

DEPARTMENT OF THE TREASURY**Fiscal Service****31 CFR Parts 317, 351, 353, and 370****Regulations Governing Agencies for the Issue and Offering of United States Savings Bonds, Including Sales by Electronic Means**

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury hereby publishes a final rule governing the issue and offering of United States Savings Bonds. The final rule creates new categories of savings bond issuing agents and clarifies and expands the means by which savings bonds may be sold, including electronic means.

DATES: Effective November 20, 1998.

ADDRESSES: This final rule can be downloaded from the Bureau of the Public Debt at the following World Wide Web address: <<http://www.savingsbonds.gov>>. It also is available for public inspection and copying at the Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 5030, Main Treasury Building, 1500 Pennsylvania Ave. NW, Washington, D.C. 20220. Individuals wishing to visit the library should call (202) 622-0990 for an appointment.

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SUPPLEMENTARY INFORMATION:**I. Background**

The growth of electronic commerce and the World Wide Web have led to a flourishing of financial service providers and new payment methods. However, the Bureau of the Public Debt has been unable to take full advantage of these developments in the sale of United States Savings Bonds because of

apparent restrictions in existing regulations.

On April 30, 1998, the Department of the Treasury published a proposed rule addressing the issue and offering of United States Savings Bonds. The publication proposed to create new categories of savings bond issuing agents and clarify and expand the means by which savings bonds may be sold, including electronic means. Three written comment letters were received in response to the proposed rule. The proposed rule and comments can be downloaded from the Bureau of the Public Debt at the following World Wide Web address: <<http://www.savingsbonds.gov>>. Treasury found the comments extremely useful in making revisions. Although some minor comments are not addressed, all comments have been considered in the formulation of this final rule. The comments are addressed below on a section-by-section basis.

The most important aspects of the final rule are directed at four areas in title 31 of the Code of Federal Regulations. First, changes in §§ 317.2 and 317.3 amend the regulations used to determine which organizations may serve as issuing agents and the procedures used to qualify these organizations as issuing agents. Second, changes to § 351.5 expand the means by which issuing agents may sell savings bonds. Third, a new subpart in part 370 addresses the use of Automated Clearing House debit entries for the sale of savings bonds issued through the Bureau of the Public Debt. Fourth, another new subpart in part 370 addresses the electronic submission of transaction requests through the Bureau of the Public Debt.

II. Summary of Amendments**A. Regulations Governing Agencies for Issue of Savings Bonds (31 CFR Part 317)****(1) Definitions (§ 317.1)**

The revised definition of "issuing agent" notes the authority of the Commissioner of the Public Debt to qualify issuing agents, as explained in § 317.2. The definition also clarifies that an issuing agent acts as an agent of the purchaser in handling the remittance. The language addressing the handling of the remittance is consistent with current practice. The Secretary of the Treasury collects purchase funds from issuing agents, not the public. If an issuing agent discovers that the remittance is uncollectible or must be returned after the issuance of a savings bond, the Secretary is nonetheless entitled to payment from the issuing agent. The

issuing agent bears the risk of loss for non-collection or return of the remittance.

(2) Organizations Eligible To Serve as Issuing Agents (§ 317.2)

In the past, issuing agent eligibility has been limited to financial institutions (such as banks and credit unions), agencies of the United States and state and local governments, and employers operating payroll savings plans. This final rule expands the types of organizations that are eligible to serve as issuing agents.

One change, in § 317.2(c), allows organizations that operate payroll savings plans on behalf of employers to issue bonds and serve as issuing agents. The change is designed to bolster payroll savings plan sales from small businesses, which often do not have the resources to maintain such plans themselves. As is the case with employer organizations, an organization operating a payroll savings plan on behalf of an employer organization will be eligible for issuing agent fees only if it inscribes savings bonds.

Another addition, set out in § 317.2(d), gives the Commissioner of the Bureau of the Public Debt the authority to qualify issuing agents when doing so is in the public interest. The Commissioner can use such process as deemed to be appropriate in selecting the issuing agent. The selected issuing agent also will be subject to such conditions as deemed to be appropriate.

The new § 317.2(d) will be used for the selection of entities to sell savings bonds in unique ways as new methods of sales emerge. In particular, this provision will facilitate the qualification of issuing agents to sell savings bonds through electronic methods, such as those offered by financial services providers through World Wide Web access. In qualifying issuing agents under this provision, the Commissioner will balance the convenience and cost-effectiveness of using new purchase methods against the need to insure the security and reliability of those methods.

In its comment letter, the American Bankers Association indicated its general support for most of the changes being proposed but expressed concern over Section 317.2(d), stating, "There is no demonstrable need to add this text given the capabilities and interest of currently eligible organizations." Treasury recognizes the long-standing service of financial institutions as issuing agents of savings bonds and the significant contribution that financial institutions have made toward the success of the savings bond program.

Treasury also looks forward to cooperating with financial institutions in selling savings bonds in new ways. In particular, Treasury is interested in selling savings bonds through home banking packages offered by financial institutions and exploring other new methods which may evolve over time. However, changes are taking place rapidly in other sectors of the savings bonds market place, and in particular, in portions of the market place not exclusively the domain of financial institutions which makes necessary the flexibility afforded by section 317.2(d). Therefore, Treasury respectfully disagrees with the position that the flexibility to be gained through section 317.2(d) would not benefit the savings bond program, and has decided to retain the provision in the final rule.

(3) Procedures for Qualifying and Serving as an Issuing Agent (§ 317.3)

In the past, designated Federal Reserve Banks have processed applications from prospective issuing agents. The section has been amended to state that an organization that seeks qualification because of its status as an organization operating a payroll savings plan on behalf of an employer under § 317.2(c) or under the general "public interest" provision of § 317.2(d) will apply directly to the Commissioner of the Bureau of the Public Debt. The application shall be supplemented by such other information as the Bureau of the Public Debt may request.

(4) Issuance of Bonds (§ 317.6)

The issuing agent fee provision has been simplified by removing unnecessary detail. The section continues to emphasize that fee schedules are set out not in the regulations, but through a separate publication in the **Federal Register**. The changes have no effect on the current fee structure, though the Bureau of the Public Debt reserves the right to create new categories of fees as new ways of selling savings bonds develop.

(5) Appendix to § 317.8—Remittance of Sales Proceeds and Registration Records, Department of the Treasury Circular, Public Debt Series No. 4-67 (Third Revision), Fiscal Service, Bureau of the Public Debt

The appendix has been revised, primarily for changes in terminology. For instance, the definition of "issuing agent" has been redefined to reflect the changes to that term in § 317.2. The term "over-the-counter" has been redefined to reflect the expanded meaning given to that term in § 351.5 of this chapter. Among other minor

changes, paragraph (3) of subpart B has been removed because that provision no longer has application.

B. Offering of United States Savings Bonds, Series EE (31 CFR Part 351)

(1) Governing Regulations for Series EE Bonds (§ 351.1)

This section has been amended to note that the regulations governing the transfer of funds by electronic means on account of United States securities in part 370 of this chapter apply to transactions for the purchase of savings bonds issued through the Bureau of the Public Debt. The regulations in part 370 have no application to transactions for the purchase of savings bonds accomplished through issuing agents generally, unless and to the extent otherwise directed by the Commissioner of the Bureau of the Public Debt. Furthermore, because these regulations are intended to be the source of the terms and conditions of Series EE bonds, Treasury does not warrant the correctness of representations that in any way conflict with these regulations.

