

# Federal Income Benefits & Direct Express: How It Works, How Things Can Go Wrong, and What to Do About It

Kate Lang, Justice in Aging

Carla Sanchez-Adams, National Consumer Law Center

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# Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to [NCLER@acl.hhs.gov](mailto:NCLER@acl.hhs.gov).
- Written materials and a recording will be available at [NCLER.acl.gov](http://NCLER.acl.gov). See also the chat box for this web address.

# About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

# About NCLC

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S.

NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness.

# About Justice in Aging

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

Since 1972 we've focused our efforts primarily on populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

# Key Lessons

- Direct Express is available for those receiving federal income benefits who don't have a bank account
- Some Direct Express cardholders have had customer service and accessibility problems
- The Electronic Funds Transfer Act offers strong protections for unauthorized use of Direct Express cards
- Timing is important—the faster a consumer notifies Direct Express of an error, the more protected they are

# Direct Express

- Since 2013, US Department of the Treasury requires federal benefit payments to be made electronically
  - No more paper checks for new beneficiaries
- Treasury contracts with Comerica Bank to issue Direct Express debit MasterCard card for beneficiaries without a bank account



# How Does It Work?

- Each month, benefit payment is automatically deposited to Direct Express card account on payment date
- Prepaid debit card, not line of credit
- Cannot deposit additional funds to card
- Beneficiary can
  - use at stores that accept debit MasterCard cards
  - withdraw cash from ATM, bank or credit union with MasterCard logo
  - pay bills online or over the phone
  - use to purchase money orders at US Post Office



# Fees

- No monthly fees or overdraft fees
- No fee to get cash back with purchases
- No fee to get cash from a bank or credit union
- One free ATM cash withdrawal each month in network; \$0.85 each withdrawal thereafter
- One free card replacement per year; \$4 each thereafter, \$13.50 for expedited delivery
- \$1.50 each time to transfer funds to bank account

# Protections

- FDIC insured up to maximum legal limit
- Consumer protections under the Electronic Funds Transfer Act (EFTA) and implementing Regulation E (12 CFR 1005)
- MasterCard Zero Liability for unauthorized use when promptly reported
- PIN chosen by beneficiary
- Card replaced upon request if lost or stolen

# Representative Payees and Direct Express

- SSA Representative Payee or VA Fiduciary can receive benefits on Direct Express card
- If managing benefits for more than one beneficiary, payee/fiduciary has option to receive all benefits on one Direct Express card OR to have separate Direct Express card for each beneficiary
- Only for individuals serving as payee/fiduciary— organizations or agencies cannot use Direct Express
- Direct Express cannot be used for “dedicated accounts” (retroactive benefits for children receiving SSI)

# Problems with Direct Express?

- Contact Kate Lang at [klang@justiceinaging.org](mailto:klang@justiceinaging.org) for link to survey form

# Common Problems with Direct Express

- Customer Service
  - Two different call centers, depending on card number
  - Long wait times on hold at 800 numbers
  - No follow-up communication
  - Challenges with recognition of third-party assistors
- Access Issues
  - Those with limited English proficiency
  - Those with disabilities (hearing impairments, vision impairments, cognitive impairments)

# Treasury Response

- “Anticipated wait time” message added for call centers; maximum wait times down to under 30 minutes
- Comerica website has “contact us” button to click through to TTY service for hearing impaired cardholders
- Free interpreters available by phone
- Third party caller can contact Comerica to start fraud investigation
- Financial privacy waiver form created, for cardholder to give permission for Comerica to speak with third party

# SSA POMS on Direct Express

## GN 02402.007 Direct Express Debit Card Program

- “sensitive”, not publicly available on SSA’s website, redacted version (effective 9/29/22):  
[https://drive.google.com/file/d/1HhUBc\\_dMoclLtkmKRsljYHIAKS00z\\_Pp/view?usp=sharing](https://drive.google.com/file/d/1HhUBc_dMoclLtkmKRsljYHIAKS00z_Pp/view?usp=sharing)
- Paragraph I: Consent-based process
  - SSA and Comerica Bank established an agreement allowing FO {SSA field office} employees to share cardholder banking account information with Comerica Bank representatives. We can share cardholder banking information through the consent-based process permitting FO employees to speak on behalf of the DEC cardholders when calling Comerica.

