

DEPARTMENT OF THE TREASURY**Fiscal Service****31 CFR Part 212**

RIN 1510-AA61

Taxpayer Identifying Number Requirement

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Debt Collection Improvement Act of 1996 (DCIA) requires that executive agencies include the taxpayer identifying number (TIN) of each person to whom payment may be made with each payment request submitted to a disbursing official on a certified voucher. Effective six months after the date of publication of the final rule, all disbursing officials will be required to reject any executive agency payment request that does not include the TIN. This requirement will ensure that TINs of Federal payment recipients are available to facilitate debt collection by offset of Federal payments under the DCIA, and for vendor income reporting to the Internal Revenue Service (IRS) as mandated by the Internal Revenue Code of 1986 (IRC).

DATES: Comments must be received by November 3, 1997.

ADDRESSES: Comments should be sent to Carolyn M. Austin-Diggs, Director, Asset Management Policy and Planning Division, Financial Management Service, U.S. Department of the Treasury, Room 414, 401 14th Street S.W., Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT: Dean Balamaci (Director, Program Implementation) at 202-874-6670, Barbara Wiss (Program Specialist) at 202-874-7491, Catherine McHugh (Policy Specialist) at 202-874-7497, or Laurie Levin (Attorney-Advisor) at 202-874-8615. This document is available on the Internet home page of the Financial Management Service: <http://www.fms.treas.gov>.

SUPPLEMENTARY INFORMATION:**Background**

On April 26, 1996, the DCIA was enacted as Chapter 10 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Public Law 104-134, 110 Stat. 1321-358. A major purpose of the DCIA is to enhance the government-wide collection of delinquent debts owed to the Federal Government. Among other things, under the DCIA, an eligible Federal payment will be reduced or withheld to pay the

recipient's delinquent debt owed to the United States. This process, known as "offset," also may be used to collect delinquent debts owed to States, including past-due child support.

The Financial Management Service (FMS) is responsible for the implementation of centralized administrative offset of Federal payments for the collection of delinquent nontax debt in accordance with the provisions of the DCIA. In addition, FMS, as the Treasury disbursing agency, is responsible for the disbursement of public money for the executive branch. 31 U.S.C. 3321.

Section 31001(y) of the DCIA, codified at 31 U.S.C. 3325(d), requires that the head of an executive agency include with each certified voucher submitted to a disbursing official pursuant to 31 U.S.C. 3325(a) the TIN of each person to whom payment may be made under the voucher. To ensure that agencies comply with this DCIA provision, which was effective April 26, 1996, FMS is issuing this proposed rule.

Federal agencies are advised that effective six months after the date of publication of the final rule, all disbursing officials will reject any executive agency payment request that does not include the TIN of the person(s) to whom payment may be made, i.e., the payee(s). For purposes of this proposed rule, "person" does not include a Federal agency.

Payments made by the legislative and judicial branches of the Federal Government will be included in the offset program, but those payments are not made by the executive branch and therefore are not covered by this regulation. We encourage the legislative and judicial disbursing officers to include the TINs in their payment function, as it is one of the means to accomplish the administrative offset of payments to pay delinquent debts.

The 9-digit TIN is an identifier required of all individuals and businesses that file tax returns in the United States, as described in section 6109 of the IRC (26 U.S.C. 6109). For purposes of this proposed rule, taxpayer identification number has the same meaning as taxpayer identifying number. For individuals who are eligible for a social security number (SSN), the SSN assigned by the Social Security Administration serves as the TIN. For resident or nonresident aliens ineligible for an SSN, the individual taxpayer identification number (ITIN) assigned by the IRS serves as the TIN. For entities other than individuals, the employer identification number (EIN) assigned by the IRS serves as the TIN. Where a payment certifying agency

determines that an individual or entity does not have a TIN and is not required to have a TIN under any law other than the DCIA certified payment voucher requirement, payment requests lacking TINs will not be rejected.

The intent of this proposed rule is to ensure that TINs are included on a certified voucher, as required by 31 U.S.C. 3325(d). The TIN is necessary for the collection of delinquent debt owed to Federal agencies and States by administrative offset under the provisions of the DCIA. The TIN is a critical identifier for matching payment requests with delinquent nontax debtor information for offset purposes. When a match occurs, the amount offset from the payment will be applied to the payee's delinquent debt, to the extent legally allowed. In addition, Federal agencies need the TIN to comply with vendor income reporting requirements under the Internal Revenue Code. Interagency efforts are under way to identify ways to assist Federal agencies in verifying the accuracy of TIN information provided by a payee. These efforts do not preclude agencies from complying with the DCIA.

Agencies have been required to furnish the TINs of payment recipients on all certified vouchers submitted to disbursing officials since April 26, 1996, the effective date of the DCIA. In its interim rule creating 31 CFR Part 208, Management of Federal Agency Disbursements, FMS advised agencies of this DCIA requirement. See 61 FR 39254, July 26, 1996. Prior to the enactment of the DCIA, FMS issued Treasury Financial Management Bulletin No. 95-10 on August 18, 1995 (TFM Bulletin), which required that the payee's TIN be included on all certified vouchers for vendor, miscellaneous, and salary payments. The TFM Bulletin requirement applied to all forms of payment requests submitted to FMS' Regional Financial Centers. In addition, the TFM Bulletin required that other disbursing officials conform their systems to these requirements.