(2) Purchase of Bonds (§ 351.5)

The categories of savings bond sales provided for in this section have been revised. The section previously provided for four categories of sales: (1) "payroll plans"; (2) "over-the-counter/mail"; (3) "bond-a-month plan"; and (4) "employee thrift, savings, vacation, and similar plans." Because some of these categories are limited and outdated, they may actually have inhibited rather than facilitated sales.

Furthermore, a comparison of this section to the appendix to § 317.8 of this chapter (discussing the remittance of sales proceeds and registration records by issuing agents) showed a lack of consistency in the categories and terminology used to define savings bond sales. In discussing savings bond sales, the appendix did not mirror § 351.5 but rather combined the four categories of sales described in § 351.5 into two categories: (1) "payroll sale"; and (2) "over-the-counter sale." The term "payroll sale" was not used in § 351.5. Also, the term "over-the-counter" had an expanded meaning in the appendix to § 317.8 as compared to its use in § 351.5, making the regulations more difficult to understand.

The final rule revises § 351.5 (as well as the appendix to § 317.8), essentially using the two categories in the appendix to § 317.8: (1) "payroll sales"; and (2) "over-the-counter sales." The payroll sales category includes sales through "payroll savings plans" and "employee thrift, savings, vacation, and similar

plans," the provisions of which are largely unchanged. The final rule also states that employers and the organizations operating payroll savings plans on behalf of employers are allowed to sell savings bonds only pursuant to payroll savings plans. These types of issuing agents are not allowed to sell savings bonds over-the-counter.

Over-the-counter sales are all sales that are not payroll sales. For over-the-counter sales, the section provides that "the purchase application and remittance may be submitted to an issuing agent by any means acceptable to the issuing agent." This broad provision ensures that issuing agents have the flexibility to sell savings bonds through new channels. For instance, the final rule authorizes issuing agents to sell savings bonds through electronic means such as the World Wide Web. Both the application and remittance can be submitted and signed through electronic methods agreed upon by the parties.

The final rule does not impose limitations on the types of remittances that an issuing agent may accept. As always, however, the issuing agent bears the burden of collection and risk of non-collection for remittances it accepts. The Secretary of the Treasury takes payment from the issuing agent, not the purchaser. The Secretary of the Treasury has no obligation to return funds received from an issuing agent after issuance of a savings bond if the issuing agent cannot collect or must return the remittance. However, as Treasury qualifies new types of issuing agents under the revised section 317.2 of this chapter, Treasury will examine carefully the types of remittances each new issuing agent will accept and the protections that will be necessary to insure that a purchaser's funds reach Treasury in proper fashion.

Finally, although the changes have no effect on the current issuing agent fee structure, the Bureau of the Public Debt reserves the right to make changes to the fee structure as new ways of selling savings bonds develop.

C. Regulations Governing United States Savings Bonds, Series EE and HH (31 CFR Part 353)

(1) Payment to Judgment Creditors (§ 353.21)

This section is amended to state that savings bonds registered in coownership form may be subject to levy by the Internal Revenue Service.

(2) Application for Relief—Non-receipt of Bond (§ 353.27)

The regulations have provided little guidance as to the status of savings bond purchases if the Secretary of the Treasury does not receive payment. While not likely, an issuing agent may fail after receiving the remittance from a purchaser but before the Secretary collects the sales proceeds from the issuing agent.

If an issuing agent has inscribed a savings bond, the Secretary will honor the savings bond even if the Secretary cannot collect the sales proceeds from the issuing agent. This policy is consistent with existing regulations, which note that the registration of an issued savings bond generally is conclusive of ownership. If a savings bond has not been inscribed, the final rule states that the Secretary is authorized to issue savings bonds to preserve the public's confidence in dealing with issuing agents, even if the Secretary cannot collect the sales proceeds from the issuing agent.

D. Regulations Governing Electronic Transactions and the Transfer of Funds by Electronic Means on Account of United States Securities (31 CFR Part 370)

(1) Applicability (§ 370.0)

This section is amended to clarify that to the extent the regulations in part 210 of this title apply to the purchase or payment of interest and principal on United States securities, the regulations in this part 370 apply in the event of any inconsistencies. Furthermore, to the extent that Regulations E (12 CFR part 205) and Z (12 CFR part 226) of the Board of Governors of the Federal Reserve System ("Federal Reserve Board" or "Board") apply to transactions accomplished pursuant to this part, those Federal laws are unaffected by this part. Regulations E and Z govern consumer rights for electronic funds transfers and credit card transactions, among other things. This part 370 is designed to complement, not preempt, the rights a person has by recourse to the person's financial institution under Regulation E, to the extent that Regulation E applies.

A determination of whether Regulation E applies to a transaction for the purchase of a United States security frequently depends upon whether the security is held in book-entry or definitive form. Regulation E excludes from its coverage "[a]ny transfer of funds the primary purpose of which is the purchase or sale of a security * * * [h]eld in book-entry form by a Federal Reserve Bank or federal agency," at 12

CFR 205.3(c)(4)(iii). This exclusion was added by the Federal Reserve Board in a final rule published in the **Federal Register** on May 2, 1996, beginning at page 19661. In discussing this exclusion, the Board listed as an example transactions involving book-entry securities held in TREASURY DIRECT. Because savings bonds currently available for purchase primarily are held in definitive rather than book-entry form, the strict language of this exclusion does not extend to most transactions involving savings bonds available for purchase.

(2) Definitions (§ 370.1)

Several definitions have been added or changed in this section. The definition of "Automated Clearing House (ACH) entry" refers to transactions accomplished in accordance with the Operating Rules and Guidelines of the National Automated Clearing House Association ("NACHA Rules"), as modified by these and other regulations and law. The definition of "deposit account" principally is taken from Regulation E. The definition of "financial institution" is the same as that included in a proposed rule to amend part 208 of this title, "Management of Federal Agency Disbursements," published in the **Federal Register** on September 16, 1997, beginning at page 48714. The definitions of "originator" and "person" are derived from the NACHA Rules. Also, the definition of "payment" has been amended to state that it applies only to subpart B of this part, which addresses credit entries. The limited definition of a payment as a deposit from the Treasury to the account of the owner only has application in subpart B and may have caused confusion by its application throughout part 370.

The section also lists five definitions that have application primarily to subpart E of this part, addressing the electronic submission of transaction requests through the Bureau of the Public Debt. As noted in the discussion to § 370.50, Treasury has looked to a number of sources in drafting these provisions. The most fundamental of these definitions is that of a "signature." A signature is "any symbol or method executed or adopted by a party with present intention to be bound," which is a traditional legal definition of a signature. The definition encompasses a signature manifested through electronic or similar means, which separately is referred to as an "electronic signature." Case law on signatures indicates that almost anything can constitute a signature, from printed and typewritten names to account numbers, if executed

with an intent to be bound. Electronic signatures are no different from other forms of signatures in this regard.

