

project selection and approval committee cannot be appealed. Agencies will be notified of any available amounts in the Fund and requirements to apply for such monies through a TFM bulletin.

(c) As provided by 31 U.S.C. 3720, sums in the Fund will be available without fiscal year limitation for the payment of expenses incurred in developing improved methods of collection and deposit and the expenses incurred in carrying out collections and deposits using such methods, including the costs of personal services and the costs of the lease or purchase of equipment and operating facilities.

(d) In addition to all reports required by law and regulation, for each fiscal year during which there is a balance in Fund, the Service will prepare and publish, by the 60th day following the close of the fiscal year, a full report on payments, receipts, disbursements, balances of the Fund, and full disclosure on projects financed by the Fund.

## PART 208—MANAGEMENT OF FEDERAL AGENCY DISBURSEMENTS

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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; Pub. L. 104-208, 110 Stat. 3009.

SOURCE: 63 FR 51502, Sept. 25, 1998, unless otherwise noted.

### § 208.1 Scope and application.

This part applies to all Federal payments made by an agency and, except as specified in § 208.4, requires such payments to be made by electronic funds transfer. This part does not apply

to payments under the Internal Revenue Code of 1986 (26 U.S.C.).

### § 208.2 Definitions.

(a) *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.

(b) *Authorized payment agent* means 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.

(c) *Disbursement* means, in the context of electronic benefits transfer, 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 access to funds in the account on the terms specified by Treasury.

(d) *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, EBT includes disbursement through an ETA<sup>SM</sup> and through a Federal/State EBT program.

(e) *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, Automated Clearing House transfers,

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Fedwire transfers, and transfers made at automated teller machines and point-of-sale terminals. For purposes of this part only, the term electronic funds transfer includes a credit card transaction.

(f) *ETA<sup>SM</sup>* means the Treasury-designated electronic transfer account made available by a Federally-insured financial institution acting as a Financial Agent in accordance with § 208.5 of this part.

(g) *Federal payment* means any payment made by an agency.

(1) The term includes, but is not limited to:

(i) Federal wage, salary, and retirement payments;

(ii) Vendor and expense reimbursement payments;

(iii) Benefit payments; and

(iv) Miscellaneous payments including, but not limited to: interagency payments; grants; loans; fees; principal, interest, and other payments related to U.S. marketable and non-marketable securities; overpayment reimbursements; and payments under Federal insurance or guarantee programs for loans.

(2) For purposes of this part only, the term "Federal payment" does not apply to payments under the Internal Revenue Code of 1986 (26 U.S.C.).

(h) *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.

(i) *Federally-insured financial institution* means any financial institution, the deposits of which are insured by the Federal Deposit Insurance Corporation under 12 U.S.C. Chapter 16 or, in the case of a credit union, the member accounts of which are insured by the National Credit Union Share Insurance Fund under 12 U.S.C. Chapter 14, Subchapter II.

(j) *Financial Agent* means a financial institution that has been designated by Treasury as a Financial Agent for the provision of 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, as amended by the Omnibus Consolidated Appropriations Act, 1997, Section 664, Public Law 104-208.

(k) *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).

(1) *Individual* means a natural person.

(m) *Recipient* means an individual, corporation, or other public or private entity that is authorized to receive a Federal payment from an agency.

(n) *Secretary* means Secretary of the Treasury.

(o) *Treasury* means the United States Department of the Treasury.

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

Subject to § 208.4, and notwithstanding any other provision of law, effective January 2, 1999, all Federal payments made by an agency shall be made by electronic funds transfer.

#### § 208.4 Waivers.

Payment by electronic funds transfer is not required in the following cases:

(a) Where an individual determines, in his or her sole discretion, that payment by electronic funds transfer would impose a hardship due to a physical or mental disability or a geographic, language, or literacy barrier, or would impose a financial hardship. In addition, the requirement to receive payment by electronic funds transfer is automatically waived for all individuals who do not have an account with a financial institution and who are eligible to open an ETA<sup>SM</sup> under § 208.5, until such date as the Secretary determines that the ETA<sup>SM</sup> is available;

(b) Where the political, financial, or communications infrastructure in a foreign country does not support payment by electronic funds transfer;

(c) Where the 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 payments made within 120 days after the disaster is declared;

(d) Where either:

(1) A military operation is designated by the Secretary of Defense in which uniformed services undertake military actions against an enemy, or

(2) A call or order to, or retention on, active duty of members of the uniformed services is made during a war or national emergency declared by the President or Congress;

(e) 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;

(f) Where the agency does not expect to make more than one payment to the same recipient within a one-year period, i.e., the payment is non-recurring, and the cost of making the payment via electronic funds transfer exceeds

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the cost of making the payment by check; and

(g) 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; or, 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.

