

DEPARTMENT OF THE TREASURY**Fiscal Service****31 CFR Part 203****RIN 1510-AA37****Treasury Tax and Loan Depositories and Payment of Federal Taxes****AGENCY:** Financial Management Service, Fiscal Service, Treasury.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Internal Revenue Code mandates that certain taxpayers use electronic funds transfer (EFT) for the payment of Federal taxes. Temporary regulations published by the Internal Revenue Service (IRS) implement this requirement, providing guidance to taxpayers relating to the deposit of taxes using EFT mechanisms. These proposed regulations are necessary for the operation of the Electronic Federal Tax Payment System (EFTPS). The EFTPS is projected to begin operation in the fall of 1996. These regulations provide rules for financial institutions and Federal Reserve Banks that use EFT mechanisms to process Federal tax payments through the EFTPS. The regulations also update the rules governing Treasury's investment program. The Small Business Job Protection Act of 1996 provides that certain taxpayers are not required to begin using EFT until July 1, 1997 (rather than, as originally scheduled, on January 1, 1997). This change does not affect and is not addressed in these regulations.

DATES: Comments must be received on or before November 29, 1996.

ADDRESSES: Comments or inquiries may be mailed to Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, Financial Management Service, Room 420, 401 14th Street, S.W., Washington, DC 20227. A copy of this proposed rule is being made available for downloading from the Financial Management Service home page at the following address: <http://www.ustreas.gov/treasury/bureaus/finman/>.

FOR FURTHER INFORMATION CONTACT: Mark Matolak, Financial Program Specialist; Donald E. Clark, Financial Program Specialist; Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, 401 14th Street, S.W., Washington, D.C. 20227, (202) 874-6590; or Margaret Roy, Principal Attorney, at (202) 874-6680.

SUPPLEMENTARY INFORMATION:**Background**

Currently, 31 CFR Part 203 governs the designation of certain financial

institutions as Treasury tax and loan (TT&L) depositories; TT&L depository participation in the paper-based Federal Tax Deposit (FTD) system; and investment of Treasury's excess operating cash in TT&L investments. This document proposes use of five new electronic methods of paying taxes, and proposes slight changes to the investment program.

Tax Payment Methods

Pursuant to section 6302(h) of the Internal Revenue Code, the Secretary of the Treasury is to develop and implement an electronic funds transfer (EFT) system to be used for the collection of depository taxes, so that the taxes are credited to the General Account of the Treasury on the tax due date. See Pub. L. No. 103-182, § 523, 107 Stat. 2057, 2161 (1993); codified at 26 U.S.C. 6302(h). The Act mandates that a certain percentage of certain types of taxes be collected using EFT methods each year. To meet these requirements, the Financial Management Service (FMS) has, in conjunction with the Internal Revenue Service (IRS) and Federal Reserve Banks (FRB), devised the Electronic Federal Tax Payment System (EFTPS), which is an electronic system for reporting and paying Federal taxes. The EFTPS will benefit both taxpayers and the Federal Government by providing greater payment and reporting efficiencies and by expediting the availability of funds and investment decision-making information. These revisions will govern the processing of tax payments through the EFTPS by financial institutions and the FRBs.

Currently, most depository taxes are paid using the paper-based FTD system, which requires the taxpayer to present its tax payment and a paper coupon to a financial institution designated by the Treasury Department (Treasury) as a TT&L depository. The depository stamps the coupon, forwards it to Treasury, and credits the payment to a non-interest bearing TT&L account. The depository retains the funds overnight. The next day the TT&L account is debited and the funds are either invested in obligations of the TT&L depository or are transferred to Treasury's General Account (TGA) at the FRB.

The effort to convert the current paper-based FTD system to an electronic system has been underway since 1990 with the use of the prototype ADEPT and TAXLINK systems. Most recently, TAXLINK was developed to test two methods of electronic payment: Automated Clearing House (ACH) debit and credit entries. These two methods are well established in both the Federal and private sectors. Using the ACH

debit method, Treasury, through a financial agent and with the authorization of the taxpayer, sends an electronic debit entry to a taxpayer's account at the taxpayer's financial institution. Using the ACH credit method, the taxpayer authorizes its financial institution to send an electronic credit entry from the taxpayer's account to Treasury. After the initial authorization process, the financial institution must begin the ACH payment process at least one business day before the tax due date. Thus, ACH debit and credit entries are "future-day" entries. These methods have proved successful in the TAXLINK program, and are incorporated into the EFTPS system.

The EFTPS program also offers three other payment methods. These methods, Fedwire value, Fedwire non-value, and Direct Access, are different from ACH methods in that Treasury gains the value of the payment the same day that the payment is initiated. Thus, these three methods are called "same-day" payment methods. They are considered exception processing and are offered to accommodate the needs of certain taxpayers that do not have information available to initiate the transaction one business day prior to the tax due date, or to correct a deficiency in an ACH payment.

Fedwire value is a funds transfer system owned and operated by the FRBs and currently is used by the FMS for collections. Fedwire non-value is a new method of collection, which involves sending information and authorization to make payments over the FRBs' Fedwire system. The Direct Access method also involves sending information to the Federal Reserve, but uses a computer interface or a new application called the "Fedline Taxpayer Deposit Application." The FMS reserves the right to add additional methods of electronic funds transfer in the future, as appropriate.

Financial Institution Participation and Responsibilities

The EFTPS will increase the ability of all financial institutions to participate in processing Federal tax payments. Currently, financial institutions must be designated as TT&L depositories to process FTD payments, and must pledge collateral to secure the tax collections they process. In contrast, financial institutions processing tax payments under the EFTPS need not be designated as TT&L depositories and need not pledge collateral, unless they elect to participate in Treasury's investment program.

In order to provide maximum flexibility to taxpayers and financial institutions, the FTD system is not being eliminated at this time. However, the FMS anticipates that by 1999, it will transition those taxpayers using the FTD system to another form of payment, such as a lockbox arrangement. The proposed regulations governing the FTD system are not substantially changed from the current rule.

Financial institutions which process EFTPS payments for their taxpayer customers have the following responsibilities: assisting taxpayers in enrolling in the system; initiating and responding to ACH prenotification entries; processing both ACH and/or same-day transactions; and providing a transaction trace number to the taxpayer as evidence that the taxpayer has completed those actions necessary to initiate a tax payment. By contract with the taxpayers, financial institutions may impose conditions to making payments, consistent with these regulations and applicable law.

