

the final determination may not be delegated to another agency.

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## PART 140—DEBT COLLECTION

Sec.

### Subpart A—Overview

140.1 What does this part cover?

### Subpart B—Offset

140.2 What is a debt and how can the SBA collect it through offset?

140.3 What rights do you have when SBA tries to collect a debt from you through offset?

### Subpart C—Administrative Wage Garnishment

140.11 What type of debt is subject to administrative wage garnishment, and how can SBA administratively garnish your pay?

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### Subpart A—Overview

#### § 140.1 What does this part cover?

This part establishes procedures which SBA may use in the collection, through offset or administrative wage garnishment, of delinquent debts owed to the United States. SBA's failure to comply with any provision of the regulations in this part is not available to any debtor as a defense against collection of the debt through judicial process or otherwise.

[70 FR 17587, Apr. 7, 2005]

### Subpart B—Offset

#### § 140.2 What is a debt and how can the SBA collect it through offset?

(a) A debt means an amount owed to the United States from loans made or guaranteed by the United States, and from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest, forfeitures, or any other source. You are a debtor if you owe an

amount to the United States from any of these sources.

(b) SBA may collect past-due debts through offset by using any of three procedures: administrative offset, salary offset, or IRS tax refund offset. A past-due debt is one which has been reduced to judgment, has been accelerated, or has been due for at least 90 days.

(1) *Administrative offset.* SBA may withhold money it owes to the debtor in order to satisfy the debt. This procedure is an "administrative offset" and is authorized by 31 U.S.C. 3716.

(2) *Salary offset.* If the debtor is a federal employee (a civilian employee as defined by 5 U.S.C. 2105, an employee of the U.S. Postal Service or Postal Rate Commission, or a member of the Uniformed Services or Reserve of the Uniformed Services), SBA may deduct payments owed to SBA or another federal agency from the debtor's paycheck. This procedure is a "salary offset" and is authorized by 5 U.S.C. 5514.

(i) Any amount deducted from salary in any one pay period will not exceed 15 percent of a debtor's disposable pay, unless the debtor agrees in writing to a greater percentage.

(ii) SBA also may collect against travel advances, training expenses, disallowed payments, retirement benefits, or any other amount due the employee, including lump-sum payments.

(iii) If an employee has terminated employment after salary offset has been initiated, there are no limitations on the amount that can be withheld or offset.

(3) *IRS tax refund offset.* SBA may request that IRS reduce a debtor's tax refund by the amount of the debt, as authorized by 31 U.S.C. 3720A. Where available, administrative and salary offsets must be used before collection is attempted through income tax offset. SBA may refer a debt to the IRS for a tax refund offset and take additional action against the debtor to collect the debt at the same time or in sequence. When SBA makes simultaneous or sequential referrals (within six months of the initial notice), only one review pursuant to the rules in this part and the statutes authorizing them is required.

**§ 140.3 What rights do you have when SBA tries to collect a debt from you through offset?**

(a) SBA must write to you and tell you that it proposes to collect the debt by reducing your federal paycheck, withholding money the Government owes you, and/or reducing your tax refund.

(b) In its written notice to you, SBA must tell you the nature and amount of the debt; that SBA will begin procedures to collect the debt through reduction of your federal paycheck, administrative offset, or reduction of your tax refund; that you have an opportunity to inspect and copy Government records relating to the debt at your expense; and that, before collection begins, you have an opportunity to agree with SBA on a schedule for repayment of your debt.

(c) SBA also must tell you that unless you respond within 60 days from the date of the notice, it will disclose to consumer reporting agencies (also known as credit bureaus or credit agencies) that you are responsible for the debt and the specific information it intends to disclose in order to establish your identity. The amount, status, history of the debt, and agency program under which it arose also will be disclosed.

(d) If you respond to SBA within 60 days from the date of the notice, SBA will not disclose the information to consumer reporting agencies until it considers your response and determines that you owe a past-due, legally enforceable debt.

(e) Within 60 days of the notice you may present evidence that all or part of the debt is not past due or not legally enforceable.

(1) Where a salary offset or administrative offset is proposed, you will have the opportunity to present your evidence to SBA's Office of Hearings and Appeals ("OHA"). The rules in part 134 of this title govern the procedural rights to which you are entitled. In order to have a hearing before OHA, you must request a hearing within 15 days of receipt of the written notice described in this section. An OHA judge will issue a decision within 60 days of the date you filed your petition/request for a review or hearing with OHA, un-

less you were granted additional time within which to file your request for review.

