

**FEDERAL RESERVE BANK
OF NEW YORK**

Fiscal Agent of the United States

[Circular No. **10219**]
[January 27, 1988]

REVISION OF OPERATING CIRCULAR NO. 11

Federal Payments by the Automated Clearing House Method

*To All Financial Institutions in the Second
Federal Reserve District, and Others Concerned:*

Enclosed is a copy of Operating Circular No. 11, "Federal Payments by the Automated Clearing House Method" (formerly "Federal Recurring Payments"), revised January 27, 1988. This revision is required by recent amendments to the Treasury ACH regulation (31 CFR 210), and by adoption of a Treasury regulation governing ACH payments under the Treasury Direct Book-Entry Securities System (31 CFR 357.26), both of which regulations are contained in the revised operating circular.

The circular treats payments under these two regulations the same to the extent possible, and points out the most important differences between security payments and other Federal ACH payments. For example, prenotifications are used for Treasury Direct security payments, just as for many commercial ACH payments, whereas a financial institution instead now signs a standard authorization form for other Federal ACH payments. Also, a financial institution is considered the agent of a security owner and a security payment is considered completed upon receipt by the financial institution, whereas other payments are considered completed upon payment to the appropriate account at the financial institution. Different collection procedures also apply to recover overpayments under the two regulations. Institutions should familiarize themselves with the procedures set forth in this circular, and recognize which type of payment is being handled in order to apply the correct procedures.

Questions concerning this matter may be directed to Andrew Heikaus, Manager, Funds Transfer Department (Tel. No. 212-720-5561).

E. GERALD CORRIGAN,
President.

**FEDERAL RESERVE BANK
OF NEW YORK**

Fiscal Agent of the United States

[**Operating Circular No. 11**
Revised January 27, 1988]

**FEDERAL PAYMENTS BY THE
AUTOMATED CLEARING HOUSE METHOD**

*To All Financial Institutions in the Second
Federal Reserve District, and Others Concerned:*

1. This operating circular, issued pursuant to Sections 4, 13, 14(e), and 15 of the Federal Reserve Act and Sections 210.6(a) and 357.26(d) of Title 31 of the Code of Federal Regulations governs the handling and distribution by this Bank of Federal payments by the automated clearing house (ACH) method. Section 210.6(a) of Part 210 of Title 31 of the Code of Federal Regulations (Part 210) provides that each Reserve Bank, as fiscal agent of the United States, may issue operating letters not inconsistent with that part governing the details of its handling of Federal payments by the ACH method and containing such provisions as are required or permitted by that part. Section 210.1 refers to regulations governing payments with respect to securities in Section 357.26 of Subpart C of Part 357 of Title 31 of the Code of Federal Regulations (Part 357). Section 357.26(d) provides that each Reserve Bank, as fiscal agent of the United States, shall handle payments with respect to securities made by the ACH method under Part 357 in accordance with its operating circular governing such payments. This circular applies both to payments under Part 210 and to payments under Subpart C of Part 357 (Treasury Direct Book-Entry Securities System or Treasury Direct). It does not apply to payments under Subpart B of Part 357 (Treasury/Reserve Automated Debt Entry System or TRADES). Reference should also be made to Part 344 of Title 31 of the Code of Federal Regulations for provisions governing payments with respect to United States Treasury Certificates of Indebtedness, Notes and Bonds — State and Local Government Series. Each Reserve Bank, as fiscal agent of the United States, has issued a circular substantially similar to this one governing its handling of Federal payments by the ACH method.

2. Except as otherwise defined herein, all terms defined in Part 210 and Part 357 and used herein have the meanings stated in those parts. The term "payment instruction" as used herein includes both a payment instruction under Part 210, and an instruction for payment by the ACH method (including a prenotification message unless the context otherwise requires) issued by the Treasury Department under Part 357. The rules applicable to financial institutions may differ as between ACH payments issued under Part 210 and those issued under Part 357, as well as between benefit payments and other payments issued under Part 210. This circular points out certain differences between types of payments, and financial institutions should be aware of the type of payment being handled and of the rules applicable to that type of payment.

3. Unless otherwise stated, all references to "this Bank" include its Head Office and Buffalo Branch.

4. By its action in maintaining or using an account on the books of this Bank and in accepting payment instructions from this Bank, each financial institution is deemed to agree to the terms of Parts 210 and 357 and of this operating circular. Section 357.26(b)(2) of Part 357 provides that a financial institution that accepts payment instructions under Part 210 is deemed to agree to accept payment instructions under Subpart C (Treasury Direct) of Part 357. A designated correspondent that authorizes a financial institution to utilize the correspondent's account on our books for the purpose of receiving the amount of a payment instruction is deemed to agree to the terms of Parts 210 and 357 and of this operating circular.

Handling of payment instructions by this Bank

5. We send payment instructions to a financial institution, or to a location in the same Federal Reserve territory as that in which the financial institution is located, at the financial institution's request, in the following manner:

- (a) by the same means and to the same location used for sending cash items to the financial institution, or to another person, under Subpart A of Regulation J of the Board of Governors of the Federal Reserve System (12 CFR 210);
 - (b) by courier to a location not receiving cash items, if the delivery point is on a Federal Reserve courier route and, in our opinion, results in savings through consolidation of payment files;
 - (c) by electronic means under arrangements with us;
 - (d) by the financial institution's picking up the items;
- or
- (e) by mail.

The person to whom delivery is made as requested or who picks up the items is considered to be the financial institution's agent.

6. We send items to a location in a different Federal Reserve territory from that in which the financial institution is located, at the financial institution's request and at the processor's expense, when in our judgment it is appropriate to do so.

7. We furnish payment instructions in the format we designate and on the medium designated by a financial institution to us, and set forth in technical specifications made available by the Funds Transfer Department of this Bank.

8. We make the amount of all payment instructions issued under Part 210 and delivered to a financial institution available for withdrawal or other use by the financial institution or its designated correspondent at our opening of business on the payment date. We make the amount of all payment instructions issued under Part 357 and delivered to a financial institution available for withdrawal or other use by the financial institution or its designated correspondent on the payment date. We may cease acting on a payment instruction at any time upon direction of the U.S. Treasury Department, and will notify the financial institution of such fact if the financial institution has received a payment instruction. We will send an advice of credit to a financial institution or designated correspondent. Advices may be aggregated each day for each financial institution.

