

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Ronald Brooks, (202) 874-7573 (Senior Program Analyst, Financial Processing Division); Randall S. Lewis, (202) 874-6877 (Principal Attorney).

SUPPLEMENTARY INFORMATION:

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

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

- The amount of time Treasury has to complete first examination of Treasury checks and to decline payment of a check; and
 - The allocation of loss when Treasury makes final payment on a check prior to the determination that a check presented for payment is a counterfeit check, or bears a forged or unauthorized drawer's signature.
- NPRM II seeks to strike a balance between these competing interests by setting a date certain by which all Treasury checks are deemed paid while allocating the risk of loss to financial institutions only in those instances where reasonable actions, if properly taken by financial institutions, could have prevented a loss to the United States Treasury.

Background

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

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

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

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

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

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

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