In addition, the section includes a definition of "digital signature," which is a type of electronic signature. Treasury will use digital signatures in its sales of savings bonds over the Internet. A digital signature uses "public-key encryption" and a "message digest function" in transforming an electronic "record." The definitions of these terms largely are taken from model, proposed, or existing authorities.

Public-key encryption is a process that relies upon an algorithm to produce two mathematically related but different keys. If public-key encryption is implemented securely, it is computationally infeasible to derive one key from the other. The keys can be used for several purposes, including the creation and verification of digital signatures. One key (the private key) is kept private and can be used to create a digital signature, while the other key (the public key) may be distributed to anyone and can be used by a relying party to verify a digital signature. The association of a public key (and by implication, its corresponding private key) to the identity of a particular person is accomplished through the use of digital certificates, issued by certification authorities.

The use of a message digest function (also known as a hash function) is an essential element in the creation and verification of a digital signature. A message digest function is an algorithm that typically provides a shortened, mathematical version of a longer electronic record. Even a small change to an electronic record can result in a dramatic change to a message digest, aiding in the verification of a digital signature and any electronic record to which the signature is attached. The signer uses the signer's private key to encrypt the short message digest, rather than the entire electronic record. This digital signature (the message digest, encrypted by the signer's private key) is sent to the recipient, along with a copy of the electronic record.

Upon receipt of the digital signature and electronic record, the recipient uses the signer's public key to decrypt the digital signature and recover the message digest. The recipient then runs the received copy of the electronic record through the same message digest function used to create the received message digest. If the two results are identical, the recipient knows that the electronic record was encrypted by the signer's private key and that the electronic record was not tampered with

from the time the signer created the digital signature.

(3) Scope (§ 370.30)

This section states that subpart D establishes regulations for debit entries to a purchaser's account to buy savings bonds issued by the Bureau of the Public Debt. The subpart also establishes the exclusive liability of the Bureau of the Public Debt for such entries. This subpart applies only to transactions for the purchase of savings bonds issued through the Bureau of the Public Debt. These regulations do not apply to transactions for the purchase of savings bonds accomplished through issuing agents generally, unless and to the extent the Commissioner of the Bureau of the Public Debt deems otherwise.

It is anticipated that purchasers will authorize an entity named on an approved paper-based authorization form to be an originator for the debit entries. This entity will forward collected funds to Treasury (unless the Bureau of the Public Debt chooses to name itself as the originator). The Bureau of the Public Debt will then issue the savings bonds through a Federal Reserve Bank acting as a fiscal agent for the United States.

(4) Authorization (§ 370.31)

This section states that all debit authorizations must be accomplished through an authorization form approved by the Bureau of the Public Debt. The purchaser must name a deposit account from which the purchaser is entitled to withdraw funds, and the purchaser (as well as any other necessary persons named on the deposit account) must sign the authorization form. Except to the extent required by the Bureau of the Public Debt, the originator will not be required to verify the identity of the purchaser or the authenticity of any signatures. Recurring debits may or must be authorized if the form so provides. Also, a purchaser's subsequent authorization will cancel a previous authorization.

The Bureau of the Public Debt retains the right to name a successor to the originator without additional notice to the purchaser, though it may ask the successor to provide such notice as a customer service. This provision is drawn from the official staff interpretation of the Federal Reserve Board to 12 CFR 205.10(b) (Regulation E), which states that "successor institutions" may assume an originator's role without notice or a new authorization.

In their comment letters, the Federal Reserve Board and NACHA speculated

that Treasury may eventually allow the submission of debit authorizations through electronic means. Part 370 could allow for the submission of debit authorizations through electronic means.

The Board and NACHA referenced provisions in Regulation E and the NACHA Rules addressing the electronic submission of debit authorizations. Neither Regulation E nor the NACHA Rules appear to allow for the electronic signature of debit authorizations. Regulation E requires that debit ACH authorizations be in a "writing signed or similarly authenticated by the consumer," at 12 CFR 205.10(b). Section 2.1.2 of the NACHA Rules uses identical language. Under Regulation E and the NACHA Rules, an electronic debit ACH authorization is not "signed," but rather is "similarly authenticated."

Treasury is not inclined to add the words "similarly authenticated" to this final rule. Treasury believes that its definition of "signature" would encompass electronic means which also would qualify under the "similarly authenticated" category of Regulation E and the NACHA Rules. Treasury recognizes that the Federal Reserve Board may interpret the definition of "similarly authenticated" more strictly than Treasury in its definition of "signature." To address this concern, § 370.0 of this part has been amended to note that transactions accomplished under this part are subject to Regulation E, when applicable. Thus, even if a debit authorization for the purchase of a definitive savings bond could be electronically signed under this part, the electronic signature would have to meet the "similarly authenticated" requirements of Regulation E.

(5) Prenotification (§ 370.32)

The section leaves the requirement of a prenotification message to the discretion of the Bureau of the Public Debt. A financial institution that fails to respond to a prenotification warrants that the deposit account number and the type of account contained in the message is accurate as of the time of receipt of the prenotification. The proposed rule also would have left the time period in which a financial institution must respond to a prenotification up the Bureau of the Public Debt. In its comment letter, NACHA expressed the view that Treasury should not deviate from the NACHA Rules in setting its own time frame for a response. Treasury agrees with this suggestion and has changed this provision in the final rule to state that the time period for a response shall be that which is set out by NACHA.

(6) Warranties of Financial Institution (§ 370.33)

This section states that a financial institution's acceptance and handling of a debit entry or failure to reject a prenotification made with respect to a security covered by this subpart shall constitute its agreement to the provisions of this subpart. Also, a financial institution that agrees to this subpart warrants that it has the authority to receive entries and to comply with any requirements imposed upon Receiving Depository Financial Institutions under the Operating Rules and Operating Guidelines of the National Automated Clearing House Association, as modified by these and other regulations and law.

(7) Responsibilities of Financial Institution (§ 370.34)

This section states that a financial institution that receives a debit entry on behalf of its customer must debit the customer's account on the settlement date. If the financial institution is unable to debit the designated account, it shall return the entry by no later than the next business day after receipt, with an electronic message or other response explaining the reason for the return.

(8) Termination or Suspension by the Bureau of the Public Debt (§ 370.35)

This section states that the Bureau of the Public Debt can terminate or suspend the availability of debit entries at any time, and its decision to do so will be final.

(9) Termination or Suspension by Purchaser or Deposit Account Owner by Notice to the Originator (§ 370.36)

Under this section, a purchaser or deposit account owner will be able to cancel or suspend debit entries for the purchase of savings bonds by providing written or oral notice to the originator, which must be received by the originator within three days of the debit. The originator may require the person to give written confirmation within 14 days of an oral notice. An oral notice ceases to be effective if the written confirmation is not received by the end of the 14-day period. A suspension will remain in effect for the duration specified by the purchaser, but for no more than six months. As noted in § 370.53 of this part, a written notice can be accomplished through electronic means.

