



Consumer Federation of America

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Testimony of

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**On Behalf of
Consumer Federation of America
and
National Consumer Law Center
(on behalf of its low income clients)**

**Before the Subcommittee on Social Security
Committee on Ways and Means
U. S. House of Representatives**

**Hearing on Protecting Social Security Beneficiaries from Predatory
Lending and Other Harmful Financial Institution Practices**

June 24, 2008

Chairman McNulty, Congressman Johnson, and Members of the Committee, my name is Jean Ann Fox and I am director of financial services for the Consumer Federation of America (CFA).¹ I am testifying today on behalf of CFA and National Consumer Law Center² on behalf of its low income clients. I appreciate the opportunity to offer our comments on financial services and credit products that harm Social Security and SSI recipients.

Federal benefit recipients are being charged steep fees for direct deposit arrangements and exorbitant interest rates for loans based on future receipt of exempt federal funds. Check cashers and loan companies partner with a few banks and intermediaries to provide “direct deposit” of Social Security, SSI, VA benefits, and federal pensions through accounts only accessible at the local check casher or loan company or through a high-fee debit card. Not only are these second-class bank accounts expensive, they deprive recipients of control over their exempt funds and divert protected funds to repay high cost loans either to the bank handling the direct deposit or to a loan company partnering with the bank.

Federal Benefits Needed for Basic Essentials, Not Harmful Financial Products

Federal law protects the subsistence income provided by tax-payers to retired workers, disabled Americans, orphans and survivors, veterans and federal retirees. This income is intended to relieve poverty and ensure minimum subsistence income. Creditors are prohibited by Section 207 of the Social Security Code from attaching, garnishing, or otherwise taking funds meant to provide basic essentials.³ Despite federal protection of exempt funds, Treasury and the Social Security Administration have permitted exempt funds to be funneled through master/sub accounts at fringe financial outlets. In addition, payday lenders make triple-digit interest rate loans to beneficiaries, secured by unfunded checks or debit authorizations for bank accounts into which exempt funds are deposited.

Federal Policy Exposes Recipients to Harmful Financial Products

The Congressional decision to mandate distribution of federal benefits by direct deposit had the unintended side effect of exposing recipients to new forms of high cost financial services.⁴ Unbanked federal recipients were mandated to open bank accounts to get direct deposit instead of receiving paper checks in the mail each month. Those who

¹ The **Consumer Federation of America** is a nonprofit association of over 280 pro-consumer groups, with combined membership of 50 million people. CFA was founded in 1968 to advance consumers’ interest through advocacy, research and education.

² The **National Consumer Law Center** is a non-profit organization specializing in consumer issues on behalf of low-income people. NCLC works with thousands of legal services, government and private attorneys, as well as community groups and organizations, who represent low-income and elderly individuals on consumer issues.

³ Social Security Act, at 42 U.S.C. § 407(a)

⁴ Debt Collection Improvement Act of 1996, called “EFT’99.”

opened bank accounts became eligible for payday loans. Those who did not have access to mainstream bank accounts and claimed a hardship waiver were solicited to get direct deposit through their corner check cashers and similar outlets. Under procedures permitted by the Social Security Administration, a few banks receive direct deposit of exempt federal benefits into master accounts to enable loan companies to deduct payments and fees before the remaining monthly SS, SSI or other federal payment was handed to the beneficiary.

Earlier this year the Wall Street Journal published a front page story, titled “Social Insecurity: High Interest Lenders Tap Elderly, Disabled⁵,” which described the high cost and unfair terms of financial arrangements that target low-income recipients of taxpayer-supported federal benefits. Readers were shocked to learn that the Social Security Administration would direct deposit SS and SSI benefits into a bank account controlled by a loan company, not by the recipient. Maps illustrated the clustering of high cost payday lenders near Section 8 housing in six major cities to show the concentration of high cost lenders in neighborhoods with low income populations. We appreciate the response from this Committee and the Social Security Administration to address the problems exposed by the report.

Social Security Administration Reexamines Delivery of SS and SSI Benefits through Master/Sub Account Arrangements

The Social Security Administration requested comments from the public on whether they should terminate delivery of benefits through master/sub accounts. We appreciate their attention to this problem and filed comments in that docket, urging a halt to delivery of benefits through financial service companies. But even if the SSA stops the master/sub account delivery of SS and SSI checks, that does not protect other recipients of exempt federal funds, including veterans, railroad pensioners, and federal pension recipients. In addition, only Congress can enact protections against securing loans with unfunded checks or required debit access to bank accounts. That is why your attention to this problem is so important.

Financial Products Target Exempt Benefits and Bank Accounts

Hi-jacking direct deposit of benefits: The Social Security Administration and Treasury permit delivery of exempt benefits through master/sub account arrangements that can include a bank, an intermediary, and the outlet where consumers go to pick up their “checks.” Unbanked recipients are targeted by these “third-party direct deposit providers” as a means of getting faster access to their checks that is safer than receiving paper checks in the mailbox. Loan companies also use the direct deposit arrangements to secure repayment of loans before recipients gain access to their funds. There are at least three variations on these arrangements:

⁵ Ellen Schultz and Theo Francis, “Social Insecurity: High Interest Lenders Tap Elderly, Disabled,” *Wall Street Journal*, February 12, 2008, A1.

- Third-party direct deposit arrangements for delivering federal benefits to unbanked recipients through check cashers and other financial outlets.
- Master/sub account arrangements that deduct loan payments from exempt funds before the balance is paid to recipients at loan company offices.
- Third-party direct deposit accounts that extend high cost credit via debit card overdrafts and cash advances on the next month's benefits.

Payday loans secured by bank accounts into which exempt funds are direct

deposited: A new and growing threat to exempt funds is posed by payday loan companies that make loans to federal benefit recipients who have bank accounts of their own and borrow by writing a post-dated check for the loan and finance charge which deducts exempt funds from their bank accounts. Some payday loans also use electronic authorization to withdraw payment directly from borrowers' bank accounts as soon as exempt funds are deposited.