Steps Important to Implementation of the Proposed Rule

This section discusses three (3) primary steps which are important to the implementation of the proposed rule:

- (1) Federal agencies obtain TINs from Federal payment recipients;
- (2) To request payments, agencies prepare and certify vouchers; and
- (3) Disbursing officials examine vouchers and make payments accordingly.

(1) *Federal agencies obtain TINs from Federal payment recipients.* The

authority for agencies to collect TINs is found in 31 U.S.C. 7701(c)(1) or other laws authorizing the collection of TINs. The DCIA requires that all agencies obtain TINs from persons doing business with the agency. As previously noted, this requirement does not apply to payments made to other Federal agencies.

To minimize the burden of compliance with the DCIA requirement to provide TINs on certified vouchers, FMS encourages agencies to obtain the TIN when the agency first has direct contact with a person. Typically, this is when the agency also is obtaining the routing transit number, account number, and other information needed to make payments electronically, in accordance with 31 CFR Part 208. For payments by check, this will occur when the agency is obtaining the name and address of the payee. There are other advantages to obtaining the TIN when an agency first has direct contact with a person. For example, collecting contractor data required for payment requests at the start of the procurement process enhances the Government's ability to issue timely payment upon receipt of subsequent invoices.

(2) *To request payments, agencies prepare and certify vouchers.* To make a payment, a Federal payment certifying agency prepares a voucher to authorize disbursement of Federal funds to a recipient. An authorized official of the payment agency reviews the voucher and certifies that: The information stated on the voucher and supporting documents is accurate; the appropriation or fund involved is legally available for payment; and the services have been rendered, or advancing funds before services are rendered is legally proper. Although responsible for the information contained on the voucher, an authorized official of the payment agency may be relieved from liability under certain circumstances. For example, an authorized official may be relieved from liability if the certification was based on official records and if the official did not know, and could not have discovered the correct information through reasonable diligence and inquiry. 31 U.S.C. 3528(b).

As noted above, 31 U.S.C. 3325(d) requires that executive agencies include with each certified voucher submitted to a disbursing official the TIN of each person to whom payment may be made under the voucher. A certified voucher may contain information for a single payment request or multiple payment requests. A TIN is required for each payment request. In addition, if an individual payment request has

multiple payees, a TIN is required for each payee.

Because 31 U.S.C. 3325(d) requires that the TIN be included with executive agency payment requests, a payment request lacking the TIN is not in proper form, and this proposed rule requires the disbursing official to reject the payment request.

(3) *Disbursing officials examine vouchers and make payments accordingly.* Disbursing officials must reject executive agency payment requests without TINs. A disbursing official (who in most cases is different than the certifying official) examines a certified payment voucher submitted by a payment agency. If the voucher is in proper form, properly certified and approved, and computed correctly, the disbursing official makes payments as directed in the voucher. A disbursing official may reject a voucher which is not in proper form pursuant to the performance of the disbursing official's duties under 31 U.S.C. 3325(a), or other governing authorities as applicable to disbursing officials of the Department of Defense. If an individual payment request is not in proper form, the disbursing official will reject the payment request in question, not the entire voucher. In general, to reject a payment request means that the disbursing official will not issue the payment to the named payee. The disbursing official will notify the payment certifying agency that the payment request has been rejected. For the payment to be issued, the certifying agency is required to resubmit the payment request in proper form.

Pursuant to 31 U.S.C. 3325, an executive agency payment request which does not contain the TIN is not in proper form. Therefore, for the reasons discussed above, this proposed rule requires disbursing officials to reject any executive agency payment request that does not include the TIN of the payee(s).

This proposed rule applies to Treasury and non-Treasury disbursing officials. In mandating administrative offset, the DCIA does not distinguish between Treasury disbursing officials and non-Treasury disbursing officials. The DCIA directs disbursing officials of the Department of the Treasury, the Department of Defense, the United States Postal Service, or any other government corporation, or any disbursing official of the United States designated by the Secretary of the Treasury to conduct administrative offset to collect claims owed to the United States. Therefore, because the TIN is required to conduct administrative offset, both Treasury and

non-Treasury disbursing officials must reject executive agency payment requests without TINs.

Disbursing officials are not responsible for any liabilities resulting from the rejection of a certified payment voucher that is not in proper form under this proposed rule. Certifying agencies may be responsible for any resulting liabilities depending on the facts and circumstances surrounding the rejection of the payment voucher. For example, if a payee has supplied a valid TIN to the certifying agency and the agency has failed to include the TIN on a certified payment voucher, the certifying agency may be responsible for any resulting Prompt Payment Act penalties that accrue. See 31 U.S.C. 3901-3907 (Prompt Payment).

