

## Fiscal Service, Treasury

## § 240.1

### § 235.1 Scope of regulations.

This part governs the issuance of settlement checks for checks drawn on designated depositories of the United States by accountable officers of the United States, that have been negotiated and paid on a forged or unauthorized indorsement.

[40 FR 6785, Feb. 14, 1975, as amended at 54 FR 35642, Aug. 29, 1989]

### § 235.2 Definition.

*Accountable Officers of the United States*, as used in these regulations, means disbursing officers authorized by the Secretary of the Treasury to maintain official accounts of the United States in depository banks located in the United States, its territories, and foreign countries, and to draw checks thereon in dollars or in foreign currencies.

### § 235.3 Settlement of claims.

Upon receipt of a claim by a payee or special indorsee on a check determined to have been paid on a forged indorsement under conditions satisfying the provisions set forth in 31 U.S.C. 3343, accountable officers of the United States, with respect to a check drawn on designated depositories of the United States, in dollars or in foreign currency, shall cause to be issued a settlement check in the appropriate currency to the payee or special indorsee.

[40 FR 6785, Feb. 14, 1975, as amended at 49 FR 47001, 47002, Nov. 30, 1984; 54 FR 35642, Aug. 29, 1989]

### § 235.4 Check Forgery Insurance Fund.

The Check Forgery Insurance Fund, established pursuant to 31 U.S.C. 3343, shall be available for use by the Commissioner, Financial Management Service, and accountable officers of the United States for the purpose of providing funding for settlements made to a payee or special indorsee pursuant to these regulations.

[40 FR 6785, Feb. 14, 1975, as amended at 49 FR 47001, 47002, Nov. 30, 1984]

### § 235.5 Reclamation amounts.

Amounts received by way of reclamation on forged checks shall be deposited to the credit of the Check Forgery

Insurance Fund or to the appropriate foreign currency fund or other account charged for the settlement payment.

### § 235.6 Implementing instructions.

Procedural instructions implementing these regulations will be issued by the Commissioner of the Financial Management Service in volume I, part 4 of the Treasury Financial Manual.

[54 FR 35642, Aug. 29, 1989]

## PART 240—INDORSEMENT AND PAYMENT OF CHECKS DRAWN ON THE UNITED STATES TREASURY

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### APPENDIX A TO PART 240—STANDARD FORMS FOR POWER OF ATTORNEY AND THEIR APPLICATION

AUTHORITY: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3328; 31 U.S.C. 3331; 31 U.S.C. 3343; 31 U.S.C. 3711; 31 U.S.C. 3716; 31 U.S.C. 3717; 332 U.S. 234 (1947); 318 U.S. 363 (1943).

SOURCE: 54 FR 35642, Aug. 29, 1989, unless otherwise noted.

### GENERAL PROVISIONS

### § 240.1 Scope of regulations.

The regulations in this part prescribe the requirements for indorsement and the conditions for payment of checks drawn on the United States Treasury. These regulations also establish procedures for collection of amounts due the United States Treasury because of payments on checks bearing forged or

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other unauthorized indorsements or other material defects or alterations.

### § 240.2 Definitions.

(a) *Certifying agency* means an agency for whom a Treasury disbursing officer or a non-Treasury disbursing officer makes payment in accordance with 31 U.S.C. 3325. The responsibilities of a certifying official are set forth at 31 U.S.C. 3528.

(b) *Check* or *Checks* means a check or checks drawn on the United States Treasury.

(c) *Check payment* means the amount paid to a presenting bank in accordance with § 240.9(a)(3) of this part.

(d) *Commissioner* means the Commissioner of the Financial Management Service, Department of the Treasury, 401 14th Street SW., Washington, DC 20227.

(e) *Days* means calendar days.

(f) *Financial institution* means any bank, savings bank, savings and loan association, Federal or State chartered credit union, or similar institution.

