

federal register

**Friday
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Part III

**Department of the
Treasury**

Fiscal Service

**Federal Agency Disbursements;
Electronic Funds Transfer; Notice**

DEPARTMENT OF THE TREASURY**Fiscal Service**

RIN 1510-AA56

Electronic Transfer Account

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of Electronic Transfer Account features.

SUMMARY: The Debt Collection Improvement Act of 1996 (Act) amends 31 U.S.C. 3332 to provide that, subject to the authority of the Secretary of the Treasury to grant waivers, all Federal payments, other than payments under the Internal Revenue Code, must be made by electronic funds transfer (EFT) after January 1, 1999. The Department of the Treasury (Treasury) published a final rule implementing this mandate, 31 CFR Part 208 (Part 208), on September 25, 1998. 63 FR 51490. Part 208 provides that any individual who receives a Federal benefit, wage, salary, or retirement payment is eligible to open an Electronic Transfer Account, or "ETASSM," at any Federally insured financial institution that elects to offer ETASSM. This notice describes the required features of the ETASSM. In addition, Treasury is publishing, as an appendix to this notice, the ETASSM Financial Agency Agreement (FAA) that Treasury will enter into with financial institutions that offer ETASSM.

DATES: This notice is effective July 16, 1999.

ADDRESSES: This notice is available on the Financial Management Service's ETASSM web site at the following address: <http://www.fms.treas.gov/eta>.

FOR FURTHER INFORMATION CONTACT: Sally Phillips, Senior Financial Program Specialist, at (202) 874-7106; Matthew Friend, Financial Program Specialist, at (202) 874-7032; Natalie H. Diana at (202) 874-6590; Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, at (202) 874-6590; or Margaret Marquette, Attorney-Advisor, at (202) 874-6681. In addition, inquiries about the ETASSM may be submitted electronically via e-mail to eta.inquiries@fms.sprint.com or by filling out an inquiry form available on the ETASSM web site at <http://www.fms.treas.gov/eta>. Financial institutions may call 1-888-ETA-FRBK (382-3725) for more information about enrolling in the ETASSM program.

SUPPLEMENTARY INFORMATION:**A. Background**

On September 25, 1998, Treasury issued Part 208, which provides, in part,

that any individual who receives a Federal benefit, wage, salary, or retirement payment shall be eligible to open an account called an ETASSM at any Federally insured financial institution that chooses to offer ETASSM. 63 FR 51490, 51504. The ETASSM has been developed to maximize opportunities for individuals required to receive Federal payments electronically to have access to an account at reasonable cost and with the same consumer protections available to other account holders at the same financial institution.

On November 23, 1998, Treasury published for comment in the **Federal Register** a notice setting forth proposed terms, conditions, and attributes of the ETASSM (hereafter the "Notice"). 63 FR 64820. Treasury received 198 comment letters in response to the Notice. Comments were received primarily from financial institutions, financial institution trade associations, and consumer and community-based organizations. Recipients, non-financial institution trade associations, non-financial institution payment service providers, and Federal agencies also commented on the Notice.

The majority of comments on the proposed ETASSM features were supportive of Treasury's efforts to design a low-cost account for those recipients without accounts at financial institutions in order to bring them more fully into the financial services mainstream. The comments reflected divergent views on many proposed ETASSM features, including account eligibility, fees associated with the account, number of cash withdrawals, methods of access, and whether a monthly statement should be provided. Comments were also divided on the question of whether to allow financial institutions the option of offering, as part of the ETASSM, certain additional features at an additional cost, if any, to the recipient.

Based on the comments received, Treasury has developed a listing of required attributes and optional features for the ETASSM, which are the subject of this notice. In addition, Treasury is publishing, as an appendix to this notice, the FAA that Treasury will enter into with each financial institution that elects to offer ETASSM.

B. Compensation to Financial Institutions

In order to maximize the number of financial institutions that choose to offer ETASSM, Treasury will offer financial institutions compensation to establish the account. Treasury will reimburse each financial institution that offers the ETASSM a one-time fee of \$12.60 per

account established, in order to offset the costs of setting up the account. The fee will be paid regardless of whether the recipient has or had an existing account.

Financial institutions that commented on the proposed amount of compensation were divided as to whether \$12.60 is adequate to cover the cost of opening the account. However, almost all financial institutions that commented on this question agreed that the amount of compensation should not depend on whether the customer is new or existing, pointing out that the costs of opening the account are the same in either circumstance. Comments from some consumer organizations similarly stated that the amount of compensation paid should not differ based on whether a recipient has or does not have an existing account.

There was little comment on the question of whether compensation should increase as the number of accounts opened increases. In general, large financial institutions favored increased compensation whereas small institutions did not. Treasury has determined that a standard compensation amount of \$12.60 per account is appropriate regardless of the number of ETASSM a financial institution opens.

C. Availability of ETASSM

In order to provide a convenient source of information for recipients regarding the availability of ETASSM, Treasury will maintain and make publicly available to recipients and program agencies, by telephone and other electronic means, a list of participating ETASSM providers. In addition, financial institutions offering ETASSM will be required to display prominently a logo to be supplied by Treasury indicating that the ETASSM is available at that financial institution.

Some financial institutions have indicated that they already offer low-cost accounts that may meet the requirements for the ETASSM and have inquired whether they can receive compensation for offering those accounts. Any account that has the attributes set forth in this notice can qualify as an ETASSM provided that the financial institution opens the account after entering into an FAA with Treasury, and that the account is identified to the public as an ETASSM. As with all other ETASSM, a low-cost account that is designated as an ETASSM may offer only those features set forth in this notice. It may not offer additional features, such as a check writing feature, even if the cost of providing such a feature falls within the maximum

monthly fee. Compensation for opening these accounts will be provided to the financial institution on the same basis as for opening all other ETAsSM.

Some commenters on the Notice asked whether Community Reinvestment Act (CRA) credit would be available for financial institutions that offer ETAsSM. The Federal Financial Institutions Examination Council recently supplemented and republished in the *Federal Register* its Interagency Questions and Answers Regarding Community Reinvestment. Interagency Question & Answer 3 addressing §§ 12(j) ¹ and 563e.12(i) has been amended to state that providing ETAsSM qualifies as a community development service. See 64 FR 23618, 23630 (May 3, 1999).

