

**FEDERAL RESERVE BANK  
OF NEW YORK**

*Fiscal Agent of the United States*

AT-10736(d)  
November 4, 1994

**SPECIAL TREASURY NOTICE ON  
FEDERAL GOVERNMENT PARTICIPATION IN ACH**

*To all Depository Institutions in the Second Federal  
Reserve District that Receive Government ACH Payments:*

The Financial Management Service of the U.S. Department of the Treasury has published proposed amendments to its regulations designed to provide a regulatory basis for the broader use of ACH (Automated Clearing House) to meet the future payment, collection, and information flow needs of the Government. These regulations define the responsibilities and liabilities of the Federal Government, the Federal Reserve Banks, financial institutions, and receivers and originators doing business with the Federal Government through the ACH system.

Printed on the following pages is the text of a Special Notice issued by the Financial Management Service requesting public comment, together with the text of the proposal as printed in the *Federal Register*. Comments thereon should be submitted by November 29, and should be directed to the Financial Management Service at the address specified in the notice.

HENRY F. WIENER,  
*Vice President.*



DEPARTMENT OF THE TREASURY  
FINANCIAL MANAGEMENT SERVICE  
WASHINGTON, D.C. 20227

AT-10736(d)

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\* \* \* \* \* SPECIAL NOTICE \* \* \* \* \*

Enclosed is a copy of the Notice of Proposed Rulemaking amending 31 C.F.R. Part 210, Government Participation in the Automated Clearing House (ACH). This regulation defines the responsibilities and liabilities of the Federal Government, Federal Reserve Banks, financial institutions, receivers and originators doing business with the Federal Government through the Automated Clearing House system. This notice was published in the Federal Register Friday, September 30, 1994. Comments on the proposed rule must be received on or before November 29, 1994.

This amendment responds to the needs of the private and public sector to close the gap in how rules and regulations are administered for the use of the ACH network. This revision is intended to eliminate, as much as possible, the need for the financial industry to operate under two sets of rules for processing ACH transactions.

In general, this revision accepts the private industry ACH Rules as promulgated by the National Automated Clearing House Association (NACHA), unless it is determined that, in its role of protecting the public trust, it is not in the best interests of the Government to do so. The Government already uses NACHA transaction formats and applies many NACHA rules to Government entries. This regulation will continue to provide provisions which protect the substantive rights and state the liabilities of participants while allowing the Government to enjoy the full benefit of a modern system.

Recent revisions to 31 C.F.R. Part 206 require Federal agencies to use EFT whenever it is cost-effective, practicable, and consistent with current statutory authority. This amendment to 31 C.F.R. Part 210 is intended to provide a regulatory basis for broader use of the ACH system to meet the future payment, collection, and information flow needs of the Government. This revision will increase the use of electronic funds transfers for Government financial transactions by facilitating the use of ACH for collection transactions as well as payment transactions.

FMS is encouraging all Federal Program Agencies and financial institutions that expect to be impacted by the proposed rule change to review the notice for complete details.

Comments on the Notice of Proposed Rulemaking may be mailed to the Cash Management Policy and Planning Division, Financial Management Service, U.S. Department of the Treasury, Room 511, Liberty Center, 401 14th Street, S.W., Washington, D.C. 20227

Sincerely,

John P. McGuire, Director  
Collections Modernization Division

Friday  
September 30, 1994

# Federal Register

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## Part IV

# Department of the Treasury

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## Fiscal Service

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### 31 CFR Part 210

### Federal Government Participation in the Automated Clearing House; Proposed Rule

**DEPARTMENT OF THE TREASURY****Fiscal Service****31 CFR Part 210**

RIN Number 1510-AA39

**Federal Government Participation in the Automated Clearing House**

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Proposed rule.

**SUMMARY:** This document proposes to revise regulations which define the responsibilities and liabilities of the Federal Government (Government), Federal Reserve Banks, financial institutions, Receivers and Originators doing business with the Government through the Automated Clearing House (ACH) system. This revision proposes substantive changes to the existing regulations and supersedes the savings allotment provisions of Part 209 because savings allotment and recurring benefit payments formerly under the terms of Part 209 are made by the ACH method under the terms of Part 210.

These revisions are intended to provide a regulatory basis for broader use of the ACH system to meet the future payment, collection, and information flow needs of the Government. These revisions also are intended to bring Government regulations more in line with financial industry rules so as to eliminate, as much as possible, the need for the financial industry to operate under two sets of rules for processing ACH transactions. In general, these revisions accept the private industry *ACH Rules* as promulgated by the National Automated Clearing House Association (NACHA), unless it is determined that, in its role of protecting the public trust, it is not in the best interests of the Government to do so. The exceptions to the *ACH Rules* are cited in these regulations. The Government already uses *ACH Rules* transaction formats and applies many *ACH Rules* to Government entries. These regulations will continue to provide provisions which protect the substantive rights of participants and enumerate their liabilities.