(2) Where an income tax refund offset is proposed, you will have the opportunity to request a review and present your evidence to the appropriate SBA Commercial Loan Servicing Center at the address provided in the notice.

(f) SBA must consider any evidence you present and must first decide that a debt is past due and legally enforceable. A debt is legally enforceable if there is any forum, including a State or Federal Court or administrative agency, in which SBA's claim would not be barred on the date of offset. Non-judgment debts are enforceable for ten years; judgment debts are enforceable beyond ten years. You will be notified of SBA's decision at least 30 days before any offset deduction is made. You also will be notified of the amount, frequency, proposed beginning date, and duration of the deductions, as well as any obligation to pay interest, penalties, and administrative costs.

(g) If there is any substantial change in the status or amount of your debt, SBA will promptly report that change to each consumer reporting agency it originally contacted.

(h) SBA will obtain satisfactory assurances from each consumer reporting agency that the consumer reporting agency has complied with all federal laws relating to provision of consumer credit information.

(i) If your debt is being repaid by reduction of your income tax refund and you make any additional payments to SBA, SBA will notify the IRS of these payments and your new balance within 10 business days of receiving your payment.

(j) When the debt of a federal employee is reduced to court judgment, the employee is not entitled to further review by SBA, but is only entitled to notice of a proposed salary offset resulting from the judgment. The amount deducted may not exceed 15% of disposable pay, except when the deduction of a greater amount is necessary to completely collect the debt within the employee's remaining period of employment.

(k) When another federal agency asks SBA to offset a debt for it, SBA will

not initiate the requested offset until it has received from the creditor agency a written certification that the debtor owes a debt, its amount, and that the provisions of all applicable statutes and regulations have been complied with fully.

(l) SBA may make an offset prior to completion of the procedures described in this part, if:

(1) Failure to make an offset would substantially prejudice the government's ability to collect the debt; and

(2) The time before the payment would otherwise be made to you does not reasonably permit the completion of the procedures.

(3) Such prior offset then must be followed by the completion of the procedures described in this part.

(m) Where an IRS tax refund offset is sought, SBA must follow the Department of the Treasury's regulations governing offset of a past-due, legally enforceable debt against tax overpayment.

### Subpart C—Administrative Wage Garnishment

#### § 140.11 What type of debt is subject to administrative wage garnishment, and how can SBA administratively garnish your pay?

(a) *General.* SBA may order your employer to pay SBA a portion of your disposable pay to satisfy delinquent non-tax debt you owe to the United States. This process is called "administrative wage garnishment" and is authorized by 31 U.S.C. 3720D.

(b) *Scope.* (1) This section provides procedures for SBA to collect delinquent non-tax debts through administrative wage garnishment.

(2) This section applies despite any State law.

(3) Nothing in this section prevents SBA from settling for less than the full amount of a debt. See, for example, the Federal Claims Collection Standards (FCCS), 31 CFR parts 900-904.

(4) SBA's receipt of payments under this section does not prevent SBA from pursuing other debt collection remedies. SBA may pursue debt collection remedies separately or together with administrative wage garnishment.

(5) This section does not apply to the collection of delinquent non-tax debt owed to the United States from the wages of Federal employees. Federal pay is subject to the Federal salary offset procedures set forth in 5 U.S.C. 5514 and other laws, including subpart B of this part.

(6) Nothing in this section requires SBA to duplicate notices or administrative proceedings required by contract, other laws, or regulations.

(c) *Definitions.* In this section the following definitions apply:

*Agency* means the SBA.

*Business day* means Monday through Friday excluding Federal legal holidays.

*Day* means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, a Sunday, or a Federal legal holiday.

*Debt* or *claim* means any amount of money, funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by an individual, including debt administered by a third party as an agent for the Federal Government. Debt also includes accrued interest, administrative costs incurred in collection efforts by SBA or a lender participating in an SBA loan program, and penalties imposed pursuant to law or contract.

*Debtor* or *you* means an individual who owes a delinquent non-tax debt to the United States.