(g) *Item* means a reference in a monthly interest billing statement to a check for the amount of which Treasury has demanded refund from a presenting bank.

(h) *Monthly interest billing statement* means a statement prepared by Treasury and sent to a presenting bank which includes the following information regarding each outstanding demand for refund:

- (1) The reclamation date;
- (2) The reclamation number;
- (3) Check identifying information; and
- (4) The balance due, including interest.

(i) *Person* or *persons* means an individual or individuals, or an institution or institutions including all forms of financial institutions.

(j) *Presenting bank* means:

(1) A financial institution which, either directly or through a correspondent banking relationship, presents checks to and receives provisional credit from a Federal Reserve Bank; or

(2) A depository which is authorized to charge checks directly to the General Account of the United States Treasury and present them to Treasury

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for payment through a designated Federal Reserve Bank.

(k) *Protest* means a presenting bank's written statement and any supporting documentation tending to prove that it is not liable for refund of the reclamation balance.

(l) *Reclamation* means a demand by Treasury for refund of the amount of a check payment.

(m) *Reclamation date* means the date on which a demand for refund was prepared. Normally, demands are sent to presenting banks within two working days of the reclamation date.

(n) *Treasury* means the United States Treasury.

(o) *U.S. securities* means securities of the United States and securities of Federal agencies and wholly or partially government-owned corporations for which the Treasury acts as the transfer agent.

(p) *Unauthorized indorsement* means:

(1) An indorsement made by a person other than the payee, except as authorized by and in accordance with § 204.5 and §§ 240.11 through 240.15;

(2) An indorsement by a financial institution under circumstances in which the financial institution breaches the guaranty required of it by 31 CFR 209.9(a) (*See*, 31 CFR 209.8); or

(3) A missing indorsement where the depository bank had no authority to supply the indorsement.

### § 240.3 Limitations on payment.

(a) As a general rule,

(1) The Commissioner shall not be required to pay a Treasury check issued on or after October 1, 1989 unless it is negotiated to a financial institution within 12 months after the date on which the check was issued; and

(2) The Commissioner shall not be required to pay a Treasury check issued before October 1, 1989 unless it is negotiated to a financial institution no later than October 1, 1990.

(b) All checks drawn on the United States Treasury and issued on or after October 1, 1989 shall bear a legend, stating "Void After One Year." The legend is notice to payees and indorsers of a general limitation on the payment of Treasury checks. The legend, or the inadvertent lack thereof, does not

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limit, or otherwise affect, the rights of the Commissioner under the law.

(c) The Treasury shall have the usual right of a drawee to examine checks presented for payment and refuse payment of any checks. The Treasury shall have a reasonable time to make such examination.

(d) Checks shall be deemed to be paid by the United States Treasury only after first examination has been fully completed.

(e) If the Treasury is on notice of a question of law or fact about whether a Treasury check is properly payable when the check is presented for payment, the Commissioner may defer payment until the Comptroller General settles the question.

### § 240.4 Cancellation and distribution of proceeds of checks.

(a) *Checks issued on or after October 1, 1989.* (1) Any check issued on or after October 1, 1989 that has not been paid and remains outstanding for more than 12 months shall be cancelled by the Commissioner.

(2) The proceeds from checks cancelled pursuant to paragraph (a) of this section shall be returned to the agency which authorized the issuance of the check and credited to the appropriation or fund account initially charged for the payment.

(3) Beginning January 1, 1991, and monthly thereafter, the Commissioner shall provide to each agency that authorizes the issuance of Treasury checks a list of those checks issued for such agency which were cancelled during the preceding month pursuant to paragraph (a) of this section.

(b) *Checks issued before October 1, 1989.* (1) Any check issued before October 1, 1989 that has not been paid and remains outstanding for more than 12 months shall be cancelled by the Commissioner no later than April 1, 1991.

(2) The proceeds from checks cancelled pursuant to paragraph (b) of this section shall be applied as required by 31 U.S.C. 3334.