9. While we handle payment instructions promptly and expect that payment instructions will be made available to a financial institution or its designated agent during the business day of the financial institution prior to the payment date, no representation of such availability is made by this Bank. In certain cases, a financial institution choosing physical delivery of payment instructions may not receive certain payment instructions by the business day prior to the payment date. In other cases, we notify a financial institution of a significant delay in the handling of a payment instruction within a reasonable time after we obtain knowledge of such a delay. If a financial institution does not receive payment instructions within the usual time for receipt or has reason to believe that instructions may be lost or delayed in transit, the financial institution should notify this Bank by telephone (Tel. No. 212-720-5330).

Handling of payment instructions by financial institutions

10. A financial institution receiving a payment file should act promptly to ensure that the total dollar amount of the payment instructions received agrees with the dollar file total on the payment file. In addition, if payment instructions are received in automated format (magnetic tape, diskette or data transmission) the financial institution should act promptly to ensure that the file is readable and does not contain format errors.

11. If payment instructions or any related documentation received by a financial institution do not balance, are clearly erroneous on their face, or are

incapable of being processed, the financial institution, after assuring itself that neither it nor its agent is responsible for the problem and that it is unable to correct the problem promptly, shall give this Bank immediate notice by telephone of the problem so that we may deliver or make available corrected material.

Payments with respect to a security

Prenotification

12. A financial institution that receives a prenotification message (a payment instruction in zero dollar amount) under Part 357 is deemed to have warranted to the Treasury Department that the information as to deposit account number and/or type of account contained in the message is accurate as of the time of prenotification unless the financial institution responds within eight (8) calendar days after the date of receipt, as provided in Section 357.26(b)(3). The financial institution should state what information does not agree with its account records, and set forth the correct information, if available, or should state any questions it has about the forthcoming payment.

Crediting owner's account

13. As provided in Section 357.26(b)(5), a financial institution that receives a payment instruction shall credit the amount of the payment instruction to the designated account on its books and shall make the amount available for withdrawal or other use on the payment date. If the scheduled payment date is not a business day for this Bank, the financial institution receiving credit from us shall make the amount available by our next business day. If a financial institution is unable to credit the designated account, it shall return the payment instruction to this Bank by the next business day after receipt with a statement identifying the reason therefor. A financial institution shall also promptly return to this Bank a payment instruction to be returned as provided in Section 357.26(b)(5)(ii).

Payments in error; duplicate payments

14. As prescribed by Section 357.26(b)(6), we may charge the account of a financial institution or its designated correspondent with the amount of a payment in error or duplicate payment, where the financial institution has failed to respond to a notice of such a payment.

Payments other than security payments

Crediting recipient's account

15. As provided in Section 210.7(d), a financial institution that receives a payment instruction shall credit the amount of the payment instruction to the designated account of the recipient on its books and shall make the amount

available for withdrawal or other use by the recipient not later than the opening of business on the payment date. If the scheduled payment date is not a business day for the financial institution or this Bank, the financial institution receiving credit from us shall make the amount available by the next business day for both the financial institution and this Bank. If, as provided in Section 210.7(e), a financial institution is unable to credit the amount of a payment instruction to the appropriate account, the financial institution shall immediately (by the end of the next business day after receipt) either (a) return the payment instruction to this Bank with a statement identifying the reason therefor, or (b) credit the amount of the payment to the account designated by the recipient if it has reason to believe the account indicated in the payment instruction is not the account designated by the recipient. A financial institution shall also immediately return to this Bank a payment instruction to be returned as provided in Section 210.7(f).

Collection procedures

16. Upon completion of other collection activity as prescribed by Section 210.12 and instruction from the Department of the Treasury, we charge the account of a financial institution or its designated correspondent bank with the amount claimed by the Department of the Treasury, where the financial institution has failed to return benefit payments to the Government after the death or legal incapacity of a recipient or the death of a beneficiary.

Return of payments

17. Payment instructions shall be returned to this Bank in the format we specify and on the medium agreed to by the financial institution and us. Returned payment instructions must be accompanied by a transmittal form, in the format we specify, setting forth the number of payment instructions returned, the aggregate amount of the payments and the name and routing number of the financial institution. Each financial institution returning a payment instruction for any reason should maintain adequate records to permit the reproduction or tracing of any lost or destroyed payment instruction. Upon receipt of a returned payment instruction, we debit the account of the financial institution or its designated correspondent on our books in the amount of the payment instruction.

Liability of this Bank

18. In connection with the matters specified in Part 210 or this circular, this Bank shall not have or assume any responsibility to any person other than to the Department of the Treasury. Similarly, in connection with matters specified in Part 357 or this circular, this Bank acts only as fiscal agent of the United States. This Bank, as fiscal agent under Part 210 or Part 357, shall not be responsible for the insolvency, neglect, mistake, misconduct, or default of an-

other person or for the loss or destruction of a payment instruction in transit or in the possession of others.

19. An owner or recipient or beneficiary of a payment instruction, or a financial institution with respect to its designated correspondent, has no right of recourse upon, interest in, or right of payment from, any reserve balance, clearing account, deposit account, or other funds of the Government, of a designated correspondent, or, in the case of an owner, recipient, or beneficiary, of a financial institution, in the possession of this Bank.

Right to amend

20. We reserve the right to amend this circular at any time.

Effect of this circular on previous circular

21. This circular supersedes Operating Circular No. 11, Revised April 19, 1976, entitled "Federal Recurring Payments," and the First and Second Supplements thereto, dated January 3, 1977, and September 23, 1977, respectively.

E. GERALD CORRIGAN,
President.

APPENDIX A

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

PART 210 — FEDERAL PAYMENTS THROUGH FINANCIAL INSTITUTIONS BY THE AUTOMATED CLEARING HOUSE METHOD

Subpart A — General

Sec.