D. Summary of ETASM Attributes

After considering the comments received, Treasury has determined that the ETASM account will have the following attributes. These attributes are explained in more detail below. The ETASM shall:

- Be an individually owned account at a Federally insured financial institution;
- Be available to any individual who receives a Federal benefit, wage, salary, or retirement payment;
- Accept electronic Federal benefit, wage, salary, and retirement payments and such other deposits as a financial institution agrees to permit;
- Be subject to a maximum price of \$3.00 per month;
- Have a minimum of four cash withdrawals and four balance inquiries per month, to be included in the monthly fee, through (a) the financial institution's proprietary (on-us) automated teller machines (ATMs),² (b) over-the-counter transactions at the main office or a branch of the financial institution, or (c) any combination of on-us ATM access and over-the-counter access at the option of the financial institution;³
- Provide the same consumer protections that are available to other account holders at the financial

¹ The Interagency Questions and Answers employ an abbreviated method to cite to the relevant regulations. Because the CRA regulations of the four Federal banking agencies are substantially identical, corresponding sections of the different regulations usually bear the same suffix. Therefore the Interagency Questions and Answers typically cite only to the suffix. See 64 FR 23618, 23619.

² As explained below in the discussion of ETASM attributes, the term proprietary (on-us) ATM refers to an ATM which a financial institution's customers may use without being subject to a fee of any kind, including a surcharge.

³ Financial institutions may provide additional withdrawals or balance inquiries at no charge or for a fee.

institution, including, for accounts that provide electronic access, Regulation E protections regarding disclosure, limitations on liability, procedures for reporting lost or stolen cards, and procedures for error resolution;

- For financial institutions that are members of an on-line point-of-sale (POS) network, allow on-line POS purchases, cash withdrawals, and cash back with purchases at no additional charge by the financial institution offering the ETASM;
- Require no minimum balance, except as required by Federal or State law;
- At the option of the financial institution, be either an interest-bearing or a non-interest-bearing account; and
- Provide a monthly statement.

E. Discussion of ETASM Attributes

Individually Owned Account at Federally Insured Financial Institution

Treasury proposed in the Notice that the ETASM be an individually owned account established at a Federally insured financial institution. Many commenters stated that the account should be available as a jointly held account at the option of the recipient in order to maximize the utility of the account. Other commenters asked that Treasury clarify whether or not the ETASM could be held by a representative payee receiving payments on behalf of the recipient.

It was not Treasury's intention to require that ETAsSM be titled only in the name of the recipient. By characterizing the ETASM as an individually owned account, Treasury intended to indicate that the ETASM would not be a Treasury owned account or an account owned by a corporation, organization, or other entity. An ETASM may be titled in any way that meets the requirements of 31 CFR 208.6 and 31 CFR 210.5, except that an ETASM may not be established in the name of a corporation or other entity. 31 CFR 208.6 and 31 CFR 210.5 provide that all Federal payments, other than vendor payments, made by electronic funds transfer, including those made through an ETASM, shall be deposited into an account at a financial institution in the name of the recipient, with certain exceptions, including payments made to a representative payee. As discussed in the supplementary information accompanying the promulgation of 31 CFR Part 210, 210.5 does not require that the recipient's name be the only name on the account, and thus would not prohibit the use of a joint account.

Most consumer organizations supported the requirement that financial

institutions be Federally insured as an important consumer protection. Several credit unions commented that credit unions which are privately insured should be permitted to offer ETAsSM.

Treasury believes that Federal deposit or share insurance is an important consumer protection which should be afforded to ETASM holders. Accounts at institutions that are insured by the Federal Deposit Insurance Corporation (FDIC) or National Credit Union Administration (NCUA) are insured for the full amount in the account, up to \$100,000. In contrast, accounts at some institutions that are other than Federally insured are insured for only 50% of the amount in the account. In addition, Federally insured financial institutions are subject to comprehensive Federal regulation and oversight through examinations for safety-and-soundness and compliance with consumer protection laws. Accordingly, Treasury is requiring that in order to be eligible to offer ETAsSM, a financial institution must be Federally insured.

As proposed in the Notice, financial institutions offering ETAsSM are prohibited under the FAA from entering into arrangements with non-financial institutions to provide access to ETAsSM, other than access through a national or regional ATM/POS network. Treasury continues to be concerned that such arrangements might be confusing or misleading to recipients and, therefore, will not permit financial institutions to enter into such arrangements with respect to the offering of the ETASM.

Available to any Individual Who Receives a Federal Benefit, Wage, Salary, or Retirement Payment

With two exceptions, a financial institution that chooses to offer ETAsSM must open an ETASM for any recipient of a Federal benefit, wage, salary, or retirement payment who requests an ETASM and who, by enrolling through the institution in the Federal Government's Direct Deposit program, agrees to have such payments electronically transferred to the ETASM. Each financial institution may establish its own account-opening procedures for the ETASM. For example, some institutions may choose to open ETAsSM through a telephone application process whereas others may choose to require recipients to apply in person.

The two exceptions to the account-opening requirement are: (a) A financial institution may not open an ETASM for any individual if the institution does not have authority under its charter to maintain a deposit or share account for the individual (for example, where a

recipient does not meet a credit union's field of membership requirements); and (b) a financial institution is not required to open an ETASSM for any individual if (i) the institution is aware that the individual previously was the owner of an ETASSM that was closed because of fraud at that institution or any other financial institution, or (ii) the institution, for reasons of account misuse, previously closed an ETASSM held by the individual at that institution.

The Notice indicated that financial institutions would not be permitted to deny an ETASSM to any eligible recipient, and that financial institutions would be permitted to close an ETASSM only in certain circumstances to be delineated by Treasury. This requirement drew extensive comment from financial institutions.

In general, financial institutions commented that it is essential that they be able to refuse an account to an individual who has a history of abusing accounts, such as repeated overdrafts or fraud. Many institutions commented that denying accounts to individuals who have a history of previous account misuse or credit problems is their primary method for reducing the risk of account fraud and losses. Some institutions expressed concern that they might be faced with overwhelmingly large numbers of ETASSM applicants. Other institutions commented that the prohibition against denying ETASSM to eligible individuals would impose an unacceptable risk of loss to banks and violate bank "safety and soundness" principles.

