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September 2, 2025

Hon. Scott Bessent
Secretary
Department of the Treasury
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Comments on Executive Order 14247

Dear Mr. Bessent:

Enclosed please find comments in response to the Request for Information from the Department of the Treasury with respect to Executive Order 14247 regarding electronic payments, specifically those made by or to the Internal Revenue Service. These comments are submitted on behalf of the Section of Taxation and have not been reviewed or approved by the House of Delegates or the Board of Governors of the American Bar Association. Accordingly, they should not be construed as representing the position of the American Bar Association.

The Section of Taxation would be pleased to discuss these comments with you or your staff.

Sincerely,

Megan L. Brackney
Chair, Section of Taxation

Enclosure

cc: Kenneth Kies, Assistant Secretary of Tax Policy, Department of the Treasury and Acting Chief Counsel, Internal Revenue Service
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AMERICAN BAR ASSOCIATION
SECTION OF TAXATION

Comments on Executive Order 14247, *Modernizing Payments To and From America's Bank Account*

These comments (“**Comments**”) are submitted on behalf of the American Bar Association Section of Taxation (“**Section**”) and have not been reviewed or approved by the House of Delegates or Board of Governors of the American Bar Association. Accordingly, they should not be construed as representing the position of the American Bar Association.

Principal responsibility for preparing these Comments was exercised by Rochelle Hodes. Primary responsibility for drafting these Comments was exercised by Garrett Brodeur, Bibiana Cruz, Omeed Firouzi, Erica Brady-Gitlin, Eric Homs, Pramod Kumar, Deanne Morton, and Susan E. Morgenstern. In addition, law student members of the Section Sean Miller, Jon-Yin Mills Chong, Jack Horner, Bel Weyble, Kestutis Carlson, and Bethany Ho assisted in preparing these comments. The Comments were reviewed by Alexandra Minkovich, of the Committee on Government Submissions, John Colvin, Chair of the Committee on Government Submissions, and Michael Desmond, Vice Chair for Government Relations.

Although members of the Section may have clients who might be affected by the proposed changes in administrative practice and the principles addressed by these Comments, no member who has been engaged by a client (or who is a member of a firm or other organization that has been engaged by a client) to make a government submission with respect to, or to otherwise influence the development or outcome of one or more specific issues addressed by, these Comments has participated in the preparation of the portion (or portions) of these Comments addressing those issues. Additionally, while the Section’s membership includes government officials, no such official was involved in any part of the drafting or review of these comments.

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Date: September 2, 2025

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EXECUTIVE SUMMARY

The Section respectfully submits these Comments in response to the Department of the Treasury’s (“**Treasury**”) Request for Information (“**RFI**”) on Executive Order 14247, Modernizing Payments To and From America’s Bank Account (“**EO**”), which, among other items, directs the Secretary of the Treasury to cease issuing paper checks and transition to the use of electronic payments and prepaid cards for all federal disbursements where feasible.¹ While the Section supports the EO’s policy goals of phasing out paper checks to defend against financial fraud and improper payments, increase efficiency, reduce costs, and enhance the security of federal payments, we urge careful consideration of several practical and legal concerns when crafting these rules.

These Comments are limited in scope to payments the Internal Revenue Service (“**Service**”) is required to make to taxpayers under the Code², which for all intents and purposes means refunds of overpayments under section 6402. For background, these Comments also discuss payments the Code requires taxpayers to make to the Service.³ Given that context, these Comments address the questions posed by the RFI regarding factors causing continued use of paper checks, barriers to individual and organization use of electronic funds transfer (“**EFT**”) options, alternatives when EFT is not feasible, risks and considerations regarding EFT, and barriers to offering certain types of EFT.

Our comments and recommendations are as follows:

- We do not believe that the law currently permits Treasury to mandate electronic receipt of tax refunds. Accordingly, while the Section recommends continuing to offer electronic payment options for tax refunds and expanding these options as appropriate, because requiring electronic receipt of tax refunds is not permitted by law, as contemplated by the EO, we do not believe that paper refund checks can or should be eliminated as an option for taxpayers.
- Elimination of paper checks may have a negative impact on unbanked and underbanked taxpayers. Treasury can take steps to mitigate these negative consequences by expanding access to basic, low-cost bank accounts for unbanked individuals—for example, by partnering with financial institutions to promote safe banking products, providing targeted outreach and financial education in unbanked communities about how to set up an account to receive tax refunds, and

¹ EO 14247 was signed on March 25, 2025, and published in the Federal Register on March 28, 2025. 90 Fed. Reg. 14001 (March 28, 2025). The U.S. Department of Treasury’s Request for Information was published in the Federal Register on May 30, 2025. 90 Fed. Reg. 23108 (May 30, 2025).

² Unless otherwise indicated, references to a “section” are to a section of the Internal Revenue Code of 1986, as amended (“**Code**”) and all “Treas. Reg. §” references are to the Treasury regulations promulgated under the Code, all as in effect (or, in the case of proposed regulations which remain outstanding, as proposed) as of the date of these Comments.

³ Technically, the Treasury Department (in particular, the Bureau of Fiscal Service (“**BFS**”)) is the payor and payee. For ease of discussion and to avoid confusion, this discussion will refer to payments made by and to the Service. Our discussion does not address criminal fines and penalties required to be paid to the government under the Code because those issues raise broader considerations beyond tax.

taking steps to eliminate additional costs and difficulties associated with electronic payment methods, such as prepaid cards, so that electronic payment methods can become a more valuable and user-friendly alternative for those who remain unbanked and underbanked.

