

**DEPARTMENT OF THE TREASURY****Fiscal Service****31 CFR Part 240****RIN 1510-AA45****Indorsement and Payment of Checks Drawn on the United States Treasury****AGENCY:** Financial Management Service, Fiscal Service, Treasury.**ACTION:** Final rule.

**SUMMARY:** This document amends the rule governing the indorsement and payment of checks drawn on the United States Treasury and the remedies available when checks are lost or stolen and then negotiated by someone other than the intended payee. In instances where losses occur, Part 240 provides for the allocation of losses between the Federal Government and indorsers of the check. Part 240 also provides notice of how Treasury will collect debts owed by banks and other indorsers when they fail to pay claims arising under its terms.

**EFFECTIVE DATE:** May 3, 2004.**FOR FURTHER INFORMATION CONTACT:**

Ronald Brooks, (202) 874-7573, [ronald.brooks@fms.treas.gov](mailto:ronald.brooks@fms.treas.gov), Senior Program Analyst, Financial Processing Division, Financial Management Service, Prince Georges Center II Building, 3700 East-West Highway, Room 725-D, Hyattsville, Maryland 20782. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays. A copy of this final rule is being made available on the Financial Management Service Web site at the following address: [http://www.fms.treas.gov/checkclaims/31\\_CFR\\_240.pdf](http://www.fms.treas.gov/checkclaims/31_CFR_240.pdf).

**SUPPLEMENTARY INFORMATION:****I. Background**

On April 23, 2003, The Financial Management Service (FMS) issued a Notice of Proposed Rulemaking (NPRM) (68 FR 20046) proposing changes constituting a comprehensive revision of 31 CFR Part 240 (Part 240). The NPRM addressed, in part, the time for first examination of Treasury checks, the apportionment of risk when losses occur, deceased payee check intercepts, declination protests, the use of debt collection tools in the collection of reclamation debts, and the use of powers of attorney. The NPRM also included changes made in an Interim

Rule issued on May 24, 2002, which related to Treasury Check Offset (TCO) (67 FR 36517). This final rule addresses issues raised in comments submitted in response to the NPRM and finalizes the NPRM with changes. In addition, it supercedes the Interim Rule. FMS did not receive any comments on the Interim Rule.

The revised regulation includes provisions governing how checks may be indorsed, and remedies available to payees and other indorsers when checks are lost or stolen and then subsequently negotiated by someone other than the intended payee. In instances where losses occur, such as when a check bearing a fraudulent indorsement is paid, the regulation provides for the allocation of losses between the Government and indorsers of the check. The regulation also provides notice of how Treasury will collect debts owed by financial institutions and other indorsers when they fail to pay claims arising under the terms of this regulation.

**II. Summary of Comments**

We received 12 comments in response to the NPRM. Comments were received from credit unions, credit union associations, bank associations, and one bank. The comments reflected particular interest in the following four issues: (1) The definition of a material defect or alteration (§ 240.2); (2) the time frame within which Treasury must complete first examination (§ 240.5); (3) protests of declinations and reclamations (§§ 240.6 and 240.8); and (4) the use of powers of attorney (§ 240.16). In addition to these four main areas of interest, comments and recommendations regarding several other sections were also submitted. A summary of these comments and Treasury's response to the comments follows.

**Material Defect or Alteration**

Three comments opposed the provision in § 240.2 that includes counterfeit checks within the definition of "material defect or alteration." The commenters stated that Treasury is in the best position to detect counterfeit checks and therefore counterfeit checks should not be subject to reclamation. After careful consideration, we have retained counterfeit checks within the definition of "material defect or alteration." Section 240.7 specifies that after final payment, Treasury will not reclaim on a counterfeit check unless the reclamation debtor has failed to make all reasonable efforts to ensure that a check is an authentic Treasury check and not a counterfeit check.

Therefore, we believe that we have appropriately provided for those situations where a financial institution has taken "all reasonable efforts," and that the risk properly lies with the financial institution if it fails to take reasonable steps necessary to detect counterfeit checks.

Three commenters suggested that Treasury provide guidance regarding what is meant by "reasonable efforts." Four commenters suggested that Treasury provide guidance on detecting counterfeit checks. In response, we have added a definition of the term "reasonable efforts" to the definition section found at § 240.2. This new definition clarifies that "reasonable efforts" needed to ensure that a check is authentic include, as a minimum, verifying the existence of the U.S. Treasury watermark. However, the definition makes clear that "reasonable efforts" will not be the same in every instance because the minimum effort required will be dependent upon the facts of each particular case. For instance, depending on the facts, it may be reasonable to expect the verification of other security features, such as the bleeding ink or the ultraviolet overprinting. Guidance on the various security features found on U.S. Treasury checks is available on the FMS Web site at:

<http://www.fms.treas.gov>. Institutions also may contact the FMS Questioned Documents Branch at (202) 874-7640 for additional information about these security features or to request training.

One commenter suggested that Treasury make an on-line database available that would enable institutions to verify check information. Although there are currently no plans to implement such a system, institutions may contact the Federal Reserve Bank of Richmond to verify limited check issue information. Institutions must remember, however, that just because a check contains the correct issue information that does not necessarily mean the check is authentic—it may only be a copy. Therefore, security features such as the watermark must also be verified. Contact information for the Federal Reserve Bank of Richmond is available on the FMS Web site at: <http://www.fms.treas.gov>.

**First Examination**

Section 240.5 specifies that Treasury shall have a reasonable amount of time, not to exceed 90 days, to complete first examination (unless Treasury is on notice of a question of law or fact about whether a check is properly payable). Seven commenters supported the proposed provision in § 240.5. Three

commenters opposed the 90-day time frame. Five commenters suggested a shorter time frame in which to complete first examination. Two of these five commenters stated that Treasury should complete first examination by midnight of the next business day. One commenter suggested a 30-day time frame or, in the alternative, a 30-day time frame for checks under \$10,000. One commenter suggested a 45-day time frame and one commenter suggested less than 90 days but did not specify a specific number of days.

We have carefully considered the comments received relating to first examination and the concerns raised therein. Given the inherent delays that Treasury experiences in receiving check issue records from non-Treasury disbursing officials, Treasury must have sufficient time to complete first examination. The proposed rule issued in 1997 set a date certain at 150 days from the date that a check is presented to a Federal Reserve Bank for payment. The NPRM reduced this amount of time further to 90 days. Treasury has continued to work diligently to reduce the number of days necessary to complete first examination, as well as the potential for losses when issue records are not received in a timely manner. As a consequence, we have decided for the final rule to reduce the amount of time available for first examination to 60 days. Treasury will continue to strive to make additional reductions to this time frame whenever possible.

