

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 134 and 140

Administrative Wage Garnishment

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: SBA is issuing a proposed rule adopting administrative wage garnishment regulations to implement the Debt Collection Improvement Act of 1996. The rule would allow SBA to garnish the wages of a person indebted to the United States for any non-tax debt without first obtaining a judgment. The debtor generally would be entitled to a hearing before a Judge assigned to SBA's Office of Hearings and Appeals.

DATES: Submit comments on or before August 28, 2000.

ADDRESSES: Send all comments concerning this proposed rule to: Arnold S. Rosenthal, Assistant Administrator, Office of Portfolio Management, Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Submit electronic comments and other data to: Walter.Intlekofer@sba.gov. See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Arnold S. Rosenthal, Assistant Administrator, Office of Portfolio Management, (202) 205-6481.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit comments and data by sending electronic mail (E-mail) to: Walter.Intlekofer@sba.gov. Submit comments as Microsoft Word 97 or as ASCII files avoiding the use of special characters and any form of encryption. Identify all comments and data in electronic form with the title, "Administrative Wage Garnishment Regulations." You may file electronic comments on this proposed rule online at many Federal Depository Libraries.

Public Review of Comments

Whether you comment on paper or electronically, your comments, including name, street address, or other contact information (such as e-mail address, FAX, or phone number), will be available for public review at this address during regular business hours (8 a.m. to 5 p.m.), Monday through Friday, except federal holidays. You may request confidentiality. If you want us to consider withholding your contact information from public review or from FOIA disclosure, you must state this prominently at the beginning of your comment. We will honor requests for confidentiality, to the extent the law allows, on a case-by-case basis. If you are an organization or business, or identify yourself as a representative or official of an organization or business, we will make your entire submission available for public inspection.

Background

SBA is issuing a proposed rule adopting administrative wage garnishment regulations implementing the Debt Collection Improvement Act (DCIA) of 1996. The Department of the Treasury garnishment regulations require agencies to publish regulations for administrative wage garnishment hearings.

Rulemaking History

Department of the Treasury (Treasury) published its proposed rules, with detailed analysis, at 62 FR 62458, Nov. 21, 1997 (Treasury Proposed Rule). After receiving written comments, Treasury published its final rule, discussing comments and changes in the final rules, at 63 FR 25136, May 6, 1998 (Treasury Final Rule). Treasury has since published a technical amendment at 64 FR 22906, April 28, 1999 (Treasury Technical Amendment). The rule, with the technical amendment, is now published in the Code of Federal Regulations as 31 CFR 285.11.

SBA issued a proposed rule amending its debt collection through offset regulations, 13 CFR part 140, to conform to the Debt Collection Procedures Act of 1996 and the DCIA, at 64 FR 3454, Jan 22, 1999 (Proposed Offset Rule). In anticipation of the administrative wage garnishment regulations, the Proposed Offset Rule sets forth general rules, applicable to offset collections and

administrative wage garnishments, at subpart A of 13 CFR part 140 and rules pertaining only to offset at subpart B of 13 CFR part 140. The comment period for the Proposed Offset Rule ended February 22, 1999, and the SBA anticipates issuing a final rule (Final Offset Rule) shortly. This proposed rule takes into account SBA's regulations as the Final Offset Rule would amend them; therefore, this proposed rule includes citations that now do not exist as such but will be effected by the Proposed Offset Rule.

Same Organization as Treasury Final Rule

The core of this proposed rule, to be published in the Code of Federal Regulations as 13 CFR 140.11, is identical in subsection, paragraph, and subparagraph organization to 31 CFR 285.11. Thus, for example, section 285.11(f)(11) of the Treasury Final Rule corresponds to section 140.11(f)(11) of this proposed rule.

Conformity in Substance to Treasury Final Rule

Except as stated below, this proposed rule is substantially identical to the Treasury Final Rule.

Variation in Substance From Treasury Final Rule

This proposed rule provides for a hearing by a Judge assigned to the case by SBA's Assistant Administrator for Hearings and Appeals (AA/OHA), rather than a hearing official designated by the Administrator. Additionally, it makes minor editorial changes in accordance with Administration plain-language directives.

Basic Provisions

The rule would permit SBA to garnish the wages of a person indebted to the United States for any non-tax debt without first obtaining a judgment. SBA merely notifies the debtor it intends to garnish his/her wages. Subject to the exercise of appeal rights, SBA then may notify the debtor's employer (any state or local government or private employer, but not the federal government) to begin the garnishment. The OHA hearing, with a written decision by a Judge, will enhance the credibility and fairness of SBA's garnishment appeal procedure and will ensure due process.

Rules and Procedures

Except as stated below, this proposed rule would establish for the SBA the substantive and procedural requirements of the Treasury Final Rule.

