

particular sector, or (c) exceed five percent of the labor costs of the entities in the sector.¹⁹

The minimal cost to read and understand the rule will not generate any such significant economic impacts.

Since the only quantifiable impacts that the Board has identified is the \$71.08 that may be incurred in reviewing and understanding the rule, the Board does not believe there will be a significant economic impact on a substantial number of small entities associated with this proposed rule. The Board welcomes input from the public regarding additional costs of compliance not identified by the Board or costs of compliance the Board identified but lacks the means to accurately estimate.

E. Duplicate, Overlapping, or Conflicting Federal Rules

Agencies are required to include in an IRFA “all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.”²⁰ The Board has not identified any such federal rules, but welcomes comments that suggest any potential conflicts not noted in this section.

F. Alternatives Considered

Pursuant to 5 U.S.C. 603(c), agencies are directed to look at “any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.” Specifically, agencies must consider establishing different compliance or reporting requirements or timetables for small entities, simplifying compliance and reporting for small entities, using performance rather than design standards, and exempting small entities from any part of the rule.²¹

First, the Board considered taking no action. Inaction would leave in place the interpretation of statutory employee under the Act that includes students who perform services for compensation at a private college or university in connection with their studies. However, for the reasons stated in Sections I through IV of the Notice of Proposed Rulemaking (84 FR 49691), the Board finds it desirable to revisit this interpretation and to do so through the rulemaking process. Consequently, the Board rejects maintaining the status quo.

Second, the Board considered creating exemptions for certain small colleges, universities, and labor unions. This was

rejected as impractical, considering that exemptions for small entities would substantially undermine the purposes of the proposed rule because such a large percentage of colleges and universities (63.6 percent) and unions (97.6 percent) would be exempt under the SBA definitions. In this regard, exempting small universities and colleges from the decision to exclude students from the Board’s jurisdiction would incongruously result in the exercise of Board jurisdiction over students who attend small colleges and universities, but not larger educational institutions. Similarly, if a large university employer entered into a bargaining relationship with a small labor union (or vice versa), both entities would be exempted. Drawing this distinction appears to be an impermissible interpretation of the relevant statutory provisions and one that would undermine the policy behind the proposed rule. Moreover, given the very small quantifiable cost of compliance, it is possible that the burden on a small entity of determining whether it fell within a particular exempt category might exceed the burden of compliance. As such, exempting small entities would be contrary to the objectives of this rulemaking and of the NLRA.

Because no alternatives considered will accomplish the objectives of this proposed rule while minimizing costs on small entities, the Board believes that proceeding with this rulemaking is the best regulatory course of action. The Board welcomes public comment on any facet of this IRFA, including alternatives that it has failed to consider.

Dated: October 9, 2019.

Roxanne Rothschild,

Executive Secretary.

[FR Doc. 2019–22436 Filed 10–15–19; 8:45 am]

BILLING CODE 7545–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 208

[FISCAL–2018–0001]

RIN 1510–AB26

Management of Federal Agency Disbursements

AGENCY: Bureau of the Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking with request for comment.

SUMMARY: The Department of the Treasury (Treasury), Bureau of the

Fiscal Service (Fiscal Service or “we”), is proposing to amend its regulation that requires electronic delivery of all Federal payments aside from tax payments. The proposed rule would eliminate obsolete references in the regulation, including references to the Electronic Transfer Account (ETASM). In addition, the proposed rule would provide for the disbursement of non-benefit payments, including tax payments, through Treasury-sponsored accounts, such as the U.S. Debit Card. The proposed rule would not mandate the electronic delivery of tax payments or affect the Direct Express[®] program, which will continue to be available to recipients of benefit payments.

DATES: Comments on the proposed rule must be received by December 16, 2019.

ADDRESSES: Comments on this rule, identified by docket Fiscal-2018–0001, should be submitted using 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: Brett Smith, Director, EFT Strategy Division, 3201 Penny Drive, Bldg/ E, Landover, MD 20785].

