

First, the rules currently promulgated at § 240.6 are redesignated as § 240.7. These rules still include the basic provisions governing Treasury's initial demand for payment.

Second, NPRM II moves the TCO provisions from § 240.9 to § 240.10.

Third, NPRM II revises the Administrative Offset provisions (redesignated as § 240.9) to incorporate DCIA provisions requiring United States Disbursing Officers to offset debts referred by creditor agencies against payments to the debtors which a certifying agency has certified for payment to the Disbursing Officer.

Fourth, redesignated § 240.7 is revised to clarify that reclamations are due on the reclamation date. This continues current Treasury policy which is not stated explicitly in the current regulation. This section is revised further to clarify the types of charges that will be added to the reclamation amount, when those amounts will accrue, and how the amounts will be calculated. NPRM II clarifies that Treasury policy is to add such costs in accordance with 31 U.S.C. 3717, and the Federal Claims Collection Standards (FCCS) (31 CFR Parts 900–904).

In accordance with 31 CFR 901.9, Treasury waives administrative costs during the first days following the date of delinquency based on a determination that collection of administrative costs during the first 60 days following the reclamation date would be against equity and good conscience. This policy provides indorsers with a reasonable amount of time to consider the reclamation, conduct any necessary research, and either pay the reclamation or protest it. For the same reasons, Treasury will apply the same policy to interest and penalties, except that penalties will be waived for the first 90 days following the reclamation date. Specifically, paragraph 240.7(d), as revised, provides that: (1) Interest begins accruing at the rate determined under 31 U.S.C. 3717 on the 61st day following the reclamation date; (2) penalties, calculated at not more than 6% of the outstanding balance, begin accruing on the 91st day following the reclamation date; and (3) administrative costs begin accruing on the 61st day following the reclamation date. The definition of Monthly Statement at § 240.2 of NPRM II also is revised to clarify that such statements will include unpaid interest, penalties, and administrative costs.

Fifth, former paragraphs (c) and (d) of § 240.6 are moved to § 240.7 of NPRM II. The substance of current paragraph (c) is incorporated in paragraph (d) of § 240.7 of NPRM II, and the substance

of current paragraph (d) is incorporated in paragraph (a) of § 240.7 of NPRM II. New paragraph 240.7(e) of NPRM II provides notice that, should all efforts to collect an unpaid reclamation be unsuccessful, Treasury will terminate collection action on the unpaid balance of the reclamation (including unpaid interest, administrative costs, and penalties), and the unpaid balance will be reported to the Internal Revenue Service as discharged indebtedness in accordance with 26 U.S.C. 6050P.

b. *Reclamation procedures and protests.* Reclamation protest rules, currently promulgated at § 240.7 (Demand and Protest), provide: (1) That a presenting bank may file a protest within 90 days of the reclamation date; (2) that the protest will be reviewed by a division director or an authorized designee, neither of whom was involved in the initial determination of fraudulent indorsement or alteration of the check; and (3) that Treasury will refrain from collection by means of administrative offset while a timely protest is being considered.

NPRM II moves these provisions to § 240.8 (Reclamation procedures; reclamation protests), and proposes that the existing reclamation procedure and protest provisions be revised to clarify certain current practices. Specifically, the proposal clarifies the rights of any indorser that directly receives a reclamation (*i.e.*, the “reclamation debtor”), including, but not limited to: (1) The right to inspect and copy Treasury records relating to the reclamation; (2) the right to protest the reclamation; and (3) the right to seek a repayment agreement. Paragraph 240.8(b)(1)(i) of NPRM II reiterates the requirement in the current Part 240 that Treasury will not consider protests received more than 90 days after the reclamation date. In addition, the monthly statements will provide notice that Treasury intends to collect the debt through administrative offset if the reclamation debt is not paid within 120 days of the reclamation date.

Consistent with the recent decision by the United States Court of Appeals for the Federal Circuit in *Casa de Cambio Comdiv S.A. de C.V. v. U.S.*, 291 F.3d 1356 (Fed. Cir. 2002), paragraph 240.8(b)(1) of NPRM II also clarifies Treasury policy that protests may be filed only by the recipient of the reclamation, the “reclamation debtor,” and not by other indorsers of the check that is the subject of the reclamation. Protests by an indorser that was not the direct recipient of a reclamation will be accepted only where authorized by law. While paragraph 240.8(b)(1)(ii) of NPRM II provides Treasury with the discretion

to consider information received by indorsers other than the reclamation debtor, any decision by Treasury to exercise such discretion would not, in any way, serve to waive any of Treasury's rights under Part 240, nor would it serve to grant rights to an indorser not otherwise provided in Part 240.

In addition, redesignated paragraph 240.8(c) of NPRM II requires that a protest by the reclamation debtor be filed and a final determination on the protest be issued by Treasury before the reclamation debtor may file a civil lawsuit in relation to Treasury's reclamation action on the check.

6. *Use of powers of attorney in indorsing Treasury checks.* Limitations on the use of powers of attorney for negotiating checks currently are codified in § 240.15. These limitations allow any check to be negotiated under a specific power of attorney which is executed after the issuance of the check and which describes the check in full. General powers of attorney executed in favor of individuals, financial institutions, or other entities may be used to negotiate certain enumerated checks, the right to which does not expire upon the death of the payee/beneficiary. Other types of checks, such as recurring benefit payments, may be negotiated under a special power of attorney that is executed in favor of a financial institution as attorney-in-fact and which states that it is not given to carry into effect an assignment of the right to receive the payment, either to the attorney-in-fact or to any other person. As revised, the rules will change the availability of powers of attorney in the following ways.

a. The proposed rule expands the availability of special powers of attorney by allowing such powers of attorney to be executed in favor of any entity or individual, rather than only financial institutions. However, as is current practice, paragraph 240.16(c) of NPRM II provides that special powers of attorney may be utilized only if they specifically state that they are not being executed with the intent of assigning the right of payment to the attorney-in-fact or to any other person.

b. The proposed rule allows durable special powers of attorney and springing durable special powers of attorney to be used to negotiate classes of checks the right to which expires upon the death of the payee/beneficiary. This includes checks for recurring benefit payments. A durable special power of attorney is a power of attorney that explicitly provides for its continued effect despite the later incompetence of the principal. A springing durable special power of