Section Analysis

The following is a section-by-section analysis of how this proposed rule would affect SBA's regulations. This proposed rule would:

- Amend Section 134.101 (Definitions) to define "business day," used in § 134.202(c)(ii);
- Amend Section 134.102(i) (Jurisdiction of OHA) to add collection of debts under DCIA to the jurisdiction of SBA's Office of Hearings and Appeals (OHA);
- Amend Section 134.202 (Commencement of cases) to specify the time limit for requesting a hearing on an administrative wage garnishment;
- Amend Section 134.222(a) (Availability of oral hearing) to add administrative wage garnishment to that group of cases in which a party might obtain an oral hearing;
- Amend Section 134.226(b) (Time limits for decision) to add collection of debts under DCIA to that group of cases in which OHA must render a decision within 60 days;
- Amend Section 134.227(a) (Final decisions) to add collection of debts under DCIA to that group of cases in which OHA's decision constitutes a final agency decision;
- Amend Section 140.1 (Coverage) to specify the coverage of subpart A of part 140;
- Amend Section 140.2 (Definitions) to add definitions pertaining to administrative wage garnishment;
- Add Section 140.3, a table showing features of part 140's debt collection methods;
- Add Section 140.10 (Coverage) to specify the coverage of subpart C of part 140; and
- Add Section 140.11 (Administrative wage garnishment) to implement the Treasury Final Rule, with the following modifications:

1. Definitions.

Section 285.11(c) of the Treasury Final Rule contains definitions. Section 140.11(c) contains no definitions, but incorporates by reference § 140.2, which defines terms applicable to debt collections through both offset and administrative wage garnishment. Except as stated below, the definitions pertaining to administrative wage garnishment are substantially identical to those in the Treasury Final Rule.

Business day. Section 285.11(c) of the Treasury Final Rule defines "business day" as "Monday through Friday," then tells the reader to count the last day of the period unless it was a Federal legal holiday. The SBA believes all federal legal holidays, not merely those on the last day of a given period, are properly excluded from the term "business day." Therefore, proposed § 140.2(c) would define "business day" as "Monday

through Friday, excluding federal legal holidays."

Certificate of service. Both the Treasury Final Rule, 31 CFR 285.11(c), and SBA's procedural rules, 13 CFR 134.204 (d), define "certificate of service." In the Treasury Final Rule, "Certificate of service" refers only to documentation by the Agency, not by a party or by counsel, of which documents it mailed to the debtor and when it mailed them.

Under SBA's procedural rules, such a certificate of service is inadequate to document service of pleadings: A party serving pleadings must prepare a certificate of service conforming with 13 CFR 134.204(d).

Therefore, proposed § 140.11(d) applies only to a certificate signed by an SBA official and retained as evidence of mailing of a part 140 document, such as a notice of proposed garnishment or a garnishment order. When, for example, a debtor serves a request for hearing under proposed § 140.11(f)(2), the certificate of service must conform to § 134.204(d).

Debt or claim. The Treasury Final Rule defined "debt" or "claim" as "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." 31 CFR 285.11(c). The SBA believes this definition raises more questions than it answers: For example, the meaning of "appropriate official," which is defined neither in statute nor in case law. Because many SBA collections arise from loan defaults, proposed § 140.2(g) defines "debt," in accordance with 31 U.S.C. § 3701(b): "Debt means money owed to the United States for any reason, including loans made or guaranteed by the United States, fees, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest, or forfeitures."

Additionally, the Treasury Final Rule defines "delinquent" and "non-tax" under the definition for "debt or claim." 31 CFR 285.11(c). Proposed §§ 140.2(n) and 140.2(m) would define these key terms separately.

Delinquent or past due. The Treasury Final Rule uses "delinquent," while the offset regulations use "past due." The garnishment statute, 31 U.S.C. § 3720D, refers to neither. Because "past due" is clearer than "delinquent," the SBA adopted "past due." However, the Treasury Final Rule's definition of "delinquent" for purposes of garnishment differs from that of "past

due" for purposes of offset. Therefore, the SBA would adopt two definitions of "past due": One, proposed § 140.2(n)(1), would apply to offset only; the other, proposed § 140.2(n)(2), would apply to garnishment only.

Disposable pay. "Disposable pay" is defined differently in 5 U.S.C. § 5514 and in the Treasury Final Rule. The garnishment statute, 31 U.S.C. § 3720D, defines "disposable pay" broadly, as does 5 U.S.C. § 5514; however, the Treasury Final Rule excludes "health insurance premiums." 31 CFR 285.11(c). The analysis did not suggest a rationale. Treasury Final Rule, 63 FR 25136 at 25137; Treasury Proposed Rule, 62 FR 62458 at 62459.

The SBA is reluctant to define "disposable pay" more broadly than in the Treasury Final Rule. Additionally, one could argue that sound public policy favors encouraging debtors to maintain health insurance, which may reduce time lost from work and promote healthy families and businesses. Therefore, and because this definition varies from that used in the offset regulations, the SBA would adopt two definitions: One, proposed § 140.2(i)(1), would apply to offset only; the other, § 140.2(i)(2), would apply to garnishment only.

2. Hearing

Section 285.11(f)(1) allows agencies either to prescribe their own regulations or to adopt § 285.11 without change. Proposed § 140.11(f)(1) states that all procedures set forth in § 140.11, as well as the provisions of part 134, subparts A and B, consistent with § 140.11, will apply to any hearing on an administrative wage garnishment.

