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Part IV

Department of the Treasury

Fiscal Service

31 CFR Part 210

Federal Government Participation in the Automated Clearing House; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

RIN 1510–AA39

Federal Government Participation in the Automated Clearing House

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final Rule.

SUMMARY: The Department of the Treasury, Financial Management Service (Service), is revising its regulation, 31 CFR Part 210 (Part 210), governing the use of the Automated Clearing House (ACH) system by Federal agencies (agencies). The ACH system is the primary electronic funds transfer (EFT) system used by agencies to make payments, and the Service anticipates that agencies increasingly will use the ACH system to collect funds. Part 210 provides the regulatory foundation for use of the ACH system by agencies. It defines the rights and liabilities of agencies, Federal Reserve Banks, financial institutions, and the public, in connection with ACH credit entries, debit entries, and entry data originated or received by an agency through the ACH system.

DATES: This rule is effective May 10, 1999. The incorporation by reference of the publication listed in the rule is approved by the Director of the Federal Register as of May 10, 1999.

ADDRESSES: This rule is available on the Financial Management Service's ACH web site at the following address: http://www.fms.treas.gov/ach/.

FOR FURTHER INFORMATION CONTACT: Walt Henderson, Senior Financial Program Specialist, at (202) 874–6705; Mary Bailey, Financial Program Specialist, at (202) 874–6749; Natalie H. Diana at (202) 874–6590; Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, at (202) 874–6590; or Margaret Marquette, Senior Attorney, at (202) 874–6681.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

The ACH system is a nationwide EFT system which provides for the interbank clearing of credit and debit transactions and for the exchange of information among participating financial institutions. The Federal Government (Government) is the largest single user of the ACH system, originating and receiving millions of transactions each month. As the Government's financial manager, the Service collects and disburses funds for most agencies. In fiscal year 1998, approximately 63% of payments made by the Department of the Treasury (Treasury) were made through the ACH system. In addition, a growing number of transactions involving the collection of funds by agencies are being made through the ACH system. In fiscal year 1998, over $1.1 trillion in corporate tax payments was collected electronically.

Two laws are responsible for the substantial increase in the use of the ACH system by agencies. Provisions in the North American Free Trade Agreement Implementation Act (NAFTA), Pub. L. No. 103–182, sec. 523 (codified at 26 U.S.C. 6302(h)) mandate the use of EFT for the collection of certain Federal taxes. Provisions in the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. No. 104–134, require that most Federal payments (other than payments under the Internal Revenue Code of 1986) be made by EFT.

To meet the NAFTA requirements, the Service, in conjunction with the Internal Revenue Service and Federal Reserve Banks, implemented the Electronic Federal Tax Payment System (EFTPS) which enables taxpayers to pay Federal taxes by EFT. 31 CFR Part 203 (Payment of Federal Taxes and the Treasury Tax and Loan Program) addresses the rights and responsibilities of taxpayers, financial institutions, and Federal Reserve Banks in connection with EFTPS. 63 FR 5644.

On September 25, 1998, Treasury published a final rule, 31 CFR Part 208 (Part 208), implementing the requirement of the DCIA that agencies convert from check to EFT payments, subject to the waiver authority of the Secretary of the Treasury. 63 FR 51490.

The Service anticipates that the ACH system will be the dominant, though not exclusive, EFT system used by agencies to make payments and to collect funds. Part 210 provides the regulatory foundation for use of the ACH system by agencies.

B. Proposed Rulemakings

On September 30, 1994, the Service published a Notice of Proposed Rulemaking with respect to Part 210. 59 FR 50112. After considering the comments received on the 1994 proposed rule, and taking into account developments since that proposal was issued, the Service issued a new Notice of Proposed Rulemaking on February 2, 1998 (NPRM). 63 FR 5426. The NPRM proposed to adopt the ACH rules developed by the National Automated Clearing House Association (NACHA) (ACH Rules) as the rules governing all Government ACH transactions, with twelve exceptions for which the Service proposed to establish special rules as a matter of Federal law.

The Service received 26 comment letters on the NPRM. Commenters generally supported the adoption of the ACH Rules as the rules governing Government ACH transactions, but had differing views regarding the twelve proposed exceptions. Some financial institutions commented that Federal payments should be subject to the ACH Rules without variation or exception, commenting that imposing liability on financial institutions for losses resulting from Government errors and omissions will damage efforts to expand the use of the ACH as a vehicle for making Federal payments, and may have pricing implications for recipients of Federal payments. Other financial institutions and agencies commented that certain of the twelve proposed exceptions were not appropriate. Specific comments are discussed in the section-by-section analysis below.

C. Final Rule

Part 210, which implements Treasury's statutory responsibility to collect and disburse public funds, establishes the rights and duties of parties to transactions originated or received by agencies through the ACH system, just as other Treasury rules regulate the rights of parties to Treasury checks.[1]

The ACH Rules, which are developed and updated by NACHA, allocate rights and liabilities among participants to an ACH transaction. Financial institutions agree to be bound by the ACH Rules when they join an ACH association. The ACH Rules are structured upon the premise that five entities participate in the ACH system. They are: (1) The originator, which is the person or entity that agrees to initiate ACH entries in accordance with an arrangement with a receiver; (2) the originating depository financial institution (ODFI), which is the institution that receives payment instructions from the originator and forwards the entries to an ACH Operator; (3) the ACH Operator, which is a central clearing facility, operated by a Federal Reserve Bank or a private organization, that receives entries from ODFIs, distributes the entries to appropriate receiving depository financial institutions (RDFIs), and performs the settlement function for the affected financial institutions; (4) the RDFI, which is the institution that receives ACH entries from the ACH Operator and posts them to the accounts

[1] 31 CFR Part 240.

of its depositors; and (5) the receiver, which is a natural person or organization that has authorized an originator to initiate an ACH entry to the receiver's account with the RDFI.

In initiating and receiving Government entries, agencies, Federal Reserve Banks, and the Service operate in unique capacities that differ from the roles contemplated by the ACH Rules. These differences are a result of the statutory authorities that govern Government payments and collections and that distinguish Government payments from commercial payments involving private parties and financial institutions.

Because the ACH Rules employ terminology that is based upon private industry financial institution-customer relationships, the definitions used in the ACH Rules do not address the roles of agencies, the Service, and the Federal Reserve Banks with respect to the origination or receipt of an ACH entry. Due to the bifurcation of function between certifying and disbursing agencies, Government operations do not conform to the definitions in the ACH Rules. From a functional perspective, the agency that certifies an ACH entry to the Service performs a function that is analogous to that of the originator of the entry for purposes of the ACH Rules. In disbursing the payment, the Service is acting as the ODFI and the Federal Reserve Bank is the originating ACH Operator with respect to the entry. Similarly, an agency that receives a payment through the ACH system functions as the receiver, while the Service functions as the RDFI, and the Federal Reserve Bank functions as the receiving ACH Operator for the entry.

The ACH Rules generally require ODFIs and RDFIs to assume responsibility for entries originated and received by their customers. ODFIs and RDFIs must make certain warranties with respect to entries originated and received by their customers and are liable to other participants in the ACH system for breach of those warranties. The ACH Rules do not impose direct liability upon originators and receivers; any losses resulting from an act or omission by an originator or receiver are imposed on the ODFI or RDFI. The ODFI or RDFI can seek recourse against the originator or receiver if it has the right to do so under the contract between the parties and/or applicable state law.

The Service does not believe that it is appropriate to assume liability arising from the acts and omissions of agencies originating and receiving ACH entries. Accordingly, although it is the Service's view that agencies operate as originators and receivers and the Service operates as an ODFI and RDFI from a functional perspective, the Service believes it is appropriate to impose upon agencies that originate or receive ACH entries the obligations and liabilities imposed on ODFIs and RDFIs, respectively, for purposes of the ACH Rules. Part 210 therefore is structured on the premise that agencies are subject to all of the obligations and liabilities imposed on ODFIs and RDFIs under the ACH Rules, except as otherwise provided in Part 210.

After reviewing the comments and further considering the issues raised, the Service has determined to preempt 11 provisions of the ACH Rules.[2] In view of the special nature of Government entries, and the importance of protecting public funds, the Service believes that it is in the best interest of the public to preempt the 11 provisions of the ACH Rules described briefly below, for reasons discussed in more detail in the section-by-section analysis.

The following five ACH Rules are preempted entirely and are excluded specifically from Part 210's definition of ''applicable ACH Rules'' (see § 210.2(d)):

1. ACH members. Part 210 preempts the limitation on the applicability of the ACH Rules to members of an ACH association.

2. Compensation. Part 210 preempts the compensation rules set forth in the ACH Rules.

3. Rules Enforcement. Part 210 preempts the requirement under the ACH Rules that participants agree to be subject to a national system of fines to ensure compliance with the ACH Rules.

4. Reclamation. The reclamation provisions of Subpart B preempt all ACH Rules related to the reclamation of entries and the liability of participants that otherwise would apply to benefit payments.

5. Timing of Origination. Part 210 preempts the requirement set forth in the ACH Rules that a credit entry be originated no more than two banking days before the settlement date of the entry.

In addition to the foregoing five provisions of the ACH Rules which Part 210 entirely preempts through the definition of ''applicable ACH Rules,'' six other provisions of the ACH Rules are preempted in part by operation of specific sections of Part 210. Those provisions are:

1. Verification of identity of recipient (see §§ 210.4(a) and 210.8(b)(2)). Under the ACH Rules, a receiver must authorize an entry before the entry may be originated and the ODFI must warrant that the authorization is valid. The ODFI thus bears the ultimate liability for any loss resulting from a forged authorization under the ACH Rules. Part 210 imposes a different rule for Government entries. Specifically, under § 210.4(a), a financial institution that accepts an authorization from a recipient must verify the identity of the recipient. The financial institution is liable to the Government for all entries made in reliance on a forged authorization that the institution has accepted. Thus, Part 210 preempts the ODFI warranty and liability provisions of the ACH Rules by allocating liability to the RDFI if it accepts a forged authorization.

2. Authorization for debit entries to agencies (see §§ 210.4(a)(2) and 210.8(b)(1)). Part 210 preempts the ACH Rules with respect to the form of authorization required to initiate debit entries to an agency. The ACH Rules require that every entry be authorized by the receiver, but only require that the authorization be in writing in the case of debit entries to a consumer account. Under § 210.4(a), no person or entity (including any financial institution) may initiate or transmit a debit entry to an agency, other than a reversal of a credit entry, unless the agency has expressly authorized in writing (or through a similarly authenticated authorization) the origination of the entry by that particular originator. An ODFI transmitting an entry in violation of this requirement would be liable for the amount of the transaction, plus interest, under § 210.8(b)(1).

3. Liability of the Government

(a) Amount of damages (see § 210.6). In general, the ACH Rules impose liability on an RDFI or ODFI for all losses, liabilities, or claims incurred by another depository financial institution (DFI), ACH Operator, or ACH Association as a result of the RDFI's or ODFI's breach of any warranty. Thus, under the ACH Rules, an agency that originates payments would be liable for all losses resulting from any breach by it of an applicable warranty under the ACH Rules. Similarly, an agency that receives payments would be liable for all losses resulting from any breach by it of an applicable warranty under the ACH Rules.

Section 210.6 limits an agency's liability to the amount of the entry whether it is originating or receiving

[2] The NPRM proposed to preempt 12 provisions of the ACH Rules. As discussed in the section-by-section analysis, the final rule deletes from the listing of provisions to be preempted the provision related to arbitration and replaces it with a provision related to rules enforcement. In addition, the provision related to prenotifications has been deleted, leaving a total of 11 provisions to be preempted.

ACH entries. Therefore, an agency would not be liable to a DFI, ACH Operator, or ACH Association for interest, attorneys' fees, or other consequential damages. In addition, in certain circumstances, an agency's liability may be reduced further by the amount of the loss caused by the financial institution's negligence.

(b) Liability of Federal Reserve Banks (see § 210.7(a)). Part 210 preempts section 11.5 of the ACH Rules, which provides that a Federal Reserve Bank is not the agent of an RDFI or ODFI. Part 210 provides that Federal Reserve Banks are Fiscal Agents of the Treasury in carrying out their duties as the Government's ACH Operator and are not liable to any party other than the Treasury for their actions under Part 210.

4. Liability of financial institutions (see § 210.8(b)). Part 210 preempts the provisions of the ACH Rules that would operate to make a financial institution liable to the Government for any loss, liability or claim relating to an entry in an amount exceeding the entry. The ACH Rules impose liability on an RDFI or ODFI for all losses, liabilities, or claims incurred by another DFI, ACH Operator, or ACH Association as a result of the RDFI's or ODFI's breach of any warranty. Under Part 210, a financial institution would not be liable to the Government for interest, attorneys' fees, or other consequential damages, except in the case of an unauthorized debit to an agency, as discussed above.

5. Reversals (see § 210.6(f)). Part 210 requires agencies initiating reversals to certify that the reversal does not violate applicable law or regulations. This requirement is not imposed under the ACH Rules. In addition, Part 210 applies the ACH Rules relating to indemnification to the Government, but limits the extent of the indemnification to the amount of the individual entry(ies) being reversed.

6. Account requirements for Federal payments (see § 210.5). Part 210 imposes a requirement with respect to ACH credit entries representing Federal payments other than vendor payments that is not imposed under the ACH Rules, i.e., that such payments be deposited to an account at a financial institution ''in the name of'' the recipient, with three exceptions discussed in the section-by-section analysis. The term ''account'' for purposes of § 210.5 is intended to mean a deposit account and not a loan account or general ledger account. The Service is aware that NACHA has approved a change to the ACH Rules, which will become effective in September 2000, to permit the crediting of ACH credits to a financial institution general ledger account or to a loan account. Because of the consumer protections associated with the crediting of Federal payments to a deposit account, including those available under Regulation E (12 CFR Part 205) and Regulation DD (12 CFR Part 230), as well as the availability of Federal deposit or share insurance, the Service does not intend to accept this ACH Rule with respect to payments other than vendor payments.

