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DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 315, 353, and 360

[Docket No.: FISCAL-2015-0002]

RIN: 1530-AA11

Regulations Governing United States Savings Bonds

AGENCY: Bureau of the Fiscal Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The United States Department of the Treasury, Bureau of the Fiscal Service, is issuing a final rule amending regulations governing United States savings bonds to address certain state escheat claims.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You can download this final rule at the following Internet address:

*<http://www.regulations.gov>, <http://www.gpo.gov>, or <http://www.fiscal.treasury.gov>.*

FOR FURTHER INFORMATION CONTACT:

Theodore C. Simms II, Senior Counsel, 202-504-3710 or

[Theodore.Simms@fiscal.treasury.gov](mailto:Theodore.Simms@fiscal.treasury.gov).

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

The United States Department of the Treasury has issued savings bonds since 1935 on the credit of the United States to raise funds for federal programs and operations.

Article 8, Section 8, Clause 2 of the Constitution authorizes the federal government to “borrow money on the credit of the United States.” Under this grant of power, “the Congress authorized the Secretary of the Treasury, with the approval of the President, to issue savings bonds in such form and under such conditions as he may from time to time prescribe . . . .” *Free v. Bland*, 369 U.S. 663, 667 (1962) (citing the predecessor to 31 U.S.C. 3105). Congress provided that the proceeds of savings bonds may be used by the federal government for any expenditures authorized by law. See 31 U.S.C. 3105(a).

Congress expressly authorized the Secretary of the Treasury to establish the terms and conditions that govern the savings bond program. 31 U.S.C. 3105(c). Treasury’s savings bond regulations implement this authority, setting forth a contract between the United States and savings bond purchasers. This contract gives purchasers confidence that the United States will honor its debts when a purchaser surrenders a savings bond for payment. The contract also protects the public fisc by ensuring that Treasury does not face multiple claims for payment on a single savings bond.

Under Treasury regulations, savings bonds have always been registered securities. The regulations authorize several forms of registration, including registration to individuals who are owners, co-owners, and beneficiaries, as well as to fiduciaries and institutions. See 31 CFR 315.7, 353.7, and 360.6. The regulations also provide that savings bonds are not transferrable and are payable only to the registered owner, except as described in Treasury regulations. See 31 CFR 315.15, 353.15, and 360.15. Detailed regulations describe when payment will be made to a person or entity that is not the registered owner.

To redeem a paper savings bond, the registered owner or a successor specified in the regulations must surrender the physical bond. Although there are exceptions to the requirement that the bond be surrendered, the exceptions are carefully drawn to protect the owner's rights and to protect Treasury against competing claims. For example, if a claimant cannot surrender the bond, the claimant must provide satisfactory evidence of the loss, theft, or destruction of the bond, or a satisfactory explanation of the mutilation or defacement, as well as sufficient information to identify the bond by serial number. See, e.g., 31 CFR Parts 315 and 353, subpart F. An owner's right to payment continues indefinitely. Pursuant to statutory authority, Treasury regulations allow owners to keep their bonds indefinitely and to surrender them for payment even years after the bonds mature. See 31 U.S.C. 3105(b) and 31 C.F.R. Parts 315 and 353, subpart H.

## II. STATE ESCHEAT CLAIMS FOR THE CUSTODY OF SAVINGS BONDS

Many state escheat laws allow states to take custody of unclaimed or abandoned property. Treasury's savings bond regulations do not explicitly address the topic of abandoned savings bonds, or the effect of custody escheat statutes on the rights of savings bond owners. Treasury has addressed the topic in guidance and in litigation.

In 1952, Treasury issued a bulletin to the Federal Reserve Banks providing guidance on custody escheat claims. The bulletin addressed a state claim to the custody of four savings bonds in the state's possession, which had belonged to a ward of the state who died without heirs.<sup>1</sup> In this context, Treasury stated that it will not recognize a state claim to the custody of savings bonds, but will recognize an escheat judgment that

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<sup>1</sup> Public Debt Bulletin No. 111, Subject: State Statutes Concerning Abandoned Property (Feb. 27, 1952) at 1.

confers title on a state because “in escheat the state is ‘the ultimate heir.’”<sup>2</sup> The 1952 bulletin does not identify a specific regulation authorizing state escheat claims, the full criteria under which they will be considered, or a process for submitting them. Because the state did not claim title over the bonds, this kind of detail was unnecessary.

Treasury addressed a new, broader custody escheat claim in 2004 and 2006, when several states attempted to claim the proceeds of all matured, unredeemed bonds registered to residents in their state. Unlike the claim addressed by the 1952 bulletin, these states did not possess the bonds they sought to redeem, which presumably were still held by their owners. Treasury rejected these claims. Noting that Treasury has a contract with the savings bond owners, and is obligated to pay these owners in perpetuity when the bonds are presented for payment, Treasury informed the states that they must obtain title to the bonds and then apply to Treasury for payment under existing procedures. These procedures require claimants to surrender the physical bond or provide evidence that the bond has been lost, stolen, or destroyed. Treasury’s 2004 letters specifically said that the states must possess the bonds they seek to redeem.<sup>3</sup>

Several of these states sued Treasury to claim the proceeds of all matured, unredeemed bonds registered to persons with addresses in their states. See *New Jersey v. United States Treasury*, 684 F.3d 382 (3<sup>rd</sup> Cir. 2012). In *New Jersey*, the United States Court of Appeals for the Third Circuit considered the validity of state statutes that deemed savings bonds to be “abandoned” if the owners did not redeem their bonds by a

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<sup>2</sup> *Id.* at 3.