To assist in the processing of the tax payments and tax information, the FMS has designated two financial institutions as Treasury's financial agents. These two institutions will enroll all mandated and voluntary EFT taxpayers in the EFTPS, compile payment information for Treasury, and in the case of the ACH debit method, originate the debit entries to the taxpayer's financial institution. In addition, the FRBs, in their capacity as fiscal agents for Treasury, play a role in the system by providing same-day reporting and payment mechanisms.

In general, this rulemaking proposes to place liability for errors on the party making the errors. If the taxpayer properly instructs the financial institution and complies with all requirements of its financial institution, and the financial institution is late in transmitting the tax payment to Treasury, then the FMS will charge the financial institution for the lost value of funds.

The regulations provide that, by processing these transactions, the financial institution authorizes the FRB to charge the interest to the financial institution's reserve account. This interest provision serves the dual purposes of encouraging financial institutions to follow efficient procedures, and of recovering the value of the funds for the Government.

The two financial institutions designated as Treasury's financial agents to perform services such as compiling payment information, and originating ACH debit entries, are prohibited from charging taxpayers for these services.

Treasury's Investment Program

In addition to providing guidance for financial institutions in processing tax payments, these regulations also govern Treasury's investment program. Under that program, Treasury invests in open-ended, interest-bearing obligations of the financial institution held in a "note balance." To receive investments, a financial institution must be designated as a TT&L depository and must post collateral.

Currently, funds for investment are derived from FTD payments. With the implementation of the EFTPS, electronic payments also will be a source of funds.

For TT&L note option depositories processing EFTPS payments, an important consideration in selecting an electronic payment mechanism is the availability of funds to Treasury's investment program. Of the five EFT methods, Fedwire value is the least appealing to both Treasury and TT&L note option depositories. Under Fedwire value, monies collected are not directly invested in interest-bearing obligations of TT&L note option depositories, but instead are credited first to the TGA at the FRB. Use of Fedwire value thus not only diverts funds from the banking system, but also delays Treasury's investment opportunities.

Related Rules

Regulations promulgated by the IRS govern the rights and responsibilities of taxpayers using the EFTPS. See temporary regulations published at 59 FR 35,414 and 61 FR 11548. The ACH debit and credit entries covered by this Part also will be subject to 31 CFR Part 210. The FMS published for comment proposed revisions to Part 210 on September 30, 1995. (See 59 FR 50,112). The FMS anticipates issuing a revised notice of proposed rulemaking for Part 210 in the near future. Publication of the revisions to 31 CFR Part 210 at this time is important because of the dramatic increase in volume of EFT tax payments expected as the EFTPS is implemented. Procedural instructions for financial institutions on the EFTPS will be found in the Treasury Financial Manual, and FRB Operating Circulars.

Comments

The FMS invites comments on all aspects of these proposed regulations. The FMS is interested in how these rule changes may affect the banks' participation in this program and their relationships with their customers. In particular, comments are requested on the following:

1. Section 203.13 of the proposed regulations provides that the FMS may

establish that ACH credit entries made at the direction of taxpayers be delivered to the FRB by a deadline that is different from that currently required for ACH credit entries.

The FMS anticipates that if a different deadline is required, it would be approximately 11:00 p.m. on the day before the entry is to settle. This potential deadline ensures sufficient time for the transfer of credit entry information to Treasury for purposes of maximizing the timely investment of tax receipts.

2. In § 203.13(c)(1) of the proposed regulations, financial institutions are required to send an ACH prenotification entry for each new taxpayer paying taxes using the ACH credit entry method. This entry may be in the form of a zero dollar ACH entry.

This requirement is to validate taxpayer data to ensure that future payments can be posted to the credit of the correct taxpayer.

3. Section 203.6(a) of the proposed regulations allows depositories the option of either electing to continue to process paper-based FTDs, or choosing not to process such FTDs. This section affords financial institutions maximum flexibility to determine the services they wish to offer, and relies on market forces to provide sufficient services.

4. The FMS is contemplating restricting the use of the same-day options (Fedwire non-value and Direct Access) to TT&L note option depositories. This action will ensure that tax payments will remain within the commercial banking system by flowing directly to TT&L note option depositories, thereby maximizing Treasury's investment opportunities.

5. What effects, if any, these changes have on the business relationships of financial institutions with taxpayer/customers and/or with the Government?

Section by Section Analysis

The following lists the proposed sections, and notes the changes from the current regulation.

1. Subpart A—General Information—§§ 203.1–203.9 generally update the current rule, with no substantive changes.

Several new definitions are added to § 203.2 (*Definitions*) to reflect the new methods of payment; other definitions are updated and clarified. Sections 203.3 and 203.4, regarding financial institution eligibility and application for depository status, are revised, with minor nonsubstantive changes, from § 203.3 of the current rule. Section 203.5 regarding the depository agreement, is based on current § 203.6. Section 203.6, regarding the obligations of the

depository, updates current § 203.7 and adds a provision regarding the obligation of a depository which only processes electronic payments.

Section 203.7 (*Compensation for Services*) retains the intent of current § 203.13, and adds that the Federal Government may decide not to compensate financial institutions for processing tax payments. Section 203.8 combines the information in current §§ 203.11 and 203.15 regarding termination of depository status and change of options. Section 203.9 (*Additional Instructions*) combines references to procedural instructions and Federal Reserve instructions.

2. Subpart B—Electronic Federal Tax Payments—§§ 203.10–203.17 are entirely new; the current rule provides only for paper tax payments. Section 203.10 defines the scope of the subpart and states that financial institutions which process electronic tax payments shall adhere to the provisions of Part 203.

Section 203.11 describes the financial institution's responsibility in processing taxpayer enrollments. Financial institutions shall verify enrollment information and sign the enrollment form. The enrollment information must be transmitted to Treasury's financial agent in paper form and may also be transmitted electronically.

Section 203.12 describes generally the five types of electronic payment methods.

Section 203.13 lists the responsibilities of financial institutions in originating and receiving ACH credit and debit entries. Financial institutions are required to verify the accuracy of the first entry sent to or from Treasury, in order to ensure that the taxpayer's payment will be credited correctly. This section also states that credits sent by financial institutions can only be reversed with the approval of the IRS.