### § 240.5 Guaranty of indorsements.

The presenting bank and the indorsers of a check presented to the Treasury for payment are deemed to guarantee to the Treasury that all

prior indorsements are genuine, whether or not an express guaranty is placed on the check. When the first indorsement has been made by one other than the payee personally, the presenting bank and the indorsers are deemed to guarantee the Treasury, in addition to other warranties, that the person who so indorsed had unqualified capacity and authority to indorse the check on behalf of the payee.

### § 240.6 Reclamation of amounts of paid checks.

(a) If, after a check has been paid by Treasury, it is found to:

(1) Bear a forged or unauthorized indorsement; or

(2) Contain any other material defect or alteration which was not discovered upon first examination, then, upon demand by the Treasury in accordance with the procedures specified in § 240.7 of this part, the presenting bank or other indorser shall refund the amount of the check payment.

(b) Interest on any unpaid item shall commence to accrue on the sixty-first day after the reclamation date. Interest shall be calculated at the rate set from time to time for purposes of 31 U.S.C. 323. Interest shall continue to accrue until the amount demanded is paid or the reclamation is abandoned by Treasury.

(c) In addition to its right to recover interest, Treasury shall have the right to recover such other applicable charges (*e.g.*, administrative collection costs, late payment penalties) as may be authorized or required by law.

(d) If the Treasury determines that a check has been paid over a forged or unauthorized indorsement, the Commissioner may reclaim the amount of the check from the presenting bank or any other indorser that breached its guarantee of indorsement prior to:

(1) The end of the one-year period beginning on the date of payment; or

(2) The expiration of the 180-day period beginning on the close of the period described in paragraph (d)(1) of this section if a timely claim under 31 U.S.C. 3702 is presented to the agency which authorized the issuance of the check.

**§ 240.7 Demand and protest.**

(a) For all reclamations an initial demand for refund of the amount of a check payment will be made by sending a "Request for Refund (Reclamation)," to the presenting bank or any other indorser. This Request shall advise the presenting bank of the amount demanded and the reason for the demand. Treasury will make follow-up demands by including each unpaid item on at least three monthly interest billing statements sent to the presenting bank. Monthly interest billing statements will identify any unpaid reclamation demands and will also show the amount of any accrued interest for each outstanding reclamation. Any discrepancies should be brought to Treasury's attention immediately at the address listed in paragraph (b) of this section. Monthly interest billing statements will contain or be accompanied by notice to the bank:

(1) That Treasury intends to collect the debt through administrative offset if the reclamation is not paid within 120 days of the reclamation date;

(2) That the bank has an opportunity to inspect and copy Treasury's records with respect to the reclamation;

(3) That the bank may, by filing a protest, request Treasury to review its decision that the bank is liable for the reclamation; and

(4) That the bank has an opportunity to enter into a written agreement with Treasury for the repayment of the amount of the reclamation. A request for a payment agreement must be accompanied by proof that satisfies the Treasury that the requesting bank is unable to repay the entire amount owed at the time that it is due.

(b) Requests for an appointment to inspect and copy Treasury's records with respect to a reclamation and requests to enter into repayment agreements should be sent in writing to: Department of the Treasury, Financial Management Service, Operations Division, Reclamation Branch, Room 700-D, 3700 East-West Highway, Hyattsville, MD 20782.

(c)(1) If a presenting bank wishes to contest its liability for the principal amount demanded, it shall send a protest, *i.e.*, a written statement and copies of all documentary evidence (*e.g.*,

affidavits, account agreements, signature cards) and other written information raising a question of law or fact which, if resolved in the bank's favor, would show that the bank is not liable, to: Department of the Treasury, Financial Management Service, Operations Division, Reclamation Branch Room 700-D, 3700 East-West Highway, Hyattsville, MD 20782.

