department should allow direct deposit of Social Security and other benefits only into bank accounts and onto prepaid debit card accounts that do not offer payday loan products. If a bank or prepaid debit card provider offers loans that do not satisfy the five criteria set forth above, direct deposit should not be allowed. Additionally, to make sure that these federal benefits serve their intended purpose of providing for recipients' necessities, Treasury should forbid banks from helping themselves electronically to Social Security and other exempt benefits as repayment for any loan product.

CONCLUSION

As more and more seniors find themselves on the direct deposit bandwagon, the federal government must ensure that they are protected from the predatory loan products being offered as a feature of the accounts into which their benefits are being deposited. Social Security payments are not designed to aid banks scrambling to preserve profit margins and offset lost revenue from fee-based overdraft programs. Social Security is intended to provide seniors with income to cover necessities. For many, Social Security income is critical to pay for basic necessities. The government's effort to save money by promoting direct deposit must not expose seniors to the indignities and dangers of poverty.

[81] *See* Nat'l Consumer Law Ctr., Stopping the Payday Loan Trap: Alternatives That Work, Ones That Don't 8-18 (2010), *available at* http://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/report-stopping-payday-trap.pdf (detailing the APR, term, installment payment, and no electronic repayment criteria and how adherence to these criteria necessitate that lenders conduct a thorough evaluation of a borrower's ability to repay).

APPENDIX A

Disclosed APRs Hid Costliness of Wells Fargo Direct Deposit Advances

While Mr. B's monthly statements told him that he would pay interest at an Annual Percentage Rate of 120 percent to use Wells Fargo's bank payday loan product, the actual APR for the loans—some of which lasted only two days—was much higher.

STATEMENT DATE(S)	DIRECT DEPOSIT ADVANCE TRANSACTION DATE	DIRECT DEPOSIT ADVANCE REPAYMENT DATE(S)	DURATION OF DIRECT DEPOSIT ADVANCE (DAYS)	DIRECT DEPOSIT ADVANCE AMOUNT	DIRECT DEPOSIT ADVANCE FINANCE CHARGE	STATED APR (PRESUMING OPEN-END CREDIT)	COMPUTED APR (COMPARABLE TO CLOSED-END LOAN OF SAME DURATION)
3/7/07	2/25/07	3/1/07	4	$500.00	$50.00	120%	913%
5/7/07	4/20/07	4/27/07	7	$500.00	$50.00	120%	521%
8/7/07	7/29/07	8/1/07	3	$500.00	$50.00	120%	1217%
9/10/07	8/25/07	8/31/07	6	$500.00	$50.00	120%	608%
10/5/07	9/12/07	9/14/07	2	$500.00	$50.00	120%	1825%
10/5/07	9/20/07	9/28/07	8	$500.00	$50.00	120%	456%
2/7/08	1/21/08	2/1/08	11	$500.00	$50.00	120%	332%
5/7/08	4/18/08	5/1/08	13	$500.00	$50.00	120%	281%
6/6/08	5/12/08	5/30/08 & 6/2/2008	21	$500.00	$50.00	120%	182%
9/8/08	8/20/08	8/29/08	9	$500.00	$50.00	120%	406%
11/7/08	10/25/08	10/31/08	6	$500.00	$50.00	120%	608%
12/5/08	11/22/08	11/26/08	4	$500.00	$50.00	120%	913%
2/6/09	1/22/09	1/30/09	8	$500.00	$50.00	120%	456%
3/6/09	2/26/09	3/2/09	4	$500.00	$50.00	120%	913%
4/7/09	3/18/09	3/30/09	12	$500.00	$50.00	120%	304%
5/7/09	4/25/09	4/30/09	5	$500.00	$50.00	120%	730%
7/7/09	6/20/09	6/30/09	10	$500.00	$50.00	120%	365%
8/7/09	7/27/09	7/31/09	4	$500.00	$50.00	120%	913%
11/6/09	10/25/09	10/30/09	5	$500.00	$50.00	120%	730%
12/7/09	11/18/09	11/30/09	12	$500.00	$50.00	120%	304%
1/8/10	12/23/09	12/31/09	8	$500.00	$50.00	120%	456%
2/5/2010 & 3/5/2010	1/29/10	2/12/10	14	$500.00	$50.00	120%	261%
3/5/10	2/16/10	2/26/10	10	$500.00	$50.00	120%	365%
4/7/10	3/20/10	3/30/10	10	$500.00	$50.00	120%	365%
TOTAL			196	$12,000.00	$1,200.00		

APPENDIX B

Fees, and More Fees

Even after paying $200 in finance charges for four bank payday loans taken out in a three-month period, Mr. B, a Wells Fargo customer, still got hit with $458 in overdraft penalties.