#### *Protests*

Three commenters opposed the provisions at §§ 240.6 and 240.8, which provide that only a presenting bank may protest the declination of a check and that only a reclamation debtor may protest a reclamation. Two commenters supported these provisions. In the case of declinations, Treasury declines payment only against the presenting bank. As such, it is only the presenting bank that may protest this decision. (See *Casa de Cambio Comdiv S.A. de C.V. v. U.S.*, 291 F.3d 1356 (Fed. Cir. 2002)). Likewise, any indorser that directly receives a reclamation has the right to protest the reclamation. Consistent with the decision of the Court in *Casa*, we have left unchanged the provisions related to who may protest a declination or reclamation.

Two commenters suggested that Treasury respond to a protest within a set time frame (one suggested 45 days, the other suggested 60 days). Treasury agrees that a protester should be able to expect a response within a reasonable time frame. Therefore, §§ 240.6 and

240.8 have been revised to provide that the deciding official will make every effort to decide the protest within 60 days of receiving a proper protest, or will provide notice of the reason for delay. We note that in some cases it is not possible to render a decision within 60 days due to the need for a referral to the Secret Service or for additional handwriting samples. In such situations, a final decision will be rendered as soon as the necessary information becomes available.

#### *Powers of Attorney*

This final rule retains the general provision that general powers of attorney may be used only to negotiate certain enumerated checks, the right to which does not expire upon the death of the payee/beneficiary. For all other checks, such as recurring benefit payments, a special power of attorney is required. This rule expands the use of special powers of attorney by allowing such powers of attorney to be executed in favor of any entity or individual, rather than only financial institutions as is currently the rule. One commenter opposed the continued required use of special powers of attorney. Five commenters supported the proposed expanded use of special powers of attorney.

This rule continues the mandatory use of special powers of attorney for all checks that do not qualify for the use of a general power of attorney. The reason for this decision is two-fold: First, a general power of attorney is more easily abused by the attorney-in-fact; and second, a special power of attorney must explicitly state that it does not purport to assign the right to receive payments to the attorney-in-fact or to any other person. Requiring use of a special power of attorney for payments such as recurring benefit payments ensures both that the intended recipient has a clear intent to authorize an attorney-in-fact to negotiate such payments, and that all parties seeking to rely on the power of attorney are aware that it cannot be used as a means of assigning the right to receive payment. While the rule requires the continued use of special powers of attorney, Treasury believes that removing the requirement that they be executed in the name of a financial institution will assist recipients of recurring benefit payments by affording them greater flexibility in designating an attorney-in-fact.

Three commenters suggested that Treasury keep Appendix A that provides forms for Treasury powers of attorney. These commenters felt that the forms provide a customer service and

are efficient in that they include the necessary special power of attorney language. In response, this rule retains the forms in Appendix A as optional use forms. These forms are available on the FMS Web site at: <http://www.fms.treas.gov>.

#### *Miscellaneous*

One commenter suggested reducing the deadline for presenting a check claim to 90–120 days. However, since 31 U.S.C. 3702 specifies a one-year time frame within which to present a check claim, we cannot by regulation reduce this amount of time. One commenter requested that we clarify when the one-year presentment deadline begins—specifically, whether the negotiated date will be the presentment date. According to § 240.4(a), “Treasury shall not be required to pay any check that is not negotiated to a financial institution within 12 months after the date on which the check was issued.” Therefore, the operative dates are the check issuance date and the date of first presentment.

One commenter suggested that we address check truncation legislation such as “Check 21” in the final rule. We note that the Check Clearing for the 21st Century Act, Pub. L. 108–100, was enacted on October 28, 2003, and that its provisions do not become effective until October 28, 2004. Given that this is new legislation and does not become effective until October 2004, we have concluded that, to the extent Part 240 must be amended to be consistent with “Check 21,” that will be done in a separate regulatory action.

Section 240.18, Implementing Instructions, was removed from the final rule. Instead, specific references to the Treasury Financial Manual have been included within the body of the regulation where appropriate.

## **II. Procedural Matters**

#### *Executive Order 12866, Regulatory Planning and Review*

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

#### *Clarity of the Regulations*

Executive Order 12866 and the President’s memorandum of June 1, 1998, require each agency to write all rules in plain language. We invite your comments on how to make this final rule easier to understand. Please send any comments you may have on this final rule to the address specified in the **FOR FURTHER INFORMATION CONTACT** section.

## Regulatory Flexibility Act

It is hereby certified pursuant to the Regulatory Flexibility Act that this final rule will not have a significant impact on a substantial number of small business entities. The major revisions to Part 240 in this final rule incorporate recent statutory changes and Court decisions, or revise current agency practices relating to implementation of Federal Claims Collection Standards (FCCS) requirements. Specifically, the provisions concerning collection procedures do not create, in and of themselves, new debt collection tools, impose new fees not authorized by law, or otherwise create new limits on the rights of affected parties, including small business entities. The provisions concerning the referral of delinquent debts to other agencies or United States disbursing officials, and the provisions concerning the collection of delinquent debts by means of Treasury check offset, are all in furtherance of specific authorities established by the Debt Collection Improvement Act of 1996 (DCIA). In particular, the DCIA provides that, "By presenting Treasury checks for payment a presenting bank is deemed to authorize this offset." 31 U.S.C. 3712(e). Consequently, any economic impact on small entities will be the result of specific statutory authority, rather than a direct result of Treasury regulations.

The provisions relating to how and when penalties and administrative costs will be added to delinquent debts represent a change in Treasury policy relating to implementation of the requirements of the FCCS. While the change in policy may result in some additional costs to small business entities, any such additional costs will be the result of Treasury's compliance with the requirements of the FCCS, and not a direct result of this regulation. Further, the impact of the change in policy will not be significant, as the costs will be waived for those who pay within 60 days of the date of reclamation; such costs will be incurred only by those who fail to pay a reclamation in a timely fashion.

Provisions relating to declinations clarify existing Treasury practices concerning the processing of checks determined to include a material defect or alteration prior to Treasury's making final payment on a check. Including such provisions benefits financial institutions, as well as the general public, by providing notice of how and when actions by Treasury to decline final payment may be protested. Accordingly, a Regulatory Flexibility Analysis is not required.