Section 203.14 lists the responsibilities of the financial institutions in originating same-day payments. Same-day payments must be received by 2:00 p.m. FRB head office local zone time. If not received by that time, the FRB will return the payments to the financial institution. A financial institution may obtain a reversal of a payment prior to 2:00 p.m., but, after that time, the financial institution may obtain a reversal only in certain circumstances and only with the assent of the IRS. Further, the financial institution must be prepared to supply the taxpayer with a transaction trace number, in case of questions regarding the payment.

Section 203.15 imposes late fees on financial institutions which delay the

transmission of the tax payment. These late fees are similar to those currently imposed by § 203.10. Generally, the regulations attempt to recover the value of funds lost due to late payments. Financial institutions will not be charged late fees when the delay or non-payment is due to the taxpayer failing to satisfy financial institution conditions.

Section 203.16 explains that all debit entries to the Treasury are examined for prior authorization. In the unlikely event that such an unauthorized entry is posted to the TGA, this section imposes a higher rate of interest on the financial institution originating the entry.

Section 203.17 provides an administrative appeal process for financial institutions which are assessed late fees or interest charges.

3. Subpart C—Federal Tax Deposits—§§ 203.18–203.20 are modeled on current §§ 203.5, 203.9 and 203.10, governing the acceptance and processing of FTD coupons. Definitions of classes of depositories in current §§ 203.9(a) and 203.10(a) are deleted and will be contained in procedural instructions.

4. Subpart D—*Investment Program*—§§ 203.22–203.25 describe Treasury's investment program and collateral security requirements. This is the program in which Treasury invests in obligations of the TT&L note option depository using tax payments transmitted by the depository; and/or makes direct or special direct investments, which are additional funds invested in depository obligations.

Section 203.25(f) is modeled on existing § 203.14(f)(1). The FMS has in the past received inquiries regarding its interpretation of existing § 203.14(f)(1). The existing provision provides that in the event of a depository's insolvency, the pledged collateral is available to satisfy any claim of the United States. The FMS interprets this provision broadly. Specifically, in the event a depository is placed in receivership, existing § 203.14(f)(1) authorizes the FMS to apply the collateral to satisfy any claim of the United States, including, but not limited to, claims arising out of the depository relationship for which the collateral was originally pledged. This position is consistent with the FMS' longstanding interpretation of Part 203.

Proposed § 203.25(f) expands Treasury's authority to liquidate collateral pledged by TT&L depositories in the event the depository fails to pay timely amounts owed to the United States. This provision is calculated to protect the Federal Government from loss.

The list of acceptable securities found at current § 203.14(d) is deleted and will be contained in procedural instructions.

Regulatory Analysis

The regulations are not a significant regulatory action as defined in Executive Order 12866. Accordingly, a regulatory assessment is not required. It is hereby certified that this revision will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required. This change will not impose significant costs on small businesses. It is expected that costs, if any, associated with electronic tax processing will be offset by cost savings resulting from reductions in the paperwork burden and the availability of a user-friendly electronic tax collection system.

List of Subjects in 31 CFR Part 203

Banks, Banking, Electronic Funds Transfers, Taxes.

For the reasons set out in the preamble, 31 CFR part 203 is proposed to be revised to read as follows:

PART 203—TREASURY TAX AND LOAN DEPOSITARIES AND PAYMENT OF FEDERAL TAXES

Subpart A—General Information

Sec.

203.1 Scope.

203.2 Definitions.

203.3 Financial institution eligibility for designation as a Treasury tax and loan depository.

203.4 Designation of financial institutions as Treasury tax and loan depositories.

203.5 Parties to the agreement.

203.6 Obligations of the depository.

203.7 Compensation for services.

203.8 Termination of agreement or change of election or option.

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Subpart B—Electronic Federal Tax Payments

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203.12 Electronic payment methods.

203.13 Future-day reporting and payment mechanisms.

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Subpart C—Federal Tax Deposits

203.18 Scope of the subpart.

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203.20 Note option.

203.21 Remittance option.

Subpart D—Investment Program and Collateral Security Requirements for Treasury Tax and Loan Depositories

- 203.22 Scope of the subpart.
- 203.23 Sources of balances.
- 203.24 Note balance.
- 203.25 Collateral security requirements.

Authority: 12 U.S.C. 90, 265–266, 332, 391, 1452(d), 1464(k), 1767, 1789a, 2013, 2122, and 3102; 26 U.S.C. 6302; 31 U.S.C. 321, 323 and 3301–3304.

Subpart A—General Information

§ 203.1 Scope.

The regulations in this part govern the processing of Federal tax payments by financial institutions and the Federal Reserve Banks (FRB) using electronic payment or paper methods; the designation of Treasury tax and loan (TT&L) depositories; and the operation of the Treasury Department's (Treasury) investment program.

§ 203.2 Definitions.

As used in this part:

Advice of credit means the Treasury form (Standard Form 2284) used in the Federal Tax Deposit (FTD) system which is supplied to depositories to use in summarizing and reporting deposits. Advice of credit information also may be delivered electronically.

Automated Clearing House (ACH) credit entry means a transaction originated by a financial institution in accordance with applicable ACH association formats and applicable laws, regulations, and procedural instructions.

Automated Clearing House (ACH) debit entry means a transaction originated by Treasury's financial agent, in accordance with applicable ACH association formats and applicable laws, regulations, and instructions.

Business day means any day on which the FRB of the district is open to the public.

Direct Access transaction means same-day Federal tax payment information transmitted by a financial institution directly to the Electronic Tax Application at a FRB using computer interface or the Fedline Taxpayer Deposit Application.

Direct investment means placement of Treasury funds with a depository and a corresponding increase in a depository's note balance.

Electronic Federal Tax Payment System (EFTPS) means that system through which taxpayers remit Federal tax payments electronically.

Electronic Tax Application (ETA) means a subsystem of EFTPS that receives, processes, and transmits Federal tax payment information for taxpayers. ETA activity is comprised of

Fedwire value transfers, Fedwire non-value transactions, and Direct Access transactions.

Electronic Tax Application (ETA) reference number means the unique number assigned to each ETA transaction by a FRB.

Federal funds rate means the Federal funds rate published weekly by the Board of Governors of the Federal Reserve System.

