



## DEPARTMENT OF THE TREASURY

### Fiscal Service

### 31 CFR Part 208

### FISCAL-2026-0001

### RIN 1530-AA33

### Management of Federal Agency Disbursements

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

**ACTION:** Notice of proposed rulemaking with request for comment.

**SUMMARY:** Executive Order (E.O.) 14247, *Modernizing Payments To and From America's Bank Account*, directs the Secretary of the Treasury to cease issuing paper checks for all Federal disbursements to the extent permitted by law and to review and, as appropriate, revise procedures for granting limited exceptions where electronic payment methods are not feasible. In accordance with the E.O., the Department of the Treasury (Treasury), Bureau of the Fiscal Service ("Fiscal Service" or "we"), is proposing to amend its regulation that sets forth the limited circumstances under which paper check disbursements may be made by federal agencies.

**DATES:** Comments must be received on or before [Insert date 45 days after date of publication in the Federal Register].

**ADDRESSES:** You may submit comments, identified by Docket ID FISCAL-2026-0001 and RIN 1530-AA33, by any of the following methods:

*Electronic Submission:* Comments may be submitted electronically through the Federal Government eRulemaking portal at <https://www.regulations.gov>.

*Mail:* Send via regular or express mail to: Bureau of the Fiscal Service, 3201 Pennsy Drive, Building E, Landover, MD 20785, Attn: Lisa Andre, Senior Advisor.

Fiscal Service encourages the electronic submission of comments. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

**FOR FURTHER INFORMATION CONTACT:** Lisa Andre, Senior Advisor, Office of the Associate Commissioner for Business Operations at 215-516-8142 or [lisa.andre@fiscal.treasury.gov](mailto:lisa.andre@fiscal.treasury.gov), or Frank J. Supik, Associate Chief Counsel at 202-874-6638 or [frank.supik@fiscal.treasury.gov](mailto:frank.supik@fiscal.treasury.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

#### **a. Part 208 and Executive Order 14247**

In 1998, Fiscal Service issued a final rule, codified at 31 CFR part 208 (part 208), to implement the requirements of Section 3332 of Title 31 of the United States Code, as amended by section 31001(x)(1) of the Debt Collection Improvement Act of 1996, Pub. L. 104-134, 110 Stat. 1321-376.

Section 3332 generally mandates that all Federal payments, other than payments under the Internal Revenue Code of 1986, be delivered by EFT unless the requirement is waived by the Secretary of the Treasury (Secretary). Specifically, subsection (f)(2)(A) of section 3332 provides that “[t]he Secretary of the Treasury may waive application of [the EFT mandate] to payments – (i) for individuals or classes of individuals for whom compliance poses a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary.” Section 3332 also authorizes the Secretary to “prescribe regulations that the Secretary considers necessary to carry out this section.” 31 U.S.C. 3332(i)(1). The waivers authorized by section 3332 are located in part 208.

Although 97% of the more than 1.3 billion payments Treasury disburses each year on behalf of Federal agencies are made electronically, in fiscal year 2025, Treasury still

printed 40.9 million checks. In recognition of the “unnecessary costs; delays; and risks of fraud, lost payments, theft, and inefficiencies” associated with paper checks, on March 25, 2025, the President signed Executive Order (E.O.) 14247, “Modernizing Payments To and From America’s Bank Account,” mandating the transition to electronic payments for all Federal disbursements, to the extent permitted by law. The E.O. directs the Secretary to cease issuing paper checks for all Federal disbursements to the extent permitted by law, and to review and, as appropriate, revise procedures for granting limited exceptions where electronic payment methods are not feasible.

The elimination of paper checks in accordance with E.O. 14247 is critical to defending against financial fraud and promoting operational efficiency. Treasury checks are 16 times more likely to be reported lost or stolen, returned undeliverable, or altered than an electronic payment. In addition, the Federal Government has seen increased check printing costs. The cost to print checks has climbed to an average of \$3.07 per check, which is 20 times more expensive than Automated Clearing House payments. While Treasury has taken numerous steps to reduce the cost of check production, including outsourcing its check printing operations to the private sector, it firmly believes that further reducing checks will increase efficiency, reduce costs, and enhance the security of Federal payments.

In accordance with the E.O., Treasury has reviewed the categories of waivers available to individual payees as well as the categories of waivers available to paying agencies and proposes to: i) modify the waivers available to individuals and agencies for the purpose of further refining the circumstances under which paper checks may be disbursed; and ii) transfer from Treasury to the payment-authorizing agencies the responsibility for adjudicating hardship waivers that are submitted by individuals, given those agencies established relationships with the payees.