Additionally, SBA is adding two sentences to proposed § 140.11(f)(1). These sentences, now part of § 285.11(f)(9), state that a hearing need not be a formal judicial hearing, but that witnesses who testify in oral hearings must do so under oath or affirmation. Because these statements more directly relate to hearings rather than to the record, SBA is placing them in proposed 140.11(f)(1).

Section 285.11(f)(2) allows the debtor to request a hearing concerning the existence or amount of the debt or the terms of the repayment schedule unless the repayment schedule is based on a written agreement under paragraph (e)(2)(ii). Proposed § 140.11(f)(2) also contains this provision. In addition, it requires the debtor to specifically state in the request for hearing that the debtor deserves a hearing because of questions concerning the existence or amount of the debt or the terms of the repayment schedule. The debtor also must file the

request for hearing with OHA, serving a copy on the office initiating the garnishment action. Subsequent references to the entity to which a debtor directs a request for hearing (specifically, (f)(4), (f)(5), and (f)(10)) will substitute "OHA" for the Treasury Final Rule's "agency."

Section 285.11(f)(3)(i) states the agency will determine whether an oral hearing is required. To ensure a fair process and decision, proposed § 140.11(f)(3)(i) requires the OHA Judge appointed to the case, rather than SBA, to determine whether an oral hearing is justified and to conduct any hearing. Subsequent paragraphs (specifically, (f)(4), (f)(5), (f)(6), (f)(7), (f)(9), (f)(10), (f)(11), (f)(12), and (n)(1)) substitute "Judge" for the Treasury Final Rule's "hearing official."

Similarly, section 285.11(f)(3)(ii) requires the agency to set the time and location of any oral hearing. OHA's Judges have authority to "take all appropriate action to ensure the efficient, prompt, and fair determination of a case." 13 CFR 134.218(b). Therefore, proposed § 140.11(f)(3)(ii) places this determination in the hands of the OHA Judge assigned to the case.

If an oral hearing is not required, § 285.11(f)(3)(iii) requires a "paper hearing," defined as a resolution based on the written record. Proposed § 140.11(f)(3)(iii) also requires a resolution based on the written record, but refers to it as a "written hearing."

Additionally, section 285.11(f)(3)(iii) requires the agency to set the deadline for the submission of evidence. Proposed § 140.11(f)(7)(iii) states the Judge will notify the debtor of this deadline, and proposed § 140.11(f)(3)(iii) omits the requirement to set the deadline.

Section 285.11(f)(4) provides that an agency will conduct a hearing before issuing a withholding order if the agency receives the debtor's request for a hearing within 15 business days after the agency mails the notice described in § 285.11(e)(1) of this section. This deadline is inconsistent with proposed § 134.202(b), which states that a pre-garnishment hearing will be given if the debtor files a petition within 15 business days after SBA mails the notification letter to the debtor. Filing is effective, not only on receipt of a pleading by personal delivery, express mail, or commercial delivery service, but also on the postmark date of first-class mail or the transmission date of a facsimile. 13 CFR 134.204(e). Therefore, proposed § 140.11(f)(4) reads, "if you file your written request," rather than, "if [your written request] is received by [SBA]."

Section 285.11(f)(5) provides that an agency need not delay issuing a withholding order unless the agency receives the debtor's request for a hearing within 15 business days after the agency mails the notice described in § 285.11(e)(1). Like that in § 285.11(f)(4), above, this deadline is inconsistent with proposed § 134.202(b). Therefore, proposed § 140.11(f)(5) reads, "if you file your written request," rather than, "if [your written request] is received by [SBA]."

Section 185.11(f)(5) states the agency will determine whether a request for hearing was untimely for reasons beyond the debtor's control or whether other circumstances justify delaying or canceling the withholding order. Proposed § 140.11(f)(5) authorizes the assigned Judge to make this decision.

Section 285.11(f)(6) authorizes the head of the agency to designate any qualified individual as a hearing official, including an Administrative Law Judge (ALJ). Proposed § 140.11(f)(6) states that a Judge assigned to OHA will conduct the hearing. The Assistant Administrator for Hearings and Appeals (AA/OHA) may assign any OHA case not subject to the Administrative Procedure Act to an ALJ or Administrative Judge or, if an attorney, may decide it personally, 13 CFR 134.218(a). Therefore, proposed § 140.11(f)(6) is substantially identical to § 285.11(f)(6), except that the AA/OHA, rather than the SBA Administrator, actually assigns the Judge to each case.

Paragraph (f)(8) describes the burden of proof on the respective parties to a hearing. Consistent with the Treasury Final Rule, proposed § 140.11(f)(8) requires the debtor to show, by a preponderance of the evidence, that no debt exists or that the amount of the debt is incorrect. Proposed § 140.11(f)(8) also briefly defines "preponderance of the evidence" in plain English.

Section 285.11(f)(9), first sentence, requires the hearing official to maintain a summary record. The term "summary" is not defined; therefore, SBA is omitting it from proposed § 140.11(f)(9). OHA's regulations require a verbatim record for oral hearings, and any party can purchase a transcript. 13 CFR 134.222(e). Thus, any record the Judge keeps will not be verbatim, but will consist of the entire written record on appeal.