Federal Reserve account means a reserve or clearing account held by a financial institution with an FRB.

Federal Reserve Bank (FRB) head office local zone time (head office LZT) means the local time of the FRB head office through which a financial institution, or its authorized correspondent bank, sends a same-day payment to an FRB.

Federal Reserve Bank of the district means the FRB that services the geographical area in which the depository is located, or such other FRB that may be designated in an FRB operating circular.

Federal tax deposit (FTD) means a tax deposit made using an FTD coupon.

Federal tax deposit coupon (FTD coupon) means a paper form (form 8109) supplied to a taxpayer by the Treasury for use in the FTD system to accompany deposits of Federal taxes.

Federal Tax Deposit system (FTD system) means the paper-based system in which taxpayers present an FTD coupon (form 8109) and payment to a depository or an FRB, which prepares an advice of credit listing the FTDs.

Federal taxes means those Federal taxes or other payments specified by the Secretary as eligible for payment through the procedures prescribed in this part.

Fedwire means the funds transfer system owned and operated by the FRBs.

Fedwire non-value transaction means the same-day Federal tax payment information transmitted by a financial institution to an FRB using a Fedwire type 1090 message to authorize a payment.

Fedwire value transfer means a Federal tax payment made by a financial institution using a Fedwire entry.

Financial institution means any bank, savings bank, savings and loan association, credit union, or similar institution.

Input Message Accountability Data (IMAD) means a unique number assigned to each Fedwire transaction by the financial institution sending the transaction to an FRB.

Note option means that program available to a depository under which Treasury invests in obligations of the

depository. The amount of such investments will be evidenced by an open-ended interest-bearing note balance maintained at the FRB of the district.

Procedural instructions are the procedures contained in the Treasury Financial Manual, Volume IV (IV TFM). The FRBs may issue operating circulars consistent with the regulations in this part.

Recognized insurance coverage means the insurance provided by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or insurance organizations specifically qualified by the Secretary.

Remittance option means that program available to a depository that processes FTD payments, under which the amount of deposits credited by the depository to the TT&L account will be withdrawn by the FRB for deposit to the Treasury's General Account on the day that the FRB receives the advices of credit supporting such deposits.

Same-day payment means the following ETA payment options: (1) Direct Access transaction; (2) Fedwire non-value transaction; and (3) Fedwire value transfer.

Secretary means the Secretary of the Treasury, or the Secretary's delegate.

Special direct investment means the placement of Treasury funds with a depository and a corresponding increase in a depository's note balance, where the investment specifically is identified as a "special direct investment" and may be secured by collateral retained in the possession of the depository pursuant to the terms of § 203.25(c)(2)(i).

Tax due date means the day on which a tax payment is due to Treasury, as determined by statute and IRS regulations.

Transaction trace number means a unique number assigned by the taxpayer's financial institution to each ACH credit transaction and by Treasury's Financial Agent to each ACH debit transaction.

Treasury's Financial Agent (TFA) means a financial institution designated as an agent of Treasury for processing EFTPS enrollments, receiving EFTPS tax payment information, and originating ACH debit entries on behalf of Treasury.

Treasury's General Account (TGA) means an account maintained in the name of the United States Treasury at an FRB.

Treasury tax and loan (TT&L) account means the Treasury account maintained by a depository in which funds are credited by the depository after receiving and collateralizing FTDs.

Treasury tax and loan depositary (depositary) means a financial institution designated as a depositary by the FRB of the district for the purpose of maintaining a TT&L account and/or note balance.

Treasury tax & loan (TT&L) rate of interest means the Federal funds rate less twenty-five basis points (i.e., 1/4 of 1 percent).

§ 203.3 Financial institution eligibility for designation as a Treasury tax and loan depositary.

(a) To be designated as a TT&L depositary, a financial institution must be an FRB, or insured as a national banking association, state bank, savings bank, savings and loan, building and loan, homestead association, Federal home loan bank, credit union, trust company, or a U.S. branch of a foreign banking corporation, the establishment of which has been approved by the Comptroller of the Currency.

(b) A financial institution shall possess the authority to pledge collateral to secure TT&L account balances and/or a note balance.

(c) In order to be designated as a TT&L depositary for the purposes of processing tax deposits in the FTD system, a financial institution shall possess under its charter either general or specific authority permitting the maintenance of the TT&L account, the balance of which is payable on demand without previous notice of intended withdrawal and either general or specific authority permitting the maintenance of a note balance, which is payable on demand without previous notice of intended withdrawal.

§ 203.4 Designation of financial institutions as Treasury tax and loan depositaries.

(a) *Application procedures.* An eligible financial institution seeking designation as a depositary and, thereby, the authority to maintain a TT&L account and/or a note balance shall file with the FRB Financial Management Service Form 458 "Financial Institution Agreement and Application for Designation as a TT&L depositary," and Financial Management Service Form 459, "Resolutions Authorizing the Financial Institution Agreement and Application for Designation as a TT&L depositary," certified by its board of directors. Financial Management Service Forms 458 and 459 are available upon request from the FRB.

(b) *Designation.* Each financial institution satisfying the eligibility requirements and the application procedures will receive from the FRB

notification of its specific designation as a TT&L depositary. A financial institution is not authorized to maintain a TT&L account or note balance until it has been designated as a TT&L depositary by the FRB. Depositaries processing tax payments in the FTD System are required to elect either the remittance or the note option.

§ 203.5 Parties to the agreement.

To be designated as a TT&L depositary, a financial institution shall enter into a depositary agreement with Treasury's fiscal agent, the FRB. By entering into this agreement, the financial institution agrees to be bound by this part, and instructions issued pursuant to this part.

§ 203.6 Obligations of the depositary.

A depositary shall:

(a) Administer a note balance, if not participating in the FTD System.

(b) Administer a TT&L account and, if applicable, a note balance, if participating in the FTD System.

(c) Comply with the requirements of Section 202 of Executive Order 11246, entitled "Equal Employment Opportunity" as amended by Executive Orders 11375 and 12086, and the regulations issued thereunder at 41 CFR Chapter 60.

(d) Comply with the requirements of Section 503 of the Rehabilitation Act of 1973, as amended, and the regulations issued thereunder at 41 CFR part 60-741, requiring Government contractors to take affirmative action to employ and advance in employment qualified individuals with disabilities.