Treasury believes the proposed changes to part 208 will help to reduce paper check disbursements and further the policy goals set forth in the E.O. of defending against financial fraud and improper payments, increasing efficiency, reducing costs, and enhancing the security of Federal payments. Treasury will continue to work with paying agencies to support their full transition to electronic payments. Treasury is committed to empowering agencies to offer other modern electronic payment options, and providing the public with a secure, efficient and convenient customer experience.

#### **b. Treasury's 2025 Request for Information**

In June 2025, Treasury issued a Request for Information (RFI) which offered the opportunity for interested individuals and organizations to provide feedback on matters related to Treasury's implementation of E.O. 14247. 90 FR 23108 (May 30, 2025). The RFI yielded 248 comments from individuals and entities, including industry groups, non-profit organizations, tribal governments, financial institutions, and consumer advocates. There were notable themes within the feedback regarding potential barriers to electronic payments that may impact certain individuals and concerns that may make individuals hesitant to use electronic payments. Barriers and challenges noted from the commenters spanned a broad spectrum, including but not limited to account identification requirements, account fees, financial and digital literacy among the underbanked and the elderly, tribal considerations, international payment considerations, as well as concerns about consumer protection, privacy, data security, and fraud risk.

Overall, the comments indicated a broad consensus in favor of electronic payments. Commenters acknowledged the efficiency, security, and reduction in fraud associated with electronic payments. Commenters noted that many of the advantages of electronic payments would redound to the payees, many of whom would realize benefits from increased financial inclusion, consumer protections, and faster receipt of payments, with lower fees from industry in many instances. In addition, commenters noted that

electronic payments create significant cost-savings for the government, when compared with check payments.

Some commenters proposed continued exemptions for certain populations. For example, some commenters noted that tribal communities and rural areas may have higher rates of unbanked and underbanked individuals and also may lack sufficient technological infrastructure to acclimate to fully electronic disbursing. Several commenters supported exemptions for seniors and persons with disabilities who may need assistance with managing their financial affairs or may have difficulty navigating electronic payment methods.

Many commenters also noted that long-standing habits or inadequate understanding of potential electronic payment or account options drive the preference of some payment recipients to continue receiving checks, noting the importance of robust public awareness or education campaigns to accompany the EFT mandate. Several commenters noted such campaigns should provide simple EFT enrollment processes, clear communication, and support resources (such as chat functions, in-person assistance, and other measures) which have helped in past initiatives to successfully assist individuals in signing up for electronic financial services. They further noted that the reach of such efforts could be maximized through multiple channels, including government websites, community outreach, direct mail, press and news releases, and social media, amongst others.

There were differing positions regarding access to financial services by unbanked and underbanked populations. While some commenters maintained that the presence of the underbanked should lead to the continued availability of exceptions from the EFT requirement, others noted that the exponential growth of EFT payment options over the last few years should largely address accessibility gaps. Moreover, some commenters focused on the challenges posed by banking deserts which may impact both rural and

urban populations, indicating that checks may remain a viable alternative for these situations.

Finally, many commenters expressed concern that the E.O.'s implementation timeline did not provide sufficient time for agencies or the public to fully eliminate check transactions with the Federal Government. Treasury acknowledges that, although great strides have been made across the government to meet the E.O.'s directives, more time is required to address the remaining regulatory, policy, and technical limitations. All of the feedback provided by RFI commenters has been reviewed, considered and has helped to shape the changes proposed in this rulemaking.

## **II. Proposed Change to Regulation**

Fiscal Service proposes amending existing part 208 by eliminating or modifying certain waivers currently available to individual payees and establishing new waiver categories available to agencies. The proposed rule would require agencies—rather than Treasury—to approve individual hardship waiver requests in accordance with guidelines established by Treasury. Treasury has concluded that paying agencies are better positioned to review and adjudicate hardship waiver requests submitted by their payees, given the established relationship between the payee and their paying agency, and the paying agency's familiarity with the nuances of its own programs. In fact, it would be more efficient for the paying agency to process a hardship waiver request when the paying agency initially enrolls the individual to receive a Federal payment. Agency-managed waiver processes compliant with this regulation and Treasury guidance will help agencies make well-informed decisions about whether a payment should be issued by paper check. Paying agencies will also have greater visibility into their remaining paper check disbursements, helping them better prioritize and expand electronic payment offerings.

Fiscal Service also proposes to amend the regulation to require agencies to:

- i) confirm that an applicable exception applies prior to authorizing a check payment; and
- ii) provide Fiscal Service with reporting on the agency's compliance with part 208, which may include information regarding the waiver requests the agency has approved and rejected.