Finally, while provisions in this rule supercede existing Federal common law to the extent that such law applies to counterfeit checks, and may result in a shift in liability for losses associated with counterfeit checks, the actual amounts involved are expected to be minimal. An analysis of Treasury statistics for calendar year 2001 indicates that of 95 counterfeit checks presented to Treasury for payment, only 1 such counterfeit item took more than 30 days to detect. In that instance, the item was detected on the 105th day following presentment. Even in that instance, under the proposed rule, liability for the loss would be shifted to an indorser only if it were determined that the indorser breached the guarantee of authenticity in § 240.3(d) by failing to make all reasonable efforts to ensure that the check was authentic. Consequently, the provisions relating to liability for losses resulting from the payment of counterfeit checks is not expected to have a significant impact on a substantial number of small business entities.

### List of Subjects in 31 CFR Part 240

Banks, Banking, Checks, Counterfeit checks, Federal Reserve system, Forgery, Guarantees.

### Authority and Issuance

■ For the reasons stated in the preamble, part 240 of title 31 is revised to read as follows:

## 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 Presentment guarantees.
  - 240.4 Limitations on payment; cancellation and distribution of proceeds of checks.
  - 240.5 Provisional credit; first examination; declination; final payment.
  - 240.6 Declination protest.
  - 240.7 Reclamation of amounts of paid checks.
  - 240.8 Reclamation procedures; reclamation protests.
  - 240.9 Offset.
  - 240.10 Treasury Check Offset.
  - 240.11 Processing of checks.
- #### Indorsement of Checks
- 240.12 Indorsement by payees.
  - 240.13 Checks issued to incompetent payees.
  - 240.14 Checks issued to deceased payees.
  - 240.15 Checks issued to minor payees.
  - 240.16 Powers of attorney.
  - 240.17 Lack of authority to shift liability.
  - 240.18 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).

### 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 regulations 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 § 240.7 of this regulation. Treasury will reclaim on counterfeit checks that are deemed paid under § 240.5(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.

#### § 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 a check or checks drawn on the United States Treasury.

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

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

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

(n) *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.

(o) *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.

(p) *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

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

(q) *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 § 240.3 and §§ 240.12 through 240.16; 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.

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

(s) *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.

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

(u) *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.

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

(w) *Person* means an individual, institution, including a financial institution, or any other type of entity; the singular includes the plural.

(x) *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.

(y) *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 § 240.5(d).

(z) *Reasonable efforts*, for purposes of § 240.7, means, at a minimum, verifying the existence of the U.S. Treasury watermark. Based upon the facts at hand, reasonable efforts may require the verification of additional security features.

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

(bb) *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.

(cc) *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 § 240.7.

(dd) *Reclamation debtor* means a presenting bank or other indorser of a

check from whom Treasury has demanded a refund in accordance with §§ 240.7 and 240.8. 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.

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

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

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

(hh) *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.

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

#### **§ 240.3 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.

#### **§ 240.4 Limitations on payment; cancellation and distribution of proceeds of checks.**

(a) *Limitations on payment*.

(1) Treasury shall not be required to pay any check that is not negotiated to a financial institution within 12 months after the date on which the check was issued.

(2) All checks shall bear a legend, stating "Void After One Year." The

legend is notice to payees and indorsers of a general limitation on the payment of checks. The legend, or the inadvertent lack thereof, does not limit, or otherwise affect, the rights of Treasury under the law.

(b) *Cancellation and distribution of proceeds of checks*.

(1) Any check that has not been paid and remains outstanding for more than 12 months after the issue date will be canceled by Treasury.

(2) The proceeds from checks canceled pursuant to paragraph (b)(1) of this section will be returned to the payment certifying or authorizing agency for ultimate credit to the appropriation or fund account initially charged for the payment.

(3) On a monthly basis, Treasury will provide to each agency that authorizes the issuance of checks a list of those checks issued for such agency which were canceled during the preceding month pursuant to paragraph (b)(1) of this section.

#### **§ 240.5 Provisional credit; first examination; declination; final payment.**

(a) Any credit issued by a Federal Reserve Bank to a financial institution shall be a provisional credit until Treasury completes first examination of the check, or as provided in paragraph (d) of this section.

(b) Treasury shall have the right as a drawee to complete first examination of checks presented for payment, to reconcile checks, and, when appropriate, to make a declination on any check.

(c) Treasury will decline payment on a check when first examination by Treasury establishes that the check:

(1) Has a material defect or alteration; or

(2) Bears a forged or unauthorized drawer's signature.

(d) Treasury shall have a reasonable amount of time to complete first examination. However, except as provided in paragraph (e) of this section, if Treasury has not declined payment on a check within 60 days after the check is presented to a Federal Reserve Processing Center for payment, Treasury will be deemed to have made final payment on the check.

(e) Notwithstanding the provisions of paragraph (d) of this section, in accordance with 31 U.S.C. 3328(a)(2), if, upon presentment for payment, Treasury is on notice of a question of law or fact about whether a check is properly payable, Treasury may defer final payment until the question is settled.

(f) If a Federal Reserve Bank debits a financial institution's reserve account as

a result of an erroneous declination, Treasury will promptly refund the amount of the payment.

#### **§ 240.6 Declination protest.**

(a) *Who may protest*. Only a presenting bank may protest the declination of a check that it has presented to a Federal Reserve Bank for payment.

(b) *Basis for protest*. Where Treasury, in accordance with § 240.5, has made a declination of a check presented for payment and a Federal Reserve Bank has reversed its provisional credit to the presenting bank, the presenting bank may file a protest challenging the factual basis for such declination. Protests may be filed challenging the following determinations:

(1) *Counterfeit checks*. The presenting bank may offer evidence that the check is not a counterfeit.

(2) *Altered checks*. The presenting bank may offer evidence that the check is not altered.

(3) *Checks bearing forged or unauthorized drawer's signatures*. The presenting bank may offer evidence that the drawer's signature was authentic or was authorized.

(4) *Checks bearing a forged or unauthorized indorsement*. The presenting bank may offer evidence that an indorsement on the back of the check was not forged or was otherwise authorized in accordance with the requirements of §§ 240.12 through 240.16.

(c) *Procedures for filing a protest*. A declination protest must be in writing, and must be sent to: Department of the Treasury, Financial Management Service, Branch Manager, Financial Processing Division, Check Reconciliation Branch, Room 700-A, PO Box 1849, 3700 East-West Highway, Hyattsville, MD 20788, or to such other address as Treasury may publish in the Treasury Financial Manual, which can be found at <http://www.fms.treas.gov>. Treasury will not consider any protest unless it is received within 90 days from the declination date.