- Without accommodation, taxpayers abroad may be unable to claim refunds they are entitled to by law if paper checks are eliminated. The Service should consider changing its policy and allow direct deposit of tax refunds into foreign financial institutions through International ACH or wire transfer where feasible. In the meantime, the Service should continue issuing paper checks for international addresses until a reliable electronic cross-border payment system is in place.
- Issuing tax refunds by electronic means can have unintended negative consequences that are not present when the Service issues tax refunds by paper check. For instance, a refund could be lost, stolen or misdirected. The procedures for resolving lost, stolen, or misdirected refunds are more cumbersome if the refund was paid by direct deposit. Accordingly, we recommend preserving taxpayers' ability to choose how they wish to receive their refunds in the manner that is most appropriate for their particular situation. Additionally, taxpayers can avoid deficiency interest on repayment of an erroneous tax refund by not cashing a paper check but cannot avoid interest if the Service issues an erroneous refund by direct deposit. We recommend that Treasury and the Service review direct deposit tracing procedures so taxpayers experience fewer difficulties in resolving misdirected and stolen refunds.
- If prepaid cards are used to make tax refunds, we recommend that the Service take steps to educate the public about the new method of issuing refunds and how to address potential risks with prepaid cards, revise procedures and increase staffing to accommodate prepaid cards as a means of paying tax refunds, and ensure that consumer protections applicable to government benefits issued on prepaid cards apply to tax refunds.
- Nevertheless, we support the EO's policy goal of transitioning away from paper checks and towards electronic payments and encourage Treasury and the Service to educate taxpayers about electronic payment options and increase taxpayer participation in electronic payment options. To that end, we propose that Treasury and the Service publish regulations in accordance with the Administrative Procedures Act ("APA")⁴ regarding options for electronic payment of tax refunds and how taxpayers may select these options.
- If Treasury proceeds with the elimination of paper checks for tax refunds, we strongly recommend delaying implementation of the September 30, 2025, effective date in the EO to better align with the federal tax cycle, allow adequate

⁴ 5 U.S.C. § 553.

time for taxpayer education and outreach, and to account for the significant changes to the tax law in the One Big Beautiful Bill Act of 2025 (“**OBBBA**”)⁵, which the Service and practitioners will need to swiftly understand and implement.

⁵ Pub. L. No. 119-21, 139 Stat. 72.

BACKGROUND

The Section respectfully submits these Comments in response to the Treasury's RFI on the EO, which, among other items, directs the Secretary of the Treasury to cease issuing paper checks and transition to the use of electronic payments or prepaid cards for all federal disbursements where feasible. Specifically, section 3 of the EO provides:

- (a) Effective September 30, 2025, and to the extent permitted by law, the Secretary of the Treasury shall cease issuing paper checks for all Federal disbursements inclusive of intragovernmental payments, benefits payments, vendor payments, and tax refunds, except as specified in section 4 of this order.
- (b) All executive departments and agencies (agencies) shall comply with this directive by transitioning to EFT methods, including direct deposit, prepaid card accounts, and other digital payment options, and take all steps necessary to enroll recipients in EFT payments, except as specified in section 4 of this order.
- (c) As soon as practicable, and to the extent permitted by law, all payments made to the Federal Government shall be processed electronically, except as specified in section 4 of this order.

Section 4 of the EO gives the Secretary of the Treasury limited discretion to provide exceptions and accommodations with respect to the phase out of paper checks:

Exceptions and Accommodations for the Phase Out of Paper Check

Disbursements and Receipts. (a) The Secretary of the Treasury, shall review and, as appropriate, revise procedures for granting limited exceptions where electronic payment and collection methods are not feasible, including exceptions for: (i) individuals who do not have access to banking services or electronic payment systems; (ii) certain emergency payments where electronic disbursement would cause undue hardship, as contemplated in 31 C.F.R. Part 208; (iii) national security- or law enforcement-related activities where non-EFT transactions are necessary or desirable; and (iv) other circumstances as determined by the Secretary of the Treasury, as reflected in regulations or other guidance. (b) Individuals or entities qualifying for an exception under this section or other applicable law shall be provided alternative payment options.

Further, Section 5 of the EO instructs the Secretary of the Treasury, in coordination with other agency heads, to develop and implement a public awareness campaign to inform federal payment recipients of the transition to electronic payments, including guidance on accessing and setting up digital payment options, with a particular focus on unbanked and underbanked populations and protecting personal identifiable information and "tax return information."

As stated in the EO and the RFI, the policy goals of phasing out paper checks are to defend against financial fraud and improper payments, increase efficiency, reduce costs, and enhance the security of federal payments. The Section supports these goals but

urges careful consideration of several practical and legal concerns when crafting rules requiring electronic payments.

These Comments are limited in scope to payments the Service is required to make under the Code, which for all intents and purposes means refunds of overpayments under section 6402. Given that context, our comments address the questions posed by the RFI regarding factors causing continued use of paper checks, barriers to individual and organization use of EFT options, alternatives when EFT is not feasible, risks and considerations regarding EFT, and barriers to offering certain types of EFT.

DISCUSSION

I. There is no apparent authority to mandate electronic receipt of tax refunds.

A. General authority to mandate electronic payments

Section 3332 of Title 31 of the United States Code provides the statutory framework for the disbursement of federal payments by EFT, also referred to in the statute title as “direct deposit.” Specifically, it mandates that, “[e]xcept as provided in subsection (f), all Federal payments made by an agency shall be made by electronic funds transfer.”⁶ The term “federal payments” is broadly defined to include federal wages, salaries, retirement payments, and benefits.⁷ However, the definition of federal payments expressly excludes payments made under the Code.⁸

Treasury’s BFS processes payment of federal tax refunds, relying on instructions transmitted by the Service.⁹ The Code is silent as to the method by which tax refunds are to be issued. Accordingly, the Code neither requires nor prohibits the issuance of tax refunds by electronic means. In practice, taxpayers are permitted to request payment of tax refunds by electronic means.¹⁰

In contrast to the issuance of tax refunds, the Code was amended in 1993 to add section 6302(h), which authorizes the Service to require payment of depository taxes by electronic means.¹¹ Depository taxes are defined in section 6302(h)(2) as any tax if the Secretary is authorized to require deposits of such tax, which the Service has interpreted to include excise taxes, employment taxes, and corporate estimated taxes paid by

⁶ 31 U.S.C. § 3332(a)(1).

⁷ 31 U.S.C. § 3332(j)(3).

⁸ 31 U.S.C. § 3332(j)(3) (flush language) (providing “Such term [federal payments] shall not include any payment under the Internal Revenue Code of 1986.”); *see also* 31 C.F.R. §§ 208.1, 208.3.

⁹ BFS generally is the accounting department for the U.S. government, making and collecting payments. Federal tax refunds are only one type of payment processed by BFS but the prevalence of information regarding tax refunds on its website reflects the important role BFS plays in ensuring taxpayers receive the money they are lawfully due. *See* <https://www.fiscal.treasury.gov/public/>.