Fiscal Service invites public comment on the proposed changes more fully described below in the section-by-section analysis and is particularly interested in comments on Fiscal Service's proposed changes to the individual and agency waivers set forth in § 208.4.

### **III. Section-by-Section Analysis**

#### **§ 208.1 Scope and Application**

We propose to revise § 208.1 for clarity by inserting “other than payments made under the Internal Revenue Code of 1986” as a new clause at the end of the first sentence of the section which currently reads: “This part applies to all Federal payments made by an agency.” With this proposed change, we propose to delete as unnecessary the reference to the statutory carve-out for payments made under the Internal Revenue Code in the second sentence of the section. The new proposed section would read as follows: “This part applies to all Federal payments made by an agency, other than payments made under the Internal Revenue Code of 1986. Except as specified in § 208.4, this part requires Federal payments to be made by electronic funds transfer.” These revisions are not intended to alter the scope of part 208.

#### **§ 208.2 Definitions**

Fiscal Service proposes to update the definitions section by eliminating the definitions of “Authorized payment agent” and “Federally-insured financial institution” because those terms are not used in the current regulation. We propose, however, to add the text of the “Authorized payment agent” definition to the definition of “Recipient” to

clarify that the term includes any recipient of a Federal payment who is permitted to receive payment on behalf of another individual entitled to payment, such as a Social Security representative payee.

Fiscal Service proposes to revise the second sentence of the definition of “Electronic funds transfer” which provides a non-exhaustive list of the types of electronic funds transfers that are included in the definition for the purpose of highlighting the types of electronic funds transfers that are most germane to the regulation. Accordingly, the revised list of examples would no longer refer to “transfers made at automated teller machines and point-of-sale terminals.” In addition to the current references to Automated Clearing House and Fedwire transfers, we propose to add a reference to transfers made by “instant payment networks.” We have also, in light of the account requirements for Federal payments under 31 CFR part 210, added a reference to transfers that are made to “accounts that meet applicable requirements under 31 CFR Part 210.” For clarity, the proposed revision also notes that such accounts may include bank accounts and certain prepaid debit cards and digital wallets.

To align with the definition under 31 U.S.C. 3332(j)(3), we propose to exclude “[p]ayments under the Internal Revenue Code of 1986” as an example within the definition of “Federal payment.” While the reference was previously added to support the delivery of tax payments via Treasury-sponsored accounts, we have determined that this can be accomplished instead through revisions to § 208.5—the section that addresses Treasury’s authority to deliver payments to Treasury-sponsored accounts. This proposed revision does not imply that payments under the Internal Revenue Code of 1986 cannot be disbursed by EFT, nor that the Internal Revenue Service is precluded from pursuing an EFT mandate. Finally, we also propose to add “disaster assistance” as an additional example of a “miscellaneous payment” type.

We propose non-substantive edits to the definition of “Financial Agent” by proposing to delete “as amended by the Omnibus Consolidated Appropriations Act, 1997, Section 664, Public Law 104-208.” This clause, which follows a list of United States Code sections under which Treasury may designate a Financial Agent, is unnecessary because those sections already incorporate the changes of the omnibus appropriations act for fiscal year 1997.

We are proposing to add “Indian land” as a new defined term because of the proposal to add a new waiver category for individuals or entities located on Indian land lacking the infrastructure to support electronic funds transfers. Under the proposal, “Indian land” is defined as having the meaning set forth in 25 U.S.C. 3501(2).

Finally, we propose an editorial change to the definition of “Treasury-sponsored account.” The current definition provides that a Treasury-sponsored account “means a Direct Express card account, a U.S. Debit Card account, or another account established pursuant to § 208.5 or § 208.11.” We propose to make the Direct Express card and U.S. Debit Card accounts illustrative examples of the definition, so that “Treasury-sponsored account” is primarily defined as an account established pursuant to § 208.5. Accordingly, the proposed revision would read: “*Treasury-sponsored account* means an account established pursuant to § 208.5, such as a Direct Express card account or a U.S. Debit Card account.” This proposed editorial change is not intended to increase the scope of the definition. The proposed change also eliminates the reference to § 208.11, in light of the proposal discussed below to eliminate that section.

### **Section 208.3 Payment by electronic funds transfer.**

In light of the proposal discussed above to exclude “[p]ayments under the Internal Revenue Code of 1986” as an example within the definition of “Federal payment,” we are proposing to delete as unnecessary the last sentence of current § 208.3 which provides

that the requirement to make Federal payments by electronic funds transfer does not apply to payments under the Internal Revenue Code of 1986.

