

Date: June 20, 1997

VAOPGCPREC 22-97

From: General Counsel (021)

Subj: Mandatory Electronic Funds Transfer (Direct Deposit)

To: Acting Under Secretary for Benefits (20)

QUESTION PRESENTED

May the Department of Veterans Affairs (VA) withhold monthly benefits from beneficiaries in situations where the payee refuses to participate in the Electronic Funds Transfer Program.

COMMENT

1. The Debt Collection Improvement Act of 1996 (DCIA), part of the Omnibus Consolidated Recissions and Appropriations Act of 1996 (Public Law 104-134), mandates the use of electronic funds transfer (EFT) for all Federal payments. It is being implemented in two phases. The first phase, which began July 26, 1996 (90 days after enactment of the bill), requires that all Federal payments to recipients whose entitlement to receive such payments was established on or after July 26, 1996, be made electronically. 31 U.S.C. § 3332 (e)(1). The head of each agency is authorized to waive this requirement if the recipient certifies that he/she does not have an account at a financial institution or an authorized payment agent. 31 U.S.C. § 3332 (e)(2).
2. The second phase, which begins January 1, 1999, requires that all Federal payments, except income tax refunds, be disbursed electronically. 31 U.S.C. § 3332(f)(1). Authority rests with the Secretary of the Treasury to grant exemptions to this requirement. These may be granted (a) for individuals or classes of individuals for whom compliance imposes a hardship; (b) for classifications or types of checks; or (c) in other circumstances as may be necessary. 31 U.S.C. § 3332(f)(2).
3. Under both phases, each covered recipient of Federal payments required to be made by electronic funds transfer must (a) designate one or more financial institutions or other authorized agents to which the payments shall be made, and (b) provide the Federal agency that makes or authorizes the payments information necessary for the recipient to receive the electronic funds transfer payments through the institution or agent designated. 31 U.S.C. § 3332(g).
4. The DCIA provisions on electronic funds transfer were enacted "to facilitate offset and to improve audits associated with counterfeit, stolen, forged, and fraudulent checks." 142 Cong. Rec. H4046-12, 4090 (1996). The provisions are mandatory, not permissive. Consequently, except for the exclusions provided in the statute, neither the Treasury, nor any other authorized payment disbursing entity, has authority to make a

covered Federal payment by other than electronic funds transfer. It necessarily follows, as further discussed below, that VA, having no independent authority to pay benefits by other than electronic means, must withhold payment until the entitled recipient of the benefits complies with the above-mentioned section 3332(g) requirements, without which VA could not make EFT payments.

5. As the legislative history of the DCIA plainly reflects, the Congress was mindful of the significant implications associated with the Government's moving from a paper check payment system to an EFT system. Congress was particularly concerned with the effect of this on payment recipients who would be required to obtain a bank account and it emphatically expressed the expectation that the Secretary of the Treasury take vigorous action to accommodate the needs of affected "unbanked" recipients. See, 142 Cong. Rec. H4090.

6. The DCIA's phasing-in of the EFT requirements obviously was designed to allow Treasury to meet those congressional expectations and to manage the program's implementation in a manner that would ease the transitional burden on both the Government and affected members of the public. As to the latter, Congress initially limited application of EFT to new eligibles; in other words, to those who had not become accustomed to, and had no expectation interest in, receiving Federal payments by check. Moreover, Congress provided express safeguards so that EFT requirements would not produce unduly harsh results for the affected payment recipients.

7 During the first phase of implementation, for instance, agency heads are given liberal authority to waive EFT requirements for the unbanked. Further, with full implementation in the second phase, the DCIA grants the Secretary of the Treasury broad discretion to waive those requirements to avoid imposing hardship on beneficiaries, such as those who have geographical, physical, mental, educational, or language barriers or who, as a result of natural or environmental disasters, would not be able to receive benefits. 142 Cong. Rec. H4090. An additional safeguard associated with the full phase-in of EFT mandates that the Treasury, pursuant to regulations, ensure that affected recipients of payments after January 1, 1999, have access to accounts at financial institutions at a reasonable cost and with reasonable consumer protections. See, 31 U.S.C. § 3332(i)(2).

8. Thus, congressional intent is clear that Federal agencies implementing the EFT program are expected to avoid imposing hardship on those individuals who in good faith cannot comply with the DCIA's requirements.

9. As a practical matter, of course, the waiver directive in 31 U.S.C. § 3332(e)(2) enables an unbanked recipient covered by the current first phase of EFT implementation to avoid participation in the program, with no untoward consequences,

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simply by certifying that he or she has no bank account. Waiver is mandatory in that case so that the agency has no authority to "look behind" the certification for motive or

reason why the recipient is “unbanked.” The same does not hold true, however, for recipients under the second phase of EFT implementation covering all Federal payments after January 1, 1999. During the second phase, only the Secretary of the Treasury may waive application of the EFT requirements and, as previously mentioned, only in cases of hardship, for certain classifications or types of checks, or in other designated circumstances. 31 U. S. C. § 3332(f)(2). Consequently, in cases not subject to waiver, a recipient’s negligent or willful noncompliance can prevent issuance of payment until corrected.

10. To summarize, the DCIA’s EFT provisions require, subject to certain exceptions, that Federal payments to covered recipients must be made by electronic funds transfer and that the recipients must furnish certain information about their bank accounts which will enable the transfers to take place. Although the EFT requirements are mandatory, the statute contains safeguards designed to assure that the requirements do not impose unreasonable burdens on the legal rights of individuals to receive the Federal payments due them. Since VA is a “Federal agency” subject to the EFT provisions of the DCIA (31 U.S.C. § 3332(j)(2)), any payments made or authorized by VA to a recipient of those payments must be in accordance with the Act’s requirements.

HELD

The Secretary has authority under the DCIA to withhold monthly VA benefits to a recipient of Federal payments subject to the EFT program if the recipient has not complied with the statutory EFT requirements and is not entitled to a waiver of their application.

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