

§ 235.6 Implementing instructions.

Procedural instructions implementing these regulations will be issued by the Commissioner of the Financial Management Service in volume I, part 4 of the Treasury Financial Manual.

[54 FR 35642, Aug. 29, 1989]

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

GENERAL PROVISIONS

Sec.

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

INDORSEMENT OF CHECKS

- 240.13 Indorsement by payees.
- 240.14 Checks issued to incompetent payees.
- 240.15 Checks issued to deceased payees.
- 240.16 Checks issued to minor payees.
- 240.17 Powers of attorney.
- 240.18 Lack of authority to shift liability.
- 240.19 Reservation of rights.

APPENDIX A TO PART 240—OPTIONAL FORMS FOR POWERS OF ATTORNEY AND THEIR APPLICATION

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; 332 U.S. 234 (1947); 318 U.S. 363 (1943).

SOURCE: 69 FR 61568, Oct. 19, 2004, unless otherwise noted.

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 regula-

tions 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 regulation, 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 §240.8 of this regulation. Treasury will reclaim on counterfeit checks that are deemed paid under §240.6(d) of this regulation when a presenting bank or other indorser fails to make all reasonable efforts to ensure that a check is an authentic Treasury check.

(c) Nothing in this regulation supercedes the rights or obligations of Treasury or any other person that are set forth in Regulation CC, 12 CFR part 229, with respect to substitute checks, as defined therein.

§ 240.2 Definitions.

(a) *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.

(b) *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.

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

(d) *Check or checks* means an original check or checks; an electronic check or checks; or a substitute check or checks.

(e) *Check payment* means the amount paid to a presenting bank by a Federal Reserve Bank.

§ 240.2

31 CFR Ch. II (7-1-07 Edition)

(f) *Counterfeit check* means a document that purports to be an authentic check drawn on the United States Treasury, but in fact is not an authentic check.

(g) *Days* means calendar days. For purposes of computation, the last day of the period will be included unless it is a Saturday, Sunday, or Federal holiday; the first day is not included. For example, if a reclamation was issued on July 1, the 90 day protest period under §240.9(b) would begin on July 2. If the 90th day fell on a Saturday, Sunday or Federal holiday, the protest would be accepted if received on the next business day.

(h) *Declination* means the process by which Treasury refuses to make final payment on a check, *i.e.*, declines payment, by instructing a Federal Reserve Bank to reverse its provisional credit to a presenting bank.

(i) *Declination date* means the date on which the declination is issued by Treasury.

(j) *Disbursing official* means an official, including an official of the Department of the Treasury, the Department of Defense, any Government corporation (as defined in 31 U.S.C. 9101), or any official of the United States designated by the Secretary of the Treasury, authorized to disburse public money pursuant to 31 U.S.C. 3321 or another law.

(k) *Drawer's signature* means the signature of a disbursing official placed on the front of a Treasury check as the drawer of the check.

(l) *Electronic check* means an electronic image of a check drawn on the United States Treasury, together with information describing that check, that meets the technical requirements for sending electronic items to a Federal Reserve Bank as set forth in the Federal Reserve Banks' operating circulars.

(m) *Federal Reserve Bank* means a Federal Reserve Bank (FRB) or a branch of a Federal Reserve Bank.

(n) *Federal Reserve Processing Center* means a Federal Reserve Bank center that images Treasury checks for archiving check information and transmitting such information to Treasury.

(o) *Financial institution* means:

(1) Any insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(2) Any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(3) Any savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(4) Any insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752) or any credit union which is eligible to make application to become an insured credit union under section 201 of such Act (12 U.S.C. 1781);

(5) Any savings association as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) which is an insured depository institution (as defined in such Act) (12 U.S.C. 1811 *et seq.*) or is eligible to apply to become an insured depository institution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*); and

(6) Any financial institution outside of the United States if it has been designated by the Secretary of the Treasury as a depository of public money and has been permitted to charge checks to the General Account of the United States Treasury.

(p) *First examination* means Treasury's initial review of a check that has been presented for payment. The initial review procedures, which establish the authenticity and integrity of a check presented to Treasury for payment, may include reconciliation; retrieval and inspection of the check or the best available image thereof; and other procedures Treasury deems appropriate to specific circumstances.

(q) *Forged or unauthorized drawer's signature* means a drawer's signature that has been placed on the front of a Treasury check by a person other than:

(1) A disbursing official; or

Fiscal Service, Treasury

§ 240.2

(2) A person authorized to sign on behalf of a disbursing official.

(r) *Forged or unauthorized indorsement* means:

(1) An indorsement of the payee's name by another person who is not authorized to sign for the payee; or

(2) An indorsement of the payee's name made by another person who has been authorized by the payee, but who has not indorsed the check in accordance with §240.4 and §§240.13 through 240.17; or

(3) An indorsement added by a financial institution where the financial institution had no authority to supply the indorsement; or

(4) A check bearing an altered payee name that is indorsed using the payee name as altered.

(s) *Guarantor* means a financial institution that presents a check for payment and any prior indorser(s) of a check.

(t) *Material defect or alteration* means:

(1) The counterfeiting of a check; or

(2) Any physical change on a check, including, but not limited to, a change in the amount, date, payee name, or other identifying information printed on the front or back of the check (but not including a forged or unauthorized drawer's signature); or

(3) Any forged or unauthorized indorsement appearing on the back of the check.