#### **Section 208.4 Waivers**

The waivers the Secretary has authorized from the requirement that a Federal payment be made electronically are set forth in § 208.4. Fiscal Service is proposing to revise § 208.4(a)(1) which sets forth the waivers available to individuals by eliminating or modifying the waivers available under § 208.4(a)(1)(i), (ii), and (iii). Fiscal Service is proposing to eliminate the waiver available under current paragraph (a)(1)(i) for individuals “born prior to May 1, 1921, [who were] receiving payment by check on March 1, 2013” as that waiver was established to mitigate the impacts of the EFT requirement on Federal check payment recipients who were at least 90 years old on May 1, 2011—the effective date of the final rule published on December 22, 2010 requiring that all Federal nontax payment recipients receive payments by EFT. *See* 75 FR 80320. Given the limited applicability of the waiver to individuals who would now be over 104 years old, we propose eliminating the waiver category. While there would no longer be any individual waiver based on age, an agency could request Treasury’s approval to establish a waiver that takes recipient age into account, utilizing the new waiver under proposed § 208.4(d)(5) (“[w]here the Federal agency identifies a group of recipients that has have a reasonable need for non-electronic payments”).

Fiscal Service is also proposing to modify the waiver under paragraph (a)(1)(ii) that applies where a person “[r]eceives a type of payment for which Treasury does not offer delivery to a Treasury-sponsored account.” Under the proposal, agencies would be required to request Treasury’s approval to issue paper check disbursements based upon the unavailability of a Treasury-sponsored account. Additionally, Fiscal Service is removing the waiver discussed in the last sentence of current paragraph (a)(1)(ii) which currently permits an agency to file a waiver request to continue to issue paper checks

after Treasury has provided the agency with an option to issue the payments to a Treasury-sponsored account. To the extent the agency has a legitimate reason to continue making paper check payments despite the availability of a Treasury-sponsored account program, the agency may be able to request approval under the new waiver that applies if an agency “identifies a group of recipients that has a reasonable need for non-electronic payments.”

We are also proposing to eliminate the waiver under current paragraph (a)(1)(iii) that applies if an individual “[i]s ineligible for a Treasury-sponsored account because of suspension or cancellation of the individual’s Treasury-sponsored account by the Financial Agent.” Fiscal Service proposes eliminating this waiver as it has had extremely limited use since it was first introduced in 2010 with respect to Direct Express cards.

We are proposing to retain in proposed paragraphs (a)(i) and (ii) the hardship waivers that are currently set forth in paragraphs (a)(1)(iv) and (v). Under the proposed rule, however, the requests to utilize a hardship waiver would be submitted by the individual to the paying agency rather than to Treasury for adjudication. We are also proposing a minor edit to the language in current paragraph (a)(1)(v) to replace the reference to “electronic financial transactions” with “electronic funds transfers” for consistency with the rest of the regulation.

We are proposing a new § 208.4(b) which would require an individual who seeks a waiver under new paragraphs (a)(i) or (ii) to request approval from the paying agency in a form and manner determined by the agency pursuant to Treasury guidance. The new paragraph (b) would also provide that a waiver granted by a paying agency under paragraphs (a)(i) or (ii) may be revoked by the agency pursuant to Treasury guidance.

We are proposing a new § 208.4(c) which would cover waivers that an agency could utilize without obtaining Treasury’s prior approval. The waivers in this section would include those that are substantively covered in current § 208.4(a)(2) through (6).

Proposed § 208.4(c)(1) would permit an agency to issue a paper check “[w]here payment into a foreign country by electronic funds transfer is not supported by Treasury or is otherwise not feasible due to the financial infrastructure or political conditions in the foreign country.” This waiver seeks to streamline the text of current § 208.4(a)(2) and (3). As part of this change, instead of retaining the current reference to “political, financial, or communications infrastructure in a foreign country,” we propose to refer more simply to “the financial infrastructure or political conditions in the foreign country.” We believe the reference to “financial infrastructure” is sufficiently broad to cover any relevant communications or internet availability issues and that the reference to “political conditions” more directly addresses challenges that could limit electronic funds transfers into a foreign country.

Proposed paragraph (c)(2) contains without modification the substance of the waiver currently contained in paragraph (a)(4) for payments to recipients within an area designated by the President or an authorized agency administrator as a disaster area that are made within the first 120 days after the disaster is declared. In proposed paragraph (c)(3), Fiscal Service proposes to simplify the text of the waiver under current paragraph (a)(5) for certain military operations by directly incorporating the statutory definition of “contingency operation” on which the current waiver is based. *See* 62 FR 48720 (Sept. 16, 1997). Additionally, proposed paragraph (c)(3) clarifies that the waiver applies only when disbursement by paper check is necessary as a result of the contingency operation. Proposed paragraph (c)(3) would read as follows: “Where disbursement by paper check is necessary as a result of a contingency operation as defined in 10 U.S.C. 101(a)13.” Proposed paragraph (c)(4) contains, without modification, the substance of the waiver in current paragraph (a)(6) for certain security and law enforcement purposes.