- 210.1 Scope of regulations.
- 210.2 Definitions.
- 210.3 Policy for payments by the Automated Clearing House method.
- 210.4 Recipients.
- 210.5 The Federal Government.
- 210.6 Federal Reserve Banks.
- 210.7 Financial institutions.
- 210.8 Timeliness of action.
- 210.9 Liability of, and acquittance to, the United States.
- 210.10 Fraud.

Subpart B — Repayment of Benefit Payments

Sec.

- 210.11 Death or legal incapacity of recipients or death of beneficiaries.
- 210.12 Collection procedures.
- 210.13 Notice to Account Owners of collection action.
- 210.14 Erroneous death information.

Authority: 12 U.S.C. 391; 31 U.S.C. 321 and other provisions of law.

Subpart A — General

§ 210.1 Scope of regulations.

This part governs Federal Government payments made by the automated clearing house (ACH) method through Federal Reserve Banks and financial institutions, to recipients maintaining accounts at these financial institutions. It describes the procedures to be used, defines the obligations and responsibilities of the participants in ACH payments, and states terms of a contract between the Federal Government and those participants. It also prescribes the liabilities of

financial institutions to the Federal Government arising from payments to deceased or incompetent recipients, and deceased beneficiaries, of Federal benefit payments. Regulations promulgated by the Bureau of the Public Debt governing TREASURY DIRECT payments made by the ACH method for principal and interest on Government securities can be found at Part 357 of this title.

§ 210.2 Definitions.

As used in this part, unless the context otherwise requires:

(a) "Account," "recipient's account," "designated account" and "appropriate account" mean the account specified by a recipient or beneficiary into which payments under this part shall be deposited. These terms also include an account on which the financial institution has, after execution of an enrollment, made changes to the account number of the type of account as authorized by § 210.4(f).

(b) "Automated Clearing House" (ACH) means a payment mechanism through which participating institutions exchange funds electronically.

(c) "Beneficiary" means a person other than a recipient who is entitled to receive the benefit of all or part of a benefit payment from the Federal Government.

(d) "Benefit Payment" is a payment of money for any Federal Government entitlement program or annuity. It can be either a one-time or recurring payment. These payments include, but are not limited to, the following nine:

- (1) Social Security.
- (2) Supplemental Security Income.
- (3) Black Lung.
- (4) Civil Service Retirement.
- (5) Railroad Retirement Board Retirement/Annuity.
- (6) Veterans Administration Compensation/Pension.
- (7) Central Intelligence Agency Annuity.
- (8) Military Retirement Annuity.
- (9) Coast Guard Retirement.

(e) "Federal Reserve Bank" means any Federal Reserve District Head Office, branch, or regional check processing center that processes ACH payments for the Federal Government.

(f) "Financial Institution" means any bank, savings bank, savings and loan association, credit union, or similar institution.

(g) "Outstanding Total" means the sum of all benefit payments received pursuant to an enrollment, after death or legal incapacity, minus any amount returned to or recovered by the Federal Government.

(h) "Payment" means a sum of money which is transferred to a recipient in satisfaction of an obligation. A payment includes any Federal Government benefit, annuity, or other payment (or allotment therefrom), including any payment of salary, wages, or pay and allowances.

(i) "Payment Date" means the date specified in the payment instruction for a payment. It is the date on which the funds specified in the payment instruction are to be available for withdrawal from the recipient's account with the financial institution specified by the recipient, and on which the funds are to be made available to the financial institution by the Federal Reserve Bank with which the financial institution maintains or utilizes an account. If the payment date is not a business day for the financial institution receiving a payment, or for the Federal Reserve Bank from which it received such payment, then the next succeeding business day for both shall be deemed to be the payment date.

(j) "Payment Instruction" means an order issued by the Federal Government for the payment of money under this part. A payment instruction may be contained on:

(1) a letter, memorandum, telegram, computer printout or similar writing, or

(2) any form of nonverbal communication, registered upon magnetic tape, disc or any other medium designed to capture and contain in durable form conventional signals used to electronically communicate messages.

(k) "Program Agency" means an agency of the Federal Government responsible for determining and initiating a payment to be made, and includes any department, agency, independent establishment, board, office, commission, or other establishment in the executive, legislative, or judicial branches of the Federal Government and any wholly-owned or -controlled Federal Government corporation.

(l) "Recipient" means a person authorized by a program agency to receive payments from the Federal Government. Recipient includes a person named by a program agency to receive benefit payments for a beneficiary.

§ 210.3 Policy for payments by the Automated Clearing House method.

Once an ACH enrollment has been completed, all payments covered by that enrollment shall be made by the ACH method unless the United States Department of the Treasury (hereafter referred to as Treasury) determines that conditions exist that make payment by check or other means more appropriate.

§ 210.4 Recipients.

(a) In order for a recipient to receive a payment by the ACH method, the recipient shall designate the desired financial institution and account identifica-

tion at that financial institution using an enrollment procedure prescribed by the Financial Management Service for such payments. The title of the account so designated shall include the name of the recipient.

(b) In executing an enrollment, a recipient:

(1) agrees to the provisions of this part; and

(2) authorizes the termination of any inconsistent previously executed enrollment or inconsistent payment instructions.

(c) Once an ACH enrollment has been effected, it shall remain in effect until it is terminated by one of the following events:

(1) a request from the recipient to the program agency to terminate the enrollment;

(2) a change in the title of an account which removes the name of the recipient, removes or adds the name of a beneficiary, or alters the interest of the beneficiary;

(3) the death or legal incapacity of a recipient, or the death of the beneficiary of a benefit payment; or

(4) the closing of the account.

Upon the occurrence of any of the foregoing events, except the death of the recipient or beneficiary, the recipient or representative payee shall execute a new enrollment before further payments may be credited to that account.

(d) A recipient who wishes to change the account or financial institution to which payment is directed shall execute a new enrollment.

(e) A recipient of a benefit payment made under this part may request only that the full amount of the payment be credited to one account on the books of a financial institution. Except as authorized by law or other regulations, the procedures set forth in this part shall not be used to effect an assignment of a payment.