In addition to preempting the provisions of the ACH Rules listed above, Part 210 also establishes, as a matter of Federal law, certain rights and obligations that are not addressed in the ACH Rules. For example, the ACH Rules generally do not address the rights and liabilities between receivers and originators, nor do the ACH Rules address rights and liabilities between ODFIs and originators, or between RDFIs and receivers. Under the ACH Rules, an ODFI is responsible for entries originated by its customers. The ODFI must make certain warranties with respect to any entry originated by its customer, and is liable for breach of those warranties. The ODFI's ability to seek recourse against the originator in the event of a loss for which the ODFI is liable under the ACH Rules is beyond the purview of the ACH Rules and would be governed by the contract between the ODFI and originator and applicable state law.

The Service is establishing some of these rights in Part 210 with respect to agencies vis-a-vis originators or receivers of Government entries. For example, Part 210 provides that an agency will be liable to a recipient for any loss sustained by the recipient as a result of the agency's failure to originate a credit or debit entry in accordance with Part 210, and limits that liability to the amount of the entry. Neither the basis nor the extent of an originator's liability to a receiver is addressed in the ACH Rules. In addition, the ACH Rules do not address the circumstances in which an entry, in fact, is ''authorized.'' The determination of whether a valid authorization exists ordinarily would depend on the contract between the parties and applicable state law. Part 210 establishes certain circumstances in which an entry shall be deemed to be unauthorized.

D. Future Changes to Subpart B

The NPRM solicited preliminary comment on the reorganization of Subpart B in order to allow for the increasing use of automated processes to effect reclamations, rather than requiring reclamations to be conducted on the basis of paper-driven procedures. In addition, the Service requested comment on ways in which the reclamation process might be restructured in the future to operate more efficiently as a fully automated process.

In order to begin formulating a preliminary approach to implementing an automated reclamation process, the Service solicited comment on whether the protection afforded to financial institutions by the limited liability provisions of Subpart B is outweighed by the processing costs of handling reclamations. In particular, the Service requested comment on an approach in which an RDFI would be liable for the amount of any post-death entries received, regardless of whether the RDFI had actual or constructive knowledge of the death.

Although commenters generally expressed conceptual support for increased automation of reclamation processing, most commenters did not favor moving toward an automated reclamation process at this time. One agency questioned the business case for replacing the current paper reclamation process with a form of automated reclamation. That agency indicated that the use of death notification entries (DNEs) has significantly reduced the number of reclamation requests produced and that, at the same time, payment cycling is causing a significant reduction in reclamations because the agency has additional time to receive and act on reports of recipients' deaths. The agency commented that these enhancements reduce the need for a future electronic reclamation process.

Some financial institutions commented that the approach outlined in the NPRM would substantially increase financial institutions' losses from reclamations without a corresponding reduction in expenses. One financial institution pointed out that it would expect to perform much of the same research under the Service's suggested approach as it currently does in order to pursue reimbursement from the surviving depositor(s) or the estate of the decedent. Another financial institution expressed support for assuming liability for any payments received within a one-year period of the recipient's death, but recommended that the Service continue the existing limitations on financial institution liability for payments received more than one year after the death of the recipient.

II. Section-by-Section Analysis of Part 210

The title of Part 210 has been changed to ''Federal Government Participation in the Automated Clearing House'' to reflect the broadened scope of the regulation to cover all types of transactions that are handled, or that may in the future be handled, over the ACH system.

As revised, Part 210 is comprised of two subparts. Subpart A sets forth rules applicable to all ACH credit and debit entries and entry data originated or received by an agency, which are defined in the proposed rule as ''Government entries.'' Subpart B contains the rules for the reclamation of benefit payments. Subpart C, which dealt with discretionary salary allotments, has been deleted as unnecessary because it is redundant of rules that appear elsewhere. For example, regulations issued by the Office of Personnel Management, at 5 CFR Part 550, address the circumstances under which salary and savings allotments may be made.

Section 210.1—Scope; Relation to Other Regulations

Part 210 formerly covered only ACH payments made by the Government. In the NPRM, the Service proposed to broaden the scope of Part 210 to cover all entries and entry data originated or received by an agency through the ACH system. Section 210.1 is revised as proposed in the NPRM. Thus, Part 210 as amended applies to collections and the information entries that are handled through the ACH system, as well as to Federal payments made through the ACH system.

Part 210 establishes the general legal and operational framework applicable to all ''Government entries'' as defined in the rule. Federal tax payments made by ACH debit or credit are governed by 31 CFR Part 203, which sets forth the rights and responsibilities of taxpayers, financial institutions, and Federal Reserve Banks in connection with EFTPS. ACH credits and debits originated by the Bureau of the Public Debt to pay principal or interest on, and to collect payment for the purchase of, United States securities are governed by 31 CFR Part 370.

Both Part 203 and Part 370 impose certain requirements with respect to the payments subject to those regulations that are inconsistent with the provisions of Part 210. Federal tax payments received by the Government through the ACH system that are governed by Part 203 and ACH entries for the purchase of, or payment of principal and interest on, United States securities that are governed by Part 370 are not subject to any provision of Part 210 that is inconsistent with Part 203 or Part 370, respectively.

Section 210.2—Definitions

The Service is revising this section, as proposed, to provide that any term not defined in Part 210 shall have the meaning given to that term in the ACH Rules. In addition, for clarity and simplification, the Service is adding, removing, or redesignating certain other terms, as indicated below.

The Service is deleting certain definitions from Part 210 because Part 210, as revised, uses these terms in the same way as the ACH Rules. Thus, the definitions of the terms ''banking day,'' ''business day,'' and ''prenotification,'' have been deleted. In addition, the term ''payment'' is not defined in revised Part 210 because Part 210 uses instead the ACH terms ''entry'' and ''credit.'' Similarly, the term ''payment date'' is not defined because Part 210 uses instead the ACH term ''settlement date.''

Other terms previously defined in Part 210, such as ''allotment,'' ''allotter,'' ''discretionary allotment,'' ''employee,'' and ''nonbenefit payment'' have been deleted because they are not used in revised Part 210. The terms ''account,'' ''payment instruction,'' and ''Federal Reserve Bank'' have been deleted as unnecessary.

The Service has added a definition of ''ACH Rules'' at § 210.2(a). This definition explains that the ACH Rules consist of the NACHA Operating Rules and the NACHA Operating Guidelines.

The Service also has added a definition of ''actual or constructive knowledge'' at § 210.2(b). This phrase is used in Subpart B in connection with determining a financial institution's liability for post-death and post-legal incapacity payments. The addition of this definition is intended to clarify that in reference to the death or legal incapacity of a recipient of benefit payments or the death of a beneficiary, the RDFI is deemed to have actual knowledge of the death or legal incapacity when it has received, by whatever means, any information of the death or incapacity and has had a reasonable opportunity to act upon the information. Moreover, if the RDFI would have discovered the death or legal incapacity if it had followed commercially reasonable business practices, the RDFI will be deemed to have constructive knowledge of the death or incapacity. For example, an RDFI would have actual knowledge of a death or legal incapacity through a communication of that fact by an executor of the deceased recipient's or beneficiary's estate, a family member, another third party, or the agency issuing the benefit payment. On the other hand, if an RDFI misplaced a letter sent through the mail containing notice of death or legal incapacity, or failed to open or read the letter, the RDFI would be deemed to have constructive knowledge of the death even though it did not have actual knowledge.

Although Part 210 previously did not contain a definition of ''actual or constructive knowledge,'' the reclamation provisions of Subpart B of Part 210 provided that a financial institution is deemed to have knowledge of the death or legal incapacity of a recipient or the death of a beneficiary if the financial institution would have discovered the death or legal incapacity if it had exercised due diligence. The Service is not changing that standard, but is adding this definition to clarify that the basis for determining whether a financial institution has constructive knowledge of the death or legal incapacity is whether commercially reasonable business practices would have resulted in discovery of the information.

Financial institutions questioned whether the addition of a definition of ''actual or constructive knowledge'' might be viewed to broaden the circumstances under which a financial institution can be liable in reclamation cases. Several commenters asked whether financial institutions would have an obligation to check obituaries, noting that Part 210 previously provided expressly that there is no such obligation. One commenter stated that banks should not be responsible for acting on the basis of unconfirmed information, regardless of its source, and therefore suggested that the definition of actual or constructive knowledge include the concept that the information should come from an official source such as a death certificate, written communication from a decedent's personal representative, or a copy of a court order adjudicating a recipient's incapacity. The same commenter pointed out that under the proposed standard, a bank might be deemed to have knowledge of death prior to the time when the information is, or should have been, brought to the attention of an employee who handles benefit payments. The commenter urged that banks be permitted an opportunity to communicate the information to the responsible individual or department.

The deletion of the language formerly in Part 210 stating that financial institutions are not required to check obituaries does not mean that financial

institutions must check obituaries. The standard of constructive knowledge set forth in the final rule, i.e., whether commercially reasonable business practices would have resulted in discovery of the recipient's death or incapacity, is a flexible concept. For example, what is a commercially reasonable practice for a large money center bank may not be commercially reasonable for a small rural bank. Similarly, business practices that are not today technologically feasible or cost-effective may become standard industry practices at some future time. Thus, with regard to whether financial institutions should be responsible for acting on the basis of unconfirmed information, the Service declines to adopt a rule under which a financial institution has knowledge of the death of a recipient only if the information comes from an ''official source.'' Rather, whether a financial institution would be deemed to have knowledge of a recipient's death would depend on whether, given all the facts and circumstances, a similarly situated financial institution would reasonably conclude that the information was reliable.

The Service agrees that financial institutions need a reasonable period of time to act on information of death or incapacity and, as indicated above, has incorporated a provision to this effect in the final definition. Some commenters indicated that banks utilizing batch processing systems cannot activate a hold on an account following receipt of notice until evening or the following day, depending on the processing schedule. Accordingly, the Service believes that a reasonable period of time will not exceed one business day, i.e., twenty four hours, excluding weekends or holidays.

The Service has added a definition of ''agency'' at § 210.2(c) to mean any department, agency, or instrumentality of the United States Government, or a corporation owned or controlled by the Government of the United States. Part 210 formerly used the term ''program agency.'' The change is not intended to alter the scope of Part 210. The definition is identical to the definition of agency in Part 208, which sets forth rules governing the mandatory use of EFT by Federal agencies, except that the definition of agency for purposes of Part 210 expressly excludes Federal Reserve Banks.

For purposes of Subpart B, which governs reclamations, ''agency'' means the agency that certified the benefit payment(s) being reclaimed.

Section 210.2(d) defines the term ''applicable ACH Rules'' to mean the ACH Rules with an effective date on or before September 17, 1999, which are made applicable to ''Government entries'' pursuant to § 210.3. Part 210 completely preempts those ACH Rules that: govern claims for compensation or reclamation of benefit payments; provide for rules enforcement procedures; limit the applicability of the ACH Rules to members of an ACH association; or require that a credit entry be originated no more than two banking days before the settlement date of the entry. Therefore, these ACH Rules have been excluded from the term ''applicable ACH Rules.'' As discussed above in the Introduction, Part 210 also preempts certain other provisions of the ACH Rules through operation of particular sections of Part 210.

In the NPRM, the Service proposed to preempt the requirement under the ACH Rules that disputes among participants be settled by arbitration procedures set forth in the ACH Rules. Since the ACH Rules have been amended, effective March 19, 1999, to make arbitration voluntary rather than mandatory, the Service no longer believes it is necessary to preempt the arbitration provisions of the ACH Rules. However, since publication of the NPRM, NACHA has adopted a rule that became effective on December 18, 1998, establishing a national system of fines applicable to both financial institutions and access participants for violation of the provisions of the ACH Rules. The Service does not believe it is in the public interest to subject the Treasury General Account (TGA) to an unquantified liability based on an untested system of fines; therefore, at this time the Service is not incorporating in Part 210 those provisions of the ACH Rules dealing with enforcement for noncompliance. However, the Service intends to work with agencies to achieve Government-wide compliance with all ACH Rule requirements, including applicable time frames.

Other than the requirement that credit entries be originated no more than two banking days before the settlement date of the entry, any technical or timing requirements imposed on DFIs under the ACH Rules constitute applicable ACH Rules, and will be binding on agencies and financial institutions, unless preempted. Thus, for example, agencies will be subject to the timing requirements for reversals and returns.

Many commenters objected to permitting agencies to originate an entry more than two banking days before the settlement date of the entry. Some financial institutions pointed out that production and storage costs are incurred by an RDFI to warehouse ACH entries and that expanding the origination window increases the risk to which the RDFI is exposed. For example, several financial institutions pointed out that a DNE is ineffective to cause the automated return of a benefit payment that has already been received but is being held or warehoused pending settlement. Some agencies also indicated that there is no reason that the Government cannot adhere to the two-day origination deadline eventually, and that it would benefit the Government to do so by allowing agencies more time to process reports that affect continuing payment entitlement. The Service anticipates that in the future agencies will be able to adhere to the two-day window and expects to revise Part 210 accordingly at that time. However, because there is not uniform operational capability to meet the two-day window at this time, the Service has retained this preemption of the ACH Rules in the final rule.

The Service is adding a definition of ''authorized payment agent'' at § 210.2(e) in connection with the account requirements set forth at § 210.5. The definition has been reworded slightly from the proposed definition in order to correspond to the definition of ''authorized payment agent'' for purposes of Part 208.