Most consumer organizations, on the other hand, supported making the ETASSM available to all Federal payment recipients so that all eligible recipients would have the opportunity to enter the financial services mainstream regardless of their credit history.

Several financial institutions were concerned with how long they would be committed to participating as ETASSM providers. Some institutions urged Treasury to permit them to offer ETASSM for a "trial period," after which they could close the accounts if they were not profitable. Similarly, institutions commented that they must have the ability to close an ETASSM for overdrafts, fraud, or excessive Regulation E claims.

31 CFR 208.5 provides that any individual who receives a Federal benefit, wage, salary or retirement payment is eligible to open an ETASSM. Treasury believes that it is important to ensure that even individuals who may have experienced prior checking account management problems or credit problems have access to an ETASSM.

Accordingly, a financial institution will be required to open an ETASSM for any eligible recipient, regardless of the recipient's previous account experience, except where the individual has engaged in fraud with respect to another ETASSM or where the individual has misused an ETASSM at that same institution. The distinction between fraud and misuse in this context is that although a recipient could unintentionally or negligently misuse an account in various ways (for example, by inadvertently causing an overdraft to the account or failing to safeguard a PIN number), fraud represents actions by an individual with the intent to obtain funds wrongfully from the financial institution (for example, where an individual authorizes a third party to withdraw funds from an account using an ATM card and then falsely represents to the financial institution that the withdrawal was unauthorized). Treasury takes seriously this distinction and reserves the right to take corrective action to address any violation of the account-opening requirements, including by terminating a financial institution's participation in the ETASSM program.

Treasury believes that the risk of fraud or misuse of an ETASSM is minimal because of the way in which the account has been designed. For example, as discussed below, the potential for overdrafts will be very low, in contrast to a checking account or an account with off-line debit card access. In addition, financial institutions that provide POS access will be permitted to impose overdraft fees (subject to certain limitations discussed below) or withdraw a recipient's POS access if a POS card is misused, including by overdrawing the account.

In light of the fact that financial institutions will not be permitted to deny an ETASSM to an eligible individual except in limited circumstances, Treasury recognizes that it is important for financial institutions to have the ability to close an individual ETASSM that is misused. Accordingly, a financial institution will be permitted to close an ETASSM where the financial institution has cause to believe that fraud has occurred in connection with the account or that the account has been misused. Any determination that fraud or misuse has occurred must be consistent with the financial institution's usual criteria for closing accounts. Those criteria could include, for example, where the institution determines that fraud has occurred after conducting the investigation required under Regulation E; excessive overdrafts; negligence in safeguarding an ATM and/or POS card

or personal identification number (PIN); or failure to pay an overdraft within a reasonable period of time.

In addition to the foregoing provisions, Treasury intends to monitor any issues that may arise as institutions begin offering ETASSM and to work with institutions where necessary to deal with any unanticipated problems, including working with institutions that experience an overwhelming number of requests by eligible recipients to open ETASSM.

Accept Electronic Federal Benefit, Wage, Salary, and Retirement Payments and Such Other Deposits as a Financial Institution Agrees to Permit

Treasury had proposed to limit the types of funds that could be deposited to an ETASSM to electronic Federal benefit, wage, salary, and retirement payments. Most commenters supported allowing deposits other than electronic Federal benefit, wage, salary, and retirement payments into the ETASSM. Many financial institutions commented that permitting other electronic deposits into the ETASSM would enhance utility for the recipient. Some financial institutions commented that their systems cannot distinguish among, and restrict, types of electronic deposits which are sent to an account. All consumer organizations supported allowing other electronic (and non-electronic) deposits into the account as a way to make the account a more meaningful entry into the financial services mainstream.

In view of the comments received, Treasury will permit (but not require) financial institutions to offer recipients the option of depositing to the ETASSM other funds in addition to electronic Federal benefit, wage, salary, and retirement payments. A financial institution may choose to limit such other deposits to electronic deposits or may allow recipients to deposit cash and/or checks in addition to other electronic deposits. Financial institutions may specify whether deposits of other funds can be made by mail, at an ATM, and/or over-the-counter. Financial institutions may not charge any fee in connection with allowing deposits of other funds.

Attachment

One of the reasons that Treasury had proposed to limit the types of funds that could be deposited to an ETASSM was to reduce the potential that funds in an ETASSM would be subject to attachment. Several consumer organizations requested that Treasury prohibit attachment of all funds. These commenters stated that recipients may

not understand the implications of an attachment, and may be unable to organize a defense against the attachment. One consumer organization suggested that when presented with an attachment order, financial institutions should determine which funds are attachable (or not attachable) as a way to assist recipients.

Financial institutions opposed any shifting of the burden for defending against an attachment in this manner. A number of financial institutions commented that they should not have any disclosure requirement with respect to the potential attachment of ETAsSM, noting that this would be expensive and would constitute the provision of legal advice, for which they could be subject to litigation risk. Some institutions commented that Treasury should provide model disclosure language regarding attachment. Others commented that it must be made clear that it is not the financial institution's responsibility to claim any exemption from attachment.

Most Federal benefit payments deposited to an account at a financial institution, including Social Security benefits, Supplemental Security Income benefits, Veteran's benefits, and Federal Railroad Retirement benefits, are protected from attachment and the claims of judgment creditors by Federal law, subject to certain limited exceptions.⁴ If a financial institution receives an order of attachment or garnishment for an ETASM, it must immediately send a copy of the order and the name of the creditor and contact person, if any, to the recipient. In addition, in order to ensure that recipients understand that Federal benefit payments deposited to an ETASM generally are protected from attachment, Treasury will require institutions that open an ETASM to provide the following disclosure, in writing, to the holder:

Many Federal benefit payments, including Social Security benefits, Supplemental Security Income benefits, Veteran's benefits, and Railroad Retirement benefits, are protected from attachment under Federal law. This means that your creditors do not have the right to have these funds taken out of your ETASM. There are a few exceptions, however. For example, funds in your ETASM can be taken to satisfy child support or alimony obligations you owe. [If you deposit funds other than Federal benefit payments to your ETASM, your creditors may be able to have those funds taken out of your account,

but your Federal benefits would still be protected.]⁵

If we/[name of Institution] receive an order of attachment, garnishment, or levy, we will immediately send you a copy of the order and the name of the creditor and contact person, if any.