<sup>3</sup> In 2004, Treasury sent nearly identical letters to Connecticut, the District of Columbia, Illinois, Kentucky, New Hampshire, North Carolina and South Dakota rejecting their claims to a class of bonds they did not possess. In 2006, Treasury sent a similar letter to Florida. These letters are available in the docket for this rule at [www.regulations.gov](http://www.regulations.gov)

certain time after maturity. Relying on their own statutes, the states argued that they were entitled to take custody of the proceeds of the unredeemed bonds, and upon taking custody the states would become the entity responsible for paying the bond owners.

The Third Circuit rejected the states' argument, explaining that the state unclaimed property statutes conflict with federal law in many ways. See *New Jersey*, 684 F.3d at 407-408. The court emphasized that, in advancing the goal of making the bonds "attractive to savers and investors," *Free*, 369 U.S. at 669, Congress had authorized Treasury to implement regulations specifying that "owners of savings bonds may keep the bonds after maturity." 31 U.S.C. 3105(b)(2)(A). The states' unclaimed property laws, by contrast, specified that matured bonds are abandoned and their proceeds are subject to the laws if not redeemed within a time period as short as one year after maturity. *New Jersey*, 684 F.3d at 407-408. Declaring the laws preempted, the Third Circuit observed that the state laws purported to alter the terms of the contracts between the United States and the bond owners, and potentially could make the United States subject to multiple obligations on a single bond. *Id.* at 408-409.

### III. STATE ESCHEAT CLAIMS FOR THE TITLE OF SAVINGS BONDS

Beginning in 2000, certain states enacted title escheat laws specifically for savings bonds that the states deemed to be "unclaimed" or "abandoned." Pursuant to these title escheat laws, states have attempted to claim title to bonds in their possession, as well as to a broad class of bonds the states do not possess. Kansas enacted the first statute in 2000. Other states enacted their laws more recently. Iowa, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, and South Dakota enacted their statutes

in 2014. Arkansas, Florida, Georgia, Indiana, Maine, New Hampshire, Ohio, and South Carolina enacted their statutes in 2015.

These title escheat statutes raise similar concerns to the custody escheat statutes that the Third Circuit declared preempted in *New Jersey*. Under the title escheat statutes, states presume a savings bond to be abandoned if it has not been redeemed by a certain time. The bonds are presumed abandoned even if they have not matured and are in the owner's possession, without regard to the owner's intention to redeem them later or to pass them along to a registered beneficiary or heir. In Louisiana, for example, the state presumes that a bond is abandoned if it has not been redeemed between eight and eighteen years after issuance (depending on the bond series), long before the bond even matures.

Under many of these laws, states may initiate an escheat proceeding to claim any bonds that are presumed abandoned; for bonds that a state does not possess, the state often publishes a statement in local newspapers of its intention to claim title to bonds of a particular description, and requires bond owners to respond to the escheat proceeding in order to protect their ownership of the bonds. Bond owners are not parties to the escheat proceeding, and may never learn that the state is attempting to claim title over their bonds, especially if they live out-of-state. To avoid escheat, savings bond owners would need to monitor state laws, newspapers, and judicial proceedings in states where they may not live in order to protect their rights.

Despite the broad reach of these title escheat statutes, state law can only affect savings bond ownership to the extent allowed by federal regulation. Treasury's savings bond regulations determine ownership, describing in detail the rights of registered owners

and their successors, including the right to hold paper bonds indefinitely. States do not have any explicit rights under these federal regulations to obtain title to savings bonds through a state escheat proceeding. To the extent that state escheat statutes purport to convey title to savings bonds in conflict with federal law, the escheat statutes would be preempted. See, e.g., *Free v. Bland*, 369 U.S. 663 (1962); *New Jersey v. U.S. Dept. of Treasury*, 684 F.3d 382, 407-408 (3<sup>rd</sup> Cir. 2012) (state unclaimed property laws preempted by federal statutes and savings bond regulations).

The new title escheat statutes also frustrate the objectives and operations of the federal savings bond program by creating the potential for multiple claims over the same bonds. Under these state statutes, a state may attempt to claim bonds that are still in the possession of registered owners, who can submit them for payment at any time. A state may also attempt to claim bonds that are in the possession of another state, where both states have a claim to title under their own state laws. State laws may define “abandonment” in different ways, with an advantage going to the state that can claim escheat title soonest. The potential for competing claims exposes Treasury to the risk of double-payment and costly litigation, as well as threatens the vested rights of bond owners.

Under the current savings bond regulations, Treasury has informed several states by letter that their title escheat claims will not be honored for bonds they do not possess. Given the recent increase in escheat laws specifically addressing savings bonds, the time is ripe for Treasury to clarify its prior statements on escheat and to describe more formally the criteria Treasury will use to evaluate escheat claims. Through a uniform federal rule governing title escheat claims, Treasury will provide formal notice to all

states about the escheat claims it will recognize and how it will protect the rights of bond owners still in possession of their savings bonds.

