

Electronic Fund Transfer (EFT) payments. The Official Staff Commentary on Regulation E (Commentary) states that the electronic re-presentment of a returned check is not covered by Regulation E because the transaction is originated by check. Commentary, Section 205.3, Paragraph 3(c)(1). Regulation E does apply, however, to any fee authorized by the consumer to be debited electronically from the consumer's account because the check was returned for insufficient funds. Accordingly, such a fee may be collected by ACH debit only if authorized by the consumer. The Commentary states that a consumer authorizes a one-time EFT where the consumer receives notice that the transaction will be processed as an EFT and completes the transaction. Commentary, Section 205.3, Paragraph 3(b).

Part 210 currently provides that agencies may collect a service fee by ACH debit in the case of accounts receivable and point-of-purchase entries that are returned for insufficient funds, provided that notice of the fee has been included in the required disclosure.³ We are proposing to expand this provision to allow agencies to originate an ACH debit entry in order to collect a service fee related to an RCK entry if notice of the fee is given to the Receiver before the agency accepts the Receiver's check.

B. Reclamations; Misdirected Payments

We are proposing to amend part 210 to address certain issues relating to the reclamation of Federal benefit payments and the receipt of misdirected Federal payments. The changes that we are proposing to make are:

(1) To require financial institutions that learn that an account holder has died to return any subsequent Federal benefit payments using return reason code R15 (Beneficiary or Account Holder Deceased) or R14 (Representative Payee Deceased), as appropriate;

(2) To provide that financial institutions are not liable for post-death benefit payments to which the recipient was entitled;

(3) To require a financial institution that becomes aware that a Federal benefit payment was misdirected to notify the agency that sent the payment of the error;

(4) To prohibit agencies from reclaiming payments that were made more than seven years prior to the date of the notice of reclamation;

(5) To limit the information that agencies may request from financial institutions, in accordance with the Right to Financial Privacy Act; and

(6) To allow financial institutions to notify an account owner of the receipt of a notice of reclamation "promptly" rather than "immediately."

We are also making several non-substantive changes to the wording of the reclamation provisions of part 210 in order to correct typographical errors and clarify its operation.

1. Mandatory Use of R15 or R14 Return Reason Code

A financial institution is required to return any Federal benefit payment received after the institution learns of the death of the recipient. *See* 31 CFR 210.10(a). However, part 210 does not specify what ACH return reason code financial institutions must use in effecting these returns. In some cases, financial institutions use an R02 (Account Closed) code, whereas in other cases financial institutions use an R15 (Beneficiary or Account Holder Deceased) or R14 (Representative Payee Deceased) code. Most Federal paying agencies that receive payments returned with an R15 code automatically stop payments to the recipient and begin an investigation. In contrast, when a payment is returned using an R02 or other non-death code, agencies may only temporarily suspend the payment rather than terminating further payments to the recipient. Thus, the use of the R02 or other non-death code to return a payment made to a deceased recipient may result in further payments being issued to the deceased beneficiary, creating a risk of loss of additional public funds.

We are proposing to require financial institutions to return benefit payments using an R15 or R14 code, as appropriate, if the financial institution is aware that the recipient is deceased. This requirement would not impose any additional burden on financial institutions to take steps to learn of the death of account holders, but would simply require that, in circumstances where the financial institution is aware of the death of the recipient, the R15 or R14 code be used to return payments. We are also proposing to amend the regulation to provide that a Receiving Depository Financial Institution (RDFI) that returns a payment using the R15 or R14 code is deemed to have satisfied the requirement to notify an agency of the death of a payment recipient if the RDFI

learns of the death from a source other than notice from the agency. We believe that the use of the R15 and R14 codes is an efficient means of notifying agencies that a recipient is deceased because of the stop on subsequent payments and investigation that is automatically triggered when an agency receives an R15 returned payment. We request comment both from agencies and from financial institutions on this proposed rule change.

2. Post-Death Payments to Which Recipient Is Entitled

We are proposing to amend part 210 to provide an exception to the general rule that an RDFI is liable to the Federal government for all post-death benefit payments unless the RDFI has the right to limit its liability. Currently, part 210 imposes on RDFIs partial or full liability for benefit payments received after the death or legal incapacity of a recipient. The allocation of this liability to RDFIs is based on the presumption that a post-death payment is improper because the recipient is not entitled to the payment. However, we have become aware that there are certain types of payments to which a recipient (or his or her estate) is legally entitled, and which an agency may not have the legal obligation or authority to recover, notwithstanding that the payment was issued following the recipient's death. For example, agencies sometimes issue payments that represent retroactive benefits owed to the recipient. The recipient's legal entitlement to such a payment does not necessarily end upon death.

One of the premises underlying the allocation of liability to financial institutions for payments that agencies issue to deceased recipients is that because these payments are improper, there is a loss of public funds unless the payments are recovered. We do not believe that it is equitable to impose liability on a financial institution where there is no loss of public funds because the agency that certified the payment has determined that the payment was properly issued notwithstanding its issuance following the recipient's death. Accordingly, we are proposing to amend part 210 to address these situations. In determining whether to reclaim post-death payments, we will rely on the determination of the certifying agency as to whether a recipient is entitled to a post-death payment. It is our understanding that, for the vast majority of Federal benefit payments, death does in fact end the recipient's legal entitlement to the payments. Therefore, as a practical matter, the effect of this amendment would be that financial institutions may expect that a small

³ Any agency that seeks to collect a service fee from the issuer of a returned check must have independent authority to do so. Part 210 does not authorize the collection of a service fee, but only provides an electronic means through which such a fee can be collected if authority exists.