*Delinquent non-tax debt* means any debt not related to an obligation under the Internal Revenue Code of 1986, as amended, that has not been paid by the date specified in SBA's initial written demand for payment, or applicable agreement, unless other satisfactory payment arrangements have been made. For purposes of this section, the terms "debt" and "claim" are synonymous and refer to delinquent non-tax debt.

*Disposable pay* means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld. For purposes of this section,

“amounts required by law to be withheld” include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order.

*Employer* means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local Governments, but does not include an agency of the Federal Government.

*Evidence of service* means information retained by the SBA indicating the nature of the document to which it pertains, the date of mailing of the document, and to whom the document is being sent. Evidence of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

*Garnishment* means the process of withholding amounts from an employee’s disposable pay and the paying of those amounts to a creditor in satisfaction of a withholding order.

*Withholding order* means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body. For purposes of this section, the terms “wage garnishment order” and “garnishment order” have the same meaning as “withholding order.”

(d) *When may the SBA initiate administrative wage garnishment proceedings?* Whenever SBA determines you owe a delinquent non-tax debt, SBA may initiate administrative wage garnishment proceedings to withhold a portion of your wages to satisfy the debt.

(e) *What notice must the SBA give you before beginning an administrative wage garnishment?* (1) SBA will send a written notice by first-class mail to your last known address at least 30 days before initiating garnishment. This pre-garnishment notice will inform you of:

- (i) The type and amount of the debt;
- (ii) SBA’s intent to collect the debt by making deductions from your pay until the debt is paid in full;
- (iii) An explanation of your rights, including those listed below, and the timeframe within which you may exercise your rights.

(2) You have the right to:

(i) Inspect and copy non-privileged SBA records related to the debt;

(ii) Enter into a written repayment agreement with SBA under terms agreeable to SBA; and

(iii) Have a hearing at SBA’s Office of Hearings and Appeals (OHA) in accordance with paragraph (f) of this section concerning the existence or the amount of the debt or the terms of the proposed repayment schedule under the garnishment order. However, you are not entitled to a hearing concerning the terms of the proposed repayment schedule if those terms have been established by written agreement under paragraph (e)(2)(ii) of this section.

(3) SBA will retain evidence of service showing when SBA mailed the pre-garnishment notice.

(f) *What type of hearing must SBA give me?*—(1) *Procedural rules.* Unless they expressly conflict with this section, the rules of procedure governing cases before OHA apply to administrative wage garnishment hearings.

(2) *Request for hearing.* You will be provided with a hearing, if you request one in writing disputing either the existence or amount of the debt or the terms of the repayment schedule (except a repayment schedule you and SBA agreed to in writing).

(3) *Type of hearing or review.* (i) You will have the right to an oral hearing only if the Judge determines that the issues in dispute cannot be resolved solely by review of the documentary evidence, for example, when the Judge finds that the validity of the claim turns on the issue of credibility or veracity.

(ii) If the Judge determines an oral hearing is needed, he or she will set the time and location. You may choose whether the oral hearing is conducted in person or by telephone. You must pay all travel expenses for yourself and your witnesses to attend an in-person hearing. SBA will pay telephone charges for telephone hearings.

(iii) If no oral hearing is needed, the Judge will accord you a “paper hearing,” that is, the Judge will decide the issues in dispute based upon a review of the written record. The Judge will set a reasonable deadline for the submission of evidence.

(4) *Effect of timely request for hearing.* Subject to paragraph (f)(13) of this section (failure to appear), if the Judge determines your written request for a hearing was received at OHA by the 15th business day after SBA mailed the pre-garnishment notice, SBA will not issue a garnishment order before the Judge renders a decision.

(5) *Untimely request for hearing.* If the Judge determines your written request for a hearing was not received at OHA by the 15th business day after SBA mailed the pre-garnishment notice, SBA will provide a hearing to you. However, SBA may proceed with the issuance of a garnishment order and acceptance of payments unless the Judge determines that the delay in filing the request was caused by factors over which you had no control, or that information received justifies a delay or cancellation of the garnishment order.

(6) *Hearing official.* A hearing official may be any Judge, as designated by the Assistant Administrator for Hearings and Appeals.

(7) *Procedure.* After you request a hearing, the Judge will decide what type of hearing to hold and will notify you and the SBA of:

- (i) The date and time of a telephonic hearing;
- (ii) The date, time, and location of an in-person oral hearing; or
- (iii) The deadline for the submission of evidence for a written hearing.