The consent-based process is applicable when a cardholder is unable to resolve Direct Express issues without FO employee intervention and they are at the FO.

# Remedies under the Electronic Funds Transfer Act (EFTA)





# Electronic Funds Transfer Act

15 U.S.C. § 1693, et seq.

- The EFTA provides protections for unauthorized use, errors, as well as certain specific protections for prepaid accounts
- Implementing Regulation E, **12 CFR § 1005.1 et seq.** and Official Commentary to Reg. E provide more info.
- EFTA rights cannot be waived. **15 U.S.C. § 1693l** (lowercase “l”)
- Fantastic Resource: [CFPB’s EFTA FAQs](#)

# What is the Scope of the EFTA?

- Covers Direct Express account (prepaid account) and electronic funds transfers (EFTs) to and from a covered account
- Types of EFTs covered:
  - ACH transactions for those with a bank account
  - Debit cards (bank, nonbank, government)
  - Mobile p2p apps that store funds (PayPal, Venmo, Cash App)
  - Zelle (bank account p2p payments)
  - ATM transactions
  - Prepaid and payroll cards

# What Protection Does the EFTA Provide?

- Strong protections for unauthorized use, kicks in error resolution procedures.
- How unauthorized is defined:
  - EFT initiated by someone other than the consumer who does not have actual authority to initiate the transfer AND consumer received no benefit.

# What is NOT Considered Unauthorized?

- EFT initiated by the consumer, even if deceived/scammed into doing it
- EFT by person to whom the consumer furnished the “access device” (i.e., debit card), even if the person exceeds their authority
- EFT “initiated by the financial institution or its employee”
  - Can still be an “error,” just not “unauthorized”
  - Reg. E official interpretation: a consumer “has no liability for erroneous or fraudulent transfers initiated by an employee of a financial institution.”

# If EFT is Unauthorized, What Then?

- Error resolution procedures kick in.
  - 15 USC § 1693f(f), 12 CFR § 1005.11(a)
- Types of errors:
  - Unauthorized EFTs
  - Incorrect EFTs
  - An omission from a monthly statement of an EFT that should have been included
  - A computational error
  - Consumer's receipt of an incorrect amount of money from an ATM
  - Consumer's request for additional information or clarification concerning an EFT

# How Do You Trigger Error Resolution?

- Consumer must provide notice about the unauthorized error within 60 days of receiving statement showing the error, though amount of recovery will depend on when dispute (see next slide)
- Oral or written notice is sufficient
  - But bank may require written notice w/in 10 days of the oral notice – bank must provide the “how to and where to” at the time of the oral notice
- Notice must identify the consumer, the account number, explain that an error occurred, and reason for belief that it was an error.

# Unauthorized Charges: Liability Limits

- If “access device” lost/stolen:
  - If report w/in 2 biz days of learning of loss: max liability is \$50
  - If report w/in 60 days of statement, max liability is:
    - \$50 + debits made after 2 biz days until notice given
    - Up to a maximum of \$500
- If device not lost/stolen:
  - \$0 liability if report w/in 60 days of statement
  - If report > 60 days, liable for all preventable charges after 60 days

# Bank Duty to Investigate Errors

- After notice, bank must investigate the error “promptly”
- Report results w/10 days OR provisionally re-credit account, take up to 45 days to investigate
- If alleged error is an unauthorized EFT and investigation is inconclusive, burden is on bank to prove it’s authorized.
  - 15 USC § 1693g(b)
- Investigation must be “reasonable” (caselaw) and consumer negligence plays no role (i.e, wrote PIN # on ATM card or login info provided through fraud)
  - See Official Interpretation to 12 C.F.R. § 1005.2(m)



# What Happens After the Investigation?

- If error found, correct w/in 1 day.
- If gave provisional credit but found no error, can reverse credit but must give 5 days notice or honor payments for 5 days. This may trigger overdraft or other problems.
- Must give consumer written explanation of findings, notice of right to request documents that the institution relied upon in making its determination
  - If consumer requests documents, must be in “understandable form.”