The Director, Operations Division, who has supervisory authority over the Reclamation Branch, or his authorized subordinate, shall consider and decide any protest properly submitted under this paragraph. Neither the Director, Operations Division, nor any of his subordinates, shall have any involvement in the process of making findings or demands under § 240.6(a). In order to be considered, and to be timely, a protest must be received not later than 90 days after the reclamation date. Treasury will refrain from collection in accordance with § 240.8 while a timely protest is being considered. Unresolved protested items will be appropriately annotated on the monthly interest billing statement.

(2) If Treasury accepts the protest, the presenting bank shall be notified in writing that efforts to collect the item and any accrued interest have been abandoned.

(3) If the evidence sent by the presenting bank does not satisfy Treasury that refund of the amount demanded is not required under § 240.6(a), Treasury will notify the presenting bank in writing of its decision that the bank is liable for the amount demanded and the reasons for its decision. If the presenting bank fails to send the amount demanded within 30 days of the date of Treasury's decision, Treasury shall proceed to collect the amount owed in accordance with § 240.8, provided that no offset shall be taken sooner than 120 days after the reclamation date.

(4) If an item, and/or accrued interest relating to that item remains unpaid for 90 days after the reclamation date and if there is no unresolved protest associated with the item, the monthly interest billing statement will be annotated with a notice that the presenting bank has until the next billing date to make payment on the item or be subject to offset thereon.

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### § 240.8 Offset.

(a) If an item, and/or accrued interest relating to that item, remains unpaid for 120 days after the reclamation date and the presenting bank has been sent at least one monthly interest billing statement informing it that Treasury intends to collect that item by offset, Treasury may refer the matter to any Federal agency and request that agency to offset the indebtedness and other applicable charges against amounts otherwise owed by the Federal agency to the presenting bank. Monthly interest billing statements will be annotated to identify those specific items that are to be referred to an agency for offset.

(b) If a bank wishes to make payment on an item referred to an agency for offset, it should contact Treasury at the address listed in § 240.7(b) to reduce the possibility of a double collection. If an agency to which an indebtedness is referred in accordance with this paragraph is unable to effect offset in whole or in part, Treasury may then refer the debt to any other agency and request offset in accordance with this paragraph. Treasury designates each agency acting under this paragraph as its designee for the sole purpose of effecting offset. No such designee shall be liable to any party for any loss resulting from its action under this paragraph.

(c) If Treasury is unable to collect an amount owed by use of the offset described in paragraph (a) of this section, Treasury shall take such action against the presenting bank as may be necessary to protect the interests of the United States, including referral to the Department of Justice.

(d) If Treasury effects offset under this section and it is later determined that the presenting bank paid the amount of the reclamation and accrued interest thereon, or that a presenting bank which had timely filed a protest was not liable for the amount of the reclamation, Treasury shall promptly refund to the presenting bank the amount of its payment.

### § 240.9 Processing of checks.

(a) *Federal Reserve Banks.* (1) Federal Reserve Banks shall cash checks for Government disbursing officers when

such checks are drawn by the disbursing officers to their own order. Payment of such checks shall not be refused except for alteration or counterfeiting of the check, or forged signature of the drawer.

(2) Federal Reserve Banks shall not be expected to cash Government checks presented directly to them by the general public.

(3) As a depository of public funds, each Federal Reserve Bank shall:

(i) Receive checks from its member banks, nonmember clearing banks, or other depositors, when indorsed by such banks or depositors who guarantee all prior indorsements thereon;

(ii) Give immediate credit therefore in accordance with their current Time Schedules and charge the amount of the checks cashed or otherwise received to the account of the Treasury, subject to examination and payment by the United States Treasury;

(iii) Forward payment records and copies of checks to Treasury; and

(iv) Release the original checks to a designated Federal Records Center upon notification from Treasury. The Treasury shall return to the forwarding Federal Reserve Bank a photocopy of any check the payment of which is refused upon first examination. Federal Reserve Banks shall give immediate credit therefor in the United States Treasury's account, thereby reversing the previous charge to the account for such check. The Treasury authorizes each Federal Reserve Bank to release the original check to the endorser when payment is refused in accordance with § 240.3(a).