¹⁰ *See e.g.*, Form 1040 and 1040-SR Instructions, Form 8888, *Allocation of Refund*, Form 8302, *Electronic Deposit of Tax Refund of \$1 Million or More*, and Form 8050, *Direct Deposit of Corporate Tax Refund*.

¹¹ North American Free Trade Agreement Implementation Act, Pub. L. No. 103-182, § 523, 107 Stat. 2057 (Dec. 8, 1993).

businesses and entities.¹² Treasury published regulations to identify depository taxes subject to electronic payment requirements and acceptable methods for electronic payment.¹³ Individual income taxes (including individual estimated taxes) are not identified in the regulations as depository taxes. Accordingly, there is no statutory or regulatory requirement to pay non-depository taxes electronically, although electronic payment is permitted.¹⁴

In sum, Congress enacted legislation under Title 31 to require the government to make certain payments electronically. However, payments made pursuant to the Code were specifically excluded from that statute. Additionally, Congress amended the Code to provide the Secretary with authority to require that taxpayers use electronic means to pay taxes but limited that requirement to depository taxes. There is no similar statutory provision requiring taxpayers to receive tax refunds by electronic means or to eliminate paper tax refund checks. Accordingly, we believe there is no legal authority permitting the payment of refunds by electronic means only. As provided in the EO, Treasury is instructed to cease making payments by check, only to the extent permitted by law. Therefore, as contemplated by the EO, Treasury and the Service should not eliminate payment of tax refunds by paper check.

B. Section 6402 requires the Service to refund the balance of an overpayment after discretionary and mandatory offsets.

Section 6402(a) provides:

In the case of any overpayment, the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall, subject to subsections (c), (d), (e), and (f), refund any balance to such person.

Thus, the Service is permitted, but not required, to collect federal tax liabilities through offset against federal tax overpayments under section 6402(a) (“may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax”) (discretionary offset). However, the overpayment must be offset by the amount of properly certified child support, federal non-tax debts, state tax obligations, and unemployment compensation debts under sections 6402(c), (d), (e), and (f) (mandatory offsets). BFS pays the refund less discretionary and mandatory

¹² Treas. Reg. § 31.6302-1(h)(3) provides that depository taxes are taxes required to be deposited under Treas. Reg. §§ 1.6302-1 (corporate income tax, estimated tax, unrelated business income tax, private foundation excise tax), Treas. Reg. § 1.6302-2 (nonresident alien withholding), Treas. Reg. § 1.6302-3 (estimated tax of certain trusts), 31.6302-1 (employment tax withholding) 31.6302-2 (Railroad Retirement Tax Act withholding), Treas. Reg. § 31.6302-3 (backup withholding), Treas. Reg. § 31.6302-4 (nonpayroll withholding), and Treas. Reg. § 40.6302(c)-1 (federal excise taxes).

¹³ See e.g., TD 9507, 75 Fed. Reg. 75897 (Dec. 7, 2010).

¹⁴ Treas. Reg. § 1.6302-4.

offsets.¹⁵ The statute then requires that the balance of the refund after offsets “shall” be refunded to the taxpayer.

Under section 6402, the Service has no discretion not to refund overpayments (after offsets) to the taxpayer. Further, as discussed in section I.A., we do not believe that the Code or other law permits Treasury to stop disbursements of tax refunds by paper check. Accordingly, for taxpayers who only want to receive their refunds by check, eliminating a paper check option can be seen as circumventing the taxpayer’s statutory right to their refund.

C. Recommendation

The Section recommends that Treasury and the Service continue offering electronic payment options for tax refunds and expand these options as appropriate. However, Treasury should not eliminate paper refund checks without legislation authorizing Treasury to do so.

II. Paper Refund Check Considerations for Different Groups of Taxpayers

A. The Unbanked and Underbanked

1. Households

More than four percent of U.S. households (about 5.6 million households)¹⁶ are “unbanked,” meaning that the members of the household do not have a bank account, and thus cannot receive direct deposit refunds. Presently, their only option for a refund is to wait for a paper check and then often use expensive check-cashing services. The National Taxpayer Advocate has noted that unbanked taxpayers have “no free option” for electronic refunds and must endure slower delivery and high fees required for check-cashing services.

According to the Federal Deposit Insurance Corporation (“FDIC”), the single greatest barrier to banking is cost. The most common reason for being unbanked is not having “enough money to meet minimum balance requirements.”¹⁷ For this reason, many low-income households are unbanked.

Unbanked households often qualify for the refundable earned income tax credit (“EITC”). In tax year 2024, the maximum adjusted gross income for eligible EITC households filing as married filing jointly with one child was \$56,004.¹⁸ The maximum amount of their EITC was \$4,213. For tax year 2024, more than 21 million refunds were issued with an EITC.¹⁹ For many of these taxpayers, their tax refund constitutes the

¹⁵ See 31 U.S.C. § 3720A.

¹⁶ FDIC, 2023 FDIC National Survey of Unbanked & Underbanked Households p. 21 (Nov. 2024).

¹⁷ *Id.* at p. 29.

¹⁸ Publication 596 (2024), *Earned Income Credit*, p. 2.

¹⁹ 2024 Internal Revenue Service Data Book, p. 17 (May 2025).

single largest cash disbursement of the year. Given that these taxpayers are also more likely to be unbanked, they are also at greater risk to the obstacles and risks inherent in alternative financial products.²⁰

Certain paid tax return preparers have long offered alternative financial products for their customers' tax refunds.²¹ Two examples of such products are refund anticipation checks and refund anticipation loans, neither of which provides an ongoing bank account for the taxpayer and both of which impose financial costs on the taxpayer.²² In 2023, almost 22 million taxpayers –16% – purchased a refund product for which they paid more than \$842 million in fees.²³ These costs are likely to multiply if refund delivery choices are proscribed. For this reason, we encourage the development of a no fee and no minimum balance solution for unbanked and underbanked taxpayers, who are typically low-income, so that they may receive the full value of their refunds.