(e) Comply with the requirements of Section 503 of the Vietnam Era Veterans' Readjustment Assistance Act of 1972, as amended, 38 U.S.C. 4212, Executive Order 11701, and the regulations issued thereunder at 41 CFR parts 60-250 and 61-250 requiring contractors to take affirmative action to employ and advance in employment qualified special disabled veterans and Vietnam Era veterans.

§ 203.7 Compensation for services.

Except as provided in the procedural instructions, Treasury will not compensate financial institutions for servicing and maintaining the TT&L account, or for processing tax payments.

§ 203.8 Termination of agreement or change of election or option.

(a) *Termination by Treasury.* The Secretary may terminate the agreement of a depositary at any time upon notice to that effect to that depositary, effective on the date set forth in the notice.

(b) *Termination or change of election or option by the depositary.* A

depositary may terminate its depositary agreement, or change its option or election, consistent with this part, by submitting notice to that effect in writing to the FRB effective at a prospective date set forth in the notice.

§ 203.9 Additional instructions.

Procedural instructions on this part are found in the Treasury Financial Manual, Volume IV (IV TFM). In addition, each FRB may issue operating circulars and other instructions not inconsistent with this part or the Treasury Financial Manual, governing the handling of tax payments and TT&L accounts, and containing such provisions as are required or permitted by this part. These instructions and the terms of this part shall be binding on financial institutions that process tax payments and/or maintain a TT&L account or note balance under this part. By accepting or originating Federal tax payments, the financial institution agrees to be bound by this part, and instructions issued pursuant to this part.

Subpart B—Electronic Federal Tax Payments.

§ 203.10 Scope of the subpart.

This subpart prescribes the rules by which financial institutions shall process Federal tax payment transactions electronically.

§ 203.11 Enrollment.

(a) *General.* Taxpayers shall complete an enrollment process with the TFA prior to making their first electronic Federal tax payment. Taxpayers may enroll using either a paper-based or an electronic method.

(b) *Types of enrollment.* (1) *Paper.* The TFA shall provide financial institutions and taxpayers with enrollment forms upon request. The taxpayer is responsible for completing the enrollment form, obtaining the required financial institution verification and signature, and returning the enrollment form to the TFA.

(2) *Electronic.* A financial institution may choose to assist its customers with the enrollment process by offering electronic enrollment. If a financial institution chooses to offer electronic enrollment, the financial institution shall follow the procedural instructions and the instructions provided by the TFA. An authorized financial institution representative shall verify and sign the enrollment form and provide a paper copy of the completed enrollment form to the taxpayer for submission to the TFA.

(c) *Verification.* If the taxpayer elects the ACH debit entry method of paying

taxes, either through the paper or electronic enrollment process, an authorized representative of the financial institution shall verify the accuracy of the financial institution routing number, taxpayer account number, and taxpayer account type. The authorized financial institution representative shall sign the enrollment form attesting to the accuracy of the financial institution information.

§ 203.12 Electronic payment methods.

(a) *General.* Electronic payment methods for Federal tax payments available under this subpart include ACH credit entries, ACH debit entries, and same-day payments. Any financial institution that is capable of originating and/or receiving transactions for these payment methods by itself or through a correspondent, may do so on behalf of a taxpayer.

(b) *Conditions to making an electronic payment.* Nothing contained in this part shall affect the authority of financial institutions to enter into contracts with their customers regarding the terms and conditions for processing payments, provided that such terms and conditions are not inconsistent with this subpart and applicable law governing the particular transaction type.

(c) *Payment of interest for time value of funds held.* Treasury will not pay interest on any payments erroneously paid to Treasury and subsequently refunded to the financial institution.

§ 203.13 Future-day reporting and payment mechanisms.

(a) *General.* A financial institution may receive an ACH debit entry, originated by the TFA at the direction of the taxpayer; or, a financial institution may originate an ACH credit entry, at the direction of the taxpayer. Taxpayers will be credited for the actual amount received by Treasury. Treasury will not credit taxpayers for any amount deducted for system charges.

(b) *ACH debit.* A financial institution receiving an ACH debit entry originated by the TFA shall, as applicable:

- (1) Timely verify the information contained in the ACH prenotification entry;
- (2) Timely return to the FRB or other ACH processor a prenotification entry that contains an invalid account number or is otherwise erroneous or unprocessable;
- (3) Properly notify the TFA of incorrect information on entries received, using a Notification of Change entry; and
- (4) Timely return an entry not posted, e.g., a return or a contested dishonored return for acceptable return reasons, as set forth in the procedural instructions.

(c) *ACH credit.* A financial institution originating an ACH credit entry at the direction of a taxpayer, by itself or through a correspondent, shall:

- (1) Originate an ACH prenotification that may be in the form of a zero dollar ACH entry. The originator may initiate an ACH credit entry no earlier than 10 calendar days after the date the prenotification was transmitted to an FRB or other ACH processor;
 - (2) Format the ACH credit entry in the ACH format approved by Treasury for Federal tax payments;
 - (3) Originate and deliver an ACH credit entry to the FRB or other ACH processor by the deadline, as specified by the FRB or Treasury, whichever is earlier, in order to meet the tax due date specified by the taxpayer;
 - (4) Provide the taxpayer, upon request, a transaction trace number;
 - (5) Process all ACH entries received from the FRB or other ACH processor on a timely basis.
- (d) *ACH credit corrections.* Correction of ACH credit entries must be approved in advance by the IRS. The financial institution will find procedures for requesting corrections in the procedural instructions. Once approval is received, corrections will be processed by the TFA.

§ 203.14 Same-day reporting and payment mechanisms.

(a) *General.* A financial institution or its authorized correspondent may initiate same-day reporting and payment transactions on behalf of taxpayers. A same-day payment must be received by the FRB by 2:00 p.m., FRB head office LZT. Taxpayers will be credited for the actual amount received by Treasury. Treasury will not credit taxpayers for any amount deducted for system charges.

(b) *Fedwire Value transfer.* To initiate a Fedwire value tax payment, the financial institution shall be a Fedwire participant and shall comply with the FRB's Fedwire format for tax payments. The taxpayer's financial institution shall provide, upon request by the taxpayer, the IMAD and the ETA reference numbers for a Fedwire value transfer. The financial institution may obtain the ETA reference number for Fedwire value transfers from its FRB by supplying the related IMAD number. Fedwire value transfers settle immediately to the TGA and thus are not credited to a depository's note balance.

