

DEPARTMENT OF THE TREASURY**Fiscal Service****31 CFR Part 240****RIN 1510-AA45****Indorsement and Payment of Checks Drawn on the United States Treasury****AGENCY:** Financial Management Service, Fiscal Service, Treasury.**ACTION:** Proposed rule.

SUMMARY: The Department of the Treasury (Treasury), Financial Management Service (FMS),¹ is proposing revisions to its regulations governing the indorsement and payment of checks drawn on the United States Treasury. This notice of proposed rulemaking (NPRM II) supersedes the NPRM issued on May 30, 1997 (NPRM I). The regulations provide how checks may be indorsed, and remedies when checks are lost or stolen, and then subsequently negotiated by someone other than the intended payee. In instances where losses occur, such as when a check bearing a fraudulent indorsement is paid, the regulations provide for the allocation of losses between the Government and indorsers of the check. The regulations also provide information on how Treasury will collect debts owed by banks and other indorsers when they fail to pay claims arising under the terms of the regulation.

DATES: Comments must be submitted on or before June 23, 2003.

ADDRESSES: All comments concerning NPRM II should be addressed to Ronald Brooks, Senior Program Analyst, Financial Processing Division, Financial Management Service, Prince Georges Center II Building, 3700 East-West Highway, Room 725-D, Hyattsville, MD 20782. Comments also may be emailed to: Ronald.Brooks@fms.treas.gov.

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SUPPLEMENTARY INFORMATION:

Regulations governing the indorsement and payment of checks drawn on the U.S. Treasury are codified at 31 CFR part 240 (Part 240). Many entities are involved in the Federal check disbursing system: Treasury and non-Treasury offices that issue Treasury checks, banks in the Federal Reserve

System that receive Treasury checks and provide payment information to Treasury, and Treasury offices that receive payment information from the Federal Reserve System and reconcile that information with issuance information provided by the numerous Treasury and non-Treasury disbursing offices. For years, Treasury has been working to find a balance between the demands of this Federal system that relies on the coordination of many parties and the desire of the financial community to operate within a framework that is similar for commercial checks and Treasury checks. Issues that have continued to generate debate over time include:

- The amount of time Treasury has to complete first examination of Treasury checks and to decline payment of a check; and
- The allocation of loss when Treasury makes final payment on a check prior to the determination that a check presented for payment is a counterfeit check, or bears a forged or unauthorized drawer's signature.

NPRM II seeks to strike a balance between these competing interests by setting a date certain by which all Treasury checks are deemed paid while allocating the risk of loss to financial institutions only in those instances where reasonable actions, if properly taken by financial institutions, could have prevented a loss to the United States Treasury.

Background

Treasury disburses payments for a majority of civilian Federal agencies. Other Federal agencies, such as the military departments, have their own disbursing officers, but also use Treasury check stock to make payments. Regardless of the agency which disburses a payment, if the payment is made in the form of a Treasury check, the check must be presented to the Department of the Treasury for payment. Conditional payment, referred to in this proposed rule as provisional credit, is effected by a credit to a reserve or other account with the Federal Reserve Bank through which the check is presented for payment. See 31 CFR 240.5(c) of NPRM II.

On occasion, problems occur during this process because of attempts to defraud Treasury either by interjecting counterfeit checks into the system or by altering authentic Treasury checks. In other instances, Treasury checks do not reach, or are lost by or stolen from, the intended payees, and are indorsed by persons not entitled to them and paid over those forged or unauthorized

indorsements. Part 240 defines the rules by which Treasury checks are to be indorsed and paid, and assigns the responsibilities and associated liabilities among parties when the system fails to prevent such frauds from occurring. In doing so, the provisions in Part 240 describe the circumstances in which a claim arises—*e.g.*, when a debt is owed by a presenting bank or other indorser of a Treasury check to the United States—and how such claims may be collected, including limitations on the government's ability to collect.

How claims arise. Federal law, not the commercial rules evidenced in the Uniform Commercial Code as adopted by individual States, applies to Treasury checks. Treasury checks are governed by Federal statutes, FMS regulations promulgated in Part 240 pursuant to 5 U.S.C. 301, 31 U.S.C. 321, and 31 U.S.C. 3328(e), and, where the foregoing are silent, Federal common law. See *Clearfield Trust Co. v. United States*, 318 U.S.C. 363 (1943). NPRM II outlines the responsibilities of the parties involved in the indorsement and payment of Treasury checks. For example, under § 240.4 of NPRM II, payees or subsequent indorsers of Treasury checks must present such checks for payment within one year of a check's issuance. Similarly, under § 240.5 of NPRM II, if Treasury is going to decline payment on a check bearing a material defect or alteration or forged or unauthorized drawer's signature, it must do so within a reasonable amount of time not to exceed 90 days. Claims arise when checks are presented to Treasury for payment in violation of the requirements in this Part, such as when presenting banks or other indorsers breach the presentation guarantees in § 240.3 of NPRM II. For example, if a bank accepts a check bearing a forged indorsement and that check is presented for payment, the presenting bank and any indorsers of that check will have breached the guarantee of indorsement in this rule, and a claim will arise in the amount of the check in favor of the Government.

How claims are collected. The provisions of 31 U.S.C. 3711 require the head of each Federal agency to try to collect claims arising from the activities of the agency. Because of Treasury's role in issuing and making payment on Treasury checks, Treasury historically has accepted responsibility for the collection of claims arising from the requirements of Part 240. Moreover, Treasury's role in this collection activity is expressly referred to in 31 U.S.C. 3343.

In trying to collect claims arising under Part 240, Treasury first will

¹ FMS is the bureau within Treasury that is charged with implementing Treasury's authority in this area. The terms Treasury and FMS are used interchangeably in this proposed rule.

attempt to collect such claims, referred to in this Part as "reclamation debts," using the reclamation procedures codified in §§ 240.7 and 240.8 of NPRM II. Under those procedures, Treasury will attempt to collect by means of a demand letter, referred to as a "REQUEST FOR REFUND (CHECK RECLAMATION)." If the presenting bank or other indorser from whom Treasury seeks payment, referred to in this Part as the "reclamation debtor," fails to refund the amount of the check in response to the demand letters, Treasury will attempt to collect by means of offset in accordance with § 240.9 of NPRM II. By employing offset, Treasury will seek to collect the debt owed by reducing, or "offsetting," by the amount of the debt, any payment due to the reclamation debtor by another Federal agency. If Treasury still is unable to collect the full amount of the debt, Treasury will collect the amount through the Treasury Check Offset (TCO) procedures codified at § 240.10 of NPRM II. TCO is a collection mechanism, specifically authorized under 31 U.S.C. 3712(e), which allows FMS to collect reclamation debts by directing a Federal Reserve Bank to withhold credit from a debtor bank presenting Treasury checks for ultimate charge to the account of the United States Treasury. By presenting Treasury checks for payment, presenting banks are deemed to authorize this offset.

Previous NPRMs. NPRM I, published May 30, 1997 (62 FR 29314), which was a re-issuance of a notice originally published on September 21, 1995 (60 FR 48940), addressed four issues: (1) Setting the time for FMS to conduct its first examination of Treasury checks at 150 days; (2) superseding Federal common law by apportioning the risk of loss on checks bearing a forged drawer's signature, including counterfeit checks, to presenting banks; (3) authorizing Federal Reserve Banks to intercept checks payable to deceased payees and return them unpaid to depositary banks; and (4) making definitions in Part 240 consistent with other FMS regulations.

FMS did not require commenters to resubmit comments originally submitted in response to the notice published on September 21, 1995; all comments received in response to that notice were treated as responses to NPRM I. FMS received a total of 24 comments on NPRM I. Eight responses were received from individual banks, three from banking associations, two from clearinghouse associations, five from credit unions and credit union organizations, and one from a Federal Reserve Bank. Five of the respondents

provided comments in response to both notices.

On May 24, 2002, FMS issued an Interim Rule (67 FR 36517) (hereinafter "Interim Rule") which revised 31 CFR Part 240 to incorporate procedures relating to TCO, a new debt collection tool established by the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104-134, Title III, section 31001(d)(4). Under that authority, Treasury is authorized to collect certain debts, owed to the Treasury by financial institutions presenting Treasury checks to a Federal Reserve Bank, by directing Federal Reserve Banks to withhold credit from such presenting banks.

NPRM II addresses all of the issues discussed in NPRM I, as well as issues not previously raised. It also incorporates the substance of the Interim Rule. In particular, NPRM II codifies existing procedures whereby presenting banks can administratively protest a Treasury decision to decline final payment of a particular check. The proposal also clarifies that the reclamation protest procedures at § 240.8, must be exhausted before a civil suit may be filed against Treasury. Under § 10(c) of the Administrative Procedure Act, 5 U.S.C. 704, an agency action is not judicially reviewable until it becomes final. The Supreme Court, in interpreting this section, has held that an agency action is final, and therefore subject to judicial review, unless the agency rule expressly requires exhaustion of administrative remedies as a prerequisite to judicial review. *See, e.g., Darby v. Cisneros*, 509 U.S. 137 (1993). Treasury is adding language that makes it clear that reclamation decisions are not final until the protest procedures have been exhausted.

In addition, NPRM II expands the use of powers of attorney as a basis for negotiating Treasury checks by allowing them to be used in more instances, and by eliminating the requirement that a specific Treasury power of attorney form be used. Finally, NPRM II clarifies Treasury regulations relating to the charging of administrative costs, penalties and interest when payments of reclamations are not submitted timely.