#### IV. PUBLIC COMMENTS AND TREASURY RESPONSES

Treasury voluntarily sought public comment on the proposed rule for 45 days to assist the agency in giving full consideration to the matters discussed in the proposed rule. We received comments on behalf of six state officials and associations:

1. National Association of Unclaimed Property Administrators.
2. National Association of State Treasurers.
3. Joint comments from state officials in Kansas, Louisiana, South Dakota, Pennsylvania, Mississippi, Kentucky, North Dakota, Iowa, South Carolina, and Maine.
4. The Treasurer of North Carolina.
5. The Treasurer of Missouri.
6. The State Auditor of Arkansas.

The commenters offered a range of observations, primarily opposing the proposed rule.

*Comment:* Several commenters urged Treasury to withdraw the proposed rule because it would hinder states' efforts to "reunite" bondholders with their unredeemed, matured savings bonds. In the commenters' view, bonds that have not been redeemed for some period after maturity are forgotten, abandoned, or lost. States should have the role of locating bond owners, according to the commenters, in part because states already have effective unclaimed property programs and in part because the United States does not have an incentive to locate bond owners. Because the proposed rule does not allow states to take title to bonds they do not possess, the commenters contend that states cannot assist in locating most owners of matured, unredeemed bonds. This disadvantages

bond owners and discourages the public from purchasing new savings bonds, according to the commenters.

*Response:* The proposed rule is designed to protect the rights of savings bond owners, which are safeguarded by Treasury regulations and the savings bond contract. Under these regulations, bond owners have the contractual right to retain their bonds indefinitely, to pass them along to registered co-owners, beneficiaries, heirs, and other successors, and to present them for payment by the United States government. The proposed rule protects these rights by explicitly limiting states' ability to claim title and the right to payment for themselves. Contrary to the assertion of the commenters, there is no need to "reunite" the bond owners with their U.S. savings bonds, which remain in the hands of their registered owners; the regulation clarifies that Treasury will not consider a state's request to redeem a bond that the state does not possess.

Additionally, the commenters emphasized that state unclaimed property programs will attempt to locate savings bond owners after a state claims title to their bonds. The rigor of state efforts to locate bond owners, however, would be outside federal control. Once in possession of bond proceeds, states have little incentive to locate a bond's former owner, particularly if that owner lives in another state. In addition, states may impose burdensome processes on former owners who seek payment, and may not pay former owners in full. The law in Arkansas, for example, only provides that a state "may" pay a claim from a former bond owner after deducting certain expenses from the payment. Ark. Code Ann. § 18-28-231(g)(2)(A). A person who owns a savings bond expects to be paid in full by the federal government, not by a state that has taken title to the owner's unredeemed bond.

Treasury recognizes that savings bonds can be abandoned, with no one eligible under Treasury regulations to redeem them. States are encouraged to assist in locating the owners of bonds in the states' possession, and through advertising and other methods to persuade their citizens to redeem savings bonds that have matured. These efforts can continue without impairing a bond owner's title and rights under the savings bond contract. The commenters did not offer any evidence, however, to support their claim that matured, unredeemed bonds are necessarily lost or abandoned. Based on its contact with tens of thousands of bond owners, Treasury has learned that many bond owners choose to retain their bonds after maturity for a variety of personal and financial reasons. To protect the rights of these bond owners, Treasury has not made any changes to the proposed regulation in response to this comment.

*Comment:* Several commenters asserted that the proposed rule exceeds Treasury's legal authority by preempting state property law regimes. In the commenters' view, states have the right to determine when property is unclaimed, and Treasury's proposed rule would unduly limit this right by allowing Treasury to scrutinize state escheat judgments and by preventing states from taking title to bonds that are not in the state's possession. The commenters urged that states be allowed to determine when property is abandoned, and to submit claims for bonds that are not in their possession.

*Response:* The ownership of savings bonds arises from Treasury's savings bond regulations, which have been issued under an explicit grant of authority from Congress. 31 U.S.C. 3105. Under these regulations, the owner has a contract with the federal government that defines not only the registered owner's rights, but also those of successors specified in the regulations, such as a beneficiary named on the bond or the

bond owner's estate. Federal courts have upheld these federal rules of succession against contrary claims founded on state law. See, e.g., *Free v. Bland*, 369 U.S. 663 (1962).

Treasury has long recognized that savings bonds can be abandoned, particularly in the context of a deceased person without heirs. When no person appears able under Treasury regulations to satisfy the requirements for payment, and the state can establish that a bond has been abandoned, Treasury has allowed a state to escheat the bond and submit it for payment. This does not interfere with any rights protected by the savings bond regulations, because no one else is eligible under the Treasury regulations to receive payment. Treasury has allowed states to redeem bonds belonging to a deceased owner under 31 CFR Part 315, subpart L, and bonds in a state's possession when the state can establish that they are abandoned and can satisfy the requirements for a waiver under 31 CFR 315.90.