The major reasons for the proposed changes are to provide a clearer and broader framework, and greater leeway for the Department of the Treasury, Financial Management Service (the Service), to make ongoing modifications to policies, Government operating instructions, and interpretations of this regulation. This will permit the Service to manage effectively the transition to fully electronic processing, respond

more rapidly to changes in commercial rules and operating procedures, and utilize commercial ACH processes or rules, unless it is determined not to be in the best interest of the Government. It also will provide the Service a regulatory basis for working with the financial community to develop or enhance ACH products and services as they become available in the banking industry, if they are consistent with the terms of the regulation described in this part. This requires a complete rewording of Subpart A and Subpart B.

**DATES:** Comments must be received on or before November 29, 1994.

**ADDRESSES:** Comments may be mailed to the Cash Management Policy and Planning Division, Financial Management Service, U.S. Department of the Treasury, Room 511, Liberty Center, 401 14th Street SW., Washington, DC 20227.

**FOR FURTHER INFORMATION CONTACT:** John Galligan (202) 874-6935 (Director, Cash Management Policy and Planning Division); or Margaret Roy (Principal Attorney) (202) 874-6680.

**SUPPLEMENTARY INFORMATION:****Background**

Part 210 of Title 31 of the Code of Federal Regulations sets forth the rights and liabilities of the Government, Federal Reserve Banks, financial institutions and recipients where recipients of Government payments authorize the payments to be made by the ACH method. The regulations in this part were promulgated in 1975 and revised in 1976, 1984, 1987, 1989, and 1993.

The Service is revising these regulations to provide the framework necessary to achieve its ACH development strategy which involves the following three objectives: (1) Broaden the use of the ACH network for payments and collections; (2) move closer to industry standards to easily expand Government services within existing networks; and, (3) pursue a paperless environment.

The Service proposes to increase the use of the ACH network by adapting the regulatory framework of Part 210 to the emerging body of ACH products and services. This requires an expansion of the regulation to cover activities that are, or in the future may be, handled over the ACH network, including collections and the movement of information related to monetary transactions. In this way, the Service and Federal program agencies will be in a position to take full advantage of the ACH network to move as many of the

Government's transactions as possible to ACH.

Moving closer to industry standards, as set forth by NACHA through the *ACH Rules*, also will enable the Government to expand its use of the ACH network. This will give the Service the flexibility to adopt, when in the best interest of the Government and consistent with legal requirements, those ACH practices and procedures that are proven viable in the commercial sector, and to work within industry rulemaking practices to introduce new practices and procedures. This requires a complete reworking of Subpart A and Subpart B.

The Service, in its pursuit toward a paperless environment, will be able to streamline and automate such diverse payment-related information processes as change requests, authorization activities, and reclamations. In the past, these have been expensive paper-based ancillary ACH activities. Advances in the ACH network have shown the efficiency of automating these processes.

The following methods were used by the Service to determine which revisions to the rules were necessary to achieve its ACH development strategy. First, an ACH work group was established to identify the major differences between the Government and private industry. The work group wrote issue papers discussing the differences along with options for resolving them. Second, a rules impact assessment was developed to determine how the differences in rules affected financial institutions. The assessment involved asking representatives from financial institutions about the impact of the current Government ACH rules and procedures, and an analysis of their responses. Third, the Service conducted a series of Federal agency forums to discuss options to resolve the differences. These efforts provided the basis for making the proposed revisions.

The Service is proposing:

(1) Clarification of the authorization and revocation processes to offer additional consumer protection and to facilitate automated or streamlined authorization procedures, including procedures to authorize debits.

(2) Clarification of the liability of participants with regard to authorizations, revocations, prenotification entries, notification of change entries, and commercial-to-Government entries.

(3) That liabilities be associated with failure to examine and act upon prenotifications that may be originated by the Government.

(4) A regulatory framework for equitable adjustments when a financial

institution either has been enriched, or harmed, as a result of erroneous ACH entries. The provision will allow Federal agencies to abide by industry rules if they have independent authority and choose to do so.

(5) That after due consideration of commercial practices, the Service may publish procedures under which it may authorize reversing entries to correct duplications or errors.

(6) Improvements to the reclamation of post-death benefits portion of the regulation, and a framework for paperless processing of the information and money associated with these transactions.

(7) To substitute certain terms used in the *ACH Rules* for terms which the Government uses in the same way as those defined in the *ACH Rules*, and to include those terms the Government uses differently from the *ACH Rules* or which are not contained in the *ACH Rules*. For example, current Part 210 uses the term "payment date," while the *ACH Rules* use the term "settlement date." Since both of these terms are used in the same way, the Service will use the term "settlement date."

The Service will accept or reject amendments to the NACHA Operating Rules and NACHA Operating Guidelines which may affect Government ACH transactions. Therefore, Section 210.2(a)(4) proposes that "The Service will indicate its acceptance or rejection of amendments to NACHA Operating Rules and NACHA Operating Guidelines in effect on September 27, 1994, by publishing a notice in the *Federal Register* prior to the effective date of the amendments."