# CFPB Prepaid/Payroll Card Rules

- Effective as of April 1, 2019
- New disclosures
- Clear EFTA/Reg E protection w/ modified rules on timing, notices
- Statements not required but must offer free balance info by phone, online transactions, paper histories by request
  - Direct Express does provide paper statements if requested
- New rules on overdraft fees on prepaid cards
  - Must comply with TILA, unlike for bank accounts (in essence, it is an extension of credit)
  - As a result, no overdraft fees permitted for Direct Express



# CFPB Model Prepaid Disclosure

Monthly fee	Per purchase	ATM withdrawal	Cash reload
<b>\$5.99<sup>†</sup></b>	<b>\$0</b>	<b>\$0</b> <small>in-network</small> <b>\$1.99</b> <small>out-of-network</small>	<b>\$3.99*</b>
ATM balance inquiry (in-network or out-of-network)		\$0 or \$0.50	
Customer service (automated or live agent)		\$0 or \$0.50* per call	
Inactivity (after 12 months with no transactions)		\$1.00 per month	
<b>We charge 4 other types of fees. Here are some of them:</b>			
[Additional fee type]		\$0.50 or \$1.00	
[Additional fee type]		\$3.00	
<p><sup>†</sup> No monthly fee with direct deposit or 30 transactions per month.</p> <p>* This fee can be lower depending on how and where this card is used.</p> <p><b>You may be offered overdraft/credit after 30 days. Fees would apply.</b> Register your card for FDIC insurance eligibility and other protections.</p> <p>For general information about prepaid accounts, visit <a href="http://cfpb.gov/prepaid">cfpb.gov/prepaid</a>. Find details and conditions for all fees and services inside the package, or call 800-234-5678 or visit <a href="http://xyz.com/prepaid">xyz.com/prepaid</a>.</p>			

# CFPB Model Payroll Card Disclosure

You do not have to accept this payroll card.  
Ask your employer about other ways to receive your wages.

Monthly fee	Per purchase	ATM withdrawal	Cash reload
<b>\$0</b>	<b>\$0</b>	<b>\$0</b> in-network <b>\$1.95*</b> out-of-network	<b>N/A</b>
ATM balance inquiry (in-network or out-of-network)			\$0 or \$1.95*
Customer service (automated or live agent)			\$0 or \$1.95 per call
Inactivity			\$0
<b>We charge 4 other types of fees.</b> Here are some of them:			
[Additional fee type]			\$1.00*
[Additional fee type]			\$3.00
* This fee can be lower depending on how and where this card is used. [See [location] for free ways to access your funds and balance information.]			
<b>No overdraft/credit feature.</b> Your funds are eligible for FDIC insurance.			
For general information about prepaid accounts, visit <a href="http://cfpb.gov/prepaid">cfpb.gov/prepaid</a> . Find details and conditions for all fees and services in the cardholder agreement.			

# Liability for EFTA Violations

- Actual damages;
- Statutory damages \$100-\$1000 per violation (in class action, up to \$500,000 or 1% of net worth);
- Attorneys' fees and costs; and
- Treble damages for any of the following:
  - Investigation not performed in good faith;
  - No provisional credit;
  - No reasonable basis for finding no error;
  - Knowingly and willfully finding no error when such a conclusion could not be drawn from the information available.
- 1 year SOL from violation

Questions?

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# Case Consultations

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at [ConsultNCLER@acl.hhs.gov](mailto:ConsultNCLER@acl.hhs.gov).