The definition of abandonment, however, cannot be left entirely to states because of the potential for states to impair the rights of ownership provided by federal law. As the United States General Accounting Office (GAO) explained in a 1989 report, the amounts that the United States owes to owners of matured savings bonds are not considered "unclaimed because these moneys are currently payable to the rightful owners upon presentation of a proper claim and without any time limitation."<sup>4</sup> If states are allowed to define when a bond is abandoned or unclaimed, the states could impose requirements on bond owners that are outside the savings bond regulations, such as a requirement to redeem the bond within a certain time after issuance, or to maintain some

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<sup>4</sup> General Accounting Office, *Unclaimed Money: Proposals for Transferring Unclaimed Funds to States* 17 (1989). GAO found that Treasury was receiving claims amounting to \$7,000 to \$10,000 each day for bonds that had matured many years earlier. *Id.* at 23.

active communication with the state or Treasury to prove the bond owner's continuing interest in the bond. Persons holding matured bonds with an expectation that they can be redeemed anytime -- an expectation reasonably based on the savings bond regulations -- should not be required to consult state law to determine if their federal property rights are protected. Because the ownership rights for savings bonds arise under federal law, they cannot be taken away by a contrary state law.

For this reason, Treasury has required more evidence of abandonment than is required under some state laws. While some states presume that a bond is abandoned if it has not been redeemed within a certain time after issuance, Treasury has required positive evidence that the owner has relinquished a claim over the bond. In particular cases, this evidence has included the state's physical possession of the bond and affidavits showing that the registered owner did not seek to claim it after notice. When the evidence of abandonment is sufficient, Treasury is able to recognize a state's claim to title under the waiver provisions of 31 CFR 315.90, 353.90, and 360.90 (depending on the bond series). Under these provisions, Treasury may waive a savings bond regulation if (a) the waiver would not be inconsistent with law or equity, (b) the waiver would not impair any existing rights, and (c) Treasury is satisfied that the waiver would not subject the United States to any substantial expense or liability.

The proposed rule disallows escheat claims for "unclaimed" bonds that are not in a state's possession in part because states cannot produce sufficient evidence that these bonds are abandoned. States typically have little information about bonds that are not in their possession. In the claims reviewed by Treasury, states could not specify the original or current owner of these bonds, their physical location, or the evidence that bonds have

been abandoned by their owner. Instead, states identified these bonds by general description, typically the bond series, the date range when the bonds were issued, and the state recorded in the registration. The states presumed that the bonds were abandoned based on a deadline in state law, a concept that is alien to Treasury's savings bond regulations. In contrast, a state in possession of a bond may be able to show that the bond is abandoned. Often, a state acquires possession of the bond from a bank or other entity, which made unsuccessful efforts to return the bond to its owner. The fact that a state possesses the bond is itself evidence, though not conclusive, that the bond has been abandoned. Such evidence is unavailable when a state does not possess the bonds.

Based on Treasury's review of several claims, a state escheat proceeding produces little or no evidence of actual abandonment for bonds that are not in the state's possession. At the outset, a state will publish a general notice in local newspapers that the state is initiating an escheat proceeding for a class of bonds. These notices are a mere formality. The notice does not list the bond owners' names. Bond owners in possession of their bonds have no reason to search for their bonds in a listing of "unclaimed" property. Bond owners may not reside in the state initiating escheat proceedings or have any connection to that state. In these circumstances, few if any bond owners are likely to see the notice and come forward in time to contest the state's claim to their bonds. When a state court issues an uncontested finding that such bonds are "unclaimed" or "abandoned" under such a statute, there is an insufficient basis to conclude that owners have actually abandoned their claim to the bonds.

Some commenters asserted that states should be allowed under 31 CFR Parts 315, 353, and 360, subpart F, to submit evidence that bonds they have escheated have been

lost, stolen, or destroyed. Treasury does not accept the commenters' unproven assumption that a bond is necessarily lost, stolen, or destroyed simply because it has not been redeemed by a date specified in a state escheat law. If an unforeseen instance arises in which a state escheats a bond that it cannot surrender for payment, and the state can show particularized evidence about that bond as required in subpart F, Treasury can consider that request under the waiver provisions in 31 CFR 315.90, 353.90, or 360.90. The proposed rule is consistent with the rights of bond owners safeguarded by Treasury's current savings bond regulations. Accordingly, no changes have been made to the rule in response to this comment.

*Comment:* Several commenters argued that the preamble and proposed rule take a position on escheat that is at odds with past statements, where Treasury acknowledged that it would recognize state escheat claims to the title of savings bonds. The commenters specifically cited statements in 1952, 1983, and a brief filed on behalf of the United States opposing certiorari in *New Jersey v. U.S. Dept. of Treasury*, a case involving custody escheat claims.

*Response:* State escheat claims are not explicitly recognized in the savings bond regulations. While the regulations specifically acknowledge the rights of beneficiaries, heirs, and others to succeed to ownership of savings bonds, the ability of states to claim title by escheat is not mentioned. However, Treasury has said that it will recognize state claims to title in savings bonds in particular contexts.

Treasury's statement on escheat in 1952, the earliest cited by commenters, arose in the context of a state seeking custody of bonds in its possession. In that statement, the Secretary of the Treasury addressed a request by the Comptroller of New York to redeem

four United States savings bonds that came into the state's possession after the registered owner died as a ward of the state, leaving no heirs. The Secretary informed the Comptroller that Treasury would not redeem the bonds in the state's possession unless the state obtained title to the bonds based on an escheat judgment. The Secretary's 1952 letter did not suggest that a state could demand redemption of U.S. savings bonds that the state did not possess.