Eliminating paper refunds, without further measures, could disproportionately harm low-income and minority taxpayers who make up a large portion of the unbanked population.²⁴ These individuals may face delays or costs that other taxpayers do not, undermining the equity of our tax system.

2. Employed minors

A significant percentage of teenagers in the United States work. The Fair Labor Standards Act sets the minimum age for employment at 12 for agricultural jobs and 14 for all non-agricultural jobs and millions of minors participate in the labor force.²⁵ As of June 1, 2025, the labor force participation rate for 16 to 19 year-olds in the United States was approximately 35%.²⁶ While many of these teenage workers do not meet the income filing threshold, they are required to file to claim any federal or state income tax refunds due to withholding. If not granted an exception by Treasury so that they may receive their refunds by check, many teenage workers may not be able to receive their refunds.

Many minors are not allowed to have accounts in their own name without a parent or legal guardian being a co-owner of the account. Teenagers who are their family's

²⁰ Board of Governors of the Federal Reserve System. Research and Analysis: Economic Well-Being of U.S. Households in 2023, p. 59 (May 2024).

²¹ Jones, M.R. (2017) *Tax Preparers, Refund-Anticipation Products, and EITC Noncompliance*, Internal Revenue Service, available at <https://www.irs.gov/pub/irs-soi/17resconjones.pdf> (last viewed Aug. 11, 2025).

²² Treasury Inspector General for Tax Administration, *Assessment of Tax Refund-Related Products*, Report Number 2025-4S0-003 (Nov. 18, 2024).

²³ *Id.*

²⁴ FDIC, 2023 FDIC National Survey of Unbanked & Underbanked Households p. 21 (Nov. 2024) (stating in the summary that unbanked rates among Black, Hispanic, and American Indian or Alaska Native individuals remained several times higher than the unbanked rate among White households).

²⁵ U.S. Department of Labor: *Hiring, Workers Under 18*, United States Department of Labor, available at <https://www.dol.gov/general/topic/hiring/workersunder18> (last viewed Aug. 11, 2025).

²⁶ U.S. Bureau of Labor Statistics (Jul. 14, 2025), *Labor Force Participation Rate - 16-19 Yrs.*, Federal Reserve Bank of St. Louis, available at <https://fred.stlouisfed.org/series/LNS11300012> (last viewed Aug. 11, 2025).

primary wage earner, are in foster care or are unhoused may not have a parent or legal guardian whom they trust with whom to share a joint bank account.

Even if working teenagers have a parent or legal guardian they can trust, structural barriers may preclude them from gaining a bank account. It may be the case that neither they nor their parents or guardians have the necessary identification documents needed to open a bank account.²⁷ Alternatively, they might not have enough money to meet minimum balance requirements or may be concerned with unpredictable or high fees being charged to maintain an account.²⁸

3. Recommendations

Treasury and the Service should work, in conjunction with other government agencies, where appropriate, to:

- Expand access to basic, low-cost bank accounts for unbanked individuals – for example, by partnering with financial institutions to promote safe banking products.
- Provide targeted outreach and financial education in unbanked and underbanked communities about how to set up an account to receive tax refunds.
- Take steps to eliminate additional costs and difficulties associated with prepaid cards so they can become a more valuable and user-friendly alternative for those who remain unbanked and underbanked.

B. International Taxpayers

1. Background

A significant number of U.S. taxpayers abroad and foreign national taxpayers lack access to U.S. banking. However, these individuals may still have a U.S. tax obligation or may be subject to withholding that under U.S. law must be refunded if such refund is properly requested. Under U.S. tax law, nonresident individuals may be subject to tax on U.S.-source income that is either (i) effectively connected with a U.S. trade or business under the Code, or (ii) fixed, determinable, annual, or periodical income, such as interest, dividends, or royalties, which is generally subject to 30% withholding under sections 871 and sections 1441 unless reduced by treaty. In both cases, taxpayers may be eligible for refunds under section 6402 if the tax withheld or paid exceeds the final liability, provided a proper return is filed (e.g., Form 1040-NR, *U.S. Nonresident Alien Income Tax Return*).

²⁷ FDIC, 2023 FDIC National Survey of Unbanked and Underbanked Households, p. 29 (Nov. 2024).

²⁸ *Id.*

Currently, the Service does not permit direct deposit of refunds into foreign bank accounts – only accounts with U.S. routing numbers qualify.²⁹ The Service treats an account at a foreign branch of a U.S. bank as a foreign account because the Service distinguishes accounts based on the physical location of the account, not the nationality or charter of the financial institution.

U.S. taxpayers living abroad historically receive refunds by paper check mailed overseas. Under the EO’s mandate to eliminate checks, these individuals face a risk of being unable to receive refunds at all. U.S. banks typically require in-person identification and a U.S. mailing address, which can be impractical for Americans residing abroad or non-resident filers. While some international taxpayers may maintain a U.S. bank account or use an intermediary U.S. correspondent bank, many are unable to do so because U.S. banks generally require in-person identity verification, a U.S. mailing address, and ongoing Know Your Customer/Anti-Money Laundering documentation, and therefore many non-resident taxpayers cannot satisfy the prerequisites for opening or maintaining a domestic account. The elimination of paper checks, absent an alternative, thus poses a serious hurdle for taxpayers lacking U.S. bank access.

During the COVID-19 pandemic, international mail disruptions left many overseas taxpayers waiting months or longer for refund checks. Eliminating checks without an alternative would mean some international taxpayers would not receive their refund. Treasury’s BFS has experience with international payments. For example, Social Security benefits are delivered by International Direct Deposit in over 50 countries. A similar solution could be explored for tax refunds.³⁰

We urge Treasury to not foreclose taxpayers from receiving refunds solely due to lack of a U.S. bank account. Until a robust cross-border payment alternative is implemented, continuing to issue paper checks for this population is a necessary safety valve.

2. Recommendations

Treasury and the Service should:

²⁹ See Instructions for Form 1040-NR-EZ, *U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents*, pp. 9–10; Publication 1345, *Handbook for Authorized IRS e-file Providers of Individual Income Tax Returns*, p. 12 (Oct. 2024); Publication 4163, *Modernized e-File (MeF) Information for Authorized IRS e-File Providers for Business Returns*, p. 50 (Dec. 2024); IRM 4.26.16.2.5; IRM 4.26.16.2; Publication 54, *What is considered a foreign country?*; Publication 1345, *Handbook for Authorized IRS e-file Providers of Individual Income Tax Returns*, p. 12 (Oct. 2024).