(d) *Review of a declination protest*. The Director, Financial Processing Division, or an authorized designee, will make every effort to decide any protest properly submitted under this section within 60 days, and will notify the presenting bank of Treasury's decision. In those cases where it is not possible to render a decision within 60 days, the Director, Financial Processing Division, or an authorized designee, will notify the presenting bank of the delay. Neither the Director, Financial Processing Division, nor an authorized designee, will have any involvement in

the decision to deny payment of a check under § 240.5 of this Part.

(1) If, based on the evidence provided, the Director of the Financial Processing Division, or an authorized designee, finds that the presenting bank has met, by a preponderance of the evidence, the criteria in paragraph (b) of this section, Treasury will reverse its decision to decline payment on the check by directing a Federal Reserve Bank to provide credit in the amount of the check to the presenting bank.

(2) If, based on the evidence provided, the Director of the Financial Processing Division, or an authorized designee, finds that the presenting bank has failed to meet, by a preponderance of the evidence, the criteria in paragraph (b) of this section, the declination will not be reversed.

#### **§ 240.7 Reclamation of amounts of paid checks.**

(a) If, after making final payment in accordance with § 240.5, Treasury determines that any guarantor has breached a presentment guarantee listed in § 240.3, the guarantor shall be liable to Treasury for the full amount of the check payment. Treasury may reclaim the amount of the check payment from any such guarantor prior to:

(1) The end of the 1-year period beginning on the date that a check is processed for payment by a Federal Reserve Processing Center; or

(2) The expiration of the 180-day period beginning on the close of the period described in paragraph (a)(1) of this section if a timely claim under 31 U.S.C. 3702 is presented to the certifying agency.

(b) Treasury will not reclaim on a check that bears a forged or unauthorized drawer's signature unless it has evidence that the reclamation debtor had knowledge of the forged or unauthorized drawer's signature.

(c) Treasury will not reclaim on a counterfeit check unless the reclamation debtor has failed to make all reasonable efforts to ensure that a check is an authentic check and not a counterfeit check. Guidance on the key security features found on U.S. Treasury checks is available on the FMS Web site at: [http://www.fms.treas.gov/checkclaims/check\\_security.pdf](http://www.fms.treas.gov/checkclaims/check_security.pdf). Institutions may contact the FMS Questioned Documents Branch at (202) 874-7640 for additional information about these security features or to request training.

(d) Reclamation debts are due to be paid upon receipt of the reclamation by the reclamation debtor. Interest, penalties, and administrative costs associated with unpaid balances will accrue as follows:

(1) *Interest.* Treasury will assess interest on the unpaid principal of the reclamation debt beginning on the 61st day following the reclamation date, and will calculate interest based on the rate published annually by Treasury in accordance with 31 U.S.C. 3717. Interest will continue to accrue until the full amount of the reclamation is paid or Treasury determines that payment is not required.

(2) *Penalties.* Treasury will assess a penalty beginning on the 91st day following the reclamation date. The penalty will be assessed in accordance with 31 U.S.C. 3717 on the unpaid principal of the reclamation debt, and will continue to accrue until the full amount of the reclamation debt is paid or Treasury determines that payment is not required.

(3) *Administrative costs.* Treasury will assess administrative costs associated with the unpaid reclamation debt beginning on the 61st day following the reclamation date. Administrative costs will continue to accrue until the full amount of the reclamation debt is paid or Treasury determines that payment is not required.

(e) If Treasury is unable to fully collect a reclamation debt from a reclamation debtor, after pursuing all appropriate means of collection (including, but not limited to, administrative offset in accordance with § 240.9 and Treasury Check Offset in accordance with § 240.10), Treasury will discharge the unpaid reclamation debt. See 31 CFR 903.5 (Discharge of indebtedness; reporting requirements). Treasury or the certifying agency will report the amount of the unpaid reclamation debt to the Internal Revenue Service in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P-1.

#### **§ 240.8 Reclamation procedures; reclamation protests.**

(a) *Reclamation procedures.*

(1) Treasury will send a "REQUEST FOR REFUND (CHECK RECLAMATION)" to the reclamation debtor in accordance with § 240.7(a). This request will advise the reclamation debtor of the amount demanded and the reason for the demand. Treasury will make follow-up demands by sending at least three monthly statements to the reclamation debtor. Monthly statements will identify any unpaid reclamation debts (as defined at § 240.2) and will contain or be accompanied by notice to the reclamation debtor that:

(i) If the reclamation debt is not paid within 120 days of the reclamation date, Treasury intends to collect the debt

through administrative offset in accordance with § 240.9;

(ii) If the administrative offset is unsuccessful, Treasury intends to collect the debt through Treasury Check Offset in accordance with § 240.10;

(iii) The reclamation debtor has an opportunity to inspect and copy Treasury's records with respect to the reclamation debt;

(iv) The reclamation debtor may, by filing a protest in accordance with § 240.8(b), request Treasury to review its decision that the reclamation debtor is liable for the reclamation debt; and

(v) The reclamation debtor has an opportunity to enter into a written agreement with Treasury for the repayment of the reclamation debt. A request for a repayment agreement must be accompanied by documentary proof that satisfies Treasury that the reclamation debtor is unable to repay the entire amount owed when due.

(2) Requests by a reclamation debtor for an appointment to inspect and copy Treasury's records with respect to a reclamation debt and requests to enter into repayment agreements must be sent in writing to: Department of the Treasury, Financial Management Service, Financial Processing Division, Reclamation Branch, Room 700D, PO Box 1849, Hyattsville, MD 20788, or to such other address as Treasury may publish in the Treasury Financial Manual, which can be found at <http://www.fms.treas.gov>.

(3) If a reclamation debt remains unpaid for 90 days after the reclamation date and if there is no unresolved protest associated with the reclamation debt, the monthly statement will be annotated with a notice that the reclamation debtor has until the next billing date to make payment on the reclamation debt or Treasury will proceed to collect the reclamation debt through offset in accordance with § 240.9 and Treasury Check Offset in accordance with § 240.10.

(4) If Treasury determines that a reclamation has been made in error, Treasury will abandon the reclamation. If Treasury already has collected the amount of the reclamation from the reclamation debtor, Treasury will promptly refund to the reclamation debtor the amount of its payment. Treasury may refund the amount either by applying the amount to another reclamation debt owed by the reclamation debtor in accordance with this Part or other applicable law, or by returning the amount to the reclamation debtor.