The commenters also refer to a statement first posted on Treasury's web site in 2000, which discusses Treasury's views on escheat claims when a state seeks title to bonds in its possession, and to a 1983 letter that discusses escheat in the context of a state's claim for custody of "abandoned bonds and notes." The 1983 letter may not concern savings bonds at all, but rather bonds and notes that Treasury has issued under different legal authority. Neither of these statements addresses claims by states to the title of savings bonds that are still in the registered owner's possession.

The commenters also cite to a brief filed by the United States in a case involving state claims to the custody of savings bonds. This brief, opposing certiorari in the Supreme Court, does not advance a new position on escheat. Rather, it explains Treasury's longstanding view that states cannot escheat savings bonds under custody escheat statutes. In a background section, the brief summarizes the views expressed in the 1952 bulletin, the 1983 letter, and the notice on Treasury's web site, and notes the general proposition that a state cannot receive payment without completing an escheat proceeding that satisfies due process and that awards title to the bond to the state. The litigation did not concern, and the Solicitor General did not address, the full criteria that

Treasury would apply under a title escheat statute when a state seeks to redeem savings bonds that it does not possess.

The commenters did not mention the letters that Treasury sent to states in 2004 and 2006 addressing the states' demand that Treasury pay them the proceeds of all matured, unredeemed savings held by residents of those states. Three commenters on the proposed rule, North Carolina, South Dakota and Kentucky, were recipients of these letters. As noted earlier, Treasury's 2004 and 2006 letters rejected the states' claims to bonds they did not possess. The letters specifically informed the states that they must obtain title to the bonds and then apply to Treasury for payment under existing procedures. These procedures require claimants to surrender the physical bond or provide evidence that the bond has been lost, stolen, or destroyed. The 2004 letters specifically said that the states must possess the bonds they seek to redeem.

The proposed rule does not conflict with the statements cited by commenters or with Treasury's 2004 and 2006 letters. The proposed rule permits states to escheat savings bonds in their possession when they meet specified criteria. It also permits states to escheat the savings bonds of owners who die without successors named in the regulations, when the states meet the requirements that apply to all claimants from deceased owners, co-owners, and beneficiaries. The proposed rule does not permit states to escheat bonds that they do not possess, a position that is consistent with letters sent to states in 2004 and 2006, and more recent letters sent to Kansas and other states.

The proposed rule is also consistent with Treasury's longstanding view that a bond owner can redeem matured bonds in the owner's possession at any time. It does not conflict with the statements cited by commenters, because those statements did not

specifically address a title escheat claim for bonds that are not in a state's possession. To the extent the statements cited by commenters require interpretation, this preamble and the final rule clarify that Treasury will not recognize *every* state escheat judgment purporting to convey title over savings bonds. In keeping with Treasury's longstanding position, savings bond owners remain entitled to submit their paper bonds to Treasury for payment indefinitely, notwithstanding a state escheat judgment that purports to give the state title over bonds that the state does possess.

The statements on escheat cited by commenters also did not excuse states from satisfying Treasury's payment requirements. Generally, Treasury regulations require a claimant seeking payment to surrender the bond. See, e.g., 31 CFR Parts 315 and 353, subpart H, and 31 CFR 316.10. If a claimant cannot surrender the bond, the claimant must provide satisfactory evidence of the loss, theft, or destruction of the bond, or a satisfactory explanation of the mutilation or defacement, as well as sufficient information to identify the bond by serial number. See, e.g., 31 CFR Parts 315 and 353, subpart F. Treasury will not consider any claim for a missing bond that is filed more than six years after a bond's final maturity, unless the claimant supplies the serial number of the bond. 31 CFR 315.29(c) and 353.29(c). When a state does not possess a bond, and does not have specific information about a bond's location, history, or serial numbers, the state cannot satisfy Treasury's requirements for payment. The proposed rule is consistent with the payment requirements in Treasury's existing savings bond regulations.

The commenters seem to prefer that Treasury consider their escheat claims under 31 CFR Parts 315, 353, or 360 subpart E (depending on the bond series), instead of the waiver provisions in sections 315.90, 353.90, or 360.90. Treasury has considered the

commenters' arguments carefully. Subpart E provides in part that Treasury "will recognize a claim against an owner of a savings bond and conflicting claims of ownership of, or interest in, a bond between coowners or between the registered owner and the beneficiary, if established by valid, judicial proceedings, but only as specifically provided in this subpart." See, e.g., 31 CFR 315.20(b). The subpart then describes the types of adverse claims covered by this subpart (payment to judgment creditors, divorce, and gifts causa mortis), and the type of evidence necessary to establish the validity of judicial proceedings. Treasury has the right to require other evidence to establish the validity of judicial proceedings under sections 315.91(a), 353.91(a), and 360.91.

As stated in the preamble to the proposed rule and other public documents, Treasury interprets subpart E to apply only to the adverse proceedings specifically listed there. Escheat proceedings are not among the listed proceedings, and because they are *in rem* proceedings, they do not qualify as "a claim against an owner of a savings bond" in section 315.20(b), 353.20(b), or 360.20(b). State escheat proceedings are claims against an intangible asset, which is why state courts do not obtain jurisdiction over the bond owner in order to issue an escheat judgment. This position is not inconsistent with the 1952 letter, the 1983 letter, or the 2000 web site entry that the commenters cite, because none of these documents cites to subpart E or any specific regulation that allows states to claim title by escheat. Treasury's letters to states in 2004 and 2006 regarding escheat also did not cite to subpart E as the basis for state escheat claims. To the extent there is any ambiguity in Treasury's prior statements on the applicability of subpart E to escheat proceedings, the final rule is intended to clarify these statements: Subpart E does not apply to escheat proceedings.