Given the passage of time since the issuance of NPRM I and the comprehensive nature of the revisions included in NPRM II, comments provided in response to NPRM I, including those provided in response to the NPRM issued on September 21, 1995, will not be considered as comments submitted in response to NPRM II. Those wishing to comment on NPRM II must provide written comments by the date indicated.

Structure of Part 240

This revision alters the structure of Part 240 by: (1) Moving existing provisions relating to limitations on payments from §§ 240.3(a) and (b) to § 240.4, and §§ 240.3(c) through (e) to § 240.5; (2) moving existing provisions relating to guarantees of indorsement from § 240.5 to § 240.3; (3) deleting existing rules governing the release of original checks from § 240.10, and substituting new provisions governing TCO at § 240.10; (4) moving existing rules governing reclamations of amounts of paid checks from § 240.6 to § 240.7; (5) moving rules governing reclamation demand and protest from § 240.7 to § 240.8; (6) moving rules governing offset from § 240.8 to § 240.9; (7) adding new rules at § 240.6 governing declination protests; (8) moving existing rules governing the processing of checks from § 240.9 to § 240.11; (9) moving existing rules relating to the indorsement of checks by payees from §§ 240.11(a) through (e) to § 240.12, and specific rules regarding Social Security checks from § 240.11(f) to § 240.14; (10) redesignating rules currently promulgated at §§ 240.12 through 240.15 to §§ 240.13 through 240.16; (11) adding new rules relating to the lack of authority for financial institutions to shift liability at § 240.17; (12) adding new provisions relating to implementing instructions at § 240.18; and (13) deleting appendix A to part 240 (Standard Forms for Power of Attorney and Their Application).

Summary of Substantive Changes

1. Time for first examination. As stated in the current Part 240, Treasury has the usual right of a drawee to examine checks presented for payment and to refuse payment of any check. The current rule states that Treasury has a reasonable amount of time to make such examination.

As indicated in the preamble to NPRM I, Treasury has tried to develop a policy which allows itself the time necessary to perform the functions required to complete first examination, while meeting the desire of the financial community for a date certain after which all Treasury payments are final. In NPRM I, Treasury attempted to address the concerns of the financial community by defining the term "first examination" and providing a date certain after which all payments would be deemed paid. NPRM I set that date at 150 days from the date that a check is presented to a Federal Reserve Bank for payment.

Comments on this issue varied widely among the respondents. Six responses

recommended that FMS adopt the commercial rule of midnight of the next business day, while five responses recommended maintaining the current "reasonable time" standard. Of those suggesting alternatives to the 150 day time frame, four respondents recommended 30 days and one suggested 90 days. One respondent recommended an approach incorporating both a "reasonable time" standard and a date certain after which payment would be final regardless of case-specific problems. This rule adopts the latter approach.

Under the provisions of § 240.5 of NPRM II, Treasury retains the right of a drawee to examine checks presented for payment, to reconcile checks, and, when appropriate, to direct a Federal Reserve Bank to decline payment of any check. Treasury shall have a reasonable amount of time to complete first examination. All payments are provisional until first examination is completed, and, as stated in the definition of provisional credit at § 240.2 of NPRM II, may be reversed by Treasury until the completion of first examination or final payment is deemed made pursuant to § 240.5(d) of NPRM II. As provided in the definition of first examination at § 240.2 of NPRM II, the amount of time necessary to complete first examination will be a function of the procedures deemed appropriate in specific circumstances to determine whether a check presented for payment bears a material defect or alteration or a forged drawer's signature. Under § 240.5(d) of NPRM II, if Treasury has not declined payment within 90 days after the check has been processed for payment by a Federal Reserve Processing Center, Treasury will be deemed to have made final payment on the check.

While FMS understands the desire of the financial community to operate under a single set of rules that are applicable to commercial checks and Treasury checks, adopting a midnight of the next business day standard is not operationally feasible. As stated previously, Treasury is not the only Federal agency to issue Treasury checks. Treasury issues payments for a majority of Executive Branch agencies, but some agencies, including the military departments and the U.S. Marshal's Office, also have statutory authority to issue Treasury checks. Some other agencies have a delegation of authority from the Secretary of the Treasury to issue Treasury checks. It is not possible for Treasury to receive check issue records from all non-Treasury disbursing officials in time for Treasury to take even the most rudimentary steps

to establish the authenticity and integrity of all such Treasury checks before midnight of the next business day. The volume of checks issued (e.g., 362 million checks in fiscal year 2001) and the number of agencies involved necessitate a standard different from that applied to commercial checks.

Further, the "midnight rule" was specifically rejected by the Ninth Circuit Court of Appeals in *Bank of America v. Federal Reserve Bank of San Francisco*, 349 F.2d 565 (9th Cir. 1965), *cert. denied*, 382 U.S. 984 (1966). In that case, the Court determined that Treasury regulations stating that checks are deemed paid "upon first examination" necessarily implied that "the Treasurer is to have sufficient time within which to conduct first examination." The Court also concluded that first examination included examination for forged indorsements, forged signature of the drawer, raised amounts, and other material defects. Current Treasury regulations codified at Part 240 and these proposed revisions to those regulations ensure that Treasury has sufficient time to make such examinations.

2. *Apportionment of risk.* Since the issuance of NPRM I in 1997, Treasury has continued to improve internal processes, as well as coordination with the various non-Treasury entities that issue Treasury checks, to improve the efficiency of the check payment system. As a result, Treasury is able to complete first examination on most checks in less than 30 days, and has been able to reduce the amount of time necessary to complete first examination in problem cases from 150 days to 90 days. However, Treasury also understands that despite everyone's best efforts, there will be instances where Treasury will be unable to complete first examination within the 90 day time frame, and losses will arise. In NPRM I, Treasury clearly stated that if a material defect or alteration were discovered after final payment had been made, Treasury would reclaim in instances involving forged drawers' signatures, double forgeries (checks bearing both a forged drawer's signature and a forged indorsement), and counterfeit checks. NPRM II takes a different approach. In this proposed rule, Treasury will reclaim after final payment only in those instances where an indorser has breached one of the presentment guarantees listed in § 240.3. As a consequence, this proposed rule allocates losses in specific circumstances as follows:

a. *Checks bearing a forged or unauthorized indorsement.* Treasury will reclaim on a check if it determines

after final payment, that a check was negotiated over a forged or unauthorized indorsement. In such cases, the basis for Treasury's claim would be a breach of the guarantee of indorsements at 31 CFR 240.3(a).

b. *Checks that have been altered.*

Treasury will reclaim on a check if it determines, after final payment, that a check has been materially altered. In such cases, the basis for Treasury's claim would be a breach of the guarantee of alterations at 31 CFR 240.3(b).

c. *Checks bearing a forged drawer's signature.* After final payment, Treasury will not reclaim on a check bearing a forged drawer's signature unless there is evidence that the reclamation debtor had knowledge that the drawer's signature was forged or unauthorized. In such instances, the basis for Treasury's claim would be a breach of the guarantee of drawer's signature at 31 CFR 240.3(c). This provision also applies to a check bearing both a forged drawer's signature and a forged indorsement.

d. *Counterfeit checks.* After final payment, Treasury will not reclaim on a counterfeit check unless the reclamation debtor has failed to make all reasonable efforts to ensure that a check is an authentic Treasury check and not a counterfeit check. Guidance regarding specific attributes, such as the security features on a check, that financial institutions must verify in order to ensure that they have made all reasonable efforts to ensure the authenticity of a Treasury check, will be provided by Treasury or on Treasury's behalf. In instances where Treasury determines that a reclamation debtor has failed to make all such reasonable efforts, the basis for Treasury's claim would be a breach of the guarantee of authenticity at 31 CFR 240.3(d).

In allocating the risk of loss in this manner, Treasury is cognizant of relevant case law in this area. In particular, the holding in *United States v. Chase National Bank*, 252 U.S. 485 (1920), which relied on the English case of *Price v. Neal*, 97 Eng. Rep. 871, 3 Burr. 1354 (1762), was that, after final payment, Treasury generally cannot recover on a Treasury check bearing the forged signature of a drawer, including those situations when such a check also bears a forged indorsement on the back (often referred to as a double forgery). In this proposed rule, Treasury does not alter the allocation of risk for losses involving forged drawers' signatures on authentic Treasury checks. However, this proposed rule does supersede the holding in *Chase National Bank* to the extent that the opinion applies to

counterfeit checks. In Treasury's view, this is a logical distinction which places the ultimate risk of loss on the party with the best opportunity to discover a counterfeit. As noted by the Court in *Chase National Bank*, when an authentic Treasury check bearing a forged drawer's signature is paid, it is proper to allocate the loss to the drawee bank because it is incumbent on the drawee to know the drawer's signature, and there can be no recovery from an innocent holder not chargeable with fault. In the context of an authentic Treasury check bearing a forged drawer's signature, this proposed rule recognizes that, absent actual knowledge that the drawer's signature is forged, a depository bank generally has no basis for questioning the drawer's signature. That is not the case with counterfeit checks. Treasury checks include numerous security features which can be used to quickly detect most counterfeit checks. One example is the watermark. Every authentic Treasury check carries a watermark and includes, on the back, the statement, "WARNING—DO NOT CASH CHECK WITHOUT NOTING WATERMARK * * * HOLD TO LIGHT TO VERIFY WATERMARK."

Despite such security features, some counterfeit checks will go undetected during first examination and will be deemed paid under § 240.5(d) of NPRM II. Only in those situations where the depository bank fails to act with reasonable care when accepting a Treasury check will the risk of loss be shifted from the Government to the depository bank. An example would be a situation where the depository bank ignores the warning to verify the watermark. Treasury will reclaim on a counterfeit check if it determines that the counterfeit check does not have a watermark.