In the case of a beneficiary who is physically or mentally incapable of managing his or her payments, § 210.5 would permit an authorized payment agent to receive the payments on behalf of the beneficiary. The Social Security Act, the Veterans' Benefits Act, and the Railroad Retirement Act contain provisions permitting a benefit payment to be made to an individual or organization other than the beneficiary when doing so is in the best interest of the beneficiary.[3] The Social Security Administration (SSA) and the Railroad Retirement Board use the term ''representative payee'' to refer to individuals and organizations that have been selected to receive benefits on behalf of a beneficiary who is ''legally incompetent or mentally incapable of managing benefit payments.'' The Department of Veterans Affairs uses the term ''fiduciary'' to refer to individuals or organizations appointed to serve in similar circumstances. The definition of the term ''recipient'' in former § 210.2 refers to representative payees and fiduciaries. SSA, the Railroad Retirement Board, and the Department of Veterans Affairs have issued detailed regulations addressing the qualifications

[3] *See* 42 U.S.C. 1383(a)(2)(A)(ii)(i); 38 U.S.C. 5502(a)(1); 45 U.S.C. 231k, respectively.

and duties of representative payees and fiduciaries.[4] The rules governing these representational relationships are longstanding and well established. Therefore, the Service believes that it is appropriate to rely on existing agency regulations in defining the term ''authorized payment agent.''

Other agencies also may provide for payment to representative payees and fiduciaries. While not specifically mentioned by name, the phrase ''or other agency'' in the definition is intended to refer to such agencies.

The Service has added a definition of ''Automated Clearing House or ACH'' in § 210.2(f) to make it clear that the electronic fund transfers that are subject to Part 210 are limited to those effected through an EFT system that has adopted the ACH Rules.

The definition of ''beneficiary'' in § 210.2(g) has been reworded slightly from the definition previously set forth in Part 210 to reflect the addition of a definition of benefit payment, but substantively is unchanged from the previous definition.

The definition of ''benefit payment'' in § 210.2(h) is similar to the definition previously set forth in Part 210. The regulation lists several types of benefit payments for purposes of convenience and illustration. It should be noted, however, that the term ''benefit payment'' includes, but is not limited to, the specific examples set forth at § 210.2(h).

The Service has added to Part 210 a definition of ''Federal payment.'' The definition in § 210.2(i) is identical to the definition of that term in Part 208 except that the definition of Federal payment in Part 208 excludes payments under the Internal Revenue Code of 1986, whereas the term ''Federal payment'' in § 210.2(i) includes those payments. Payments under the Internal Revenue Code of 1986 are excluded in Part 208 because the DCIA expressly provides that payments under the Internal Revenue Code of 1986 are not subject to the DCIA's mandatory EFT requirements. However, payments that the Internal Revenue Service or a taxpayer elects to make using the ACH system are subject to Part 210 and thus are included within the definition of Federal payment at § 210.2(i).

The definition of ''financial institution'' in § 210.2(j) is identical to the definition contained in Part 208 except that the Service has added a sentence noting that, in Part 210, a financial institution may be referred to as an Originating Depository Financial Institution (ODFI) or a Receiving Depository Financial Institution (RDFI), depending on whether it is originating or receiving entries to or from its ACH Operator.

The definition of ''financial institution'' makes specific reference to banks, savings banks, credit unions, savings associations, and United States-based foreign bank branches. The definition has been designed to reflect the class of entities that can participate directly in the ACH system, i.e., financial institutions that are authorized by law to accept deposits.

The term ''Government entry'' is defined in § 210.2(k) as an ACH credit or debit entry or entry data originated or received by an agency. As noted above, Part 210 previously applied only to credit entries originated by an agency for the purpose of making payments. As amended, Part 210 has a broader scope; it applies to all entries originated or received by an agency, whether made for the purpose of payments or collections or for information purposes.

The Service has added a definition of the ''Green Book'' in § 210.2(l) to clarify that financial institutions that originate or receive Government entries are subject to the procedures and guidelines published by the Service in the Green Book, as provided at § 210.3(c).

The term ''notice of reclamation'' at § 210.2(m) means a notice issued by the Government in a paper, electronic, or other form in order to initiate a reclamation. This definition clarifies that the Government is not limited to a paper-based means of communication and opens the way for an automated reclamation procedure. The definition of ''notice of reclamation'' is moved to the definition section of Part 210 from § 210.13(a), where it was previously located.

The Service has preserved the definition of ''outstanding total'' in Part 210 without substantive change.

The definition of ''recipient'' in § 210.2(o) is substantially similar to the corresponding definition in Part 208. The term includes an authorized payment agent that receives a payment on behalf of a beneficiary.

The term ''Service'' has been added at § 210.2(p) to mean the Financial Management Service, Department of the Treasury.

The term ''Treasury'' has been added at § 210.2(q) to mean the United States Department of the Treasury.

The Service has added a definition of the term ''Treasury Financial Manual'' at § 210.2(r) to clarify that the Service may publish procedures and guidelines applicable to Government entries in the Treasury Financial Manual. The Treasury Financial Manual contains procedures to be observed by all agencies with respect to central accounting, financial reporting, and other Government-wide fiscal responsibilities of the Treasury.

Section 210.3—Governing Law

Section 210.3(a) provides that the rights and obligations of the United States and the Federal Reserve Banks with respect to all Government entries are governed by Part 210, which has the force and effect of Federal law. This approach is consistent with *Clearfield Trust Co.* v. *United States,* 318 U.S. 363 (1943), and its progeny, which support the principle that the Government can establish the rules that govern Federal payments and collections and that Federal law applies whenever Treasury engages in its sovereign function of collecting and disbursing public funds, regardless of the method used to carry out this function.

One commenter requested clarification regarding the extent to which Article 4A of the Uniform Commercial Code (UCC Article 4A) is applicable to Government entries. Treasury consistently has taken the position that under *Clearfield Trust,* state law, including the Uniform Commercial Code, is inapplicable to Federal payments and collections, except to the extent that the state law is incorporated in Federal law. However, UCC Article 4A is incorporated in the ACH Rules, which the Service is adopting, and, therefore, will apply to Government entries except as preempted in Part 210.

Section 210.3(b)(1) provides that Part 210 incorporates by reference the applicable ACH Rules published in Parts I, II, and IV of the 1999 NACHA Rule Book (including any rule changes in effect on or before September 17, 1999), as modified by Part 210. NACHA has approved an amendment to the ACH Rules that, effective September 2000, will permit the crediting of entries to non-deposit accounts. The Service does not intend to accept this amendment for payments subject to § 210.5.

Section 210.3(b)(2) describes how subsequent amendments to the ACH Rules will be handled. The proposed rule provided that Government entries would be governed by any amendment to the ACH Rules that became effective after a specified date only if the Service accepted the amendment by publishing notice to that effect. Many commenters urged the Service to change this position. Several financial institutions and agencies recommended that the Service provide that amendments to the ACH Rules are deemed accepted unless

[4] *See* 20 CFR Parts 404, 410, 416, 266, and 348; and 38 CFR Part 13, respectively.

the Service expressly rejects the amendment by publishing notice to that effect in the **Federal Register**.

Federal regulations require that any changes to a publication incorporated by reference in a Federal regulation be published in the **Federal Register**.[5] Accordingly, the Service may not adopt an approach whereby amendments to the ACH Rules are deemed accepted unless expressly rejected. In order to mitigate the uncertainty and inconvenience to financial institutions that would result from a lag in addressing ACH Rule amendments, the Service intends to work closely with NACHA to track proposed ACH Rule changes and to respond to such changes in a timely manner. The Service anticipates that it will publish a **Federal Register** notice addressing ACH Rule changes within 90 days of NACHA's publication of its rule book, which is published annually.

For the above reasons, Part 210 states that amendments effective after September 17, 1999, will not apply to Government entries unless the Service expressly accepts such amendments by publishing notice of acceptance in the **Federal Register**. In addition, § 210.3(b)(2) provides that with respect to any future amendment that the Service determines to accept, the date of applicability of the amendment to Government entries will be the effective date of the rulemaking specified by the Service in the **Federal Register** notice that expressly accepts the amendment.

Section 210.3(c) provides that any person or entity that originates or receives a Government entry must comply with the instructions and procedures issued by the Service, including the Treasury Financial Manual and the Green Book. As indicated above, the Service has moved certain requirements that previously were set forth in the regulation itself to the Green Book and the Treasury Financial Manual. In light of the proposed relocation of these provisions, the Service believes it is important to make explicit in the regulation the Service's longstanding policy that the requirements set forth in the Green Book and the Treasury Financial Manual are binding upon financial institutions and agencies to the same extent as the regulation itself.

The requirements set forth in the Green Book and the Treasury Financial Manual, including those provisions that the Service is relocating from the regulation to the Green Book or Treasury Financial Manual, are procedural, rather than substantive, in nature. Changes to the substantive rights and liabilities of parties to a Government entry will be made through amendments to Part 210 itself in accordance with administrative rulemaking requirements.

Section 210.4—Authorizations and Revocations of Authorizations

Section 210.4(a) provides that each debit and credit entry subject to Part 210 must be authorized in accordance with the applicable ACH Rules and the additional requirements set forth in this section. The liability of a financial institution for failing to comply with the authorization requirements is set forth at § 210.8(b)(2).

Section 210.4(a)(1) provides that the agency or RDFI that accepts the recipient's authorization shall verify the identity of the recipient and, in the case of a written authorization that bears the recipient's signature, the validity of the signature. Traditionally, recipients of benefit payments, such as Social Security and Veterans benefits, enrolled in Direct Deposit by completing a Form 1199A with the assistance of their financial institution. In recent years, in order to encourage recipients to use Direct Deposit, SSA and other agencies have become directly involved in the enrollment process by accepting Direct Deposit authorizations over the phone with the assistance of trained customer service representatives. Part 210 acknowledges that the enrollment process may be completed by the recipient's financial institution or by the agency. In addition, § 210.4(a) encourages automated enrollments by removing the requirement that the financial institution sign the authorization form. Section 210.4(a) recognizes that signature verification may not be possible or practical in an automated enrollment process.

Part 210 imposes an absolute requirement that the RDFI or agency accepting the authorization verify the recipient's identity and, where appropriate, the recipient's signature. The Service leaves to the discretion of the financial institution or agency accepting an authorization the steps it will take to verify the recipient's identity.

Some commenters requested that the Service clarify that a financial institution that accepts an authorization is not required to verify that the recipient, in fact, is entitled to receive the payment(s) in question. Financial institutions, in particular, commented that the RDFI is not in a position to determine who is entitled to the payment being authorized. The Service agrees that the financial institution is not in a position to know whether the customer, in fact, is entitled to the payment(s) being authorized. Section 210.4(a) requires only that the identity of the recipient be verified; the financial institution is not liable for determining whether the customer is entitled to the payment.

Agencies and other commenters supported the requirement that the RDFI verify the identity of the recipient as a means of reducing fraud. Financial institutions and ACH associations generally objected to the imposition of liability on financial institutions that accept and process enrollments, rather than on the ODFI, as provided for in the ACH Rules. Financial institutions further commented that if the ACH Rules are preempted in this respect, financial institutions should not be held to a strict liability standard. These institutions urged the Service to adopt a ''commercially reasonable business practices'' standard of care, or an ''actual or constructive knowledge'' of a fraud standard. Financial institutions argued that they cannot be an insurer against all fraud and that a strict liability standard creates a disincentive for financial institutions to participate in the enrollment process.

The Service continues to believe that the authorization process represents an opportunity to reduce fraud which could otherwise result in significant losses to the Government. Because a financial institution that accepts an authorization from a customer has an obligation to know the customer and is in a position to verify a written signature, the Service believes it is appropriate to hold the financial institution strictly liable for verifying the identity of the customer.

Under § 210.4(a)(2), an originator and an ODFI are prohibited from initiating a debit entry to an agency, other than a reversal of a credit entry, without the express permission, in writing or similarly authenticated, of the agency. The Service has conducted pilot programs to test the initiation of debit entries to the Government. These pilots indicate that the use of debit entries to the Government is a cost-efficient payment mechanism that benefits both the Government and the payee-recipient. However, in order to protect the interests of the Government, the Service believes that it is appropriate to require the prior written or similarly authenticated authorization, just as the ACH Rules require prior written authorization in the case of debits to a consumer account. In the case of recurring entries, the agency is required to give an authorization only once, prior to the first entry.

[5] See 1 CFR 51.11.

As proposed, § 210.4(a)(2) did not provide an exception from the authorization requirements for a reversal of a credit entry previously sent to an agency. Since a reversal of a credit entry is a debit entry, some commenters questioned whether proposed § 210.4(a)(2) would limit or restrict a financial institution's right to reverse a credit entry. It was not the Service's intention to require a prior written authorization before the initiation of a reversal, and the final rule has been revised to clarify this point.

Section 210.4(b) specifies the terms to which a recipient agrees by executing an authorization for an agency to initiate an ACH entry. Under § 210.4(b)(1), a recipient agrees to be bound by Part 210 and, under § 210.4(b)(2), the recipient agrees to provide accurate information.

Section 210.4(b)(3) provides that the recipient agrees to verify the recipient's identity to the satisfaction of the party that accepts the authorization, whether this is the RDFI or the agency. The imposition of this requirement on recipients complements the duty of the party accepting the authorization to verify the recipient's identity.

Section 210.4(b)(4) provides that a new authorization supersedes any existing authorization that is inconsistent with the new authorization.

Under § 210.4(b)(5), the recipient agrees that the Government may reverse any duplicate or erroneous entry as provided in § 210.6(f).

Section 210.4(c)(1) provides that, in the case of a recipient of benefit payments, a change in the recipient's ownership of the account results in the termination of the authorization. The purpose of this provision is to ensure that payments are not deposited to an account to which a recipient no longer has access or in which the recipient's ownership interest has changed.