The proposed rule was similar, but would have required written notice in all cases. In its comment letter, the Federal Reserve Board suggested that Treasury follow the stop-payment provisions in Regulation E, at 12 CFR

§ 205.10(c). The provision noted by the Federal Reserve Board allows for the option of oral notice. Treasury finds this approach to be more flexible and agrees with the Federal Reserve Board recommendation. The substance of 12 CFR § 205.10(c), including provisions for oral notice, has been incorporated into the final rule.

(10) Changes and Error Resolution (§ 370.37)

This section provides that while responding to an oral or written notice from a person relating to the propriety of issuance information or a debit entry involving the person's deposit account, the originator may suspend further debit entries. In response to an oral notice, the originator may require the person to give written notice, to be received by the originator within 10 business days of an oral notice. The originator promptly will investigate and correct any error, but is not bound to complete the investigation or correct the error within 10 business days if the person fails to provide the requested written confirmation. As noted in § 370.53 of this part, a written notice can be accomplished through electronic means.

In its comment letter, the Federal Reserve Board focused on a provision of the proposed rule that would have allowed the originator to ignore an oral notice that was not received within 30 days of a written notice. The Board expressed the view that this provision varied from the error resolution procedures in Regulation E, at 12 CFR § 205.11. Treasury has decided to drop this questioned provision. Treasury also has changed the time frame for a written confirmation to 10 business days, consistent with Regulation E.

(11) Liability (§ 370.38)

This section states that the Bureau of the Public Debt is not liable in disputes arising out of debit entries, unless the Bureau of the Public Debt names itself or a fiscal or financial agent as the originator. Disputes arising out of debit entries are the responsibility of the originator. Also, unless the Bureau of the Public Debt designates itself or a fiscal or financial agent as the originator, the originator serves as the agent of the purchaser in handling the remittance. At most, liability of the Bureau of the Public Debt is limited to the amount of the improper debit, less any losses caused by the failure of a claimant to exercise due diligence.

(12) Scope (§ 370.50)

This section states that subpart E establishes provisions for the electronic submission of transaction requests

through the Bureau of the Public Debt. The subpart also sets out the exclusive liability of the Bureau of the Public Debt for transactions completed pursuant to this subpart. These regulations do not apply to transactions requests accomplished through savings bond issuing agents generally, unless and to the extent the Commissioner of the Bureau of the Public Debt deems otherwise.

It is important to note the limited scope and extent of this subpart E. This subpart only sets out Federal contract law provisions for electronic dealings with the Bureau of the Public Debt. For instance, a person who purchases a security from or opens a securities account with the Bureau of the Public Debt agrees to these provisions. The subpart does not apply to savings bond sales accomplished through issuing agents such as banks and employers offering payroll savings plans. The regulations leave unchanged the right of states to determine their own rules for electronic and digital signatures and does not address any issues related to certification authorities. Furthermore, the regulations are relatively brief, at least in comparison to work done by the American Bar Association, the National Conference of Commissioners on Uniform State Laws, the American Law Institute, the United Nations Commission on International Trade Law, and many states, among others.

(13) Requirements (§ 370.51)

An electronically signed transaction request cannot be accepted by the Bureau of the Public Debt unless the signature has been accomplished through a method that has been approved for specific purposes by the Bureau of the Public Debt.

(14) Time of Acceptance (§ 370.52)

Acceptance of a transaction request by the Bureau of the Public Debt will be effective no earlier than upon receipt of the message by the Bureau of the Public Debt, and no later than upon the transmittal of a message of acceptance by the Bureau of the Public Debt.

(15) Point of Transaction (§ 370.53)

The point of transaction for a transaction request submitted electronically under this subpart will be Parkersburg, West Virginia.

(16) Effect of Electronic Signature (§ 370.54)

This section states that an electronic signature and any electronic record to which it is affixed shall not be denied legal effect, including legal effect as a signature, a writing, or an original,

solely because the signature or record is in electronic form. Some provisions of law, such as the Statute of Frauds, require evidence of an agreement to be in writing. Other provisions of law require that an original record be produced in court, rather than a copy, or require that a record be signed. However, there seems little reason to use these doctrines to preclude the admissibility of electronically signed records. These records are equivalent to signed writings, each copy of which is identical to the original.

(17) Admissibility of Digital Signature (§ 370.55)

This section addresses the legal requirement that an item be authenticated before being introduced into evidence. "Authentication" is a term that has a technical meaning specifically linked to the security of electronic signatures, but also has a separate meaning in the law of evidence, at which this section is directed.

Under Rule 901 of the Federal Rules of Evidence, "The requirement of authentication * * * as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." For instance, under Rule 901(b)(2), this evidentiary requirement may be met in regard to a handwritten record by nonexpert testimony as to the genuineness of handwriting. Although there have not as yet been any cases on the matter, the requirement of authentication for digital signatures likely can be met under Rule 901(b)(9), which allows for the sufficiency of "[e]vidence describing a process or system used to produce a result and showing that the process or system produces such a result."

However, in some situations authentication evidence is not required as a condition precedent to admissibility. As noted under Rule 902 of the Federal Rules of Evidence, extrinsic evidence of authenticity is not necessary for certified birth and death certificates, newspapers and periodicals, trade inscriptions, commercial paper, and notarized records, among other things. Because these items are likely to be authentic, a strict adherence to preliminary authentication procedures unnecessarily would expend a court's time and resources. Accordingly, the items are considered to be self-authenticating and—barring other objections to the evidence—may be admitted into evidence without additional preliminary review.

The section states a limited self-authentication provision for digital

signatures. This section begins by noting that authentication of a purported digital signature may be accomplished by evidence sufficient to support a finding that a digital signature exists. However, extrinsic evidence of authenticity is unnecessary to establish that a digital signature corresponds to a public key pair, as well as that an electronic record to which a digital signature is affixed has not been altered from its original form.

There are several reasons that support the insertion of a limited self-authentication clause into this final rule. If public-key encryption has been properly implemented, the risk of a successful forgery or alteration of a digital signature is extremely remote, and is significantly less than the risk of forgery or alteration for paper records. Furthermore, although a legal showing of authenticity in the absence of a self-authentication provision almost certainly could be accomplished, such a showing would require considerable time and resources. Among other things, it would entail extensive scientific testimony on encryption, leading to an expensive and unproductive "battle of the experts." Use of a self-authentication provision avoids this wasteful problem.

In almost all cases, the existence of a digital signature should be beyond reasonable dispute. The most likely challenges to a digital signature and an electronic record to which it is affixed will turn not on whether a digital signature exists, but on whether the digital signature should be attributed to a particular person. These challenges frequently will focus on the issuance, protection, or revocation of the digital certificates used to link a digital signature and accompanying record to a particular person. This section does nothing to prevent such challenges, for the self-authentication provision does not tie a digital signature to a particular person. Extrinsic evidence tying the public key pair used in the creation of a digital signature to a particular person still will have to be provided before a digital signature and a record to which it has been affixed could be admissible. Furthermore, this section would have no application at all in criminal cases.

Finally, even to the extent that a self-authenticated digital signature and accompanying record could be introduced into evidence under this section, this section in no way prevents a party against whom a digital signature is asserted from contesting the existence or authenticity of the signature. However, any arguments would go to the weight of the evidence, not to its admissibility.