Instructions: All submissions received must include the agency name (Bureau of the Fiscal Service) and docket number 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 disclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You can download this proposed rule at the following website: <https://fiscal.treasury.gov/fsservices/gov/pmt/eft/regulations.htm>.

FOR FURTHER INFORMATION CONTACT:

Brett Smith, Director, EFT Strategy Division, at (202) 874–6666 or brett.smith@fiscal.treasury.gov, or Natalie H. Diana, Senior Counsel, at (202) 874–6680 or natalie.diana@fiscal.treasury.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In 1998, Fiscal Service published part 208 of title 31, Code of Federal Regulations (part 208), to implement the requirements of Section 3332, title 31 United States Code, as amended by

¹⁹ See SBA Guide at 19.

²⁰ 5 U.S.C. 603(b)(5).

²¹ 5 U.S.C. 603(c).

subsection 31001(x)(1) of the Debt Collection Improvement Act of 1996 (*Pub. L. 104-134*) (Section 3332). Section 3332 generally requires that all Federal payments other than tax payments be made by electronic funds transfer (EFT), unless waived by the Secretary. The Secretary must ensure that individuals required to receive Federal payments by EFT have access to an account at a financial institution “at a reasonable cost” and with “the same consumer protections with respect to the account as other account holders at the same financial institution.” See 31 U.S.C. 3332(f), (i)(2).

Fiscal Service has had great success in reducing check payments, but still must print and mail close to 60 million checks each year. More than half of these are for non-benefit payments, especially tax payments. Over the years, Fiscal Service has implemented multiple solutions to facilitate electronic payments.

ETASM Accounts

In conjunction with the 1998 publication of part 208, Fiscal Service developed the ETA, a low-cost account offered by participating financial institutions for those individuals who wish to receive their Federal payments by direct deposit. See Notice of Electronic Transfer Account Features, 64 FR 38510 (July 16, 1999). Fiscal Service determined to end the program in 2017 and as of September 2018 all ETA accounts were closed.

Direct Express[®] Card

In 2008, Fiscal Service introduced the Direct Express[®] Debit MasterCard[®] card. The Direct Express card is a low-cost prepaid debit card account developed for Federal benefit recipients (initially, for Social Security and Supplemental Security Income payment recipients). In 2010, Fiscal Service amended part 208 to establish the Direct Express card as an account that meets the requirements of Section 3332(i), which ensures that payment recipients have access to an account at a reasonable cost and with the same consumer protections as other account holders at the financial institution that issues the card.

U.S. Debit Card

Since 2008 Fiscal Service has also sponsored another prepaid card account, the U.S. Debit Card, for our efforts to reduce the number of non-benefit payments made by cash or check. The U.S. Debit Card program enables agencies to make Federal non-benefit payments to recipients through prepaid debit cards instead of through checks or cash. The accounts are issued,

and the program is operated, by a financial institution designated as Fiscal Service’s financial agent. Federal entities and programs use the U.S. Debit Card to make payments for a variety of purposes, including stipends, awards, grants, and travel reimbursements for local visitors and international guests.

In recent years, Fiscal Service has engaged in testing and developing payment methods to facilitate the electronic delivery of Federal non-benefit payments, in order to reduce check payments and provide more options for payment recipients. In particular, Fiscal Service is testing the delivery of payments to virtual accounts (which are accessed online or through a mobile device rather than a plastic card), as well as implementing capabilities to enable payment recipients to receive payments in real-time by providing a debit card number. The U.S. Debit Card program now includes this functionality.

II. Proposed Change to Regulation

Summary of Proposal

We are proposing to update part 208 to reflect the evolution of Fiscal Service’s payment technologies and to eliminate obsolete ETA references and expired EFT waiver categories. The waiver categories that have not expired remain in place without change.

After conducting an analysis of the ETA program in 2017, Fiscal Service concluded that it was time to end the program. As of September 2018, all ETA accounts were closed. Accordingly, we are proposing to remove now-obsolete references to the ETA from the regulation.