(u) *Minor* means the term minor as defined under applicable State law.

(v) *Monthly statement* means a statement prepared by Treasury which includes the following information regarding each outstanding reclamation:

(1) The reclamation date;

(2) The reclamation number;

(3) Check identifying information; and

(4) The balance due, including interest, penalties, and administrative costs.

(w) *Original check* means the first paper check drawn on the United States Treasury with respect to a particular payment transaction.

(x) *Payee* means the person that the certifying agency designated to receive payment pursuant to 31 U.S.C. 3528.

(y) *Person* means an individual, institution, including a financial institu-

tion, or any other type of entity; the singular includes the plural.

(z) *Presenting bank* means:

(1) A financial institution which, either directly or through a correspondent banking relationship, presents checks to and receives provisional credit from a Federal Reserve Bank; or

(2) A depository which is authorized to charge checks directly to Treasury's General Account and present them to Treasury for payment through a designated Federal Reserve Bank.

(aa) *Provisional credit* means the initial credit provided to a presenting bank by a Federal Reserve Bank. Provisional credit may be reversed by Treasury until the completion of first examination or final payment is deemed made pursuant to §240.6(d).

(bb) *Reasonable efforts* means, at a minimum, verifying the existence of the Treasury watermark on an original check. Based upon the facts at hand, including whether a check is an original check, a substitute check or an electronic check, reasonable efforts may require the verification of other security features.

(cc) *Reclamation* means a demand for the amount of a check for which Treasury has requested an immediate refund.

(dd) *Reclamation date* means the date on which a reclamation is issued by Treasury. Normally, demands are sent to presenting banks or other indorsers within two business days of the reclamation date.

(ee) *Reclamation debt* means the amount owed as a result of Treasury's demand for refund of a check payment, and includes interest, penalties and administrative costs assessed in accordance with §240.8.

(ff) *Reclamation debtor* means a presenting bank or other indorser of a check from whom Treasury has demanded a refund in accordance with §§240.8 and 240.9. The reclamation debtor does not include a presenting bank or other indorser who may be liable for a reclamation debt, but from which Treasury has not demanded a refund.

(gg) *Recurring benefit payment* includes but is not limited to a payment of money for any Federal Government entitlement program or annuity.

§ 240.3

(hh) *Substitute check* means a paper reproduction of a check drawn on the United States Treasury that meets the definitional requirements set forth at 12 CFR 229.2(aaa).

(ii) *Treasury* means the United States Department of the Treasury, or when authorized, an agent designated by the Secretary of the Treasury or his delegee.

(jj) *Treasury Check Offset* means the collection of an amount owed by a presenting bank in accordance with 31 U.S.C. 3712(e).

(kk) *Truncate* means to remove a paper check from the forward collection or return process and send to a recipient, in lieu of such paper check, a substitute check or an electronic check.

(ll) *U.S. securities* means securities of the United States and securities of Federal agencies and Government corporations for which Treasury acts as the transfer agent.

(mm) *Writing* includes electronic communications when specifically authorized by Treasury in implementing instructions.

§ 240.3 Electronic checks and substitute checks.

(a) *Legal equivalence of electronic checks.* An electronic check for which a presenting bank has provided the guarantees described in § 240.4 is the legal equivalent of an original or substitute check for purposes of this part if the electronic check accurately represents all of the information on the front and back of the check that the presenting bank truncated. If a financial institution presents an electronic check for payment and the check is subject to return, Treasury may effect the return using an electronic check, but this part does not create any right for the presenting bank to return the check to the payee or any other person using an electronic check.

(b) *Safekeeping of original checks.* Any financial institution that creates a substitute check or electronic check shall prevent unauthorized access to the original or substitute check that was truncated by storing the check, until it is destroyed, in a manner consistent with federal banking agency

31 CFR Ch. II (7-1-07 Edition)

guidelines for safeguarding customer information.

§ 240.4 Presentment guarantees.

The guarantors of a check presented to the Treasury for payment are deemed to guarantee to the Treasury all of the following:

(a) *Indorsements.* That all prior indorsements are genuine, whether or not an express guarantee is placed on the check. When the first indorsement has been made by one other than the payee personally, the presenting bank and the indorsers are deemed to guarantee to the Treasury, in addition to other guarantees, that the person who so indorsed had unqualified capacity and authority to indorse the check on behalf of the payee.

(b) *Alterations.* That the check has not been materially altered.

(c) *Drawer's signature.* That the guarantors have no knowledge that the signature of the drawer is forged or unauthorized.

(d) *Authenticity.* That the guarantors have made all reasonable efforts to ensure that a check is an authentic Treasury check, not a counterfeit check.

(e) *Electronic check.* If the check is an electronic check, that—

(1) The check accurately represents all of the information on the front and back of the original or substitute check that was truncated and meets the technical requirements for sending electronic items to a Federal Reserve Bank as set forth in the Federal Reserve Banks' operating circulars;

(2) Treasury will not receive presentment of, or otherwise be charged for, the electronic check, the original check, or a substitute check (or a paper or electronic reproduction of any of the foregoing) such that Treasury will be asked to make payment based on a check it already has paid; and

(3) Treasury's receipt of the electronic check instead of the original or substitute check will not result in the loss of Treasury's ability to determine whether the check contains a material defect or alteration.

(f) *Substitute check.* If the check is a substitute check, that the guarantors make the warranties set forth at 12