(18) Negligence Contributing to Forged Signature (§ 370.56)

This section states that a person whose failure to exercise ordinary care substantially contributes to the creation or submission of a forged signature is precluded from disavowing the forged signature. Furthermore, the burdens are on the person against whom a signature is asserted to produce evidence that ordinary care was exercised and to persuade a trier of fact that it is more likely than not that the person exercised ordinary care. However, in asserting a signature under this section the Bureau of the Public Debt first will have to establish that it exercised ordinary care in relying upon the signature.

This section is drawn in part from section 3-406 of the Uniform Commercial Code (UCC) ("Negligence Contributing to Forged Signature or Alteration of Instrument."). The responsibilities imposed upon persons in regard to the technology used to create and submit electronic signatures and accompanying electronic records are similar to those imposed under the UCC in regard to rubber signature stamps used to sign checks. Official Comment 3 to UCC section 3-406 is enlightening in this regard. If a person's rubber signature stamp and checks, kept in an unlocked drawer, are stolen and used by a party to forge a check, a bank may successfully be able to argue that the person is precluded from disavowing the forged signature because the person's lack of ordinary care substantially contributed to the forgery. Similarly, under the final rule if a person fails to take adequate security precautions to protect access to electronic signature technology (such as by not safekeeping a computer password, for instance) and this failure substantially contributes to the creation or submission of a forged signature, the person is precluded from disavowing the signature.

By looking to the UCC provision, this section attempts to find middle ground between varying approaches in current law as to how liability should be distributed between the parties for unauthorized transactions. For instance, a person can be held accountable for all unauthorized calls from that person's telephone number, without regard to whether ordinary care was exercised by the person. At the other end of the spectrum, a person cannot be held accountable beyond \$50 in unauthorized transactions on that person's credit card, regardless of whether the consumer exercised ordinary care in protecting the card or

in promptly reporting a loss or theft of the card.

Treasury believes that if pursued in these regulations, a provision that allows the assertion of a forged signature against a person even if the person exercised ordinary care would unfairly punish consumers and discourage electronic commerce. At the same time, if a person's fault has led to the creation of a forged signature, a provision that limits or precludes the assertion of the signature against the person does little to encourage the exercise of ordinary care. This section allows the assertion of a forged signature only if the person's failure to exercise ordinary care substantially contributed to the creation of the signature.

This section places the burdens of production and persuasion upon the person against whom the signature would be asserted to show that the person exercised ordinary care. Because an electronic signature is not created in the presence of the person accepting the signature, the person accepting the signature typically does not have best access to the evidence needed to establish the forgery and the exercise of ordinary care. It is appropriate to require the person against whom the signature would be asserted to make this showing. Also, in asserting a signature under this section the Bureau of the Public Debt will have to establish that it exercised ordinary care in relying upon the signature. The evidence needed to establish that it used ordinary care will be within the control of the Bureau of the Public Debt and so it is fair to require the Bureau of the Public Debt to make this showing.

In its comment letter, the Federal Reserve Board expressed concern that this section might be used to avoid the limitations of Regulation Z. As alluded to above, Regulation Z caps cardholder liability for unauthorized credit card use at \$50. This section does not seek to encroach upon Regulation Z. To the extent this section might apply to unauthorized savings bond purchases involving credit cards, Treasury would be seeking to recover on a savings bond contract, not a credit card debt. In any event, Treasury has amended section 370.0 of this part to emphasize that to the extent Regulation Z applies to transactions accomplished pursuant to this part, the consumer protections extended by Regulation Z are unaffected.

(19) Liability (§ 370.57)

This section limits the Bureau of the Public Debt's liability for claims involving this subpart E to the amount

of the transaction, less any losses caused by the failure of a claimant to exercise due diligence. For instance, this section could have application to claims involving errors in the handling of otherwise properly authorized transactions.

III. Procedural Requirements

This final rule does not meet the criteria for a "significant regulatory action," as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

This final rule relates to matters of public contract and procedures for United States securities. The notice and public procedures requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

As no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) does not apply.

There are no new collections of information contained in this final rule. Therefore, the Paperwork Reduction Act (44 U.S.C. 3507) does not apply.

List of Subjects in 31 CFR Parts 317, 351, 353, and 370

Bonds, Electronic Funds Transfers, Government Securities.

For the reasons set forth in the preamble, 31 CFR parts 317, 351, 353, and 370 are amended as follows:

PART 317—REGULATIONS GOVERNING AGENCIES FOR ISSUE OF UNITED STATES SAVINGS BONDS

1. The authority citation for part 317 is revised to read as follows:

Authority: 2 U.S.C. 901; 5 U.S.C. 301; 12 U.S.C. 391; 12 U.S.C. 1767; 31 U.S.C. 3105.

2. Revise § 317.1 to read as follows:

§ 317.1 Definitions.

(a) *Bond(s)* means Series EE United States Savings Bonds and Series I United States Savings Bonds.

(b) *Federal Reserve Bank* refers to the Federal Reserve Bank or Branch providing savings bond services to the district in which the issuing agent or the applicant organization is located. See § 317.9(a).

(c) *Issuing agent* refers to an organization that has been qualified by a designated Federal Reserve Bank or the Commissioner of the Bureau of the Public Debt to sell savings bonds. An issuing agent acts as an agent of the purchaser in handling the remittance. The definition encompasses:

(1) Each organization that accepts and processes purchase orders for bonds

sold over-the-counter, but does not inscribe bonds, and

(2) Each organization that is authorized to inscribe bonds sold over-the-counter or through payroll savings plans.

(d) *Offering circular* refers to Department of the Treasury Circular, Public Debt Series No. 1-80, current revision, for Series EE savings bonds, and to Department of the Treasury Circular, Public Debt Series No. 1-98 for Series I savings bonds.

(e) *Organization* means an entity, as described in § 317.2, that may qualify as an issuing agent of bonds.

3. Revise § 317.2 to read as follows:

§ 317.2 Organizations authorized to act.

Organizations eligible to apply for qualification and serve as issuing agents are the following:

(a) Banks, Federal credit unions in good standing, trust companies, and savings institutions chartered by or incorporated under the laws of the United States, or those of any State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) Agencies of the United States and State and local governments.

(c) Employers operating payroll savings plans for the purchase of United States Savings Bonds, as well as organizations operating payroll savings plans on behalf of employers.

(d) Other organizations specifically and individually qualified by the Commissioner of the Bureau of the Public Debt whenever the Commissioner deems such a qualification to be in the public interest. In selecting an issuing agent, the Commissioner may use such process that the Commissioner deems to be appropriate. The selected issuing agent will be subject to such conditions that the Commissioner deems to be appropriate.

§ 317.3 [Amended]

4. Amend § 317.3 as follows:

A. Revise the introductory text to paragraph (a) to read as follows:

§ 317.3 Procedure for qualifying and serving as issuing agent.