Proposed paragraph (c)(5) would provide a new waiver category available to agencies for payments “made to individuals or entities located on Indian land lacking the

infrastructure to support electronic funds transfers.” This new waiver, which we propose in response to paying agency feedback and comments received in response to the Request for Information related to E.O. 14247, attempts to provide flexibility for tribal communities that may lack sufficient technological infrastructure to acclimate to fully electronic disbursing.

Proposed paragraph (d) provides six waiver categories that an agency may request Treasury’s approval to utilize. Proposed paragraph (d)(1) contains the waiver currently contained in paragraph (a)(7) for non-regular and non-recurring payments to individuals and small businesses. While this waiver can currently be used by an agency without prior Treasury approval, Fiscal Service believes that amending part 208 to require agencies to seek approval to issue check payments for non-regular and non-recurring payments (including classes of such payments) would meaningfully support the administration’s goal, as set forth in E.O. 14247, to eliminate paper-based transactions.

Under proposed paragraph (d)(2), agencies could request Treasury’s approval to issue paper check payments “[w]here a particular payment is not eligible for deposit to a Treasury-sponsored account.” As noted above, this waiver is addressed in current paragraph (a)(1)(ii) as a waiver that is available when an individual “[r]eceives a type of payment for which Treasury does not offer delivery to a Treasury-sponsored account.” Fiscal Service believes part 208 should be revised to explicitly require agencies to request Treasury approval to utilize this waiver, because individual payees are not likely to know whether a Treasury-sponsored account is available for the type of payment they are receiving. Moreover, if a paying agency determines that a Treasury-sponsored account is not available for a particular type of payment, the agency would be able to work with Treasury to determine whether an agency implementation of a Treasury-sponsored account could be a viable mechanism for the payment type, and if it is not, then the agency could initiate a waiver request with Treasury.

Proposed paragraphs (d)(3) and (d)(4) contain, without modification, the waivers available in current paragraph (a)(8) that apply where an agency has an urgent need for goods and services or where there is only one source for the goods or services, and the Government would be seriously injured unless payment is made by check.

Proposed paragraph (d)(5) includes a new waiver ground that is not covered in the current regulation. Consistent with the previously discussed proposal to empower paying agencies to adjudicate hardship waiver requests, proposed paragraph (d)(5) would allow agencies to request Treasury's approval to issue a paper check payment "[w]here the Federal agency identifies a group of recipients that has a reasonable need for non-electronic payments." Fiscal Service believes that the paying agencies would be best-positioned to understand the needs of their payees and to identify to Fiscal Service any payees that should be granted an exception from the EFT requirement.

Proposed paragraph (d)(6) contains the waiver that is available in current paragraph (a)(4) and permits agencies to request an extension of the waiver for payments to recipients within an area designated by the President or an authorized agency administrator as a disaster area beyond the first 120 days after the disaster is declared.

Proposed paragraph (e) tracks current paragraph (b) and provides that an agency seeking Treasury's approval to utilize a waiver under proposed paragraph (d) shall submit a written request to Treasury's Chief Disbursing Officer in such form that Treasury may prescribe and notes that Treasury reserves the right to reject any such request.

Finally, proposed paragraph (f) largely tracks current paragraph (c) and provides that if application of an agency waiver under proposed paragraphs (c) or (d) would, in Treasury's determination, lead to the agency initiating an unusually large number or proportion of payments by means other than electronic funds transfer, Treasury reserves the right to revoke the relevant waiver and require the agency to work with Treasury to identify and implement ways to make the payments by electronic funds transfer.

Additionally, for consistency with the phrasing used in proposed paragraph (b) with respect to the hardship waivers granted by agencies, proposed paragraph (f) replaces the word “nullify” with the word “revoke.” This edit is not intended to effect a substantive change.

### **Section 208.5 Accounts for disbursement of Federal payments**

Section 208.5 addresses Treasury’s authority to designate a Financial Agent to establish and administer Treasury-sponsored accounts for individuals for the disbursement of Federal payments. Given the proposed removal of “[p]ayments under the Internal Revenue Code of 1986” from the definition of “Federal payment” for the purpose of aligning the regulation’s definition with 31 U.S.C. 3332(j)(3), we propose to add a new sentence at the end of § 208.5 to clarify that Treasury’s authority to disburse payments to Treasury-sponsored accounts extends not only to Federal payments within the meaning of part 208 but also to payments made under the Internal Revenue Code of 1986.

