

Regulatory Flexibility Act

It is hereby certified pursuant to the Regulatory Flexibility Act that this revision, if adopted, will not have a significant impact on a substantial number of small business entities. The major revisions to Part 240 in this proposed regulation incorporate recent statutory changes, or revise current agency practices relating to implementation of FCCS requirements. Specifically, the provisions concerning collection procedures do not create, in and of themselves, new debt collection tools, impose new fees not authorized by law, or otherwise create new limits on the rights of affected parties, including small business entities. The provisions concerning the referral of delinquent debts to other agencies or United States disbursing officials, and the provisions concerning the collection of delinquent debts by means of TCO, are all in furtherance of specific authorities established by the DCIA. In particular, the DCIA provides that, "By presenting Treasury checks for payment a presenting bank is deemed to authorize this offset." 31 U.S.C. 3712(e). Consequently, any economic impact on small entities will be the result of the application of the statute, rather than a direct result of Treasury regulations.

The provisions relating to how and when penalties and administrative costs will be added to delinquent debts represent a change in Treasury policy relating to implementation of the requirements of the FCCS. While the change in policy may result in some additional costs to some small entities, any such additional costs will be the result of Treasury's compliance with the requirements of the FCCS, and not a direct result of this regulation. Further, the impact of the change in policy will not be significant, because the costs are waived for those who pay within 60 days of the date of reclamation and such costs will be incurred only by those who fail to pay a reclamation in a timely fashion.

Provisions relating to declinations clarify existing Treasury practices concerning the processing of checks determined to include a material defect or alteration prior to Treasury's making final payment on a check. Including such provisions benefits financial institutions, as well as the general public, by providing notice of how and when actions by Treasury to decline final payment may be protested.

Finally, while provisions in this rule supersede existing Federal common law to the extent that such law applies to counterfeit checks, and may result in a shift in liability for losses associated

with counterfeit checks, the actual amounts involved are expected to be minimal. An analysis of Treasury statistics for calendar year 2001 indicates that of 95 counterfeit checks presented to Treasury for payment, only one such counterfeit item took more than 30 days to detect. In that instance, the item was detected on the 105th day following presentation. Even in that instance, under the proposed rule, liability for the loss would be shifted to an indorser only if it were determined that the indorser breached the guarantee of authenticity in § 240.3(d) by failing to make all reasonable efforts to ensure that the check was authentic. Consequently, the provisions relating to liability for losses resulting from the payment of counterfeit checks is not expected to have a significant impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Notice and Comment

Public comment is solicited on all aspects of this proposed regulation. Treasury will consider all comments made on the substance of this proposed regulation, but does not intend to hold hearings.

List of Subjects in 31 CFR Part 240

Banks, Banking, Checks, Counterfeit checks, Federal Reserve system, Forgery, Guarantees.

Authority and Issuance

For the reasons stated in the preamble, Part 240 of title 31 is proposed to be revised to read as follows:

PART 240—INDORSEMENT AND PAYMENT OF CHECKS DRAWN ON THE UNITED STATES TREASURY

Subpart A—General Provisions

Sec.

- 240.1 Scope of regulations.
- 240.2 Definitions.
- 240.3 Presentment guarantees.
- 240.4 Limitations on payment; cancellation and distribution of proceeds of checks.
- 240.5 Provisional credit; first examination; declination; final payment.
- 240.6 Declination protest.
- 240.7 Reclamation of amounts of paid checks.
- 240.8 Reclamation procedures; reclamation protests.
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- 240.10 Treasury Check Offset.
- 240.11 Processing of checks.

Subpart B—Indorsement of Checks

- 240.12 Indorsement by payees.
- 240.13 Checks issued to incompetent payees.
- 240.14 Checks issued to deceased payees.

- 240.15 Checks issued to minor payees.
- 240.16 Powers of attorney.
- 240.17 Lack of authority to shift liability.
- 240.18 Implementing instructions.
- 240.19 Reservation of rights.

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 321, 3327, 3328, 3331, 3334, 3343, 3711, 3712, 3716, 3717; 32 U.S.C. 234 (1947); 318 U.S.C. 363 (1943).

Subpart A—General Provisions

§ 240.1 Scope of regulations.

(a) The regulations in this part prescribe the requirements for indorsement and the conditions for payment of checks drawn on the United States Treasury. These regulations also establish procedures for collection of amounts due the United States Treasury based on claims arising from the breach of presentment guarantees by presenting banks and other indorsers of Treasury checks when checks bearing material defects or alterations or forged disbursing officer (drawer) signatures are presented for payment and are paid.

(b) Standards contained in this regulation supersede existing Federal common law to the extent that they are inconsistent with Federal common law rules relating to counterfeit checks. Under the provisions of this part, the risk of loss on certain counterfeit checks is placed on presenting banks and other indorsers unless Treasury fails to timely reclaim on a check payment in accordance with 31 U.S.C. 3712(a) and § 240.7 of this part. Treasury will reclaim on counterfeit checks that are deemed paid under § 240.5(d) when a presenting bank or other indorser fails to make all reasonable efforts to ensure that a check is an authentic Treasury check.

§ 240.2 Definitions.

Administrative offset or *offset*, for purposes of this section, has the same meaning as defined in 31 U.S.C. 3701(a)(1) and 31 CFR Part 285.

Agency means any agency, department, instrumentality, office, commission, board, service, or other establishment of the United States authorized to issue Treasury checks or for which checks drawn on the United States Treasury are issued.

Certifying agency means an agency authorizing the issuance of a payment by a disbursing official in accordance with 31 U.S.C. 3325.

Check or *checks* means a check or checks drawn on the United States Treasury.

Check payment means the amount paid to a presenting bank by a Federal Reserve Bank.

Counterfeit check means a document that purports to be an authentic check