But even when subpart E does apply, it only applies to “valid” judicial proceedings. Treasury has never maintained that it would recognize *every* title escheat judgment, under subpart E or any other savings bond regulation. When evaluating the validity of a proceeding under subpart E, Treasury expects more than evidence that a state judgment was entered. Treasury may require that a claimant submit any evidence pertaining to the judgment under 31 CFR 315.23, 315.91, 353.23, 353.91, 360.23, and 360.91. Treasury may require evidence, for example, that the proceeding provided due process and that the judgment does not interfere with the rights of bond owners. A state judgment is not valid under subpart E, for example, if it “gives effect to an attempted voluntary transfer inter vivos of a bond, or a judicial determination that impairs the rights of survivorship conferred by these regulations upon a coowner or beneficiary.” See, e.g., 31 CFR 315.20(a); see also *Free v. Bland*, 368 U.S. 663 (1962). A state judgment also will not be valid if it purports to convey custody over bonds to the state. See *New Jersey v. U.S. Dept. of Treasury*, 684 F.3d 382 (3<sup>rd</sup> Cir. 2012). These examples illustrate that the validity of a state judgment for purposes of subpart E depends in part on its substantive compliance with law.

To the extent there is any ambiguity about the scope of “valid” proceedings under subpart E, the final rule has been amended to make clear that Treasury may review judicial proceedings to determine whether they provided due process, complied with the savings bond regulations, and complied with relevant state law. No other changes have been made to the proposed rule in response to this comment.

*Comment:* Several commenters describe the proposed rule as a “convenient litigating position,” which they believe should not be applied in the litigation with Kansas.

*Response:* The regulation addresses escheat claims from all states, and reflects Treasury’s longstanding positions on the rights of bond owners. It also reflects Treasury’s consideration of new title escheat statutes and new claims for bonds that a state does not possess. No changes have been made to the regulation in response to this comment.

*Comment:* Several commenters questioned Treasury’s authority to review state escheat judgments. According to the commenters, only the Supreme Court has jurisdiction over appeals from final state court judgments, relying on *Lance v. Dennis*, 546 U.S. 459 (2006), a case construing the bounds of federal jurisdiction under 28 U.S.C. 1257.

*Response:* Contrary to the assertions of the commenters, *Lance* is inapposite because Treasury’s consideration of the savings bond redemption request does not constitute judicial appellate review. To be sure, the United States Supreme Court has exclusive jurisdiction to hear appeals from final state court judgments under 28 U.S.C. 1257, but that principle only applies when invoked against a losing party in the underlying state judicial action. *Lance*, 546 U.S. at 464. Because Treasury is not a party to state escheat proceedings, and is not in a position to request Supreme Court review of the state judgment, *Lance* and 28 U.S.C. 1257 do not apply here. No changes have been made to the regulation in response to this comment.

*Comment:* One commenter viewed the savings bond regulations as an unconstitutional delegation of legislative authority.

*Response:* Under its constitutional power to borrow money, Congress has authorized the Secretary of the Treasury, with approval of the President, to issue savings bonds in such form and under such conditions as he may prescribe. *Free v. Bland*, 369 U.S. 663, 666-667 (1962); 31 U.S.C. 3105. This authority allows Treasury to issue regulations prescribing restrictions on transfer and conditions governing redemption. 31 U.S.C. 3105(c). The proposed savings bond regulations fit within this authority. No changes have been made to the regulation in response to this comment.

*Comment:* One commenter asserted that the proposed rule is a “major rule” subject to the Congressional Review Act (CRA), 5 U.S.C. 804. The commenter claimed that the rule would substantially decrease the likelihood that bond owners will “recover” over \$16,000,000,000 in matured savings bonds, thereby surpassing the Act’s \$100,000,000 threshold for economic impact. The commenter also asserted that the proposed rule could substantially increase costs for states seeking to restore unclaimed property to their citizens.

*Response:* The CRA defines a “major rule” as any rule that the Office of Management and Budget finds has resulted or is likely to result in “(A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.” 5 U.S.C.

804(2). The commenter asserted that the rule triggers the first two definitions of a major rule.

The rule does not alter the United States' obligation to redeem savings bonds in accordance with the savings bond regulations. Current bond owners may continue to surrender their matured, unredeemed bonds to Treasury for payment, as many people do every year. Because the rule protects the existing rights of bond owners under the savings bond contract, its effect on the economy does not meet the threshold test for a major rule.

The commenter did not offer evidence that the proposed rule will cause a major increase in costs or prices for state unclaimed property programs. When a state seeks to escheat bonds in a state's possession, Treasury's rule would require states to show that bonds are actually abandoned and that the state escheat proceeding provided due process and was consistent with federal and state law. Treasury does not expect that this requirement will impose major, new costs on states.

No changes have been made in the proposed rule in response to this comment.