(f) A financial institution may change the account numbers or, at the request of the recipient, the type of the recipient's account without executing a new enrollment provided no change is made to the title of the account or the interest of the recipient or beneficiary in the account. These changes must be communicated to the appropriate program agency or agencies in accordance with implementing instructions issued by the Federal Government.

§ 210.5 The Federal Government.

(a) The Federal agencies that perform disbursing functions will, in accordance with the provisions of this part, issue and direct payment instructions

to the Federal Reserve Bank on whose books the financial institution named therein maintains or utilizes an account in sufficient time for the Federal Reserve Bank to carry out its responsibilities under this part.

(b) Procedural instructions will be issued by the Financial Management Service for the guidance of program agencies, Federal agencies that perform disbursing functions, Federal Reserve Banks, and financial institutions in the implementation of these regulations.

§ 210.6 Federal Reserve Banks.

(a) Each Federal Reserve Bank as Fiscal Agent of the United States shall receive payment instructions from the Federal Government and shall make available and pay to financial institutions amounts specified in these payment instructions, and shall otherwise carry out the procedures and conduct the operations contemplated under this part. Each Federal Reserve Bank may issue operating circulars (sometimes referred to as operating letters or bulletins) not inconsistent with this part, governing the details of its handling of payments under this part and containing such provisions as are required and permitted by this part.

(b) The Federal Government by its action of issuing and sending any payment instruction contained in the media specified in § 210.2(k) shall be deemed to authorize the Federal Reserve Banks to:

(1) pay the amount specified in the payment instruction to the debit of the general account of the Treasury on the payment date; and

(2) handle and act upon the payment instruction.

(c) Upon receipt of a payment instruction, a Federal Reserve Bank shall, if the payment is directed to a financial institution which maintains or utilizes an account on the books of another Federal Reserve Bank, forward the payment instruction to the other Federal Reserve Bank. The Federal Reserve Bank on whose books the financial institution or its designated correspondent maintains an account shall deliver or make available to the financial institution the information contained in the payment instruction not later than the close of business for the financial institution on the business day prior to the payment date on the medium as agreed to by the Federal Reserve Bank and financial institution.

(d) A financial institution by its action in maintaining or utilizing an account at a Federal Reserve Bank shall be deemed to authorize that Federal Reserve Bank to credit the amount of the payment to the account of the financial institution on its books, or the account of its designated correspondent maintaining an account with the Federal Reserve Bank.

(e) A Federal Reserve Bank receiving a payment instruction from the Federal Government shall make the amount specified in the payment instruction available for withdrawal from the financial institution's account on its books, referred to in paragraph (d) of this section, at the opening of business on the payment date.

(f) Each Federal Reserve Bank shall be responsible only to the Treasury and shall not be liable to any other party for any loss resulting from the Federal Reserve Bank's action under this section.

§ 210.7 Financial Institutions.

(a) A financial institution's execution of actions required of it in connection with an enrollment shall constitute its agreement to the terms of this part with respect to each payment received by it pursuant to the enrollment. Regardless of whether it has executed an enrollment, a financial institution's acceptance and handling of a payment issued pursuant to this part shall constitute its agreement to the provisions of this part.

(b) A financial institution in executing an enrollment shall be responsible for:

(1) the completeness and accuracy of the data provided by it with respect to the enrollment, and

(2) verifying that the account number entered by the recipient during enrollment corresponds to an account bearing the name of the recipient.

(c) A financial institution wishing to terminate an enrollment shall do so by giving written notice to the recipient. The termination shall become effective 30 days after the financial institution has sent the notice to the recipient. However, terminations for reasons of fraud shall be effective immediately.

(d) A financial institution receiving a payment under this part shall credit the amount of the payment to the designated account of the recipient on its books, and it shall make the amount available for withdrawal or other use by the recipient not later than the opening of business on the payment date. "Available" in this paragraph means accessible through any means of access provided by a financial institution to its customers for the recipient's type of account, for example, checks, automated teller machines, or automatic transfers from the recipient's account. If the payments or any related information received by the financial institution from a Federal Reserve Bank do not balance, are incomplete, are clearly erroneous on their face, or are incapable of being processed, the financial institution, after assuring itself that neither it nor any of its agents is responsible, shall immediately notify the Federal Reserve Bank in order that it may deliver corrected information to the financial institution.

(e) A financial institution receiving a payment under this part shall credit the amount of the payment to the account specified in the payment instruction. If the financial institution is unable to credit the amount of the payment to the account indicated in the payment instruction because, for example, such an account does not exist on its books, or because in processing the payment it has reason to believe the account indicated in the payment instruction is not the account designated by the recipient, it shall either:

(1) return the payment to the Federal Reserve Bank with a statement identifying the reason therefor; or

(2) credit the amount of the payment to the account designated by the recipient.

A credit to any other account by a financial institution shall constitute a breach of its warranty made by reason of paragraph (i) of this section.

(f) A financial institution shall immediately return to the Federal Government through the Federal Reserve Bank any payment received by the financial institution:

(1) after termination of the enrollment pursuant to § 210.4(c)(2) and before the execution of a new enrollment;

(2) after termination of the enrollment pursuant to § 210.7(c) has become effective;

(3) after the financial institution learns of the death or legal incapacity of the recipient, or the death of the beneficiary, or a benefit payment, regardless of whether or not notice has been received from the Federal Government; or

(4) after the closing of the recipient's account.

(g) A financial institution to which a payment is sent under this part does not thereby become a Federal Government depository and shall not advertise itself as one because of that fact.

(h) If any change in account numbers permitted by § 210.4(f) is made by a financial institution, the financial institution shall be liable to the recipient for any lost or late payment caused by the financial institution's actions in processing the change.

(i) Each financial institution by its action of handling a payment under this part shall be deemed to warrant to the Federal Government that it has handled the payment in accordance with the requirements of this part. In addition to the liability which may be imposed pursuant to § 210.11, if the foregoing warranty is breached, the financial institution shall be liable to the Federal Government for any loss sustained by the Federal Government, but only to the extent that the loss was the result of the breach. Except as provided in sections

210.10(b) and 210.11, a financial institution shall not be liable under this part to any party for its handling of a payment.