If you have questions about a creditor's right to remove funds from your ETASM, contact your benefit agency or your local legal services organization.

Set Off

Treasury had proposed to prohibit financial institutions that elect to offer ETAsSM from exercising any right of set off against an ETASM, with the exception of the monthly account fee or charges for additional cash withdrawals or balance inquiries. All consumer organizations who commented on the issue opposed any right of the financial institution to set off funds held in an ETASM under any circumstances. In contrast, financial institutions strongly objected to any prohibition against their right of set off. They argued that a financial institution's right of set off is essential to mitigate the risks posed by overdrafts, amounts mistakenly credited to an account, and amounts provisionally credited to accounts as required under Regulation E. They also argued that prohibiting set off will reduce the incentives for cross selling other bank services to recipients, thereby reducing the potential profitability of servicing these customers and the attractiveness of offering the ETASM. Financial institutions commented that eliminating incentives for cross selling will reduce the availability of credit and other bank services, such as cashing checks, that are often provided to customers on the basis of an available account balance. Several institutions requested clarification as to whether the prohibition against set off would prevent recipients from pledging the account or having automatic loan payments debited from the account.

In response to the comments requesting clarification of Treasury's intent, Treasury will permit financial institutions to deduct from an ETASM amounts representing certain obligations of the recipient that are directly related to the maintenance of the ETASM itself. Those obligations include: (a) The monthly fee; (b) any other fees incurred by the recipient in connection with the maintenance of the ETASM; (c) any amount mistakenly credited to an ETASM to which the recipient has no legal right; (d) the

⁵This sentence must be included only if the financial institution permits the recipient to deposit into the ETASM funds other than Federal benefit, wage, salary, and retirement payments.

amount of any overdraft on an ETASM; and (e) any amount for which the recipient is liable under Regulation E, including any amount provisionally credited to the ETASM for which the financial institution determines, after conducting the investigation required under Regulation E, that the recipient is liable.

Treasury will not permit financial institutions to set off against an ETASM obligations incurred by a recipient in connection with other products or services offered by the institution. In response to questions raised by commenters, this prohibition means that recipients may not pledge the account or have automatic loan payments transferred from the account to another account. Treasury encourages financial institutions offering ETAsSM to market other products and services to recipients, but will not allow payment for such products and services to be set off against the account.

Subject to a Maximum Price of \$3.00 Per Month

Financial institutions that choose to offer ETAsSM may charge a fee not to exceed \$3.00 per month. Treasury will evaluate the appropriateness of this fee from time to time, and will make adjustments periodically as warranted. All attributes listed in the "Summary of ETASM Attributes" section of this notice must be included within the monthly fee to the recipient.

In general, consumer and community-based organizations commenting on the Notice favored the establishment of a maximum monthly fee for the ETASM. Some of these organizations expressed a concern that \$3.00 a month would be too expensive for some recipients. On the other hand, many financial institutions indicated that \$3.00 per month would not cover the costs of maintaining the ETASM as proposed. A number of financial institutions requested clarification that they would be allowed to charge additional fees for account research, card replacement, overdrafts, cashier's checks, money orders and other special services. Consumer organizations urged Treasury to regulate any fees for additional withdrawals so they do not exceed actual financial institution costs or some other reasonable cost.

Treasury believes that \$3.00 represents a reasonable maximum monthly fee for the ETA.⁶ However, in

⁶In response to a question raised by some credit unions, Treasury will not regard the membership share which an individual is required to purchase in order to become a credit union member to constitute a fee. Treasury understands that the

⁴ See 42 U.S.C. 407(a); 42 U.S.C. 1383; 38 U.S.C. 530; and 45 U.S.C. 231m(a). The prohibition against attaching such funds is subject to certain exceptions, including to satisfy child support and alimony obligations. See, e.g., 42 U.S.C. § 659. *Philpott v. Essex County Welfare Board*, 409 U.S. 413, 416 (1973).

recognition of costs that may be incurred by financial institutions for providing services beyond those required by this notice, Treasury will permit financial institutions to charge the holder of an ETASM for other services for which the institution usually charges fees to its customers. Examples of such fees include fees for ATM withdrawals in excess of four per month; replacement card fees; and account research fees. Financial institutions may impose such fees at their customary rates, except that the amount of any overdraft fee may not exceed \$10.00. In addition, a financial institution may not charge a recipient more than one overdraft fee during a 24-hour settlement period even if several items on the recipient's account are returned during that period. Treasury believes that \$10.00 represents a fee that, in the context of the ETASM, is reasonable both for financial institutions and recipients, particularly in view of the very limited risk of overdraft in the ETASM.

Prior to opening an ETASM, a financial institution must clearly and conspicuously disclose, in writing, the amount of any applicable fees to the recipient, as described more fully in the FAA.

Have a Minimum of Four Cash Withdrawals and Four Balance Inquiries Per Month Included in the Monthly Fee

Access to funds and balance information may be provided by ETASM providers through one of three methods: (1) The financial institution's proprietary (on-us) ATMs, (2) over-the-counter at the ETASM provider's main office or branch locations, or (3) through a combination of ATM and over-the-counter transactions. In addition, access to balance information may be provided over the telephone or, if the recipient agrees, through other electronic means. Any of these methods may be used at the option of the financial institution as long as a minimum of four cash withdrawals and four balance inquiries are provided within the \$3.00 monthly fee and provided that, as discussed below, institutions that are members of on-line POS networks provide on-line POS access.

A majority of consumer organizations supported the proposed methods of access to the account, although some commented that the number of cash withdrawals included in the monthly fee should be increased. Financial institutions generally commented that two or three withdrawals per month

would be more reasonable in light of the cost structure of the account. Some financial institutions requested clarification on the meaning of "proprietary" ATMs.

By using the term proprietary (on-us) ATMs, Treasury is referring to those ATMs which a financial institution's customers may use without being subject to a fee of any kind, including a surcharge. In determining the number of cash withdrawals and balance inquiries to include in the monthly account fee, Treasury weighed the advantages of providing multiple withdrawals and inquiries against their cost, recognizing that the more transactions provided, the higher the monthly cost. With regard to transaction fees, it should be noted that Treasury is not restricting the imposition of ATM fees or surcharges generally, provided that the ETASM holder has four cash withdrawals and four balance inquiries within the monthly fee.