### **Section 208.6 Availability of Treasury-sponsored accounts.**

We are not proposing any changes to § 208.6.

### **Section 208.7 Agency responsibilities**

Current § 208.7(a) requires agencies to “put into place procedures that allow recipients to provide the information necessary for the delivery of payments to the recipient by electronic funds transfer to an account at the recipient’s financial institution or a Treasury-sponsored account.” We propose to revise the section by adding a reference to the delivery of payments to “a prepaid account designated by the recipient that meets applicable requirements under 31 CFR Part 210” for the purpose of clarifying that permissible accounts for Federal EFT payments extend beyond traditional demand deposit accounts. We are not proposing any changes to § 208.7(b).

### **Section 208.8 Recipient responsibilities**

We propose to amend § 208.8 by removing the last sentence of the section which currently provides: “For recipients who do not designate a bank account for the receipt of payments, Treasury may disburse payments to a Treasury-sponsored account or to an account to which the recipient is receiving other Federal payments.” We are proposing this revision because Treasury does not view unilaterally redirecting certified payments without payee consent or appropriate statutory authority as a feasible approach to expand electronic payments.

### **Section 208.9 Compliance**

For clarity, we propose to replace the second sentence of § 208.9(a), which states that “Treasury may require agencies to provide information about their progress in converting payments to electronic funds transfer,” with the following sentence: “Treasury may require an agency to report on the agency’s compliance with this part in a manner and timeframe prescribed by Treasury.” Additionally, we propose to add a new sentence stating that the reporting Treasury may require an agency to provide may include information regarding the agency’s efforts to enroll check recipients in electronic funds transfer payments and the waiver requests the agency has approved and rejected.

We propose to add a new paragraph (b) which states that an agency’s Certifying Officer must ensure prior to certifying disbursement by paper check that there is an applicable waiver under § 208.4. We are proposing this new paragraph to emphasize the importance of ensuring that disbursements of Federal funds are legal, proper, and accurate, which includes compliance with § 208.4 and E.O. 14247.

We do not propose any changes to the provisions in current paragraph (b), which would be redesignated as new paragraph (c).

### **Section 208.10 Reservation of rights.**

We are not proposing any changes to § 208.10.

### **Section 208.11 Accounts for disaster victims**

Section 208.11 provides that Treasury may establish and administer accounts at any financial institution designated as a Financial Agent for disaster victims to facilitate the delivery of Federal payments by EFT. This section was added in the aftermath of Hurricane Katrina and is no longer needed given § 208.6 which generally provides that Treasury may designate a Financial Agent to establish and administer Treasury-sponsored accounts for individuals for the disbursement of Federal payments.

#### **IV. Regulatory Analysis**

##### **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 comment 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.

##### **Regulatory Planning and Review**

The proposed rule does not meet the criteria for a “significant regulatory action” as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

##### **Regulatory Flexibility Act Analysis**

It is hereby certified that the proposed rule will not have a significant economic impact on a substantial number of small entities. The rule provisions being amended primarily apply to Federal agencies and recipients of Federal payments, and do not have any material impact on small entities. Notwithstanding this certification, comments are invited about impacts this rule may have on small entities.

##### **Unfunded Mandates Act of 1995**

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. We have determined that the proposed rule will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

#### **List of Subjects in 31 CFR Part 208**

Banks, banking, Debit cards, Disbursements, Electronic funds transfers, Federal payments, Treasury-sponsored accounts.

For the reasons set out in the preamble, we propose to revise and republish 31 CFR part 208 as follows:

#### **PART 208—MANAGEMENT OF FEDERAL AGENCY DISBURSEMENTS**

**Authority:** 5 U.S.C. 301; 12 U.S.C. 90, 265, 266, 1767, 1789a; 31 U.S.C. 321, 3122, 3301, 3302, 3303, 3321, 3325, 3327, 3328, 3332, 3335, 3336, 6503.

##### **§ 208.1 Scope and application.**

This part applies to all Federal payments made by an agency, other than payments made under the Internal Revenue Code of 1986. Except as specified in § 208.4, this part requires Federal payments to be made by electronic funds transfer.

##### **§ 208.2 Definitions.**

The following definitions apply to this part:

*Agency* means any department, agency, or instrumentality of the United States Government, or a corporation owned or controlled by the Government of the United States.