We are also proposing to eliminate waiver provisions that have expired due to the passage of time. When part 208 was promulgated in 2010, it included a provision stating that individuals receiving Federal payments by check on March 1, 2011, could continue to do so through February 28, 2013. In addition, the rule provides that individuals who file claims for Federal benefits before March 1, 2011, and who request check payments when they file, may receive payments by check through February 28, 2013. Since the February 28, 2013 deadline has expired, these provisions no longer have any effect and there is no purpose in retaining them in the rule. All other waiver provisions will remain unchanged.

We are proposing to expand the definition of “Federal payment” for purposes of part 208 to include payments made under the Internal Revenue Code of 1986, to support the delivery of tax payments via Treasury-

sponsored accounts. Tax payments would continue to be excluded from the electronic payment mandate that applies to other Federal payments, consistent with Section 3332. However, the definitional change would provide flexibility to offer taxpayers Treasury-sponsored accounts as an electronic payment alternative for the receipt of tax payments on a voluntary basis.

Lastly, because payment methods continue to evolve we are proposing to revise part 208 to address the use of other “Treasury-sponsored accounts” for the delivery of Federal payments. The proposed revisions will provide flexibility to implement new methods of making payments, with the ultimate goal of reducing check payments, modernizing Fiscal Service’s payment capabilities, and offering payment recipients electronic alternatives to checks or direct deposit to a traditional bank account. This will impact the U.S. Debit Card program. However, we are not proposing to change the regulatory treatment of Direct Express accounts or make any changes to the Direct Express program. The concept of Treasury-sponsored accounts and changes to the U.S. Debit Card program are discussed immediately below.

Treasury-Sponsored Accounts

In order to support existing and emerging methods of paying individuals, Fiscal Service is proposing to add a new term, “Treasury-sponsored account,” to the regulation. A Treasury-sponsored account would be defined as an account that a Treasury-designated financial agent establishes and administers for an individual for the disbursement of Federal payments, upon terms and conditions that Treasury considers appropriate. The term “Treasury-sponsored account” would include, but not be limited to, Direct Express and U.S. Debit Cards. Although Fiscal Service does not have current plans to develop Treasury-sponsored accounts other than Direct Express and U.S. Debit Cards, this terminology provides flexibility for the future.

Currently the regulation only addresses the use of accounts established by financial agents to accomplish disbursement of benefit payments and accounts established for disaster victims. The proposed rule would broaden the uses of accounts established by financial agents for disbursement purposes, including to disburse not just benefit payments but also miscellaneous, vendor, expense reimbursement and tax payments. Treasury-disbursed accounts would be required to be made available at a

reasonable cost and with the same consumer protections provided to other account holders at the financial institution, thereby meeting the requirements of Section 3332.

U.S. Debit Card

Historically, Fiscal Service structured the U.S. Debit Card program as a conventional general purpose prepaid card program, which provides payment recipients with access to their funds via a plastic card. Recently, Fiscal Service expanded the U.S. Debit Card program to include a new virtual account option, which allows payment recipients to establish a prepaid account accessible through their mobile devices or online without the use of a plastic card. Payment recipients who open a virtual U.S. Debit Card account have the capability to move their funds in real-time through Direct to Debit functionality, which allows the cardholder to transfer funds on the basis of a debit card number. They may also opt to have a plastic U.S. Debit Card to

access funds in the account if they so choose.

It is Fiscal Service’s view that the U.S. Debit Card meets the statutory “reasonable cost” and “same consumer protection” requirements of Section 3332. A 2014 study by the Federal Reserve Bank of Kansas City found that prepaid cardholders pay, on average, \$11 per month in fees. Some of the fees included in that amount are monthly, account maintenance, IVR and ATM balance inquiry, ATM withdrawal, PIN and signature transaction, and declined transaction fees. See *General Purpose Reloadable Cards: Penetration, Use, Fees and Fraud Risks*, The Federal Reserve Bank of Kansas City, RWP 14–01, February 2017. In contrast, the U.S. Debit Card carries no monthly fee and can be used at no cost in many cases. There are no fees for cardholders to sign up for or activate the card; receive deposits; make purchases at retail locations, online or by telephone; or get cash at retail locations and financial institutions. Cardholders can check

their balances and sign up for alerts via the mobile app, text, telephone or email. If desired, a cardholder may receive a monthly paper statement. There are no fees for declined transactions.