In the Notice, Treasury requested comment on one other kind of account access, i.e., whether financial institutions should be permitted to offer preauthorized Automated Clearing House (ACH) debit capability as an additional feature, at the option of the financial institution and at an additional fee, if any, to the recipient. Comments from all sources were evenly divided over whether Treasury should allow ETASM providers to offer this feature. Supporters of the feature pointed to increased utility to the recipient, in that it would provide a convenient and cost-saving means for recipients to pay certain recurring bills such as utility, insurance, and car payments. Some financial institutions commented that it is beyond their capability to know about, or restrict, ACH debits to the account.

Institutions that opposed allowing ACH debit capability were concerned that the account could compete with other products, that this feature would complicate account management and confuse consumers, and that the occurrence of overdrafts would increase. Some commenters opposing the inclusion of this feature pointed to the potential for fraud against the account holder. Commenters observed that ACH debit capability could be very expensive for the financial institution, given the costs of servicing the account and dealing with customer inquiries.

In response to the issues raised by commenters as well as low public acceptance at this time, Treasury is not including ACH debit as a feature of the ETASM, optional or otherwise. However, in light of the operational concerns expressed by some commenters,

financial institutions will not be required to reject preauthorized ACH debit transactions, if any, initiated by recipients.

Consumer Protections

ETAsSM will be subject to those consumer protections available to other account holders at the same financial institution. Most commenters supported this requirement. Thus, an ETASM will be protected by Federal deposit or share insurance, subject to the Truth in Savings Act disclosures found in Regulation DD (12 CFR Part 230) and, if electronic access is provided, subject to Regulation E (12 CFR Part 205).

For Financial Institutions That Are Members of an On-line Point-of-Sale (POS) Network, Allow On-line POS Transactions

A majority of consumer organizations and other non-financial institution commenters supported on-line POS access to the account. Many financial institutions opposed the on-line POS access requirement because of the cost of providing POS access, as well as the increased possibility of overdrafts. Some financial institutions who offer off-line POS access to customers through VISA Check and MasterMoney cards questioned whether they would be required to provide such cards to ETASM holders.

By referring to on-line POS access, Treasury is excluding access to the ETASM through off-line debit systems. Treasury is aware that off-line debit systems carry the same risks of overdraft as check writing capability. Therefore, institutions that generally offer this type of POS access to customers are not permitted to offer off-line POS access to the ETASM. On-line POS access, in contrast to off-line, carries minimal risk of overdraft in most situations. For small institutions that rely on batch processing for on-line POS access, which presents a greater possibility for overdraft, Treasury believes that the risk presented is mitigated by the right to offset overdrafts against an ETASM, to charge a fee for overdrafts or returned items, and to discontinue POS access or close the ETASM for repeated overdrafts.

Financial institutions that provide POS access may not impose a fee in connection with POS purchases, cash withdrawals, and cash back with purchases. Treasury is aware that some merchants impose fees on cardholders for such transactions, and is not prohibiting or regulating merchant fees.

No Minimum Balance

In general, financial institutions may not require that a recipient maintain a

membership share is returned to the individual when the account is closed.

minimum balance in his or her ETASM. The only exception to this requirement is where a minimum balance is mandated by Federal or State law. For example, in the case of credit unions, under 12 U.S.C. 1759, a Federal credit union member must subscribe to at least one share of stock.

Consumer organizations generally were supportive of this requirement. Most financial institutions did not indicate that a minimum balance would be necessary, except in order to support the payment of interest on an ETASM, as discussed below.

At the Option of the Financial Institution, be Either an Interest-bearing or a Non-Interest-bearing Account

Consumer organizations generally supported allowing financial institutions to pay interest on the ETASM, though most conceded that any interest paid might be negligible. Some organizations pointed out that the benefit of interest to recipients could be partially or fully offset if additional fees were imposed in connection with the payment of interest. A few consumer organizations opposed allowing interest because it would complicate the account, indicating that the account should be kept simple and understandable in order to attract those recipients who have avoided accounts at financial institutions in the past.

A majority of financial institutions were opposed to allowing the payment of interest on the ETASM. Many commented that, given the pricing structure of the account and the prohibition against a minimum balance, it would not be feasible to pay interest on the account. Other financial institutions commented that the account should be kept simple so as not to confuse recipients. A number of institutions indicated that paying interest on the ETASM would compete with existing products and therefore they would be reluctant to offer the ETASM.

Treasury believes that the availability of interest-bearing ETAsSM could encourage and facilitate savings by low income recipients. Treasury believes that recipients may find the payment of

interest to be an attractive feature that could encourage more individuals to sign up for interest-bearing ETAsSM at financial institutions that choose to offer them. At the same time, Treasury understands that some financial institutions may not find it economically viable to offer an interest-bearing ETASM, and does not wish to discourage those institutions from offering ETAsSM. Accordingly, the payment of interest will be offered solely at the option of the financial institution.

Financial institutions may not require a minimum balance in connection with the payment of interest. If a financial institution offers both interest-bearing and non-interest-bearing ETAsSM, the institution may charge a higher monthly fee for the interest-bearing ETASM, than it charges for the non-interest-bearing ETASM, but in no case may the monthly fee exceed \$3.00.

Financial institutions are prohibited by Federal law from paying interest (which includes certain premiums and other payments) on demand deposit accounts. See, e.g., 12 U.S.C. §§ 371a, 1828(g), and 1464(b)(1)(B); 12 CFR § 217.101. In order for a financial institution to pay interest (or certain other amounts) on an ETASM, it must reserve the right to require the holder of an account to provide at least seven days' written notice prior to withdrawal of any funds in the ETASM. See 12 CFR 204.2(b)(3)(ii). (Such accounts are sometimes known as NOW accounts and are authorized under 12 U.S.C. 1832(a).) Treasury understands that financial institutions rarely exercise this right. In order to ensure that ETASM holders are treated like other NOW account holders in this respect, the FAA will provide that if a financial institution, in order to establish the ETASM as a NOW account, reserves the right to require seven days' written notice prior to withdrawal of any funds in the ETASM, the institution shall not exercise this right with respect to any ETASM holder unless the institution requires such notice of all its NOW account holders.⁷

⁷The legal staff of the Board of Governors of the Federal Reserve System has informally advised

In addition, to ensure that recipients are aware of both their rights and the financial institution's rights, financial institutions that pay interest on an ETASM must provide the following disclosure, in writing, to the holder:

Under Federal regulations, financial institutions that offer interest-bearing transaction accounts (including ETAsSM) must reserve the right to require you to provide at least seven days' written notice prior to withdrawing any funds in your ETASM. We/[name of institution] agree that we will not require this notice from you unless we require it for all interest-bearing transaction accounts we offer.