*Direct Express® card* means the prepaid debit card issued to recipients of Federal benefits by a Financial Agent pursuant to requirements established by Treasury.

*Disbursement* means, in the context of payments delivered to Treasury-sponsored accounts, the performance of the following duties by a Financial Agent acting as agent of the United States:

- (1) The establishment of an account for the recipient that meets the requirements of the Federal Deposit Insurance Corporation or the National Credit Union Administration Board for deposit or share insurance;
- (2) The maintenance of such an account;
- (3) The receipt of Federal payments through the Automated Clearing House system or other electronic means and crediting of Federal payments to the account; and
- (4) The provision of recipient access to funds in the account on the terms specified by Treasury.

*Electronic benefits transfer (EBT)* means the provision of Federal benefit, wage, salary, and retirement payments electronically, through disbursement by a financial institution acting as a Financial Agent. For purposes of this part and Public Law 104-208, EBT includes, but is not limited to, disbursement through a Treasury-sponsored account or a Federal/State EBT program.

*Electronic funds transfer* means any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes, but is not limited to, transfers made by Automated Clearing House (ACH), Fedwire, and

instant payment networks to accounts that meet applicable requirements under 31 CFR Part 210, including bank accounts and certain prepaid debit cards and digital wallets.

*Federal payment* means any payment made by an agency. The term includes, but is not limited to:

- (1) Federal wage, salary, and retirement payments;
- (2) Vendor and expense reimbursement payments;
- (3) Benefit payments; and
- (4) Miscellaneous payments including, but not limited to: interagency payments; grants; loans; fees; principal, interest, and other payments related to U.S. marketable and nonmarketable securities; overpayment reimbursements; payments under Federal insurance or guarantee programs for loans; and disaster assistance.

*Federal/State EBT program* means any program that provides access to Federal benefit, wage, salary, and retirement payments and to State-administered benefits through a single delivery system and in which Treasury designates a Financial Agent to disburse the Federal payments.

*Financial Agent* means a financial institution that has been designated by Treasury as a Financial Agent for the provision of electronic funds transfer or EBT services under any provision of Federal law, including 12 U.S.C. 90, 265, 266, 1767, and 1789a, and 31 U.S.C. 3122 and 3303.

*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 agency or branch of a foreign bank as defined in section 1(b) of the International Banking Act, as amended (12 U.S.C. 3101).

*Indian land* has the meaning set forth in 25 U.S.C. 3501(2).

*Individual* means a natural person.

*Recipient* means an individual, corporation, or other public or private entity that is authorized to receive a Federal payment from an agency, including any individual or entity that is appointed or otherwise selected as a representative payee or fiduciary, under regulations of the Social Security Administration, the Department of Veterans Affairs, the Railroad Retirement Board, or other agency making Federal payments, to act on behalf of an individual entitled to a Federal payment.

*Secretary* means Secretary of the Treasury.

*Treasury* means the United States Department of the Treasury.

*Treasury-sponsored account* means an account established pursuant to § 208.5, such as a Direct Express card account or a U.S. Debit Card account.

*U.S. Debit Card* means the prepaid debit card issued to recipients of certain Federal payments by a Financial Agent pursuant to requirements established by Treasury.

### **§ 208.3 Payment by electronic funds transfer.**

Subject to § 208.4, and notwithstanding any other provision of law, all Federal payments made by an agency shall be made by electronic funds transfer.

### **§ 208.4 Waivers**

(a) An individual may request approval from an agency to receive a Federal payment by paper check in the following circumstances:

(i) payment by electronic funds transfer would impose a hardship because of the individual's inability to manage an account at a financial institution or a Treasury-sponsored account due to a mental impairment; or

(ii) payment by electronic funds transfer would impose a hardship because of the individual's inability to manage an account at a financial institution or a Treasury-sponsored account due to the individual living in a geographic location lacking the infrastructure to support electronic funds transfers.

(b) An individual who seeks a waiver under paragraphs (a)(i) or (ii) of this section must request approval from the agency in a form and manner determined by such agency pursuant to guidance provided by Treasury. A waiver granted by an agency under paragraphs (a)(i) or (ii) of this section may be revoked by the agency pursuant to Treasury guidance.

(c) An agency may, without obtaining Treasury's prior approval, certify a Federal payment for disbursement by paper check under the following circumstances:

(1) Where payment into a foreign country by electronic funds transfer is not supported by Treasury or is otherwise not feasible due to the financial infrastructure or political conditions in the foreign country;

(2) Where the Federal payment is to a recipient within an area designated by the President or an authorized agency administrator as a disaster area. This waiver is limited to Federal payments made within 120 days after the disaster is declared;

(3) Where disbursement by paper check is necessary as a result of a contingency operation as defined in 10 U.S.C. 101(a)(13);

(4) Where a threat may be posed to national security, the life or physical safety of any individual may be endangered, or a law enforcement action may be compromised; or

(5) Where the Federal payment will be made to individuals or entities located on Indian land lacking the infrastructure to support electronic funds transfers.