(b) *Depositaries outside of the mainland of the United States.* Banks outside of the mainland of the United States designated as depositaries of public money and permitted to charge checks to the General Account of the United States Treasury shall be governed by the operating instructions contained in the letter of authorization to them from Treasury and shall assume the obligations of presenting banks set forth in §§ 240.5 and 240.6. Checks charged to the General Account of the United States Treasury along with the supporting credit voucher shall be shipped to the Federal Reserve Bank of Richmond.

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The Treasury shall return to the presenting depository bank a photocopy of any check the payment of which is refused upon first examination. The depository bank shall give immediate credit therefor in the General Account of the United States Treasury, thereby reversing the previous charge to the Account for such check. Treasury authorizes the Federal Reserve Bank of Richmond to return to the presenting depository bank the original check when payment is refused in accordance with § 240.3(a).

### § 240.10 Release of original checks.

An original check may be released to a responsible indorser upon receipt of a properly authorized request showing the reason it is required and that the request is in conformity with all applicable law including the Privacy Act.

## INDORSEMENT OF CHECKS

### § 240.11 Indorsement by payees.

(a) *General requirements.* Checks shall be indorsed by the payee or payees named, or by another on behalf of such payees as set forth in this part.

(b) *Checks indorsed by the payee or payees named.* When a check is indorsed by the payee or payees named, the forms of indorsement shall conform to those recognized by general principles of law and commercial usage for negotiation, transfer or collection of negotiable instruments.

(c) *Checks indorsed by another on behalf of the named payee or payees—(1) Acceptable indorsement.* The only acceptable indorsement of a check by another on behalf of the named payee or payees (except when a check is indorsed by a financial institution under the payee's or payees' authorization) is one which indicates that the person indorsing is doing so on behalf of the named payee or payees. Such an acceptable indorsement shall include the signature of the indorser and sufficient wording to indicate that the indorser is indorsing on behalf of the named payee or payees, pursuant to authority expressly conferred by or under law or other regulation. An example would be: "John Jones by Mary Jones." This example states the minimum indication acceptable. However, §§ 240.12(a)(1),

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240.13(a)(1), and 240.15(d) specify the addition of an indication in specified situations of the actual capacity in which the person other than the named payee is indorsing. Checks indorsed "for collection" or "for deposit only to the credit of the within named payee or payees," are acceptable without any signature. However, in the absence of a signature, the presenting bank will be deemed to guarantee its good title to such checks to all subsequent indorsers and to Treasury.

(2) *Unacceptable indorsement.* The indorsement by another on behalf of the named payee or payees, which consists of the name(s) of the payee(s), whether as purported signature(s) or otherwise, and *not* the signature of the person other than named payee or payees indorsing the check, regardless of the relationship between the indorser and the named payee or payees, will be rebuttably presumed to be a forgery and is unacceptable. The indorsement by a person who purports to indorse for the named payee(s) with an indorsement consisting of the name(s) of the payee(s), whether as purported signature(s) or otherwise, and the indorsing person's signature and no indication of the indorsing person's representative capacity, will create a rebuttable presumption that the indorsing person was not authorized to indorse for the named payee(s). In these circumstances it is the responsibility of the individual or institution accepting a check from a person other than the named payee(s) to determine that such person is authorized and has the capacity to indorse and negotiate the check. Evidence of the basis for such a determination may be required by the Treasury in the event of a dispute.

(d) *Indorsement of checks by a financial institution under the payee's authorization.* When a check is credited by a financial institution to the payee's account under the payee's or payees' authorization, the financial institution may use an indorsement substantially as follows: "Credit to the account of the within-named payee in accordance with the payee's or payees' instructions, XYZ." A financial institution using this form of indorsement will be deemed to guarantee to all subsequent indorsers and to the Treasury that it is