The key feature of the master/sub account product is that the bank, direct deposit intermediary, and financial outlet control the recipient's exempt funds, deducting fees, account charges, loan repayment and/or finance charges before the recipient gets control of her benefits. Taxpayer dollars intended to lift recipients out of poverty are skimmed off by banks and their partners as exempt funds are diverted to financial service providers at the expense of federal benefit recipients.

Direct Deposit Delivery of Exempt Funds through Check Cashers and Loan Companies

Four million or so unbanked Social Security and SSI recipients either receive their benefits as paper checks that must be cashed or through electronic deposit at their local check casher, loan company, or payday lender. Recipients who just get a paper check in the mail pay a high cost just to cash the check. On average, check cashers charge 2.44 percent of the face value of a government benefit check to cash it. For a \$1,002 SS check, a recipient pays \$24.45 a month or almost \$300 a year just to turn the check into cash, according to a 2006 survey of check cashers conducted by CFA.⁶ It costs even more to get direct deposit of benefits routed through financial outlets.

As Treasury and the Social Security Administration urged recipients to get their benefits through direct deposit, check cashers and a few banks came up with products that permitted them to hold onto this segment of their business. According to the check cashing trade group, seven percent of their customers reported using Social Security benefit payment services in 2006, up from three percent in 2000. Over three-fourths of these recipients reported accessing the payment service at a check cashing outlet.⁷

Master/Sub Account Direct Deposit of Exempt Funds Costly to Recipients

⁶ Jean Ann Fox, and Patrick Woodall, "Cashed Out: Consumers Pay Steep Premium to 'Bank' at Check Cashing Outlets," Consumer Federation of America, November 2006.

⁷ Patricia J. Cirillo, Cypress Research Group, "Survey of Key FiSCA Member Organizations on Transaction Volumes," Attachment 1, October 2007, slide 20.

In Appendix A, we describe in detail the direct deposit products targeted at federal benefit recipients by four banks, their intermediaries and the check cashers, loan companies, and other outlets where recipients go to pick up their checks. Here is how this process typically works:

Banks set up a master account to receive exempt funds in the name of the recipient. The beneficiary goes to the check cashing outlet and pays to receive and then cash the “check” printed to deliver their funds or to have funds loaded onto a prepaid debit card. Fees are charged to set up the account, to deliver each payment, and to cash each check. The direct deposit accounts offered by check-cashers simply convert the electronic payment of benefits back into a paper check. When the benefits are delivered by debit card, recipients are provided a stored value card which appears to be not covered by Reg E protections which provide limits on liability for unauthorized transfers, procedures to resolve disputes, disclosures, and other substantive protections.

Recipients who are enrolled in these third-party direct deposit accounts have no direct control over their funds. The bank deducts its fees and those paid to the check casher or other entity that delivers the “check” or provides the debit card. Contracts include fine print that permits the bank to channel exempt funds to make loan payments on behalf of the recipient before handing over the rest of that month’s check. Recipients get what is left over.

Some of the direct deposit bank/intermediary accounts and debit cards come with credit features of their own that are repaid out of exempt funds as first priority. Cash advance or overdraft loans tied to direct deposit of exempt funds into master/sub accounts appear to violate SSA requirements against assignment of benefits to pay debts.⁸

A Philadelphia SSI recipient who received \$579.40 per month only received \$566.50 in a cashier’s check each month after the bank deducted \$9.95 per month for the direct deposit account plus \$2.95 to the check casher for printing out the check. Then the check casher charged its fee to turn that check into cash. The River City Bank Dollar\$\$\$ Direct account came with a credit feature. For a \$200 cash advance, the bank deducted \$20 in finance charges, handing over a \$180 cashier’s check for the loan plus a check for the SSI benefits. Each month the bank collected payment in full by deducting \$200 from his exempt funds, leaving him short. The loan was renewed for thirty-three months, with the SSI recipient paying \$660 for the use of \$180 for less than three years.⁹

Several of the bank/intermediary direct deposit programs market themselves to loan companies as a way to collect loan payments out of exempt funds.

⁸ SSA, POMS, GN 02402.045.B, *Direct Deposit and Assignment of Benefits*. A request for direct deposit that assigns or transfers the right to future payment to someone other than the beneficiary is an assignment of benefits.

⁹ River City Bank account summary, dated March 9, 2006 for client of Philadelphia Community Legal Services, on file with CFA.

- Republic Bank & Trust/Currency Connection promotes its service to loan companies to “enhance(s) collection efforts for in-house lending.”¹⁰ The RB&T contract states, in part, “You agree that the Bank may, unless prohibited by law, debit funds from your Account to pay all or portions of any amounts you may owe the Bank or your EFI... Upon Account closure, the Bank will return to you the available balance in your Account less any fees or charges, claims, set-offs, or other amounts you owe the bank or EFI.”¹¹
- River City Bank Dollar\$\$\$ Direct agreement states: “I further authorize the Bank to pay all of the fees and charges due to the EFD upon receipt by the Bank of the Direct Deposit.”¹² The bank’s Cash Advance Program makes loans of \$200 to recipients that are repaid in full out of the next deposit of exempt funds. The bank charges a \$10 fee and permits the EFD to also collect \$10 for a one-month \$180 loan.¹³
- First Citizens Bank/FirstNet/Cornerstone Community Bank is the direct deposit provider in the WSJ account of Mr. Bevel’s loan payments out of exempt funds. FirstNet describes the benefits of its Government Benefits Processing for loan companies. “The process allows you to provide a safe, secure way for your customers to receive their benefits and **make their monthly loan payment as soon as the benefits become available.**”¹⁴ (Emphasis added.)