REPORTED ON STATEMENT DATED	TRANSACTION DATE	DATE DIRECT DEPOSIT ADVANCE REPAID OR OVERDRAFT PENALTY ASSESSED	TRANSACTION TYPE	OVERDRAFT PENALTY	DIRECT DEPOSIT ADVANCE AMOUNT
8/7/07	7/30/07	8/1/07	Direct Deposit Advance		$500.00
8/7/07	7/30/07	7/30/07	Overdraft penalty or penalties	$74.00	
8/7/07	7/31/07	7/31/07	Overdraft penalty or penalties	$141.00	
8/7/07	8/1/07	8/1/07	Overdraft penalty or penalties	$34.00	
9/10/07	8/22/07	8/22/07	Overdraft penalty or penalties	$68.00	
9/10/07	8/24/07	8/24/07	Overdraft penalty or penalties	$39.00	
9/10/07	8/25/07	8/31/07	Direct Deposit Advance		$500.00
10/5/07	9/12/07	9/12/07	Overdraft penalty or penalties	$68.00	
10/5/07	9/12/07	9/14/07	Direct Deposit Advance		$500.00
10/5/07	9/20/07	9/28/07	Direct Deposit Advance		$500.00
10/5/07	9/26/07	9/26/07	Overdraft penalty or penalties	$34.00	
			TOTALS	$458.00	$2,000.00

Fees, and More Fees *(continued)*

REPORTED ON STATEMENT DATED	FINANCE CHARGE	DURATION OF CREDIT (DAYS)	COMPUTED APR (COMPARABLE TO CLOSED-END LOAN OF SAME DURATION)	APR STATED BY BANK	PRE-TRANSACTION ACCOUNT BALANCE	POST-TRANSACTION ACCOUNT BALANCE
8/7/07	$50.00	2	1217%	120%	$(504.61)	$(4.61)
8/7/07					$(678.61)	$(752.61)
8/7/07					$(828.61)	$(969.61)
8/7/07					$2,276.58	$2,242.58
9/10/07					$(103.44)	$(171.44)
9/10/07					$(274.43)	$(313.43)
9/10/07	$50.00	6	608%	120%	$(313.43)	$186.57
10/5/07					$218.53	$150.53
10/5/07	$50.00	2	1825%	120%	$709.72	$1,209.72
10/5/07	$50.00	8	456%	120%		
10/5/07					$(50.28)	$(84.28)
	$200.00					

APPENDIX C

An Account on the Edge

Monthly statements from Mr. B's bank show the expensive fees incurred as he juggled bank payday loans and overdraft coverage in a futile effort to prevent his account balance from falling below zero.

Post Date	Balance	Withdrawal	Deposit	Notes
9-Jul	$3,997.28			Start balance
11-Jul	$3,497.28	$500.00		ATM—payment to credit card
11-Jul	$3,397.28	$100.00		ATM—withdrawal
12-Jul	$3,197.28	$200.00		ATM—withdrawal
13-Jul	$697.28	$2,500.00		Check
16-Jul	$597.28	$100.00		ATM—withdrawal
16-Jul	$497.28	$100.00		ATM—withdrawal
16-Jul	$397.28	$100.00		ATM—transfer to checking
18-Jul	$297.28	$100.00		ATM—withdrawal
18-Jul	$247.28	$50.00		Check
19-Jul	$147.28	$100.00		ATM—withdrawal
20-Jul	$1,556.48		$1,409.20	Mr. B's paycheck
23-Jul	$4,556.48		$3,000.00	ATM check deposit
23-Jul	$3,856.48	$700.00		ATM—payment to credit card
23-Jul	$3,656.48	$200.00		ATM—withdrawal
23-Jul	$3,456.48	$200.00		ATM—transfer to checking
23-Jul	$3,256.48	$200.00		ATM—payment to credit card
23-Jul	$3,156.48	$100.00		ATM—withdrawal
24-Jul	$2,786.48	$370.00		Check
24-Jul	$2,571.39	$215.09		Branch store withdrawal
24-Jul	$2,471.39	$100.00		ATM—withdrawal