Additionally, § 285.11(f)(9), in its second and third sentences, states that the hearing need not be a formal judicial hearing, but that witnesses who testify in oral hearings must do so under oath or affirmation. These statements more directly relate to hearings rather than to

the record. Therefore, SBA is placing those sentences in proposed § 140.11(f)(1).

Section 285.11(f)(10) provides that the hearing official must issue a written decision within 60 days after receipt of a hearing request. This deadline is inconsistent with proposed § 134.226(b), which provides that a decision pertaining to debt collection must be made within 60 days after a petition is filed. Filing is effective, not only on receipt of a pleading by personal delivery, express mail, or commercial delivery service, but also on the postmark date of first-class mail or the transmission date of a facsimile. 13 CFR 134.204(e). Therefore, proposed § 140.11(f)(10) reads, "after you filed your request for a hearing," rather than, "after receipt of [your written request]." Similarly, proposed § 285.11(f)(10)(ii) requires SBA to suspend previously issued withholding orders beginning on the 61st day after filing, rather than receipt, of the hearing request.

3. Wage Garnishment Order.

Section 285.11(g)(1) requires the agency to send a garnishment order within specified time limits unless it receives "information that the agency believes justifies a delay or cancellation of the withholding order." This wording appears to render the Judge's decision irrelevant or, at best, advisory. Therefore, proposed § 140.11(g)(1) requires the SBA to send a garnishment order within specified time limits unless it receives "an adverse decision from the Judge or other justification to delay or cancel the withholding order."

In the Treasury Final Rule, § 285.11(g)(2) provided in part that the withholding order sent to an employer must be on the garnishing agency's letterhead. The Treasury Technical Amendment deleted the words "on the agency's letterhead" from § 285.11(g)(2). This amendment "allows * * * agencies to use [Standard Form (SF) 329 (11-98),] prescribed by [Treasury] for the issuance of an administrative wage garnishment order[,] without preparing the form on agency letterhead." Treasury Technical Amendment, 64 FR 22906, 22908 (1999). Because the form will clearly identify SBA as the garnishing agency and requiring SBA letterhead would interfere with use of SF 329, SBA is adopting this amendment.

Section 285.11(g)(3), second sentence, allows the agency to retain an electronic copy of the certificate of service. Because the SBA chooses not to exercise this option, the second sentence does not appear in proposed § 140.11(g)(3).

4. Amounts Withheld.

Section 285.11(i)(2)(i)(B) clarifies that the amount of garnishment is limited by the Consumer Credit Protection Act (CCPA). The CCPA, § 303(a)(2), codified at 15 U.S.C. 1673(a)(2) (maximum allowable garnishment), sets an additional limit on the amount of disposable pay that may be collected from a debtor's wages: The difference between 30 times the minimum hourly wage and the debtor's weekly disposable pay. This subparagraph did not appear in the Treasury Proposed Rule; Treasury added it to the final rule based upon the recommendations of two commenters. Treasury Final Rule, 63 FR 25136, 25138–39 (1998). However, the terms "hourly" and "weekly" do not appear in § 285.11(i)(2)(i)(B). Because both the comments on the final rule, 63 FR at 25139, and SF 329C (Wage Garnishment Worksheet), block 9, clearly indicate those terms are necessary to understand the limit set by CCPA, the SBA is inserting them in proposed § 285.11(i)(2)(i)(B).

Section 285.11(i)(3), introductory clause, purports to discuss "withholding orders with priority." However, the subparagraphs of § 285.11(i)(3) describe how to determine whether another withholding order has priority. Therefore, proposed § 140.11(i)(3) replaces "withholding orders with priority" with "other withholding orders."

Compliance With the Regulatory Flexibility Act (5 U.S.C. 601–12); the Paperwork Reduction Act (44 U.S.C. ch. 35); and Executive Orders 12866, 12988, and 13132

1. Regulatory Flexibility Act

The Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. §§ 601–12), has reviewed this regulation and certifies that this rule, including the certification contained in proposed section 140.11(h), would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–12.

This proposed rule applies only to individuals, as well as employers of such individuals, with outstanding debts to the United States. Though a substantial number of small entities will be subject to this proposed regulation and to its certification requirement, the requirements will not have a significant economic impact on these entities. Though a delinquent debtor's employer must certify certain information about the debtor, including the debtor's employment status and earnings, the employer's payroll records already

contain this information. Therefore, an employer will not expend significant time or expense completing the certification form. Even if an employer received withholding orders on several employees during the year, the cost imposed on the employer to complete the certifications would not be significant. Employers need not vary normal pay cycles to comply with withholding orders issued under this proposed rule.

2. Paperwork Reduction Act of 1995

For purposes of the Paperwork Reduction Act (44 U.S.C. ch. 35), we certify this proposed rule would impose no new reporting or record-keeping requirements on employers. As noted at 1, above, though an employer of a delinquent debtor must certify certain information about the debtor, the employer's payroll records already contain this information; and, even if an employer received withholding orders on several employees, the burden of completing the certifications would not be significant.