#### Rulemaking Analysis

Treasury has determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, a regulatory assessment is not required. It is hereby certified that this revision will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The included changes are expected to result in improvements to the ACH process with advantages to institutions and recipients.

#### List of Subjects in 31 CFR Part 210

Automated Clearing House, banks, banking, electronic funds transfer, Federal Reserve Banks, financial institution, Government employees, wages.

Accordingly, Part 210 of Title 31 of the code of Federal regulations is proposed to be revised, as follows:

### PART 210—FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE

#### Subpart A—General

##### Sec.

- 210.1 Scope of regulations.
- 210.2 General.
- 210.3 Authorizations and revocations of authorizations.
- 210.4 The Government.
- 210.5 Federal Reserve Banks.
- 210.6 Financial institutions.
- 210.7 Fraud.

#### Subpart B—Reclamations

- 210.8 General terms of reclamations.
- 210.9 Knowledge of death or legal incapacity of Receiver or death of entitled beneficiary.
- 210.10 Liabilities/limitations.
- 210.11 Notice to Account Holders.
- 210.12 Erroneous death information, restitution and over recoveries.

#### Subpart C—Discretionary Salary Allotments

- 210.13 General.

#### Subpart D—Savings Allotments

- 210.14 General.

#### Subpart E—Definitions

- 210.15 Definitions.

**Authority:** 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321, 3301, 3302, 3321, 3335 and other provisions of law.

#### Subpart A—General

##### § 210.1 Scope of regulations.

This part governs the way the Federal Government (Government) uses the Automated Clearing House (ACH) network to effect electronic credits and debits, and non-value transactions. This part supersedes the savings allotment provisions of Part 209 of this title by including provisions for savings allotments (available hereunder only to Federal civilian employees). These transactions are made by the ACH payment method under the terms of this part. Regulations requiring the collection and disbursement of all ACH Federal funds via Electronic Funds Transfer (EFT), when cost effective, practicable, and consistent with existing statutes, can be found at Part 206 of this title. Regulations promulgated by the Bureau of the Public Debt governing payments made by the ACH method for principal and interest on Government securities can be found at Part 370 of this title.

##### § 210.2 General.

(a) *Governing law.* Federal payments and collections made through the ACH method are governed by the terms of this part, the instructions issued under this part, Federal statutes and Regulation E. Federal payments and

collections also are governed by the operating rules and guidelines promulgated by the National Automated Clearing House Association (NACHA), in effect on September 27, 1994, only to the extent they do not conflict with this part, the instructions issued under this part, Federal statutes and Regulation E.

(1) This part furthers the Government's obligation to protect the public trust, limits the financial liability of the Government, and ensures clarity in the application of the *ACH Rules* to Government participants.

(2) The Department of the Treasury, Financial Management Service (the Service), is responsible for publishing operating policies, procedures and guidelines for Government payment and collection transactions using the ACH method. These instructions will be published by the Service in its Treasury Financial Manual (TFM) and/or other operating guidelines.

(3) The NACHA operating guidelines may be found in the *ACH Rules* book, published by NACHA and distributed through regional ACH associations.

(4) The Service will indicate its acceptance or rejection of amendments to NACHA Operating Rules and NACHA Operating Guidelines in effect on September 27, 1994, by publishing a notice in the *Federal Register* prior to the effective date of the amendments. Failure to accept or reject prior to the effective date of the amendments will be deemed a rejection of such amendments.

(b) *Breach of warranty, compensation for breach of warranty or errors.* Each participant named under this part warrants to all other parties that it has handled entries in accordance with the requirements stated in this part. This warranty shall be limited to the amount of the payment, with one exception: Agencies may use the compensation rules found in Appendix VIII of the *ACH Rules*. Use of the compensation rules shall be preceded by a written agreement. Funding, authority, and agreements for any such payments will be the responsibility of the agency, not the Department of the Treasury or the Service.

(c) *Arbitration rules in cases of dispute.* Agencies may use arbitration requirements found in Appendix IX of the *ACH Rules*. Use of the arbitration provisions shall be preceded by a written agreement for their use. Funding for any expenses incurred in following the arbitration requirements will be the responsibility of the agency, not the Department of the Treasury or the Service.

**§ 210.3 Authorizations and revocations of authorizations.**

(a) *Requirements for authorization.* The requirements for authorization to originate and receive credit and debit transactions are as follows:

(1) Every Government Originator shall obtain prior authorization from the Receiver for ACH transactions originated by the Government. The Government Originator shall exercise due diligence in verifying the identity of any Receiver who presents an authorization to the Government.

(2) All Originators sending ACH credits with a value greater than zero to the Government shall enter into an agreement with the Government entity to which the credit is directed prior to transmitting the first credit. Specifications for the agreement can be found in the TFM.

(3) A Receiving Depository Financial Institution (RDFI) shall verify the identity of any Receiver who initiates or executes an authorization through the RDFI to receive credits or debits originated by the Government. The RDFI shall exercise due diligence in such identification, at a minimum applying the standards used for negotiation of financial instruments.