(a) *Execution of application agreement.* An organization seeking issuing agent qualification generally shall obtain from and file with a designated Federal Reserve Bank an application-agreement form. However, if an organization seeks qualification under § 317.2(d) or because of its status as an organization operating a payroll savings plan on behalf of an employer under § 317.2(c), it shall make

application directly to the Bureau of the Public Debt for approval by the Commissioner of the Bureau of the Public Debt. An application-agreement sent directly to the Bureau of the Public Debt shall be supplemented by such other information as the Bureau of the Public Debt may request.

* * * * *

B. Add the words "or the Bureau of the Public Debt" after the words "Federal Reserve Bank" in paragraphs (b) and (c).

5. Revise § 317.6(b) to read as follows:

§ 317.6 Issuance of bonds.

* * * * *

(b) *Fees.* Each issuing agent, other than a Federal agency, will be paid fees. Only issuing agents are eligible to collect fees. With prior approval, agents that are authorized to inscribe bonds and receive fee payments will also be paid a bonus for presorting savings bond mailings. Schedules reflecting the amount of the fees and presort bonuses, and the basis on which they are computed and paid, will be published separately in the **Federal Register**.

* * * * *

6. Amend the appendix to § 317.8 as follows:

A. Revise the section heading to the appendix to read as set out below;

B. Remove paragraph 3 of subpart B;

C. Revise paragraphs 2(c) and 2(e) of subpart A, all of subpart C, and paragraphs 2(a)(i) and 2(b) of subpart D to read as follows:

§ 317.8 Remittance of sales proceeds and registration records.

* * * * *

Appendix to § 317.8—Remittance of Sales Proceeds and Registration Records, Department of the Treasury Circular, Public Debt Series No. 4-67, Third Revision (31 CFR Part 317), Fiscal Service, Bureau of the Public Debt

Subpart A—General Information

* * * * *

2. *Definition of terms.* As used in this appendix:

* * * * *

(c) *Over-the-counter sale* means any sale of savings bonds other than payroll sales.

* * * * *

(e) *Issuing agent*, as provided in § 317.1(c) of the Circular, refers to an organization that has been qualified by a designated Federal Reserve Bank or the Commissioner of the Bureau of the Public Debt to sell savings bonds.

* * * * *

Subpart C—Remittance of Payroll Sales Proceeds

1. *Application of requirements.* The remittance requirements for payroll sales apply only to issuing agents. An employer that maintains a payroll savings plan but does not issue bonds shall be notified by the servicing issuing agent that it must remit sales proceeds to the issuing agent in sufficient time to permit compliance with the requirements.

2. *Remittance of payroll sales deductions.* Issuing agents shall remit sales proceeds throughout the month shown in the issue date as soon as the full amount of the purchase price of the bonds has been received or accumulated. In no case should such proceeds be remitted later than the second business day of the month following the month shown in the issue date. The issuing agent shall ensure that its system properly accounts for and recognizes when the full purchase price has been received, or has been accumulated, so that timely remittance can be made. The issuing agent shall transmit registration records in an electronically processible format within thirty (30) days following the month shown on the issue date.

Subpart D—Interest on Late Remittances

* * * * *

2. * * *

(a) *Bonds inscribed by issuing agent—*
(i) *Payroll sales.* If, during any three (3) month period, the interest assessed on an issuing agent's late remittance of proceeds from payroll savings plan sales or thrift, savings, vacation, or similar plan sales accumulates to less than \$50 for each type of sales, the interest assessed for the first month will be waived. The interest assessed for each type of sales for the remaining two (2) months will then be carried forward to the next period of three (3) consecutive months.

* * * * *

(b) *Bonds inscribed by the designated Federal Reserve Bank.* The interest assessed on late remittance of all sales proceeds transmitted during a given month will be waived if it is less than \$25.

* * * * *

PART 351—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES EE

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105.

2. Revise § 351.1 to read as follows:

§ 351.1 Governing regulations.

Series EE bonds are subject to the regulations of the Department of the Treasury, now or hereafter prescribed, governing United States Savings Bonds of Series EE and HH, contained in Department of the Treasury Circular, Public Debt Series No. 3–80 (part 353 of this chapter). Treasury expressly disclaims the effect of, and does not warranty the correctness of, any representations or warranties regarding Series EE bonds, wherever made, that in any way conflict with the terms and conditions of Series EE bonds, as set out in these and other regulations and other applicable law. The regulations in part 370 of this chapter apply to transactions for the purchase of United States Savings Bonds issued through the Bureau of the Public Debt. The regulations in part 370 do not apply to transactions for the purchase of bonds accomplished through issuing agents generally, unless and to the extent otherwise directed by the Commissioner of the Bureau of the Public Debt.

3. Revise § 351.5 to read as follows:

§ 351.5 Purchase of bonds.

(a) *Payroll sales—*(1) *Payroll savings plans.* Bonds in \$100 and higher denominations may be purchased through deductions from the pay of employees of organizations that maintain payroll savings plans. The bonds must be issued by an authorized issuing agent.

(2) *Employee thrift, savings, vacation, and similar plans.* Bonds registered in the names of trustees of employee plans may be purchased in book-entry form in \$100 multiples through a designated Federal Reserve Bank after Bureau of the Public Debt approval of the plan as eligible for the special limitation under § 353.13 of this chapter, also published as § 353.13 of Department of the Treasury Circular, Public Debt Series No. 3–80.

(b) *Over-the-counter sales—*(1) *Eligible issuing agents.* Bonds may be purchased through any issuing agent, except that an organization serving as an issuing agent because of its status as an employer or an organization operating an employer's payroll savings plan under § 317.2(c) of this chapter may sell bonds only through payroll savings plans.

(2) *Manner of sale.* An application for the purchase of a bond must be accompanied by a remittance to cover the issue price. The purchase application and remittance may be submitted to an issuing agent by any means acceptable to the issuing agent.

An application may authorize purchases on a recurring basis. The issuing agent bears the burden of collection and the risk of loss for non-collection or return of the remittance.

PART 353—REGULATIONS GOVERNING UNITED STATES SAVINGS BONDS, SERIES EE AND HH

1. The authority citation for part 353 is revised to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105, 3125.

§ 353.6 [Amended]

2. Remove the word “deduction” in § 353.6(b)(4), and add, in its place, the word “savings.”

§ 353.13 [Amended]

3. Add the phrase “, as amended” after the word “1954” in § 353.13(c)(3).

4. Revise paragraph (a) of § 353.21 to read as follows:

§ 353.21 Payment to judgment creditors.

(a) *Purchaser or officer under levy.* The Department of the Treasury will pay (but not reissue) a savings bond to the purchaser at a sale under a levy or to the officer authorized under appropriate process to levy upon property of the registered owner or coowner to satisfy a money judgment. Payment will be made only to the extent necessary to satisfy the money judgment. The amount paid is limited to the redemption value 60 days after the termination of the judicial proceedings. Except in a case of a levy by the Internal Revenue Service, payment of a bond registered in coownership form pursuant to a judgment or a levy against only one coowner is limited to the extent of that coowner's interest in the bond. That interest must be established by an agreement between the coowners by judgment, decree, or order of a court in a proceeding to which both coowners are parties. Payment of a bond registered in coownership form pursuant to levy by the Internal Revenue Service will be made if the levy is against either coowner on the bond.