Post Date	Balance	Withdrawal	Deposit	Notes
26-Jul	$1,671.39	$800.00		Check
26-Jul	$1,141.39	$530.00		Check
26-Jul	$898.39	$243.00		Check—Verizon Wireless
26-Jul	$698.39	$200.00		Check
26-Jul	$595.39	$103.00		Check—Verizon Wireless
27-Jul	$(104.61)	$700.00		Check—Sallie Mae
27-Jul	$(404.61)	$300.00		Check—Sallie Mae
27-Jul	$(504.61)	$100.00		Check—Sallie Mae
30-Jul	$(4.61)		$500.00	Direct Deposit Advance
30-Jul	$(504.61)	$500.00		Check
30-Jul	$(612.61)	$108.00		Check
30-Jul	$(647.61)	$35.00		Check
30-Jul	$(678.61)	$31.00		Check
30-Jul	$(701.61)	$23.00		Fee—overdraft
30-Jul	$(724.61)	$23.00		Fee—overdraft
30-Jul	$(747.61)	$23.00		Fee—overdraft
30-Jul	$(752.61)	$5.00		Level 2 charge—continuous overdraft
31-Jul	$(828.61)	$76.00		Check
31-Jul	$(862.61)	$34.00		Fee—overdraft
31-Jul	$(896.61)	$34.00		Fee—overdraft
31-Jul	$(930.61)	$34.00		Fee—overdraft
31-Jul	$(964.61)	$34.00		Fee—overdraft

An Account on the Edge *(continued)*

Post Date	Balance	Withdrawal	Deposit	Notes
31-Jul	$(969.61)	$5.00		Level 2 charge—continuous overdraft
1-Aug	$811.33		$1,780.94	Mr. B's military pension
1-Aug	$2,540.77		$1,729.44	Mr. B's federal employee pension
1-Aug	$2,826.58		$285.81	Mr. B's private employer pension
1-Aug	$2,326.58	$500.00		Repayment of Direct Deposit Advance
1-Aug	$2,276.58	$50.00		Finance charge for Direct Deposit Advance
1-Aug	$2,242.58	$34.00		Fee—overdraft
2-Aug	$2,142.58	$100.00		ATM—withdrawal
2-Aug	$2,042.58	$100.00		ATM—transfer to checking
2-Aug	$1,942.58	$100.00		ATM—payment to credit card
2-Aug	$1,842.58	$100.00		ATM—payment to credit card
3-Aug	$3,251.78		$1,409.20	Mr. B's paycheck
3-Aug	$3,074.78	$177.00		Check
3-Aug	$2,974.78	$100.00		Check—credit card payment
3-Aug	$2,874.78	$100.00		Check—credit card payment
3-Aug	$2,774.78	$100.00		ATM—withdrawal
3-Aug	$2,688.78	$86.00		Check
3-Aug	$2,658.78	$30.00		Check—credit card payment
3-Aug	$2,628.78	$30.00		Check
3-Aug	$2,600.63	$28.15		Check

Post Date	Balance	Withdrawal	Deposit	Notes
6-Aug	$2,400.63	$200.00		Check
6-Aug	$2,200.63	$200.00		ATM—withdrawal
6-Aug	$2,071.63	$129.00		Check—AAA
6-Aug	$1,981.63	$90.00		Check
6-Aug	$1,897.63	$84.00		Check—AAA
6-Aug	$1,813.63	$84.00		Check
6-Aug	$1,778.03	$35.60		Check
6-Aug	$1,742.83	$35.20		Check
7-Aug	$1,532.83	$210.00		Check
7-Aug	$1,432.83	$100.00		Check—Retail Services 3
7-Aug	$1,402.83	$30.00		Check—Retail Services 3
7-Aug	$1,377.83	$25.00		Check—Retail Services 3
8-Aug	$1,177.83	$200.00		ATM payment to credit card
8-Aug	$1,008.05	$169.78		Check
8-Aug	$908.05	$100.00		ATM transfer to checking
9-Aug	$808.05	$100.00		ATM withdrawal
10-Aug	$773.05	$35.00		Check
13-Aug	$573.05	$200.00		ATM withdrawal
13-Aug	$473.05	$100.00		ATM withdrawal
13-Aug	$373.05	$100.00		ATM transfer to checking
13-Aug	$273.05	$100.00		ATM payment to credit card
16-Aug	$173.05	$100.00		ATM withdrawal
16-Aug	$73.05	$100.00		ATM payment to credit card
17-Aug	$1,482.26		$1,409.21	Mr. B's paycheck

An Account on the Edge *(continued)*

Post Date	Balance	Withdrawal	Deposit	Notes
17-Aug	$1,382.26	$100.00		ATM withdrawal
17-Aug	$1,282.26	$100.00		ATM transfer to checking
17-Aug	$1,182.26	$100.00		ATM payment to credit card
17-Aug	$1,082.26	$100.00		ATM payment to credit card
20-Aug	$882.26	$200.00		ATM withdrawal
20-Aug	$837.26	$45.00		Check
20-Aug	$797.26	$40.00		ATM withdrawal
20-Aug	$758.26	$39.00		Check
21-Aug	$893.26		$135.00	Overdraft transfer from credit card
21-Aug	$475.42	$417.84		Check
21-Aug	$175.42	$300.00		ATM transfer to checking
21-Aug	$75.42	$100.00		ATM withdrawal
21-Aug	$(24.58)	$100.00		ATM payment to credit card
21-Aug	$(103.44)	$78.86		Check
22-Aug	$(137.44)	$34.00		Fee—overdraft
22-Aug	$(171.44)	$34.00		Fee—overdraft
23-Aug	$(274.43)	$102.99		Check
24-Aug	$(308.43)	$34.00		Fee—overdraft
24-Aug	$(313.43)	$5.00		Level 2 charge continuous overdraft
27-Aug	$186.57		$500.00	Direct Deposit Advance
27-Aug	$86.57	$100.00		ATM withdrawal
28-Aug	$36.57	$50.00		Check
31-Aug	$1,625.10		$1,588.53	Mr. B's paycheck