(b) *Reclamation protests.*

(1) *Who may protest.* Only a reclamation debtor may protest a reclamation.

(2) *Basis for protest.* Where Treasury, in accordance with § 240.7 and paragraph (a) of this section, reclaims the amount of a check payment, the reclamation debtor may file a protest challenging such reclamation. Protests may be filed challenging the following determinations:

(i) *Counterfeit checks.* The reclamation debtor may offer evidence that it made all reasonable efforts to ensure that a check is authentic. The reclamation debtor must include evidence that the check was examined for a watermark as required under §§ 240.2(z) and 240.3. Depending on the circumstances, FMS may require evidence that the reclamation debtor also examined the check for evidence of additional security features as described in guidance provided by Treasury or on Treasury's behalf.

(ii) *Altered checks.* The reclamation debtor may offer evidence that the check is not altered.

(iii) *Checks bearing forged or unauthorized drawer's signatures.* The reclamation debtor may offer evidence that the reclamation debtor did not have knowledge of the forged or unauthorized drawer's signature.

(iv) *Checks bearing a forged or unauthorized indorsement.* The reclamation debtor may offer evidence that the indorsement was not forged or was otherwise authorized in accordance with the requirements of §§ 240.12 through 240.16.

(3) *Procedures for filing a protest.* A reclamation protest must be in writing, and must be sent to: Department of the Treasury, Financial Management Service, Financial Processing Division, Reclamation Branch, Room 700D, PO Box 1849, Hyattsville, MD 20788, or to such other address as Treasury may publish in the Treasury Financial Manual, which can be found at <http://www.fms.treas.gov>.

(i) The reclamation protest must include supporting documentation (including, but not limited to, affidavits, account agreements, and signature cards) for the purpose of establishing that the reclamation debtor is not liable for the reclamation debt.

(ii) Treasury will not consider reclamation protests received more than 90 days after the reclamation date.

(iii) Treasury may, at its discretion, consider information received from a guarantor other than the reclamation debtor. However, in so doing, Treasury does not waive any of its rights under this Part, nor does Treasury grant rights

to any guarantor that are not otherwise provided in this Part.

(4) *Review of a reclamation protest.* The Director, Financial Processing Division, or an authorized designee, will make every effort to decide any protest properly submitted under this section within 60 days, and will notify the reclamation debtor of Treasury's decision. In those cases where it is not possible to render a decision within 60 days, the Director, Financial Processing Division, or an authorized designee, will notify the reclamation debtor of the delay. Neither the Director, Financial Processing Division, nor an authorized designee, will have any involvement in the process of making determinations under § 240.7(a) of this Part or sending a "REQUEST FOR REFUND (CHECK RECLAMATION)" under § 240.8(a) of this Part.

(i) Treasury will refrain from the collection activities identified in §§ 240.9 and 240.10 while a timely protest is being considered. However, interest, penalties, and administrative costs will continue to accrue and will be added to the reclamation debt until a final determination on the protest has been made.

(ii) If, based on the evidence provided, the Director of the Financial Processing Division, or an authorized designee, finds that the reclamation debtor has met, by a preponderance of the evidence, the criteria in paragraph (b)(2) of this section, Treasury will notify the reclamation debtor, in writing, of his or her decision to terminate collection and will refund any amounts previously collected for the reclamation debt. Treasury may refund the amount either by applying the amount to another reclamation debt owed by the reclamation debtor in accordance with this Part or other applicable law, or by returning the amount to the reclamation debtor.

(iii) If the Director, Financial Processing Division, or an authorized designee, finds, by a preponderance of the evidence, that the reclamation debtor is liable for the reclamation debt, Treasury will notify the reclamation debtor, in writing, of his or her decision. If the reclamation debtor has not paid the reclamation in full, the reclamation debtor must pay any outstanding amounts in full within 30 days from the date of Treasury's decision. If the reclamation debtor fails to pay the reclamation debt in full within that time frame, Treasury will proceed to collect the reclamation debt through offset in accordance with §§ 240.9 and 240.10.

(5) *Effect of protest decision.* The notice provided to the reclamation debtor under paragraph (b)(4)(iii) of this

section shall serve as the final agency determination under the Administrative Procedure Act (5 U.S.C. 701, *et seq.*). No civil suit may be filed until the reclamation debtor has filed a protest under this section, and Treasury has provided notice of its final determination.

#### § 240.9 Offset.

(a) If a reclamation debt remains unpaid for 120 days after the reclamation date, Treasury will refer the reclamation debt, if eligible, to Treasury's centralized offset program (see 31 CFR Part 285) or another Federal agency for offset in accordance with 31 U.S.C. 3716. Prior to making a referral for offset, Treasury, in accordance with § 240.8(a)(3), will send at least one monthly statement to the reclamation debtor informing the reclamation debtor that Treasury intends to collect the reclamation debt by administrative offset and Treasury Check Offset.

(b) If a reclamation debtor wishes to make payment on a reclamation debt referred for offset, the reclamation debtor should contact Treasury at the address listed in § 240.8(b) to resolve the debt and avoid offset.

(c) If Treasury is unable to collect a reclamation debt by use of the offset described in paragraph (a) of this section, Treasury shall take such action against the reclamation debtor as may be necessary to protect the interests of the United States, including, but not limited to, Treasury Check Offset in accordance with § 240.10, or referral to the Department of Justice.

(d) If Treasury effects offset under this section and it is later determined that the reclamation debtor already had paid the amount of the reclamation debt, or that a reclamation debtor which had timely filed a protest was not liable for the amount of the reclamation, Treasury will promptly refund to the reclamation debtor the amount of its payment. Treasury may refund the amount either by applying the amount to another reclamation debt owed by the reclamation debtor in accordance with this Part or other applicable law, or by returning the amount to the reclamation debtor.

#### § 240.10 Treasury Check Offset.

(a) If Treasury is unable to effect collection pursuant to §§ 240.7, 240.8, or 240.9, of this Part, Treasury will collect the amount of the reclamation debt through Treasury Check Offset. Treasury Check Offset occurs when, at the direction of the Treasury, a Federal Reserve Bank withholds, that is, offsets, credit from a presenting bank. The amount of credit offset is applied to the



reclamation debt owed by the presenting bank. By presenting Treasury checks for payment, the presenting bank is deemed to authorize Treasury Check Offset.