5. Revise § 353.27 to read as follows:

§ 353.27 Application for relief—Non-receipt of bond.

If a bond issued on any transaction is not received, the issuing agent must be notified as promptly as possible and given all information about the non-receipt. An appropriate form and instructions will be provided. If the application is approved, relief will be granted by the issuance of a bond bearing the same issue date as the bond that was not received. Also, relief is authorized for the issuance of bonds for

which the Secretary has not received payment, in order to preserve public confidence in dealing with issuing agents.

PART 370—REGULATIONS GOVERNING ELECTRONIC TRANSACTIONS AND THE TRANSFER OF FUNDS BY ELECTRONIC MEANS ON ACCOUNT OF UNITED STATES SECURITIES

1. The authority citation for part 370 is revised to read as follows:

Authority: 12 U.S.C. 391; 31 U.S.C. chapter 31.

2. The heading of part 370 is revised to read as set forth above.

3. Revise subpart A to read as follows:

Subpart A—General Information

Sec.

370.0 Applicability.

370.1 Definitions.

Subpart A—General Information

§ 370.0 Applicability.

The regulations in this part apply to electronic transactions and the transfer of funds by electronic means as employed by the Bureau of the Public Debt in connection with United States securities, except as varied by agreement or as otherwise provided. To the extent that the regulations in part 210 of this title apply to the purchase or payment of interest and principal on United States securities, the regulations in this part 370 apply in the event of any inconsistencies. Among other things, the written authorization of the Financial Management Service is not necessary for the issuance of routing numbers by a Federal Reserve Bank or for the receipt, origination, or reversal of any credit or debit entry accomplished pursuant to this part. Finally, to the extent that Regulation E (12 CFR part 205) and Regulation Z (12 CFR part 226) of the Board of Governors of the Federal Reserve System may apply to transactions authorized by this part, those Federal laws are unaffected by this part.

§ 370.1 Definitions.

Automated Clearing House (ACH) entry means a transaction in accordance with applicable Operating Rules and Operating Guidelines of the National Automated Clearing House Association, as modified by these and other regulations and law. The regulations in this part control in the event of any inconsistencies with the applicable Operating Rules and Operating Guidelines.

Credit entry means an ACH entry for the deposit of money to a deposit account.

Debit entry means an ACH entry for the payment of money from a deposit account.

Deposit account means a demand deposit (checking), savings, or asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution.

Digital signature means a type of electronic signature. A digital signature uses public-key encryption and a message digest function to transform an electronic record. A person who has the initial electronic record and the signer's public key can verify:

(1) Whether the transformation was accomplished by the private key that corresponds to the signer's public key; and

(2) Whether the initial record has been altered since the transformation was made.

Electronic signature means a signature manifested through electronic or similar means, including digital and biometric methods.

Financial institution means:

(1) An entity described in section 19(b)(1)(A), excluding subparagraphs (v) and (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)). Under section 19(b)(1)(A) of the Federal Reserve Act and for purposes of this part only, the term "depository institution" means:

(i) Any insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank that is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(ii) Any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank that is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(iii) Any savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank that is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(iv) Any insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752) or any credit union that is eligible to make application to become an insured credit union pursuant to section 201 of such Act (12 U.S.C. 1781);

(v) Any savings association as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) that is an insured depository institution (as defined in such Act) (12 U.S.C. 1811 *et*

seq.) or is eligible to apply to become an insured depository institution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*); and

(2) Any agency or branch of a foreign bank as defined in section 1(b) of the International Banking Act, as amended (12 U.S.C. 3101).

Message digest function means an algorithm mapping or translating one sequence of bits into another, generally smaller, set such that:

(1) An electronic record yields the same message digest result every time the algorithm is executed using the same electronic record as input;

(2) It is computationally infeasible that an electronic record can be derived or reconstituted from the message digest result produced by the algorithm; and

(3) It is computationally infeasible that two electronic records can be found that produce the same message digest using the algorithm.

Originator means an entity authorized by a person to initiate debit or credit entries to the person's deposit account and that also has an agreement with a financial institution to transmit the debit or credit entries to the person's deposit account.

Owner means the person(s) in whose name(s) a security is registered.

Payment means, for the purpose of subpart B of this chapter, the deposit of money from the Department of the Treasury to the deposit account of the owner.

Person means any natural person or organization.

Public-key encryption means a process which generates and employs a key pair consisting of a private key and its mathematically related public key, in which one use of the public key is to verify a digital signature created by the private key.

Record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Security means any obligation issued by the United States that, by the terms of the applicable offering circular, is made subject to this part.

Settlement date means the date an exchange of funds with respect to an entry is reflected on the books of the Federal Reserve Bank(s). For a security held in the TREASURY DIRECT system, the issue date will in most cases be the same as the settlement date. For United States Savings Bonds, the issue date will in most cases be the first day of the month in which settlement takes place.

Signature means any symbol or method executed or adopted by a party with present intention to be bound.

4. Revise the heading of subpart C to read as follows:

Subpart C—Debit ACH Entries for the Sale of Securities in TREASURY DIRECT

* * * * *

Subpart D—Redesignated

5. Redesignate subpart D as subpart F and §§ 370.30 and 370.31 as §§ 370.60 and 370.61.

6. Add subparts D and E to read as follows:

Subpart D—Debit ACH Entries for the Sale of United States Savings Bonds Issued Through the Bureau of the Public Debt

Sec.

370.30 Scope.

370.31 Authorization.

370.32 Prenotification.

370.33 Warranties of financial institution.

370.34 Responsibilities of financial institution.

370.35 Termination or suspension by the Bureau of the Public Debt.

370.36 Termination or suspension by purchaser or deposit account owner by notice to the originator.

370.37 Changes and error resolution.

370.38 Liability.

Subpart O—Debit ACH Entries for the Sale of United States Savings Bonds Issued Through the Bureau of the Public Debt

§ 370.30 Scope.

This subpart provides regulations for Automated Clearing House debit entries used for the sale of United States Savings Bonds issued through the Bureau of the Public Debt. This subpart also establishes the exclusive liability of the Bureau of the Public Debt for such entries. This subpart does not apply to transactions for the sale of United States Savings Bonds accomplished through savings bond issuing agents generally, unless and to the extent the Commissioner of the Bureau of the Public Debt directs otherwise.

§ 370.31 Authorization.

(a) *General.* The purchaser of a security shall authorize an originator to initiate Automated Clearing House debit entries and shall designate a deposit account at a financial institution to receive such entries. An authorization shall be accomplished only through a form approved by the Bureau of the Public Debt.

(b) *Persons to sign.* The signatures of the purchaser and any other persons whose signatures ordinarily are required to withdraw funds from the designated deposit account are necessary for the authorization to be effective. Except to

the extent required by the Bureau of the Public Debt, the originator will not be required to verify the identity of the purchaser or the authenticity of the signatures.

(c) *Recurring debit entries.* A single authorization may allow or require debit entries to be made to a deposit account on a recurring basis, if the approved authorization form so provides.

(d) *Subsequent authorizations.* A purchaser's subsequent authorization cancels a previous authorization.

