

number of post-death payments will not be the subject of a notice of reclamation. We request comment both from financial institutions and from agencies on this proposal.

3. Misdirected Federal Payments

Although the vast majority of electronic Federal payments are delivered without incident to the intended recipient, on rare occasions a Federal payment is delivered to an account that does not belong to the entitled payee. This can occur, for example, if the payee mistakenly provides an incorrect account or routing number to the paying agency. RDFIs may rely on the account number alone in posting a payment, and have no obligation to verify that the payee name matches the name of the account holder on the RDFI's records.

In some cases, the owner of an account to which a Federal payment was erroneously delivered has brought the erroneous payment to the attention of the RDFI. Sometimes the RDFI contacts the agency that originated the payment. In other instances, rather than notifying the agency, RDFIs have handled such errors by removing the funds from the account to which they were credited and crediting the funds to the account of the intended payee, based on the payee name and/or the individual identification number in the ACH information accompanying the payment. When this approach is taken, the agency that originated the payments remains unaware of any problem, meaning that the agency may continue to direct subsequent payments to the wrong account.

The repeated delivery of payments to the wrong account, particularly where the account owner has taken steps to bring the mistake to the attention of the bank, undermines public confidence in the Federal government's use of the ACH system. We do not believe that it is unduly burdensome to require financial institutions to contact paying agencies in the small number of cases in which financial institutions are made aware that a Federal payment has been misdirected. We are requesting comment on this proposed amendment to part 210, including the means by which this notice to agencies could be most conveniently and effectively provided.

4. Seven Year Limit on Reclamations

We are proposing to amend the limitation on the age of payments that an agency may reclaim. Part 210 currently prohibits (subject to one exception) an agency from reclaiming any post-death or post-incapacity

payment made more than six years prior to the most recent payment made by the agency to the recipient's account. There have, however, been situations in which the most recent payment that an agency made to a recipient's account took place several years before the reclamation was initiated. Thus, notwithstanding the existing limitation, there have been reclamations initiated by agencies for payments made many years ago. Although these reclamations are infrequent, they are particularly difficult and time-consuming to process because neither agencies nor financial institutions retain records indefinitely, meaning that very old payment records or related account information frequently is not available. We therefore are proposing to prohibit agencies from reclaiming any payment that was made more than seven years prior to the date of the notice of reclamation. The only exception to this limitation would be in a situation in which the account balance exceeds the total amount of the payments that the agency would otherwise be permitted to reclaim after applying the seven-year limitation.

5. Right to Financial Privacy Act Changes

Part 210 currently provides that in order to limit its liability in a reclamation, a financial institution must respond to a notice of reclamation by providing the names, addresses, and "any other relevant information" regarding account co-owners and other persons who withdrew, or were authorized to withdraw, funds from the recipient's account after the death or legal incapacity of the recipient. 31 CFR 210.11(b)(3)(i). This information is used by paying agencies to pursue the recovery of the payments from persons who have made use of the funds but who were not entitled to them.

The information that an agency may obtain from a financial institution in connection with a reclamation is limited by the Right to Financial Privacy Act, 12 U.S.C. 3401 *et seq.* (Financial Privacy Act). The Financial Privacy Act prohibits, subject to some exceptions, agencies from obtaining from financial institutions any information contained in or derived from the financial records of any customer, except pursuant to an administrative or judicial subpoena, a search warrant, or other method prescribed by the Act. The Financial Privacy Act contains two exceptions that permit agencies to obtain from a financial institution certain information related to an account to which an erroneous Social Security Federal Old-Age, Survivors, and Disability Insurance benefit payment, or a benefit payment

made by the Railroad Retirement Board or Department of Veterans' Affairs (VA), was sent without following the Act's procedural requirements. The exceptions permit disclosure by a financial institution of the name and address of any customer "where the disclosure of such information is necessary to, and such information is used solely for the purpose[s] of, the proper administration of" title II of the Social Security Act (42 U.S.C. 401 *et seq.*), the Railroad Retirement Act (45 U.S.C. 231 *et seq.*) or benefits programs under laws administered by VA. 12 U.S.C. 3413(k), (p). These exceptions permit disclosure only of names and addresses—not of other transaction information, such as dates and times of withdrawals.

In order to clarify that the information that financial institutions are required to provide in connection with a reclamation is limited to the information specified in the Financial Privacy Act, we are proposing to revise the wording of subsection 210.11(b)(3)(i).

6. Notification to Account Owners

We are proposing to revise § 210.13 in order to allow financial institutions to notify an account owner of the receipt of a notice of reclamation "promptly" rather than "immediately." We do not believe that the need to notify account owners of a reclamation is so urgent as to require immediate notification. This change is intended to reduce an unnecessary burden on financial institutions.

III. Section-by-Section Analysis

Section 210.2(d)

We are proposing to revise the definition of Applicable ACH Rules at § 210.2(d) by adding a new subparagraph (8) in order to exclude ACH Rules 3.6.2 and 3.7.1 from the definition. ACH Rules 3.6.2 and 3.7.1, respectively, prohibit the origination of ARC entries and POP entries using, among other things, third-party checks, credit card checks, obligations of financial institutions (e.g., traveler's checks, cashier's checks, official checks, money orders, etc.), and checks drawn on a state or local government.

Section 210.2(i)

We are proposing to add a new definition of "business check" to § 210.2. The definition would include not only any check drawn on a corporate or business deposit account (including a third-party check), but also credit card checks; negotiable instruments issued by a financial