³⁰ BFS, International Treasury Services, available at <https://fiscal.treasury.gov/its/> (last viewed Aug. 11, 2025); Soc. Sec. Admin., *Your Payments While You Are Outside the United States* 31 (Pub. No. 05-10137, rev. Apr. 2025).

- Allow direct deposit of tax refunds into foreign financial institutions through International ACH or wire transfer where feasible.
- Continue issuing paper checks for international addresses until a reliable electronic cross-border payment system is in place.

III. Unintended Consequences of Eliminating Paper Refund Checks in the Case of Erroneous Refunds and Refund Tracing

A. Background

When refunds are lost, stolen, or misdirected, the Service requires taxpayers to complete Form 3911, Taxpayer Statement Regarding Refund, to initiate a refund trace to start the process for reissuing the refund.³¹ The remedies available to taxpayers through refund tracing vary depending on the method of refund disbursement. If a refund trace is issued for a refund disbursed by paper check, the remedies are more robust. The Service can track a lost, stolen, or misplaced check and certify a new payment for the non-receipt, loss, destruction, mutilation, or defacement of a check.³² Conversely, if the refund was issued by direct deposit, the Service can only verify that a financial institution received the deposit and has limited legal authority to correct errors caused by neither the taxpayer nor the Service.³³ For example, when the Service misdirects electronic refunds, the Service has no authority to redirect them. In such cases, the Service can only “contact the financial institution and ask that it persuade the incorrect account owner to return the misdirected funds.”³⁴

Additionally, as of August 3, 2025, there is limited published guidance for how to use Form 3911. First, there are no instructions for Form 3911. Second, the Service webpage, which includes a link to the PDF version of the Form, only states that it is used to “provide the service with information needed to trace the nonreceipt or loss of the already issued refund check.”³⁵ While Form 3911 does have a checkbox to indicate that the refund the taxpayer wants to trace was disbursed by direct deposit, the webpage fails to provide any instructions as to that option.³⁶

Finally, there can be significant delays in refund tracing. Staffing shortages at the Service and complexity regarding these matters are significant impediments to quick resolution. The fact that third party banks are involved in resolving these issues when there is a direct deposit only exacerbates the delay.

³¹ IRS Procedures Refund Inquiries FAQs, available at <http://irs.gov/faqs/irs-procedures/refund-inquiries/refund-inquiries-0> (last viewed on Aug. 11, 2025).

³² See IRM 21.4.2.

³³ See IRM 21.4.1.5.7.5. See also Treas. Reg. § 301.6402-2(g).

³⁴ IRM 21.4.1.5.7.5.

³⁵ Form 3911, Taxpayer Statement Regarding Refund.

³⁶ *Id.* The website states that “Form 3911 is completed by the taxpayer to provide the Service with information needed to trace the nonreceipt or loss of the already issued refund check.”

Additionally, there are occasions where the Service makes mistakes when issuing refunds, including issuing a refund to a taxpayer when no refund was requested, sending a refund check made out to the incorrect taxpayer, making a direct deposit to the incorrect bank account, or sending a refund to the correct taxpayer at the correct address or correct bank account, but for an amount greater than that which the taxpayer is entitled. The Service generally has two years to bring a suit under section 7405 to recover an erroneous refund.³⁷ The taxpayer could owe deficiency interest on the erroneous refund if the refund was sent to the taxpayer's account by direct deposit or if the taxpayer deposits the erroneous refund check. In the case of a paper check, the taxpayer can ensure that it will avoid this interest charge if the taxpayer does not cash or deposit the check.³⁸

The only opportunity to ensure the taxpayer avoids an interest charge on an erroneous refund is if the erroneous refund is received by paper check and the taxpayer does not cash the check. Eliminating paper refund checks means that taxpayers risk an interest charge if the Service issues an erroneous refund, even if the error was made through no fault of the taxpayer.

The unintended consequences of using direct deposit demonstrate the advantage that paper checks may have over electronic methods in certain situations.

B. Recommendations

Treasury and the Service should:

- Review direct deposit tracing procedures so taxpayers experience fewer difficulties in resolving misdirected and stolen refunds.
- Preserve taxpayers' ability to choose how they wish to receive their refunds to allow taxpayers to decide which method is most appropriate for them.

IV. Risks Associated with Prepaid Cards

A. Background

The rising popularity of prepaid cards as an alternative to banking indicates a willingness of recipients and payees to accept them. While that suggests that prepaid cards may be an alternative to paper checks, our recent experience assisting taxpayers who have received prepaid cards for payments made by the Service shows the potential perils of prepaid debit cards, particularly for certain vulnerable groups. In this section, we provide suggestions to improve payments made by prepaid cards.

The COVID-19 Economic Impact Payments (“EIP”) and DirectExpress cards used to make Social Security, veteran's benefits, and other government payments, provide illustrative experiences for government payments made on prepaid cards. One of

³⁷ IRC § 6532(b).

³⁸ See Internal Revenue Manual (“IRM”) 21.4.5.14(3). See also <https://www.irs.gov/taxtopics/tc161>.

the main downsides of the cards is that they are no less susceptible to loss and fraud than paper checks.

Taxpayers faced challenges accessing and directing their EIP transmitted on prepaid cards, including onerous activation fees³⁹ and limitations on transferring EIP prepaid card funds to traditional bank accounts.⁴⁰

DirectExpress prepaid cards, which are used to distribute Social Security, veterans' benefits, and other government payments, also come with certain limitations. For instance, there is only one free cash withdrawal per government deposit onto the prepaid card.⁴¹ There is also an expedited delivery fee for replacement cards.⁴² Additionally, only certain ATMs accept DirectExpress cards without an additional surcharge from the owner, which could be a serious impediment for recipients in certain locations.⁴³

Complaints soared with prepaid cards in 2021, partly due to the EIPs, and customer service mechanisms were inadequate to meet the spike in requests.⁴⁴ There is no indication that the shortcomings in the level of customer service with respect to prepaid cards has improved since 2020, and moving more payments to prepaid cards will only increase the need for customer assistance.⁴⁵ In addition, Form 3911, *Taxpayer Statement Regarding Refund*, only accounts for checks and direct deposit, causing further frustration and confusion for taxpayers.