(e) *Successor originator.* The Bureau of the Public Debt reserves the right to name a successor to the originator named on the debit authorization form. The designation of a successor shall be effective without additional notice to the purchaser.

§ 370.32 Prenotification.

The requirement of a prenotification prior to the initiation of any debit entry is left to the discretion of the Bureau of the Public Debt. If sent, the receiving financial institution must respond within the time frame for such responses established by the National Automated Clearing House Association. If a prenotification is sent and the receiving financial institution does not reject or otherwise respond to the prenotification message within the specified time period, the financial institution shall be deemed to have warranted to Treasury and the originator that the information as to the deposit account number and the type of account contained in the message is accurate as of the time of receipt of the prenotification.

§ 370.33 Warranties of financial institution.

A financial institution's acceptance and handling of a debit entry or failure to timely reject a prenotification made with respect to a security covered by this subpart shall constitute its agreement to the provisions of this subpart. In addition to warranties referred to in § 370.32, a financial institution that agrees to this part also warrants that it has the authority to receive entries and to comply with any requirements imposed upon Receiving Depository Financial Institutions under the Operating Rules and Operating Guidelines of the National Automated Clearing House Association, as modified by these and other regulations and law.

§ 370.34 Responsibilities of financial institution.

A financial institution that receives a debit entry on behalf of its customer must debit the customer's account on the settlement date. If the financial institution is unable to debit the

designated account, it shall return the entry by no later than the next business day after receipt, with an electronic message or other response explaining the reason for the return.

§ 370.35 Termination or suspension by the Bureau of the Public Debt.

The Bureau of the Public Debt may terminate or suspend the availability of debit entries as a means of purchase for savings bonds at any time. A decision to terminate or suspend the availability of debit entries as a means of purchase is in the sole discretion of the Bureau of the Public Debt and shall be final.

§ 370.36 Termination or suspension by purchaser or deposit account owner by notice to the originator.

A purchaser of a security or a deposit account owner may terminate or suspend debits by notifying the originator orally or in writing at least three business days before the scheduled date of the transfer. In response to an oral notice, the originator may require the consumer to give written notice, to be received by the originator within 14 days of an oral notice. An oral notice ceases to be binding after 14 days if the purchaser fails to provide the required written confirmation. A suspension will remain in effect for the duration specified by the purchaser, but for no more than six months. The termination and revocation methods need not be recited in the authorization.

§ 370.37 Changes and error resolution.

While responding to an oral or written notice from a person relating to the propriety of security issuance information or a debit entry involving the person's deposit account, the originator may suspend further debit entries. In response to an oral notice, the originator may require the person to give written notice, to be received by the originator within 10 business days of an oral notice. The originator promptly will investigate the allegation and provide relief for any error, but is not bound to complete the investigation or correct the error within 10 business days if the requested written confirmation is not provided.

§ 370.38 Liability.

(a) *Scope of liability.* Unless the Bureau of the Public Debt has designated itself or a fiscal or financial agent as an originator, the Bureau of the Public Debt shall not be liable for any unauthorized, erroneous, duplicative, or otherwise improper debit entries, and shall not be liable for a failure to debit a deposit account. Unless the Bureau of the Public Debt has designated itself or

a fiscal or financial agent as the originator, the originator serves as the agent of the purchaser in handling the remittance. Any claims must be pursued against the originator. The Bureau of the Public Debt shall not be liable for its choice of an originator. The Bureau of the Public Debt shall not be liable to any Automated Clearing House association.

(b) *Extent of liability.* For any claim involving this subpart that may proceed against the Bureau of the Public Debt, the Bureau of the Public Debt's liability is limited to the amount of the improper debit and does not extend to other damages or costs, including consequential damages, punitive damages, the costs of litigation, or payment of attorney fees. The liability of the Bureau of the Public Debt also shall be reduced by the amount of the loss resulting from a failure of the claimant to exercise due diligence, including a failure to follow standard commercial practices.

Subpart E—Electronic Submission of Transaction Requests Through the Bureau of the Public Debt

Sec.

- 370.50 Scope.
- 370.51 Requirements.
- 370.52 Time of acceptance.
- 370.53 Point of transaction.
- 370.54 Effect of electronic signature.
- 370.55 Admissibility of digital signature.
- 370.56 Negligence contributing to forged signature.
- 370.57 Liability.

Subpart E—Electronic Submission of Transaction Requests Through the Bureau of the Public Debt

§ 370.50 Scope.

This subpart provides general regulations for the electronic submission of transaction requests through the Bureau of the Public Debt. This subpart also establishes the exclusive liability of the Bureau of the Public Debt for transactions accomplished under this subpart. This

subpart does not apply to transactions for the sale of United States Savings Bonds accomplished through savings bond issuing agents generally, unless and to the extent the Commissioner of the Bureau of the Public Debt directs otherwise.

§ 370.51 Requirements.

An electronically signed transaction request cannot be accepted by the Bureau of the Public Debt unless the signature has been accomplished through a method that has been approved for specific purposes by the Bureau of the Public Debt.

§ 370.52 Time of acceptance.

A transaction request submitted electronically, including an offer to purchase a security, is accepted no earlier than at the moment the request is received by the Bureau of the Public Debt and no later than at the moment a message of acceptance is sent by the Bureau of the Public Debt, regardless of the method used to transmit the message of acceptance.

§ 370.53 Point of transaction.

For jurisdiction and venue purposes, the point of transaction for a transaction request handled pursuant to this subpart is Parkersburg, West Virginia, regardless of from where the transaction request is transmitted or where the transaction request is actually processed.

§ 370.54 Effect of electronic signature.

An electronic signature and any electronic record to which it is affixed or attached may not be denied legal effect, including legal effect as a signature, a writing, or an original, solely because the signature or record is in electronic form.

§ 370.55 Admissibility of digital signature.

The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that a digital signature exists. However, in

asserting a digital signature against a particular person in any civil litigation or dispute, extrinsic evidence of authenticity as a condition precedent of admissibility shall not be necessary to establish that a digital signature corresponds to a specific public key pair and that an electronic record to which the digital signature is affixed has not been altered from its original form.

§ 370.56 Negligence contributing to forged signature.

A person whose failure to exercise ordinary care substantially contributes to the creation or submission of a forged signature is precluded from disavowing the forged signature. The burden of production and the burden of persuasion is on the person against whom the signature is asserted to establish the exercise of ordinary care. However, in asserting a signature under this section, the Bureau of the Public Debt bears the burden of production and the burden of persuasion in establishing that it exercised ordinary care in relying upon the signature.

§ 370.57 Liability.

For any claim involving this subpart that may proceed against the Bureau of the Public Debt, the Bureau of the Public Debt's liability is limited to the amount of the transaction and does not extend to other damages or costs, including consequential damages, punitive damages, the costs of litigation, or payment of attorney fees. The liability of the Bureau of the Public Debt shall also be reduced by the amount of the loss resulting from a failure of the claimant to exercise due diligence, including a failure to follow standard commercial practices.

Dated: November 10, 1998.

Donald V. Hammond,

Fiscal Assistant Secretary.

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