(b) If Treasury effects offset under this section and it is later determined that the presenting bank paid the reclamation debt in full, or that a presenting bank was not liable for the amount of the reclamation debt, Treasury will promptly refund to the presenting bank the amount of its overpayment. Treasury may refund the amount either by applying the amount to another reclamation debt in accordance with this Part or other applicable law, or by returning the amount to the presenting bank.

(c) Treasury Check Offset is used for the purpose of collecting debt owed by a presenting bank to the Federal Government. As a consequence, presenting banks shall not be able to use the fact that Treasury checks have not been paid as the basis for a claim against Treasury, a Federal Reserve Bank, or other persons or entities, including payees or other indorsers of checks, for the amount of the credit offset pursuant to 31 U.S.C. 3712(e) and this section.

(d) This section does not apply to a claim based upon a reclamation that has been outstanding for more than 10 years from the date of delinquency.

#### **§ 240.11 Processing of checks.**

(a) *Federal Reserve Banks.*

(1) Federal Reserve Banks must cash checks for Government disbursing officials when such checks are drawn by the disbursing officials to their own order, except that payment of such checks must be refused if:

(i) A check bears a material defect or alteration;

(ii) A check was issued more than one year prior to the date of presentment; or

(iii) The Federal Reserve Bank has been notified by Treasury, in accordance with § 240.14(c), that a check was issued to a deceased payee.

(2) Federal Reserve Banks are not required to cash checks presented directly to them by the general public.

(3) As a depository of public funds, each Federal Reserve Bank shall:

(i) Receive checks from its member banks, nonmember clearing banks, or other depositors, when indorsed by such banks or depositors who guarantee all prior indorsements thereon;

(ii) Give immediate provisional credit therefore in accordance with their current Time Schedules and charge the amount of the checks cashed or otherwise received to the General Account of the United States Treasury,

subject to first examination and payment by Treasury;

(iii) Forward payment records, requested original checks, and copies of checks to Treasury; and

(iv) Release the original checks to a designated Regional Records Services Facility upon notification from Treasury.

(4) If a check is to be declined under § 240.5, Treasury will provide the Federal Reserve Bank with notice of declination upon the completion of first examination. Federal Reserve Banks must give immediate credit therefor to Treasury's General Account, thereby reversing the previous charge to the General Account for such check.

(5) Treasury authorizes each Federal Reserve Bank to release a copy of the check to the presenting bank when payment is declined.

(b) *Treasury General Account (TGA) designated depositories outside the United States.*

(1) Financial institutions outside the United States designated by Treasury as depositories of public money in accordance with 31 U.S.C. 3303 and permitted to charge checks to the General Account of the United States Treasury in accordance with Treasury implementing instructions shall be governed by the operating instructions contained in the letter of authorization to them from Treasury and are, as presenting banks, subject to the provisions of §§ 240.3, 240.7, and 240.8.

(2) If a check is to be declined under § 240.5, Treasury will provide the presenting bank with notice of declination upon the completion of first examination and will provide the presenting bank with a copy or image of the check. Such presenting bank must give immediate credit therefore to the General Account of the United States Treasury, thereby reversing the previous charge to the Account for such check. Treasury authorizes the designated Federal Reserve Bank to return to such presenting bank the original check when payment is declined in accordance with § 240.4(a) or § 240.14(c).

(3) To ensure complete recovery of the amount due, reclamation refunds require payment in U.S. dollars with checks drawn on or payable through U.S. financial institutions located in the United States. Reclamation refunds initiated by financial institutions outside of the United States must be sent through their headquarters or U.S. correspondent financial institution only. The payments should be accompanied by documentation identifying the check that was the subject of the reclamation (such as a copy of the reclamation notice or the current monthly

statement). Reclamation refunds shall not be deposited to Treasury's General Account.

(4) Additional information relating to designated depositories outside the United States may be found in Volume VI, Chapter 2000, of the Treasury Financial Manual, which can be found at <http://www.fms.treas.gov>.

#### **Indorsement of Checks**

##### **§ 240.12 Indorsement by payees.**

(a) *General requirements.* Checks shall be indorsed by the named payee or by another on behalf of such named payee as set forth in this Part.

(b) *Acceptable indorsements.*

(1) A check is properly indorsed when:

(i) The check is indorsed by the payee in a form recognized by general principles of law and commercial usage for negotiation, transfer or collection of negotiable instruments.

(ii) The check is indorsed by another on behalf of the named payee, and sufficiently indicates that the indorser has indorsed the check on behalf of the payee pursuant to authority expressly conferred by or under law or other regulation. An example would be: "John Jones by Mary Jones." This example states the minimum indication acceptable. However, §§ 240.13, 240.14, and 240.16(f) specify the addition of an indication in specified situations of the actual capacity in which the person other than the named payee is indorsing.

(iii) Absent a signature, the check is indorsed "for collection" or "for deposit only to the credit of the within named payee or payees." The presenting bank shall be deemed to guarantee good title to checks without signatures to all subsequent indorsers and to Treasury.

(iv) The check is indorsed by a financial institution under the payee's authorization.

(2) *Indorsement of checks by a duly authorized fiduciary or representative.* The individual or institution accepting a check from a person other than the named payee is responsible for determining whether such person is authorized and has the capacity to indorse and negotiate the check. Evidence of the basis for such a determination may be required by Treasury in the event of a dispute.

(3) *Indorsement of checks by a financial institution under the payee's authorization.* When a check is credited by a financial institution to the payee's account under the payee's authorization, the financial institution may use an indorsement substantially as follows: "Credit to the account of the



within-named payee in accordance with the payee's instructions. XYZ [Name of financial institution].” A financial institution using this form of indorsement will be deemed to guarantee to all subsequent indorsers and to the Treasury that it is acting as an attorney-in-fact for the payee, under the payee's authorization, and that this authority is currently in force and has neither lapsed nor been revoked either in fact or by the death or incapacity of the payee.

(4) *Indorsement of checks drawn in favor of financial institutions.* All checks drawn in favor of a financial institution, for credit to the account of a person designating payment so to be made, must be indorsed in the name of the financial institution as payee in the usual manner. However, no check drawn in favor of a financial institution for credit to the account of a payee may be negotiated by the financial institution after the death of the payee.

(c) *Unacceptable indorsements.*

(1) A check is not properly indorsed when the check is signed or otherwise is indorsed by a person without the payee's consent or authorization.

