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Subject: FW: Comments on Proposed Treasury Regulations

The following are the US Office of Personnel Management's comments on the proposed changes to 31 CFR 210:

Check Conversion (210.2(d), 210.2(i), 210.6(g), 210.6(h), 210.6(i)):

We do not believe the regulations should require a fee for Non-Sufficient Funds (NSF) in all cases. Mandatory imposition of a NSF fee could result in poor customer service on our part.

Misdirected Payments (210.8(d) Notice of Misdirected Payment)

In the event an RDFI becomes aware that the agency originated an ACH credit to an account not owned by the payee, the RDFI should notify the agency *and return the misdirected payment to the agency*. Further, in many cases, it is the agency that first becomes aware that a payment has been sent to the wrong routing number or account number. In these cases, the agency immediately corrects the intended payee's information, but the agency has no mechanism to recover the misdirected payment. We would like the ability to recover the funds, in whole or in part, upon proper notification to the bank.

We recommend that an RDFI should be required to match a payee's name to the account name when posting a payment. This secondary match would reduce, if not eliminate, misdirected payments posting to wrong accounts. We also believe it is important that the regulations require that all payments are returned to the agency via ACH.

Return Codes(210.10(a) Full Liability)

We support the use of a death reason code for returned payments when the RDFI becomes aware of the death of the recipient or beneficiary of a Federal benefit payment. This agency has processes in place to stop payments when payments are returned for the reason of death. We recommend that the regulations urge financial institutions to

use the appropriate code when returning payments.

Recovery of Funds - Post Death(210.10(d) Time Limits)

When a reclamation is sent to an RDFI, an agency does not know the amount of funds in the account available for reclamation. The proposed change would likely induce agencies to *always* request more than seven years. (The only exception would be a situation in which the account balance exceeds the total amount of the payments that the agency would otherwise be permitted to reclaim after applying the seven-year limitation.) The RDFI would then make the appropriate determination of all monies to be returned that exceeds the seven year rule.

Additionally, when post-death payments occur due to fraud, there should be no time limit on the recovery of funds.

Right to Financial Privacy Act (210.11(b)(3)(i) Qualifications for Limited Liability)

Your proposed changes to section 210.11(b)(3) reference Treasury's belief that only the Social Security Administration, the Railroad Retirement Board and the Department of Veterans' Affairs are authorized to receive information from the financial records of a bank's customers. Accordingly, there does not appear to be anything that would permit Treasury to receive this information on behalf of these agencies. In light of this interpretation, we assume that Treasury will be amending the FMS 133 to delete this requested information once the regulations become final.

Since the lack of this information will be a serious blow to the agencies that are not specifically mentioned, we would like to know if Treasury is going to undertake an effort to amend the law so that this information can again be requested by Treasury and passed on to the appropriate agency as it is currently? There are a number of pension plans such as Civil Service Retirement, Federal Employees Retirement, and Foreign Service Retirement to mention a few, that will suffer financial losses because of this change. Many of our post-death overpayments are small when considered on an individual basis and therefore the expense of a case by case administrative subpoena and investigation to determine who actually received the money would not be cost effective; however when these cases are considered in the aggregate, this will present a substantial increase in the total debt that must be written off as uncollectible.

There are also several other areas where the loss of the information currently provided by the financial institutions will provide a stumbling block to collection efforts by agencies that administer retirement or pension benefits. For example, your proposal to amend section 210.10(c)(2) would not require a bank to return money paid into the account if the certifying agency determines that the recipient or beneficiary was entitled to the post-death payment. There are specific statutory provisions for the payment of money due our annuitants and survivors (see 5 U.S.C. 8342(c) and 5 U.S.C. 8424(d)) when the payments have not been made prior to the death of the beneficiary. OPM

currently makes adjustments on a case by case basis using the information that the bank provides under the current provisions of section 210.11(b)(3); however, if the proposed amendment becomes final, we would not be able to make such adjustments, unless we somehow became aware of the recipient of the payments using our own initiative.

A similar situation would arise with the proposed amendment to section 210.10(d). If the financial institutions do not have to provide information about account balances, etc., how would we know that we should submit a reclamation request for more than the amount that was paid within seven years of the date of the notice of reclamation? Some of the proposals would be welcome changes if they were not adversely affected by the proposed amendment to section 210.11(b)(3) that comes after long years under a regulation that required that the information be provided to all affected agencies.

The Civil Service Retirement and Disability Fund **needs to** be included in the list of agencies shown. Exclusion will hinder our ability to recover funds due the United States Government. It will increase the number of subpoenas we must issue to RDFI's in order to obtain this information. We also urge that social security numbers be supplied to OPM so we can identify payees in our system.

RFDI Notification of Reclamation to Account Holder (210.13)

We note the change allowing a RFDI to notify account holders "promptly" instead of "immediately" about reclamations. We feel strongly that this language is extremely vague and needs to be defined quantitatively before this rule is implemented.

William J. Washington

Deputy Chief Financial Officer

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