The Electronic Funds Transfer Act (“EFTA”), a consumer protection law regulating electronic payments, is implemented through Federal Reserve regulations known as Regulation E.⁴⁶ Regulation E provides rules and some protections for some prepaid cards. Among other things, the EFTA imposes error resolution and theft and fraud relief obligations on financial institutions. However, some prepaid cards, like the cards used to transmit EIP, are not covered by the EFTA.⁴⁷ In addition, consumer

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ DirectExpress, FAQ 3.1, available at <https://www.usdirectexpress.com/faq.html> (last viewed Aug. 11, 2025).

⁴² *Id.* Because benefits recipients often rely on the date benefits will be received to pay bills like rent, they may have no choice but to make expedited requests for replacement of lost or stolen cards.

⁴³ *Id.*

⁴⁴ Rowan, L. *Government prepaid card complaints soared in 2020. Here's why*, SFGATE (Apr. 13, 2021), available at <https://www.sfgate.com/news/article/Government-Prepaid-Card-Complaints-Soared-in-16098295.php?utm> (last viewed Aug. 11, 2025).

⁴⁵ Iboshi, Kyle *Oregon veteran discovers fraudsters went on spending spree with his Social Security and disability funds*, KGW8 (Sept. 20, 2023), available at <https://www.kgw.com/article/news/investigations/social-security-disability-funds-stolen-direct-express-card/283-0bdba902-8ae1-4ec6-8d38-d4b5d3aceea1?utm> (last viewed Aug. 11, 2025).

⁴⁶ 15 U.S.C. §§1693 through 1693r; Electronic fund transfers FAQs, Consumer Financial Protection Bureau (Jan. 16, 2025), available at <https://www.consumerfinance.gov/compliance/compliance-resources/deposit-accounts-resources/electronic-fund-transfers/electronic-fund-transfers-faqs/> (last viewed Aug. 11, 2025).

⁴⁷ See 12 C.F.R. Part 1005.

complaints resulting from the spike in theft and fraud involving prepaid cards have overwhelmed government agencies that protect consumers, like the Consumer Financial Protection Bureau and the Federal Trade Commission.⁴⁸

Other downsides of prepaid cards include hidden fees and significant difficulties accessing funds with the cards.⁴⁹ Additionally, some prepaid cards include a binding arbitration clause as a condition of use, limiting the cardholder's ability to litigate issues in connection with these cards.⁵⁰

Two of the most concerning issues with prepaid cards are loss and theft. Prepaid cards come with the same risk of theft through the mail as paper checks. While theoretically it is easier to deactivate and replace funds on prepaid cards, many recipients have experienced difficulties and added costs with this process. When a card is lost or stolen, the taxpayer must call the private issuer to deactivate the card and request a replacement.⁵¹ This requires that the individual have information regarding the card and issuer (not always the case if it is lost or stolen) and that the issuer have sufficient customer service coverage to handle all of the calls, an area that needs improvement. In addition, required time frames for reporting loss may not be adequate in all cases. Also, there could be additional costs to the taxpayer. While the first replacement of a card is free, a fee is incurred for any subsequent replacements.⁵² Unauthorized transactions must be reported in a timely manner, or the individual would be responsible for some of the associated costs.⁵³

If prepaid cards are used to pay tax refunds, the Service could improve customer service by establishing a separate, dedicated unit to address lost, stolen, or misdirected refunds. Currently, the refund unit within account management in the Wage and Investment Operating Division handles all types of refund issues, including refund issues related to internal Service functions and processing and refund tracing in the case of lost, stolen, or misdirected refunds. Though all these activities relate to refunds generally, different and specialized expertise and knowledge is needed to resolve lost, stolen, or

⁴⁸ Rowan, L. (Apr. 13, 2021) *Government prepaid card complaints soared in 2020. here's why*, SFGATE, available at <https://www.sfgate.com/news/article/Government-Prepaid-Card-Complaints-Soared-in-16098295.php?utm> (last viewed Aug. 11, 2025).

⁴⁹ Consumer Financial Protection Bureau FAQs (Jun. 1, 2020), *I would like to pay a bill (such as rent) that doesn't allow payment with debit cards. How can I do this without paying a fee?*, available at <https://www.consumerfinance.gov/about-us/blog/economic-impact-payment-prepaid-card/?utm#balance> (last viewed Aug. 11, 2025).

⁵⁰ David Dayen *Unsanitized: Stimulus debit cards come with a forced arbitration clause*, The American Prospect (Jun. 26, 2020), available at <https://prospect.org/coronavirus/unsanitized-stimulus-debit-cards-forced-arbitration-clause> (last viewed Aug. 11, 2025); Money Network *Economic impact payment card cardholder agreement*, Money Network Economic Impact Payments (2023), available at <https://www.eipcard.com/cardholder-agreement/> (last viewed Aug. 11, 2025).

⁵¹ *Id.*

⁵² *Id.*

⁵³ *How do I get my money back after I discover an unauthorized transaction or money missing from my bank account?* Consumer Financial Protection Bureau (Aug. 28, 2023), available at <https://www.consumerfinance.gov/ask-cfpb/how-do-i-get-my-money-back-after-i-discover-an-unauthorized-transaction-or-money-missing-from-my-bank-account-en-1017/> (last viewed Aug. 11, 2025).

misdirected refund issues. We raise this suggestion as a general matter in light of the changes anticipated by the EO which may increase demands on the Service's customer service functions based on experiences our members have had when trying to replace lost, stolen, or misdirected EIP prepaid cards or tax refunds paid by direct deposit or paper check.