3. Executive Order 12866

a. Significance of This Regulation

We have drafted and reviewed this regulation in accordance with Executive Order 12866, section 1(b), Principles of Regulation. This regulation falls within a category of regulatory actions that the Office of Management and Budget (OMB) does not constitute as "significant" within the meaning of section 3(f) of Executive Order 12866. Accordingly, OMB did not require review of this regulation.

b. Clarity of This Regulation

Executive Order 12866 and the President's memorandum of June 1, 1998, require us to write all rules in plain language. Other "Plain Language" directives include Writing User-Friendly Documents (visited March 22, 2000) <http://www.blm.gov/nhp/NPR/pe_toc.html>; and the Federal Register Document Drafting Handbook, October 1998 Revision (visited March 22, 2000) <<http://www.nara.gov/fedreg/ddhhome.html#top>>. Following these directives, we have reworded many provisions to help you understand them.

4. Executive Order 12988

For purposes of Executive Order 12988, we certify we drafted this rule, to the extent practicable, in accordance with the standards set forth in Section 3 of that Order.

5. Executive Order 13132

For purposes of Executive Order 13132, we determine this proposed rule does not have federalism implications to justify preparing a Federalism Assessment.

List of Subjects

13 CFR Part 134

Administrative practice and procedure, Claims, Equal access to justice, Lawyers, Organization and functions (Government agencies).

13 CFR Part 140

Administrative practice and procedure, Claims, Debts, Hearing and appeal procedures, Salaries, Wages.

Accordingly, under the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA proposes to amend 13 CFR parts 134 and 140 as follows:

PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

1. The authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), and 637(a).

2. Amend § 134.101 by adding a new definition for "Business day" in alphabetical order to read as follows:

§ 134.101 Definitions.

* * * * *

Business day means Monday through Friday, excluding federal legal holidays.

* * * * *

3. Revise § 134.102(i) to read as follows:

§ 134.102 Jurisdiction of OHA.

* * * * *

(i) Collection of debts owed to SBA and the United States under the Debt Collection Act of 1982, the Debt Collection Improvement Act of 1996, and part 140 of this chapter;

* * * * *

4. Amend § 134.202 as follows:

a. Redesignate paragraphs (c) and (d) as paragraphs (d) and (e), respectively.

b. Add a new paragraph (c) to read as follows:

§ 134.202 Commencement of cases.

* * * * *

(c) In proceedings for debt collection by administrative wage garnishment under part 140, subpart B, of this chapter:

(1) At any time after SBA mails to you, as the debtor, the notification letter described in § 140.11(e)(1);

(2) But no later than 15 business days after SBA mails the notification letter to

you, if you desire a hearing before SBA issues the withholding order to your employer;

* * * * *

5. Amend § 134.222(a) by adding paragraph (a)(3) to read as follows:

§ 134.222 Oral hearing.

* * * * *

(a) * * *

(3) In administrative wage garnishment proceedings under the Debt Collection Improvement Act of 1996 and part 140, subpart C, of this chapter, you make a timely request under § 140.11(f)(3)(i) of this chapter, and the Judge finds a genuine dispute as to a material fact that cannot be resolved solely by reviewing documents.

* * * * *

6. Revise § 134.226(b) to read as follows:

§ 134.226 The decision.

* * * * *

(b) *Time limits.* Decisions pertaining to the collection of debts owed to SBA and the United States under the Debt Collection Act of 1982, the Debt Collection Improvement Act of 1996, and part 140 of this chapter must be made within 60 days after a petition is filed.

* * * * *

7. Revise § 134.227(a) to read as follows:

§ 134.227 Finality of decisions.

(a) *Final decisions.* A decision on the merits will be a final decision, when issued, in proceedings concerning the collection of debts owed to SBA and the United States, under the Debt Collection Act of 1982, the Debt Collection Improvement Act of 1996, and part 140 of this chapter.

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PART 140—DEBT COLLECTION

8. Revise part 140 to read as follows:

PART 140—DEBT COLLECTION

Subpart A—General Rules

Sec.

140.1 What does this subpart cover?

140.2 Definitions.

140.3 What debt collection methods does part 140 provide?

Subpart B—Debt Collection Through Offset [Reserved]

140.5 What does this subpart cover?

[Reserved]

140.6 How does SBA verify whether I owe a debt, or collect a debt from me through offset? [Reserved]

Subpart C—Debt Collection Through Administrative Wage Garnishment

140.10 What does this subpart cover?

140.11 What type of debt is subject to administrative wage garnishment, and how can the SBA get an administrative wage garnishment of my pay?

Authority: 31 U.S.C. 3711, Collection and compromise; 31 U.S.C. 3720A, Reduction of tax refund by amount of debt; 5 U.S.C. 5514, Installment deduction for indebtedness to the United States; 31 U.S.C. 3716, Administrative offset; 15 U.S.C. 634(b)(6), Small Business Act; 31 U.S.C. 3720, Collection of payments; 31 U.S.C. 3720D, Garnishment.

Subpart A—General Rules

§ 140.1 What does this subpart cover?

This subpart establishes general rules for subparts B and C of this part.

§ 140.2 Definitions.

Unless otherwise noted, the following definitions apply to both subpart B and subpart C of this part.