In recognition of the United States Court of Federal Claims decision in *ABN AMRO Bank, N.V. v. United States*, 34 Fed. Cl. 126 (1995), which held that Treasury had failed to act in a manner which made evident an intent to modify by regulation the holdings of *United States v. Chase National Bank* and *Price v. Neal*, NPRM II explicitly supercedes common law to the extent that such law applies to counterfeit checks. Treasury is cognizant of relevant United States Supreme Court precedent interpreting the common law in this area and, by this regulation, removes any ambiguity regarding Treasury having supplanted that common law. In so acting, Treasury relies on the Secretary's general rulemaking authority, 31 U.S.C. 321, as well as the specific statutory authority of the Secretary to prescribe regulations

governing the payment of drafts, found at 31 U.S.C. 3328(e).

3. *Deceased payee check intercepts.* As noted in NPRM I, where a payment has been issued and negotiated after a payee's death, Treasury historically has recovered funds associated with payment from financial institutions through the reclamation process. In response to concerns raised by financial institutions that reclamation actions generally occur only after final payment has been made and most, if not all, of the funds have been withdrawn from depositor accounts, Treasury, working with Federal Reserve Banks, developed procedures whereby checks can be intercepted when a payment has been issued and negotiated after a payee's death. Under these procedures, the intercept will take place in situations where an agency has advised Treasury via an unavailable check cancellation (UCC) that the payee is deceased and not entitled to the payment. Checks associated with such payments will be intercepted upon presentment to a Federal Reserve Processing Center. The check will be stamped "Not Negotiable Payee Deceased/Not Entitled Questions—Contact Authorizing Agency" and will be returned unpaid before financial institutions are required under Federal Reserve Regulation CC (12 CFR Part 229) to make funds permanently available to their depositors. The provisions in § 240.14(c) of the proposed rule codify procedures that already have been implemented and which should result in fewer payments to non-entitled payees. If the UCC is received after the check has been presented for payment, Treasury will recover the funds associated with the payment from financial institutions through the reclamation process.

4. *Declination protests.* The current Part 240 does not include provisions relating to protests of Treasury decisions to decline payment of a check. NPRM II includes such procedures at § 240.6 (Declination protest). Treasury's promulgation of declination protest procedures serves two purposes: (1) Providing public notice of the opportunity for a presenting bank to protest a declination; and (2) establishing an administrative adjudication process for declination protests. The new protest provisions for declinations formalize procedures which allow a presenting bank to protest a declination and, under certain circumstances, to receive back the original amount of the check issued by a United States disbursing officer.

In order to receive back such amounts, a presenting bank must be able to provide sufficient, credible evidence

that the factual basis for the declination was in error.

For example, if Treasury declined payment of a check upon determining during first examination that the amount of the check had been altered from \$400 to \$4,000, the presenting bank, to succeed in its protest, would have to provide sufficient, credible evidence that the check, in fact, was issued in the amount of \$4,000. Consistent with the recent decision by the United States Court of Appeals for the Federal Circuit in *Casa de Cambio Comdiv S.A. de C.V. v. U.S.*, 291 F.3d 1356 (Fed. Cir. 2002), § 240.6 of NPRM II also clarifies that protests may be filed only by the presenting bank, and not by other indorsers on the check that is the subject of the declination.

5. *Use of debt collection tools in the collection of reclamation debts.*

a. *Collection of reclamation debts.* Existing rules, codified at § 240.6, provide the framework for the collection process for amounts relating to checks that, after final payment by Treasury, are determined to have been negotiated over a forged or unauthorized indorsement or contain a material defect or alteration. Under the current rule, the reclamation process includes the following debt collection tools: (1) Issuance of a demand letter, referred to as a "REQUEST FOR REFUND (CHECK RECLAMATION)"; (2) collection of interest, late payment penalties and administrative collection costs; (3) follow-up on the initial demand with at least three monthly interest billing statements including outstanding balances and notices of subsequent collection actions; (4) referral to other Federal agencies for administrative offset; and (5) any other actions necessary to protect the interests of the United States should debt collection tools (1)–(4) fail. Since the issuance of the Interim Rule on May 24, 2002, the current rule has also included provisions relating to TCO, a debt collection tool authorized by the DCIA. The DCIA authorizes Treasury to collect amounts owed to the Treasury by presenting banks, *i.e.*, financial institutions presenting Treasury checks to the Federal Reserve for payment by the United States. Under TCO, Treasury will direct a Federal Reserve Bank to withhold credit from such presenting banks and, instead, use the funds to satisfy a presenting bank's debt to the Treasury. In accordance with the DCIA, Treasury will collect by means of TCO only if efforts to collect by means of Reclamation and Administrative Offset are unsuccessful. This proposal revises the current provisions in a number of ways.

First, the rules currently promulgated at § 240.6 are redesignated as § 240.7. These rules still include the basic provisions governing Treasury's initial demand for payment.

Second, NPRM II moves the TCO provisions from § 240.9 to § 240.10.

Third, NPRM II revises the Administrative Offset provisions (redesignated as § 240.9) to incorporate DCIA provisions requiring United States Disbursing Officers to offset debts referred by creditor agencies against payments to the debtors which a certifying agency has certified for payment to the Disbursing Officer.

Fourth, redesignated § 240.7 is revised to clarify that reclamations are due on the reclamation date. This continues current Treasury policy which is not stated explicitly in the current regulation. This section is revised further to clarify the types of charges that will be added to the reclamation amount, when those amounts will accrue, and how the amounts will be calculated. NPRM II clarifies that Treasury policy is to add such costs in accordance with 31 U.S.C. 3717, and the Federal Claims Collection Standards (FCCS) (31 CFR Parts 900–904).

In accordance with 31 CFR 901.9, Treasury waives administrative costs during the first days following the date of delinquency based on a determination that collection of administrative costs during the first 60 days following the reclamation date would be against equity and good conscience. This policy provides indorsers with a reasonable amount of time to consider the reclamation, conduct any necessary research, and either pay the reclamation or protest it. For the same reasons, Treasury will apply the same policy to interest and penalties, except that penalties will be waived for the first 90 days following the reclamation date. Specifically, paragraph 240.7(d), as revised, provides that: (1) Interest begins accruing at the rate determined under 31 U.S.C. 3717 on the 61st day following the reclamation date; (2) penalties, calculated at not more than 6% of the outstanding balance, begin accruing on the 91st day following the reclamation date; and (3) administrative costs begin accruing on the 61st day following the reclamation date. The definition of Monthly Statement at § 240.2 of NPRM II also is revised to clarify that such statements will include unpaid interest, penalties, and administrative costs.

Fifth, former paragraphs (c) and (d) of § 240.6 are moved to § 240.7 of NPRM II. The substance of current paragraph (c) is incorporated in paragraph (d) of § 240.7 of NPRM II, and the substance

of current paragraph (d) is incorporated in paragraph (a) of § 240.7 of NPRM II. New paragraph 240.7(e) of NPRM II provides notice that, should all efforts to collect an unpaid reclamation be unsuccessful, Treasury will terminate collection action on the unpaid balance of the reclamation (including unpaid interest, administrative costs, and penalties), and the unpaid balance will be reported to the Internal Revenue Service as discharged indebtedness in accordance with 26 U.S.C. 6050P.

b. *Reclamation procedures and protests.* Reclamation protest rules, currently promulgated at § 240.7 (Demand and Protest), provide: (1) That a presenting bank may file a protest within 90 days of the reclamation date; (2) that the protest will be reviewed by a division director or an authorized designee, neither of whom was involved in the initial determination of fraudulent indorsement or alteration of the check; and (3) that Treasury will refrain from collection by means of administrative offset while a timely protest is being considered.

NPRM II moves these provisions to § 240.8 (Reclamation procedures; reclamation protests), and proposes that the existing reclamation procedure and protest provisions be revised to clarify certain current practices. Specifically, the proposal clarifies the rights of any indorser that directly receives a reclamation (*i.e.*, the “reclamation debtor”), including, but not limited to: (1) The right to inspect and copy Treasury records relating to the reclamation; (2) the right to protest the reclamation; and (3) the right to seek a repayment agreement. Paragraph 240.8(b)(1)(i) of NPRM II reiterates the requirement in the current Part 240 that Treasury will not consider protests received more than 90 days after the reclamation date. In addition, the monthly statements will provide notice that Treasury intends to collect the debt through administrative offset if the reclamation debt is not paid within 120 days of the reclamation date.

Consistent with the recent decision by the United States Court of Appeals for the Federal Circuit in *Casa de Cambio Comdiv S.A. de C.V. v. U.S.*, 291 F.3d 1356 (Fed. Cir. 2002), paragraph 240.8(b)(1) of NPRM II also clarifies Treasury policy that protests may be filed only by the recipient of the reclamation, the “reclamation debtor,” and not by other indorsers of the check that is the subject of the reclamation. Protests by an indorser that was not the direct recipient of a reclamation will be accepted only where authorized by law. While paragraph 240.8(b)(1)(i) of NPRM II provides Treasury with the discretion

to consider information received by indorsers other than the reclamation debtor, any decision by Treasury to exercise such discretion would not, in any way, serve to waive any of Treasury's rights under Part 240, nor would it serve to grant rights to an indorser not otherwise provided in Part 240.

In addition, redesignated paragraph 240.8(c) of NPRM II requires that a protest by the reclamation debtor be filed and a final determination on the protest be issued by Treasury before the reclamation debtor may file a civil lawsuit in relation to Treasury's reclamation action on the check.