(4) The title of the account designated to receive a payment shall include the name of the Receiver, except as provided as follows:

(i) In the case of discretionary allotments, the allotter may authorize a credit to any other Receiver. The Receiver's agreement is not required for the authorization or revocation;

(ii) In the case of a master account/sub-account structure, the accounts need not include the name of the Receiver. However, a clearly traceable audit trail to the payment shall exist in the sub-account, and the Receiver must retain control over the funds.

(5) Government benefit payments shall be deposited only into a consumer account except under conditions stated in § 210.3(a)(4)(ii). The definition of consumer account includes non-participating depository financial institutions that receive Government payments.

(6) Unless expressly authorized in writing, Originators and Originating Depository Financial Institutions (ODFIs) shall not initiate, under any circumstances, debit entries to the Government. ODFIs shall be subject to the liabilities in § 210.6(e)(2) for any unauthorized debits.

(b) *Terms of Receiver authorizations.* By executing an authorization for a Government ACH participant to initiate credits or debits, a Receiver agrees:

(1) To the provisions of this part;

(2) To provide accurate information;

(3) To verify their identity to the satisfaction of the RDFI or Government Originator, whichever has accepted the authorization;

(4) That any new authorization pertaining to a credit or debit supersedes any previous authorization pertaining to the same credit or debit;

(5) That the Government reserves the right to use reversal entries in the event that it originates duplicate files or makes entries in error; and,

(6) That Government benefits shall be sent to a designated RDFI and that the full amount of the Government benefit shall be credited to either a checking or a savings account, but not both.

(c) *Termination and revocation of authorizations.* An ACH authorization shall remain valid until it is terminated or revoked by—

(1) Receipt by the Government Originator of a written request from the Receiver, unless a later effective date is requested by the Receiver;

(2) A change in the title of an account which removes or adds the name of a Receiver, or otherwise alters the interest of the Receiver of Government credits, except as provided in § 210.3(a)(4)(i) & (ii) of this part;

(3) The death of a Receiver or the death of a beneficiary on whose behalf the Receiver is accepting credits;

(4) Closing of the Receiver's account at the RDFI by the Receiver or by the RDFI. If the RDFI is closing the account, it shall provide 30 days written notice to the Receiver before it takes any action;

(5) Inability of the RDFI to process the item correctly or properly because of incorrect transaction instructions;

(6) Failure to meet any of the conditions specified in the terms of the authorization;

(7) A determination by the Government Originator that the conditions of authorization have changed and accordingly, the authorization is void as of the time of the changed condition;

(8) Return by the RDFI of one or more debit entries originated by the Government for reasons of insufficient funds, stop payment orders, or other similar reasons; or,

(9) The RDFI's insolvency, closure by any State or Federal regulatory authority or by corporate action, or appointment of a receiver, conservator, liquidator or other officer. In each event, the authorization shall remain valid if a successor is named. At the Service's discretion, the Government may temporarily transfer authorizations to another RDFI. The transfer is valid until either a new authorization is executed

by the Receiver, or 120 days have elapsed since the insolvency, closure or appointment, whichever occurs first.

(d) *Assignment of benefit payments prohibited.* Except as authorized by law, an ACH authorization shall not be used to assign benefits to a party other than the beneficiary, or someone designated by the Government Originator to act on behalf of the beneficiary.

**§ 210.4 The Government.**

(a) *Timeliness of entries.* Government ACH participants shall forward all ACH transactions they prepare to an ACH Operator site designated by the Federal Reserve Bank. Government ACH participants shall conform with the timing requirements of the Federal Reserve Bank.

(b) *Authorization to receive ACH entries.* Government participants may receive ACH credit entries with a value greater than zero. Prior written authorization from the Service is required, and the Service will direct the Federal Reserve Bank to take appropriate actions. Government participants shall require ODFIs to initiate such credits to the General Account of the Department of the Treasury at a Federal Reserve Bank designated by the Government Participant in the authorization agreement.

(c) *Requirement to post or return ACH entries.* Government participants shall review all ACH credit entries with a value greater than zero, that they receive. If the entries do not balance, are incomplete, are clearly incorrect, or, are incapable of being processed, the Government participants shall advise the Federal Reserve Bank to take appropriate action. Timing of the advice shall be according to Federal Reserve Bank deadlines and instructions. In the event of an unauthorized debit to the Government, the Government participant shall transmit a Return entry to the designated Federal Reserve Bank, in time to effect same-day settlement.

(d) *Timing of settlement by the Government.* Government participants shall make their authorized ACH transactions effective on the designated settlement date.

(e) *Prenotifications.* Government participants may originate ACH Prenotification entries prior to origination of the first ACH credit to a Receiver. Government participants shall originate a Prenotification prior to origination of the first debit to a Receiver. A Government participant that is a Receiver of Prenotifications will verify and respond to Prenotifications according to the *ACH Rules*.

(f) *Notification of Change.* Government participants shall originate and receive Notification of Change entries and Refused Notification of Change entries, except where the Government does not recognize a particular change code. A list of acceptable change codes can be found in the TFM.