(a) *Administrative offset.* To satisfy a debt, we may withhold money we owe you or another federal agency owes you. This procedure is an *administrative offset* and is authorized by 31 U.S.C. 3716.

(b) *Agency.* *Agency* includes a department, agency, court, or court administrative office, in the executive, judicial, or legislative branch of the federal government, including government corporations. For purposes of this section, agency means either the agency administering the program giving rise to the debt or the agency attempting to recover the debt.

(c) *Business day.* *Business day* means Monday through Friday, excluding federal legal holidays. To count business days after an event, count every day from the day after the event through the last day, but exclude Saturdays, Sundays, and federal legal holidays.

(d) *Certificate of service.* For purposes of this part only, *certificate of service* means a certificate signed by an agency official showing the type of document being sent, the mailing date, and to whom it was sent. When preparing a certificate of service for any other purpose, see § 134.204(d) of this chapter.

(e) *Creditor agency.* *Creditor agency* means any agency owed a debt that seeks to collect that debt through administrative offset.

(f) *Day.* *Day* means calendar day. To count days after an event, count every day from the day after the event through the last day, unless the last day is a Saturday, a Sunday, or a federal legal holiday; if so, the next working day will be the last day.

(g) *Debt.* *Debt* means money owed to the United States for any reason, including loans made or guaranteed by

the United States, fees, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest, or forfeitures. A debtor is someone who owes money to the United States from any source.

(h) *Debtor/You/Your.* *Debtor/You/Your* means a person, organization, or entity, other than a federal, state, or local agency, that owes a debt.

(i) *Disposable pay.* (1) As used in subpart B of this part (offset), *disposable pay* means what remains of your pay after any amounts required by law are deducted.

(2) As used in subpart C of this part (garnishment), *disposable pay* means what remains of your pay (including salary, bonuses, commissions, and vacation pay) after health insurance premiums and any amounts required by law are deducted. "Amounts required by law" include social security deductions and withholding taxes, but do not include amounts withheld because of a court order.

(j) *Employer.* *Employer* means a person or entity that employs the services of others and pays their wages or salaries. The term *employer* includes state and local governments, but does not include a federal agency.

(k) *Garnishment.* *Garnishment* means the process of withholding amounts from your disposable pay and then paying those amounts to a creditor to satisfy a withholding order.

(l) *Legally enforceable.* As used in subpart B of this part (offset), a debt is *legally enforceable* if, on the date of offset, SBA's claim would not be barred in even one forum, including a state or federal court or administrative agency. Non-judgment debts are enforceable for ten years; judgment debts are enforceable beyond ten years.

(m) *Non-tax.* *Non-tax* means not related to an obligation under the Internal Revenue Code of 1986, as amended.

(n) *Past due.* (1) As used in subpart B of this part (offset), a debt is *past due* if it has been reduced to judgment, accelerated, or due for at least 90 days.

(2) As used in subpart C of this part (garnishment), a *past-due* debt is one you have not paid by the date specified in our initial written demand for payment or applicable agreement, unless you have made other satisfactory payment arrangements.

(o) *Salary offset.* If you are an active or retired 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), we may

deduct payments owed to the United States from your paycheck. This procedure is a *salary offset* and is authorized by 5 U.S.C. 5514, 31 U.S.C. 3716, and subpart B of this part.

(1) Any amount deducted from your salary in any one pay period will not exceed 15 percent of your disposable pay, unless you agree in writing to a greater percentage.

(2) A federal agency also may collect against travel advances, training expenses, disallowed payments, retirement benefits, or any other amount due you, including lump sum payments. These collection efforts are not subject to the 15-percent limitation in paragraph (o)(1) of this section.

(p) *Tax refund offset.* We may request that the Department of the Treasury (Treasury) reduce your tax refund by the amount of the debt, as authorized by 31 U.S.C. 3720A. A federal agency, at the same time, may take additional action against you to collect the debt. Even if SBA refers your debt to other agencies (within six months of the initial notice), it must review your debt only once under subpart B and its authorizing statutes.

(q) *Treasury Offset Program.* The Treasury Offset Program, operated through the Financial Management Service, is a centralized process that provides for the offset of federal payments, including federal tax refunds, federal salary payments, retirement

payments, and other types of payments, to collect debts you owe the federal government.

(r) *We/Our/Us.* *We/Our/Us* refers to the SBA.

(s) *Withholding order/wage garnishment order/garnishment order.* *Withholding order/wage garnishment order/garnishment order* refers to an order issued by an agency or a judicial or administrative body for withholding or garnishing pay.

§ 140.3 What debt collection methods does part 140 provide?

This table shows some features of the debt collection methods discussed in this part.