## V. SUMMARY OF THE FINAL RULE

The final rule describes when Treasury will recognize an escheat judgment vesting title in the state to abandoned savings bonds. For bonds in the state's possession, the final rule requires a state to demonstrate that it made reasonable efforts to provide actual and constructive notice of the state escheat proceeding to all persons listed on the face of the bond and all persons who may have an interest in the bond. The state must also demonstrate that those persons had an opportunity to be heard before the escheat judgment was entered. The steps normally required in a state escheat proceeding may be

adequate to establish abandonment, but Treasury is not bound by these proceedings. Because state escheat rules may vary and state escheat proceedings are often uncontested, Treasury reserves the right to require additional evidence of abandonment. Existing regulations already allow Treasury to require a bond of indemnity, with or without surety, in any case for the protection of the United States' interests. See 31 CFR 315.91, 353.91, and 360.91. These regulations remain in effect.

The final regulation also makes explicit that Treasury will not recognize escheat judgments that convey custody, but not title, to a state. This principle is well established in Federal case law and has been incorporated into the final regulation.

Treasury's decision to recognize escheat judgments for bonds in a state's possession will be a discretionary matter, because the breadth of state escheat laws is not within Treasury's control. In exercising discretion, Treasury will consider whether a state's escheat claim impairs any existing rights under Treasury regulations and will assess the risk to Treasury of duplicative payment claims. Requiring states to possess the bonds that they seek to redeem protects these interests, and enables Treasury to locate records of the bonds for which the state seeks payment. Treasury will also assess whether the state has followed its own escheat rules, to ensure (for example) that a state judgment only covers bonds that were eligible for escheat.

The final rule on escheat claims to unclaimed property does not apply when a state claims title to a definitive savings bond as the heir to a deceased owner. Treasury has long recognized circumstances in which a state may obtain title to a savings bond by escheat when the bond owner has died. These escheat claims will be considered under existing savings bond regulations that pertain to the estates of deceased owners, co-

owners, and beneficiaries. See 31 CFR part 315, subpart L; part 353, subpart L; and part 360, subpart K.

The final rule does reflect one change in the proposed rule. The final rule provides additional information about how Treasury will assess whether a state proceeding is “valid” under 31 CFR 315.20, 353.20, and 360.20. Under the final rule, Treasury may require any evidence to establish the validity of judicial proceedings, such as evidence that the proceeding provided due process, complied with this Part, and complied with relevant state law.

## VI. PROCEDURAL REQUIREMENTS

### A. Administrative Procedure Act (APA).

Because this rule relates to United States securities, which are contracts between Treasury and the owner of the security, this rulemaking falls within the contract exception to the APA at 5 U.S.C. 553(a)(2). Treasury, however, voluntarily sought public comment to assist the agency in giving full consideration to the matters discussed in the proposed rule. Treasury fully considered and responded to those comments in the preamble to this final rule.

### B. Congressional Review Act (CRA).

This rule is not a major rule pursuant to the CRA, 5 U.S.C. 801 *et seq.* It is not expected to lead to any of the results listed in 5 U.S.C. 804(2). This rule will take effect upon publication in the Federal Register.

### C. Paperwork Reduction Act (PRA).

We ask for no collections of information in this final rule. Therefore, the PRA, 44 U.S.C. 3501 *et seq.* does not apply.

D. Regulatory Flexibility Act.

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply to this rulemaking because, pursuant to 5 U.S.C. 553(a)(2), it is not required to be issued with notice and opportunity for public comment. The rule will not have a significant economic impact on a substantial number of small entities. The rule primarily affects states and is not expected to have a direct impact on any small entities.

E. Executive Order 12866.

This rule is not a significant regulatory action pursuant to Executive Order 12866.

List of Subjects in 31 CFR Parts 315, 353, and 360

Government securities, Savings bonds.

Accordingly, for the reasons set out in the preamble, 31 CFR parts 315, 353, and 360 are amended to read as follows:

**Part 315 -- REGULATIONS GOVERNING U.S. SAVINGS BONDS, SERIES A, B, C, D, E, F, G, H, J, AND K, AND U.S. SAVINGS NOTES**

1. The authority citation for part 315 continues to read as follows:

Authority: 31 U.S.C. 3105 and 5 U.S.C. 301.

2. Amend § 315.20 by revising paragraph (b) to read as follows:

**§ 315.20 General.**

\* \* \* \* \*

(b) The Department of the Treasury will recognize a claim against an owner of a savings bond and conflicting claims of ownership of, or interest in, a bond between coowners or between the registered owner and the beneficiary, if established by valid, judicial proceedings specifically listed in this subpart. Escheat proceedings will not be

recognized under this subpart. Section 315.23 specifies evidence required to establish the validity of judicial proceedings. Treasury may require any other evidence to establish the validity of judicial proceedings, such as evidence that the proceeding provided due process, complied with this part, and complied with relevant state law.

\* \* \* \* \*

3. Redesignate subpart O as subpart P.
4. Add a new subpart O to read as follows:

**Subpart O – Escheat and Unclaimed Property Claims by States**

**§ 315.88 Payment to a State claiming title to abandoned bonds.**

(a) *General.* The Department of the Treasury may, in its discretion, recognize an escheat judgment that purports to vest a State with title to a definitive savings bond that has reached the final extended maturity date and is in the State’s possession, when the State presents evidence satisfactory to Treasury that the bond has been abandoned by all persons entitled to payment under Treasury regulations. A State claiming title to a definitive savings bond as the heir to a deceased owner must comply with the requirements of subpart L, and not this section. Treasury will not recognize an escheat judgment that purports to vest a State with title to a bond that has not reached its final extended maturity date. Treasury also will not recognize an escheat judgment that purports to vest a State with title to a bond that the State does not possess, or a judgment that purports to grant the State custody of a bond, but not title.