(c) *Fedwire non-value transaction.* To initiate a Fedwire non-value tax payment, the financial institution shall be a Fedwire participant and shall comply with the FRB's Fedwire format

for tax payments. The taxpayer's financial institution shall provide the taxpayer, upon request, the IMAD and ETA reference number for the Fedwire non-value transaction. The financial institution may obtain the ETA reference number for Fedwire non-value transactions from its FRB by supplying the related IMAD number.

(1) For a note option depository, tax payments made using the Fedwire non-value method will be credited to the depository's note balance.

(2) For a financial institution that is not a note option depository, tax payments made using the Fedwire non-value method will be debited from the financial institution's Federal Reserve account and credited to the TGA on the day of the transaction. By initiating a Fedwire non-value transaction, a financial institution authorizes the FRB to debit its Federal Reserve account in the amount of the tax payment specified in the transaction.

(d) *Direct Access transaction.* By initiating a Direct Access transaction, a financial institution authorizes the FRB to debit its Federal Reserve account or the Federal Reserve account of its designated correspondent in the amount of the tax payment specified in the transaction. The taxpayer's financial institution shall provide, upon request of the taxpayer, the ETA reference number for a Direct Access transaction.

(1) For a note option depository, tax payments made using Direct Access will be credited to the depository's note balance.

(2) For a financial institution that is not a note option depository, tax payments made using Direct Access will be debited from the financial institution's Federal Reserve account, or the Federal Reserve account of its designated correspondent, and credited to the TGA on the day of the transaction.

(e) *Cancellations and reversals.* The FRB may reverse a same-day transaction:

- (1) If the transaction:
 - (i) Is originated by a financial institution after 2:00 p.m. FRB head office LZT;
 - (ii) Has an unenrolled taxpayer identification number;
 - (iii) Does not meet the edit and format requirements set forth in the procedural instructions;
- (2) At the direction of the IRS, for the following reasons:
 - (i) Incorrect taxpayer name;
 - (ii) Overpayment;
 - (iii) Unidentified payment; or,
- (3) At the request of the financial institution that sent the same-day transaction, if the request is made prior

to 2:00 p.m. FRB head office LZT on the day the payment was made.

(f) Other than as stated in paragraph (e) of this section, Treasury is not obligated to reverse all or any part of a payment.

§ 203.15 Electronic Federal Tax Payment System late fees.

(a) *Circumstances subject to late fees.* Treasury may assess a late fee on a financial institution in instances where a taxpayer that failed to meet a tax due date proves to the IRS that the delivery of tax payment instructions to the financial institution was timely and that the taxpayer satisfied the conditions imposed by the financial institution pursuant to § 203.12(b).

(b) *Calculation of late fees.* Any late fee assessed under this section shall be in the form of interest at the TT&L rate. The late fee will be assessed from the day the taxpayer specified that its payment should settle to Treasury until the receipt of the payment by Treasury.

(c) *Authorization to assess late fees.* A financial institution that processes Federal tax payments made by electronic payment methods under this subpart is deemed to authorize the FRB to debit its Federal Reserve account or the account of its designated correspondent for any late fee assessed under this section. Upon the direction of Treasury, the FRB shall debit the Federal Reserve account of the financial institution or the account of its designated correspondent for the amount of the late fee.

(d) *Circumstances not subject to late fees.* Treasury will not assess a late fee on a taxpayer's financial institution if a taxpayer fails to meet a tax due date because the taxpayer has not satisfied conditions imposed by the financial institution pursuant to § 203.12(b). The burden is on the financial institution to establish the taxpayer has not satisfied the conditions.

§ 203.16 Prohibited Automated Clearing House debits.

(a) *General.* The Treasury has instituted operational safeguards to scrutinize all debit entries sent to the Treasury. In the unlikely event an unauthorized debit entry is posted to the TGA, this section sets forth the liability of financial institutions originating such debits. Accordingly, a financial institution shall not originate an ACH debit to the TGA without the prior written permission of Treasury.

(b) *Liability.* A financial institution that originates an unauthorized ACH debit entry that is posted to the TGA shall be liable to Treasury for the amount of the transaction and shall be

liable for interest charges as specified in paragraph (d) of this section.

(c) *Authorization to recover principal and assess interest charge.* By initiating an unauthorized ACH debit entry, a financial institution is deemed to authorize the FRB to debit its Federal Reserve account or the account of its designated correspondent for any principal and, if applicable, interest charge assessed by Treasury under this section.

(d) *Interest charge calculation.* The interest charge shall be at a rate equal to the Federal funds rate plus two percent. The interest charge shall be assessed for each calendar day, from the day the TGA was debited to the day the TGA is recredited with the full amount due.

§ 203.17 Appeal and dispute resolution.

(a) *Appeal.* A financial institution may appeal any late fee or interest charge assessed under either § 203.15 or § 203.16. An appeal must be received, in writing, by the Treasury officer identified in the procedural instructions, no later than 90 calendar days after the date of the charge. The financial institution shall submit information supporting its position and the relief sought.

(b) *Decision.* Treasury will decide to: uphold the fee or charge; reverse the fee or charge; or mandate another action. Treasury's decision will be final.

(c) *Recoveries.* In the event of an over or under recovery of late fees or interest charges, Treasury will reimburse, or instruct the FRB to credit or debit the Federal Reserve account of the financial institution or its designated correspondent, as appropriate.

Subpart C—Federal Tax Deposits

§ 203.18 Scope of the subpart.

This subpart applies to all depositories that accept FTD coupons and governs the acceptance and processing of those coupons.

§ 203.19 Tax deposits using Federal tax deposit coupons.

(a) *FTD coupons.* A depository that accepts FTD coupons shall, through any of its offices that accept demand and/or savings deposits:

(1) Accept from a taxpayer, cash, a postal money order drawn to the order of the depository, or a check or draft drawn on and to the order of the depository, covering an amount to be deposited as Federal taxes when accompanied by an FTD coupon on which the amount of the deposit has been properly entered in the space provided. A depository may accept, at its discretion, a check drawn on another

financial institution, but it does so at its option and absorbs for its own account any float and other costs involved.