Treasury Failed to Protect Recipients

When EFT’99 was initiated, Congress directed Treasury to adopt regulations to ensure that federal recipients who were required to get direct deposit of benefits would be protected. Accounts were to be at financial institutions with access to accounts at a reasonable cost and with the same consumer protections as other account holders at the same financial institution.¹⁵ Treasury’s regulations governing the direct deposit system require that benefit payments may be deposited only into accounts at a financial institution in the name of the recipient.¹⁶ Master/sub account arrangements do not meet those requirements under the EFT statute or Treasury’s regulation.

In 1999 Treasury issued an ANPRM to request comments on regulating access to federal benefits through payment service providers. Despite extensive comments from consumer organizations, no further consideration was given by Treasury, at least in any public forum, to protecting this nation’s most vulnerable recipients of federal benefits from the greed and opportunism of financial providers. Treasury has the authority to prohibit financial institutions accepting electronic deposits of federal payments from contracting with payment service providers to be conduits for the delivery of federal

¹⁰ https://www.ccrbt.com/check_products.aspx, “Benefits to Check Cashier”

¹¹ ACE CheckDirect Deposit Account Application and Agreement, acquired 2008, on file with CFA.

¹² River City Bank Dollar\$\$\$ Direct Application, Authorization, Certification, Agreement. On file with CFA.

¹³ River City Bank – Dollars Direct page, retrieved by Google on February 9, 2006. On file with CFA.

¹⁴ <https://www.weballotments.com/fedsys.asp>, visited June 12, 2008.

¹⁵ 31 U.S.C. § 3332(i).

¹⁶ 31 CFR 208.6, 210.5.

payments. Treasury adopted such a prohibition when it established Electronic Transfer Accounts.¹⁷ Inexplicably Treasury failed to extend that same protection to recipients who were sold direct deposit services by check cashers, loan companies, and other retail outlets.

Payday Lenders Get First Claim to Exempt Funds in Bank Accounts

Banked federal benefit recipients are also vulnerable to high cost quick cash loans that extract exempt funds from consumers' bank accounts. As federal benefit recipients have acquired their own bank accounts to receive direct deposit from Treasury, they have also become eligible for loans based on checks/debits drawn on those accounts and held for future deposit. Since federal benefits are modest and payment is made on a monthly basis, many recipients struggle to make ends meet until the next check arrives at the first of the month.

Payday loans are small cash advances for less than \$1,000, typically in the \$300 to \$500 range, based on holding the borrower's unfunded personal check or electronic debit for the amount of the loan and the finance charge. To get a payday loan, a borrower must have an open bank account, a source of income, and identification. Loans are due and payable in full on the borrower's next payday and typically cost 390 to 780 percent annual percentage rate (APR) for two-week terms. Finance charges are typically expressed as dollars per hundred borrowed, in the \$15 to \$30 per \$100 range.

Payday loans are single payment balloon loans. On the next payday, a borrower can bring in cash and "buy back" the check, or the check can be deposited for payment, or the borrower can pay only the finance charge and renew the loan for another pay cycle without reducing the principal. Most checks written to get payday loans are never deposited and are bought back by customers who are then encouraged to take out another loan. Failure to bring in cash will result in the check/debit being deposited and exempt funds withdrawn from the account.

For more information on payday lending, please visit CFA's website for consumers: www.paydayloaninfo.org. Case studies on payday loan use by federal recipients are included in Appendix B.

Benefit Recipients Pay an Estimated \$860 Million for Triple-digit Payday Loans

The payday loan industry projects \$50.7 billion in annual loan volume through both storefront and online payday lenders, with \$8.6 billion paid by consumers in finance charges.¹⁸ The Colorado Attorney General's office reports that ten percent of payday

¹⁷ 63 *Fed. Reg.* 64823 (Nov. 23, 1998).

¹⁸ Dennis Telzrow and David Burtzlaff, "Payday Loan Industry: Industry Report," Stephens Inc. Investment Bankers, April 17, 2008 at 4.

loan customers list “benefits” as their source of income on loan applications.¹⁹ This group of consumers includes recipients of state as well as federal benefits and pensions. Assuming Colorado is typical of payday lending in other states, “benefit” recipients’ share of the payday loan market is \$5 billion in loans, costing \$860 million in finance charges. This may be a conservative estimate. The California Department of Corporations commissioned a study of payday loan customers in 2007. Over twelve percent of surveyed respondents listed a Government assistance check (General Relief/Social Security) as their first or second form of regular income.²⁰ The average borrower uses eight to twelve loans per year, becoming trapped in repeat borrowing. All of the money paid to renew payday loans is diverted from meeting the basic needs of retirees, welfare recipients, veterans, disabled, survivors and dependents.

Payday Loans Modern Equivalent of a Wage Assignment

Securing payment of a debt by the borrower’s unfunded check drawn on the next Social Security or other exempt federal funds to be deposited in the bank or by electronic authorization to access pay deposited into an account is the modern banking equivalent of a wage assignment. The Federal Trade Commission ruled decades ago that a wage assignment that could not be withdrawn was an unfair trade practice under the Credit Practices Rule. The FTC Credit Practices Rule outlaws credit contract provisions analogous to check holding, such as wage assignments, confessions of judgment, and the taking of a non-purchase money security interest in household goods. Holding the consumer’s signed check is even more advantageous for a lender than holding a confession of judgment. With the check, the creditor goes directly to the bank to collect without filing suit or going to court to get a writ of execution. Since Federal policy is for federal payments to be direct deposited, a loan based on access to the funds that will be deposited into the account on the next payday is very close to a wage assignment.

The Electronic Fund Transfer Act prohibits conditioning the extension of credit on requiring electronic payment of debts for periodic payment loans, but is silent on the single payment electronic payday loan model. Typically an online payday loan can be renewed several times, with only the finance charge withdrawn from the account. Some of these payday lenders use remotely created demand drafts to collect directly from bank accounts when consumers exercise their rights to revoke access to accounts under the EFTA. Social Security and SSI recipients who sign these contracts lose control of the exempt funds in their accounts. For example:

CashNetUSA’s Deferred Deposit Loan Agreement:

¹⁹ “Payday Lending Demographic and Statistical Information: July 2000 through December 2007,” Administrator of the Colorado Uniform Consumer Credit Code, Office of Attorney General, February 4, 2008 at 3.