6. *Use of powers of attorney in indorsing Treasury checks.* Limitations on the use of powers of attorney for negotiating checks currently are codified in § 240.15. These limitations allow any check to be negotiated under a specific power of attorney which is executed after the issuance of the check and which describes the check in full. General powers of attorney executed in favor of individuals, financial institutions, or other entities may be used to negotiate certain enumerated checks, the right to which does not expire upon the death of the payee/beneficiary. Other types of checks, such as recurring benefit payments, may be negotiated under a special power of attorney that is executed in favor of a financial institution as attorney-in-fact and which states that it is not given to carry into effect an assignment of the right to receive the payment, either to the attorney-in-fact or to any other person. As revised, the rules will change the availability of powers of attorney in the following ways.

a. The proposed rule expands the availability of special powers of attorney by allowing such powers of attorney to be executed in favor of any entity or individual, rather than only financial institutions. However, as is current practice, paragraph 240.16(c) of NPRM II provides that special powers of attorney may be utilized only if they specifically state that they are not being executed with the intent of assigning the right of payment to the attorney-in-fact or to any other person.

b. The proposed rule allows durable special powers of attorney and springing durable special powers of attorney to be used to negotiate classes of checks the right to which expires upon the death of the payee/beneficiary. This includes checks for recurring benefit payments. A durable special power of attorney is a power of attorney that explicitly provides for its continued effect despite the later incompetence of the principal. A springing durable special power of

attorney is similar to a durable special power of attorney in that it survives the principal's incompetence, but differs in that it does not become effective until such time that the principal is determined to be incompetent. A springing durable special power of attorney is created by the principal's use of words explicitly stating that the power of attorney is to become effective upon a determination that the principal is incompetent. The proposed rule allows durable special powers of attorney and springing durable special powers of attorney to be used for a period of six months following the date that a payee/beneficiary of a check is determined to be incompetent.

The new provisions at §§ 240.13 and 240.16(d) and (e) of NPRM II are intended to serve as a six-month bridge from the time a payee/beneficiary is determined to be incompetent until a guardian or other fiduciary is named. As with special powers of attorney, durable special powers of attorney and springing durable special powers of attorney may be executed in favor of an individual, a financial institution or any other entity as attorney-in-fact, but must state that they are not given to carry into effect an assignment of the right to receive payment, either to the attorney-in-fact or to another person. Durable special powers of attorney and springing durable special powers of attorney automatically are revoked, for purposes of negotiating Treasury checks, upon the death of the payee/beneficiary.

c. The proposed rule deletes Appendix A to Part 240 which discusses the various Treasury power of attorney forms. Negotiating checks under a power of attorney no longer will require the use of a Treasury power of attorney form. Individual powers of attorney now will be governed by applicable law to the extent that such powers of attorney are consistent with the limitations provided in this Part, including, but not limited to, the following: (1) That special powers of attorney, durable special powers of attorney, and springing durable special powers of attorney must include a recitation that the power of attorney is not executed to effect an assignment of the right to receive payment either to the attorney-in-fact or to any other person; and (2) that for purposes of negotiating checks covered by this Part, all powers of attorney automatically are revoked upon the death of the beneficiary of the check.

d. Current paragraphs 240.16(f), (g) and (h) are deleted. They no longer are necessary because the descriptions of the types of powers of attorney all require that powers of attorney be

executed in accordance with applicable Federal or state law.

7. *Definitions.* Section 240.2 is amended by adding a definition of "disbursing official." This definition is necessary due to revisions to redesignated § 240.9 (Offset) of NPRM II which allow Treasury to refer delinquent debts to any disbursing official of the United States for offset. The definition of "protest" has been deleted, and the substance of the definition moved to the protest provisions in §§ 240.6 and 240.8 of NPRM II. The definitions of the terms "commissioner" and "item" were deleted because the terms are not used in NPRM II.

The definition of "unauthorized indorsement" is amended to clarify that it includes forged as well as unauthorized indorsements. As such, the proposed rule uses the term "forged or unauthorized indorsement," and specifically states that it includes situations where the payee's name is signed by another without the authority to do so. The definition is also amended by deleting the reference to 31 CFR Part 209, which was removed from the CFR on December 27, 1996 (61 FR 68155-01). Other definitions were added to improve the readability of Part 240.

8. *Other changes.* The substance of current paragraph 240.3(a)(2) has been moved to paragraph 240.4(a)(1) of NPRM II and has been revised by deleting the language "unless it is negotiated to a financial institution no later than October 1, 1990." The deleted language pertains to checks that were outstanding at the time Part 240 was revised and provided notice that the Secretary of the Treasury, in accordance with 31 U.S.C. 3328(a), would not be required to pay such checks if they were not negotiated by the specified date. Due to the passage of time, the deleted language no longer is necessary. Similarly, the language in current paragraph 240.4(b) is deleted because it relates to the cancellation of checks that were issued before October 1, 1989, and had not been negotiated within 12 months. The deleted language no longer is necessary because all such checks have been paid or canceled pursuant to law.

Redesignated paragraphs 240.8(b) and 240.13(b) of NPRM II are revised to update addresses. In addition, § 240.8 is revised to clarify that a reclamation may be sent to any indorser, not just financial institutions in general or presenting banks in particular. Section 240.8 also is revised to clarify that monthly statements will include all outstanding amounts including unpaid portions of the original claim, interest,

penalties, and administrative costs. (See definitions of "reclamation debt" and "reclamation debtor" in § 240.2 of NPRM II.)

The substance of current § 240.10, concerning the release of original checks, is deleted in order to reflect Treasury's practice of not releasing original checks to indorsers. Paragraph 240.11(a)(5) of NPRM II authorizes a Federal Reserve Bank to release a copy of a check to the indorser.

Redesignated § 240.11 includes the substance of current § 240.9 (Processing of checks). The substance of these rules is revised to clarify that depositaries outside the United States are to make reclamation refunds by checks drawn on or payable through U.S. financial institutions located in the United States, not by making a deposit directly to Treasury's General Account. Reclamation refunds initiated by banks outside the United States shall be sent through their headquarters or U. S. correspondent bank only. The proposed rule also clarifies that all reclamation refunds should be accompanied by documentation identifying the check that was the subject of the reclamation (such as a copy of the reclamation notice or the current monthly statement).

Redesignated § 240.12 of NPRM II is revised to clarify that no check drawn in favor of a financial institution for credit to the account of a payee may be negotiated after the death of a payee.

New § 240.19 of NPRM II incorporates a general reservation of rights provision.

Rulemaking Analysis

Executive Order 12866

It has been determined that this regulation is not a significant regulatory action as defined in E.O. 12866. Therefore, a Regulatory Assessment is not required.

Clarity of Regulations

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. We invite your comments on how to make this proposed rule easier to understand. For example:

- Have we organized the material in this proposed rule to suit your needs?
- Are the requirements in the proposed rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- What else could we do to make this proposed rule easier to understand?

Please send any comments you have on the clarity of this proposed rule to the address specified in the **ADDRESSES** section.

Regulatory Flexibility Act

It is hereby certified pursuant to the Regulatory Flexibility Act that this revision, if adopted, will not have a significant impact on a substantial number of small business entities. The major revisions to Part 240 in this proposed regulation incorporate recent statutory changes, or revise current agency practices relating to implementation of FCCS requirements. Specifically, the provisions concerning collection procedures do not create, in and of themselves, new debt collection tools, impose new fees not authorized by law, or otherwise create new limits on the rights of affected parties, including small business entities. The provisions concerning the referral of delinquent debts to other agencies or United States disbursing officials, and the provisions concerning the collection of delinquent debts by means of TCO, are all in furtherance of specific authorities established by the DCIA. In particular, the DCIA provides that, "By presenting Treasury checks for payment a presenting bank is deemed to authorize this offset." 31 U.S.C. 3712(e). Consequently, any economic impact on small entities will be the result of the application of the statute, rather than a direct result of Treasury regulations.

The provisions relating to how and when penalties and administrative costs will be added to delinquent debts represent a change in Treasury policy relating to implementation of the requirements of the FCCS. While the change in policy may result in some additional costs to some small entities, any such additional costs will be the result of Treasury's compliance with the requirements of the FCCS, and not a direct result of this regulation. Further, the impact of the change in policy will not be significant, because the costs are waived for those who pay within 60 days of the date of reclamation and such costs will be incurred only by those who fail to pay a reclamation in a timely fashion.

Provisions relating to declinations clarify existing Treasury practices concerning the processing of checks determined to include a material defect or alteration prior to Treasury's making final payment on a check. Including such provisions benefits financial institutions, as well as the general public, by providing notice of how and when actions by Treasury to decline final payment may be protested.

Finally, while provisions in this rule supercede existing Federal common law to the extent that such law applies to counterfeit checks, and may result in a shift in liability for losses associated

with counterfeit checks, the actual amounts involved are expected to be minimal. An analysis of Treasury statistics for calendar year 2001 indicates that of 95 counterfeit checks presented to Treasury for payment, only one such counterfeit item took more than 30 days to detect. In that instance, the item was detected on the 105th day following presentment. Even in that instance, under the proposed rule, liability for the loss would be shifted to an indorser only if it were determined that the indorser breached the guarantee of authenticity in § 240.3(d) by failing to make all reasonable efforts to ensure that the check was authentic. Consequently, the provisions relating to liability for losses resulting from the payment of counterfeit checks is not expected to have a significant impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Notice and Comment

Public comment is solicited on all aspects of this proposed regulation. Treasury will consider all comments made on the substance of this proposed regulation, but does not intend to hold hearings.

List of Subjects in 31 CFR Part 240

Banks, Banking, Checks, Counterfeit checks, Federal Reserve system, Forgery, Guarantees.