(d) An agency must request Treasury's approval to certify a Federal payment for disbursement by paper check under the following circumstances:

(1) Where the agency does not expect to make multiple payments to the same recipient within a one-year period on a regular, recurring basis but only if the payments are made to an individual or a small business concern where "small business concern" has the meaning given the term in section 3 of the Small Business Act at 15 U.S.C. 632 and its implementing regulations;

(2) Where a particular payment is not eligible for deposit to a Treasury-sponsored account;

(3) Where an agency's need for goods and services is of such unusual and compelling urgency that the Government would be seriously injured unless payment is made by a method other than electronic funds transfer;

(4) Where there is only one source for goods or services and the Government would be seriously injured unless payment is made by a method other than electronic funds transfer;

(5) Where the Federal agency identifies a group of recipients that has a reasonable need for non-electronic payments; or

(6) Where a Federal agency seeks to extend a waiver under § 208.4(c)(2) beyond 120 days after the disaster is declared.

(e) An agency seeking Treasury's approval to utilize a waiver under paragraph (d) of this section shall submit a written request to Treasury's Chief Disbursing Officer in such form that Treasury may prescribe. Treasury reserves the right to reject any such request.

(f) If application of an agency waiver under paragraphs (c) or (d) of this section would, in Treasury's determination, lead to the agency initiating an unusually large number or proportion of payments by means other than electronic funds transfer, Treasury reserves the right to revoke the waiver in this class of cases and require the agency to work with Treasury to identify and implement ways to make the payments by electronic funds transfer.

#### **§ 208.5 Accounts for disbursement of Federal payments.**

Treasury may designate a Financial Agent to establish and administer Treasury-sponsored accounts for individuals for the disbursement of Federal payments. Such accounts may be established upon terms and conditions that the Secretary considers appropriate or necessary and shall be made available at a reasonable cost and with the same consumer protections provided to other account holders at the financial institution.

Treasury may deliver payments to such accounts and the maintenance of accounts and the provision of account-related services under this section shall constitute reasonable duties of a Financial Agent of the United States. This section applies to the disbursement of Federal payments and payments made under the Internal Revenue Code of 1986, as amended.

#### **§ 208.6 Availability of Treasury-sponsored accounts.**

An individual who receives a Federal payment shall be eligible to open a Treasury-sponsored account under terms and conditions established by Treasury.

#### **§ 208.7 Agency responsibilities.**

(a) An agency shall put into place procedures that allow recipients to provide the information necessary for the delivery of payments to the recipient by electronic funds

transfer to an account at the recipient's financial institution, a prepaid account designated by the recipient that meets applicable requirements under 31 CFR Part 210, or a Treasury-sponsored account.

(b) Upon request from Treasury, an agency shall provide Treasury with a list of the employer identification numbers (EINs) assigned to the agency that the agency has used to make or receive a Federal intragovernmental payment during the 12-month period preceding the request from Treasury as well as a list of the EINs for all Federal agencies to whom the agency has made a Federal intragovernmental payment during the same 12-month period.

#### **§ 208.8 Recipient responsibilities.**

Each recipient who is required to receive payment by electronic funds transfer shall provide the information necessary to effect payment by electronic funds transfer.

#### **§ 208.9 Compliance.**

(a) Treasury will monitor agencies' compliance with this part. Treasury may require an agency to report on the agency's compliance with this part in a manner and timeframe prescribed by Treasury. Required reporting may include information regarding the agency's efforts to enroll check recipients in electronic funds transfer payments and the waiver requests the agency has approved and rejected.

(b) The agency's Certifying Officer must ensure prior to certifying disbursement by paper check that there is an applicable waiver under § 208.4.

(c) If an agency fails to make payment by electronic funds transfer as prescribed under this part, Treasury will consider that payment to be not timely pursuant to 31 U.S.C. 3335, as electronic funds transfer payments are processed, disbursed, and settled more quickly than checks and, accordingly, Treasury may assess a charge to the agency pursuant to 31 U.S.C. 3335.

#### **§ 208.10 Reservation of rights.**

The Secretary reserves the right, in the Secretary's discretion, to waive any provision(s) of this part in any case or class of cases.

**Gary Grippo,**

*Acting Fiscal Assistant Secretary.*

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