(2) Issue a counter receipt when requested to do so by a taxpayer that makes an FTD deposit over the counter.

(3) Place a stamp impression on the face of each FTD coupon in the space provided. The stamp shall reflect the date on which the tax deposit was received and the name and location of the depository. The timeliness of the tax payment will be determined by reference to the date stamped by the depository on the FTD coupon.

(4) Credit, on the date of receipt, all FTD deposits to the TT&L account and administer that account pursuant to the provisions of this part.

(5) Forward, each day, to the IRS Center servicing the geographical area in which the depository is located, the FTD coupons for all FTD deposits received that day. The FTD coupons shall be accompanied by an advice of credit reflecting the total amount of all FTD coupons.

(6) Establish an adequate record of all FTD deposits prior to transmittal to the IRS Center so that the depository will be able to identify deposits in the event tax deposit coupons are lost in shipment. For tracking purposes, a record shall be made of each FTD deposit showing, at a minimum, the date of deposit, the taxpayer identification number, and the amount of the deposit. The depository's copy of the advice of credit may be used to provide the necessary information if individual deposits are listed separately, showing date, taxpayer identification number, and amount.

(7) Deliver its advices of credit to the FRB by the cutoff hour designated by the FRB for receipt of advices.

(8) Not accept compensation from taxpayers for accepting deposits of Federal taxes and handling them as required by this section.

(b) *FTD deposits with Federal Reserve Banks.* An FRB shall:

(1) Accept an FTD deposit directly from a taxpayer when such tax deposit is:

(i) Mailed or delivered by a taxpayer; and

(ii) Provided in the form of cash or a check or postal money order payable to the order of that FRB; and,

(iii) Accompanied by an FTD coupon on which the amount of the tax deposit has been properly entered in the space provided.

(2) Issue a counter receipt, when requested to do so by a taxpayer that makes an FTD deposit over the counter; and,

(3) Place, in the space provided on the face of each FTD coupon accepted

directly from a taxpayer, a stamp impression reflecting the name of the FRB and the date on which the tax deposit will be credited to the TGA. Timeliness of the Federal tax payment will be determined by this date. However, if such a deposit is mailed to an FRB, it shall be subject to the "Timely mailing treated as timely filing and paying" clause of the Internal Revenue Code (26 U.S.C. 7502); and,

(4) Credit the TGA with the amount of the tax payment;

(i) On the date the payment is received, if payment is made in cash; or,

(ii) On the date the proceeds of the tax payment are collected, if payment is made by postal money order or check.

§ 203.20 Note option.

(a) *Late delivery of advices of credit.* If an advice of credit does not arrive at the FRB before the designated cutoff hour for receipt of such advices, the FRB will post the funds to the note balance as of the next business day after the date on the advice of credit. This is the date on which funds will begin to earn interest for Treasury.

(b) *Transfer of funds from TT&L account to the note balance.* For a depositary selecting the note option, funds equivalent to the amount of deposits credited by a depositary to the TT&L account shall be withdrawn by the depositary and credited to the note balance on the business day following the receipt of the tax payment.

§ 203.21 Remittance option.

(a) *FTD late fee.* If an advice of credit does not arrive at the FRB before the designated cutoff hour for receipt of such advices, an FTD late fee in the form of interest at the TT&L rate will be assessed for each day's delay in receipt of such advice. Upon the direction of Treasury, the FRB shall debit the Federal Reserve account of the financial institution or the account of its designated correspondent for the amount of the late fee.

(b) *Withdrawals.* For a depositary selecting the Remittance Option, the amount of deposits credited by a depositary to the TT&L account will be withdrawn upon receipt by the FRB of the advices of credit. The FRB will charge the depositary's Federal Reserve account or the account of the depositary's designated correspondent.

Subpart D—Investment Program and Collateral Security Requirements for Treasury Tax and Loan Depositaries

§ 203.22 Scope of the subpart.

This subpart provides rules for TT&L depositaries on crediting note balances

under the various payment methods; debiting note balances; and pledging collateral security.

§ 203.23 Sources of balances.

Depositaries electing to participate in the investment program can receive Treasury's investments in obligations of the depositary from the following sources:

(a) FTD deposits that have been credited to the TT&L account pursuant to subpart C of this part;

(b) EFTPS ACH credit and ACH debit transactions, Fedwire non-value transactions, and Direct Access transactions pursuant to subpart B of this part; and

(c) Direct investments and special direct investments pursuant to subpart D of this part.

§ 203.24 Note balance.

(a) *Additions.* Treasury will invest funds in obligations of depositaries selecting the note option. Such obligations shall be in the form of open-ended, interest-bearing notes; and additions and reductions will be reflected on the books of the FRB of the district.

(1) *FTD system.* A depositary processing tax deposits using the FTD system and electing the note option shall debit the TT&L account and credit its note balance as stated in 203.20(b).

(2) *EFTPS.* (i) *ACH credit and ACH debit.* A note option depositary processing EFTPS ACH debit entries and/or ACH credit entries shall credit its note balance for the value of the transactions on the settlement day. Financial institutions may refer to the procedural instructions for information on how to ascertain the amount of the credit to the note balance;

(ii) *Fedwire non-value and Direct Access.* A note option depositary processing Fedwire non-value and/or Direct Access transactions pursuant to subpart B of this part shall credit its note balance and debit its customer's account for the value of the transactions on the transaction date.

(b) *Other additions.* Other funds from Treasury may be offered from time to time to certain note option depositaries through direct investments, special direct investments or other investment programs.

(c) *Note balance withdrawals.* The amount of the note balance shall be payable on demand without previous notice. Calls for payment on the note will be by direction of the Secretary through the FRBs. On behalf of Treasury, the FRB shall charge the reserve account of the depositary or the depositary's designated correspondent

on the day specified in the call for payment.

(d) *Interest.* A note shall bear interest at the TT&L rate. Such interest is payable monthly by a charge to the Federal Reserve account of the depositary or its designated correspondent.

(e) *Maximum balance.*

(1) *Note depositaries.* A depositary selecting the note option shall establish a maximum balance for its note by providing notice to that effect in writing to the FRB. The maximum balance is the amount of funds for which a note option depositary is willing to provide collateral in accordance with § 203.25(c)(1). That portion of any advice of credit or EFTPS tax payment, which, when posted at the FRB, would cause the note balance to exceed the maximum balance amount specified by the depositary, will be withdrawn by the FRB that day.