Monthly Statement

Most consumer organizations supported the requirement that a monthly statement be provided for the ETASM. A number of financial institutions objected to the requirement that a monthly statement be provided, on the basis of the associated costs. Several institutions commented that the statement requirements of Regulation E should be adequate. Others commented that balance information via a voice response unit or ATM would be more useful to recipients. Some said a passbook should be sufficient.

Treasury believes that it is important to provide recipients with a monthly statement, particularly since the ETASM allows for POS withdrawals and purchases, and account balances may not always be provided in connection with such transactions. A monthly statement will facilitate a recipient's ability to track their withdrawals and POS transactions and thus be helpful for financial planning and account management purposes. The monthly statement may be provided electronically (e.g., at an ATM) if the recipient agrees, subject to the requirements of Regulation E. See 63 FR 14527, March 25, 1998.

Dated: July 13, 1999.

Richard L. Gregg,
Commissioner.

BILLING CODE 4810-35-P

Treasury that such a restriction will not preclude treating the ETASM as a NOW account.

OMB Control # 1510-0073



Financial Agency Agreement

The undersigned financial institution, _____, a _____, (hereafter "Institution") hereby applies to the Department of the Treasury ("Treasury") for designation as a Financial Agent of the United States for the purpose of offering and maintaining Electronic Transfer Accounts (ETAsSM). This agreement, which shall be executed on behalf of Treasury by its Fiscal Agent, the Federal Reserve Bank of Dallas (hereafter "Reserve Bank"), is made pursuant to 31 CFR § 208.5, as amended from time to time, which is incorporated by reference herein.

Representations and Warranties. Institution represents and warrants to Reserve Bank and Treasury that:

1. **Authority.** Institution possesses under its charter and the regulations issued by its chartering authority either general or specific authority to offer and maintain ETAsSM.
2. **Execution and Delivery.** The execution and delivery of this Agreement and the offering and maintenance of ETAsSM by Institution is authorized by due action of its board of directors, as evidenced by the resolutions of such body, submitted with this Agreement.
3. **Insured Status.** Institution is a financial institution, the deposits of which are insured by the Federal Deposit Insurance Corporation under 12 U.S.C. Chapter 16 or the member accounts of which are insured by the National Credit Union Share Insurance Fund under 12 U.S.C. Chapter 14, Subchapter II.
4. **Year 2000 Readiness.** Institution meets the standards for Year 2000 system readiness established by the Federal Financial Institutions Examination Council (FFIEC).

Obligations of Institution. Institution hereby agrees as follows:

1. **Offering of ETAsSM.** Within 60 days of the date of execution of this Agreement by Reserve Bank, or as otherwise agreed to in writing by the Reserve Bank, Institution will commence the offering and maintenance of ETAsSM in accordance with the requirements set forth in the ETASM Notice dated [Treasury will insert date of publication of this document in the Federal Register] and published in the Federal

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Register at [Treasury will insert citation for this document], as may be amended from time to time (hereafter "Notice"). The Notice is incorporated by reference in this Agreement. Institution will offer ETAsSM at all of its branch locations.

2. Insured Status. For the duration of the term of this Agreement, Institution shall maintain its status as a financial institution, the deposits of which are insured by the Federal Deposit Insurance Corporation under 12 U.S.C. Chapter 16 or the member accounts of which are insured by the National Credit Union Share Insurance Fund under 12 U.S.C. Chapter 14, Subchapter II.
3. Account Opening. Except as provided in subparagraphs (a) and (b), Institution shall open an ETASM for any Eligible Individual who requests an ETASM and who authorizes the deposit of Eligible Payments to the ETASM. Institution may establish account-opening procedures for the ETASM provided that the procedures do not conflict with any provision of this agreement. "Eligible Payment" means any electronically transferred Federal benefit, wage, salary, or retirement payment. "Eligible Individual" means any individual who receives a Federal benefit, wage, salary, or retirement payment.
 - (a) Institution shall not open an ETASM for any individual if Institution does not have authority under its charter to maintain a deposit or share account for the individual.
 - (b) Institution is not required to open an ETASM for any individual if:
 - (i) Institution is aware that the individual previously was the owner of an ETASM that was closed because of fraud at Institution or any other financial institution, or
 - (ii) Institution, for reasons of account misuse, previously closed an ETASM held by the individual at Institution.
4. Fees. Institution may charge the holder of an ETASM a fixed monthly account fee in an amount established by Treasury and set forth in the Notice (hereafter "Monthly Fee"). Institution may not charge any other fee in connection with any required attribute of the ETASM listed in the Notice. Subject to the foregoing restriction, Institution may charge the holder of an ETASM other account-related fees that Institution usually and customarily charges to its other retail customers. Examples of such fees include (but are not limited to): fees for ATM withdrawals in excess of the minimum specified in the Notice; replacement card fees; and account research fees. Institution may impose such fees at its customary rates; provided, however, that the amount of any overdraft fee may not exceed the amount established by Treasury and set forth in the Notice. All fees shall be disclosed in accordance with the requirements set forth in paragraph 10(a) of this Agreement.