(8) *Burden of proof.* (i) The SBA will have the burden of going forward to prove the existence or amount of the debt.

(ii) Thereafter, if you dispute the existence or amount of the debt, you must establish by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, you may present evidence that the terms of the repayment schedule are unlawful, would cause you a financial hardship, or that collection of the debt may not be pursued due to operation of law.

(9) *Record.* The Judge must maintain a summary record of any hearing provided under this section. A hearing is not required to be a formal evidentiary-type hearing; however, wit-

nesses who testify in oral hearings will do so under oath or affirmation.

(10) *Date of decision.* The Judge must render a written decision within 60 days of the date on which your request for a hearing was received by OHA. If the Judge's decision is not rendered within that time, and SBA had previously issued a garnishment order, SBA must suspend garnishment beginning on the 61st day. This suspension must continue until the Judge renders a decision.

(11) *Content of decision.* The written decision shall include:

- (i) A summary of the facts presented;
- (ii) The Judge's findings, analysis and conclusions; and
- (iii) The terms of any repayment schedule, if applicable.

(12) *Final agency action.* The Judge's decision will be the final agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).

(13) *Failure to appear.* In the absence of good cause shown, a debtor who fails to appear at an oral hearing will be deemed as not having timely filed a request for a hearing.

(g) *Garnishment order.* (1) Unless SBA receives an adverse decision from the Judge or information it believes justifies delaying or canceling garnishment, SBA will send the garnishment order to your employer by first-class mail, within the following time frames:

- (i) If you did not make a timely request for a pre-garnishment hearing, within 30 days following the 15th business day after SBA mailed the pre-garnishment notice;
- (ii) If you did make a timely request for a pre-garnishment hearing, within 30 days after the Judge renders a final decision to proceed with garnishment; or,
- (iii) As soon as reasonably possible thereafter.

(2) The garnishment order will be in a form prescribed by the Secretary of the Treasury, and will contain the signature of, or the image of the signature of, SBA's Administrator or his/her delegatee. The garnishment order will contain only the information necessary for compliance, including your name, address, and social security number, the instructions for garnishing your

pay, and the address for sending payments.

(3) SBA will retain evidence of service showing when it mailed the garnishment order.

(h) *Certification by employer.* Along with the garnishment order, SBA will send your employer a certification, in a form determined by the Secretary of the Treasury. Your employer must complete and return this certification to us within the time stated in the certification instructions. The certification will include information about your employment status and the amount of your disposable pay available for garnishment.

(i) *Amounts withheld.* (1) Your employer must deduct the garnishment amount from your disposable pay during each pay period.

(2) Except as shown in paragraphs (i)(3) and (i)(4) of this section, the amount of garnishment will be the lesser of:

(i) The amount stated on the garnishment order, not to exceed 15% of your disposable pay; or,

(ii) The amount in 15 U.S.C. 1673(a)(2) (Restriction on Garnishment). This is the amount by which your disposable pay exceeds an amount equivalent to thirty times the minimum wage. See 29 CFR 870.10.

(3) If your pay is subject to other garnishment orders, the following applies:

(i) Unless otherwise provided by Federal law, SBA garnishment orders must be paid in the amounts in paragraph (i)(2) of this section, and will have priority over other garnishment orders issued later. However, withholding orders for family support have priority over SBA garnishment orders.

(ii) If amounts are being withheld from your pay because of a garnishment order issued before SBA's garnishment order, or because of a garnishment order for family support issued at any time, the earlier or family support order will have priority, and the amount withheld because of the SBA garnishment order will be the lesser of:

(A) The amount calculated under paragraph (i)(2) of this section, or

(B) An amount equal to 25% of your disposable pay minus the amount with-

held under the garnishment order(s) with priority.

(iii) If you owe more than one delinquent non-tax debt, SBA may issue multiple garnishment orders if the amount withheld from your pay does not exceed the amount in paragraph (i)(2) of this section.

(4) You may give written consent for SBA to garnish from your pay an amount greater than that in paragraphs (i)(2) and (i)(3) of this section.

(5) Your employer must promptly pay to SBA all amounts withheld under a withholding order.

(6) Your employer is not required to change normal pay cycles to comply with the garnishment order.

(7) No assignment or allotment of your earnings that you have requested may interfere with or prohibit execution of SBA's garnishment order. The one exception to this rule is that you may assign or allot earnings because of a family support judgment or order.