B. The Elderly and the Disabled

Prepaid cards issued to the elderly and disabled are at particular risk for theft and fraud. The elderly and the disabled are disproportionately vulnerable to financial fraud. A 2021 report found that in 2020 alone, financial institutions filed over 62,000 Suspicious Activity Reports involving \$3.4 billion in suspected elder financial exploitation.⁵⁴ Elderly individuals are often cognitively and socially vulnerable, which increases their susceptibility to deception and fraud.⁵⁵ Disabled individuals are often vulnerable due to social isolation and reliance on assistance programs.⁵⁶ Prepaid cards exacerbate these risks for the elderly and the disabled because they are more susceptible to theft and card-skimming⁵⁷ than paper checks, and their protections are weaker.⁵⁸

C. Businesses and Entities

Prepaid cards for tax refunds are also not practical for businesses and other entities. Necessary internal controls that are put in place for checks and cash would need to be updated to account for tax refunds made on prepaid cards. Limiting access to the funds on the prepaid card is not possible and transferring the funds to bank accounts could be as challenging for businesses as it is for individuals.

D. Recommendations

Treasury and the Service should:

- Engage in significant outreach not only about the payment and the amount, but also about the mechanism for transferring the payment to the recipient.

⁵⁴ *Data Spotlight: Suspicious Activity Reports on Elder Financial Exploitation* (Nov. 15, 2021), Consumer Financial Protection Bureau, available at <https://www.consumerfinance.gov/data-research/research-reports/data-spotlight-suspicious-activity-reports-on-elder-financial-exploitation/> (last viewed Aug. 11, 2025).

⁵⁵ Ebner, Natalie C., Pehlivanoglu, Didem, Shoenfelt, Alayna, *Financial Fraud and Deception in Aging*, *Adv Geriatr. Med Res.* 2023 (Nov. 21, 2023), available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC10662792/> (last viewed Aug. 11, 2025).

⁵⁶ Scoggins, Rihonna, *Protecting the Disabled Community from Fraud*, Association of Certified Fraud Examiners (Jul. 2023), available at <https://www.acfe.com/acfe-insights-blog/blog-detail?s=protecting-disabled-community-from-fraud> (last viewed Aug. 11, 2025).

⁵⁷ Butler, Rabiha, *Government benefits fraud continues to increase concern for the most vulnerable*, *Thompson Reuters* (Sept. 19, 2023), available at <https://www.thomsonreuters.com/en-us/posts/government/government-benefits-fraud/> (last viewed Aug. 11, 2025).

⁵⁸ Board of Governors of the Federal Reserve System (Nov. 2, 2018), *Changes in U.S. Payments Fraud from 2012 to 2016*, available at <https://www.federalreserve.gov/publications/2018-payment-systems-fraud.htm?utm> (last viewed Aug 11, 2025).

For instance, taxpayers generally were unaware that they were receiving their EIPs through prepaid cards because Treasury had never issued refunds to them directly in this manner.⁵⁹ Because these cards were not as familiar as previously used government payment methods, such as checks or direct deposit,⁶⁰ many recipients mistook them for scams⁶¹ or unsolicited mail and discarded them.

- Clearly identify the sender as Treasury or the Service. The envelope containing the prepaid EIP card failed to include information indicating that it was from the Service.⁶²
- Ensure the names and addresses are correct. The EIP prepaid card envelopes were sometimes incorrectly addressed.⁶³ This added to the already high risk of the card getting stolen.
- If prepaid cards are used to deliver tax refunds, ensure these transactions are covered by the EFTA.
- Conduct an education campaign to alert taxpayers as to the different ways tax refunds may be delivered and the corresponding fees, error resolution mechanisms, and relief from loss or theft provisions that might apply to each.
- Update Form 3911 to include relevant questions regarding the type of tax refund disbursement mechanism (paper check, prepaid card, direct deposit).
- Establish a dedicated customer service unit at the Service for lost, stolen, or misdirected refunds apart from the existing refund unit and ensure it has sufficient staff.

⁵⁹ AG Healey consumer alert: *Prepaid visa debit cards with stimulus funds are real* Mass.gov (Jun. 5, 2020), available at <https://www.mass.gov/news/ag-healey-consumer-alert-prepaid-visa-debit-cards-with-stimulus-funds-are-real> (last viewed Aug. 11, 2025).

⁶⁰ IR-2021-06, Jan. 7, 2021 updated Jan. 8, 2021. See also Richard Rubin, *Trump's Name Will Appear on Stimulus Paper Checks*, Wall Street Journal (Apr. 15, 2020), available at https://www.wsj.com/articles/trumps-name-will-appear-on-stimulus-paper-checks-11586959563?gaa_at=eafs&gaa_n=ASWzDAiO2_7IncE0eXvS-htEjFgQPmPjI9irBzSSru8zDZC9E-mFv0T0K_T&gaa_ts=6875505d&gaa_sig=sop8scOEdNsnfCyBadh-he3PSX-x9UGpnwirRTIaPCvJHd-4yqEei88CZIO3QCp078hmQSywVVVoJ8iQbuzCD4Q%3D%3D (last viewed Aug. 11, 2025).

⁶¹ Rebecca Heilweil, *Why millions of Americans are getting coronavirus stimulus payments on scammy-looking debit cards*, Vox (May 29, 2020), available at <https://www.vox.com/recode/2020/5/29/21274397/coronavirus-stimulus-payments-debit-cards-checks-visa?utm> (last viewed Aug. 11, 2025).

⁶² Susan Tompor, *What should you do if you lost or threw away your stimulus?* (Jun. 11, 2020), available at <https://www.freep.com/story/money/2020/06/11/how-track-lost-thrown-away-stimulus-money/5327181002/> (last viewed Aug. 11, 2025).

⁶³ AG Healey, *supra* note 72.

V. Treasury Should Publish Regulations for Electronic Payment Options for Tax Refunds under APA Procedures

A. Background

While Treasury has authority to prescribe the manner in which it makes payments and to grant waivers under 31 U.S.C. § 3332, any substantive changes to the existing tax refund disbursement process should be made in compliance with the rulemaking requirements of the APA. Treasury has historically adhered to these requirements with respect to the EFT payment system. Treasury issued interim, proposed and final rules regarding Service implementation of 31 U.S.C. § 3332.⁶⁴ The final EFT rules incorporated public comments, which helped to smooth the transition to the EFT payment system.