²⁰ California Department of Corporations – 2007 Payday Loan Study, Applied Management and Planning Group, Table 27: Source of Paycheck or Regular Income for Respondent, page 46. Table 54 noted that 9.1 percent of respondents were retired, the largest occupation listed besides “other.”

You promise to pay us the Total of Payments... You grant us a security interest in your ECheck/ACH Authorization in the amount of the Total of Payments (the "ECheck/ACH") which we may negotiate on the Payment Date or thereafter...

*The ECheck/ACH Authorizations set forth in this Loan Agreement are to remain in full force and effect for this transaction until your indebtedness to us for the Total of Payments, plus any NSF fee incurred, is fully satisfied. **You may only revoke the above authorizations by contacting us directly, and only after you have satisfied your indebtedness to us.***²¹ (Emphasis added.)

Payday Lending Fosters Coercive Collection Tactics

Making loans based on holding unfunded checks until the next SS deposit arrives fosters coercive collection tactics. Some payday lenders imply, while others outright threaten, criminal consequences for failing to "make good" on the check used to get the loan. Some states, such as Missouri and Colorado, even impose criminal sanctions on payday loan borrowers who subsequently close their bank accounts or stop payment on the check used to get the loan. An incident in Virginia illustrates the problem.

- Donald and Gail Storer, an elderly couple in Virginia, both have serious medical problems and their only income is SSI. They borrowed \$500 from a licensed payday lender and agreed to pay \$75 per month in finance charges at an APR of 185%. After repeatedly renewing the loan, rising health expenses made it impossible for them to continue. A complaint filed on their behalf, *Storer v. Buckeye Check Cashing of Virginia, Inc.*, alleged a "campaign of relentless harassment by the Defendant, a Payday Lender, which included specifically prohibited threats of criminal prosecution, in violation of the Virginia Payday Loan Act." A collector left a taped telephone message stating:

*"This message is for Gail and Donald Storer. This is Check Smart calling again, Mr. and Mrs. Storer. We are not going away. We are going to continue calling, and eventually what is going to happen is our legal department is going to press charges against you. So I would pretty much try to call the Smithfield office to work out a time frame when you will be able to handle the matter at hand. The number is 757-365-9711. You are only hurting yourself."*²²

The plaintiffs' SSI income was protected by federal law from assignment, levy, garnishment or other legal process.²³ The American Arbitration Association

²¹ <https://www.cashnetusa.com/secure/contract/contract>, July 30, 2007.

²² American Arbitration Association Award of Arbitrator, Re: 16 434 R 00441 07, Donald Storer and Gail Storer and Buckeye Check Cashing of Virginia, Inc., issued December 5, 2007.

²³ Donald Storer and Gail Storer v. Buckeye Check Cashing of Virginia, Inc., d/b/a CheckSmart, Complaint and Demand for Jury Trial, Circuit Court for Isle of Wight County, Virginia, filed with the American Arbitration Association on May 14, 2007.

found that language threatening to “press charges” amounted to a threat of criminal prosecution and found that Checksmart violated the Virginia payday loan law.²⁴

Veterans Are Not Protected from Payday Lending by Military Lending Act and DOD Regulations

In 2006 Congress enacted the Talent-Nelson amendment to the Defense Authorization act to protect Service members and their families from high cost lending that harmed readiness and damaged morale. Although it appears that active-duty service members are being protected from payday lending under DOD regulations that took effect October 1, 2007, veterans and non-active duty personnel are still fair game for 500% APR loans based on direct access to bank accounts into which military pay and exempt federal funds are deposited. The Navy Marine Corps Relief Society assists Navy and Marine retirees as well as active duty personnel. They report requests for assistance totaling \$206,573 for payday loans from 145 retirees in 2007. That is up from the 115 retirees who requested help with \$167,214 in payday loans during 2006.²⁵

In order to protect veterans and retirees from triple-digit interest rate payday loans that directly access exempt funds deposited into their bank accounts, the protections of the Military Lending Act would have to be extended to all consumers. Those protections would stop loans based on personal checks held for future deposit or on electronic access to bank accounts as well as cap interest rates at 36% APR including fees.

Policy Issues and Recommendations

1. The Social Security Administration recognizes the problems caused by delivery of exempt benefits through master/sub account arrangements and requested public comment on a proposal to discontinue that arrangement. We filed comments to assist SSA, providing examples of Master/sub account providers as well as case studies of exempt recipient victims.

- We respectfully request that this Committee give its strong support to terminating direct deposit of exempt funds by Social Security Administration through Master/sub accounts at financial service companies.

2. Treasury failed to protect unbanked federal benefit recipients. Because Treasury failed to enact regulations governing third party direct deposit of federal benefits ten years ago, consumers who most need protections get direct deposit of their exempt federal benefits through inferior, unsafe arrangements between a few banks and check cashing outlets, small loan companies and other storefront and online providers.

²⁴ American Arbitration Association Award of Arbitrator, page 4.

²⁵ Dotty Clayton, Navy Marine Corp Relief Society, electronic communication to CFA, June 17, 2008.

- We urge the Ways and Means Committee to strongly recommend that Treasury complete its work under EFT'99 by protecting all federal benefit recipients from substandard and high cost bank account arrangements.

3. Payday loans function as defacto wage assignments against exempt funds which are supposed to be safe from attachment. It is especially important for Congress to safeguard tax-payer funded benefits that recipients have been mandated to receive by direct deposit into bank accounts.