(2) *Direct investment depositaries.* A note depositary that participates in the direct investment program will set a maximum balance for direct investment purposes which is higher than its peak balance normally generated by the depositary's advices of credit and EFTPS tax payment inflow.

(3) *Special direct investment depositaries.* Special direct investments, while credited to the note balance, shall not be considered in setting the amount of the maximum balance or in determining the amounts to be withdrawn where a depositary's maximum balance is exceeded.

§ 203.25 Collateral security requirements.

Financial institutions that process EFTPS tax payments, but are not TT&L depositaries, have no collateral requirements under this part. Financial institutions that are note option depositaries or remittance option depositaries have collateral security requirements, as follows:

(a) *Note option.* (1) *FTD deposits and EFTPS tax payments.* A depositary shall pledge collateral security in accordance with the requirements of paragraphs (c)(1), (d), and (e) of this section in an amount that is sufficient to cover the pre-established maximum balance for the note, and, if applicable, the closing balance in the TT&L account which exceeds recognized insurance coverage. Depositaries shall pledge collateral for the full amount of the maximum balance at the time the maximum balance is established. If the depositary maintains a TT&L account, the depositary shall pledge collateral security before crediting deposits to the TT&L account.

(2) *Direct investments.* A note option depositary that participates in Treasury's direct investment program is not required to pledge collateral continuously in the amount of the pre-established maximum balance. However, each direct investment depositary shall pledge, no later than the day the direct investment is placed, the additional collateral in accordance with paragraphs (c)(1), (d), and (e) of this section to cover the total note balance including those funds received through the direct investment program. If a direct investment depositary has a history of frequent collateral deficiencies, it shall fully collateralize its maximum balance at all times.

(3) *Special direct investments.* Before special direct investments are credited to a depositary's note balance, the note option depositary shall pledge collateral security in accordance with the requirements of paragraphs (c)(2) and (e) of this section, to cover 100 percent of the amount of the special direct investments to be received.

(b) *Remittance option.* Prior to crediting FTD deposits to the TT&L account, a remittance option depositary shall pledge collateral security in accordance with the requirements of paragraph (c)(1), (d), and (e) of this section in an amount which is sufficient to cover the balance in the tax and loan account at the close of business each day, less recognized insurance coverage.

(c) *Deposits of securities.* (1) Collateral security required under paragraphs (a)(1), (2), and (b) of this section shall be deposited with the FRB of the district, or with a custodian or custodians within the United States designated by the FRB, under terms and conditions prescribed by the FRB.

(2)(i) Collateral security required under paragraph (a)(3) of this section shall be pledged under a written security agreement on a form provided by the FRB of the district. The collateral security pledged to satisfy the requirements of paragraph (a)(3) of this section may remain in the pledging depositary's possession and the fact that it has been pledged shall be evidenced by advices of custody to be incorporated by reference in the written security agreement. The written security agreement and all advices of custody covering collateral security pledged

under that agreement shall be provided by the depositary to the FRB of the district. Collateral security pledged under the agreement shall not be substituted for or released without the advance written approval of the FRB of the district, and any collateral security subject to the security agreement shall remain so subject until an approved substitution is made. No substitution or release shall be approved until an advice of custody containing the description required by the written security agreement is received by the FRB of the district.

(ii) Treasury's security interest in collateral security pledged by a depositary in accordance with paragraph (c)(2)(i) of this section to secure special direct investments is perfected without Treasury taking possession of the collateral security for a period not to exceed 21 days from the day of the depositary's receipt of the special direct investment.

(d) *Acceptable securities.* Unless otherwise specified by the Secretary, collateral security pledged under this section may be transferable securities, owned by the depositary free and clear of all liens, charges, or claims, of any of the classes listed in the procedural instructions. Collateral will be accepted at values assigned by the FRB of the district.

(e) *Assignment of securities.* A TT&L depositary that pledges acceptable securities which are not negotiable without its endorsement or assignment may furnish, in lieu of placing its unqualified endorsement on each security, an appropriate resolution and irrevocable power of attorney authorizing the FRB to assign the securities. The resolution and power of attorney shall conform to such terms and conditions as the FRB shall prescribe.

(f) *Effecting payments of principal and interest on securities pledged as collateral.* (1) *General.* If the depositary fails to pay, when due, the whole or any part of the funds received by it for credit to the TT&L account, and/or if applicable, its note balance; or otherwise violates or fails to perform any of the terms of this part, or fails to pay when due amounts owed to the United States or the United States Treasury; or if the depositary is closed

for business by regulatory action or by proper corporate action, or in the event that a receiver, conservator, liquidator or any other officer is appointed; then the Treasury, without notice or demand, may sell, or otherwise collect the proceeds of all or part of the collateral, including additions and substitutions; and apply the proceeds, to satisfy any claims of the United States against the depositary. All principal and interest payments on any security pledged to protect the note balance (if applicable) and/or the TT&L account (if applicable), due as of the date of the insolvency or closure, or thereafter becoming due, shall be held separate and apart from any other assets and shall constitute a part of the pledged security available to satisfy any claim of the United States.

(2) *Payment procedures.* (i) Subject to the waiver in paragraph (f)(2)(iii) of this section, each depositary (including, with respect to such depositary, an assignee for the benefit of creditors, a trustee in bankruptcy, or a receiver in equity) shall immediately remit each payment of principal and/or interest received by it with respect to collateral pledged pursuant to this section to the FRB of the district, as fiscal agent of the United States, and in any event shall so remit no later than 10 days after receipt of such a payment.

(ii) Subject to the waiver in paragraph (f)(2)(iii) of this section, each obligor on a security pledged by a depositary pursuant to this section shall make each payment of principal and/or interest due with respect to such security directly to the FRB of the district, as fiscal agent of the United States.

(iii) The requirements of paragraphs (f)(2)(i) and (ii) of this section are hereby waived for only so long as a pledging depositary avoids both termination from the program under § 203.8; and also, those circumstances identified in paragraph (f)(1) which may lead to the collection of the proceeds of collateral or the waiver is otherwise terminated by Treasury.

Dated: September 25, 1996.

Russell D. Morris,
Commissioner.

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