Some commenters questioned whether an authorization is revoked as a result of any change in the ownership of an account, even if that change does not affect the recipient's ownership interest in the account. These commenters questioned whether, for example, the addition of a co-signatory on the account would cause the authorization to be revoked. It is not the Service's intent that an authorization be revoked as a result of a change in ownership of an account where the recipient's interest is not adversely affected. The wording of 210.4(c)(1) has been changed accordingly.

Under § 210.4(c)(2), the death or legal incapacity of a recipient of benefit payments or the death of a beneficiary results in the termination of the authorization.

Section 210.4(c)(3) provides that the closing of the recipient's account at the RDFI results in termination of the authorization. In addition, this section requires the RDFI to provide 30 days written notice to the recipient prior to closing the account to which benefit payments currently are being sent, except in cases of fraud.

Final § 210.4(c)(3) is unchanged from the NPRM except that the 30-day notice requirement is limited in the final rule to accounts to which benefit payments currently are being sent. Most financial institutions commented that the 30-day notice requirement was an improper interference with their customer relationships. Financial institutions pointed out that banks routinely close accounts in cases of excessive overdrafts or in instances of fraud, and noted that the 30-day period would require banks to establish a separate account closing process for accounts receiving Federal ACH transactions. Some agencies also questioned whether it was appropriate for the Service to regulate account closing in this fashion, indicating that they had not had a problem with closed accounts. However, the Service believes that the notice requirement protects recipients from being deprived of timely access to their funds as a result of an account being closed without sufficient notice to allow the recipient to make other arrangements to receive the funds. Because the Service is concerned that a recipient of benefit payments may suffer hardship if the account to which his or her benefit payments are being sent is closed, the final rule has been limited to address this class of recipients.

One agency commenting on the proposed rule requested clarification regarding situations in which payments are sent to an account that has been kept open by a financial institution notwithstanding the recipient's request that the account be closed. The agency stated that, in its view, ''the only criterion that should apply in such a situation is whether the recipient has closed the account at the financial institution. . . . When a recipient can provide proof that an account has been closed, all Federal payments subsequently received by the financial institution must be returned.''

The effect of 210.4(c) is that payments sent to an account that has been closed must be returned by the financial institution. However, Part 210 does not establish the circumstances in which a financial institution can or must close an account. A financial institution's right or obligation to close a customer's account is established by the terms of the account agreement between the financial institution and the customer and applicable state or Federal laws. Thus, a recipient's assertion that an account has been closed is not necessarily sufficient to require the financial institution to return funds sent to the account. There may be situations in which a recipient wishes to close an account but does not have a legal right to do so. This could occur, for example, when the account has been overdrawn and language in the deposit contract provides that the financial institution may keep the account open until the overdraft is settled. In such a case, a financial institution's obligation to return a payment depends on whether the closing of the account, in fact, has been accomplished, not upon the recipient's desire to close the account or belief that the account has been closed. The Service emphasizes that it is the actual closing of the account as a legal matter, and not the recipient's desire or attempts to close the account, that imposes an obligation on the financial institution to return payments under § 210.4(c).

In order to eliminate any unnecessary interruptions in ACH services to recipients when any of the events described in § 210.4(c)(4) occurs, § 210.4(c)(4) states that an authorization will not terminate upon the insolvency or closure of the RDFI, provided that a successor is named for the institution. If no successor is named, the Government may transfer temporarily the authorization to a consenting financial institution for a period of no longer than 120 days.

The Service has deleted the provision formerly contained in § 210.4(e) that stated that, except as authorized by law or other regulations, Part 210 shall not be used to effect an assignment of a payment. The Service believes that a prohibition against assignments is not appropriate in Part 210. Other Federal laws, such as the Social Security Act, govern the assignment of benefits.

Section 210.5—Account Requirements for Federal Payments

Section 210.5 imposes restrictions on the type of account to which Federal payments may be deposited. Section 210.5(a) reiterates the general rule set forth in Part 208 that Federal payments other than vendor payments must be deposited to an account at a financial institution in the name of the recipient. The phrase ''notwithstanding ACH Rule 2.1.2'' indicates that § 210.5 imposes a requirement not imposed under the applicable ACH Rules, i.e., that the account be ''in the name of'' the recipient, with certain exceptions discussed below. This section is designed to ensure that payments reach

the intended recipient by requiring that such payments be deposited into an account in which the recipient has an ownership interest. Vendor payments are excluded under § 210.5(a) because the Service is aware that under current commercial practices many vendors designate an account in a general corporate name to receive payments in the name of a subsidiary or designate a bank account in the name of an accountant or other service provider for the receipt of payments.

Proposed § 210.5 would have imposed these restrictions only on benefit payments, which by definition excluded Federal retirement payments. Upon further consideration, the Service has determined that Federal retirement payments need not be excluded from the account restrictions. In the situation most often cited, that in which a surviving spouse is entitled to a deceased recipient's retirement payment, the surviving spouse is considered to be the recipient and, therefore, the payment would be deposited into the surviving spouse's account. The final rule parallels Part 208, which requires that all Federal payments other than vendor payments be deposited to an account in the name of the recipient, with two exceptions.

The first exception, related to authorized payment agents, is unchanged from the proposed rule. The second exception, related to investment accounts, contains two changes from the proposed rule. First, the exception has been expanded to cover investment accounts established through an investment company registered under the Investment Company Act of 1940, in addition to investment accounts established through a securities broker or dealer registered under the Securities Exchange Act of 1934. Second, the requirement contained in the proposed rule that the investment account and all associated records be structured so that the recipient's interest is protected under applicable Federal or State deposit insurance regulations has been deleted. The reasons for these changes are discussed in detail in the final rulemaking for Part 208. 63 FR 51490, 51500. Additionally, in order to ensure consistency with Part 208, § 210.5(b)(3) has been added. Section 210.5(b)(3) provides that the Secretary of the Treasury may waive the requirements of § 210.5(a) in any case or class of cases.

A number of commenters requested additional guidance on various aspects of § 210.5. Some commenters questioned whether the account must be solely in the name of the recipient, which would preclude the use of joint accounts, and whether master-subaccounts can be established with limited access by the beneficiary. One agency commented that it has no way of knowing the account title at the financial institution and cannot be expected to monitor industry practices in this regard.

The part 208 final rulemaking release contains an extensive discussion of the restrictions on accounts to which Federal payments can be sent, and addresses the issues raised by commenters on proposed § 210.5. See 63 FR 51490, 51499. The Service does not believe it is necessary to duplicate that discussion here, and refers readers to the Part 208 rulemaking release. However, in response to the question raised by commenters as to whether § 210.5 would prohibit the use of a joint account between the recipient and a spouse or other member of the recipient's family, the Service emphasizes that § 210.5 does not require that the recipient's name be the only name on the account, and thus would not prohibit the use of such a joint account. In addition, as discussed in the Part 208 rulemaking release, § 210.5 does not prevent recipients of Federal salary payments from making discretionary allotments, as such allotments are made prior to the time the recipient's payment is deposited into an account at a financial institution.

The Service is aware that NACHA has approved an amendment to the ACH Rules (effective September 2000), which permits the crediting of entries to general ledger accounts and loan accounts. The Service does not intend to accept that amendment with respect to Federal payments other than vendor payments.

Section 210.6—Agencies

The title of this section has been changed from ''The Federal Government'' to ''Agencies.'' Section 210.6 sets forth a number of obligations and liabilities to which agencies that initiate or receive Government entries are subject. These obligations and liabilities are in addition to, or different from, the obligations and liabilities that otherwise would be imposed under the applicable ACH Rules. For example, the authorization and reversal requirements of §§ 210.6(a) and (f) constitute additional obligations. The liability provisions of §§ 210.6(b), (c), (d), and (f) expand as well as limit the liability that an agency would otherwise be subject to under the applicable ACH Rules. Specifically, an agency's liability is broader than it would be under the applicable ACH Rules because an agency is liable for a failure to act ''in accordance with this part [210].'' However, the extent of an agency's potential liability is capped by the amount of the entry(ies), which is a limitation on the liability generally provided for under the applicable ACH Rules.

Section 210.6 is largely unchanged from the NPRM except that § 210.6(b) of the NPRM, relating to prenotifications, has been deleted and the subsections of § 210.6 have been renumbered accordingly. A prenotification is a non-value informational entry sent through the ACH system that contains the same information that will be carried on subsequent entries (with the exception of the dollar amount and transaction code). Under the ACH Rules, prenotifications are optional for all entries. The Service had proposed at § 210.6(b) of the NPRM to modify the ACH Rules by requiring prenotifications for debit entries initiated by an agency. The purpose of the proposed requirement was to ensure that a debit initiated by an agency would be applied against the correct account at the intended financial institution.

In light of comments received, the Service has deleted this requirement from the final rule. The purpose of a prenotification is to verify the accuracy of the account information to ensure that when a live entry is received, it can be posted to the correct account. However, a prenotification does not provide notice to the owner of the account to be debited, and thus does not serve as a protection against a debit to an incorrect account. Moreover, requiring prenotifications for debit entries may impede the implementation and operation of programs such as point-of-sale check payment capture, in which ACH debits are initiated against a consumer account at the time a purchase of goods or services takes place. Requiring prenotification also would effectively preclude agencies from effecting reversals of credit entries, as a number of commenters pointed out. For these reasons, the Service has deleted from the final rule the requirement that agencies utilize prenotifications before initiating debit entries.

Section 210.6(a) requires an agency to obtain prior written authorization from the Service in order to receive ACH credit or debit entries. The Service requires this process in order to make software and operational changes to permit the receipt of entries by the agency. Section 210.6(a) is not intended to reduce or change the liability of originators or ODFIs for the initiation of an unauthorized entry to an agency;

rather, it is an operational requirement imposed by the Service on agencies.

Sections 210.6(b)–(d) set forth an agency's liability to various parties in connection with Government entries. Section 210.6(b) provides that an agency will be liable to the recipient for any loss sustained as a result of the agency's failure to originate a credit or debit entry in accordance with Part 210. This section further provides that the agency's liability will be limited to the amount of the entry.

Several financial institutions urged the Service to reconsider this limitation on liability, pointing out that losses resulting from agency errors may be shifted unfairly to the RDFI. One commenter gave an example of an agency's initiation of a duplicate debit entry to a receiver's account, in which case the account might become overdrawn, resulting in returned checks and related charges for which the receiver would attempt to recover compensation. If the receiver's right of recovery from the Government were limited to the amount of the entry, the receiver might seek compensation from the RDFI for a refund of charges and other damages resulting from the return of checks, loss of use of funds, etc.

To address this concern, § 210.8(b) of the final rule provides that a financial institution will not be liable to any party for any loss resulting from an agency's error or omission in originating an entry. This provision does not affect a financial institution's responsibilities to its customer to resolve errors under the Electronic Fund Transfer Act or Regulation E. Rather, this provision establishes that a financial institution is not liable for consequential damages resulting from an agency's error.

The ACH Rules do not address the basis for, or the extent of, the liability of an originator or ODFI to a receiver. A receiver's rights against an originator or ODFI for failing to properly originate an entry ordinarily would be governed by contract and state law. Section 210.6(b) establishes a recipient's rights against an agency in these circumstances as a matter of Federal law: an agency will be liable for any loss sustained by a recipient, up to the amount of the entry, as a result of the agency's failure to originate a credit or debit entry in accordance with Part 210.

Section 210.6(c) establishes that an agency may be liable to an originator or an ODFI for any loss sustained by the originator or ODFI resulting from the agency's failure to credit an ACH entry to the agency's account in accordance with part 210. The agency's liability would be limited to the amount of the entry(ies). The ACH Rules do not address the liability of an RDFI to an originator. Under the ACH Rules, if an RDFI fails to properly credit an ACH entry to the designated account within the applicable time limitations, the RDFI will have breached a warranty to the ACH Operator, ACH Association, and ODFI, and may be liable to one of those parties for any losses resulting from the RDFI's breach. Whether the originator has any recourse in such a situation depends on its contract with its ODFI and on state law.

Section 210.6(c) preempts the ACH Rules with respect to the extent of an agency's liability to an ODFI by limiting that liability to the amount of the entry(ies). In addition, § 210.6(c) establishes, as a matter of Federal law, that an agency may be liable directly to an originator in an amount not exceeding the amount of the entry(ies).

Section 210.6(d) provides that an agency's liability to an RDFI for losses sustained by the RDFI in processing a duplicate or erroneous entry will be limited to the amount of the entry(ies). The phrase ''[e]xcept as otherwise provided in this Part 210'' is intended to preserve the allocation to the RDFI of liability in connection with the RDFI's failure to comply with, for example, the authorization requirements. While Part 210 previously addressed processing errors by an agency, the final rule refers to duplicate and erroneous entries, as defined in the ACH Rules, in order to describe specifically the type of errors or the nature of the losses for which an agency is liable.

Under the ACH Rules, an ODFI is liable for losses caused by its origination of duplicate or erroneous entries. Part 210 subjects agencies to the liability imposed on ODFIs under the ACH Rules for originating erroneous and duplicate entries, but preempts the ACH Rules in three respects. First, an agency is not liable for all costs incurred by the RDFI, such as attorneys' fees, but is liable only up to the amount of the entry. Second, § 210.6(d) uses comparative negligence and reduces an agency's liability to the extent the loss results from the financial institution's failure to follow standard commercial practices and exercise due diligence. Third, § 210.6(d) excludes credit entries received by an RDFI after the death or legal incapacity of a recipient of benefit payments or the death of a beneficiary. It should be noted that liability in connection with any benefit payment to a deceased recipient is not covered under § 210.6(d), but is governed solely by Subpart B.

Several commenters questioned how the comparative negligence standard would be administered and what negligence would consist of in this context. One commenter questioned whether the costs of apportioning negligence might exceed the benefit to the Government of limiting its liability in this fashion.