- We request that this Committee do everything in its power to protect all consumers from loans secured by unfunded personal checks held for future deposit or by required electronic debits to their bank accounts. A bill is pending in Congress that, if enacted, would protect SS and SSI recipients, veterans, and federal retirees from defacto assignment of benefits.²⁶

Thank you. I would be glad to answer your questions.

²⁶ "Payday Loan Reform Act of 2007," HR 2871

Appendix A

There are at least four bank/intermediary services that offer direct deposit of federal benefits through check cashers, loan companies, money transmitters and other retail outlets.

1. Currency Connection/Republic Bank & Trust (RB&T) is a Direct Deposit Program marketed to check cashers and similar entities. Exempt federal funds are delivered to recipients either as cashiers checks or loaded onto a debit card. The RB&T program is targeted to consumers receiving payroll, government benefits (Social Security, SSI-Supplemental Security Income, VA-Veterans Affairs), child support, unemployment, retirement or any other regular direct deposit.

Currency Connection claims customers benefit by receiving payment two to four days earlier than payment is received by mail, by the safety of picking up the check rather than receiving a check in the mail, convenience in picking up the check where it is to be cashed, and FDIC insurance for deposits.²⁷ The benefits for check cashers are stated as: “Check cashers can ensure their customers will come back month after month with the Currency Connection DirectDeposit Program. Enroll in this FREE program to become a Republic Bank Electronic Funds Issuer and start increasing your customer retention and overall profitability.”²⁸

Currency Connection’s Cashier’s Check fees include \$3 to Republic Bank for the 1st direct deposit per month, plus a \$3 bank fee charged to customers for each additional deposit. The bank’s partner Electronic Funds Issuer (EFI) can charge customers an additional \$1 to \$5 fee for printing a paper check to deliver the funds for a total of up to \$6 per check in addition to the fee to cash the check. Currency Connection does not set limits on the fee check cashers can charge to then cash the paper check.

Currency Connection’s debit card fees include \$19.95 to set up the account and a monthly \$19.95 service fee. ATM transactions at Republic Bank & Trust terminals are free, but RB&T charges \$2 each time a customer uses another bank’s ATM plus deductions are made for whatever the “foreign” ATM charges. Point-of-sale or balance inquiry fees are \$1 each.²⁹

Both the bank and the check casher/loan company gain direct access to deposited exempt funds to pay fees or make loan payments before the recipient has access to federally-protected funds for living expenses.

Currency Connection touts its service to loan companies to “**enhance(s) collection efforts for in-house lending.**”³⁰ The contract signed by benefit recipients with RB&T

²⁷ https://www.ccrbt.com/check_faqs.aspx, last visited February 14, 2008.

²⁸ https://www.ccrbt.com/check_products.aspx, last visited February 14, 2008.

²⁹ https://www.ccrbt.com/card_fazs.aspx, last visited June 11, 2008.

³⁰ https://www.ccrbt.com/check_products.aspx, “Benefits to Check Cashier”

authorizes both the bank and the EFI to withdraw funds from the deposit to repay obligations to either the bank or the check casher/loan company. The Agreement states:

You agree that the Bank may, unless prohibited by law, debit funds from your Account to pay all or portions of any amounts you may owe the Bank or your EFI. You acknowledge that the Bank may set-off against your Account in order to recover any ineligible benefits or payments you may have withdrawn if the Bank is obligated to return the funds to the entity that originates your payment (“Direct Deposit Originator”). Either you, or the Bank may transfer or close your Account at any time. Upon Account closure, the Bank will return to you the available balance in your Account less any fees or charges, claims, set-offs, or other amounts you owe the Bank or EFI.³¹ (Emphasis added.)

ACE Cash Express, a large check cashing/payday loan provider, has a private label version of Currency Connection, branded CheckDirect, which delivers Social Security, SSI, VA and retirement benefits via a cashier’s check or a prepaid debit card.³² Store fliers display an image of a US Treasury Social Security, SSI and VA check: “Get your check up to three days earlier than by mail. Avoid the hassle of a lost or stolen check. Pick up and cash your check at over 1,000 locations offering ACE CheckDirect.”³³ Ace check cashing fees vary, depending on state fee caps. A volunteer was told by an Arkansas ACE outlet that 2 percent is charged to cash the paper check generated from the Check Direct account. For a recipient receiving \$800, it would cost \$21.95 monthly just to access Social Security funds via CheckDirect (\$3 RB&T fee, \$2.95 for ACE to print the check plus \$16 to cash the check.)

RB&T Currency Connection Debit Card Program also provides an optional “Overdraft Protection” Feature which turns the direct deposit delivery card into a credit instrument.³⁴ Currency Connection Overdraft Shield fees cost 25 percent of each overdraft per payment period up to a maximum of \$100. It is available to Currency Connection customers who receive at least \$400 per payment deposited into Republic Bank & Trust. **A Social Security recipient who elected the Overdraft feature would be charged at least 300% APR for a cash advance**, assuming the loan was outstanding for a full month. A recipient who overdrew on the card a week before the next SSI deposit was due would pay 1,300 percent APR (\$25 per \$100 borrowed for one week). Overdraft loans are repaid out of the next deposit into the account.³⁵ This gives the bank first claim on exempt funds.

³¹ ACE CheckDirect Deposit Account Application and Agreement, acquired 2008, on file with CFA.

³² http://www.acecashexpress.com/ss_directdeposit.php, last visited February 14, 2008.

³³ ACE CheckDirect flier, picked up at Arkansas outlet, February 2008. On file with CFA.

³⁴ <http://www.electrobanking.com/users/serview.asp?xss'ElectroBanking&suid'515&page> ‘... Last visited April 29, 2008.

³⁵ AMsource Currency Connection FAQ, on file with CFA.