Cardholders may close their card account at any time without a fee. Cardholders may make purchases anywhere VISA® is accepted, including millions of retail locations worldwide, online, or by telephone. Similarly, cardholders may make unlimited free cash withdrawals and check their account balances at Allpoint ATMs as well as one free out-of-network ATM cash withdrawal for every Federal payment the cardholder receives. There are also other means by which cardholders may access their funds for free. Cardholders can transfer funds for free to a bank account and have free use of Money Network™ checks to access their funds. The free services and minimal fees are fully disclosed in materials that are provided to new U.S. Debit Card account holders, as shown in the following chart:

FEE SCHEDULE

Transaction type	Fees
Inactivity Fee *1 (3 consecutive months of no activity)	\$1.50
Money Network™ Check (use, order, or stop payment; cash at participating check-cashing locations)	0.00
Signature Point-of-Sale Transactions (for purchases, declines and returns) U.S. and Non-U.S.	0.00
PIN Point-of-Sale Transactions—with or without Cash Back (for purchases and declines) U.S. and Non-U.S.	0.00
PIN Point-of-Sale Transactions—with or without Cash Back (for returns) U.S. and Non-U.S.	0.00
ATM Withdrawals U.S. In-Network ATMs including AllPoint Network ATMs (Unlimited)	0.00
ATM Withdrawals U.S. Out-of-Network ATMs (First Free per deposit)	2.00
ATM Withdrawals Non-U.S. ATMs	3.00
ATM Inquiries U.S. and Non-U.S.	0.25
Declined Point-of-Sale (POS) Transaction	0.00
Bank Teller Over-the-Counter Cash Withdrawal (at any bank that displays the logo shown on your card)	7.00
Third-party wallet tokenization (load, transfer, or ACH)*	0.01
Transfer Funds to a Bank Account via ACH transfer*	0.00
Monthly Paper Statement by Mail*	0.00
Periodic Monthly Paper Statement Expedited Mail*	N/A
Balance Inquiries and Alerts via Mobile App, Automated Phone System, Customer Service, Online Access, or Notifications (push, email or text)*.	0.00
Customer Service 24/7*	\$0.00
* Disbursement or funds transfer via Direct to Debit	* 0.15 + Network Costs
Replacement Card with Standard Delivery	\$7.50
Replacement Card with Expedited Delivery	24.50

* Network costs are the cost of debit network interchange and other network costs imposed directly by the network for a funds transfer. Transactions are routed using a least-cost routing approach to select the available network with the lowest total fee.

U.S. Debit Cardholders are protected by Regulation E (12 CFR part 1005), which generally provides certain protections to a cardholder whose card is lost or stolen, as well as VISA’s Zero Liability protection. Card balances are covered by deposit insurance by the Federal Deposit Insurance Corporation (FDIC) to the extent allowed by law.

Fiscal Service invites comment on how the U.S. Debit Card fees compare with fees for general purpose prepaid cards in the marketplace, as well as fees

for traditional checking or savings accounts. We welcome commenters’ views on whether the U.S. Debit Card fees, in the aggregate, are reasonable.

III. Section-by-Section Analysis

§ 208.1

We are proposing to revise § 208.1 by removing the statement that part 208 does not apply to tax payments. As revised, part 208 would allow for the delivery of tax payments to Treasury-sponsored accounts, but would not

mandate that tax payments be made by EFT.

§ 208.2

Proposed § 208.2(a)–(c) are unchanged.

Proposed § 208.2(d), which defines “disbursement” in the context of electronic benefit transfer, would be broadened into a definition of disbursement for not just benefit payments but also non-benefit payments. The proposed rule would substitute the phrase “payments

electronically delivered to Treasury-sponsored accounts” for the existing phrase “electronic benefit transfer.”