What will constitute negligence on the part of a financial institution in a particular context depends on the relevant facts and circumstances. Although the Service recognizes that there may be costs associated with investigating and determining the causes of a particular loss, the Service believes it is important to retain this provision in order to apportion liability appropriately in cases where an agency and a financial institution share responsibility for a loss. For example, if an agency erroneously originated a credit entry to an incorrect account, and the person who received the misdirected funds brought the mistake to the attention of the financial institution, the financial institution could incur liability if it failed to take appropriate action and the agency subsequently was unable to recover the erroneously transmitted funds.

Section 210.6(e) is unchanged from § 210.6(f) of the proposed rule, except that the word ''final'' has been added in recognition that a Federal Reserve Bank's crediting of an account can be reversed if actual and final funds are not collected in settlement of a credit item at or before 8:30 a.m. Eastern Time on the banking day following the settlement date.

Section 210.6(f) addresses the Government's initiation of reversals. As discussed in the analysis of § 210.4(b) above, a recipient who executes an authorization agrees, among other things, that the Government may reverse duplicate or erroneous entries or files, as provided in § 210.6(f).

The ACH Rules permit an originator to reverse duplicate or erroneous entries and permit an ODFI, originator, or originating ACH Operator to reverse duplicate or erroneous files within five banking days of the settlement date of the duplicate or erroneous file or entry. For purposes of the ACH Rules, and as used herein, a duplicate entry is an entry that is a duplicate of an entry previously initiated by the originator or ODFI and an erroneous entry is an entry that orders payment to or from a receiver not intended to be credited or debited by the originator or that orders payment in a dollar amount different than what was intended by the originator.

Under the ACH Rules, the ODFI and/or originating ACH Operator must indemnify the RDFI against any losses the RDFI incurs as a result of effecting

a reversal. Consequently, in the event that the RDFI reverses an entry or file initiated by the ODFI, but the RDFI cannot recover the amount of the entry from the receiver (because, for example, the receiver has withdrawn the funds and closed the account), it is the ODFI or originator who bears the loss.

The ability to effect reversals is an important way for the Government to reduce losses resulting from overpayments and misdirected entries. If a reversal is effected expeditiously, in many cases the receiver may not be aware that the erroneous or duplicate entry occurred, and thus the funds may be available in the account for recovery by the RDFI and, ultimately, the Government.

With respect to certain types of payments, however, the Government's ability to reverse a duplicate payment or overpayment to a recipient may be constrained due to the existence of various Federal statutory provisions governing the manner in which the Government may recover overpayments. For example, in the context of Federal benefit payments, the Government may be required to provide notice and a hearing prior to taking action to recover payments, or may be limited in the amount, timing, or manner in which an overpayment is recovered. Part 210 does not address the operation of these requirements because the applicable requirements may vary depending on the type of payment. It is the agency's responsibility to determine before certifying a reversal that the reversal will not violate any applicable laws or regulations.

One commenter requested that the Service clarify how the certification requirement of § 210.6(f) affects the indemnification of the RDFI and other parties to a transaction as provided under ACH Rule 2.4.5. The certification requirement represents an additional obligation of any agency that originates a reversal. The certification requirement is intended to function as an intra-Governmental warranty and is not intended to affect the indemnification of the RDFI or other parties to a transaction under ACH Rule 2.4.5. and Part 210.

Several commenters requested clarification as to whether the Government, when initiating reversals, would be bound by any ACH Rule requirements that generally apply with respect to reversals, such as the five-day reversal deadline. It is the intention of the Service that all ACH Rule requirements apply to Government-initiated reversals except that the extent of the Government's indemnification would be limited to the amount of the entry(ies). Therefore, an agency that reverses a Government entry must do so within the five-day deadline.

Section 210.7—Federal Reserve Banks

Section 210.7 sets forth the role and responsibilities of the Federal Reserve Banks.

The settlement of ACH entries is determined by the ACH Operator which, in the case of Government entries, is a Federal Reserve Bank. The Service has deleted as unnecessary the provisions previously in Part 210 relating to funds availability since those requirements are addressed under Federal Reserve Bank Operating Circular No. 4 on ACH Items.

Some commenters were concerned that a change in the timing of payments would result from the deletion from § 210.7 of language stating that Federal Reserve Banks are to make available to the financial institution the amount specified in a payment instruction, and debit the TGA, on the payment date. Part 210 previously defined the payment date as the date upon which funds are to be available for withdrawal by the recipient, and on which the funds are to be made available to the financial institution by the Federal Reserve Bank, and provided that ''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.'' The Service is not changing the foregoing timing requirements, which are consistent with the Federal Reserve Bank Operating Circular on ACH items.

Some agencies indicated that the time frame of settlement under the ACH system may conflict with statutory requirements regarding when certain payments must be made. For example, the Office of Personnel Management (OPM) commented that the Civil Service annuity benefit is payable ''on the first business day of the month after the month or period for which it has accrued.'' Therefore, OPM indicated that it cannot legally request another payment date when the first day of the month is on a Saturday, which is a business day for purposes of the relevant statute, but which is not a settlement date under the ACH Rules. The Railroad Retirement Board commented that the Railroad Retirement Act prohibits issuing payments before the first day of the next calendar month.

The Service recognizes that agencies subject to statutory constraints on payment dates will need to address the interaction of those constraints with the timing of ACH payments. Because different statutes present different issues and limitations, the Service believes that these issues must be addressed on a case-by-case basis. Where statutory payment requirements potentially conflict with the use of the ACH system, the Service urges the paying agency to work with the Service in order to resolve those issues. For example, a statute that requires that payment be made no later than the first business day of the month may allow for the initiation of payments one or two days early in order to ensure that the recipient receives the funds no later than the statutorily prescribed payment date. On the other hand, this approach would not be a viable solution in the context of a statute that requires that payment be made no earlier than the first business day of the month. Because statutes differ, the Service is not in a position to adopt a uniform approach to these issues.

Section 210.7(a), which is unchanged from the proposed rule, specifies that each Federal Reserve Bank, as the Fiscal Agent of the Treasury, serves as the Government's ACH Operator for Government entries. The phrase ''notwithstanding Section 11.5 and Article 8 of the ACH Rules'' has been added to clarify that the Service is preempting the ACH Rule that provides that a Federal Reserve Bank is not an agent of an RDFI or ODFI.

Section 210.7(b), also unchanged from the proposed rule, has been added to Part 210 to ensure that the Service is aware of new ACH applications at an agency so that proper accounting can take place and correct credit can be given in the Treasury investment program as an agency receives ACH transactions. Agencies desiring a routing number should obtain approval from the Service prior to requesting a routing number from a Federal Reserve Bank.

Section 210.8—Financial Institutions

Section 210.8 addresses the obligations of financial institutions with respect to Government entries, which were previously set forth at § 210.7. The Service has removed as unnecessary many of the provisions of previous § 210.7 because they are addressed in the ACH Rules. For example, former § 210.7(e) has been deleted since the ACH Rules adequately cover the inability of an RDFI to credit an account indicated in an entry. In addition, former §§ 210.7(f)(1), (f)(2), and (f)(4) have been deleted since the ACH Rules address these provisions.

The Service had proposed at § 210.8(a) of the NPRM to require RDFIs to verify that the account number and one other item of information in a prenotification entry both relate to the

same account. A prenotification, as described in the ACH Rules, is a non-dollar entry, sent through the ACH system, which contains the same information (with the exception of the dollar amount and Standard Entry Class Code) that will be carried on subsequent entries. The ACH Rules do not require that RDFIs verify prenotifications in this manner; thus, the proposed requirement and the corresponding liability to which a financial institution would have been subject for failing to verify a prenotification would have superseded the ACH Rules with respect to agency-initiated prenotifications.

Several agencies commenting on the proposed rule supported the verification requirement because, in the words of one commenter, ''[t]his will ensure that subsequent Federal direct deposit payments are credited to the intended party, not just into an account that happens to coincide with a valid account number at the RDFI.'' Other agencies indicated that they did not intend to use prenotifications and did not believe the proposed verification requirement was necessary.

All of the financial institutions commenting on the NPRM objected to the proposed requirement. Financial institutions commented that they rely on account numbers alone in processing entries, as permitted by the ACH Rules and UCC Article 4A, and that they presently cannot perform the proposed verification in an automated processing environment. Therefore, in order to comply with the requirement, financial institutions would be required either to manually process Government entries or to develop and implement new processing systems. Many banks commented that they cannot invest in new processing systems at this time, especially in view of Year 2000 requirements and related systems testing. Some financial institutions indicated that if the verification requirement were imposed, the costs of processing Government entries would increase and they might shift these costs to payment recipients. Some commenters also noted that, in the case of payments made to representative payees, beneficiary information relating to the payment may not be listed on the account in any manner since financial institutions typically have information only on persons who are authorized to sign on the account.

Financial institutions also argued that shifting losses to banks is inconsistent with basic principles of electronic payment law, pointing out that both UCC Article 4A and the ACH Rules provide that the RDFI may make payment on the basis of account number alone.

After considering the comments received, the Service has decided not to include in Part 210 a requirement that upon receipt of a prenotification an RDFI verify one other identifying data element in addition to the recipient's account number. The Service does not believe it is in the best interest of the public to implement a requirement that would make it more expensive for financial institutions to receive and process electronic Government payments or that would require manual processing of Government entries. The Service acknowledges the rationale for allowing RDFIs to rely on account number alone, as set forth in the commentary to UCC Article 4A–207(b)(1): ''If the [RDFI] has both the account number and the name of the beneficiary supplied by the originator of the funds transfer, it is possible for the [RDFI] to determine whether the name and number refer to the same person, but if a duty to make that determination is imposed on the [RDFI] the benefits of an automated payment are lost. Manual handling of payment orders is both expensive and subject to human error.''

Moreover, the Service believes that more data is needed regarding the causes of misdirected Government entries. Without information as to the types of Government entries that are misdirected and the reasons for such mistakes, the Service is concerned that the verification requirement would eliminate any incentive for agencies to follow commercially reasonable standards in initiating payments. The Service does not believe it is appropriate to impose on financial institutions liability for losses resulting from agency errors.

Although data regarding misdirected entries is not available, the Service has anecdotal information that suggests that many misdirected entries are a result of human error by agency personnel who key in account numbers. The Service is particularly concerned with agency practices in which account information is processed through a single manual key entry, and urges agencies to review their enrollment practices and to consider adopting more stringent key entry procedures such as scanning a voided check or performing a double-key entry, or instituting some other verification procedure to avoid key entry mistakes. The Service encourages agencies to review their enrollment practices and intends to work with agencies to develop data regarding the extent and causes of misdirected ACH entries and to formulate ways of reducing such errors.

The Service also understands that, in some cases, misdirected entries occur as a result of financial institutions' errors in enrolling recipients or in transmitting notifications of change (NOCs). The Service believes that it is appropriate to hold financial institutions responsible for losses caused by their errors in enrolling recipients and has revised § 210.8(b)(2) accordingly, as discussed below.

The Service has redesignated former § 210.7(g) of Part 210 as § 210.8(a) without making any substantive change.

Section 210.8(b) provides that financial institutions shall be subject to liability for failing to handle an entry in accordance with Part 210 and that the amount of that liability will be limited to the amount of the entry, except as otherwise specifically provided in §§ 210.8(b)(1) and (2). The phrase ''[n]otwithstanding ACH Rules 2.2.3, 2.4.5, 2.5.2, 4.2, and 7.7.2'' indicates that the liabilities imposed on financial institutions under this section may be in addition to, or different from, the liabilities that otherwise would be imposed under the applicable ACH Rules. To the extent that Part 210 imposes duties on a financial institution not imposed under the applicable ACH Rules, § 210.8(b) correspondingly imposes liabilities on a financial institution not imposed under the applicable ACH Rules. However, the extent of the liability to which a financial institution would be subject would not exceed the amount of the entry (except in the case of unauthorized debits).

The ACH Rules generally provide that an RDFI or ODFI is liable for all claims, losses, liabilities, or expenses, including attorneys' fees and costs, resulting directly or indirectly from the breach by the RDFI or ODFI of its obligations. Under UCC Article 4A, which would apply to credit entries to non-consumer accounts, the liability of financial institutions that fail to handle entries properly generally does not extend to all resulting losses, but does include imputed interest in certain circumstances. Because Part 210, as a general matter, limits the Government's liability to the amount of an entry, the Service believes that as a matter of equity the liability of financial institutions similarly should be limited. Accordingly, § 210.8(b) preempts the extent of the liability to which financial institutions are subject under both the ACH Rules and UCC Article 4A by limiting that liability to the amount of the entry. Thus, for example, if an agency originated a credit entry to a corporate vendor and the RDFI failed to credit the entry to the vendor's account

in a timely manner, § 210.8(b) would limit the RDFI's liability to the Government to the amount of the entry, thereby preempting the UCC Article 4A rule that imposes liability on the financial institution for imputed interest for the period of the delay. Section 210.8(b) does not affect a financial institution's liability under Subpart B.

Although financial institutions generally objected to changing the liability provisions of the ACH Rules for Government entries, most financial institutions indicated that if the final rule limited the liability of the Government to the amount of an entry, the liability of financial institutions should be correspondingly limited under § 210.8(b).

Section 210.8(b) of the final rule also provides that a financial institution will not be liable to any third party for any loss resulting from an agency's error or omission in originating an entry. The Service has added this provision to the final rule to address comments by several financial institutions that limiting an agency's liability to the amount of an entry, as set forth at § 210.6, may have the effect of shifting losses resulting from an agency error to the RDFI. As discussed above, one commenter gave an example of an agency's initiation of a duplicate debit entry to a receiver's account, in which case the account might become overdrawn, resulting in returned checks and related charges for which the receiver would attempt to recover compensation. If the receiver's right of recovery from the Government were limited to the amount of the entry, the receiver might seek compensation from the RDFI for a refund of charges and other damages resulting from the return of checks, loss of use of funds, etc. Section 210.8(b) addresses this situation by providing that the receiver cannot recover against the RDFI for these damages.

