

the collection of the tax may be begun without assessment, at any time within 6 years after the return was filed. If a real estate investment trust discloses in its return (or in a schedule or statement attached thereto) the nature, source, and amount of any income giving rise to any omitted tax, the tax arising from the income shall be counted as reported on the return in computing whether the trust has omitted more than 25 percent of the tax reported on its return.

(d) *Exception.* The provisions of this section do not limit the application of section 6501(c).

(e) *Effective/applicability date*—(1) *Income taxes.* Paragraph (a) of this section applies to taxable years with respect to which the period for assessing tax was open on or after September 24, 2009.

(2) *Estate, gift and excise taxes.* Paragraphs (b) through (d) of this section continue to apply as they did prior to being removed inadvertently on September 28, 2009. Specifically, paragraph (b) of this section applies to returns filed on or after May 2, 1956, except for the amendment to paragraph (b)(1) of this section that applies to returns filed on or after December 29, 1972. Paragraph (c) of this section applies to returns filed on or after October 7, 1982, except for the amendment to paragraph (c)(3)(ii) of this section that applies to returns filed on or after January 10, 2001. Paragraph (d) of this section applies to returns filed on or after May 2, 1956.

#### § 301.6501(e)-1T [Removed]

■ **Par. 5.** Section 301.6501(e)-1T is removed.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

Approved: December 13, 2010.

**Michael Mundaca,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2010-31747 Filed 12-14-10; 4:15 pm]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Fiscal Service

#### 31 CFR Parts 357 and 363

#### Regulations Governing Book-Entry Treasury Bonds, Notes and Bills Held in Legacy Treasury Direct; Regulations Governing Securities Held in Treasury Direct

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

**ACTION:** Final rule.

**SUMMARY:** Treasury's retail electronic systems for holding Treasury marketable securities began with the goal of permitting investors to buy and hold marketable Treasury securities until maturity. As a cost-saving measure, Treasury is returning the Legacy Treasury Direct and TreasuryDirect systems to this initial vision by eliminating the SellDirect program that permits investors to sell their marketable securities on the open market through a Federal Reserve Bank. Investors will now need to transfer a marketable security to a broker or financial institution in order to effect a sale of the security prior to maturity.

**DATES:** *Effective Date:* December 17, 2010.

**ADDRESSES:** You can download this Final Rule at the following Internet addresses: <http://www.publicdebt.treas.gov>, <http://www.gpo.gov>, or <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Elisha Whipkey, Director, Division of Program Administration, Office of Retail Securities, Bureau of the Public Debt, at (304) 480-6319 or [elisha.whipkey@bpd.treas.gov](mailto:elisha.whipkey@bpd.treas.gov).

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**SUPPLEMENTARY INFORMATION:** Treasury's retail electronic systems for holding Treasury marketable securities began with the goal of permitting investors to buy and hold marketable Treasury securities until maturity. In 1997 Treasury offered Legacy Treasury Direct investors the ability, for a fee, to sell their marketable securities on the secondary market, thus bypassing the need to transfer their securities to a broker or financial institution for sale. When Treasury began offering marketable securities in TreasuryDirect, its electronic, online system, the SellDirect service was offered to investors in that system as well. Because SellDirect was inconsistent with the initial vision of the marketable retail program, Treasury specifically reserved the right to end the program at any time. SellDirect volumes are low because most investors using the Legacy Treasury Direct and TreasuryDirect systems hold their securities to maturity. From Fiscal Year 2005 to Fiscal Year 2009, an annual average of 13,000 securities worth approximately

\$800 million were sold through SellDirect, less than 1.5 percent of holdings. Alternative services by brokers or financial institutions are available to conduct sales. As a cost-saving measure, Treasury is returning the Legacy Treasury Direct and TreasuryDirect systems to their initial vision of buy and hold to maturity by eliminating SellDirect. Investors will now need to transfer a marketable security to a broker or financial institution in order to effect a sale of the security before maturity.

#### Procedural Requirements

*Executive Order 12866.* This rule is not a significant regulatory action pursuant to Executive Order 12866.

*Administrative Procedure Act (APA).* Because this rule relates to United States securities, which are contracts between Treasury and the owner of the security, this rule falls within the contract exception to the APA, 5 U.S.C. 553(a)(2). As a result, the notice, public comment, and delayed effective date provisions of the APA are inapplicable to this rule.

*Regulatory Flexibility Act.* The provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply to this rule because, pursuant to 5 U.S.C. 553(a)(2), it is not required to be issued with notice and opportunity for public comment.

*Paperwork Reduction Act (PRA).* There is no new collection of information contained in this final rule that would be subject to the PRA, 44 U.S.C. 3501 *et seq.* Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The Office of Management and Budget already has approved all collections of information in 31 CFR Part 357 (OMB No. 1535-0068) and Part 363 (OMB No. 1535-0138).

*Congressional Review Act (CRA).* This rule is not a major rule pursuant to the CRA, 5 U.S.C. 801 *et seq.*, because it is a minor amendment that is expected to decrease costs for taxpayers; therefore, this rule is not expected to lead to any of the results listed in 5 U.S.C. 804(2). This rule may take immediate effect after we submit a copy of it to Congress and the Comptroller General.

#### List of Subjects

##### 31 CFR Part 357

Banks, Banking, Bonds, Electronic funds transfers, Government securities, Reporting and recordkeeping requirements.

## 31 CFR Part 363

Bonds, Electronic funds transfer, Federal Reserve System, Government securities, Securities.