Proposed § 208.2(e), which defines “electronic benefits transfer” (EBT), would substitute the phrase “Treasury-sponsored account” for the existing phrase “a Direct Express card” and remove the reference to the ETA. Thus, the definition of electronic benefits transfer would include Direct Express but not be limited to Direct Express. A reference to Public Law 104–208 has been added to make it clear that the definition of “electronic benefits transfer” applies to the various references in the public law to electronic benefits transfer.

Proposed § 208.2(f) is unchanged.

Proposed § 208.2(g) would set forth the definition of Federal payment, which is currently located at paragraph (h). Currently paragraph (g) sets forth the definition of ETA, which we are proposing to eliminate. The definition of Federal payment would be revised to include payments made under the Internal Revenue Code of 1986, which are currently excluded from the definition.

Proposed § 208.2(h)–(i) are unchanged except that the definitions have been re-lettered from current § 208.2(i)–(j).

Proposed § 208.2(j), which defines Financial Agent, would revise the definition currently located at § 208.2(k). Currently the definition of Financial Agent for purposes of part 208 is limited to a financial agent that provides electronic benefit transfer (EBT) services. As revised, the definition would include a financial institution that has been designated by Treasury as a Financial Agent for the provision of electronic funds transfer services as well.

Proposed § 208.2(k)–(o) are unchanged from the current regulation except that the definitions have been re-lettered.

Proposed § 208.2(p) would add a new term, “Treasury-sponsored account,” defined as a Direct Express card account, a U.S. Debit Card account, or another account established pursuant to § 208.5 or § 208.11.

Proposed § 208.2(q) would add a definition of U.S. Debit Card to part 208.

§ 208.3

§ 208.3 currently states that, 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. Proposed § 208.3 would add a sentence stating that this requirement does not apply to payments under the Internal Revenue Code of 1986. The sentence is necessary

because of the proposed change to the definition of Federal payment to include payments made under the Internal Revenue Code of 1986.

§ 208.4

§ 208.4 contains waivers from the requirement that a Federal payment be made electronically. We are proposing to eliminate the text of current paragraphs (a)(1)(i) and (ii). Those provisions provide, respectively, (i) that payment recipients who were receiving their payments from an agency by check before March 1, 2011, may to continue to receive those payments by check through February 28, 2013 and (ii) that individuals who filed claims for Federal payments before March 1, 2011, and who requested check payments when they filed, are permitted to receive payments by check through February 28, 2013. Because those time periods have expired, the waivers are no longer needed in the regulation. The remaining paragraphs of § 208.4(a)(1) are unchanged except that references to Direct Express accounts would be replaced by references to “Treasury-sponsored accounts.”

§ 208.4(a)(2)–(7) are unchanged. Section 208.4(b) is unchanged except to reflect the renumbering of § 208.4(a)(1) resulting from the deletion of the obsolete waivers.

§ 208.5

Current § 208.5 addresses the provision of ETA accounts. We are proposing to eliminate the text of § 208.5 in its entirety and replace it with a provision stating that Treasury may designate a Financial Agent to establish and administer accounts for individuals for the disbursement of Federal payments. Federal payments, as defined in § 208.2, would include not only benefit payments but also miscellaneous, vendor, expense reimbursement and tax payments. Proposed § 208.5 provides that such accounts may be established upon terms and conditions that the Secretary considers appropriate or necessary and that they shall be made available at a reasonable cost and with the same consumer protections provided to other account holders at the financial institution. These requirements reflect that 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.

§ 208.6

Currently § 208.6 provides that an individual who receives a benefit

payment is eligible to open a Direct Express account, under terms and conditions established by Treasury. This section also provides that the offering of a Direct Express account constitutes the provision of EBT services within the meaning of Public Law 104–208. As proposed, § 208.6 would be broadened to provide that an individual who receives a Federal payment shall be eligible to open a Treasury-sponsored account, under terms and conditions established by Treasury. The sentence referring to Public Law 104–208 has been deleted as unnecessary in light of revisions to the definition of “electronic benefit transfer.”

§ 208.7

Proposed § 208.7 is unchanged except that the reference to a Direct Express account would be replaced by a reference to a “Treasury-sponsored account.”

§ 208.8

We are proposing to add a sentence to current § 208.8 that would state that 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 request comment on this proposal.