#### § 208.5 Availability of the ETA<sup>SM</sup>.

An individual who receives a Federal benefit, wage, salary, or retirement payment shall be eligible to open an ETA<sup>SM</sup> at any Federally-insured financial institution that offers ETAs<sup>SM</sup>. Any Federally-insured financial institution shall be eligible, but not required, to offer ETAs<sup>SM</sup> as Treasury's Financial Agent. A Federally-insured financial institution that elects to offer ETAs<sup>SM</sup> shall, upon entering into an ETA<sup>SM</sup> Financial Agency Agreement with the Treasury, be designated as Treasury's Financial Agent for the offering of the account pursuant to Public Law 104-208. Treasury shall make publicly available required attributes for ETAs<sup>SM</sup> and any ETA<sup>SM</sup> offered by a Federally-insured financial institution shall comply with such requirements. The offering of an ETA<sup>SM</sup> shall constitute the provision of EBT services within the meaning of Public Law 104-208.

#### § 208.6 General account requirements.

(a) All Federal payments made by electronic funds transfer, including those made through an ETA<sup>SM</sup>, shall be deposited into an account at a financial institution. For all payments other than vendor payments, the account at the financial institution shall be in the name of the recipient, except as provided in paragraph (b) of this section.

(b)(1) Where an authorized payment agent has been selected, the Federal payment shall be deposited into an account titled in accordance with the regulations governing the authorized payment agent.

(2) Where a Federal payment is to be deposited into an investment account

established through a securities broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, or an investment account established through an investment company registered under the Investment Company Act of 1940 or its transfer agent, such payment may be deposited into an account designated by such broker or dealer, investment company, or transfer agent.

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

(a) An agency shall disclose to each individual who is eligible to receive a Federal benefit, wage, salary, or retirement payment and who is not already receiving payment by electronic funds transfer the individual's rights and obligations under §§ 208.3, 208.4(a) and 208.5 of this part, unless payment by electronic funds transfer is not required pursuant to any provision of subsections (b) through (g) of § 208.4.

(1) Prior to the date the ETA<sup>SM</sup> becomes available, the disclosure shall be in a form substantially similar to the model disclosure set forth in appendix A of this part.

(2) On and after the date the ETA<sup>SM</sup> becomes available, the disclosure shall be in a form substantially similar to the model disclosure set forth in appendix B of this part.

(b) An agency shall put into place procedures that allow recipients to indicate that the recipient elects to have payment deposited by electronic funds transfer to an account held by the recipient at a financial institution. In addition, an agency may put into place procedures to request that individuals who are invoking a hardship waiver under § 208.4(a) indicate, in writing or orally, that a hardship waiver has been invoked. However, an agency may not delay or withhold payment if a recipient does not respond to such a request.

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

Each recipient who is required to receive payment by electronic funds transfer and who has an account with a financial institution must, within the time frame specified by the agency making the payment, designate a financial institution through which the payment may be made and provide the

agency with the information requested by the agency in order to effect payment by electronic funds transfer.

#### **§ 208.9 Compliance.**

(a) Treasury will monitor agencies' compliance with this part. Treasury may require agencies to provide information about their progress in converting payments to electronic funds transfer.

(b) If an agency fails to make payment by electronic funds transfer, as prescribed under this part, 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 regulation in any case or class of cases.

#### **APPENDIX A TO PART 208—MODEL DISCLOSURE FOR USE UNTIL ETA<sup>SM</sup> BECOMES AVAILABLE**

The Debt Collection Improvement Act of 1996 requires that most Federal payments be made by electronic funds transfer after January 2, 1999.