(b) *Due process.* At a minimum, a State requesting payment under this section must demonstrate to Treasury’s satisfaction that it made reasonable efforts to provide actual and constructive notice of the escheat proceeding to all persons listed on the face

of the bond and all persons who may have an interest in the bond, and that those persons had an opportunity to be heard before the escheat judgment was entered.

(c) *Fulfillment of obligation.* Payment to a State claiming title under this section fulfills the United States' obligations to the same extent as if payment had been made to the registered owner.

**PART 353 – REGULATIONS GOVERNING DEFINITIVE UNITED STATES SAVINGS BONDS, SERIES EE AND HH**

5. The authority citation for part 353 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105, 3125.

6. Amend § 353.20 by revising paragraph (b) to read as follows:

**§ 353.20 General**

\* \* \* \* \*

(b) The Department of the Treasury will recognize a claim against an owner of a savings bond and conflicting claims of ownership of, or interest in, a bond between coowners or between the registered owner and the beneficiary, if established by valid, judicial proceedings specifically listed in this subpart. Escheat proceedings will not be recognized under this subpart. Section 353.23 specifies evidence required to establish the validity of judicial proceedings. Treasury may require any other evidence to establish the validity of judicial proceedings, such as evidence that the proceeding provided due process, complied with this part, and complied with relevant state law.

\* \* \* \* \*

7. Redesignate subpart O as subpart P.

8. Add a new subpart O to read as follows:

## **Subpart O – Escheat and Unclaimed Property Claims by States**

### **§ 353.88 Payment to a State claiming title to abandoned bonds.**

(a) *General.* The Department of the Treasury may, in its discretion, recognize an escheat judgment that purports to vest a State with title to a definitive savings bond that has reached final maturity and is in the State’s possession, when the State presents evidence satisfactory to Treasury that the bond has been abandoned by all persons entitled to payment under Treasury regulations. A State claiming title to a definitive savings bond as the heir to a deceased owner must comply with the requirements of subpart L, and not this section. Treasury will not recognize an escheat judgment that purports to vest a State with title to a bond that has not reached its final maturity. Treasury also will not recognize an escheat judgment that purports to vest a State with title to a bond that the State does not possess, or a judgment that purports to grant the State custody of a bond, but not title.

(b) *Due process.* At a minimum, a State requesting payment under this section must demonstrate to Treasury’s satisfaction that it made reasonable efforts to provide actual and constructive notice of the escheat proceeding to all persons listed on the face of the bond and all persons who may have an interest in the bond, and that those persons had an opportunity to be heard before the escheat judgment was entered.

(c) *Fulfillment of obligation.* Payment to a State claiming title under this section fulfills the United States’ obligations to the same extent as if payment had been made to the registered owner.

## **PART 360 – REGULATIONS GOVERNING DEFINITIVE UNITED STATES SAVINGS BONDS, SERIES I**

9. The authority citation for part 360 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3105 and 3125.

10. Amend § 360.20 by revising paragraph (b) to read as follows:

**§ 360.20 General**

\* \* \* \* \*

(b) The Department of the Treasury will recognize a claim against an owner of a savings bond and conflicting claims of ownership of, or interest in, a bond between coowners or between the registered owner and the beneficiary, if established by valid, judicial proceedings specifically listed in this subpart. Escheat proceedings will not be recognized under this subpart. Section 360.23 specifies evidence required to establish the validity of judicial proceedings. Treasury may require any other evidence to establish the validity of judicial proceedings, such as evidence that the proceeding provided due process, complied with this part, and complied with relevant state law.

\* \* \* \* \*

11. Redesignate subpart M as subpart N.

12. Add a new subpart M to read as follows:

**Subpart M – Escheat and Unclaimed Property Claims by States**

**§ 360.77 Payment to a State claiming title to abandoned bonds.**

(a) *General.* The Department of the Treasury may, in its discretion, recognize an escheat judgment that purports to vest a State with title to a definitive savings bond that has stopped earning interest and is in the State’s possession, when the State presents evidence satisfactory to Treasury that the bond has been abandoned by all persons entitled to payment under Treasury regulations. A State claiming title to a definitive

savings bond as the heir to a deceased owner must comply with the requirements of subpart L of this part, and not this section. Treasury will not recognize an escheat judgment that purports to vest a State with title to a bond that is still earning interest. Treasury also will not recognize an escheat judgment that purports to vest a State with title to a bond that the State does not possess, or a judgment that purports to grant the State custody of a bond, but not title.

(b) *Due process.* At a minimum, a State requesting payment under this section must demonstrate to Treasury's satisfaction that it made reasonable efforts to provide actual and constructive notice of the escheat proceeding to all persons listed on the face of the bond and all persons who may have an interest in the bond, and that those persons had an opportunity to be heard before the escheat judgment was entered.

(c) *Fulfillment of obligation.* Payment to a State claiming title under this section fulfills the United States' obligations to the same extent as if payment had been made to the registered owner.

Dated: December 18, 2015.

David A. Lebryk,

Fiscal Assistant Secretary.

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