Section 210.8(b)(1) is unchanged from the proposed rule except that the reference to ''reserve account'' has been changed to ''account'' in response to comments that Federal Reserve Banks also maintain clearing accounts for financial institutions in some cases. Section 210.8(b)(1) clarifies that a financial institution may not originate or transmit a debit entry to an agency without the prior written authorization of the agency. As previously discussed, debit entries to the TGA represent a significant security concern for the Service. By expanding the use of the ACH system to allow for Government payments by a debit to the TGA, the possibility of unauthorized debits to the TGA arises. In carrying out its fiscal responsibility, the Service believes it is necessary to take precautions to ensure that such debits do not occur. Therefore Part 210 requires special security measures not imposed under the ACH Rules.

The ACH Rules provide that a receiver must have authorized the initiation of an entry to the receiver's account before the entry is originated and that the ODFI must warrant that the authorization is valid. Section 210.8(b)(1) goes beyond the ACH Rules by requiring that an agency authorize the debit entry, and that the authorization be in writing or similarly authenticated.

Under Part 210 as amended, a financial institution is liable for any unauthorized debit entries initiated to an agency in violation of this requirement. In connection with this, the Government also must be able to recover the interest that it would have derived from the use of the debited funds had they remained in the TGA. Therefore, a financial institution's liability for unauthorized debit entries to the TGA includes imputed interest under § 210.8(b)(1). This provision is an exception to the general limitation of a financial institution's liability to the amount of an entry. The Service believes it is necessary to impose this additional liability in order to avoid any potential loss of public funds resulting from an unauthorized debit to the TGA.

Section 210.8(b)(2) restates the third and fourth sentences of former § 210.11(b) and addresses the RDFI's liability in situations where the financial institution accepts a forged authorization. Under the ACH Rules, a receiver must authorize an entry before the entry may be originated and the ODFI must warrant that the authorization is valid. The ODFI or the originator thus bears the ultimate liability for any loss resulting from a forged or invalid authorization. Similarly, under UCC Article 4A, the ODFI or originator generally bears the risk of loss if an entry is originated to a receiver not entitled to the payment. Section 210.8(b)(2) operates to preempt these ACH and UCC Article 4A rules in situations where a financial institution accepts the recipient's authorization and fails to verify the identity of the recipient. If the financial institution accepts a forged authorization, the financial institution rather than the Government will be liable for the entries effected in reliance on the forged authorization.

The Service has revised § 210.8(b)(2) of the final rule to provide that an RDFI that transmits to an agency an authorization containing an incorrect account number shall be liable for any resulting loss, up to the amount of the payment(s) made on the basis of the incorrect number. With respect to NOCs that contain incorrect account information, the Service believes that the treatment of erroneous NOCs are appropriately addressed under the ACH Rules. The ACH Rules provide that an RDFI that transmits an NOC warrants that the information contained within the NOC is correct, and that the RDFI is liable for any loss or liability resulting from a breach of this warranty. (See ACH Rules, Article Five, Section 5.3) Accordingly, a financial institution that transmits to an agency an NOC containing erroneous information will be liable to the agency for the amount of any resulting misdirected entry.

In the case of a misdirected entry that an agency believes was the result of an incorrect account number in an authorization or NOC transmitted by an RDFI, the agency shall carry out an investigation to determine the cause of the error. If the agency determines that the loss in fact resulted from an RDFI's transmission of an incorrect account number, the agency may instruct the Service to direct the appropriate Federal Reserve Bank to debit the RDFI's account for the amount of the misdirected payment(s). The agency may not issue such an instruction until it has notified the RDFI of the results of its investigation and provided the RDFI a reasonable opportunity to respond.

Section 210.8(c) sets forth the conditions under which the obligation for the amount of an entry is acquitted. The word ''final'' has been added to the wording in the proposed rule in recognition that a credit entry may be reversed after crediting by a Federal Reserve Bank if the Reserve Bank does not receive actually and finally collected funds in settlement of the item at or before 8:30 a.m. Eastern Time on the banking day following the settlement date. Section 210.8(c) also has been revised from the proposed rule to clarify that the originator's obligation, in addition to any obligation of the ODFI, is discharged upon final crediting. The final rule also provides that, in the case of a debit entry originated by an agency against an account, full acquittance does not occur until the underlying payment is final.

Subpart B—Reclamation of Benefit Payments

The Service has restructured Subpart B of Part 210 by adding a new § 210.9—Parties to the reclamation. The other five sections comprising Subpart B (§§ 210.10 through 210.14) are a

reorganization of the four previous sections on reclamations in Part 210. As discussed above, the reclamation provisions of Subpart B completely preempt the reclamation provisions of the ACH Rules with respect to benefit payments received by an RDFI after the death or legal incapacity of a recipient or the death of a beneficiary. Any provisions of the ACH Rules dealing with reclamation of benefit payments are not applicable ACH Rules as defined in § 210.2. The Service has not changed significantly the obligations and liabilities of agencies and financial institutions in effect under former Part 210.

In order to simplify the regulation and enhance its flexibility with respect to automating reclamations, the Service has moved certain procedures and guidelines from Subpart B to the Service's Green Book or Treasury Financial Manual. As discussed above with respect to Subpart A, the Green Book and the Treasury Financial Manual do not introduce new rights and obligations that are not contained in Part 210. Instead, they provide specific operational directions and procedures which put the regulatory requirements into practice. The Service has the authority to enforce the requirements set forth in the Green Book and the Treasury Financial Manual in the same manner that it enforces regulations.

Section 210.9—Parties to the Reclamation

The Service has added this new section to delineate the differing roles of the financial institution, the Service, and the agency that certified the benefit payments in question.

Section 210.9(a) restates provisions of former §§ 210.7(a) and 210.14(d) of Part 210, which provided that by accepting and handling benefit payments, a financial institution agrees to the provisions of Subpart B, including the reclamation actions and the debiting of the financial institution's Federal Reserve Bank account for any reclamation amount for which it is liable.

Section 210.9(b) clarifies that the Service performs only disbursing and collection functions on behalf of agencies and does not make decisions as to the underlying obligations themselves. For example, if a financial institution or recipient has a question about the amount of a reclamation, the Service will respond that the amount was determined by the appropriate agency. In addition, if a financial institution or recipient disputes the facts underlying a death or date of death, that party should discuss the dispute with the appropriate agency. After resolution, the Service will carry out the reclamation in accordance with the direction of the agency that certified the payment or directed the Service to reclaim the funds in question.

Section 210.10—RDFI Liability

This section defines the liability of RDFIs for benefit payments received after the death or legal incapacity of a recipient or death of a beneficiary, and limits the extent of that liability.

Section 210.10(a) restates the rule set forth at § 210.12(a) of previous Part 210, but moves the limited liability provisions to the next section to make it clear that an RDFI is presumed liable for all benefit payments received after the death or legal incapacity of a recipient or death of a beneficiary unless the RDFI meets the qualifications for limited liability set forth in § 210.11. An RDFI has no right to limit its liability with respect to benefit payments received after it knows of the death or incapacity of a recipient or death of a beneficiary and has had a reasonable opportunity to act on that knowledge. Accordingly, the RDFI is required to return all benefit payments received after it learns of the death or legal incapacity of a recipient or death of a beneficiary. This obligation applies whether the RDFI has received a notice of reclamation or learned of the death or legal incapacity on its own.

In addition, § 210.10(a) requires that the RDFI immediately notify a paying agency if the RDFI learns of the death or legal incapacity of a recipient or death of a beneficiary from a source other than notice from the agency. Some financial institutions, while recognizing that it may be in the institution's best interest to provide agencies with such notice, commented that financial institutions should not incur further liability by failing to provide the notice.

Under § 210.11(d) as proposed, an RDFI that failed to notify an agency as required by § 210.10(a) would have forfeited its right to limit its liability. The Service agrees that proposed § 210.11(d) could potentially impose a harsh result in some circumstances, particularly where no loss is caused by the RDFI's failure to comply with the notice requirement. Accordingly, the Service has amended § 210.11(d) to provide that an RDFI that fails to comply with any provision of Subpart B in a timely and accurate manner, including the notice requirements at § 210.13, will be liable to the Government for any loss resulting from its act or omission.

Section 210.10(d) provides that an RDFI's liability for post-death and post-incapacity payments is limited to the most recent six years of payments. Previously, RDFIs were subject under Part 210 to potentially unlimited liability in situations where an agency is unaware of the death or legal incapacity of the recipient or the death of a beneficiary and continues to make payments to the account for a number of years. Financial institutions that commented on the proposed rule supported shortening the time frame for initiating reclamations, although several financial institutions urged the Service to adopt a shorter period than six years. Some agencies supported the proposed time limit, while other agencies objected to it.

Section 210.10(d) also provides an exception to the six-year limitation where the amount in the account when the RDFI receives the notice of reclamation and has had a reasonable opportunity to act on the notice exceeds the six-year amount for which the RDFI otherwise would be liable. In such a case, the RDFI would be liable for the total amount of all post-death or post-incapacity payments, up to the amount in the account.

In addition, § 210.10(d) requires that an agency that initiates a reclamation must do so within 120 days after the date that the agency receives notice of the death or incapacity of the recipient or death of the beneficiary. This provision is intended to encourage agencies to act in a timely manner in initiating reclamations, and to protect RDFIs from liability in the event an agency does not act expeditiously. Some agencies commented that the 120-day period was an adequate and appropriate period deadline, whereas other agencies commented that 120 days is too short a period in view of exception processing delays on the part of the Service that occur with respect to certain non-recurring entries. Financial institutions commenting on this provision supported a shortened deadline for initiating reclamations and generally felt that 120 days was appropriate.

Section 210.10(e) is unchanged from the proposed rule except that the reference to ''reserve account'' has been changed to ''account'' to reflect the fact that a Federal Reserve Bank may also maintain clearing accounts for financial institutions in some cases. Section 210.10(e) restates a rule of reclamations previously set forth at §§ 210.13(c) and (d): the Government has the right to debit the RDFI's account at its Federal Reserve Bank for the full amount of all post-death or post-incapacity benefit payments owed to an agency or for a lesser amount as a result of the RDFI's ability to limit its liability. Such action,

if necessary, represents a last step in reclaiming funds that have not otherwise been recovered.

The 60-day time period for an RDFI to return funds, which was previously set forth at § 210.13(c), is a procedural item that may change with the automation of reclamations. Therefore, the Service has relocated this requirement to the Green Book.

Section 210.11—Limited Liability

The Service has not changed the criteria that an RDFI must meet in order to limit its liability under Subpart B, but has reworded the provisions setting forth the criteria for greater clarity.

Section 210.11(a) provides the basis for calculating an RDFI's liability if it is eligible to limit its liability because it did not have actual or constructive knowledge of the death or incapacity of a recipient or the death of a beneficiary. The formula is taken from previous § 210.12(b) and, although reworded, does not change significantly the substantive operation of the previous formula.

Former § 210.12(d) of Part 210 contained rules addressing the circumstances in which an RDFI is ''deemed to have knowledge'' of the death or incapacity using a standard of ''due diligence.'' The Service, believing that the description of due diligence may be confusing or difficult to apply in this context, proposed to utilize a definition of ''actual or constructive knowledge'' set forth at proposed § 210.2.

Formerly under Part 210, one of the factors relevant to determining the extent of an RDFI's limited liability was the amount in the account. Former § 210.13(b)(2)(i) defined the ''amount in the account'' to mean the balance in the account when the RDFI has received a 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 RDFI returns the notice of reclamation to the Government. Part 210 previously provided that a reasonable time to take action was not later than the close of business on the day following the receipt of the notice of reclamation.

The Service has experienced many instances in which the ''amount in the account'' for reclamation purposes has been reduced by automated teller machine (ATM) withdrawals and the RDFI cannot provide information regarding the identity of the withdrawer. The Service therefore proposed in the NPRM to define the ''amount in the account'' as the account balance at the time the RDFI receives the notice of reclamation and to eliminate the ''reasonable time to take action'' language formerly at § 210.13(b)(2)(i).

A number of financial institutions commenting on the proposed rule objected to the calculation of the amount in the account on the basis that they cannot take immediate action to prevent withdrawals upon receipt of a notice of death. One commenter noted that approximately one-half of community banks utilize batch processing systems, in which a hold placed on an account cannot be activated until evening or the following day, depending on the processing schedule. As discussed above with respect to the definition of ''actual and constructive knowledge,'' the Service has revised the definition to provide financial institutions with a reasonable opportunity to take action after receiving notice of death or incapacity. The Service believes that one business day will normally constitute a reasonable opportunity to take action.

Section 210.11(b) sets forth the steps an RDFI must take in order to qualify for limited liability. By requiring an RDFI to certify the information required in § 210.11(b)(1) and (2), the burden of demonstrating qualification for limited liability is placed on the RDFI. Failure to meet this burden results in the full liability of the RDFI under proposed § 210.10.

Section 210.11(b)(2) incorporates the last sentence of former § 210.13(b)(1), and adds the requirement that the RDFI certify the date the RDFI first had actual or constructive knowledge of the death or legal incapacity of the recipient or death of the beneficiary even if such knowledge was obtained first through notice received from the agency. As proposed, § 210.11(b)(2) stated that the RDFI must certify the date the RDFI first had ''information'' of the death or incapacity. Some commenters questioned the meaning of the word ''information,'' as opposed to the phrase ''actual or constructive knowledge.'' Because ''information'' was intended to refer to actual or constructive knowledge, § 210.11(b)(2) has been revised to eliminate any apparent inconsistency.