Recipients can also borrow from RB&T when their funds are delivered via cashier's check. The standard Currency Connection Cashier's Check which is generated by the non-bank partner includes a Truth in Lending box to disclose the amount financed, the finance charge, total of payments, and the Annual Percentage Rate. Fine print states that borrowers will not be entitled to a refund of any part of the prepaid finance charge.³⁶

2. Dollars Direct (River City Bank)

River City Bank of Kentucky offers a direct deposit program to check cashers through its Dollar\$\$\$ Direct program. The bank's marketing materials to check cashers explain:

*Only banks can offer direct deposit. UNTIL NOW!
Now YOU can offer direct deposit to your customers! The Dollar\$\$\$ Direct program makes it possible for these "unbanked" individuals to continue receiving and cashing their checks while complying with the government's wishes to go paperless... You can establish a check printing fee from \$0 - \$9.99 for each check that you print. Also, providing direct deposit will keep your customers coming back to you each and every month!³⁷*

River City Bank Dollar\$\$\$ Direct delivers exempt funds by either a cashier's check or a debit card. The direct deposit agreement permits the bank to deduct fees for both River City Bank and the Electronic Funds Distributor (EFD) before exempt funds are made available to the recipient.³⁸ Once the funds have been transferred from the bank to the check casher or other outlet, the bank takes no responsibility for failure of their partner to correctly deliver the check to the payee.³⁹

Fees and charges: I authorize the Bank to deduct from the proceeds of my monthly or other periodic disbursement, all fees and charges related thereto as described in the Dollar\$\$\$ Direct account

³⁶ *Id.*

³⁷ <http://www.dollars-direct.com/> visited May 2, 2006.

³⁸ "Fees and Charges: I authorize the Bank to deduct from the proceeds of my monthly or other periodic disbursement, all fees and charges related thereto as described in the Dollar\$\$\$ Direct account disclosures, and fee schedule. I further authorize the Bank to apply all of the fees and charges due to the EFD upon receipt by the Bank of the Direct Deposit." CITE

³⁹ Application-Authorization-Certification-Agreement, Terms and Conditions of the Account, Deposits and Withdrawals, accessed at <http://www.debitcardone.com> June 16, 2008. "I hereby appoint the EFD as my agent for purposes of receiving from the Bank and delivering to me my monthly or other periodic check(s). I hereby release, absolve, and forever discharge the Bank from any and all liabilities whatsoever as a result of (e) the failure of the EFD to deliver my monthly or other periodic check(s) to me; or (ii) the fraudulent endorsement or negotiation of my monthly or other periodic check(s). In the event of the occurrence of the events described at (i) and (ii) of this paragraph, I acknowledge that the only claims I have are against the EFD, and not the Bank."

*disclosures and fee schedule. I further authorize the Bank to pay all of the fees and charges due to the EFD upon receipt by the Bank of the Direct Deposit.*⁴⁰

The Dollar\$\$\$ Direct fee schedule includes the following:

Account Setup Fee	\$14.50
Cashier's Check Fee	\$ 2.95 (for each check issued for first deposit) \$ 1.95 (for each subsequent payment deposited)
Dollar\$\$\$ Direct Debit Card	
Monthly Service Charge	\$10
Transaction fee	\$ 1
Overdraft Privilege Fee	\$ 7.50 ⁴¹
Cash Advance Fee	\$10

Dollar\$\$\$ Direct's debit card comes with an overdraft "privilege" of up to \$250 over the account balance⁴², enabling recipients to borrow from the bank by overdrawing the account. A River City Bank web page cached by Google from February 9, 2006 explains its cash advance program to check cashers and other outlets as a loan product.

Welcome to the Cash Advance Program page. Here you will find information about how direct deposit customers can get Cash Advances on any benefit or payment including SSA, SSI and VA as well as Payroll and Welfare.

What is CAP?

The Cash Advance Program or CAP is a program within the Dollar\$\$\$ Direct program where an EFD (Electronic Funds Distributor) is allowed to print and distribute Cash Advances taken on any recurring payment received by a direct deposit customer. An EFD can offer money anytime to direct deposit customers who simply cannot wait until their next deposit arrives. If the customer qualifies, he or she could receive part of their direct deposit whenever they need it.

Offering Cash Advances to your customers will increase your check printing and cashing volume. Cash Advances are only available as \$200 loans from River City Bank. The bank charges a \$10 fee for each Cash Advance, and we can deduct up to \$10 per Cash Advance

⁴⁰ River City Bank Dollar\$\$\$ Direct Application, Authorization, Certification, Agreement. On file with CFA.

⁴¹ <http://www.debitcardone.com/terms.html>, June 16, 2008. Fee schedule dated 09/03. A version provided by Community Legal Services in Philadelphia, dated 04/07, did not list the Overdraft Privilege Fee, but included a \$10 Cash Advance Fee. On file with CFA.

⁴² <http://www.debitcardone.com/features.html>, visited June 16, 2008.

for your fee as well. Offering CAP could also increase your customer base since some customers are more interested in the Cash Advance option than they are the direct deposit option. Finally, offering CAP through our program relieves you of the risk involved in loaning funds.”⁴³ (Emphasis added.)

Dollar\$\$\$ Direct agreement permits one cash advance per direct deposit. The APR quoted for a one week loan is 277.44%, and for 28 days as 68.61% APR. If the check casher adds an additional \$10 fee per \$200 loan, the cost of this loan doubles to 554.88% APR for one week and 137.22% APR for 28 days. The APR disclosure the customer sees prior to getting a loan does not include other fees which could be charged by the bank’s store front partner. To get a cash advance, the borrower has to sign over the next direct deposit of exempt federal funds to the bank. The agreement states:

I authorize the bank to access the designated Direct Deposit Account once the direct deposits have been made into the Direct Deposit Account and to disburse the monies deposited therein (less all applicable loan payoffs, fees and charges) as a cashier’s check made payable to me.⁴⁴