§ 210.8 Timeliness of action.

If, because of circumstances beyond its control, action by the Federal Government, a Federal Reserve Bank, or a financial institution is delayed beyond the time prescribed for the action (including the payment date) by this part, by the operating circulars of Federal Reserve Banks, or by applicable law, the time within which the action shall be completed shall be extended for such time after the cause of the delay ceases to operate as shall be necessary to take or complete the action, provided the Federal Government, the Federal Reserve Bank, or the financial institution exercises such diligence as the circumstances require.

§ 210.9 Liability of, and acquittance to, the United States.

(a) The United States shall be liable to a recipient for the failure to credit the proper amount of a payment to the appropriate account of the recipient as required by this part. This liability shall be limited to the amount of the payment.

(b) The United States shall be liable to the financial institution, up to the amount of the payment, for a loss sustained by the financial institution as a result of its crediting the amount of the payment to the account specified in the payment instruction, if the financial institution has handled the payment in accordance with this part. The foregoing does not extend to benefit payments received by the financial institution after the death or legal incapacity of the recipient or death of the beneficiary, in which event § 210.11 shall govern.

(c) The crediting of the amount of a payment to the appropriate account of a recipient on the books of the appropriate financial institution shall constitute a full acquittance to the United States for the amount of the payment.

§ 210.10 Fraud.

(a) The False Claims Act, 31 U.S.C. 3729, *et seq.*, provides for the recovery of damages and a civil penalty from any person who knowingly presents to the Federal Government, or causes to be presented, a false or fraudulent claim for payment, or uses a false record or statement in connection with such a claim. In addition, criminal penalties are provided in 18 U.S.C. 1001 for knowingly making false or fraudulent statements or representations to agencies of the Federal Government, and in 18 U.S.C. 1002 for knowingly possessing false documents for the purpose of enabling another to receive a payment from the Federal Government. These provisions are in addition to the Federal Government's remedies under common law.

(b) A financial institution shall verify the identity of any person who initiates and executes an enrollment through such financial institution. The Federal Government shall verify the identity of any person who presents an enrollment to the Federal Government without prior review or execution by a financial institution. A financial institution that executes an enrollment in which the recipient's or beneficiary's signature is forged or other information is falsified shall be liable to the Federal Government for all payments made in reliance thereon, except for the case where the beneficiary was deceased at the time the recipient executed the enrollment and if the financial institution had no knowledge of the beneficiary's death. However, once the financial institution has provided notice to the program agency that a payment certified by the program agency has not been received by the correct recipient or beneficiary, it shall not be liable for any payments based on the forged, false, or fraudulent information which are certified for payment after the date of the notice.

Subpart B — Repayment of Benefit Payments

§ 210.11 Death or legal incapacity of recipients or death of beneficiaries.

(a) A financial institution shall be liable to the Federal Government for the total amount of all benefit payments received after the death or legal incapacity of the recipient or the death of the beneficiary, except as provided in paragraph (f) of this section. However, a financial institution may limit its liability if the financial institution did not have knowledge of the death or legal incapacity at the time of the deposit or withdrawal of any of the benefit payments made after the death or legal incapacity, and if it fulfills the requirements of this section and those of §§ 210.12 and 210.13.

(b) Except as provided in paragraph (f) of this section, if limitation of liability is available to a financial institution under this part, the amount of its liability shall be:

(1) an amount equal to the amount in the recipient's or beneficiary's account as defined in § 210.12(b)(2)(i), plus,

(2) an amount equal to the benefit payments received by the financial institution within 45 days after the death or legal incapacity of the recipient or the death of the beneficiary; *Provided*, that the financial institution will be liable only for the 45-day amount to the extent described in § 210.12(d).

(c) Although a financial institution shall be liable for an amount equal to the amount in the recipient's or beneficiary's account, plus the amount of benefit payments received within 45 days after the death or legal incapacity of the recipient or the beneficiary, this part does not authorize or direct a financial institution to debit the account of any customer, living or deceased, including that of the recipient or beneficiary, for the financial institution's liability to the

Federal Government under this part. The amount in the recipient's or beneficiary's account is only a measure of the financial institution's liability. Nothing in this part shall be construed to affect any right a financial institution may have under State law or the financial institution's contract with a customer to recover from the customer's account an amount returned to the Federal Government in compliance with this part.

(d) A financial institution shall be deemed to have knowledge of the death or legal incapacity of the recipient or beneficiary when it is brought to the attention of a financial institution employee who handles benefits payments, or when it would have been brought to that person's attention if the financial institution had exercised due diligence. The financial institution will be considered to have exercised due diligence only if it maintains procedures under which, once it learns of the death of a depositor, it determines whether its deceased depositor is a recipient or beneficiary of benefit payments under this part, and immediately communicates such information to the appropriate employees, and it complies with such procedures. This obligation does not impose a duty on a financial institution to learn of the deaths of its customers by searching obituaries or any other means, unless it does so for purposes other than its participation in the payment system governed by this part.

(e) A financial institution that fails to comply timely with the collection procedures set forth in § 210.12 or the Notice to Account Owners requirement of § 210.13 may not limit its liability in accordance with paragraph (a) of this section.

(f) A financial institution will not be liable under this part for benefit payments made after the death of a beneficiary if the beneficiary was deceased at the time the recipient executed an enrollment and if the financial institution had no knowledge of the beneficiary's death.

§ 210.12 Collection procedures.

The amount for which the financial institution is liable under § 210.11 shall be collected as follows:

(a) For each type of benefit payment, the Federal Government will send a Notice of Reclamation to the financial institution. The Notice of Reclamation will identify benefit payments sent to the financial institution for credit to the account of a recipient or beneficiary which should have been returned by the financial institution because of the death or legal incapacity of a recipient or the death of a beneficiary.