Requiring these certifications, in combination with the authority of the Government to debit the RDFI's account as provided in § 210.10(e), underscores that the burden is on the RDFI to demonstrate its qualification for limited liability.

Former § 210.13(b)(2)(ii) has been relocated to § 210.11(b)(3) of the final rule.

Section 210.11(c) provides the payment and collection procedures which apply if an RDFI qualifies for limited liability. After an RDFI returns the amount specified in § 210.11(a)(1), if the agency is unable to collect the remaining amount of the outstanding total, the Government will debit the RDFI's account at its Federal Reserve Bank (or the correspondent account utilized by the RDFI) for the amount specified in § 210.11(a)(2), which is the *lesser* of: (i) the benefit payments received by the RDFI from the agency within 45 days after the death or legal incapacity of the recipient or death of the beneficiary, or (ii) the *balance* of the outstanding total. It should be noted that in no instance will the RDFI be liable for more than the outstanding total because the amount potentially recoverable under § 210.11(a)(2) cannot exceed the balance of the unrecovered outstanding total.

As proposed in the NPRM, § 210.11(d) would have provided that an RDFI would forfeit its right to limit its liability if the RDFI failed to comply with any provision of Subpart B. One financial institution commented that the proposed expanded liability in § 210.11(d) was inappropriate and unfair, and that only a violation of those provisions that relate directly to the qualifications for limited liability stated in § 210.11(a) and (b) should cause a financial institution to lose its right to limit its liability. The Service has revised § 210.11(d) to provide that a financial institution that violates any provision of Subpart B shall be liable to the Government for any loss resulting from its act or omission, in addition to any amount(s) for which the RDFI is liable under § 210.10 or § 210.11(a).

Section 210.12—RDFI's Rights of Recovery

Section 210.12(a) restates the principle set forth in former § 210.14(c) that in reclaiming funds from an RDFI, the Government is not directing or authorizing the RDFI to debit the recipient's account. Any rights that an RDFI may have to recover the amount of reclaimed funds from a recipient are a matter of applicable state law and the contract between the RDFI and the recipient. Subpart B neither limits nor expands those rights.

Section 210.12(b) restates without substantive change former § 210.14(d) of Part 210.

Section 210.13—Notice to Account Owners

Section 210.13 is based on former § 210.14(a) of Part 210, but has been changed slightly to provide for the possibility of an automated reclamation process by the addition of the phrase

''or otherwise provide to the account owner(s)'' to the existing requirement that notice be mailed. In addition, the phrase ''any notice required by the Service to be provided to account owners as specified in the Green Book'' has been substituted for the specific reference to the ''Notice to Account Owners'' to allow for more flexibility in changing the format of the required notice.

Part 210 formerly required that RDFIs notify account owners of any actions to be taken by the RDFI with respect to the account in connection with a reclamation action. The Service believes that this requirement may intrude unnecessarily into the relationship between the RDFI and its customer and conflicts with the principle that reclamations are actions between the Government and the RDFI, and not between the Government and the recipient. Actions taken by an RDFI with respect to a customer account, and any notice to the customer in connection with those actions, are a matter of State law or contract, not Federal law.

Section 210.14—Erroneous Death Information

This section is based upon former § 210.15 of Part 210, with certain additions and deletions. Much of former § 210.15 was procedural information which the Service has moved to the Green Book, where it is more appropriately located. In particular, the Service has relocated to the Green Book the procedures that RDFIs are to follow in correcting erroneous death information (previously codified in § 210.15(a)(1) and (2) and § 210.15(c)). The Service also has moved to the Green Book the 60-day time limit for the RDFI to return the completed notice of reclamation to the Government in order for the RDFI to limit its liability for the payments made after the death or legal incapacity of the recipient or death of the beneficiary. This 60-day limit is a requirement for the paper-based reclamation procedure. Any automated reclamation procedures developed or used by the Government would not be bound by the same time limit as the paper process since an automated procedure theoretically could be completed in less time.

The provisions at § 210.14(b) direct questions and disputes to the agency issuing directions on reclamations. These provisions clarify that the Service only performs disbursing and collection functions on behalf of the agencies and does not make decisions as to the underlying obligations.

Subpart C—Discretionary Salary Allotments

The Service has removed Subpart C from Part 210. Subpart C provided that discretionary allotments from Federal employees' wage and salary payments permitted by the issuing agency could be made through the ACH system and were subject to Part 210. The Service determined that Subpart C was redundant since the substance of Subpart C was covered in other regulations. For example, regulations issued by the Office of Personnel Management, at 5 CFR Part 550, address the circumstances under which discretionary allotments may be made. Subpart A of Part 210 sets forth the rules governing all ACH credit entries made by an agency, including any savings and salary allotment payments. For these reasons, specific provisions for the use of the ACH system to allow for discretionary allotments in Part 210 are unnecessary.

III. Rulemaking Analysis

Treasury has determined that this regulation is not a significant regulatory action as defined in Executive Order 12866.

It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Act analysis is not required.

There is no collection of information contained in this rule and, therefore, the Paperwork Reduction Act does not apply.

List of Subjects in 31 CFR Part 210

Automated Clearing House, Electronic funds transfers, Fraud, Incorporation by reference.

Authority and Issuance

For the reasons set out in the preamble, 31 CFR Part 210 is revised to read as follows:

PART 210—FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE

Sec.

Authority: 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321, 3301, 3302, 3321, 3332, 3335, and 3720.

§ 210.1 Scope; relation to other regulations.

This part governs all entries and entry data originated or received by an agency through the Automated Clearing House (ACH) network, except as provided in paragraphs (a) and (b) of this section. This part also governs reclamations of benefit payments.

(a) Federal tax payments received by the Federal Government through the ACH system that are governed by part 203 of this title shall not be subject to any provision of this part that is inconsistent with part 203.

(b) ACH credit or debit entries for the purchase of, or payment of principal and interest on, United States securities that are governed by part 370 of this title shall not be subject to any provision of this part that is inconsistent with part 370.

§ 210.2 Definitions.

For purposes of this part, the following definitions apply. Any term that is not defined in this part shall have the meaning set forth in the ACH Rules.

(a) *ACH Rules* means the Operating Rules and the Operating Guidelines published by the National Automated Clearing House Association (NACHA), a national association of regional member clearing house associations, ACH Operators and participating financial institutions located in the United States.

(b) *Actual or constructive knowledge*, when used in reference to an RDFI's knowledge of the death or legal incapacity of a recipient or death of a beneficiary, means that the RDFI received information, by whatever means, of the death or incapacity and has had a reasonable opportunity to act on such information or that the RDFI would have learned of the death or incapacity if it had followed commercially reasonable business practices.

(c) *Agency* means any department, agency, or instrumentality of the United States Government, or a corporation owned or controlled by the Government of the United States. The term agency does not include a Federal Reserve Bank.

(d) *Applicable ACH Rules* means the ACH Rules with an effective date on or

before September 17, 1999, as published in Parts I, II, and IV of the ''1999 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network,'' except:

(1) ACH Rule 1.1 (limiting the applicability of the ACH Rules to members of an ACH association);

(2) ACH Rule 1.2.2 (governing claims for compensation);

(3) ACH Rule 1.2.4 and Appendix Eleven (governing the enforcement of the ACH Rules);

(4) ACH Rules 2.2.1.8; 2.6; and 4.7 (governing the reclamation of benefit payments);

(5) ACH Rule 8.3 and Appendix Two (requiring that a credit entry be originated no more than two banking days before the settlement date of the entry—see definition of ''Effective Entry Date'' in Appendix Two).

(e) *Authorized payment agent* means any individual or entity that is appointed or otherwise selected as a representative payee or fiduciary, under regulations of the Social Security Administration, the Department of Veterans Affairs, the Railroad Retirement Board, or other agency making Federal payments, to act on behalf of an individual entitled to a Federal payment.

(f) *Automated Clearing House or ACH* means a funds transfer system governed by the ACH Rules which provides for the interbank clearing of electronic entries for participating financial institutions.

(g) *Beneficiary* means a natural person other than a recipient who is entitled to receive the benefit of all or part of a benefit payment.

(h) *Benefit payment* is a payment for a Federal entitlement program or for an annuity, including, but not limited to, payments for Social Security, Supplemental Security Income, Black Lung, Civil Service Retirement, Railroad Retirement annuity and Railroad Unemployment and Sickness benefits, Department of Veterans Affairs Compensation and Pension, and Worker's Compensation.

(i) *Federal payment* means any payment made by an agency. The term includes, but is not limited to:

(1) Federal wage, salary, and retirement payments;

(2) Vendor and expense reimbursement payments;

(3) Benefit payments; and

(4) Miscellaneous payments including, but not limited to, interagency payments; grants; loans; fees; principal, interest, and other payments related to United States marketable and nonmarketable securities; overpayment reimbursements; and payments under Federal insurance or guarantee programs for loans.

(j)(1) *Financial institution* means:

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

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

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

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

(v) Any savings association as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) which is an insured depository institution as defined in such Act (12 U.S.C. 1811 *et seq.*) or is eligible to apply to become an insured depository institution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*); and

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

(2) In this part, a financial institution may be referred to as an Originating Depository Financial Institution (ODFI) if it transmits entries to its ACH Operator for transmittal to a Receiving Depository Financial Institution (RDFI), or it may be referred to as an RDFI if it receives entries from its ACH Operator for debit or credit to the accounts of its customers.

(k) *Government entry* means an ACH credit or debit entry or entry data originated or received by an agency.

(l) *Green Book* means the manual issued by the Service which provides financial institutions with procedures and guidelines for processing Government entries.

(m) *Notice of reclamation* means notice sent by electronic, paper, or other means by the Federal Government to an RDFI which identifies the benefit payments that should have been returned by the RDFI because of the death or legal incapacity of a recipient or death of a beneficiary.

(n) *Outstanding total* means the sum of all benefit payments received by an RDFI from an agency after the death or legal incapacity of a recipient or the death of a beneficiary, minus any amount returned to, or recovered by, the Federal Government.

(o) *Recipient* means a natural person, corporation, or other public or private entity that is authorized to receive a Federal payment from an agency.

(p) *Service* means the Financial Management Service, Department of the Treasury.

(q) *Treasury* means the United States Department of the Treasury.

(r) *Treasury Financial Manual* means the manual issued by the Service containing procedures to be observed by all agencies and Federal Reserve Banks with respect to central accounting, financial reporting, and other Federal Government-wide fiscal responsibilities of the Treasury.

§ 210.3 Governing law.

(a) *Federal Law.* The rights and obligations of the United States and the Federal Reserve Banks with respect to all Government entries, and the rights of any person or recipient against the United States and the Federal Reserve Banks in connection with any Government entry, are governed by this part, which has the force and effect of Federal law.

(b) *Incorporation by reference—applicable ACH Rules.*

(1) This part incorporates by reference the applicable ACH Rules, including rule changes with an effective date on or before September 17, 1999, as published in Parts I, II, and IV of the ''1999 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network.'' The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the ''1999 ACH Rules'' are available from the National Automated Clearing House Association, 607 Herndon Parkway, Suite 200, Herndon, Virginia 20170. Copies also are available for public inspection at the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, D.C. 20001.

(2) Any amendment to the applicable ACH Rules that takes effect after September 17, 1999, shall not apply to Government entries unless the Service expressly accepts such amendment by publishing notice of acceptance of the amendment to this part in the **Federal Register**. An amendment to the ACH Rules that is accepted by the Service shall apply to Government entries on the effective date of the rulemaking specified by the Service in the **Federal**

Register notice expressly accepting such amendment.

(c) *Application of this part.* Any person or entity that originates or receives a Government entry agrees to be bound by this part and to comply with all instructions and procedures issued by the Service under this part, including the Treasury Financial Manual and the Green Book. The Treasury Financial Manual is available for downloading at the Service's web site at http://www.fms.treas.gov/ or by calling (202) 874–9940 or writing the Directives Management Branch, Financial Management Service, Department of the Treasury, 3700 East West Highway, Room 500C, Hyattsville, MD 20782. The Green Book is available for downloading at the Service's web site at http://www.fms.treas.gov/fmsnews.html or by calling (202) 874–6540 or writing the Product Promotion Division, Financial Management Service, Department of the Treasury, 401 14th Street, S.W., Room 309, Washington, D.C. 20227.

Subpart A—General

§ 210.4 Authorizations and revocations of authorizations.

(a) *Requirements for authorization.* Each debit and credit entry subject to this part shall be authorized in accordance with the applicable ACH Rules and the following additional requirements:

(1) The agency or the RDFI that accepts the recipient's authorization shall verify the identity of the recipient and, in the case of a written authorization requiring the recipient's signature, the validity of the recipient's signature.

(2) Unless authorized in writing, or similarly authenticated, by an agency, no person or entity shall initiate or transmit a debit entry to that agency, other than a reversal of a credit entry previously sent to the agency.

(b) *Terms of authorizations.* By executing an authorization for an agency to initiate entries, a recipient agrees:

(1) To the provisions of this part;

(2) To provide accurate information;

(3) To verify the recipient's identity to the satisfaction of the RDFI or agency, whichever has accepted the authorization;

(4) That any new authorization inconsistent with a previous authorization shall supersede the previous authorization; and

(5) That the Federal Government may reverse any duplicate or erroneous entry or file as provided in § 210.6(f) of this part.