(g) *Limited liability of the Government.* The Government will be liable to a Receiver or Originator only for a failure to effect the appropriate credit or debit entries to the Receiver's account. The Government's total liability is limited to the amount of the payment entry, unless the exception in § 210.2(b) applies. The Government will not be liable to any ACH association.

(h) *Losses sustained by financial institutions.* The Government will be liable to financial institutions for losses sustained in processing ACH credit and debit entries originated by a Government participant. The Government's total liability is limited to the amount of the payment entry, unless the exception in § 210.2(b) applies. Financial institutions shall have exercised due diligence, using standard commercial practices, in following the transaction instructions associated with the entry. The provisions of this subsection do not apply to credits and debits received by the RDFI after the death or legal incapacity of the beneficiary. Such credits and debits shall be governed by § 210.10 of this part.

(i) *Acquittance.* The appropriate crediting of the amount of an entry to a Receiver's account shall constitute full acquittance of the Government for the amount of the entry. The crediting of the amount of an entry received by the Federal Reserve Bank and posted to Treasury's General Account shall constitute full acquittance of the ODFI for the amount of the entry. Full acquittance of the ODFI shall not occur if the entries do not balance, are incomplete, are clearly incorrect, or, are incapable of being processed.

#### § 210.5 Federal Reserve Banks.

(a) *Fiscal Agent role.* Each Federal Reserve Bank serves as a Fiscal Agent of the Government and is authorized to act as the Government's ACH Operator.

(b) *Routing and Transit Numbers.* All routing and transit numbers issued to Government participants require the prior approval of the Service.

(c) *Delivery and funds availability.* The Federal Reserve Banks shall make the Government's ACH entry information available to a financial institution or its agent no later than the opening of business for the financial

institution on the settlement date. The Federal Reserve Banks shall make funds available to the financial institution for credit entries at the opening of business for the Federal Reserve Banks on the settlement date as prescribed by the Board of Governors of the Federal Reserve System. The Federal Reserve Banks shall prescribe the medium which will be used.

(d) *Authorization of Federal Reserve Banks to debit or credit financial institutions.* A financial institution that utilizes an account at a Federal Reserve Bank and that transmits ACH transactions to or from a Government participant, shall be deemed to authorize the Federal Reserve Bank to use the account for settlement purposes.

(e) *Federal Reserve Bank liability.* 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 part.

#### § 210.6 Financial Institutions.

(a) *Acceptance of the terms of this part.* Financial institution acceptance or transmittal of ACH entries to or from participating Government participants constitutes the financial institution's agreement to the terms of this part, regardless of whether it has executed an authorization.

(b) *Funds availability.* RDFIs shall make Government consumer credit entries available to the Receiver for withdrawal not later than the opening of business (the later of 9:00 a.m. local time or the time the teller facilities, including automatic teller machines, are available for customer account withdrawals).

(c) *RDFI action in response to Government-originated Prenotifications.* Government Originators may send Prenotification transactions to the RDFIs prior to the start of authorized credit or debit entries.

(1) In addition to the responsibilities outlined in the *ACH Rules*, the RDFI shall verify the entry by examining the Receiver's account number and at least one other identifying data element. An example of an identifying data element is the authorizing Receiver's name.

(2) RDFIs that fail to act upon proper and timely Government Prenotifications, and RDFIs that fail to fully verify the identity of the Receiver, shall be held liable to the Government. This liability shall be the lesser of the Government's loss or the amount of the credit or debit transaction(s) in question.

(d) *Financial institution is not designated a Government depository.* RDFIs to which a Government ACH

entry is sent do not become, by such action, a Government depository and shall not advertise themselves as Government depositories.

(e) *Financial institution liabilities.* Financial institution liabilities are as follows:

(1) A financial institution shall be liable to the Government for losses sustained by the Government if the Government has correctly handled the entry(ies). This liability is limited to the amount of the entry(ies).

(2) ODFIs shall be liable for all unauthorized debits to the Treasury General Account regardless of timeliness of the return entry. As a remedy, the Service may instruct the Federal Reserve Bank to debit the account utilized by the financial institution.

(3) Financial institutions will be held harmless for the Government's losses if the financial institution notifies the Government Originator of erroneous entries originated by the Government. Such notification shall be by Notification of Change entry. This relief from liability only applies to credits and debits received by the financial institution 10 or more business days after a Notification of Change is provided to the Government Originator.

#### § 210.7 Fraud.

*Identification of Receivers.* An RDFI that executes an authorization in which the Receiver's signature is forged or in which other information is falsified, shall be liable to the Government for all payments or collections made in reliance on the authorization. The provisions of § 210.3(a) also apply.