■ Accordingly, for the reasons set out in the preamble, 31 CFR Chapter II, Subchapter B, is amended as follows:

**PART 357—REGULATIONS GOVERNING BOOK-ENTRY TREASURY BONDS, NOTES AND BILLS HELD IN TREASURY/RESERVE AUTOMATED DEBT ENTRY SYSTEM (TRADES) AND LEGACY TREASURY DIRECT**

■ 1. The authority citation for part 357 continues to read as follows:

**Authority:** 31 U.S.C. chapter 31; 5 U.S.C. 301; 12 U.S.C. 391.

■ 2. Revise the heading for Part 357 to read as set forth above.

■ 3. Amend § 357.22 by removing paragraph (b) and redesignating paragraphs (c), (d), (e), and (f) as paragraphs (b), (c), (d), and (e).

**PART 363—REGULATIONS GOVERNING SECURITIES HELD IN TREASURYDIRECT**

■ 4. The authority citation for part 363 continues to read as follows:

**Authority:** 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3102, *et seq.*; 31 U.S.C. 3121, *et seq.*

**§ 363.6 [Amended]**

■ 5. Remove the definition of “Sell Direct” from § 363.6.

■ 6. Amend § 363.10 by adding paragraph (c) to read as follows:

**§ 363.10 What is a TreasuryDirect account?**

\* \* \* \* \*

(c) *Closing an account.* If a TreasuryDirect primary account and all associated linked accounts have had no holdings and no activity for a period of two years, we reserve the right to close the account, along with all linked accounts.

**§ 362 [Amended]**

■ 7. Amend § 363.22 by removing the phrase “including a transfer for a Sell Direct transaction,” from the second sentence in paragraph (a)(3)(ii).

**§ 363.27 [Amended]**

■ 8. Amend § 363.27 by removing the phrase “, and may request a Sell Direct transaction” from the second sentence in paragraph (e)(4).

**§ 363.209 [Removed and reserved]**

■ 9. Remove and reserve § 363.209.

**§ 363.210 [Amended]**

■ 10. Amend § 363.210 by removing the phrase “initiate a SellDirect transaction,” from the second sentence and removing the fourth and fifth sentences.

**Richard L. Gregg,**

*Fiscal Assistant Secretary.*

[FR Doc. 2010-31489 Filed 12-16-10; 8:45 am]

BILLING CODE 4810-39-P

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 17**

**RIN 2900-AN37**

**Payment for Inpatient and Outpatient Health Care Professional Services at Non-Departmental Facilities and Other Medical Charges Associated With Non-VA Outpatient Care**

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Final rule.

**SUMMARY:** This document affirms as final, with changes, a proposed rule that updates the Department of Veterans Affairs (VA) medical regulations concerning the payment methodology used to calculate VA payments for inpatient and outpatient health care professional services and other medical services associated with non-VA outpatient care. The rule has been designed to ensure that it will not have adverse effects on access to care.

**DATES:** This final rule is effective February 15, 2011.

**FOR FURTHER INFORMATION CONTACT:**

Holley Niethammer, Supervisory Policy Specialist, National Fee Program Office, Department of Veterans Affairs, 3773 Cherry Creek North Dr., Suite 450, Denver, CO 80209, telephone (303) 370-5062. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Under 38 U.S.C. 1703(a), “[w]hen [VA] facilities are not capable of furnishing economical hospital care or medical services because of geographical inaccessibility or are not capable of furnishing the care or services required, the Secretary, as authorized in [38 U.S.C. 1710], may contract with non-[VA] facilities in order to furnish” certain hospital care and medical services to veterans who qualify under 38 U.S.C. 1703. VA implemented this authority in 38 CFR 17.52. Also, under 38 U.S.C. 1728, VA may authorize payment for emergency care in a non-VA facility in limited situations, primarily where the care is needed for the treatment of a service-connected

disability or related condition. Under that authority, as implemented in 38 CFR 17.120, VA reimburses either the veteran who made payments for hospital care or medical services, the person or organization making such expenditure on behalf of such veteran, or the hospital or other health facility furnishing the care or services if such care or services were provided in a medical emergency and VA or other Federal facilities were not feasibly available, and an attempt to use them beforehand would not have been reasonable.

Payment methodology for health care professional services associated with outpatient and inpatient care that are payable under either 38 U.S.C. 1703 or 1728 is currently set forth in 38 CFR 17.56.

Current § 17.56(a) adopted the Medicare Participating Physician Fee Schedule for the payment of professional services. For services not covered by the Medicare Participating Physician Fee Schedule, VA pays the lesser of the actual amount billed or the amount calculated using the 75th percentile methodology set forth in current § 17.56(c) (or the usual and customary rate if there are fewer than 8 treatment occurrences for a procedure during the previous fiscal year). We cannot predict whether there will be 8 treatment occurrences during an upcoming fiscal year, or the precise charges of such treatment occurrences, because these depend upon the billing practices of the non-VA facilities involved. In the majority of these cases, the non-VA facilities’ charges are far greater than the allowable Medicare charges for the same treatment. As a result, VA’s expenditures can be unpredictable and, in some cases, can greatly exceed the costs VA would incur using the Medicare payment systems or fee schedules.

In a proposed rule published on February 18, 2010 (75 FR 7218), we proposed to amend § 17.56 to apply Medicare payment methodologies to all non-VA inpatient and outpatient health care professional services and other medical charges associated with non-VA outpatient care. We explained that such charges would include ancillary and facility costs such as those that are reimbursed using the following Medicare payment systems or fee schedules: Ambulatory Surgical Center Payment, Clinical Laboratory Fee Schedule, Home Health Prospective Payment System (PPS), Hospice, Hospital Outpatient PPS, and End Stage Renal Disease (ESRD) composite rate payment method (NOTE: Beginning January 1, 2011, Medicare will pay for