(b) Upon receipt of the Notice of Reclamation, the financial institution must do one of the following:

(1) If the financial institution had knowledge of the death or legal inca-

capacity and did not immediately return to the Federal Government all benefit payments received after it acquired that knowledge, the financial institution shall immediately return to the Federal Government an amount equal to the outstanding total of benefit payments listed on the notice that it received after it learned of the death. With respect to any benefit payments received prior to learning of the death that have not been returned, the financial institution shall certify on the Notice of Reclamation the date it learned of the death and follow the procedure in paragraph (b)(2) of this section.

(2) If the financial institution had no knowledge of the death or legal incapacity at the time any benefit payments made after the death or legal incapacity were credited to the recipient's or beneficiary's account, an appropriate official of the financial institution shall certify on the Notice of Reclamation that it had no knowledge of the death or legal incapacity and fully complete the Notice of Reclamation in accordance with its instructions and do the following:

(i) The financial institution shall return to the Federal Government both the executed Notice of Reclamation and an amount equal to the amount in the account or the outstanding total, whichever is less. The amount in the account is the balance when the financial institution has received the Notice of Reclamation and has had a reasonable time to take action based on its receipts, plus any additions to the account balance made before the financial institution returns the completed Notice of Reclamation to the Federal Government. For the purposes of this paragraph, action is taken within a reasonable time if it is taken not later than the close of business day following the receipt of the Notice of Reclamation.

(ii) If the amount returned is less than the amount requested in the notice, the financial institution shall include with the Notice of Reclamation the name and the most current address on its records of any person(s) who withdrew funds from the account after the death or legal incapacity. If the financial institution is unable to supply the name(s) of the withdrawer(s), it shall provide the names and most current addresses on its records of any co-owners of the account or other persons authorized to withdraw. If it is unable to supply the names or addresses of the withdrawers or co-owners, it shall state the reason for its inability on the Notice of Reclamation.

(3) If the Federal Government issues a second or subsequent Notice of Reclamation for the same type of payment for the same recipient or beneficiary, the financial institution shall be liable with respect to such second or subsequent Notice only for an amount equal to the amount in the account at the time it receives a second or subsequent Notice of Reclamation, plus any further additions to the account balance up to the date it returns these subsequent Notices of Reclamation. For a second or subsequent Notice of Reclamation for the same type of payment for the same recipient or beneficiary, the financial institution

shall not be liable for an amount in excess of the amount determined under the first sentence of this paragraph, attributable to benefit payments received within 45 days after the death or legal incapacity if it complied properly and timely to the first Notice of Reclamation.

(c) If the Federal Government does not receive a response to the Notice of Reclamation within 30 days, it will issue a follow-up to ensure that the original Notice of Reclamation was received. If the Federal Government does not receive from the financial institution the fully completed and properly executed Notice of Reclamation along with the amount due under § 210.11(b)(1) within 60 days of the issue date of the original Notice of Reclamation, the financial institution shall be liable for the outstanding total listed on the Notice of Reclamation. Following the sixtieth day after the date of the original Notice of Reclamation, the Federal Government will instruct the appropriate Federal Reserve Bank to debit the account utilized by the financial institution for receipt of benefit payments in the amount of the outstanding total. By receiving benefit payments under this part, the financial institution is deemed to authorize this debit. The Federal Reserve Bank will provide advice of the debit to the financial institution.

(d) After the financial institution has paid to the Federal Government an amount equal to the amount in the recipient's account as provided in § 210.11(b)(1), if the program agency is unable to collect the entire outstanding total from the withdrawer(s), the financial institution shall be liable for an additional amount equal to the benefit payment received by it within 45 days after the death or legal incapacity, or the balance of the outstanding total, whichever is less. The Federal Government will instruct the appropriate Federal Reserve Bank to debit the account utilized by the financial institution for receipt of benefit payments in the amount of the outstanding total. By receiving benefit payments under this part, the financial institution is deemed to authorize this debit. The Federal Reserve Bank will provide advice of the debit to the financial institution.

(e) Immediately upon learning of the death or legal incapacity regardless of whether there has been notification from the Federal Government, the financial institution shall return to the Federal Government any further benefit payments it receives and notify the Federal Government that it has learned of the death or legal incapacity in order that the above collection procedures can be commenced. See § 210.7(f)(3).

§ 210.13 Notice to Account Owners of collection action.

(a) Upon receipt by a financial institution of the Notice of Reclamation as described in § 210.12(a), the financial institution shall immediately mail to the

current address(es) of the account owner(s) of record a copy of the Notice to Account Owners included with the Notice of Reclamation.

(b) The financial institution shall indicate with the Notice to Account Owners any action it has taken or intends to take with respect to the recipient's or beneficiary's account in connection with the Federal Government's collection action against the financial institution.

(c) The financial institution is not authorized by this part to debit the account of any party or to deposit any funds from any account in a suspense account or escrow account or the equivalent. If such action is taken, it must be under authority of State law or the financial institution's contract with its depositor(s).

(d) The financial institution's liability under this part is not affected by any action taken by it to recover from any party the amount of the financial institution's liability to the Federal Government.

(e) Failure to mail the Notice to Account Owners, or failure to certify on the Notice of Reclamation that it has done so, shall result in the forfeiture by the financial institution of its ability under this part to limit its liability. See § 210.11(e).

§ 210.14 Erroneous death information.

(a) In the event that the financial institution is advised that the Federal Government's information that the recipient or beneficiary is deceased is incorrect, or that the date of death is incorrect, the financial institution shall certify the correct information to the Federal Government by one of the following means:

(1) Certify on the "Notice of Reclamation" that the person whose name is reflected on the notice is alive, or that the date of death is incorrect, and that the financial institution took prudent measures to assure that the person was alive or that the date of death was erroneous. Prudent measures to assure that the person was alive include, but are not limited to, the named person providing the financial institution adequate identification, or obtaining through a third person a signed, dated and notarized statement from the named person. Prudent measures to assure the correct date of death include obtaining a death certificate.

(2) If there is any question regarding the sufficiency of the evidence presented to demonstrate that the date or fact of death is incorrect, the individual presenting the evidence should be referred by the financial institution to the agency making the payment, e.g., the Social Security Administration or the Veterans Administration. The agency will certify in writing to the financial institution the corrected information. The financial institution shall then return the agency's certification with the Notice of Reclamation.