(2) Failure to include the signature of the person signing the check as required by paragraph (b)(1)(ii) of this section will create a rebuttable presumption that the indorsement is a forgery and is unacceptable.

(3) Failure to include sufficient indication of the indorser's authority to act on behalf of the payee as required by paragraph (b)(1)(ii) of this section will create a rebuttable presumption that the indorsing person is not authorized to indorse a check for the payee.

**§ 240.13 Checks issued to incompetent payees.**

(a) *Handling of checks when a guardian or other fiduciary has been appointed.*

(1) A guardian appointed in accordance with applicable State law, or a fiduciary appointed in accordance with other applicable law, may indorse checks issued for the following classes of payments the right to which under law does not terminate with the death of the payee: payments for the redemption of currencies or for principal and/or interest on U.S. securities; payments for tax refunds; and payments for goods and services.

(i) A guardian or other fiduciary indorsing any such check on behalf of an incompetent payee, must include, as part of the indorsement, an indication of the capacity in which the guardian or fiduciary is indorsing. An example would be: “John Jones by Mary Jones, guardian of John Jones.”

(ii) When a check indorsed in this fashion is presented for payment by a financial institution, it will be paid by Treasury without submission of documentary proof of the authority of the guardian or other fiduciary, with the understanding that evidence of such claimed authority to indorse may be required by Treasury in the event of a dispute.

(2) A guardian or other fiduciary may not indorse a check issued for any class of payment other than one specified in paragraph (a)(1) of this section. When a check other than one specified in paragraph (a)(1) of this section is received by a guardian or other fiduciary, the check must be returned to the certifying agency with information as to the incompetence of the payee and documentary evidence showing the appointment of the guardian or other fiduciary in order that a replacement check, and future checks, may be drawn in favor of the guardian or other fiduciary.

(b) *Handling of checks when a guardian or other fiduciary has not been appointed.* If a guardian or other fiduciary has not been appointed, all checks issued to an incompetent payee must be returned to the certifying agency for determination as to whether, under applicable law, payment is due and to whom it may be made.

(c) *Handling of certain checks by an attorney-in-fact.* Notwithstanding paragraph (a)(2) of this section, if a check was issued for a class of payments the right to which under law terminates upon the death of the beneficiary, such as a recurring benefit payment or annuity, the check may be negotiated under a durable special power of attorney or springing durable special power of attorney subject to the restrictions enumerated in § 240.16. After the end of the six-month period provided in §§ 240.16(d) and (e), such checks must be handled in accordance with paragraph (a)(2) of this section.

**§ 240.14 Checks issued to deceased payees.**

(a) *Handling of checks when an executor or administrator has been appointed.*

(1) An executor or administrator of an estate that has been appointed in accordance with applicable State law may indorse checks issued for the following classes of payments the right to which under law does not terminate with the death of the payee: payments for the redemption of currencies or for principal and/or interest on U.S. securities; payments for tax refunds; and payments for goods and services.

(i) An executor or administrator indorsing any such check must include, as part of the indorsement, an indication of the capacity in which the executor or administrator is indorsing. An example would be: “John Jones by Mary Jones, executor of the estate of John Jones.”

(ii) When a check indorsed in this fashion is presented for payment by a financial institution, it will be paid by Treasury without the submission of documentary proof of the authority of the executor or administrator, with the understanding that evidence of such claimed authority to indorse may be required by Treasury in the event of a dispute.

(2) An executor or administrator of an estate may not indorse a check issued for any class of payment other than one specified in paragraph (a)(1) of this section. Other checks, such as recurring benefit payments and annuity payments, may not be negotiated after the death of the payee. Such checks must be returned to the certifying agency for determination as to whether, under applicable law, payment is due and to whom it may be made.

(b) *Handling of checks when an executor or administrator has not been appointed.* If an executor or administrator has not been appointed, all checks issued to a deceased payee must be returned to the certifying agency for determination as to whether, under applicable law, payment is due and to whom it may be made.

(c) *Handling of checks when a certifying agency learns, after the issuance of a recurring benefit payment check, that the payee died prior to the date of issuance.*

(1) A recurring benefit payment check, issued after a payee's death, is not payable. As a consequence, when a certifying agency learns that a payee has died, the certifying agency must give immediate notice to Treasury, as prescribed at Volume I, Part 4, Chapter 7000 of the Treasury Financial Manual, which can be found at <http://www.fms.treas.gov>. Upon receipt of such notice from a certifying agency, Treasury will instruct the Federal Reserve Bank to refuse payment of the check upon presentment. Upon receipt of such instruction from Treasury, the Federal Reserve Bank will make every appropriate effort to intercept the check. If the check is successfully intercepted, the Federal Reserve Bank will refuse payment, and will return the check unpaid to the presenting bank with an annotation that the payee is deceased. If a financial institution learns that a date of death triggering action under this section is erroneous, the financial

institution must advise the payee to contact the payment certifying agency.

(2) Nothing in this section shall limit the right of Treasury to institute reclamation proceedings under the provisions of §§ 240.7 and 240.8 with respect to a check issued to a deceased payee that has been negotiated and paid over a forged or unauthorized indorsement.

#### **§ 240.15 Checks issued to minor payees.**

(a) Checks in payment of principal and/or interest on U.S. securities that are issued to minors may be indorsed by:

(1) Either parent with whom the minor resides; or

(2) If the minor does not reside with either parent, by the person who furnishes the minor's chief support.

(b) The parent or other person indorsing on behalf of the minor must present with the check the indorser's signed statement giving the minor's age, and stating that the payee either resides with the parent or receives his or her chief support from the person indorsing on the minor's behalf and that the proceeds of the check will be used for the minor's benefit.

#### **§ 240.16 Powers of attorney.**

(a) *Specific powers of attorney.* Any check may be negotiated under a specific power of attorney executed in accordance with applicable State or Federal law after the issuance of the check and describing the check in full (check serial and symbol numbers, date of issue, amount, and name of payee).

(b) *General powers of attorney.* Checks may be negotiated under a general power of attorney executed, in accordance with applicable State or Federal law, in favor of a person for the following classes of payments:

(1) Payments for the redemption of currencies or for principal and/or interest on U.S. securities;

(2) Payments for tax refunds, but subject to the limitations concerning the mailing of Internal Revenue refund checks contained in 26 CFR 601.506(c); and

(3) Payments for goods and services.

