



DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

31 CFR Part 323

[FISCAL- 2023-0002]

RIN 1530-AA28

Disclosure of Records

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

ACTION: Notice of proposed rulemaking with request for comment.

SUMMARY: The Bureau of the Fiscal Service within the Department of the Treasury (Fiscal Service or Treasury) proposes to adopt regulations to implement statutory requirements under the SECURE 2.0 Act of 2022 requiring Treasury to provide information on applicable savings bonds to states. A state receiving the information with respect to an applicable savings bond may use the information to locate the owner of the bond pursuant to Treasury's regulations and the state's own standards and requirements under abandoned property rules and regulations of the state. Regulations adopted by Treasury are required to protect the privacy of savings bond owners, prevent fraud, and ensure that any information disclosed to a state under these rules shall be used solely to locate savings bond owners.

DATES: Comments on the proposed rule must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. Follow the instructions on the website for submitting comments.

- *Mail:* Department of the Treasury, Bureau of the Fiscal Service, Attn: Marcia Goodnight, Retail Securities Services. Bureau of the Fiscal Service, Warehouse and Operations Center, Dock 1. 257 Bosley Industrial Park Drive, Parkersburg, WV 26101.

The fax and e-mail methods of submitting comments on rules to Fiscal Service have been decommissioned.

Instructions: All submissions received must include the agency name (Bureau of the Fiscal Service) and docket number FISCAL-2023-0002 for this rulemaking. In general, comments received will be published on regulations.gov without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comments or supporting materials that you consider confidential or inappropriate for public disclosure. In accordance with the U.S. government's eRulemaking Initiative, Fiscal Service publishes rulemaking information on www.regulations.gov. Regulations.gov offers the public the ability to comment on, search, and view publicly available rulemaking materials, including comments received on rules.

FOR FURTHER INFORMATION CONTACT: Marcia Goodnight, Retail Securities Services, at RetailSecurityServicesComments@fiscal.treasury.gov; or Lela Anderson, Attorney-Advisor, at 304-480-8692.

SUPPLEMENTARY INFORMATION:

I. Background

On December 29, 2022, the SECURE 2.0 Act of 2022¹ (SECURE Act) became law and added subsection (f) to 31 U.S.C. 3105 mandating that Treasury share certain savings bond information with states for the purpose of locating savings bond owners. Under new subsection (f), Treasury is required to “provide each state, in digital or other electronic form, with information describing any applicable savings bond which has an applicable address that is within such state, including (i) the name and applicable address of the registered owner; and (ii) the name and applicable address of any registered co-owner or beneficiary.”² “Applicable address” is defined to include the registered address for the registered owner of the savings bond or the last-known address for the registered owner available to the Secretary.³ “Applicable savings bond” is defined to include a savings bond which is more than three years past its final maturity date, in paper or electronic form, and has not been redeemed.⁴

Treasury is required by new subsection (f)(2) to prescribe regulations or guidance as necessary to carry out the purposes of subsection (f), including rules to protect the privacy of the owners of applicable savings bonds, prevent fraud, and ensure that any information provided to a state is used solely for the purposes of the new subsection (f).⁵ Regulations or guidance issued by Treasury must not have the effect of prohibiting, restricting, or otherwise preventing a state from obtaining the information described above.

II. Summary of Proposed Rule Amendments

¹ P.L. 117-32.

² 31 U.S.C. 3105(f)(1)(A).

³ 31 U.S.C. 3105 (f)(1)(C).

⁴ 31 U.S.C. 3105 (f)(6).

⁵ 31 U.S.C. 3105(f)(2)

Proposed Amendments to part 323 “Disclosure of Records.”

Fiscal Service would add the proposed regulations to its disclosure of records regulations adopted under the Freedom of Information Act (FOIA).⁶ Fiscal Service would maintain the current FOIA regulations found in part 323 by moving the existing provisions in sections 323.1-323.5 into a new subpart A. A new subpart B would contain the proposed regulations to implement the SECURE Act requirements to provide records containing applicable savings bond information to states. Subpart B would include definitions necessary to implement the proposed regulations, including proposed requirements for a state to receive applicable savings bond information, proposed instructions for the use of information, and proposed liability statements. Separating the two different statutory authorities, FOIA and the SECURE Act, by subpart is intended to assist the public in identifying the two separate authorities under which an individual or a state may request a disclosure of records or information.

Treasury believes the new disclosure of applicable savings bond information requirements is closely associated with the purpose of the existing FOIA disclosure regulations. While the SECURE Act only allows for disclosure of certain information to states, rather than to the public at large, a savings bond owner could look to a single regulation, part 323, to determine the various ways in which their savings bond information could be disclosed.

A. *Subpart A, §323.1*

⁶ 31 CFR part 323.

As noted above, subpart A will contain the existing regulations that implement FOIA for Fiscal Service currently found at part 323. Accordingly, the proposal would make a technical modification to the first sentence of 323.1 to identify the subpart rather than the part.