5. **Set Off.** Institution shall not exercise any right of set off against an ETASM for any obligation of the account holder to Institution, except that Institution may set off against an ETASM: (a) the Monthly Fee; (b) any fee(s) incurred by the holder of an ETASM in connection with the maintenance of the ETASM as provided in this Agreement; (c) any amount mistakenly credited to an ETASM by Institution and to which the account holder has no legal right; (d) the amount of any overdraft on an ETASM; and (e) any amount for which the account holder is liable under Regulation E, including any amount provisionally credited to the ETASM by Institution in accordance with Regulation E for which Institution determines, after investigation, that the holder of the ETASM is liable.
6. **Additional Deposits.** Institution may offer recipients who open ETAsSM the option of depositing to the ETASM other funds in addition to electronic Federal benefit, wage, salary, and retirement payments. At its discretion, Institution may limit such other deposits to electronic deposits, may allow recipients to deposit checks and/or cash in addition to other electronic deposits, and may specify whether deposits can be made by mail, at an ATM, and/or over the counter. Notwithstanding any other provision of this Agreement, Institution may not charge a fee in connection with this option.
7. **Payment of Interest.** Institution is not required to pay interest on ETASM balances, but may elect to do so in its sole discretion. Institution may not require a minimum balance in connection with the payment of interest. If Institution offers both interest-bearing and non-interest-bearing ETAsSM, Institution may charge a different Monthly Fee for the interest-bearing and non-interest-bearing ETAsSM, but may in no case charge a Monthly Fee that exceeds the maximum amount specified by Treasury in the Notice. If Institution, in order to establish the ETASM as a NOW account, reserves the right to require the account holder to provide at least seven days' written notice prior to withdrawal of any funds in the ETASM, Institution shall not exercise this right with respect to any ETASM holder unless Institution requires such notice of all its NOW account holders. If Institution pays interest on an ETASM, Institution shall provide the disclosure set forth in paragraph 10(d) of this Agreement to the holder of the account.
8. **Access Arrangements.** Institution shall not enter into any arrangement with any non-financial institution provider of payment services, other than a national or regional ATM/POS network, for the purpose of providing access to payments deposited to an ETASM maintained by Institution.
9. **Account Closing.** Institution may close an ETASM where Institution has cause to believe that fraud has occurred in connection with the account or that the account has been misused. A determination that fraud or misuse has occurred shall be based on, and consistent with, Institution's usual and customary criteria for closing accounts. Such criteria may include (but shall not be limited to): where Institution determines that fraud has occurred after conducting the investigation required under Regulation E; excessive overdrafts; negligence in safeguarding an ATM and/or POS card or PIN number; or failure to pay an overdraft within a reasonable period of time. Institution

shall not close any ETASM for any reason other than fraud or misuse unless (a) so requested by the holder of the ETASM; (b) the ETASM ceases to be used for the receipt of Eligible Payments; or (c) this Agreement is terminated in accordance with its terms.

10. Disclosures.

(a) Prior to opening an ETASM, Institution shall provide to the holder of the account the following disclosures, which shall be made clearly and conspicuously in writing in a form the account holder may retain:

(i) the amount of any fee(s) that Institution may impose on the holder of the ETASM in accordance with this Agreement;

(ii) a list of Institution's local ATM and branch locations, hours of service, and telephone numbers; and

(iii) the following disclosure regarding attachment of an ETASM:

"Many Federal benefit payments, including Social Security benefits, Supplemental Security Income benefits, Veteran's benefits, and Railroad Retirement benefits, are protected from attachment under Federal law. This means that your creditors do not have the right to have these funds taken out of your ETASM. There are a few exceptions, however. For example, funds in your ETASM can be taken to satisfy child support or alimony obligations you owe. [If you deposit funds other than Federal benefit payments to your ETASM, your creditors may be able to have those funds taken out of your account, but your Federal benefits would still be protected.]¹

If we/[name of Institution] receive an order of attachment, garnishment, or levy, we will immediately send you a copy of the order and the name of the creditor and contact person, if any.

If you have questions about a creditor's right to remove funds from your ETASM, contact your benefit agency or your local legal services organization."

(iv) In addition, if Institution pays interest on an ETASM, Institution shall provide the following disclosure to the holder of the account:

"Under Federal regulations, financial institutions that offer interest-bearing transaction accounts (including ETAsSM) must reserve the right to require you to provide at least seven days' written notice prior to withdrawing any funds in your

¹ This sentence should be included in disclosure only if Institution permits additional deposits to the ETASM.

ETASM. We/[name of Institution] agree that we will not require this notice from you unless we require it for all interest-bearing transaction accounts we offer.”

(b) Institution shall provide the following disclosure in its account agreement with the ETA holder:

"[Name of Institution] is required by the Department of the Treasury to ensure that your ETASM meets certain criteria and to provide you with certain disclosures about your ETASM. These obligations are set forth in an ETASM Financial Agency Agreement between [name of Institution] and the Department of the Treasury. The text of the ETASM Financial Agency Agreement is publicly available and is published in the Federal Register at [Treasury will insert citation for this document], dated [Treasury will insert date of publication of this document in the Federal Register]."

11. **Provision of Information.** Institution shall complete and provide to Reserve Bank the enrollment form attached to this Agreement. Institution shall report to Treasury by the 15th day of each month the number of ETAsSM opened and closed by Institution during the previous month and the number of ETAsSM open at the Institution as of the end of the previous month (hereafter "Monthly Report"). Institution shall also provide an account number for the Institution to which payment shall be made. In addition, Institution shall provide Treasury with such information and documentation as reasonably may be required from time to time, including internal audit reports, in order for Treasury to verify the number and status of ETAsSM, facilitate payment of Set Up Fees, and ensure compliance with the terms of this Agreement.

Use of ETASM Mark. Treasury grants to Institution a license to use the ETASM mark in advertising and promoting ETAsSM in accordance with the graphics standards established by Treasury (hereafter "Graphics Standards"). Treasury shall provide to Institution one or more logos containing the ETASM mark that Institution must display in each branch, in accordance with the Graphics Standards. Treasury has the right to revoke such license immediately if Treasury, in its sole discretion, determines that Institution is using the ETASM mark in a misleading or inappropriate manner. Institution's license to use the ETASM mark shall cease upon termination of this Agreement.

Set Up Fee. Treasury shall pay Institution a one-time fee, the amount of which shall be determined by Treasury and published in the Notice, for each ETASM that Institution establishes for an Eligible Individual (hereafter "Set Up Fee"). Treasury shall pay the Set Up Fee within 30 days of receipt of the Monthly Report documenting the number of ETAsSM opened.

