

### § 313.122

(b) *Debtor* means a person who owes a debt or a claim. The term “person” includes any individual, organization or entity, except another federal agency.

(c) *Tax refund offset* means withholding or reducing a tax refund payment by an amount necessary to satisfy a debt owed by the payee(s) of a tax refund payment.

(d) *Tax refund payment* means any overpayment of federal taxes to be refunded to the person making the overpayment after the Internal Revenue Service (IRS) makes the appropriate credits.

#### § 313.122 Notification of debt to FMS.

The FDIC shall notify FMS of the amount of any past due, legally enforceable non-tax debt owed to it by a person, for the purpose of collecting such debt by tax refund offset. Notification and referral to FMS of such debts does not preclude FDIC’s use of any other debt collection procedures, such as wage garnishment, either separately or in conjunction with tax refund offset.

#### § 313.123 Certification and referral of debt.

When the FDIC refers a past-due, legally enforceable debt to FMS for tax refund offset, it will certify to FMS that:

(a) The debt is past due and legally enforceable in the amount submitted to FMS and that the FDIC will ensure that collections are properly credited to the debt;

(b) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred for offset within ten years after the FDIC’s right of action accrues;

(c) The FDIC has made reasonable efforts to obtain payment of the debt, in that it has:

(1) Submitted the debt to FMS for collection by administrative offset and complied with the provisions of 31 U.S.C. 3716(a) and related regulations;

(2) Notified, or has made a reasonable attempt to notify, the debtor that the debt is past-due, and unless repaid within 60 days after the date of the notice, will be referred to FMS for tax refund offset;

### 12 CFR Ch. III (1–1–05 Edition)

(3) Given the debtor at least 60 days to present evidence that all or part of the debt is not past-due or legally enforceable, considered any evidence presented by the debtor, and determined that the debt is past-due and legally enforceable; and

(4) Provided the debtor with an opportunity to make a written agreement to repay the debt; and

(d) The debt is at least \$25.

#### § 313.124 Pre-offset notice and consideration of evidence.

(a) For purposes of § 313.123(c)(2), the FDIC has made a reasonable effort to notify the debtor if it uses the current address information contained in its records related to the debt. The FDIC may, but is not required to, obtain address information from the IRS pursuant to 26 U.S.C. 6103(m)(2), (4), (5).

(b) For purposes of § 313.123(c)(3), if evidence presented by a debtor is considered by an agent of the FDIC, or other entities or persons acting on behalf of the FDIC, the debtor must be accorded at least 30 days from the date the agent or other entity or person determines that all or part of the debt is past-due and legally enforceable to request review by an officer or employee of the FDIC of any unresolved dispute. The FDIC must then notify the debtor of its decision.

#### § 313.125 Referral of past-due, legally enforceable debt.

The FDIC shall submit past-due, legally enforceable debt information for tax refund offset to FMS, as prescribed by FMS. For each debt, the FDIC will include the following information:

(a) The name and taxpayer identification number (as defined in 26 U.S.C. 6109) of the debtor;

(b) The amount of the past-due and legally enforceable debt;

(c) The date on which the debt became past-due; and

(d) The designation of FDIC as the agency referring the debt.

#### § 313.126 Correcting and updating referral.

If, after referring a past-due legally enforceable debt to FMS as provided in § 313.125, the FDIC determines that an error has been made with respect to