(c) *Special powers of attorney.* Checks issued for classes of payments other than those specified in paragraph (b) of this section, such as a recurring benefit payment, may be negotiated under a special power of attorney executed in accordance with applicable State or Federal law, which describes the purpose for which the checks are issued, names a person as attorney-in-fact, and recites that the special power of attorney is not given to carry into effect an assignment of the right to

receive such payment, either to the attorney-in-fact or to any other person.

(d) *Durable special powers of attorney.* A durable special power of attorney is a special power of attorney that continues despite the principal's later incompetency, and is created by the principal's use of words explicitly stating such intent. Classes of checks other than those specified in paragraph (b) of this section may be negotiated under a durable special power of attorney executed in accordance with applicable State or Federal law, which describes the purpose for which the checks are issued, names a person as attorney-in-fact, and recites that the special power of attorney is not given to carry into effect an assignment of the right to receive such payment, either to the attorney-in-fact or to any other person. For the purpose of negotiating Treasury checks, durable special powers of attorney are effective only during the six-month period following a determination that the named payee is incompetent.

(e) *Springing durable special powers of attorney.* A springing durable special power of attorney is similar to a durable power of attorney except that its terms do not become effective until the principal's subsequent incompetence. As with a durable special power of attorney, a springing durable special power of attorney is created by the principal's use of language explicitly stating that its terms become effective at such time as the principal is determined to be incompetent. Classes of checks other than those specified in paragraph (b) of this section may be negotiated under a springing durable special power of attorney executed in accordance with applicable State or Federal law, which describes the purpose for which the checks are issued, names a person as attorney-in-fact, and recites that the springing durable special power of attorney is not given to carry into effect an assignment of the right to receive payment, either to the attorney-in-fact or to any other person. For the purpose of negotiating Treasury checks, springing durable special powers of attorney are effective only during the six-month period following a determination that the named payee is incompetent.

(f) *Proof of authority.* Checks indorsed by an attorney-in-fact must include, as part of the indorsement, an indication of the capacity in which the attorney-in-fact is indorsing. An example would be: "John Jones by Paul Smith, attorney-in-fact for John Jones." Such checks when presented for payment by a financial institution, will be paid by Treasury without the submission of documentary proof of the claimed authority, with the

understanding that evidence of such claimed authority to indorse may be required by Treasury in the event of a dispute.

(g) *Revocation of powers of attorney.* Notwithstanding any other law, for purposes of negotiating Treasury checks, all powers of attorney are deemed revoked by the death of the principal and may also be deemed revoked by notice from the principal to the parties known, or reasonably expected, to be acting on the power of attorney.

(h) *Optional use forms.* Optional use power of attorney forms are listed in the appendix to this part. These forms are available on the FMS Web site at: <http://www.fms.treas.gov>.

#### **§ 240.17 Lack of authority to shift liability.**

(a) This Part neither authorizes nor directs a financial institution to debit the account of any person or to deposit any funds from any account into a suspense account or escrow account or the equivalent. Nothing in this Part shall be construed to affect a financial institution's contract with its depositor(s) under authority of state law.

(b) A financial institution's liability under this Part is not affected by any action taken by it to recover from any person the amount of the financial institution's liability to the Treasury.

#### **§ 240.18 Reservation of rights.**

The Secretary of the Treasury reserves the right, in the Secretary's discretion, to waive any provision(s) of this regulation not otherwise required by law.

### **Appendix A to Part 240—Optional Forms for Powers of Attorney and Their Application**

*FMS Form 231—General Power of Attorney (Individual).* This general power of attorney form may be executed by an individual, unincorporated partnership, or sole owner, for checks drawn on the United States Treasury, in payment: (1) For redemption of currencies or for principal or interest on U.S. securities; (2) for tax refunds; and (3) for goods and services.

*FMS Form 232—Specific Power of Attorney (Individual).* This specific power of attorney form may be executed by an individual, unincorporated partnership, or sole owner to authorize the indorsement of any class of check drawn on the United States Treasury. To be valid, the form must be executed after the issuance of the check and must describe the check in full, including the check serial and symbol numbers, date of issue, amount, and name of the payee.

*FMS Form 233—Special Power of Attorney (Individual).* This special power of attorney form may be executed by an individual, unincorporated partnership, or sole owner, to

authorize the indorsement of payments other than those listed under FMS Form 231, such as recurring benefit payments. It may name any person (as the term person is defined in 31 CFR Part 240) as attorney-in-fact, but must describe the purpose for which the checks are issued and recite that it is not given to carry into effect an assignment of the right to receive payment, either to the attorney-in-fact or to any other person. A special power of attorney is not effective for purposes of negotiating checks issued after the payee is determined to be incompetent, unless the payee has indicated that the special power of attorney is to: (1) Remain effective following a determination that the principal is incompetent (a durable special power of attorney); or (2) become effective following a determination that the principal is incompetent (a springing durable special power of attorney). In no instance may a special power of attorney be used as the basis for negotiation of a check drawn on the United States Treasury more than six months

after a determination that the principal is incompetent.

*FMS Form 234—General Power of Attorney (Corporation).* This general power of attorney form may be executed by a corporation to authorize the indorsement by an attorney-in-fact for the classes of payments listed under FMS Form 231. When authority is given to an officer of the corporation to execute a power of attorney authorizing a third person to indorse and collect checks drawn on the United States Treasury in the name of the corporation, the power of attorney on FMS Form 234 should be accompanied by FMS Form 235 (Resolution by Corporation Conferring Authority Upon an Officer to Execute a Power of Attorney for the Collection of Checks Drawn on the Treasurer of the United States), executed by the officer authorized herein to execute such a power.

*FMS Form 236—Specific Power of Attorney (Corporation).* This specific power of attorney form may be executed by a corporation to authorize the indorsement by an attorney-in-fact of any class of check

drawn on the United States Treasury. To be valid, the form must be executed after the issuance of the check and must describe the check in full, including the check serial and symbol numbers, date of issue, amount, and name of the payee. When authority is given to an officer of the corporation to execute a power of attorney authorizing a third person to indorse and collect checks drawn on the United States Treasury in the name of the corporation, the power of attorney on FMS Form 236 should be accompanied by FMS Form 235 (Resolution by Corporation Conferring Authority Upon an Officer to Execute a Power of Attorney for the Collection of Checks Drawn on the Treasurer of the United States), executed by the officer authorized herein to execute such a power.

Dated: March 26, 2004.

**Richard L. Gregg,**  
*Commissioner.*

[FR Doc. 04-7270 Filed 3-31-04; 8:45 am]

**BILLING CODE 4811-15-P**