(b) If the Federal Government's information that the recipient or beneficiary is deceased is in error, the financial institution shall be relieved of its liability, and shall no longer be subject to collection procedures under this part, if an accurate certification in accordance with paragraph (a) of this section is received by the Federal Government, on or with a properly completed Notice of Reclamation, within 60 days of the date of the original Notice of Reclamation to the financial institution.

(c) If the date of the death on the Notice of Reclamation is in error, the financial institution shall be relieved of an appropriate part of its liability if an accurate certification in accordance with paragraph (a) of this section is received by the Federal Government, on or with properly completed Notice of Reclamation, within 60 days of the date of the original Notice of Reclamation to the financial institution. In that event, the financial institution shall adjust the outstanding total on the Notice of Reclamation to exclude benefit payments made before the corrected date of death. The financial institution shall include an explanation of the adjustment with the Notice of Reclamation. If correction of an error relating to the date of death shown on the Notice of Reclamation would result in additional payments being due to the Federal Government, the financial institution shall so notify the Federal Government when it returns the Notice of Reclamation.

(d) If after the financial institution has returned to the Federal Government a completed Notice of Reclamation and had made payment of its liability, the financial institution learns that the fact of death or date of death was in error, it should bring the information to the attention of the agency which made the benefit payments, e.g., the Social Security Administration or the Railroad Retirement Board. The agency will refund to the financial institution, without interest, the appropriate amount of funds paid by the financial institution pursuant to § 210.12, including funds debited from its Federal Reserve account under § 210.12(c) or (d).

APPENDIX B

Fiscal Services

31 CFR Part 357

PART 357 — REGULATIONS GOVERNING BOOK-ENTRY TREASURY BONDS, NOTES AND BILLS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 2-86)

* * *

Subpart C — TREASURY DIRECT Book-Entry Securities System (TREASURY DIRECT)

* * *

§ 357.26 Payments.

(a) *General.* A payment by the Department with respect to a security shall be by direct deposit (electronic funds transfer), except when the Department determines that extraordinary circumstances exist that require payment by check.

(b) *Direct deposit.*

(1) *Information on deposit account at financial institution.*

(i) To establish an account in TREASURY DIRECT, the owner must furnish the name and ABA routing/transit number of the financial institution (“institution”) to which payments with respect to a security are to be made, as well as a depositor name reference, deposit account number, and type of classification of account at the institution to which such payments are to be credited. The information should be furnished on the tender form if the account is being established on original issue, or in other cases on an appropriate form provided by the Department. To assure the accuracy of the account number and account type, as well as the name and ABA routing/transit number of the institution to which payments are to be made, the owner should consult with the institution in advance of the submission of the tender or transaction form. If the investor finds that the institution to be designated to receive TREASURY DIRECT payments has not agreed to receive direct deposit payments under 31 CFR Part 210, but is willing to do so, the investor should ask the institution to contact the Federal Reserve Bank of its district for enrollment advice.

(ii) Where the TREASURY DIRECT securities account is in the name of individual(s) in their own right, and the deposit account at the financial institution is in the name of individual(s) in their own right, the two accounts must contain at least one name that is common to both.

(iii) Where the deposit account to which payments are to be directed is held in the name of the financial institution itself acting as sole trustee, or as co-trustee, or is in the name of a commercially-managed investment fund, particular inquiry should first be made of the financial institution to make certain that the direct deposit payments can be received, and alternate arrangements made if it cannot do so.

(iv) In any case where, after the establishment of the securities account, it is determined that direct deposit payments cannot be accepted by the financial institution designated, under these circumstances, and pending new direct deposit instructions, payments will be made by check drawn in the name of the owner and sent to the correspondence address of record.

(v) All payments relating to a single account master record must be made to the same designated account at a financial institution.

(vi) The deposit account to which payments are directed should preferably be established in a form identical to the registration of the securities account, particularly where the securities are registered jointly or with right of survivorship, to assure that the rights of ownership and of survivorship can be more easily identified and preserved. Neither the United States nor any Federal Reserve Bank shall be liable for any loss sustained because the interests of the holder(s) of a deposit account to which payments are made are not the same as the interests of the owner(s) of the security.

(vii) The designation of a financial institution by an owner to receive payments with respect to a security constitutes the appointment of that institution as the owner's agent for receipt of such payments. The crediting of a payment to the institution for deposit to an account in accordance with the instructions of the owner discharges the United States of any further responsibility for such payment. Where the institution has arranged with a Federal Reserve Bank to have payments credited through a designee institution, the crediting of a payment to that designee institution discharges the United States of any further responsibility for the amount of such payment.

(viii) Upon the request of a financial institution receiving direct deposit payments with respect to a security, the Department will change a deposit account number and/or type or classification of such account without requiring the submission of a transaction request from the owner of the security. The request must be made in accordance with implementing instructions issued by the Department. Such a request by a financial institution, however, will be deemed an agreement by the institution to indemnify the Department and the owner for any loss resulting from the requested change.

(2) *Agreement of financial institution.* Any financial institution which has agreed to accept credit payments under 31 CFR Part 210, or hereafter agrees to

do so, shall be deemed to agree to accept payments under this Subpart. In any case, a financial institution's acceptance and handling of a payment made with respect to a security covered by this Subpart shall constitute its agreement to the provisions of this Subpart. An institution may not be designated to receive payments, as provided in this Subpart, unless it has agreed, or hereafter agrees, to receive direct deposit payments under 31 CFR Part 210.

(3) *Pre-notification — (i) General.* The institution designated for payment will receive shortly after a securities account has been established, but not less than fifteen (15) days prior to the first payment, a pre-notification message advising that an account maintained by such institution has been designated for direct deposit payment(s). A pre-notification message will also be sent whenever there is a change in the payment instructions. The pre-notification message shall contain the information prescribed in paragraph (b)(1)(i) of this section.