B. *Purpose of the proposed regulations, Subpart B, §323.10*

Within the new subpart B, this new section briefly describes the purpose of the new regulatory provisions, namely to implement the SECURE Act.

C. *Rules governing sharing of applicable savings bond information with states, Subpart B, § 323.11.*

Definitions

Treasury proposes to amend part 323 by adding a new provision, to be found at 31 CFR 323.11, to include the definitions and regulations necessary to provide states the information required by the SECURE Act. In addition, the proposed amendments would add new provisions to help protect savings bond customers from fraud and help to ensure the security of the records and information contained therein provided to states.

The SECURE Act amended 31 U.S.C 3105 by adding subsection (f), which requires Treasury to provide, in digital or other electronic form, each state with information describing any applicable savings bond that has an applicable address that is within such state. “Applicable address” is defined in the statute as the registered address

for the registered owner, co-owner, or beneficiary of the savings bond or the last-known address for the foregoing if it is available to Treasury.⁷

Treasury proposes to define “last-known address” to mean an address available to Fiscal Service after a reasonable search of its records. While the level of effort dedicated to the search could be expressed in various degrees, a “reasonable” search balances the goals of efficiency and effectiveness. An exhaustive search, for example, would be unduly costly and burdensome on Fiscal Service, given the breadth of our systems of records, and unlikely to significantly change the results of the search. “Record” is broadly defined to include any data and documentation containing savings bond information. In defining it in this way, Fiscal Service can more readily protect savings bond owners from unauthorized disclosure of their information, as any information currently held within Treasury will become a record once disclosed. The term “State” is also broadly defined to include United States territories, possessions, and the District of Columbia, as well as the 50 states. This definition is consistent with available registered addresses over the lifetime of the savings bond program.

Requests for Records

Subsection 323.11(b) of the proposed regulations provides that each state may request the applicable savings bond records from Fiscal Service. Upon request, the state must enter into an information-sharing agreement with Fiscal Service to receive and access the requested records. This agreement would require a state to make representations regarding protecting the savings bond records from disclosure, including

⁷ 31 U.S.C. 3105(f)(1)(C).

security requirements for receiving and storing the records. These security requirements are necessary to minimize the risk of misuse or misappropriation of information or fraudulent activity.

Use of Records

Subsection 323.11(c) of the proposed regulations outlines how the records or information contained therein may be used by states, in compliance with the SECURE Act. As stated at 31 U.S.C. 3105(f), Treasury regulations are required to ensure that applicable savings bond information provided to a state will be used solely to carry out the purpose of locating the owner of the savings bond.⁸ In accordance with this statutory requirement, the proposed regulation provides that the applicable savings bond information cannot be used to escheat bond ownership to state. Treasury has determined that the use of the applicable savings bond information for this purpose would be an unauthorized use of the information under the SECURE Act. The purpose of the SECURE Act is for Treasury to provide the information regarding applicable savings bonds to states to assist Treasury in locating the owner of the bonds. The SECURE Act does not allow the states to use the provided bond records and information to escheat the bonds, which would strip the bond owners of any rights to the redemption or continued ownership of their savings bonds.

Under the proposed regulation, in order to protect the savings bond owner's privacy, any applicable savings bond information provided to states cannot be released to the public or any third party without Fiscal Service's express written approval. This

⁸ 31 U.S.C. 3105(f)(2)

requirement will also be incorporated into the information-sharing agreement described above. The requirement to obtain such approval from Fiscal Service is also intended to ensure that the release of savings bond records or the information therein does not subject Fiscal Service customers to fraud risk. In recent years, Fiscal Service has taken steps that have reduced the opportunities for fraud, however, Fiscal Service believes that making records of matured, unredeemed savings bonds available to the public would create an unacceptable risk of fraud. Fiscal Service will continue to monitor savings bond fraud and consider implementing further risk-mitigation strategies, which may eventually allow for certain savings bonds records to be distributed publicly.

Finally, under proposed section 323.11(c), Treasury will not be responsible for any loss, liability, cost, or expense that results from a state's misuse or distribution of records regarding applicable savings bonds or any information contained therein. Any breach of savings bond records or information provided to a state under the proposed regulations could result in fraudulent activity, breach of privacy for a savings bond owner, and financial loss for bond owners. The proposed regulations require each state that receives information under the proposed regulations to bear the responsibility for any costs associated with the state's misuse or distribution of, or failure to adequately protect, any records or information.

III. Request for Comments

We invite interested persons to submit comments on any aspect of the proposed regulation, including the following questions:

1. How would you expect your savings bond information to be used by the states?

2. How would you expect your savings bond information to be protected by the states?
3. Do you have any specific fraud-related concerns?
4. Are the proposed requirements related to the terms under which Treasury would share information with states reasonable? Should any further requirements applicable to states be added, either in the regulation or in the proposed information-sharing agreement, to fulfill the statutory purposes or the objectives described above?