(8) The garnishment order will state a reasonable time period within which your employer must begin wage garnishment. Your employer must withhold the designated amount from your wages each pay period until SBA notifies your employer to stop wage garnishment.

(j) *Exclusions from garnishment.* SBA may not garnish your wages if SBA knows you have been involuntarily unemployed at any time during the last 12 months. You are responsible for informing SBA of the facts and circumstances of your unemployment.

(k) *Financial hardship.* (1) If your wages are subject to a garnishment order issued by SBA, you may, at any time, request a review of the amount being withheld from your wages based on a material change in circumstances that causes you financial hardship, such as disability, divorce, or catastrophic illness. You may send your request to the Director of SBA's loan servicing center in Birmingham, Alabama.

(2) If you request review under paragraph (k)(1) of this section, you must specifically state why the current amount of garnishment causes you financial hardship and you must send documentation supporting your claim.

(3) If SBA finds financial hardship, SBA will decide how much and how long to reduce the amount garnished from your pay. SBA will notify your employer of any reductions.

(l) *Ending garnishment.* (1) After SBA has recovered the amount you owe, including interest, penalties, and administrative costs consistent with the FCCS, SBA will send a notice to your employer to stop wage garnishment with a copy to you.

(2) SBA will review your account to ensure that garnishment has stopped if you have paid your debt in full.

(m) *Prohibited actions.* No employer may fire, refuse to employ, or take disciplinary action against you because of a withholding order issued by SBA.

(n) *Refunds.* (1) SBA must promptly refund any amount collected by administrative wage garnishment if either—

(i) A Judge, after a hearing held under paragraph (f) of this section, determines you do not owe a debt to the United States; or

(ii) SBA determines that your employer continued submitting to SBA withheld wages after you had paid your debt in full.

(2) Refunds of amounts collected will not earn interest unless required by federal law or contract.

(o) *Right of action.* SBA may sue your employer for any amount that the employer fails to withhold from wages owed and payable to you in accordance with paragraphs (g) and (i) of this section. However, SBA may not file such a suit until the collection action involving you has ended unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. For purposes of this section, the collection action involving you ends when SBA stops the collection action in accordance with the FCCS or other applicable standards. In any event, the collection action involving you will be deemed ended if SBA has not received any payments from you to satisfy your debt, in whole or in part, for a period of one (1) year.

[70 FR 17587, Apr. 7, 2005]

## PART 142—PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS

### OVERVIEW AND DEFINITIONS

#### Sec.

- 142.1 Overview of regulations.
- 142.2 What kind of conduct will result in program fraud enforcement?
- 142.3 What is a claim?
- 142.4 What is a statement?
- 142.5 What is a false claim or statement?
- 142.6 What does the phrase “know or have reason to know” mean?

### PROCEDURES LEADING TO ISSUANCE OF A COMPLAINT

- 142.7 Who investigates program fraud?
- 142.8 What happens if program fraud is suspected?
- 142.9 When will SBA issue a complaint?
- 142.10 What is contained in a complaint?
- 142.11 How will the complaint be served?

### PROCEDURES FOLLOWING SERVICE OF A COMPLAINT

- 142.12 How does a defendant respond to the complaint?
- 142.13 What happens if a defendant fails to file an answer?
- 142.14 What happens once an answer is filed?

### HEARING PROVISIONS

- 142.15 What kind of hearing is contemplated?
- 142.16 At the hearing, what rights do the parties have?
- 142.17 What is the role of the ALJ?
- 142.18 Can the reviewing official or ALJ be disqualified?
- 142.19 How are issues brought to the attention of the ALJ?
- 142.20 How are papers served?
- 142.21 How will the hearing be conducted and who has the burden of proof?
- 142.22 How is evidence presented at the hearing?
- 142.23 Are there limits on disclosure of documents or discovery?
- 142.24 Can witnesses be subpoenaed?
- 142.25 Can a party or witness object to discovery?
- 142.26 Can a party informally discuss the case with the ALJ?
- 142.27 Are there sanctions for misconduct?
- 142.28 Where is the hearing held?
- 142.29 Are witness lists exchanged before the hearing?

### DECISIONS AND APPEALS

- 142.30 How is the case decided?
- 142.31 Can a party request reconsideration of the initial decision?
- 142.32 When does the initial decision of the ALJ become final?