SBA may use	To collect from	Under provisions of	Subject to review by
(a) Salary offset	Paychecks (including travel advances, training expenses, disallowed payments, retirement benefits, and lump sum payments) of active or retired federal employees or members, including those U.S. Postal Service, Postal Rate Commission, and active or reserve uniformed services.	Part 140, subparts A and B, especially § 140.2(o), § 140.6(a)(4) & (b)–(d); part 134, subparts A and B).	Administrative Law Judge, Office of Hearings and Appeals (OHA).
(b) Administrative offset	Money any agency owes to the debtor.	Part 140, subparts A and B, especially § 140.2(a), § 140.6(a)(5) & (b)–(d).	SBA official identified in notice.
(c) Administrative wage garnishment.	Disposable pay from employer (including state or local government, but not federal government).	Part 140, subparts A and C, especially § 140.2(i), (k); § 140.11; part 134, subparts A and B.	Judge, Office of Hearings and Appeals (OHA).

Subpart B—Debt Collection Through Offset [Reserved]

§ 140.5 What does this subpart cover? [Reserved]

§ 140.6 How does SBA verify whether I owe a debt, or collect a debt from me through offset? [Reserved]

Subpart C—Debt Collection Through Administrative Wage Garnishment

§ 140.10 What does this subpart cover?

This subpart establishes procedures we may use when we undertake an administrative wage garnishment. An administrative wage garnishment allows us to collect money for past-due non-tax debt owed to the United States. You cannot use our failure to follow these regulations to defend against a suit to collect a debt.

§ 140.11 What type of debt is subject to administrative wage garnishment, and how can the SBA get an administrative wage garnishment of my pay?

(a) We may collect money from your disposable pay by an administrative wage garnishment. This money is used

to satisfy past-due non-tax debt you owe the United States.

(b) *Scope.* (1) This section applies to past-due non-tax debt owed to the United States arising from an SBA program or being collected by us.

(2) This section applies despite any State law.

(3) Nothing in this section prevents us from settling for less than the full amount of a debt or suspending or stopping a debt collection action authorized by law. See, for example, the Federal Claims Collection Standards (FCCS), 4 CFR parts 101–105; see also part 140, subpart A, of this chapter.

(4) Our receipt of payments under this section does not prevent us from pursuing other debt collection remedies. We may do so separately or together with administrative wage garnishment.

(5) This section does not apply to the collection of past-due 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 us to duplicate notices or hold administrative proceedings required by contract, other laws, or regulations.

(c) *Definitions.* Unless otherwise stated, the definitions in § 140.2 apply to terms used in this section.

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

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

(i) The type and amount of the debt;

(ii) SBA's plans to collect the debt by making deductions from your pay until the debt and all interest, penalties, and administrative costs are paid in full; and

(iii) An explanation of your rights, including those in paragraph (e)(2) of

this section, and a statement about the amount of time you have to take action before wage garnishment begins.

(2) We must give you the opportunity to:

(i) Inspect and copy our records related to the debt;

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

(iii) Have a hearing as described in paragraph (f) of this section. The hearing may address the existence of the debt, the amount of the debt, or the terms of the proposed repayment schedule under the withholding order. You are not entitled to a hearing about the terms of a written repayment schedule, as described in paragraph (e)(2)(ii) of this section.

(3) We will retain a copy of a certificate of service showing when we mailed the notice of wage garnishment proceedings.

(f) *Hearing.* (1) *What type of hearing must SBA give me?* The procedures in this section, as well as procedures in part 134, subparts A and B of this chapter (Rules of Procedure Governing Cases Before the Office of Hearings and Appeals) that are consistent with this section, apply to your SBA hearing. A hearing need not be a formal judicial hearing. However, witnesses who testify in oral hearings must do so under oath or affirmation.

(2) *Request for hearing.* We must provide you with a hearing if you request one. Your request for a hearing must be in writing. You must send the original request to SBA's Office of Hearings and Appeals (OHA) and a copy to the office initiating the garnishment action. Your written request must state you deserve a hearing because of questions about whether the debt exists, the amount of the debt, or the repayment terms. You must specifically describe the basis for each of these questions. You cannot raise questions about a written debt repayment agreement under paragraph (e)(2)(ii) of this section.

(3) *Type of hearing.* (i) We must provide you with an oral hearing when the Judge appointed to conduct the hearing determines that he or she cannot resolve the issues by reviewing documents.

(ii) If the Judge determines that you should have an oral hearing, 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 resulting from an in-person hearing. We will pay telephone charges for telephone hearings.

(iii) When an oral hearing is not required, the Judge must conduct a "written hearing," after which the Judge decides the issues based upon a review of documents.

(4) *Effect of a timely request for a hearing.* We will not issue a withholding order if you file your written request for a hearing on or before the 15th business day after we mailed the notice informing you of the wage garnishment. We will not issue the withholding order until a Judge conducts a hearing and makes a decision, as required in paragraphs (f)(10) and (f)(11) of this section.

(5) *Effect of an untimely request for a hearing.* If you file your written request for a hearing more than 15 business days after we mailed your garnishment notice, the Judge still will give you a hearing. However, we will not delay issuing the withholding order to your employer. We will delay issuing a withholding order only if the Judge decides your request was untimely for reasons beyond your control or other information justifies delaying or canceling the withholding order.

(6) *Hearing official.* An OHA Judge will conduct the hearing.

(7) *Procedure.* After you request a hearing, the Judge must notify you of the following:

(i) The date and time of any telephone oral hearing;

(ii) The date, time, and location of any in-person oral hearing; and

(iii) The deadline to send evidence for a written hearing.

