

### § 313.94

debtor's name, address, and social security number, as well as instructions for withholding and information as to where payments should be sent.

(c) The FDIC will keep a stamped copy of the order indicating the date it was mailed.

#### § 313.94 Certification by employer.

Along with the withholding order, the FDIC will send to the employer a certification in a form prescribed by the Secretary of the Treasury. The employer shall complete and return the certification to the FDIC within the time frame prescribed in the instructions to the form. The certification will address matters such as information about the debtor's employment status and disposable pay available for withholding.

#### § 313.95 Amounts withheld.

(a) Upon receipt of the garnishment order issued under this section, the employer shall deduct from all disposable pay paid to the debtor during each pay period the amount of garnishment described in paragraphs (b) through (d) of this section.

(b) Subject to the provisions of paragraphs (c) and (d) of this section, the amount of garnishment shall be the lesser of:

(1) The amount indicated on the garnishment order up to 15% of the debtor's disposable pay; or

(2) The amount set forth in 15 U.S.C. 1673(a)(2). The amount set forth at 15 U.S.C. 1673(a)(2) is the amount by which the debtor's disposable pay exceeds an amount equivalent to thirty times the minimum wage. See 29 CFR 870.10.

(c) When a debtor's pay is subject to withholding orders with priority, the following shall apply:

(1) Unless otherwise provided by federal law, withholding orders issued under this section shall be paid in the amounts set forth under paragraph (b) of this section and shall have priority over other withholding orders which are served later in time. However, withholding orders for family support shall have priority over withholding orders issued under this section.

(2) If amounts are being withheld from a debtor's pay pursuant to a with-

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holding order served on an employer before a withholding order issued pursuant to this section, or if a withholding order for family support is served on an employer at any time, the amounts withheld pursuant to the withholding order issued under this section shall be the lesser of:

(i) The amount calculated under paragraph (b) of this section; or

(ii) An amount equal to 25% of the debtor's disposable pay less the amount(s) withheld under the withholding order(s) with priority.

(3) If a debtor owes more than one debt to the FDIC, the FDIC may issue multiple withholding orders. The total amount garnished from the debtor's pay for such orders will not exceed the amount set forth in paragraph (b) of this section.

(d) An amount greater than that set forth in paragraphs (b) and (c) of this section may be withheld upon the written consent of the debtor.

(e) The employer shall promptly pay to the FDIC all amounts withheld in accordance with the withholding order issued pursuant to this section.

(f) An employer shall not be required to vary its normal pay and disbursement cycles in order to comply with the withholding order.

(g) Any assignment or allotment by the employee of the employee's earnings shall be void to the extent it interferes with or prohibits execution of the withholding order under this section, except for any assignment or allotment made pursuant to a family support judgment or order.

(h) The employer shall withhold the appropriate amount from the debtor's wages for each pay period until the employer receives notification from the FDIC to discontinue wage withholding. The garnishment order shall indicate a reasonable period of time within which the employer is required to commence wage withholding.

#### § 313.96 Exclusions from garnishment.

The FDIC will not garnish the wages of a debtor it knows has been involuntarily separated from employment until the debtor has been re-employed continuously for at least 12 months. The debtor has the burden of informing

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the FDIC of the circumstances surrounding an involuntary separation from employment.

### § 313.97 Financial hardship.

(a) A debtor whose wages are subject to a wage withholding order under this section, may, at any time, request a review by the FDIC of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.

(b) A debtor requesting a review under this section shall submit the basis for claiming that the current amount of garnishment results in a financial hardship to the debtor, along with supporting documentation.

(c) If a financial hardship is found, the FDIC will downwardly adjust, by an amount and for a period of time agreeable to the FDIC, the amount garnished to reflect the debtor's financial condition. The FDIC will notify the employer of any adjustments to the amounts to be withheld.

### § 313.98 Ending garnishment.

(a) Once the FDIC has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs consistent with the FCCS, the FDIC will send the debtor's employer notification to discontinue wage withholding.

(b) At least annually, the FDIC will review its debtors' accounts to ensure that garnishment has been terminated for accounts that have been paid in full.

### § 313.99 Prohibited actions by employer.

The DCIA prohibits an employer from discharging, refusing to employ, or taking disciplinary action against the debtor due to the issuance of a withholding order under this subpart.

### § 313.100 Refunds.

(a) If a hearing official determines that a debt is not legally due and owing to the United States, the FDIC shall promptly refund any amount collected by means of administrative wage garnishment.

(b) Unless required by federal law or contract, refunds under this section shall not bear interest.

### § 313.101 Right of action.

The FDIC may sue any employer for any amount that the employer fails to withhold from wages owed and payable to its employee in accordance with this subpart. However, a suit will not be filed before the termination of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations. For purposes of this subpart, "termination of the collection action" occurs when the agency has terminated collection action in accordance with the FCCS (31 CFR 903.1 through 903.5) or other applicable standards. In any event, termination of the collection action will have been deemed to occur if the FDIC has not received any payments to satisfy the debt from the particular debtor whose wages were subject to garnishment, in whole or in part, for a period of one (1) year.

### §§ 313.102–313.119 [Reserved]

## Subpart E—Tax Refund Offset

### § 313.120 Scope.

The provisions of 26 U.S.C. 6402(d) and 31 U.S.C. 3720A authorize the Secretary of the Treasury to offset a delinquent debt owed to the United States Government from the tax refund due a taxpayer when other collection efforts have failed to recover the amount due. In addition, the FDIC is authorized to collect debts by means of administrative offset under 31 U.S.C. 3716 and, as part of the debt collection process, to notify the Financial Management Service (FMS), a bureau of the Department of the Treasury, of the amount of such debt for collection by tax refund offset.

### § 313.121 Definitions.

For purposes of this subpart E:

(a) *Debt* or *claim* means an amount of money, funds or property which has been determined by the FDIC to be due to the United States from any person, organization, or entity, except another federal agency.