#### Subpart B—Reclamations

##### § 210.8 General terms of reclamations.

(a) *General.* Credits originated by Government participants subsequently may be determined to be erroneous because of the death or legal incapacity of the Receiver or death of the beneficiary. The Government reserves the right to recover these credits and hold the RDFI liable for these funds. The terms "reclamation" and "reclaim" refer to the Government's action to recover these benefit payments. Reclamation actions are strictly limited to circumstances that meet the following criteria:

(1) The credit being reclaimed was a benefit payment to a Receiver or beneficiary; and,

(2) The Receiver was deceased or legally incapacitated, or the beneficiary was deceased, on or before the last day of the entitlement period to which the credit applies; and,

(3) The Government participant that originated the entry has requested reclamation; and,

(4) The credit has not been previously remitted to the Government by any source.

(b) *Reclamation by non-Government Originators.* The Government will not accept or be liable for reclamation entries received from non-Government Originators.

**§ 210.9 Knowledge of death or legal incapacity of Receiver or death of beneficiary.**

(a) *Knowledge of death or legal incapacity by an RDFI.* When an RDFI first learns of the death or incapacity of a customer who is a Receiver of Government ACH benefit payments or the death of a customer who is a beneficiary, it shall take the actions required under this part. Knowledge of the death or incapacity may occur by, but is not limited to, any communication with an executor of the deceased Receiver's or beneficiary's estate, family member, or other third party; or any form of notification from the Government. RDFIs are not obligated to undertake extraordinary efforts that fall outside normal business practices to learn of a death or legal incapacity. Extraordinary measures include, but are not limited to, reviewing newspaper obituary notices.

(b) *Actions required when RDFIs are notified of a death or legal incapacity.* When notified of the death or legal incapacity of a Receiver, or the death of a beneficiary, a RDFI shall either return or refuse any ACH entries subsequently received from Government Originators. If an RDFI returns either full or partial payments by check, the Service may assess an administrative fee to cover the expense of processing. Failure to return credits in accordance with these rules shall result in forfeiture of the RDFI's right to limit its liability under the provisions of this part.

(c) *Recovery involving multiple credits that are subject to reclamation.* If the Government erroneously originates a number of credits after the death or legal incapacity of a Receiver or the death of a beneficiary, the sequence of effective recovery of credits does not affect the RDFI's liability.

**§ 210.10 Liabilities/limitations.**

(a) *Rules pertaining to type of account.* There is no exemption from liability for recovery of payments issued erroneously after the Receiver's death or legal incapacity or the beneficiary's death based on the type of account to which the Government credits are made.

(b) *RDFI liability and right to limit liability.* An RDFI shall be liable to the Government for the total amount of each credit received after the death or legal incapacity of the Receiver or the death of the beneficiary, except as provided in paragraphs (e) and (f) of this section. An RDFI may limit its liability if:

(1) The RDFI did not have knowledge of the death or legal incapacity on the effective settlement date of the entry in question, or at the time of withdrawal of credits made after the death or legal incapacity; and

(2) The RDFI fulfills the requirements of this subpart and any relevant procedures published by the Service.

(c) *Determination of the amount of an RDFI's liability.* Except as provided in paragraph (f) of this section, if limitation of liability is available to an RDFI, the amount of its liability for erroneous Government credits received shall be as follows:

(1) The RDFI is liable for the amount of any Federal Government entries settled within 45 days of the Receiver's death or legal incapacity, or the beneficiary's death, minus any amount recovered by the Government Originator;

(2) In addition, the RDFI's liability extends to Federal Government entries settled more than 45 days after the death or legal incapacity of the Receiver or the death of the beneficiary. This additional liability is the lesser of:

(i) An amount equal to the amount of the entries which settled more than 45 days after the death or legal incapacity of the Receiver or the death of the beneficiary;

(ii) An amount equal to the amount in the Receiver's or beneficiary's account as defined in § 210.10(i)(2)(ii).

(d) *Reclamation actions are not directed toward Receiver's account.* This part does not authorize or direct an RDFI to debit the account of a Receiver or any other customer, living or deceased, for the RDFI's liability to the Government under §§ 210.8 through 210.12. The amount in the Receiver's account is only a measure of the RDFI's liability. Nothing in this part shall be construed to affect any right an RDFI may have under State law or the RDFI's contract with a customer to recover amounts equal to those returned to the Government in compliance with this part. A withdrawer may deposit funds to an account and authorize the RDFI to return such monies to the Government.

(e) *Exception to liability rule—person entitled to Government benefits is deceased at the time of authorization.* An RDFI shall not be liable for ACH credit entries sent to a Receiver acting as a fiduciary on behalf of a beneficiary,

if the beneficiary was deceased at the time the authorization was executed and the RDFI had no knowledge of the death. The verification and liability provisions of §§ 210.3(a)(3) and 210.7 shall apply.

(f) *Requirement that Government Originators act on notice of death.* An RDFI return of credits to the Government by ACH because of the death of the Receiver or beneficiary will constitute effective notice of death to the Government Originator. The RDFI shall not be liable for any future ACH transaction for that individual from the same Government Originator if the settlement date is more than 10 business days after the settlement date of the return entry.

(g) *Time limit to initiate reclamation actions.* The Government may initiate reclamation actions to recover erroneous credits within 12 months after the date that the Originator receives notice that the Receiver died or became legally incapacitated, or that the beneficiary died. The amount Government Originators can reclaim is the total of all payments made during the 6 years following the date of death or legal incapacity of the Receiver or death of the beneficiary.