If you are currently receiving your Federal payment by check or you have just become eligible to begin receiving a Federal payment, you have several choices:

(1) Receive your payment by Direct Deposit through the financial institution of your choice.

The Government makes payments electronically through a program called Direct Deposit. Direct Deposit is a safe, convenient, and reliable way to receive your Federal payment through a financial institution. (A financial institution can be a bank, credit union, savings bank, or thrift.) Many financial institutions offer basic, low-cost accounts in addition to full-service checking or savings accounts.

(2) Do nothing now and wait for a basic, low-cost account, called an ETA<sup>SM</sup>, to become available.

If you do not have an account with a financial institution, you do not need to do anything now. In the future a low-cost account, called an ETA<sup>SM</sup>, will be available at many financial institutions. Like Direct Deposit, the ETA<sup>SM</sup> (which stands for electronic transfer account) is a safe, convenient, and reliable way to receive your Federal payment through a financial institution. You are eligible to open this account, at a low monthly fee, if you receive a Federal benefit, wage, salary, or retirement payment. [Agency name] will contact you and let you know

when the ETA<sup>SM</sup> is available and which financial institutions in your area offer the account.

(3) Continue to receive a check.

If receiving your payment electronically would cause you a hardship because you have a physical or mental disability, or because of a geographic, language, or literacy barrier, you may receive your payment by check. In addition, if receiving your payment electronically would cause you a financial hardship because it would cost you more than receiving your payment by check, you may receive your payment by check.

Please call [agency name] at [agency customer service number] if you would like more information on Direct Deposit, the ETA<sup>SM</sup>, or hardship waivers.

#### APPENDIX B TO PART 208—MODEL DISCLOSURE FOR USE AFTER ETA<sup>SM</sup> BECOMES AVAILABLE

The Debt Collection Improvement Act of 1996 requires that most Federal payments be made by electronic funds transfer after January 2, 1999.

If you are currently receiving your Federal payment by check or you have just become eligible to begin receiving a Federal payment, you have several choices:

(1) Receive your payment by Direct Deposit through the financial institution of your choice.

The Government makes payments electronically through a program called Direct Deposit. Direct Deposit is a safe, convenient, and reliable way to receive your Federal payment through a financial institution. (A financial institution can be a bank, credit union, savings bank, or thrift.) Many financial institutions offer basic, low-cost accounts in addition to full-service checking or savings accounts.

(2) Receive your payment through a basic, low-cost account called an ETA<sup>SM</sup>.

If you receive a Federal benefit, wage, salary, or retirement payment, you are eligible to open an ETA<sup>SM</sup>. This account is available for a low monthly fee at many financial institutions. Like Direct Deposit, the ETA<sup>SM</sup> (which stands for electronic transfer account) is a safe, convenient, and reliable way to receive your Federal payment through a financial institution. Please call the customer service number listed below to find out which financial institutions in your area offer the ETA<sup>SM</sup>.

(3) Continue to receive a check.

If receiving your payment electronically would cause you a hardship because you have a physical or mental disability, or because of a geographic, language, or literacy barrier, you may receive your payment by check. In addition, if receiving your payment electronically would cause you a financial hardship because it would cost you more than re-

ceiving your payment by check, you may receive your payment by check.

Please call [agency name] at [agency customer service number] if you would like more information on Direct Deposit, the ETA<sup>SM</sup>, or hardship waivers.

### PART 210—FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE

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AUTHORITY: 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321, 3301, 3302, 3321, 3332, 3335, and 3720.

SOURCE: 64 FR 17487, Apr. 9, 1999, unless otherwise noted.

#### § 210.1 Scope; relation to other regulations.

This part governs all entries and entry data originated or received by an agency through the Automated Clearing House (ACH) network, except as provided in paragraphs (a) and (b) of this section. This part also governs reclamations of benefit payments.

(a) Federal tax payments received by the Federal Government through the ACH system that are governed by part 203 of this title shall not be subject to any provision of this part that is inconsistent with part 203.

(b) ACH credit or debit entries for the purchase of, or payment of principal and interest on, United States securities that are governed by part 370 of this title shall not be subject to any provision of this part that is inconsistent with part 370.