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

(1) With respect to a recipient of benefit payments, a change in the recipient's ownership of the deposit account as reflected in the deposit account records, including the removal of the name of the recipient, the addition of a power of attorney, or any action which alters the interest of the recipient;

(2) The death or legal incapacity of a recipient of benefit payments or the death of a beneficiary;

(3) The closing of the recipient's account at the RDFI by the recipient or by the RDFI. With respect to a recipient of benefit payments, if an RDFI closes an account to which benefit payments currently are being sent, it shall provide 30 calendar days written notice to the recipient prior to closing the account, except in cases of fraud; or

(4) The RDFI's insolvency, closure by any state or Federal regulatory authority or by corporate action, or the appointment of a receiver, conservator, or liquidator for the RDFI. In any such event, the authorization shall remain valid if a successor is named. The Federal Government may temporarily transfer authorizations to a consenting RDFI. The transfer is valid until either a new authorization is executed by the recipient, or 120 calendar days have elapsed since the insolvency, closure, or appointment, whichever occurs first.

§ 210.5 Account requirements for Federal payments.

(a) Notwithstanding ACH Rule 2.1.2, an ACH credit entry representing a Federal payment shall be deposited into an account at a financial institution. For all payments other than vendor payments, the account at the financial institution shall be in the name of the recipient, except as provided in paragraph (b) of this section.

(b)(1) Where an authorized payment agent has been selected, the Federal payment shall be deposited into an account titled in accordance with the regulations governing the authorized payment agent.

(2) Where a Federal payment is to be deposited into an investment account established through a securities broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, or an investment account established through an investment company registered under the Investment Company Act of 1940 or its transfer agent, such payment may be deposited into an account designated by such broker or dealer, investment company, or transfer agent.

(3) The Secretary of the Treasury may waive the requirements of paragraph (a) of this section in any case or class of cases.

§ 210.6 Agencies.

Notwithstanding ACH Rules 2.2.3, 2.4.5, 2.5.2, 4.2, and 7.7.2, agencies shall be subject to the obligations and liabilities set forth in this section in connection with Government entries.

(a) *Receiving entries.* An agency may receive ACH debit or credit entries only with the prior written authorization of the Service.

(b) *Liability to a recipient.* An agency will be liable to the recipient for any loss sustained by the recipient as a result of the agency's failure to originate a credit or debit entry in accordance with this part. The agency's liability shall be limited to the amount of the entry(ies).

(c) *Liability to an originator.* An agency will be liable to an originator or an ODFI for any loss sustained by the originator or ODFI as a result of the agency's failure to credit an ACH entry to the agency's account in accordance with this part. The agency's liability shall be limited to the amount of the entry(ies).

(d) *Liability to an RDFI or ACH Association.* Except as otherwise provided in this part, an agency will be liable to an RDFI for losses sustained in processing duplicate or erroneous credit and debit entries originated by the agency. An agency's liability shall be limited to the amount of the entry(ies), and shall be reduced by the amount of the loss resulting from the failure of the RDFI to exercise due diligence and follow standard commercial practices in processing the entry(ies). This section does not apply to credits received by an RDFI after the death or legal incapacity of a recipient of benefit payments or the death of a beneficiary as governed by Subpart B of this part. An agency shall not be liable to any ACH association.

(e) *Acquittance of the agency.* The final crediting of the amount of an entry to a recipient's account shall constitute full acquittance of the Federal Government.

(f) *Reversals.* An agency may reverse any duplicate or erroneous entry, and the Federal Government may reverse any duplicate or erroneous file. In initiating a reversal, an agency shall certify to the Service that the reversal complies with applicable law related to the recovery of the underlying payment. An agency that reverses an entry shall indemnify the RDFI as provided in the applicable ACH Rules, but the agency's liability shall be limited to the amount of the entry. If the Federal Government

reverses a file, the Federal Government shall indemnify the RDFI as provided in the applicable ACH Rules, but the extent of such liability shall be limited to the amount of the entries comprising the duplicate or erroneous file. Reversals under this section shall comply with the time limitations set forth in the applicable ACH Rules.

§ 210.7 Federal Reserve Banks.

(a) *Fiscal Agents.* Each Federal Reserve Bank serves as Fiscal Agent of the Treasury in carrying out its duties as the Federal Government's ACH Operator under this part. As Fiscal Agent, each Federal Reserve Bank shall be responsible only to the Treasury and not to any other party for any loss resulting from the Federal Reserve Bank's action, notwithstanding Section 11.5 and Article 8 of the ACH Rules. Each Federal Reserve Bank may issue operating circulars not inconsistent with this part which shall be binding on financial institutions.

(b) *Routing Numbers.* All routing numbers issued by a Federal Reserve Bank to an agency require the prior approval of the Service.

§ 210.8 Financial institutions.

(a) *Status as a Treasury depositary.* The origination or receipt of an entry subject to this part does not render a financial institution a Treasury depositary. A financial institution shall not advertise itself as a Treasury depositary on such basis.

(b) *Liability.* Notwithstanding ACH Rules 2.2.3, 2.4.5, 2.5.2, 4.2, and 7.7.2, if the Federal Government sustains a loss as a result of a financial institution's failure to handle an entry in accordance with this part, the financial institution shall be liable to the Federal Government for the loss, up to the amount of the entry, except as otherwise provided in this section. A financial institution shall not be liable to any third party for any loss or damage resulting directly or indirectly from an agency's error or omission in originating an entry. Nothing in this section shall affect any obligation or liability of a financial institution under Regulation E, 12 CFR part 205, or the Electronic Funds Transfer Act, 12 U.S.C. 1693 *et seq.*

(1) An ODFI that transmits a debit entry to an agency without the prior written or similarly authenticated authorization of the agency, shall be liable to the Federal Government for the amount of the transaction, plus interest. The Service may collect such funds using procedures established in the applicable ACH Rules or by instructing a Federal Reserve Bank to debit the ODFI's account at the Federal Reserve Bank or the account of its designated correspondent. The interest charge shall be at a rate equal to the Federal funds rate plus two percent, and shall be assessed for each calendar day, from the day the Treasury General Account (TGA) was debited to the day the TGA is recredited with the full amount due.

(2) An RDFI that accepts an authorization in violation of § 210.4(a) shall be liable to the Federal Government for all credits or debits made in reliance on the authorization. An RDFI that transmits to an agency an authorization containing an incorrect account number shall be liable to the Federal Government for any resulting loss, up to the amount of the payment(s) made on the basis of the incorrect number. If an agency determines, after appropriate investigation, that a loss has occurred because an RDFI transmitted an authorization or notification of change containing an incorrect account number, the agency may instruct the Service to direct a Federal Reserve Bank to debit the RDFI's account for the amount of the payment(s) made on the basis of the incorrect number. The agency shall notify the RDFI of the results of its investigation and provide the RDFI with a reasonable opportunity to respond before initiating such a debit.

(c) *Acquittance of the financial institution.* The final crediting of the correct amount of an entry received and processed by the Federal Reserve Bank and posted to the TGA shall constitute full acquittance of the ODFI and the originator for the amount of the entry. Full acquittance shall not occur if the entries do not balance, are incomplete, are incorrect, or are incapable of being processed. In the case of funds collected by an agency through origination of a debit entry, full acquittance shall not occur until the underlying payment becomes final.

Subpart B—Reclamation of Benefit Payments

§ 210.9 Parties to the reclamation.

(a) *Agreement of RDFI.* An RDFI's acceptance of a benefit payment pursuant to this part shall constitute its agreement to this subpart. By accepting a benefit payment subject to this part, the RDFI authorizes the debiting of the Federal Reserve Bank account utilized by the RDFI in accordance with the provisions of § 210.10(e).

(b) *The Federal Government.* In processing reclamations pursuant to this subpart, the Service shall act pursuant to the direction of the agency that certified the benefit payment(s) being reclaimed.

§ 210.10 RDFI liability.

(a) *Full liability.* An RDFI shall be liable to the Federal Government for the total amount of all benefit payments received after the death or legal incapacity of a recipient or the death of a beneficiary unless the RDFI has the right to limit its liability under § 210.11 of this part. An RDFI shall return any benefit payments received after the RDFI learns of the death or legal incapacity of a recipient or the death of a beneficiary, regardless of the manner in which the RDFI discovers such information. If the RDFI learns of the death or legal incapacity of a recipient or death of a beneficiary from a source other than notice from the agency, the RDFI shall immediately notify the agency of the death or incapacity.

(b) *Notice of Reclamation.* Upon receipt of a notice of reclamation, an RDFI shall provide the information required by the notice of reclamation and return the amount specified in the notice of reclamation in a timely manner.

(c) *Exception to liability rule.* An RDFI shall not be liable for post-death benefit payments sent to a recipient acting as a representative payee or fiduciary on behalf of a beneficiary, if the beneficiary was deceased at the time the authorization was executed and the RDFI did not have actual or constructive knowledge of the death of the beneficiary.

(d) *Time limits.* An agency that initiates a reclamation must do so within 120 calendar days after the date that the agency receives notice of the death or legal incapacity of a recipient or death of a beneficiary. An agency shall not reclaim any post-death or post-incapacity payment(s) made more than six years prior to the most recent payment made by the agency to the recipient's account; provided, however, that if the account balance at the time the RDFI receives the notice of reclamation exceeds the total amount of all post-death or post-incapacity payments made by the agency during such six-year period, this limitation shall not apply and the RDFI shall be liable for the total amount of all payments made, up to the amount in the account at the time the RDFI receives the notice of reclamation and has had a reasonable opportunity (not to exceed one business day) to act on the notice.

(e) *Debit of RDFI's account.* If an RDFI does not return the full amount of the outstanding total or any other amount for which the RDFI is liable under this subpart in a timely manner, the Federal Government will collect the amount outstanding by instructing the appropriate Federal Reserve Bank to

debit the account utilized by the RDFI. The Federal Reserve Bank will provide advice of the debit to the RDFI.

§ 210.11 Limited liability.

(a) *Right to limit its liability.* If an RDFI does not have actual or constructive knowledge of the death or legal incapacity of a recipient or the death of a beneficiary at the time it receives one or more benefit payments on behalf of the recipient, the RDFI's liability to the agency for those payments shall be limited to:

(1) An amount equal to: (i) The amount in the account at the time the RDFI receives the notice of reclamation and has had a reasonable opportunity (not to exceed one business day) to act on the notice, plus any additional benefit payments made to the account by the agency before the RDFI responds in full to the notice of reclamation, or

(ii) The outstanding total, whichever is less; plus

(2) If the agency is unable to collect the entire outstanding total, an additional amount equal to:

(i) The benefit payments received by the RDFI from the agency within 45 days after the death or legal incapacity of the recipient or death of the beneficiary, or

(ii) The balance of the outstanding total, whichever is less.

(b) *Qualification for limited liability.* In order to limit its liability as provided in this section, an RDFI shall:

(1) Certify that at the time the benefit payments were credited to or withdrawn from the account, the RDFI had no actual or constructive knowledge of the death or legal incapacity of the recipient or death of the beneficiary;

(2) Certify the date the RDFI first had actual or constructive knowledge of the death or legal incapacity of the recipient or death of the beneficiary, regardless of how and where such information was obtained;

(3)(i) Provide the name, address, and any other relevant information of the following person(s):

(A) Co-owner(s) of the recipient's account;

(B) Other person(s) authorized to withdraw funds from the recipient's account; and

(C) Person(s) who withdrew funds from the recipient's account after the death or legal incapacity of the recipient or death of the beneficiary.

(ii) If persons are not identified for any of these subcategories, the RDFI must certify that no such information is available and why no such information is available; and

(4) Fully and accurately complete all certifications on the notice of reclamation and comply with the requirements of this part.

(c) *Payment of limited liability amount.* If the RDFI qualifies for limited liability under this subpart, it shall immediately return to the Federal Government the amount specified in § 210.11(a)(1). The agency will then attempt to collect the amount of the outstanding total not returned by the RDFI. If the agency is unable to collect that amount, the Federal Government will instruct the appropriate Federal Reserve Bank to debit the account utilized by the RDFI at that Federal Reserve Bank for the amount specified in § 210.11(a)(2).

(d) *Violation of Subpart B.* An RDFI that fails to comply with any provision of this subpart in a timely and accurate manner, including but not limited to the certification requirements at § 210.11(b) and the notice requirements at § 210.13, shall be liable to the Federal Government for any loss resulting from its act or omission. Any such liability shall be in addition to the amount(s) for which the RDFI is liable under § 210.10 or § 210.11, as applicable.

§ 210.12 RDFI's rights of recovery.

(a) *Matters between the RDFI and its customer.* This subpart does not authorize or direct an RDFI to debit or otherwise affect the account of a recipient. Nothing in this subpart shall be construed to affect the right an RDFI has under state law or the RDFI's contract with a recipient to recover any amount from the recipient's account.

(b) *Liability unaffected.* The liability of the RDFI under this subpart is not affected by actions taken by the RDFI to recover any portion of the outstanding total from any party.

§ 210.13 Notice to account owners.

Provision of notice by RDFI. Upon receipt by an RDFI of a notice of reclamation, the RDFI immediately shall mail to the last known address of the account owner(s) or otherwise provide to the account owner(s) a copy of any notice required by the Service to be provided to account owners as specified in the Green Book. Proof that this notice was sent may be required by the Service.

§ 210.14 Erroneous death information.

(a) *Notification of error to the agency.* If, after the RDFI responds fully to the notice of reclamation, the RDFI learns that the recipient or beneficiary is not dead or legally incapacitated or that the date of death is incorrect, the RDFI shall inform the agency that certified the underlying payment(s) and direct the Service to reclaim the funds in dispute.

(b) *Resolution of dispute.* The agency that certified the underlying payment(s) and directed the Service to reclaim the funds will attempt to resolve the dispute with the RDFI in a timely manner. If the agency determines that the reclamation was improper, in whole or in part, the agency shall notify the RDFI and shall return the amount of the improperly reclaimed funds to the RDFI. Upon certification by the agency of an improper reclamation, the Service may instruct the appropriate Federal Reserve Bank to credit the account utilized by the RDFI at the Federal Reserve Bank in the amount of the improperly reclaimed funds.

Dated: April 6, 1999.

Richard L. Gregg,

Commissioner.

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