Currently, there are no regulations under the Code addressing direct deposit or other electronic means for receiving tax refunds, other than rules relating to misdirected refunds.⁶⁵ Service guidance on electronic payment of tax refunds is found in forms and publications and on the Service's website.⁶⁶ Information regarding direct deposit of tax refunds can also be found on the BFS's website.⁶⁷ The EO provides an opportunity for the Service to issue regulations that provide specific guidance for taxpayers about how to choose an electronic means of receiving their tax refund and how electronic payment methods will operate.

Promulgating rules for electronic payment of tax refunds under APA rulemaking procedures would facilitate taxpayer transition to electronic payment and away from paper checks and mitigate legal risk associated with implementing the EO. As with the Service's implementation of the EFT payment requirements, using notice and comment procedures to issue regulations for electronic payment of tax refunds would provide Treasury with valuable feedback, which would help refine the rules, make them more attractive to more taxpayers, and more administrable by taxpayers and the government alike. Notice and comment rulemaking would also help inform Treasury about other developments that could impact its decision making.⁶⁸

⁶⁴ Treasury issued an interim rule in 1996, a notice of proposed rulemaking in 1997, and final regulations in 1998. *See* 61 Fed. Reg. 39254 (July 26, 1996); 62 Fed. Reg. 48714 (Sept. 16, 1997); 63 Fed. Reg. 51490 (Sept. 25, 1998). Additional rulemaking followed updates to the EFT requirements. *See* 75 Fed. Reg. 80315, 80334 (Dec. 22, 2010); 85 Fed. Reg. 25287, 25291 (May 1, 2020); 89 Fed. Reg. 12955, 12960 (Feb. 21, 2024), *as corrected at* 89 Fed. Reg. 18543 (Mar. 14, 2024).

⁶⁵ *See* Treas. Reg. § 301.6402-2(g).

⁶⁶ *See e.g.*, Publication 17, Your Federal Income Tax For Individuals, Tax Guide 2024, p. 15; <https://www.irs.gov/refunds/get-your-refund-faster-tell-irs-to-direct-deposit-your-refund-to-one-two-or-three-accounts>.

⁶⁷ <https://www.fiscal.treasury.gov/eft/faq-tax-refund.html>.

⁶⁸ For instance, two bills passed by the House of Representatives in the current Congress may impact the implementation of the EO and should be taken into account by Treasury in implementing an electronic payment mandate. H.R. 1155, *Recovery of Stolen Checks Act*, would allow taxpayers to change the method by which they receive their tax refund to an EFT if it is determined that the original check was

B. Recommendation

Treasury and the Service should publish regulations in accordance with APA notice and comment procedures providing options for electronic payment of tax refunds and instructions for how taxpayers may select these options.

VI. Treasury Should Exercise Discretion Under the EO to Delay the September 30, 2025 Transition Date

If Treasury goes forward with the elimination of paper checks for tax refunds, at a minimum, we recommend delaying implementation of the effective date to better align with the federal tax cycle and allow adequate time for taxpayer education and outreach, as follows:

- The effective date for implementation of the EO should be aligned to tax refunds requested after a particular date, rather than tax refund payments made by Treasury after a particular date. The current EO states that elimination of paper checks will occur for all payments made after September 30, 2025. However, there may be refund requests in process as of that date. In these cases, taxpayers expect the Service to send refunds by the means anticipated when they submitted the refund claim. Currently, there is no mechanism for taxpayers to provide the additional information needed for a payment by direct deposit, such as bank account and routing information, and as discussed above, prepaid cards are not practical for businesses and entities.
- Treasury should modify the effective date for implementation of the EO to avoid adding new procedures during the ongoing filing season. Calendar year individual filers, C corporations, and tax-exempt organizations that file on extension will be filing their returns on October 15 or November 15. While the peak “filing season” ends on April 15, the period for filing returns on extension is extremely busy and new procedures for refunds that begin after September 30 will be disruptive for both taxpayers and the Service.
- The effective date of implementation of the EO should be delayed to avoid adding additional complexity to what could be a challenging filing season considering the 2025 effective dates under the OBBBA. The OBBBA makes significant tax changes, including many that are effective during 2025 and beginning in 2026. For instance, the deduction for certain tips and overtime pay is effective for 2025. Individuals and employers are awaiting guidance, including the list of eligible tip occupations, and new withholding instructions to implement these rules. Employers will be required to alter procedures and reporting to implement these rules. Mandating new rules for payment of refunds during this period of

lost or stolen and H.R. 1152, *Electronic Filing and Payment Fairness Act*, proposes to align the rules governing timeliness of electronic and paper filings, potentially affecting processing standards for paper refund claims.

uncertainty and change will only add to the burden and confusion around the tax system, which is detrimental for all taxpayers and could potentially add to an already stressful filing season.

- Elimination of paper checks for tax refunds for the unbanked and underbanked, employed minors, and the elderly, disabled, and other vulnerable populations should be delayed until after initial rollout of the changes under the EO to have the benefit of lessons learned and time to implement the recommendations in this letter. Treasury should consider the lessons learned from the EIP and DirectExpress prepaid cards when creating procedures to eliminate paper checks. Rollout of this new EO initiative with more sophisticated taxpayers will also increase the government's experience. Delaying elimination of paper checks for tax refunds for the unbanked and underbanked, employed minors, and the elderly, the disabled and other vulnerable populations will allow refinement of the program to improve processes and address shortcomings before applying the rules to less sophisticated taxpayers.
- Consideration should be given to a pilot program for tax refunds using prepaid cards, provided such cards are covered by EFTA, before issuing them. If prepaid cards are used for tax refunds, we recommend issuing the cards under a pilot program to establish benchmarks, identify and resolve issues, and educate the public about the cards. Unlike the EIP, there is no specific threat or emergency driving the date for elimination of paper checks. This provides an opportunity to provide a more thoughtful and deliberate approach to implementation.

VII. Conclusion

In closing, the Section appreciates the opportunity to comment on Treasury's implementation of EO 14247. We applaud the commitment to reducing fraud, improving efficiency, and encouraging financial inclusion. Our comments highlight the statutory framework regarding electronic payments that is unique to the Code and focus on areas where careful attention is needed to avoid burdening taxpayers or other stakeholders when implementing the EO. The Section is available to discuss these comments or provide further input. We are committed to collaborating with the government to modernize tax administration in a way that benefits both the government and taxpayers. Thank you for considering our views on this important topic.