§ 208.9–11

We are not proposing any changes to § 208.9, § 208.10, or § 208.11.

IV. Procedural 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 this 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 apply to

individuals who receive Federal payments, and do not have any direct impact 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 card, Disbursement, Electronic funds transfer, Federal payment, Treasury-sponsored account.

Words of Issuance

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

PART 208—MANAGEMENT OF FEDERAL AGENCY DISBURSEMENTS

Sec.

- 208.1 Scope and application.
- 208.2 Definitions.
- 208.3 Payment by electronic funds transfer.
- 208.4 Waivers.
- 208.5 Accounts for disbursement of Federal payments.
- 208.6 Availability of Treasury-sponsored accounts.
- 208.7 Agency responsibilities.
- 208.8 Recipient responsibilities.
- 208.9 Compliance.
- 208.10 Reservation of rights.
- 208.11 Accounts for disaster victims.

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. Except as specified in § 208.4, this part requires payments, other than payments made under the Internal Revenue Code of

1986, 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.

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.

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,

Automated Clearing House transfers, 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.

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;
- (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; and payments under Federal insurance or guarantee programs for loans; and
- (5) Payments under the Internal Revenue Code of 1986 (26 U.S.C.).

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.

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.

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, as amended by the Omnibus Consolidated Appropriations Act, 1997, Section 664, Public Law 104–208.

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).

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.

Secretary means Secretary of the Treasury.

Treasury means the United States Department of the Treasury.

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.

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. This requirement does not apply to payments under the Internal Revenue Code of 1986.

§ 208.4 Waivers.

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

(1) Where an individual:

(i) Was born prior to May 1, 1921, and was receiving payment by check on March 1, 2013;

(ii) Receives a type of payment for which Treasury does not offer delivery to a Treasury-sponsored account. In such cases, those payments are not

required to be made by electronic funds transfer, unless and until such payments become eligible for deposit to a Treasury-sponsored account;

(iii) Is ineligible for a Treasury-sponsored account because of suspension or cancellation of the individual's Treasury-sponsored account by the Financial Agent;

(iv) Has filed a waiver request with Treasury certifying that 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, and Treasury has not rejected the request; or

(v) Has filed a waiver request with Treasury certifying that 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 remote geographic location lacking the infrastructure to support electronic financial transactions, and Treasury has not rejected the request;

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

(3) 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;

(4) Where either:

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

(ii) 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;

(5) 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;

(6) Where the agency does not expect to make payments to the same recipient within a one-year period on a regular, recurring basis and remittance data explaining the purpose of the payment is not readily available from the recipient's financial institution receiving the payment by electronic funds transfer; and

(7) 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.

(b) An individual who requests a waiver under paragraphs (a)(1)(iv) and (v) of this section shall provide, in writing, to Treasury a certification supporting that request, in such form that Treasury may prescribe. The individual shall attest to the certification before a notary public, or otherwise file the certification in such form that Treasury may prescribe.

§ 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, including benefit, retirement, salary, miscellaneous, vendor, expense reimbursement and tax 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.

§ 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.

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 or to a Treasury-sponsored account.

§ 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. 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.

§ 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 part in any case or class of cases.

§ 208.11 Accounts for disaster victims.

Treasury may establish and administer accounts at any financial institution designated as a Financial Agent for disaster victims in order to allow for the delivery by electronic funds transfer of one or more Federal payments. Such accounts may be established upon terms and conditions that the Secretary considers appropriate or necessary in light of the circumstances. Treasury may deliver payments to these accounts notwithstanding any other payment instructions from the recipient and without regard to the requirements of §§ 208.4 and 208.7 and § 210.5 of this chapter. For purposes of this section, "disaster victim" means an individual or entity located within an emergency area, or an individual or entity that has

relocated or been displaced from an emergency area as a result of a major disaster or emergency. "Emergency area" means a geographical area in which there exists an emergency or disaster declared by the President pursuant to the National Emergencies Act (50 U.S.C. 1601 *et seq.*) or the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*). 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.

David A. Lebryk,

Fiscal Assistant Secretary.

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