Authority and Issuance

For the reasons stated in the preamble, Part 240 of title 31 is proposed to be revised to read as follows:

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

Subpart A—General Provisions

Sec.

- 240.1 Scope of regulations.
- 240.2 Definitions.
- 240.3 Presentment guarantees.
- 240.4 Limitations on payment; cancellation and distribution of proceeds of checks.
- 240.5 Provisional credit; first examination; declination; final payment.
- 240.6 Declination protest.
- 240.7 Reclamation of amounts of paid checks.
- 240.8 Reclamation procedures; reclamation protests.
- 240.9 Offset.
- 240.10 Treasury Check Offset.
- 240.11 Processing of checks.

Subpart B—Indorsement of Checks

- 240.12 Indorsement by payees.
- 240.13 Checks issued to incompetent payees.
- 240.14 Checks issued to deceased payees.

- 240.15 Checks issued to minor payees.
- 240.16 Powers of attorney.
- 240.17 Lack of authority to shift liability.
- 240.18 Implementing instructions.
- 240.19 Reservation of rights.

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 321, 3327, 3328, 3331, 3334, 3343, 3711, 3712, 3716, 3717; 332 U.S. 234 (1947); 318 U.S. 363 (1943).

Subpart A—General Provisions

§ 240.1 Scope of regulations.

(a) 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 based on claims arising from the breach of presentment guarantees by presenting banks and other indorsers of Treasury checks when checks bearing material defects or alterations or forged disbursing officer (drawer) signatures are presented for payment and are paid.

(b) Standards contained in this regulation supersede existing Federal common law to the extent that they are inconsistent with Federal common law rules relating to counterfeit checks. Under the provisions of this part, the risk of loss on certain counterfeit checks is placed on presenting banks and other indorsers unless Treasury fails to timely reclaim on a check payment in accordance with 31 U.S.C. 3712(a) and § 240.7 of this part. Treasury will reclaim on counterfeit checks that are deemed paid under § 240.5(d) when a presenting bank or other indorser fails to make all reasonable efforts to ensure that a check is an authentic Treasury check.

§ 240.2 Definitions.

Administrative offset or *offset*, for purposes of this section, has the same meaning as defined in 31 U.S.C. 3701(a)(1) and 31 CFR Part 285.

Agency means any agency, department, instrumentality, office, commission, board, service, or other establishment of the United States authorized to issue Treasury checks or for which checks drawn on the United States Treasury are issued.

Certifying agency means an agency authorizing the issuance of a payment by a disbursing official in accordance with 31 U.S.C. 3325.

Check or *checks* means a check or checks drawn on the United States Treasury.

Check payment means the amount paid to a presenting bank by a Federal Reserve Bank.

Counterfeit check means a document that purports to be an authentic check

drawn on the United States Treasury, but in fact is not an authentic check.

Days means calendar days. For purposes of computation, the last day of the period will be included unless it is a Saturday, Sunday, or Federal holiday; the first day is not included. For example, if a reclamation was issued on July 1, the 90 day protest period under § 240.8(b) would begin on July 2. If the 90th day fell on a Saturday, Sunday or Federal holiday, the protest would be accepted if received on the next business day.

Declination means the process by which Treasury refuses to make final payment on a check, *i.e.*, declines payment, by instructing a Federal Reserve Bank to reverse its provisional credit to a presenting bank.

Declination date means the date on which the declination is issued by Treasury.

Disbursing official means an official, including an official of the Department of the Treasury, the Department of Defense, any Government corporation (as defined in 31 U.S.C. 9101), or any official of the United States designated by the Secretary of the Treasury, authorized to disburse public money pursuant to 31 U.S.C. 3321 or another law.

Drawer's signature means the signature of a disbursing official placed on the front of a Treasury check as the drawer of the check.

Federal Reserve Bank means a Federal Reserve Bank (FRB) or a branch of a Federal Reserve Bank.

Federal Reserve Processing Center means a Federal Reserve Bank center that images Treasury checks for archiving check information and transmitting such information to Treasury.

Financial institution means:

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

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

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

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

(5) Any savings association as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) which 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

(6) Any financial institution outside of the United States if it has been designated by the Secretary of the Treasury as a depository of public money and has been permitted to charge checks to the General Account of the United States Treasury.

First examination means Treasury's initial review of a check that has been presented for payment. The initial review procedures, which establish the authenticity and integrity of a check presented to Treasury for payment, may include reconciliation; retrieval and inspection of the check or the best available image thereof; and other procedures Treasury deems appropriate to specific circumstances.

Forged or unauthorized drawer's signature means a drawer's signature that has been placed on the front of a Treasury check by a person other than:

- (1) A disbursing official; or
- (2) A person authorized to sign on behalf of a disbursing official.

Forged or unauthorized indorsement means:

(1) An indorsement of the payee's name by another person who is not authorized to sign for the payee; or

(2) An indorsement of the payee's name made by another person who has been authorized by the payee, but who has not indorsed the check in accordance with § 240.3 and §§ 240.12 through 240.16; or

(3) An indorsement added by a financial institution where the financial institution had no authority to supply the indorsement; or

(4) A check bearing an altered payee name that is indorsed using the payee name as altered.

Guarantor means a financial institution that presents a check for payment and any prior indorser(s) of a check.

Material defect or alteration means:

- (1) The counterfeiting of a check; or
- (2) Any physical change on a check, including, but not limited to, a change in the amount, date, payee name, or other identifying information printed on

the front or back of the check (but not including a forged or unauthorized drawer's signature); or

(3) Any forged or unauthorized indorsement appearing on the back of the check.

Minor means the term minor as defined under applicable State law.

Monthly statement means a statement prepared by Treasury which includes the following information regarding each outstanding reclamation:

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

Payee means the person that the certifying agency designated to receive payment pursuant to 31 U.S.C. 3528.

Person means an individual, institution, including a financial institution, or any other type of entity; the singular includes the plural.

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 Treasury's General Account and present them to Treasury for payment through a designated Federal Reserve Bank.

Provisional credit means the initial credit provided to a presenting bank by a Federal Reserve Bank. Provisional credit may be reversed by Treasury until the completion of first examination or final payment is deemed made pursuant to § 240.5(d).

Reclamation means a demand for the amount of a check for which Treasury has requested an immediate refund.

Reclamation date means the date on which a reclamation is issued by Treasury. Normally, demands are sent to presenting banks or other indorsers within 2 business days of the reclamation date.

Reclamation debt means the amount owed as a result of Treasury's demand for refund of a check payment, and includes interest, penalties and administrative costs assessed in accordance with § 240.7.

Reclamation debtor means a presenting bank or other indorser of a check from whom Treasury has demanded a refund in accordance with §§ 240.7 and 240.8. The reclamation debtor does not include a presenting bank or other indorser who may be liable for a reclamation debt, but from which Treasury has not demanded a refund.

Recurring benefit payment includes but is not limited to a payment of money for any Federal Government entitlement program or annuity.

Treasury means the United States Department of the Treasury, or when authorized, an agent designated by the Secretary of the Treasury or his delegatee.

Treasury Check Offset means the collection of an amount owed by a presenting bank in accordance with 31 U.S.C. 3712(e).

U.S. securities means securities of the United States and securities of Federal agencies and Government corporations for which Treasury acts as the transfer agent.

Writing includes electronic communications when specifically authorized by Treasury in implementing instructions.

§ 240.3 Presentment guarantees.

The guarantors of a check presented to the Treasury for payment are deemed to guarantee to the Treasury all of the following:

(a) *Indorsements*. That all prior indorsements are genuine, whether or not an express guarantee 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 to the Treasury, in addition to other guarantees, that the person who so indorsed had unqualified capacity and authority to indorse the check on behalf of the payee.

(b) *Alterations*. That the check has not been materially altered.

(c) *Drawer's signature*. That the guarantors have no knowledge that the signature of the drawer is forged or unauthorized.

(d) *Authenticity*. That the guarantors have made all reasonable efforts to ensure that a check is an authentic Treasury check, not a counterfeit check.

§ 240.4 Limitations on payment; cancellation and distribution of proceeds of checks.

(a) *Limitations on payment*. (1) Treasury shall not be required to pay any check that is not negotiated to a financial institution within 12 months after the date on which the check was issued.

(2) All checks 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 checks. The legend, or the inadvertent lack thereof, does not limit, or otherwise affect, the rights of Treasury under the law.

(b) *Cancellation and distribution of proceeds of checks*. (1) Any check that

has not been paid and remains outstanding for more than 12 months after the issue date will be canceled by Treasury.

(2) The proceeds from checks canceled pursuant to paragraph (b)(1) of this section will be returned to the payment certifying or authorizing agency for ultimate credit to the appropriation or fund account initially charged for the payment.

(3) On a monthly basis, Treasury will provide to each agency that authorizes the issuance of checks a list of those checks issued for such agency which were canceled during the preceding month pursuant to paragraph (b)(1) of this section.

§ 240.5 Provisional credit; first examination; declination; final payment.

(a) Any credit issued by a Federal Reserve Bank to a financial institution shall be a provisional credit until Treasury completes first examination of the check, or as provided in paragraph (d) of this section.

(b) Treasury shall have the right as a drawee to complete first examination of checks presented for payment, to reconcile checks, and, when appropriate, to make a declination on any check.

(c) Treasury will decline payment on a check when first examination by Treasury establishes that the check:

(1) Has a material defect or alteration; or

(2) Bears a forged or unauthorized drawer's signature.