3. Petz Enterprises Quick Acce\$\$ advertises to check cashers that “Giving Money Away has Never Been So Profitable....The majority of your check-cashing customers come to you because they don’t have a checking account. QuickAcce\$\$ allows you to print and cash payroll and benefits checks all in one place, giving your customers the speed and security of direct deposit without having to use a conventional bank while **you get to keep a percentage of every transaction** (emphasis in ad.)⁴⁵” In a 2005 Petz newsletter, the QuickAcce\$\$ 2004 program was described as follows: “QuickAccess allows your customer’s funds to be directly deposited into a trust account, and you are authorized to print a check made payable to the recipient at your location for the amount of the benefits, less any applicable QuickAccess fees.”⁴⁶

QuickAccess partners with Bank of Agriculture and Commerce in California to receive direct deposit of SS and SSI benefits. Their electronic benefit distribution method is advertised to check cashers, grocery stores, convenience stores, and pawn brokers. Types of benefits processed include Social Security payments, retirement benefits, and payments from more than 27 Federal Entitlement Programs. QuickAccess transaction fees to retail service centers are \$3 per check for all transactions greater than \$10 with no fee for smaller transactions. Retailers are charged \$195 Annual Membership Fee per location with the fee waived for locations with more than twenty-five registered recipients. QuickAccess pays rebate bonuses to service centers of up to fifty cents per

⁴³ River City Bank – Dollars Direct page, retrieved by Google on Feb. 9, 2006. On file with CFA.

⁴⁴ River City Bank – Dollars Direct Agreement, Cash Advance Product, on file with CFA.

⁴⁵ QuickAcce\$\$ ad, *Checklist*, Vol. 10 No. 3, 2007, p. 62.

⁴⁶ Petz Enterprises Newsletter 2005 “What’s Better than Money in the Bank?” available at www.petzent.com.

check based on monthly transaction volume.⁴⁷ We do not have a fee schedule for charges to benefit recipients for receiving their SS or SSI payments at check cashers or other retailers using QuickAccess.

4. First Citizens Bank/FirstNet/Cornerstone Community Bank. In the Wall Street Journal example of Mr. Bevels and the Small Loan Company in Alabama, SSA deposited his exempt federal funds into an account at Cornerstone Community Bank in Chattanooga, TN. Mr. Bevel's funds were immediately deducted to make payments to the Small Loan Company. The bank statement directed inquiries to a phone number for First Citizens Bank's FirstNet operation based in Radcliff, KY. First Citizens Bank describes its "Federal Benefits Program" direct deposit service for loan companies as follows:

*"FirstNet pioneered the first third-party federal benefits payment processing system for the consumer finance industry in 1992. This system allows companies operating as Financial Service Providers to accept and process direct deposits on behalf of federal benefit recipients. This system can also be used for anyone using direct deposit, including non-federal benefits. This service has proven to be beneficial in increasing branch traffic, increasing processing fees, and building customer loyalty. Industries successfully using this: Consumer Finance, Money Transfer. Key Benefits: Increased branch traffic. Increased fee revenue. Availability of funds on opening of business on beneficiary pay date. Flexible movement of funds. Automatic electronic enrollment."*⁴⁸

FirstNet's website further explains the benefits of its "Government Benefits Processing" for loan companies. "The process allows you to provide a safe, secure way for your customers to receive their benefits and **make their monthly loan payment as soon as the benefits become available.** (Emphasis added.)"⁴⁹ The social worker who assisted Mr. Bevels recalls that he had multiple loans at the same loan company, each permitting the loan company's bank to deduct loan payments from his exempt funds, leaving him with about \$200 from the \$600 monthly check to live on.⁵⁰

⁴⁷ <http://www.petzent.com/quickaccess/pricing.asp>, last visited May 22, 2008.

⁴⁸ <http://www.first-citizens.com/allot.asp?IF'fedben.asp&FTR'altfooter.asp>, last visited May 22, 2008.

⁴⁹ <https://www.weballotments.com/fedsys.asp>, visited June 12, 2008.

⁵⁰ Telephone communications with social worker.

Appendix B

Case Studies of Federal Beneficiaries and Harmful Financial Products and Practices

- A Houston, Texas Social Security recipient borrowed \$360 from Cash Express and its True Financial Services, LP partner in a “credit services organization” (CSO) form of payday lending. Finance charge for this loan was \$75.25 (\$3.25 interest to True Financial and \$72 fee to CSO) and the APR 231.20 percent. The loan was issued on August 31, 2007 and was due in full on October 3, 2007 for a payment of \$363.25 due to True Financial Services, LP and \$72 on the same day to Cash Express for its CSO fee. He paid \$72 every month for six months, thinking he was paying down the loan. After paying \$432 back on a \$360 loan, he was told that he still owed the full \$360 amount for loan principal and another CSO fee. The loan was secured by authorization to permit the lender to withdraw funds through the automated clearinghouse system from his bank account. The contract language does not permit the borrower to terminate the ACH authorization:

Automated Clearing House (“ACH”) Authorization. You agree to provide us ACH authorization to debit your checking account (“Account”) at your bank (“Bank”). If you do not pay us on time, either directly or in care of the CSO, you authorize us or our agent, to initiate an ACH debit to your Account for any amount due to us with regard to this loan. You are not authorizing us to initiate ACH debits on your Account to recur at substantially regular intervals. However, Lender or its agent may resubmit an ACH debit up to three times if the debit is not honored by your Bank. You will maintain a balance of available funds in your Account at least equal to the amount due and owing under this Agreement. You understand that your Bank may impose charges for each ACH debit that is not honored by your Bank. You agree that an ACH debit authorized under this Agreement may be combined with an ACH debit that you authorized your CSO to make with regard to your loan.⁵¹

- A Berea, KY consumer, whose sole income was a \$475 to \$620 monthly SSI benefit for disabilities, got payday loans costing 180% APR and check cashing services from Cash Express LLC. She was required to furnish a post-dated check for the amount of the loan plus the fee. The lender knew that the \$460 loan check constituted more than eighty percent of the borrower’s monthly income, making it likely that loans would be renewed or rolled over on a monthly basis. According to a complaint filed in arbitration, she paid the \$60 finance charge and rolled over the principal numerous times. The monthly fees alone were about ten percent of her income. She became unable to pay her rent and was evicted from subsidized,