(h) *Actions to recover funds from withdrawers.* The RDFI's liability under this part is not affected by any unsuccessful action taken by the Government to recover funds from any party.

(i) *Payment to the Government for reclaimed amounts.* The payments subject to reclamation are:

(1) If the RDFI had knowledge on the settlement date of the death or legal incapacity of the Receiver or the death of the beneficiary and did not timely and properly return the payment(s) by ACH return entry to the Government, the RDFI shall be liable for that entry(ies) and shall return an equal amount to the Government.

(2) If the RDFI had no knowledge on the settlement date of the death or legal incapacity of the Receiver or the death of beneficiary, the RDFI shall be liable for the lesser of:

(i) An amount equal to the amount of the payment(s); or

(ii) An amount equal to the amount in the deceased or legally incapacitated Receiver's account, or the deceased beneficiary's account, up to the amount of the payment. The amount in the account is defined as the account balance when the RDFI received notice of the death or legal incapacity and had reasonable time to take action on it, plus any other additions to the account balance made before the RDFI returns the payment(s). For purposes of this



paragraph, action is taken within a reasonable time if it is taken not later than the close of the business day following the receipt of the reclamation entry(ies). When determining the amount in the account, the RDFI's liability shall not be reduced for debit card withdrawals, automated withdrawals, pre-authorized debits, non-Government reclamations, and forged checks or other comparable instruments, made after the RDFI had knowledge of the death or legal incapacity.

(j) *List of withdrawers.* If the amount paid by the RDFI is less than the full amount of the reclamation, the RDFI shall provide the Government:

(1) A list of withdrawers of any post-death payments and their most recent addresses;

(2) Certification that the RDFI has returned an amount equal to the amount in the account as defined in § 210.10(i)(2)(ii); and,

(3) Certification that the RDFI had no knowledge of the Receiver's death or legal incapacity, or the beneficiary's death, prior to receiving the credit entry(ies) in question.

**§ 210.11 Notice to account holders.**

(a) *Requirement to notify account holder(s).* When the RDFI receives a reclamation, it shall send written notification to the account holder(s) stating that a collection action may be or has been initiated. This notice should be sent no later than the date the RDFI recovers funds from the account.

(b) *Forfeiture of right to limit liability for failure to notify account holder(s).* Failure to provide notice to account holders, as prescribed in § 210.11 shall result in the forfeiture by the RDFI of its ability to limit its liability under this part. The Government may require the RDFI to provide proof that written notice was mailed to joint account holders. Proof may include, but is not limited to, a file copy of the notice, a certified mail receipt, or documentation pertaining to the standard operating procedure of the RDFI that such a notice is routinely sent. If an RDFI is not able to furnish proof of notice in response to a request by the Government, it shall forfeit any right it may have to limit its liability for that payment(s) and the Government may request the Federal Reserve Bank to debit the account of the RDFI for any otherwise unrecovered amount.

**§ 210.12 Erroneous death information, restitution and over recoveries.**

(a) *Reporting corrections or errors to the Government.* If the RDFI learns that the Receiver or beneficiary is not

deceased or legally incapacitated, or that the date of death is incorrect, the RDFI shall inform the Government of the error immediately. Until the RDFI is notified otherwise, however, it remains liable for Government credits as specified in § 210.10 of this part.

(b) *Relief from or reduction in liability—error in fact or error in date of death.* The Government Originator will determine whether the report of an error in the fact of a Receiver's death or legal incapacity, or the date of death, is correct. After its review, the Government Originator will certify its determination in writing to the RDFI and inform the RDFI of relief from or change to its liability. If the Government Originator agrees that the original notice of death or legal incapacity was incorrect, or the date of death is materially different from the original notice, it shall stop further reclamation activity that it determines to be inappropriate.

(c) *Restitution by the Government of RDFI funds improperly reclaimed.* When appropriate, the Government Originator will remit to the RDFI any funds incorrectly returned or otherwise received from the RDFI.

(d) *Over/under recoveries.* In the event of an over recovery by the Government for an erroneous credit, the Government Originator will return immediately the excess amount, by appropriate means, to the party suffering the loss. In the event of either an over or under recovery, the Service may instruct the Federal Reserve Bank to credit or debit the reserve account of a financial institution.

**Subpart C—Discretionary Salary Allotments**

**§ 210.13 General.**

(a) *Scope.* This subpart applies only to Government discretionary allotments. This part does not supersede, and shall not be used to circumvent, the requirements of particular statutes, Executive Orders or other executive branch regulations; for example, the Office of Personnel Management regulations at 5 CFR Part 550, Subpart C, implementing 5 U.S.C. 5525.

(b) *Required use of the Automated Clearing House method.* Discretionary allotments shall be made by ACH entry, except when the Service determines that other means are more appropriate. "Discretionary allotment" as used herein means an amount the employing agency permits a Government employee to request be deducted from his/her net salary amount and paid to a Receiver. The aggregate amount of discretionary allotments may not exceed the net pay

due the employee for each pay period after all deductions required by law are subtracted.