IV. Procedural Requirements

A. Request for Comment on Plain Language

Executive Order 12866 requires each agency in the Executive branch to write regulations that are simple and easy to understand. We invite comments on how to make the proposed rule clearer. For example, you may wish to discuss: (1) whether we have organized the material to suit your needs; (2) whether the requirements of the rule are clear; or (3) whether there is something else we could do to make the rule easier to understand.

B. Executive Order 12866

This proposed rule is not a significant regulatory action as defined in E.O. 12866, dated September 30, 1993, as amended.

C. Administrative Procedure Act (APA)

Because this proposed rule relates to United States securities, which are contracts between Treasury and the owner of the security, this rule falls within the contract

exception to the APA, 5 U.S.C. 553(a)(2). Treasury is voluntarily seeking public comment to assist the agency in assessing the impact of the proposed rule.

D. Regulatory Flexibility Act

This proposed rule relates to matters of public contract and procedures for United States securities. Since a notice of proposed rulemaking is not required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., do not apply. This rule will not have a significant economic impact on a substantial number of small entities. Treasury is voluntarily seeking public comments in order to consider a range of views on records sharing before issuing the final rule.

E. Paperwork Reduction Act

The provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and its implementing regulations, 5 CFR part 1320, do not apply to this proposed rule because there are no new or revised recordkeeping or reporting requirements.

List of Subjects in 31 CFR Part 323

Archives and records, Freedom of information, Privacy, Savings bonds.

Accordingly, for the reasons set forth in the preamble, Treasury proposes to amend title 31 part 323 of the Code of Federal Regulations as follows:

PART 323—DISCLOSURE OF RECORDS

1. The authority citation for part 323 continues to read as follows:

Authority: 80 Stat. 379; sec. 3, 60 Stat. 238, as amended; 5 U.S.C. 201, 552.

2. Add subpart A before § 323.1;
3. Revise the first sentence of § 323.1; and
4. Add subpart B after § 323.5.

The additions and revision read as follows:

PART 323—DISCLOSURE OF RECORDS

Authority: 80 Stat. 379; sec. 3, 60 Stat. 238, as amended; 5 U.S.C. 201, 552.

Subpart A – Freedom of Information Act

Authority: 80 Stat. 379; sec. 3, 60 Stat. 238, as amended; 5 U.S.C. 201, 552.

§ 323.1 Purpose of regulations

The regulations of this subpart are issued to implement 5 U.S.C. 552(a)(2) and (3). * * *

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Subpart B – SECURE 2.0 Act of 2022

Sec.

323.10 Purpose of Subpart.

323.11 Rules governing sharing of applicable savings bond information with states.

Authority: 31 U.S.C. 3105(f).

§ 323.10 Purpose of Subpart

The regulations of this subpart are issued to implement the SECURE Act 2.0 of 2022, 31 U.S.C. 3105(f). The requirements of 31 U.S.C. 3105(f) are additionally met through the publication of a new Routine Use in the applicable Fiscal Service System of Record Notice.

§ 323.11 Rules governing sharing of applicable savings bond information with states.

(a) Definitions. For purposes of this section:

Applicable address has the meaning set forth in 31 U.S.C. 3105(f)(1)(C).

Applicable savings bond has the meaning set forth in 31 U.S.C. 3105(f)(6).

Last-known address means the full street address, if available, found after a reasonable search of Fiscal Service records.

Name means the full registered name of the owner, co-owner, or beneficiary of an applicable savings bond, as it appears on the savings bond inscription.

Record means data or documentation, whether in paper, digital, or other electronic form, containing or composed of information describing any applicable savings bond which has an applicable address within a state, including the name and registered address or last-known address of the registered owner, co-owner, or beneficiary, as further defined in 31 U.S.C. 3105(f)(1).

Registered address means the address included in the savings bond inscription.

State means the fifty states, the District of Columbia, American Samoa, the Federated States of Micronesia, Guam, the United States Virgin Islands, the Marshall Islands, the Commonwealth of the Northern Mariana Islands, Palau, and the Commonwealth of Puerto Rico.

- (b) Requests for records. Records will be made available to states in compliance with 31 U.S.C. 3105(f) and this subpart, upon request by a state to Fiscal Service. Prior to receiving access to records, each state, through an authorized state representative, must enter into an information-sharing agreement with Fiscal Service using a form that will be provided by Fiscal Service. Such agreements may contain, among other things, requirements that Treasury deems necessary or appropriate to ensure the security of the information.

- (c) Use of records. Any records or any information made available to a state under this subpart (1) must be used only for the purpose of locating the owner of an applicable savings bond, (2) must not be used to escheat savings bond ownership to a state, and (3) must not be released by a state to the public or any third party, unless explicitly approved in writing, in advance, by Treasury.
- (d) Liability. Treasury is not liable for any loss, liability, cost, or expense that may result from a state's receipt, use, or distribution of records or any information contained therein. A state receiving records under this subpart shall indemnify Treasury for any loss, liability, cost, or expense associated with the state's receipt, use, or distribution of, or failure to adequately protect, records or any information contained therein.

By the Department of the Treasury.

David Lebryk,

Fiscal Assistant Secretary.

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