⁵¹ Loan Disclosure and Promissory Note, True Financial Services, LP, on file with CFA

Section Eight housing on which she paid rent of \$118 a month. Storage for her furniture cost \$75 per month. Eventually she closed her bank account and offered to make \$25 monthly payments on her \$500 debt to Cash Express. During a visit to discuss payment arrangements, Cash Express offered to cash her SSI check for a fee. The lender refused to return any funds to the consumer, keeping all of her cashed SSI check to pay on the loan, leaving her with no income for the month. This caused extreme emotional distress.⁵²

- A Franklin, New Hampshire resident whose only income was from SSI, got a loan from Advance America, expecting to be able to repay the loan with SSI funds after the town welfare office helped with her living expenses. The \$350 loan for one month cost \$70 finance charge and 240 percent APR. When assistance was denied, Advance America refused to provide an extended payment plan. She stopped payment on the check used to get the loan and offered to make \$5 payments. Advance America staff visited her home to demand payment and made repeated telephone calls demanding payment. Despite accepting her \$5 payments, Advance America told her to stop sending the payments and that they would take her to court if she didn't pay in full. Only after a legal services attorney explained the exempt status of SSI funds and the terms of the New Hampshire debt collection law did calls stop.⁵³
- A Colorado consumer “GM” posted a message to the Arkansas coalition opposing payday lending (www.StopPaydayPredators.org). GM had twelve payday loans open at the same time. He paid interest-only fees until no longer able to do so and was being accused of writing checks on a closed account. His only income is SSI and Social Security benefits. He stated he was “extremely terrified because I know that I won't survive in prison” and saw homelessness as his only way to repay the twelve loans.⁵⁴ Colorado permits payday lenders to charge \$20 per \$100 for the first \$300 loan and \$7.50 per \$100 for loan amounts from \$300 to \$500. A two-week \$300 payday loan costs 520% APR.⁵⁵
- Peter Dixon, a disabled Virginia resident, whose sole income consists of Social Security Disability Insurance Benefits of about \$700 per month, got payday loans from NFC Payday Advance in Danville. To borrow \$300, Mr. Dixon wrote an unfunded check for \$345 for a 30-day loan at an APR of 219%. He paid NFC \$45 per month in interest on the original \$300 loan. At the end of twenty months, he had paid \$900 in interest for \$300 principal borrowed but still owed the original balance. In order to pay off the \$345 owed, Mr. Dixon got another payday loan and sold a vehicle.⁵⁶

⁵² Complaint, Riva Banks vs. Cash Express of Tennessee, LLC d/b/a Cash Express LLC, American Arbitration Association in the Commonwealth of Kentucky, filed December 27, 2007.

⁵³ Electronic communication, Sarah Mattson, New Hampshire Legal Assistance, received by CFA June 2, 2008.

⁵⁴ Electronic communication from H.C. Klein, on posting at www.StopPaydayPredators.org Feb. 24, 2008.

⁵⁵ See State Information, www.paydayloaninfo.org Click on Colorado on the map for details.

⁵⁶ Complaint, *Peter Dixon v. NFC Check Cashing Services, Inc., d/b/a NFC Payday Advance*, Circuit Court for the City of Danville, on file with CFA.

- Cynthia Wimberly, who was unemployed and had no income, obtained payday loans from Advance America in Arkansas, secured by the Veterans Administration and Social Security benefits provided to her granddaughter. She was charged 150.30% APR for one-month loans which were repeatedly renewed for interest-only payments. When she asked for an extended payment plan to retire the debt, Advance America refused. Nehemiah Bailey, another Arkansas consumer whose only income came from Veterans Administration benefits borrowed \$350 and agreed to repay \$390.37 by the end of the month for a loan costing 150.35% APR. The Advance America contract granted the lender access to funds deposited in the borrowers' bank accounts. If borrowers did not return to the store to "repurchase" the check with cash, the lender would deposit or present the check at a bank to be repaid from funds on deposit in the borrower's account⁵⁷

⁵⁷ Complaint, *Kelvin White, Cynthia Wimberly, and Nehemiah Bailey vs. Advance America Servicing, et al*, Circuit Court of Ouachita County, Arkansas, May 31, 2007.

Appendix C

Social Security and SSI Beneficiaries Cannot Afford Payday Loans

Consumers who rely on Social Security or SSI or VA benefits for most or all of their income simply cannot afford to repay the typical payday loan in a single monthly balloon payment. A retiree with \$25,000 in annual income and typical expenses based on the 2006 Bureau of Labor Statistics budget for people in the \$20,000 to \$30,000 per year income range would have a deficit of \$158 after repaying a \$325 payday loan at the end of the month. This income category would apply either to one recipient who gets about half her income from Social Security and half from another source or for two recipients who only receive Social Security. About two-thirds of retirees get half of their income from Social Security, making this scenario fit the majority of SS recipients.

\$25,000 per Year Income Not Sufficient to Repay Payday Loan⁵⁸

Income: Monthly income before taxes	\$2083
Household Expenditures per month	
Food	\$ 345
Housing/utilities	\$ 896
Transportation	\$ 422
Healthcare	\$ 201
Total Expenditures:	\$1864
Net Paycheck minus essentials:	\$ 219
Average Payday Loan	\$ 325
Average Payday Loan Payment with Interest	\$ 377
Monthly Deficit if payday loan paid on time	\$ -158

⁵⁸ Analysis by Leslie Parrish, Center for Responsible Lending.
http://www.socialsecurity.gov/policy/docs/chartbooks/fast_facts/2007/fast_facts07.html and
http://www.ssa.gov/policy/docs/quickfacts/stat_snapshot/ and Bureau of Labor Statistics Consumer Expenditure Survey 2006.