No Liability. Institution acknowledges that, except for the payment of the Set Up Fee (as defined above), neither Reserve Bank nor Treasury shall have any liability to Institution for any loss or liability incurred by Institution in connection with or resulting from opening or

maintaining an ETASM or the actions of any holder of an ETASM, including any loss to Institution resulting from fraud or misuse of an account.

Amendment. Treasury may amend this Agreement at any time upon 60 days prior written notice to Institution.

Term and Termination. The term of this Agreement is two years from the date of its execution by Reserve Bank; provided, however, that the term of this Agreement shall be extended automatically and without any action by either party for subsequent one-year terms unless Institution informs Reserve Bank and Treasury of its intent to terminate the Agreement at least 60 days prior to the end of any term, by written notice to the following addresses:

Director, Program Compliance Division
Financial Management Service
401 14th Street, N.W., Room 424
Washington, D.C. 20227

Federal Reserve Bank of Dallas
Securities Department
P.O. Box 655906
Dallas, TX 75265-5906

Treasury may terminate this Agreement at any time prior to the expiration of its term upon written notice to Institution. Institution may not terminate this Agreement prior to the expiration of its initial or any subsequent term without Treasury approval. Upon termination of this Agreement, Institution shall provide all assistance necessary to effect the orderly transfer of ETAsSM to another financial institution. Treasury may extend a termination date if, in Treasury's sole discretion, additional time is required to complete the orderly transfer of accounts.

Limited Purpose Designation. Institution acknowledges that by entering into this Agreement Institution shall be designated as a Financial Agent of United States exclusively for the purpose of offering and maintaining ETAsSM, and not for any other purpose.

Execution. Institution shall mail a duly executed original of this Agreement, together with all attachments, to the following address:

Federal Reserve Bank of Dallas
Securities Department
P.O. Box 655906
Dallas, TX 75265-5906

Institution agrees that upon its execution by the Federal Reserve Bank of Dallas, acting as Fiscal Agent of the United States, this document shall evidence the agreement entered into between the Secretary of the Treasury and Institution.

Signed on behalf of Institution by the undersigned corporate officer, who certifies that he/she is duly authorized to execute this document as evidenced by the attached resolutions of the

Governing Body

By: _____
Signature

Name of Institution

Name and Title of Authorized Officer (Print)

Street Address

Telephone Number

City or Town, State

Date

Designation

The undersigned, on behalf of the Federal Reserve Bank of Dallas, acting as Fiscal Agent of the United States, hereby designates _____ as an ETASM Financial Agent under the terms of this agreement commencing on the date indicated below.

Federal Reserve Bank of Dallas as Fiscal Agent of the United States.

By: _____
Signature

Name and Title of Official (Print)

Date

BURDEN ESTIMATE STATEMENT

We estimate that it will take you about two hours to complete the monthly report referred to in paragraph 11 of this Agreement. You are not required to provide the information requested unless a valid OMB control number is displayed on this form. Comments or suggestions regarding the above estimate or ways to simplify this form should be forwarded to Financial Management Service, Administrative Programs Division, Room 144, 3700 East West Highway, Hyattsville, MD 20782 and the Office of Management and Budget, Paperwork Reduction Project 1510-0073, Washington, DC 20530.

*Department of the Treasury
Financial Management Service*

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ATTACHMENT A

**OFFICER'S CERTIFICATE
RESOLUTIONS AUTHORIZING FINANCIAL INSTITUTION
AGREEMENT AND APPLICATION FOR DESIGNATION AS
FINANCIAL AGENT FOR THE OFFERING OF ETAsSM**

This is to certify that, at a meeting of the _____ of _____
Type of Governing Body, e.g., Board of Directors
undersigned financial institution, _____, a
Name of Institution
_____, which meeting was duly called and held on the _____
Type of Institution
day of _____, _____, a quorum being present, the following resolutions were duly
adopted; and are reflected in the attached minutes of the meeting.

1. That, after review of the "ETASM Financial Agency Agreement," in accordance with 31 CFR § 208.5 and the Notice dated [Treasury will insert date of publication of this document in the Federal Register] and published in the Federal Register at [Treasury will insert citation for this document], this financial institution is authorized to apply for designation as a Financial Agent of the United States for the purpose of offering and maintaining ETAsSM.
2. That _____ of the undersigned financial
Name and Title of Authorized Officer
institution hereby is authorized and directed to apply for designation of the financial institution as a Financial Agent for the purpose of offering and maintaining ETAsSM by execution of the ETASM Financial Agency Agreement, and to submit said agreement and application to the Federal Reserve Bank of Dallas.
3. That these resolutions and attached minutes, and the ETASM Financial Agency Agreement, are official records of the financial institution and will be maintained continuously as such.

In witness whereof, I have hereunto signed my name and affixed the seal of this financial institution.

Name of Financial Institution

Address

Signature of Certifying Officer

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Financial Management Service*

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ATTACHMENT B

Electronic Transfer Accounts (ETAsSM) Enrollment Form

In accordance with Paragraph 11 of the ETASM Financial Agency Agreement, this information is being collected by the Department of the Treasury to develop an electronic listing of designated ETASM providers. This listing will allow Federal payment recipients to ascertain the names and locations of financial institutions that offer ETAsSM within the recipients' zip code areas. Recipients can access this information through a voice response unit or the ETASM Internet web site. In order to be accurately listed as an ETASM provider, please complete the information requested below.

Financial Institution Headquarters Information

Name: _____

Address: _____

Customer Service Telephone Number: _____

(Optional) (The customer service telephone number is the central telephone number for public inquiries concerning the financial institution's ETASM offering and its branch locations. This telephone number will be published on the Internet at <http://www.eta-find.gov>.)

Primary Financial Institution Contact

(The following information will be used for Government purposes only.)

Name: _____

Title: _____

Telephone No.: _____

Routing and Transit Number: _____

(The Routing and Transit Number will be used to access branch location information for the financial institution from the National Information Center (NIC) Database of the Federal Reserve System. Note to Thrifts and Credit Unions: Your branch locations may not be included on the NIC database. Please attach a listing of all full service locations to this form so that these locations may be added to the listing of designated ETASM providers.)

Effective Date

Effective Date: _____

(The effective date is the date by which the financial institution will begin offering the ETASM to eligible recipients. The name and address of the financial institution and its branches will be posted on the listing of designated ETASM providers as of this effective date.)

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