(c) *Head of Government originating agency determines discretionary allotment policy.* Discretionary allotments may be made for any purpose determined appropriate by the head of a Government participant and which are consistent with Title 5, Chapter 55, subchapter III, United States Code, and Title 5, Chapter 1, Part 550, subpart C, Code of Federal Regulations.

(d) *Timing of discretionary allotments.* Discretionary allotment payments shall be made in accordance with the schedule established by the Government Originator, provided such allotment credits are not effected until the related earnings have accrued.

(e) *Payment of discretionary allotments.* Discretionary allotments shall be made following the policy and procedures outlined in Subpart A for non-benefit payments, and in conformance with other requirements published by the Service.

**Subpart D—Savings Allotments**

**§ 210.14 General.**

(a) *Scope.* This subpart applies only to savings allotments. Provisions for certain other types of allotments, for example, dues to labor organizations, can be found in 5 CFR part 550, subpart C. The regulations in this part do not supersede, and shall not be used to circumvent, the requirements of particular statutes, Executive Orders or other executive branch regulations.

(b) *Required use of the Automated Clearing House method.* Savings allotments shall be made by ACH entry, when cost effective, practicable, and consistent with current statutory authority.

(c) *Policy for savings allotments for Government employees.* Any employee whose place of employment is within the boundaries of the United States or its territories may authorize an allotment of pay for a savings account under the regulations in this part. "Savings account" as used herein means an account (single or joint) for the purchase of shares (other than shares of stock) or for the deposit of savings in any RDFI. The title of the account shall include the name of the authorizing employee. The head of the employing Government participant shall honor requests for allotment of pay for savings accounts if:

(1) The Government employee provides the Government participant with an authorization; and,

(2) The authorization has not been canceled by the employee, in writing, or otherwise terminated or revoked; and,

(3) Not more than two such allotments for any employee are in effect at any time; and,

(4) The amount of salary or wages becoming due an employee for any pay period thereafter is sufficient to cover the allotment(s). In making any determination under this paragraph, all payroll deductions otherwise required shall have precedence over those authorized by this section; and,

(5) The purpose of the allotment is not to circumvent statutes, Executive Orders, and other executive branch regulations, regardless of the manner in which the allotment for savings will be disposed of by the employee (which is at the employee's discretion).

#### Subpart E—Definitions

##### § 210.15 Definitions.

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

*Allotment* means a recurring specified deduction from pay of a Government employee for a legal purpose authorized by the employee.

*Allotter* means the employee from whose pay an allotment is made.

*Automated Clearing House or ACH* means a funds transfer system which provides for the interbank clearing of electronic entries for participants.

*Beneficiary* means a natural person who is entitled to receive a benefit payment, or portion thereof, from the Government.

*Benefit Payment* is a credit of funds for any Federal entitlement program or annuity, originated by a Government participant. Benefit payments may be either one-time disbursements or recurring payments. A list of benefit payments is published by the Service in operating guidelines. Only benefit payments are subject to the reclamation provisions of this part.

*Erroneous Payment* means a benefit payment made after the death or legal incapacity of a Receiver or the death of a beneficiary. Erroneous payment is an operational term used by Government participants to refer to the payments described in the preceding sentence. Erroneous payments are subject to the 45-day liability rule of § 210.10 and the reclamation provisions of §§ 210.8 through 210.12.

*Government* means any department, independent establishment, board, office, commission, or other establishment in the executive, legislative (except the Senate and House of Representatives), or judicial branch of the Federal Government, including any wholly-owned or controlled Federal Government corporation, responsible for authorizing and initiating an ACH entry.

*Government Participant* means any Government agency or entity that sends ACH transactions to an ACH operator or receives ACH transactions from an ACH operator.

*National Automated Clearing House Association or NACHA* means the national association of regional member ACH associations, ACH Operators and

participating financial institutions located in the United States. NACHA is a rulemaking body for commercial ACH transactions. The rules promulgated by NACHA can be found in the *ACH Rules* published by NACHA and distributed through regional ACH associations. For further information on the *ACH Rules*, call (703) 742-9190 or write to NACHA, 607 Herndon Parkway, Suite 200, Herndon, VA 22070.

*Receiver* means a natural person, corporation, or other public or private entity which is authorized by the Government Originator to receive ACH credit or debit entries from the Government.

*Treasury Financial Manual (TFM)* means the manual issued by the Service containing procedures to be observed by all Government agencies in relation to central accounting, financial reporting, and other Government-wide fiscal responsibilities of the Department of the Treasury. Copies of the TFM are available free to Government agencies. Others who are interested in ordering a copy may call (202) 208-1819 or write the Directives Management Branch, Financial Management Service, Department of the Treasury, Liberty Center (UPC-741), Washington, DC 20227 for further information.

Dated: July 28, 1994.

Russell D. Morris,  
Commissioner.

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