(d) Treasury shall have a reasonable amount of time to complete first examination. However, except as provided in paragraph (e) of this section, if Treasury has not declined payment on a check within 90 days after the check is presented to a Federal Reserve Processing Center for payment, Treasury will be deemed to have made final payment on the check.

(e) Notwithstanding the provisions of paragraph (d) of this section, in accordance with 31 U.S.C. 3328(a)(2), if, upon presentment for payment, Treasury is on notice of a question of law or fact about whether a check is properly payable, Treasury may defer final payment until the question is settled.

(f) If a Federal Reserve Bank debits a financial institution's reserve account as a result of an erroneous declination, Treasury will promptly refund the amount of the payment.

§ 240.6 Declination protest.

(a) *Who may protest*. Only a presenting bank may protest the declination of a check that it has

presented to a Federal Reserve Bank for payment.

(b) *Basis for protest*. Where Treasury, in accordance with § 240.5, has made a declination of a check presented for payment and a Federal Reserve Bank has reversed its provisional credit to the presenting bank, the presenting bank may file a protest challenging the factual basis for such declination. Protests may be filed challenging the following determinations:

(1) *Counterfeit checks*. The presenting bank may offer evidence that the check is not a counterfeit.

(2) *Altered checks*. The presenting bank may offer evidence that the check is not altered.

(3) *Checks bearing forged or unauthorized drawer's signatures*. The presenting bank may offer evidence that the drawer's signature was authentic or was authorized.

(4) *Checks bearing a forged or unauthorized indorsement*. The presenting bank may offer evidence that an indorsement on the back of the check was not forged or was otherwise authorized in accordance with the requirements of §§ 240.12 through 240.16.

(c) *Procedures for filing a protest*. A declination protest must be in writing, and must be sent to: Department of the Treasury, Financial Management Service, Branch Manager, Financial Processing Division, Check Reconciliation Branch, Room 700-A, 3700 East-West Highway, Hyattsville, MD 20788, or to such other address as Treasury may publish in the Treasury Financial Manual, which can be found at <http://www.fms.treas.gov>. Treasury will not consider any protest unless it is received within 90 days from the declination date.

(d) *Review of a declination protest*. The Director, Financial Processing Division, or an authorized designee, will decide any protest properly submitted under this section, and will notify the presenting bank of Treasury's decision. Neither the Director, Financial Processing Division, nor an authorized designee, will have any involvement in the decision to deny payment of a check under § 240.5.

(1) If, based on the evidence provided, the Director of the Financial Processing Division, or an authorized designee, finds that the presenting bank has met, by a preponderance of the evidence, the criteria in paragraph (b) of this section, Treasury will reverse its decision to decline payment on the check by directing a Federal Reserve Bank to provide credit in the amount of the check to the presenting bank.

(2) If, based on the evidence provided, the Director of the Financial Processing Division, or an authorized designee, finds that the presenting bank has failed to meet, by a preponderance of the evidence, the criteria in paragraph (b) of this section, the declination will not be reversed.

§ 240.7 Reclamation of amounts of paid checks.

(a) If, after making final payment in accordance with § 240.5, Treasury determines that any guarantor has breached a presentment guarantee listed in § 240.3, the guarantor shall be liable to Treasury for the full amount of the check payment. Treasury may reclaim the amount of the check payment from any such guarantor prior to:

(1) The end of the 1-year period beginning on the date that a check is processed for payment by a Federal Reserve Processing Center; or

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

(b) Treasury will not reclaim on a check that bears a forged or unauthorized drawer's signature unless it has evidence that the reclamation debtor had knowledge of the forged or unauthorized drawer's signature.

(c) Treasury will not reclaim on a counterfeit check unless the reclamation debtor has failed to make all reasonable efforts to ensure that a check is an authentic check and not a counterfeit check. In general, a reclamation debtor will be deemed to have failed to make all reasonable efforts to ensure that a check is authentic if a counterfeit check is presented to Treasury for payment despite the fact that it lacks one or more specific attributes outlined in guidance provided by Treasury or on Treasury's behalf.

(d) Reclamation debts are due to be paid upon receipt of the reclamation by the reclamation debtor. Interest, penalties, and administrative costs associated with unpaid balances will accrue as follows:

(1) *Interest.* Treasury will assess interest on the unpaid principal of the reclamation debt beginning on the 61st day following the reclamation date, and will calculate interest based on the rate published annually by Treasury in accordance with 31 U.S.C. 3717. Interest will continue to accrue until the full amount of the reclamation is paid or Treasury determines that payment is not required.

(2) *Penalties.* Treasury will assess a penalty beginning on the 91st day

following the reclamation date. The penalty will be assessed in accordance with 31 U.S.C. 3717 on the unpaid principal of the reclamation debt, and will continue to accrue until the full amount of the reclamation debt is paid or Treasury determines that payment is not required.

(3) *Administrative costs.* Treasury will assess administrative costs associated with the unpaid reclamation debt beginning on the 61st day following the reclamation date. Administrative costs will continue to accrue until the full amount of the reclamation debt is paid or Treasury determines that payment is not required.

(e) If Treasury is unable to fully collect a reclamation debt from a reclamation debtor, after pursuing all appropriate means of collection (including, but not limited to, administrative offset in accordance with § 240.9 and Treasury Check Offset in accordance with § 240.10), Treasury will discharge the unpaid reclamation debt. See 31 CFR 903.5 (Discharge of indebtedness; reporting requirements). Treasury or the certifying agency will report the amount of the unpaid reclamation debt to the Internal Revenue Service in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P-1.

§ 240.8 Reclamation procedures; reclamation protests.

(a) *Reclamation procedures.* (1) Treasury will send a "REQUEST FOR REFUND (CHECK RECLAMATION)" to the reclamation debtor in accordance with § 240.7(a). This request will advise the reclamation debtor of the amount demanded and the reason for the demand. Treasury will make follow-up demands by sending at least three monthly statements to the reclamation debtor. Monthly statements will identify any unpaid reclamation debts (as defined at § 240.2) and will contain or be accompanied by notice to the reclamation debtor that:

(i) If the reclamation debt is not paid within 120 days of the reclamation date, Treasury intends to collect the debt through administrative offset in accordance with § 240.9;

(ii) If the administrative offset is unsuccessful, Treasury intends to collect the debt through Treasury Check Offset in accordance with § 240.10;

(iii) The reclamation debtor has an opportunity to inspect and copy Treasury's records with respect to the reclamation debt;

(iv) The reclamation debtor may, by filing a protest in accordance with § 240.8(b), request Treasury to review its

decision that the reclamation debtor is liable for the reclamation debt; and

(v) The reclamation debtor has an opportunity to enter into a written agreement with Treasury for the repayment of the reclamation debt. A request for a repayment agreement must be accompanied by documentary proof that satisfies Treasury that the reclamation debtor is unable to repay the entire amount owed when due.

(2) Requests by a reclamation debtor for an appointment to inspect and copy Treasury's records with respect to a reclamation debt and requests to enter into repayment agreements must be sent in writing to: Department of the Treasury, Financial Management Service, Financial Processing Division, Reclamation Branch, Room 700D, PO Box 1849, Hyattsville, MD 20788, or to such other address as Treasury may publish in the Treasury Financial Manual, which can be found at <http://www.fms.treas.gov>.

(3) If a reclamation debt remains unpaid for 90 days after the reclamation date and if there is no unresolved protest associated with the reclamation debt, the monthly statement will be annotated with a notice that the reclamation debtor has until the next billing date to make payment on the reclamation debt or Treasury will proceed to collect the reclamation debt through offset in accordance with § 240.9 and Treasury Check Offset in accordance with § 240.10.

(4) If Treasury determines that a reclamation has been made in error, Treasury will abandon the reclamation. If Treasury already has collected the amount of the reclamation from the reclamation debtor, Treasury will promptly refund to the reclamation debtor the amount of its payment. Treasury may refund the amount either by applying the amount to another reclamation debt owed by the reclamation debtor in accordance with this Part or other applicable law, or by returning the amount to the reclamation debtor.

(b) *Reclamation protests.* (1) *Who may protest.* Only a reclamation debtor may protest a reclamation.

(2) *Basis for protest.* Where Treasury, in accordance with § 240.7 and subsection (a) of this section, reclaims the amount of a check payment, the reclamation debtor may file a protest challenging such reclamation. Protests may be filed challenging the following determinations:

(i) *Counterfeit checks.* The reclamation debtor may offer evidence that it did make all reasonable efforts to ensure that a check is authentic. Such evidence must include evidence that the

protestor examined the check in accordance with guidelines provided by Treasury or on Treasury's behalf.

(ii) *Altered checks.* The reclamation debtor may offer evidence that the check is not altered.

(iii) *Checks bearing forged or unauthorized drawer's signatures.* The reclamation debtor may offer evidence that the reclamation debtor did not have knowledge of the forged or unauthorized drawer's signature.

(iv) *Checks bearing a forged or unauthorized indorsement.* The reclamation debtor may offer evidence that the indorsement was not forged or was otherwise authorized in accordance with the requirements of §§ 240.12 through 240.16.

(3) *Procedures for filing a protest.* A reclamation protest must be in writing, and must be sent to: Department of the Treasury, Financial Management Service, Financial Processing Division, Reclamation Branch, Room 700D, PO Box 1849, Hyattsville, MD 20788, or to such other address as Treasury may publish in the Treasury Financial Manual, which can be found at <http://www.fms.treas.gov>.

(i) The reclamation protest must include supporting documentation (including, but not limited to, affidavits, account agreements, and signature cards) for the purpose of establishing that the reclamation debtor is not liable for the reclamation debt.

(ii) Treasury will not consider reclamation protests received more than 90 days after the reclamation date.

(iii) Treasury may, at its discretion, consider information received from a guarantor other than the reclamation debtor. However, in so doing, Treasury does not waive any of its rights under this part, nor does Treasury grant rights to any guarantor that are not otherwise provided in this Part.

(4) *Review of a reclamation protest.* The Director, Financial Processing Division, or an authorized designee, will consider and decide any protest properly submitted under this section. Neither the Director, Financial Processing Division, nor an authorized designee, will have any involvement in the process of making determinations under § 240.7(a) or sending a "REQUEST FOR REFUND (CHECK RECLAMATION)" under § 240.8(a).

(i) Treasury will refrain from the collection activities identified in §§ 240.9 and 240.10 while a timely protest is being considered. However, interest, penalties, and administrative costs will continue to accrue and be added to the reclamation debt until a final determination on the protest has been made.

(ii) If, based on the evidence provided, the Director of the Financial Processing Division, or an authorized designee, finds that the reclamation debtor has met, by a preponderance of the evidence, the criteria in paragraph (b)(2) of this section, Treasury will notify the reclamation debtor, in writing, of his or her decision to terminate collection and will refund any amounts previously collected for the reclamation debt. Treasury may refund the amount either by applying the amount to another reclamation debt owed by the reclamation debtor in accordance with this Part or other applicable law, or by returning the amount to the reclamation debtor.

(iii) If the Director, Financial Processing Division, or an authorized designee, finds, by a preponderance of the evidence, that the reclamation debtor is liable for the reclamation debt, Treasury will notify the reclamation debtor, in writing, of his or her decision. If the reclamation debtor has not paid the reclamation in full, the reclamation debtor must pay any outstanding amounts in full within 30 days from the date of Treasury's decision. If the reclamation debtor fails to pay the reclamation debt in full within that time frame, Treasury will proceed to collect the reclamation debt through offset in accordance with §§ 240.9 and 240.10.

(5) *Effect of protest decision.* The notice provided to the reclamation debtor under paragraph (b)(4)(iii) of this section shall serve as the final agency determination under the Administrative Procedure Act (5 U.S.C. 701, *et seq.*). No civil suit may be filed until the reclamation debtor has filed a protest under this section, and Treasury has provided notice of its final determination.

§ 240.9 Offset.

(a) If a reclamation debt remains unpaid for 120 days after the reclamation date, Treasury will refer the reclamation debt, if eligible, to Treasury's centralized offset program (see 31 CFR part 285) or another Federal agency for offset in accordance with 31 U.S.C. 3716. Prior to making a referral for offset, Treasury, in accordance with § 240.8(a)(3), will send at least one monthly statement to the reclamation debtor informing the reclamation debtor that Treasury intends to collect the reclamation debt by administrative offset and Treasury Check Offset.

(b) If a reclamation debtor wishes to make payment on a reclamation debt referred for offset, the reclamation debtor should contact Treasury at the address listed in § 240.8(b) to resolve the debt and avoid offset.

(c) If Treasury is unable to collect a reclamation debt by use of the offset described in paragraph (a) of this section, Treasury shall take such action against the reclamation debtor as may be necessary to protect the interests of the United States, including, but not limited to, Treasury Check Offset in accordance with § 240.10, or referral to the Department of Justice.

(d) If Treasury effects offset under this section and it is later determined that the reclamation debtor already had paid the amount of the reclamation debt, or that a reclamation debtor which had timely filed a protest was not liable for the amount of the reclamation, Treasury will promptly refund to the reclamation debtor the amount of its payment. Treasury may refund the amount either by applying the amount to another reclamation debt owed by the reclamation debtor in accordance with this Part or other applicable law, or by returning the amount to the reclamation debtor.

§ 240.10 Treasury Check Offset.

(a) If Treasury is unable to effect collection pursuant to §§ 240.7 and 240.8, or § 240.9, Treasury will collect the amount of the reclamation debt through Treasury Check Offset. Treasury Check Offset occurs when, at the direction of the Treasury, a Federal Reserve Bank withholds, that is, offsets, credit from a presenting bank. The amount of credit offset is applied to the reclamation debt owed by the presenting bank. By presenting Treasury checks for payment, the presenting bank is deemed to authorize Treasury Check Offset.

(b) If Treasury effects offset under this section and it is later determined that the presenting bank paid the reclamation debt in full, or that a presenting bank was not liable for the amount of the reclamation debt, Treasury will promptly refund to the presenting bank the amount of its overpayment. Treasury may refund the amount either by applying the amount to another reclamation debt in accordance with this Part or other applicable law, or by returning the amount to the presenting bank.

(c) Treasury Check Offset is used for the purpose of collecting debt owed by a presenting bank to the Federal Government. As a consequence, presenting banks shall not be able to use the fact that Treasury checks have not been paid as the basis for a claim against Treasury, a Federal Reserve Bank, or other persons or entities, including payees or other indorsers of checks, for the amount of the credit offset pursuant to 31 U.S.C. 3712(e) and this section.

(d) This section does not apply to a claim based upon a reclamation that has been outstanding for more than 10 years from the date of delinquency.

§ 240.11 Processing of checks.

(a) *Federal Reserve Banks.* (1) Federal Reserve Banks must cash checks for Government disbursing officials when such checks are drawn by the disbursing officials to their own order, except that payment of such checks must be refused if:

(i) A check bears a material defect or alteration;

(ii) A check was issued more than one year prior to the date of presentment; or

(iii) The Federal Reserve Bank has been notified by Treasury, in accordance with § 240.14(c), that a check was issued to a deceased payee.

(2) Federal Reserve Banks are not required to cash 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 provisional credit therefore in accordance with their current Time Schedules and charge the amount of the checks cashed or otherwise received to the General Account of the United States Treasury, subject to first examination and payment by Treasury;

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

(iv) Release the original checks to a designated Regional Records Services Facility upon notification from Treasury.

(4) If a check is to be declined under § 240.5, Treasury will provide the Federal Reserve Bank with notice of declination upon the completion of first examination. Federal Reserve Banks must give immediate credit therefor to Treasury's General Account, thereby reversing the previous charge to the General Account for such check.

(5) Treasury authorizes each Federal Reserve Bank to release a copy of the check to the presenting bank when payment is declined.

(b) *Treasury General Account (TGA) designated depositaries outside the United States.*—(1) Financial institutions outside the United States designated by Treasury as depositaries of public money in accordance with 31 U.S.C. 3303 and permitted to charge checks to the General Account of the United States Treasury in accordance with Treasury implementing

instructions shall be governed by the operating instructions contained in the letter of authorization to them from Treasury and are, as presenting banks, subject to the provisions of §§ 240.3, 240.7, and 240.8.

(2) If a check is to be declined under § 240.5, Treasury will provide the presenting bank with notice of declination upon the completion of first examination and will provide the presenting bank with a copy or image of the check. Such presenting bank must give immediate credit therefor to the General Account of the United States Treasury, thereby reversing the previous charge to the Account for such check. Treasury authorizes the designated Federal Reserve Bank to return to such presenting bank the original check when payment is declined in accordance with § 240.4(a) or § 240.14(c).

(3) To ensure complete recovery of the amount due, reclamation refunds require payment in U.S. dollars with checks drawn on or payable through U.S. financial institutions located in the United States. Reclamation refunds initiated by financial institutions outside of the United States must be sent through their headquarters or U.S. correspondent financial institution only. The payments should be accompanied by documentation identifying the check that was the subject of the reclamation (such as a copy of the reclamation notice or the current monthly statement). Reclamation refunds shall not be deposited to Treasury's General Account.

Subpart B—Indorsement of Checks

§ 240.12 Indorsement by payees.

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

(b) *Acceptable indorsements.*—(1) A check is properly indorsed when:

(i) The check is indorsed by the payee in a form recognized by general principles of law and commercial usage for negotiation, transfer or collection of negotiable instruments.

(ii) The check is indorsed by another on behalf of the named payee, and sufficiently indicates that the indorser has indorsed the check on behalf of the payee 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, §§ 240.13, 240.14, and 240.16(f) specify the addition of an indication in specified situations of the actual capacity in which the person

other than the named payee is indorsing.

(iii) Absent a signature, the check is indorsed "for collection" or "for deposit only to the credit of the within named payee or payees." The presenting bank shall be deemed to guarantee good title to checks without signatures to all subsequent indorsers and to Treasury.

(iv) The check is indorsed by a financial institution under the payee's authorization.

(2) *Indorsement of checks by a duly authorized fiduciary or representative.* The individual or institution accepting a check from a person other than the named payee is responsible for determining whether 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 Treasury in the event of a dispute.

(3) *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 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 instructions. XYZ [Name of financial institution]." A financial institution using this form of indorsement will be deemed to guarantee to all subsequent indorsers and to the Treasury that it is acting as an attorney-in-fact for the payee, under the payee's authorization, and that this authority is currently in force and has neither lapsed nor been revoked either in fact or by the death or incapacity of the payee.

(4) *Indorsement of checks drawn in favor of financial institutions.* All checks drawn in favor of a financial institution, for credit to the account of a person designating payment so to be made, must be indorsed in the name of the financial institution as payee in the usual manner. However, no check drawn in favor of a financial institution for credit to the account of a payee may be negotiated by the financial institution after the death of the payee.

(c) *Unacceptable indorsements.*—(1) A check is not properly indorsed when the check is signed or otherwise is indorsed by a person without the payee's consent or authorization.

(2) Failure to include the signature of the person signing the check as required by paragraph (b)(1)(ii) of this section will create a rebuttable presumption that the indorsement is a forgery and is unacceptable.

(3) Failure to include sufficient indication of the indorser's authority to

act on behalf of the payee as required by paragraph (b)(1)(ii) of this section will create a rebuttable presumption that the indorsing person is not authorized to indorse a check for the payee.

§ 240.13 Checks issued to incompetent payees.

(a) *Handling of checks when a guardian or other fiduciary has been appointed.*—(1) A guardian appointed in accordance with applicable State law, or a fiduciary appointed in accordance with other applicable law, may indorse checks issued for the following classes of payments the right to which under law does not terminate with the death of the payee: payments for the redemption of currencies or for principal and/or interest on U.S. securities; payments for tax refunds; and payments for goods and services.

(i) A guardian or other fiduciary indorsing any such check on behalf of an incompetent payee, must include, as part of the indorsement, an indication of the capacity in which the guardian or fiduciary is indorsing. An example would be: "John Jones by Mary Jones, guardian of John Jones."

(ii) When a check indorsed in this fashion is presented for payment by a financial institution, it will be paid by Treasury without submission of documentary proof of the authority of the guardian or other fiduciary, with the understanding that evidence of such claimed authority to indorse may be required by Treasury in the event of a dispute.

(2) A guardian or other fiduciary may not indorse a check issued for any class of payment other than one specified in paragraph (a)(1) of this section. When a check other than one specified in paragraph (a)(1) of this section is received by a guardian or other fiduciary, the check must be returned to the certifying agency with information as to the incompetency of the payee and documentary evidence showing the appointment of the guardian or other fiduciary in order that a replacement check, and future checks, may be drawn in favor of the guardian or other fiduciary.

(b) *Handling of checks when a guardian or other fiduciary has not been appointed.* If a guardian or other fiduciary has not been appointed, all checks issued to an incompetent payee must be returned to the certifying agency for determination as to whether, under applicable law, payment is due and to whom it may be made.

(c) *Handling of certain checks by an attorney-in-fact.* Notwithstanding paragraph (a)(2) of this section, if a check was issued for a class of payments

the right to which under law terminates upon the death of the beneficiary, such as a recurring benefit payment or annuity, the check may be negotiated under a durable special power of attorney or springing durable special power of attorney subject to the restrictions enumerated in § 240.16. After the end of the six-month period provided in §§ 240.16(d) and (e), such checks must be handled in accordance with paragraph (a)(2) of this section.

§ 240.14 Checks issued to deceased payees.

(a) *Handling of checks when an executor or administrator has been appointed.*—(1) An executor or administrator of an estate that has been appointed in accordance with applicable State law may indorse checks issued for the following classes of payments the right to which under law does not terminate with the death of the payee: payments for the redemption of currencies or for principal and/or interest on U.S. securities; payments for tax refunds; and payments for goods and services.

(i) An executor or administrator indorsing any such check must include, as part of the indorsement, an indication of the capacity in which the executor or administrator is indorsing. An example would be: "John Jones by Mary Jones, executor of the estate of John Jones."

(ii) When a check indorsed in this fashion is presented for payment by a financial institution, it will be paid by Treasury without the submission of documentary proof of the authority of the executor or administrator, with the understanding that evidence of such claimed authority to indorse may be required by Treasury in the event of a dispute.

(2) An executor or administrator of an estate may not indorse a check issued for any class of payment other than one specified in paragraph (a)(1) of this section. Other checks, such as recurring benefit payments and annuity payments, may not be negotiated after the death of the payee. Such checks must be returned to the certifying agency for determination as to whether, under applicable law, payment is due and to whom it may be made.

(b) *Handling of checks when an executor or administrator has not been appointed.* If an executor or administrator has not been appointed, all checks issued to a deceased payee must be returned to the certifying agency for determination as to whether, under applicable law, payment is due and to whom it may be made.

(c) *Handling of checks when a certifying agency learns, after the*

issuance of a recurring benefit payment check, that the payee died prior to the date of issuance. (1) A recurring benefit payment check, issued after a payee's death, is not payable. As a consequence, when a certifying agency learns that a payee has died, the certifying agency must give immediate notice to Treasury, as prescribed in the implementing instructions described in § 240.18. Upon receipt of such notice from a certifying agency, Treasury will instruct the Federal Reserve Bank to refuse payment of the check upon presentment. Upon receipt of such instruction from Treasury, the Federal Reserve Bank will make every appropriate effort to intercept the check. If the check is successfully intercepted, the Federal Reserve Bank will refuse payment, and will return the check unpaid to the presenting bank with an annotation that the payee is deceased. If a financial institution learns that a date of death triggering action under this section is erroneous, the financial institution must advise the payee to contact the payment certifying agency.

(2) Nothing in this section shall limit the right of Treasury to institute reclamation proceedings under the provisions of §§ 240.7 and 240.8 with respect to a check issued to a deceased payee that has been negotiated and paid over a forged or unauthorized indorsement.

§ 240.15 Checks issued to minor payees.

(a) Checks in payment of principal and/or interest on U.S. securities that are issued to minors may be indorsed by:

(1) Either parent with whom the minor resides; or

(2) If the minor does not reside with either parent, by the person who furnishes the minor's chief support.

(b) The parent or other person indorsing on behalf of the minor must present with the check the indorser's signed statement giving the minor's age, and stating that the payee either resides with the parent or receives his or her chief support from the person indorsing on the minor's behalf and that the proceeds of the check will be used for the minor's benefit.

§ 240.16 Powers of attorney.

(a) *Specific powers of attorney.* Any check may be negotiated under a specific power of attorney executed in accordance with applicable State or Federal law after the issuance of the check and describing the check in full (check serial and symbol numbers, date of issue, amount, and name of payee).

(b) *General powers of attorney.* Checks may be negotiated under a

general power of attorney executed, in accordance with applicable State or Federal law, in favor of a person for the following classes of payments:

- (1) Payments for the redemption of currencies or for principal and/or interest on U.S. securities;
- (2) Payments for tax refunds, but subject to the limitations concerning the mailing of Internal Revenue refund checks contained in 26 CFR 601.506(c); and

(3) Payments for goods and services.

(c) *Special powers of attorney.* Checks issued for classes of payments other than those specified in paragraph (b) of this section, such as a recurring benefit payment, may be negotiated under a special power of attorney executed in accordance with applicable State or Federal law, which describes the purpose for which the checks are issued, names a person as attorney-in-fact, and recites that the special power of attorney is not given to carry into effect an assignment of the right to receive such payment, either to the attorney-in-fact or to any other person.

(d) *Durable special powers of attorney.* A durable special power of attorney is a special power of attorney which continues despite the principal's later incompetency, and is created by the principal's use of words explicitly stating such intent. Classes of checks other than those specified in paragraph (b) of this section may be negotiated under a durable special power of attorney executed in accordance with applicable State or Federal law, which describes the purpose for which the checks are issued, names a person as attorney-in-fact, and recites that the special power of attorney is not given to carry into effect an assignment of the right to receive such payment, either to the attorney-in-fact or to any other person. For the purpose of negotiating Treasury checks, durable special powers of attorney are effective only during the 6-month period following a

determination that the named payee is incompetent.

(e) *Springing durable special powers of attorney.* A springing durable special power of attorney is similar to a durable power of attorney except that its terms do not become effective until the principal's subsequent incompetence. As with a durable special power of attorney, a springing durable special power of attorney is created by the principal's use of language explicitly stating that its terms become effective at such time as the principal is determined to be incompetent. Classes of checks other than those specified in paragraph (b) of this section may be negotiated under a springing durable special power of attorney executed in accordance with applicable State or Federal law, which describes the purpose for which the checks are issued, names a person as attorney-in-fact, and recites that the springing durable special power of attorney is not given to carry into effect an assignment of the right to receive payment, either to the attorney-in-fact or to any other person. For the purpose of negotiating Treasury checks, springing durable special powers of attorney are effective only during the 6-month period following a determination that the named payee is incompetent.

(f) *Proof of authority.* Checks indorsed by an attorney-in-fact must include, as part of the indorsement, an indication of the capacity in which the attorney-in-fact is indorsing. An example would be: "John Jones by Paul Smith, attorney-in-fact for John Jones." Such checks when presented for payment by a financial institution, will be paid by Treasury without the submission of documentary proof of the claimed authority, with the understanding that evidence of such claimed authority to indorse may be required by Treasury in the event of a dispute.

(g) *Revocation of powers of attorney.* Notwithstanding any other law, for purposes of negotiating Treasury

checks, all powers of attorney are deemed revoked by the death of the principal and may also be deemed revoked by notice from the principal to the parties known, or reasonably expected, to be acting on the power of attorney.

§ 240.17 Lack of authority to shift liability.

(a) This part neither authorizes nor directs a financial institution to debit the account of any person or to deposit any funds from any account into a suspense account or escrow account or the equivalent. Nothing in this part shall be construed to affect a financial institution's contract with its depositor(s) under authority of state law.

(b) A financial institution's liability under this part is not affected by any action taken by it to recover from any person the amount of the financial institution's liability to the Treasury.

§ 240.18 Implementing instructions.

Additional procedural instructions implementing these regulations will be issued by the Financial Management Service in Volume I, Part 4 (instructions relating to disbursing), and Volume II, Part 4 (instructions relating to Federal Reserve Banks), of the Treasury Financial Manual. Implementing instructions relating to designated depositaries outside the United States are published in Volume VI, Chapter 2000, of the Treasury Financial Manual.

§ 240.19 Reservation of rights.

The Secretary of the Treasury reserves the right, in the Secretary's discretion, to waive any provision(s) of this part not otherwise required by law.

Dated: April 17, 2003.

Richard L. Gregg,

Commissioner.

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