Post Date	Balance	Withdrawal	Deposit	Notes
31-Aug	$1,910.91		$285.81	Mr. B's private employer pension
31-Aug	$1,580.81	$330.10		Check
31-Aug	$1,316.62	$264.19		Repayment of Direct Deposit Advance
31-Aug	$1,080.81	$235.81		Repayment of Direct Deposit Advance
31-Aug	$880.81	$200.00		ATM payment to credit card
31-Aug	$780.81	$100.00		ATM withdrawal
31-Aug	$680.81	$100.00		ATM transfer to checking
31-Aug	$580.81	$100.00		ATM payment to credit card
31-Aug	$530.81	$50.00		Finance charge for Direct Deposit Advance
4-Sep	$2,311.75		$1,780.94	Mr. B's military pension
4-Sep	$3,422.49		$1,110.74	Mr. B's federal employee pension
4-Sep	$3,322.49	$100.00		ATM withdrawal
4-Sep	$3,222.49	$100.00		ATM withdrawal
4-Sep	$3,122.49	$100.00		ATM transfer to checking
6-Sep	$3,022.49	$100.00		ATM payment to credit card
10-Sep	$2,922.49	$100.00		ATM withdrawal
11-Sep	$3,080.49		$158.00	Overdraft transfer from credit card
11-Sep	$580.49	$2,500.00		Check
11-Sep	$122.49	$458.00		Check

An Account on the Edge *(continued)*

Post Date	Balance	Withdrawal	Deposit	Notes
11-Sep	$(13.97)	$136.46		Check
11-Sep	$(41.47)	$27.50		Check
12-Sep	$458.53		$500.00	Direct Deposit Advance
12-Sep	$358.53	$100.00		ATM transfer to checking
12-Sep	$258.53	$100.00		ATM payment to credit card
12-Sep	$218.53	$40.00		ATM withdrawal
12-Sep	$184.53	$34.00		Fee—overdraft
12-Sep	$150.53	$34.00		Fee—overdraft
14-Sep	$1,559.72		$1,409.19	Mr. B's paycheck
14-Sep	$1,059.72	$500.00		Repayment of Direct Deposit Advance
14-Sep	$959.72	$100.00		ATM withdrawal
14-Sep	$909.72	$50.00		Finance charge for Direct Deposit Advance
19-Sep	$809.72	$100.00		ATM withdrawal
19-Sep	$709.72	$100.00		ATM transfer to checking
20-Sep	$1,209.72		$500.00	Direct Deposit Advance
24-Sep	$209.72	$1,000.00		Check
24-Sep	$109.72	$100.00		ATM withdrawal
24-Sep	$9.72	$100.00		ATM withdrawal
25-Sep	$(50.28)	$60.00		Check
26-Sep	$(84.28)	$34.00		Fee—overdraft

Post Date	Balance	Withdrawal	Deposit	Notes
28-Sep	$1,274.20		$1,358.48	Mr. B's paycheck
28-Sep	$774.20	$500.00		Repayment of Direct Deposit Advance
28-Sep	$449.20	$325.00		ATM transfer to checking
28-Sep	$249.20	$200.00		ATM withdrawal
28-Sep	$199.20	$50.00		Finance charge for Direct Deposit Advance
28-Sep	$149.20	$50.00		ATM payment to credit card
28-Sep	$103.95	$45.25		Check
1-Oct	$1,884.89		$1,780.94	Mr. B's military pension
1-Oct	$2,995.63		$1,110.74	Mr. B's federal employee pension
1-Oct	$3,281.44		$285.81	Mr. B's private employer pension
1-Oct	$3,181.44	$100.00		ATM withdrawal
1-Oct	$3,081.44	$100.00		ATM transfer to checking
2-Oct	$2,581.44	$500.00		ATM payment to credit card
2-Oct	$2,481.44	$100.00		ATM withdrawal
2-Oct	$2,381.44	$100.00		ATM transfer to checking
2-Oct	$2,281.44	$100.00		ATM payment to credit card
4-Oct	$2,181.44	$100.00		ATM withdrawal

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