Request for Comments

The public is invited to submit comments on the proposed rule. Comments received in response to this notice of proposed rulemaking will be critical in determining exceptions or waivers of the TIN requirement that may be established for any specific class or type of payments or payees.

To justify any exceptions or waivers of the TIN requirement, agencies must provide supportable information on the volume and dollar value of payments, and on the nature of impediments to compliance. Agencies should distinguish between operational impediments, such as the need to update payment systems, and legal impediments, such as agency regulations or laws prohibiting disclosure of the TIN.

Agencies specifically are invited to comment on the issues identified below:

- The status of agency compliance with the requirement of the DCIA to furnish TINs with each certified voucher and actions planned to achieve compliance;
- Issues anticipated in connection with furnishing TINs for any specific class or type of payments or payees;
- Issues anticipated due to the rejection of payment requests which do not include TINs for any specific class or type of payments or payees;
- Issues regarding foreign currency payments, or payments to foreign governments, foreign nationals employed overseas, or other specific classes of payees overseas; and
- Disbursing official readiness to reject payment requests which do not include TINs and actions planned to achieve readiness.

Regulatory Analysis

Regulatory Flexibility Act. It is hereby certified that this regulation will not

have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The DCIA and this regulation require executive agencies to include the TIN with each certified voucher. Most small entities already will have a TIN for tax purposes. Furnishing the TIN to executive agencies will impose little or no burden.

Paperwork Reduction Act. The requirements of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, do not apply to this proposed rule. The DCIA requirement that agencies provide payees' TINs on payment vouchers submitted to disbursing officials is not a collection of information subject to the PRA. The PRA does not apply to the collection of information from agencies, instrumentalities, or employees of the United States. 44 U.S.C. 3502(3)(A).

Executive Order (E.O.) 12866. It has been determined that this regulation is not a significant regulatory action as defined in E.O. 12866.

List of Subjects in 31 CFR Part 212

Administrative practice and procedure, Electronic funds transfers, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, 31 CFR Part 212 is proposed to be added to read as follows:

PART 212—TAXPAYER IDENTIFYING NUMBER REQUIREMENT

Sec.

212.1 Scope.

212.2 Definitions.

212.3 Agency and disbursing official responsibilities.

212.4 Effective date.

Authority: 5 U.S.C. 301; 31 U.S.C. 321, 3301, 3302, 3321, 3325, and 3528.

§ 212.1 Scope.

This part governs the responsibility of certifying and disbursing officials and heads of agencies in regard to the inclusion of taxpayer identifying numbers (TINs) on certified vouchers. This part applies to all payments certified by executive agencies pursuant to 31 U.S.C. 3325. This part also applies to all payments certified by the Department of Defense.

§ 212.2 Definitions.

For purposes of this part:

Certified voucher or voucher means a payment voucher certified pursuant to 31 U.S.C. 3528(a). A voucher may contain one or more payment requests.

Certifying official means an officer or employee of an executive agency having written authorization from the head of the agency to certify vouchers.

Disbursing official or disbursing officer means an official who has authority to disburse public money pursuant to 31 U.S.C. 3321 or another law, including an official of the Department of the Treasury, the Department of Defense, the United States Postal Service, or any other government corporation, or any official of the United States designated by the Secretary of the Treasury to disburse public money.

Executive agency means a department, agency, or instrumentality in the executive branch of the United States Government.

Payment means a sum of money transferred to a person in satisfaction of an obligation.

Payment certifying agency means any executive agency that has transmitted a voucher to a disbursing official for disbursement.

Payment request means an individual request for a payment on a certified voucher. A voucher may contain one or more payment requests.

Person means a natural person, corporation, trust, estate, partnership, cooperative, association, agency, State or any other entity that receives a

Federal payment, other than another Federal agency.

Reject means to suspend payment processing before funds are disbursed to the payee, cancel the payment request, and credit any funds that had been allocated for the payment to the payment certifying agency.

Taxpayer identifying number (TIN) means the identifying number described in section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109). Taxpayer identification number has the same meaning as taxpayer identifying number.

§ 212.3 Agency and disbursing official responsibilities.

(a) As required by 31 U.S.C. 3325(d), the head of an executive agency or the certifying official shall include with each certified voucher submitted to a disbursing official pursuant to 31 U.S.C. 3325(a) the TIN of each person to whom payment may be made under the voucher. When a voucher contains more than one payment request, a TIN is required for each payment request. In the case of multiple payees the TIN of each payee shall be included.

(b) A disbursing official will reject any payment request that does not include the TIN required in paragraph (a) of this section.

(c) The disbursing official will notify the payment certifying agency of any payment requests rejected under this section. For payment to be made, the payment certifying agency will resubmit the payment request with the TIN required in paragraph (a) of this section.

§ 212.4 Effective date.

This part applies to payments certified after [insert date 6 months after date of publication of final rule].

Dated: August 26, 1997.

Michael T. Smokovich,

Acting Commissioner.

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