(8) *Burden of proof.* (i) We have the burden of first showing that you probably have a past-due non-tax debt and the amount of the debt.

(ii) If we show the probable existence and amount of the debt, you must prove by a preponderance of the evidence (meaning that it is more likely than not) that no debt exists or that the debt amount is incorrect. In addition, you may present evidence proving by a preponderance of the evidence that the terms of the repayment schedule are illegal or would cause you a financial hardship; or that collection of the debt is illegal.

(9) *Record.* The Judge must maintain a record of any hearing provided under this section.

(10) *Date of decision.* The Judge must issue a written opinion stating his or her decision as soon as possible but no later than sixty (60) days after you filed your request for a hearing. If the Judge does not do so—

(i) We cannot issue a withholding order until the Judge holds a hearing and makes a decision; or

(ii) We must suspend any previously issued withholding orders beginning on the 61st day after you filed your hearing request. This suspension must continue until the Judge holds a hearing and makes a decision.

(11) *Content of the decision.* The Judge's written decision must include:

(i) A summary of the facts presented;

(ii) The findings, analysis, and conclusions; and

(iii) The terms of any repayment schedule.

(12) *Final SBA action.* The Judge's decision will be our final action for the purposes of judicial review under the Administrative Procedure Act, 5 U.S.C. 701–706.

(13) *Failure to appear.* If you fail to appear at a hearing without a good reason, we will treat you as if you did not file a timely request for a hearing, as described in paragraph (f)(5) of this section.

(g) *Wage garnishment order.* (1) Unless we receive an adverse decision from the Judge or other justification to delay or cancel the withholding order, we will send a withholding order to your employer by first-class mail. If you made a timely request for a hearing, we would mail the withholding order within 30 days after the final SBA action, as stated in paragraph (f)(12) of this section. If you did not make a timely request for a hearing, we would mail the withholding order within 30 days after the time in paragraphs (f)(4) and (f)(5) of this section had ended (that is, 15 business days after we mailed you the notice described in paragraph (e)(1) of this section).

(2) The withholding order we send to your employer under paragraph (g)(1) of this section must be in a form determined by the Secretary of the Treasury. It must be signed by the SBA's Administrator or someone he or she designates. The withholding order must contain the information your employer needs to comply with it. Such information includes your name, address, and social security number; instructions for withholding pay; and the address for payments.

(3) We will retain a copy of a certificate of service showing when we mailed the withholding order.

(h) *Certification by employer.* Along with the withholding order, we 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 withholding.

(i) *Amounts withheld.* (1) Your employer must deduct from your disposable pay during each pay period the garnishment amount described in paragraph (i)(2) of this section.

(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). The amount in 15 U.S.C. 1673(a)(2) is the amount by which your weekly disposable pay is greater than thirty times the minimum hourly wage. See 29 CFR 870.10.

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

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

(ii) If amounts are being withheld from your pay because of a withholding order issued before we issued our withholding order, or because of a withholding 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 withholding 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 withheld under the withholding order with priority.

(iii) If you owe more than one debt to an agency, we may issue multiple withholding 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 us to withhold from your pay an amount greater than that in paragraphs (i)(2) and (i)(3) of this section.

(5) Your employer must pay to us as soon as possible all amounts withheld under a withholding order.

(6) Your employer is not required to change normal pay cycles to provide for the withholding order.

(7) No assignment or allotment of your earnings you have requested may interfere with or prohibit our withholding 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 withholding order will state a reasonable time period within which your employer must begin wage withholding. Your employer must withhold the designated amount from your wages each pay period until we notify your employer to stop wage withholding.

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

(k) *Financial hardship.* (1) You may request us to review the amount being withheld from your wages. You must base this request on a material change in circumstances that causes you financial hardship, such as disability, divorce, or catastrophic illness.

(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 we find financial hardship, we will decide how much and how long to reduce the amount withheld from your pay. We will notify your employer of any reductions.

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

(2) At least annually, we will review your account to ensure that withholding has stopped if you have paid your debt in full.

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

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

(i) A Judge, after a hearing held under paragraph (f)(3) of this section, determines you do not owe a debt to the United States; or

(ii) We determine that your employer continued withholding 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.* We may sue your employer if your employer fails to comply with the order to withhold from your wages. However, we may not file a suit until your collection action has

ended unless the expiration of a statute of limitations period requires action. Your collection action ends when we stop the collection action as required by the FCCS or other applicable standards. Your collection action also ends if we do not receive any garnishment payments from your employer for one (1) year.

Dated: June 7, 2000.

Aida Alvarez,
Administrator.

[FR Doc. 00-15923 Filed 6-26-00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000-NM-146-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 737-100, -200, -300, -400, and -500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737-100, -200, -300, -400, and -500 series airplanes. This proposal would require inspection of wire bundles in two junction boxes in the main wheel well to detect chafing or damage, and follow-on actions. This action is necessary to prevent wire damage, which could result in arcing and consequent fire in the main wheel well or passenger cabin, or inability to stop the flow of fuel to an engine or to the auxiliary power unit in the event of a fire. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 11, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-146-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments