

FEDERAL RESERVE BANK
OF NEW YORK

Fiscal Agent of the United States

[Circular No. 8055]
February 17, 1977]

Amendments to Treasury's Regulations
Regarding Checkless Federal Recurring Payments

To All Banks and Other Financial Organizations in the
Second Federal Reserve District, and Others Concerned:

With our Circular No. 7859, dated April 20, 1976, you received a copy of this Bank's Operating Circular No. 11, Revised April 19, 1976, entitled "Federal Recurring Payments." The appendix to the operating circular contains the text of the Treasury Department's regulations (31 C.F.R. Part 210) governing the handling of such payments.

The Treasury Department has amended those regulations, effective January 3, 1977, (1) to clarify the responsibilities and liability of a financial organization receiving a credit payment with erroneous information and (2) to prescribe the procedures to be followed by the Treasury Department, by agencies that make recurring payments ("program agencies"), and by Federal Reserve Banks in collecting the amount for which a financial organization is accountable in connection with credit payments that have payment dates after the event of death or legal incapacity of the designated recipient or beneficiary.

Enclosed is a copy of the First Supplement to Operating Circular No. 11 reflecting the Treasury's amendments to its regulations. In addition, printed on the reverse side of this circular is the text of a statement issued by the Treasury in submitting the amendments for publication in the *Federal Register*.

Any questions regarding this matter should be directed, at the Head Office, to John F. Sobala, Manager, Check Processing Department (Tel. No. 212-791-5321), or John M. Eighmy, Chief, Check Processing Division (Tel. No. 212-791-5319), or, at the Buffalo Branch, to Robert J. McDonnell, Assistant Cashier (Tel. No. 716-849-5022), or David P. Schwarzmuller, Chief, Check Division (Tel. No. 716-549-5051).

PAUL A. VOLCKER,
President.

(OVER)

Statement by Treasury Department on Federal Recurring Payments Regulations

On August 4, 1976, there was published in the *Federal Register* (41 FR 32605; correction published at 41 FR 35855; extension of time to comment published at 41 FR 37117) a notice of proposed rulemaking to amend Part 210, entitled "Federal Recurring Payments Through Financial Organization By Means Other Than By Check," of Title 31 of the Code of Federal Regulations. The substantive proposals were an amendment to the existing § 210.7(e), and the addition of a new § 210.10. The purpose of the former was to clarify the duties and liabilities of a financial organization on its receipt of a credit payment containing erroneous information, and of the latter, to prescribe procedures for collecting from the financial organization the amount of credit payments received after a recipient's or beneficiary's death or legal incapacity.

Interested parties were given 45 days to comment on the proposed amendments. Numerous comments were received from financial trade associations, financial organizations, interested Federal agencies, and the Federal Reserve System. The Treasury Department considered all of these comments and, in several instances, modified the proposed amendment based on these comments.

The principal differences between the final amendment and the proposed amendment are:

1. At the end of the proposed new § 210.7(e) was added the following sentence: "A credit to any other account by a financial organization will constitute a breach of its warranty made by reason of § 210.7(h)." Any failure of the financial organization to comply with Part 210 in its handling of credit payments constitutes a breach of the warranty in § 210.7(h) and renders the financial organization liable as provided therein. Thus, the above addition is optical rather than substantive, and was added because several commenters—failing to make the § 210.7(h) deduction—expressed an uncertainty as to the liability of a financial organization which credits an account other than that designated by the recipient.

2. The first sentence of the proposed § 210.10(e) has been revised to read: "If the financial organization has not fully complied with the demand made under paragraphs (c) or (d) of this section. * * *" As proposed, this section conditioned the Treasury's request for a Fed-

eral Reserve debit on the failure to return the amounts demanded in § 210.10(c), or (d). These paragraphs provide for notices demanding the full amount of credit payments outstanding, with a provision that the financial organization can comply with these notices by returning a lesser amount, calculated pursuant to § 210.9(a). The use of the phrase "amount demanded" in proposed § 210.10(e), however, had the undesired effect of requiring Federal Reserve debits where a financial organization has complied with paragraph (c) or (d) notices but—in taking advantage of the § 210.9(a) limited liability provision—has not returned the full amount demanded. The intended purpose of § 210.10(e) was to effect a debit to the applicable Federal Reserve account only in the amount of the financial organization's liability under 210.9(a), and the amendment has been revised to accomplish this purpose. It should be noted, however, that the financial organization's liability is not reduced to the amount provided in § 210.9(a)(3)(i), and (ii), unless it has affirmatively shown its compliance with the three conditions of § 210.9(a)(1), (2), and (3).

3. Several commenters queried whether the written notice under § 210.10(a) would contain the type of account, the "transit number" of the financial organization (or a branch thereof) to which the credit payments were sent, and a description of the recurring payment for which the credit payment was made. The notice being prepared by the Treasury Department will contain this and other identifying information. The amendment as revised has added these items to the listing of information to be included in the § 210.10(a) notice.

4. The last sentence of the proposed § 210.10(b) has been rewritten to make clear that the program agency's collection effort need not include a setoff against other than a current entitlement.

Since the amendment to be adopted adds no new liability but merely provides a procedure for collecting an existing liability; and because credit payments are now being issued, making the collection procedures immediately necessary, the Department of the Treasury hereby finds that good cause exists for making this amendment effective immediately.

**FEDERAL RESERVE BANK
OF NEW YORK**

Fiscal Agent of the United States

**First Supplement to
Operating Circular No. 11
(Revised April 19, 1976)
Effective January 3, 1977**

FEDERAL RECURRING PAYMENTS

*To All Banks and Other Financial Organizations in the
Second Federal Reserve District, and Others Concerned:*

The Appendix to Operating Circular No. 11, Revised April 19, 1976, containing the text of the U.S. Department of the Treasury Regulations (31 C.F.R. Part 210) governing the handling of Federal recurring payments, made by means other than by check, is amended as follows:

1. § 210.7(e) is amended to read as follows:

§ 210.7 Financial Organizations.

* * *

(e) A financial organization receiving a credit payment shall credit the amount of such credit payment to the account indicated by the depositor account number information specified in the credit payment. If the financial organization is unable to credit the amount of a credit payment to the account indicated by the depositor account number information in the credit payment because such an account does not exist on its books, or because in processing the credit payment it has reason to believe the account indicated by the depositor account number information in the credit payment is not the account designated by the recipient, it shall either:

- (1) Return the credit payment to the Federal Reserve Bank with a statement identifying the reason therefor, or
- (2) Credit the amount of the credit payment to the account designated by the recipient.

A credit to any other account by a financial organization will constitute a breach of its warranty made by reason of § 210.7(h).

* * *

2. The existing § 210.10 is renumbered § 210.11; following is the text of the new § 210.10:

§ 210.10 Collection Procedures.

The amount for which a financial organization is accountable under § 210.9 shall be collected as follows:

(a) For each type of recurring payment, the Department of the Treasury shall send a written notice ("first notice") to the financial organization which shall include the name of the recipient and any beneficiary, the depositor account number, type of account, type of recurring payment, the date of death or legal incapacity, the routing number of the financial organization, and a list of credit payments which have payment dates after the event of death or legal incapacity and which have not been returned pursuant to § 210.7(f)(3). On receipt of this notice, the financial organization shall immediately return to the Treasury Department the amount remaining in the account up to the total amount

of credit payments listed in the notice. If the amount returned is less than the total amount listed in the notice, the financial organization shall, to the extent available, provide the name and address of all persons who withdrew funds from the account after the date the first credit payment listed in the notice was credited to the account.

(b) Based on the information received from the financial organization pursuant to paragraph (a) of this section, the program agency shall attempt to collect the difference between the amount returned and the aggregate amount of all credit payments listed in the first notice from the person(s) who withdrew any moneys from the account subsequent to the date of credit of the first payment listed in the first notice. To the extent permitted by law, this attempt shall include deducting this amount from payments to be made by the program agency to such persons under a current entitlement.

(c) (1) If a financial organization has not complied with paragraph (a) of this section within 30 days from the date of the first notice, the Treasury Department shall send a follow-up notice to the first notice to such financial organization demanding that the first notice be complied with.

(2) If the financial organization has not complied with paragraph (a) of this section within 15 days from the date of the follow-up notice, the Department of the Treasury shall send a second notice to such financial organization demanding prompt payment of the total amount of credit payments listed in the first notice. To comply with this demand, the financial organization shall return to the Department of the Treasury either the full amount demanded, or a lesser amount equal to its liability pursuant to § 210.9(a)(3) (i) and (ii), with evidence that the conditions in § 210.9(a)(1), (2) and (3) have been complied with.

(d) If a financial organization has complied with paragraph (a), but the total amount of credit payments listed in the first notice has not been returned by the financial organization pursuant to paragraph (a) of this section, or collected by the program agency pursuant to paragraph (b) of this section, the Department of the Treasury shall send a second notice to such financial organization demanding the prompt payment of the amount listed in the first notice less the amount returned in accordance with paragraph (a) of this section and collected in accordance with paragraph (b). To comply with this demand, the financial organization shall return to the Department of the Treasury either the amount demanded, or a lesser amount equal to the total amount of credit payments received within 45 days after the event of death or legal incapacity plus the amount, if any, recovered pursuant to § 210.9(a)(3) (and any amount then in the account). If the lesser amount is returned, the financial organization shall also provide a statement to the effect that it has met the conditions of § 210.9(a)(2) and (3).

(e) If a financial organization has not fully complied with the demand made pursuant to paragraphs (c) or (d) of this section within 30 days from the date of the second notice issued thereunder, the Department of the Treasury will instruct the appropriate Federal Reserve Bank that an amount, equal to the amount due and unreturned under paragraphs (c) or (d) of this section, is to be debited to the account on the Federal Reserve Bank's books maintained or utilized by the financial organization for the purpose of receiving credit payments under this Part, and is to be credited to the general account of the United States Treasury. By its action in receiving credit payments under this Part, a financial organization shall be deemed to authorize such debit to the account it maintains or utilizes on the books of the Federal Reserve Bank for the purpose of receiving credit payments, as provided in the foregoing sentence. A designated correspondent, in authorizing a financial organization to utilize such designated correspondent's account on the books of the Federal Reserve Bank for the purpose of receiving the amount of credit payments under this Part, shall be deemed to authorize such debit to the account it maintains or utilizes on the books of the Federal Reserve Bank for the purpose of receiving credit payments, as provided herein.

PAUL A. VOLCKER,
President.