(ii) *Response to pre-notification.* The institution must respond to the pre-notification message within eight (8) calendar days after the date of receipt if the information as to the deposit account number and/or the type of account contained in the message does not agree with the records of the institution, or if the institution for any other reason has questions about the forthcoming payment, including its ability to credit the payment in accordance with this Subpart. Upon receipt of a response to the pre-notification message, the Department, as appropriate, will correct the payment instructions and send another pre-notification message, or contact the owner for further instructions. Where the circumstances indicate that there is insufficient time to effect the change, payment will be made by check. See paragraph (c) of this section.

(iii) *Effect of failure to reject.* If an institution does not reject or otherwise respond to a pre-notification message within the specified time period, the institution shall be deemed to have accepted the pre-notification and to have warranted to the Department that the information as to the deposit account number and/or the type of account contained in the message is accurate as of the time of such pre-notification.

(4) *Continuation of payment instructions.* Payment instructions for an account master record will apply to any and all securities held in that account until the Department:

(i) Receives a request from the owner to change such instructions; or

(ii) Receives a request from a financial institution to change such instructions in accordance with paragraph (b)(1)(vii) of this section; or

(iii) Receives advice from the financial institution holding the deposit account to which payment is being made that it has been closed; or

(iv) Receives notice of a change in status of a designated account or of the owner, as provided in paragraph (f) of this section.

(5) *Responsibility of financial institution.* An institution which receives a payment on behalf of its customer must:

(i) Upon receipt, credit the designated account and make the payment available for withdrawal or other use on the payment date. If a scheduled payment date is not a business day for the Federal Reserve Bank of the district in which the institution is located, payment will be made on the next-succeeding business day. If the institution is unable to credit the designated account, it shall return the payment by no later than the next business day after the date of receipt, with an electronic message or other response, explaining the reason for the return.

(ii) Promptly notify the Department when the designated account has been closed, or when it is on notice of the death or legal incapacity (as determined under applicable state law) of any individual named on such account, or when it is on notice of the dissolution of a corporation in whose name the deposit account is held. In all such cases, the institution, following receipt of notice by its organizational component responsible for direct deposit transactions, shall return to TREASURY DIRECT all payments received for the designated account.

(6) *Payments in error/duplicate payments.* If the Department or a Federal Reserve Bank has made a payment in error, the Department or Federal Reserve Bank will make a corrected payment, as appropriate, to the person(s) or entity entitled thereto under this Subpart. It will then promptly initiate action to recover the payment in error, and do so likewise on any duplicate payment that occurs, as follows:

(i) Send a written or electronic notice to the financial institution to which the payment was directed, which notice shall include the deposit account name reference, number, and the date and amount of the error in payment or duplicate payment that was not returned. See paragraphs (b)(3)(ii) and (b)(5)(ii) of this section. Upon receipt of this notice, the financial institution shall immediately return to the appropriate Federal Reserve Bank an amount equal to the payment in error or duplicate payment, where available. If the institution is unable to return payment for whatever reason, the institution shall immediately notify the Department or the Federal Reserve Bank, and provide such information as it has about the matter. The Department reserves the right to request the return of a partial amount of a payment in error or a duplicate payment.

(ii) Where the payment in error or a duplicate payment has not been returned, the Department or Federal Reserve Bank shall undertake such other actions as may be appropriate under the circumstances. To the extent permitted by

law, the collection action may include deducting the amount owing from future payments made to the deposit account to which the payment in error or duplicate payment was made.

(iii) If a financial institution has failed to respond in any way to the notice made pursuant to paragraph (b)(6)(i) of this section within sixty (60) calendar days of that notice, it will be deemed, by virtue of its acceptance of the direct deposit payment hereunder, to have authorized the Federal Reserve Bank to debit the amount of the payment in error or duplicate payment from the account maintained or utilized by the financial institution at the Federal Reserve Bank to which the payment in error or duplicate payment was credited. An institution designated by a financial institution to receive payment on its behalf, in authorizing such financial institution to utilize its account on the books of the Federal Reserve Bank, shall similarly be deemed to authorize such debit from that account. The institution to which payment has been directed and the owner of the TREASURY DIRECT account who designated the deposit account to which the payment has been deposited, shall be deemed to have agreed to provide information and assistance to effect recovery of a payment in error or duplicate payment under this subsection. The owner is further deemed to agree to any action permitted by law to effect collection of a payment in error or a duplicate payment.

(c) *Checks.* If a payment is not made by direct deposit, it shall be made by a check, drawn by a Federal Reserve Bank as fiscal agent of the United States, on the Federal Reserve Bank in its banking capacity ("fiscal agency check"), or drawn by the Department on itself ("Treasury check"). A fiscal agency check is governed by the regulations in 31 CFR Part 355. A Treasury check is governed by the regulations and statutes applicable to checks drawn on the United States or designated depositories of the United States (*i.e.*, 31 CFR Parts 235, 240, and 245). A check issued with respect to a security shall be made payable in the names of the owner(s) of the TREASURY DIRECT account and will be mailed to the correspondence address shown in the TREASURY DIRECT account.

(d) *Handling of payments by Federal Reserve Banks.* Each Federal Reserve Bank, as fiscal agent of the United States, shall receive payment in accordance with the information described in paragraph (b)(1)(i) of this section, and make payment to the designated institution by crediting it to the account of the designated institution, or of its designee, in accordance with the Federal Reserve Bank's operating circular governing such payments.

(e) *Timeliness of action.* If, because of circumstances beyond its control, the Department, a Federal Reserve Bank, or a financial institution is delayed beyond applicable time limits in taking any action with respect to a payment, the time for taking such action shall be extended as necessary until the cause of the delay ceases to operate.

(f) *Suspension of payments.* Upon receipt of notice that a designated deposit account has been closed, that an individual named on such account is dead or has been declared legally incompetent, or where a corporation is the owner, and it has been dissolved, the Department reserves the right to suspend payments and any transactions with respect to a security pending receipt of satisfactory evidence of entitlement. Payments will also be suspended in any case where the Department receives notice that an individual owner named on a securities account in TREASURY DIRECT is dead or has been declared legally incompetent, or in any case where the Department receives notice of a change in the name or status of an organization or representative named on a securities account in TREASURY DIRECT.