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GOVERNMENT ACCOUNTABILITY OFFICE

4 CFR Chapter I

Nomenclature Changes

AGENCY: Government Accountability Office.

ACTION: Final rule.

SUMMARY: The GAO Human Capital Reform Act of 2004 changed the name of the General Accounting Office to the Government Accountability Office. Accordingly, this technical amendment changes the name of the agency in the heading of the chapter in which the Government Accountability Office's regulations appear, chapter I of title 4 of the Code of Federal Regulations. This document also redesignates all references in chapter I of the Government Accountability Office's regulations. This rulemaking is technical in nature, and merely implements a statutory mandate.

DATES: *Effective Date:* April 7, 2005.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Forman, Assistant General Counsel, Government Accountability Office, room 7838D, 441 G Street, NW., Washington, DC 20548, (202) 512-9763.

SUPPLEMENTARY INFORMATION: On July 7, 2004, the President signed the GAO Human Capital Reform Act of 2004 (Pub. L. 108-271), providing the Government Accountability Office with additional flexibilities in its human capital management. Section 8 of Public Law 108-271 changed the name of the General Accounting Office to the Government Accountability Office to more accurately reflect the audit and evaluation work in which the Office engages to assist the Congress in fulfilling its constitutional responsibilities.

This document changes the name of the agency from General Accounting Office to Government Accountability

Office. Accordingly, chapter I of title 4 of the Code of Regulations is amended so that in every place in which the name General Accounting Office has appeared the name will now be read as Government Accountability Office. The Government Accountability Office finds good cause for making this final rule effective immediately, since the rule is merely a technical amendment following a statutory change in our name and underlying statute.

■ For the reasons set out above, title 4, chapter I of the Code of Federal Regulations is amended under the authority of section 8 of Pub. L. 108-271, 118 Stat. 814.

CHAPTER I—GENERAL ACCOUNTING OFFICE

■ 1. The heading of chapter I is revised to read as set forth below:

CHAPTER I—GOVERNMENT ACCOUNTABILITY OFFICE

■ 2. In 4 CFR chapter I, remove the words "General Accounting Office", and add in their place, the words "Government Accountability Office", wherever they appear.

Issued on: April 1, 2005.

Anthony H. Gamboa,
General Counsel.

[FR Doc. 05-6924 Filed 4-6-05; 8:45 am]

BILLING CODE 1610-02-M

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 134 and 140

RIN 3245-AE50

Procedures for Office of Hearings and Appeals, Administrative Wage Garnishment

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Direct final rule.

SUMMARY: This direct final rule implements the administrative wage garnishment provisions contained in the Debt Collection Improvement Act of 1996 (DCIA) in accordance with the regulations issued by the Secretary of the Treasury. By implementing these provisions, SBA will be able to garnish the disposable wages of a person who is indebted to the United States for nontax debts, without first obtaining a court order. This rule also amends SBA's

regulations on hearings and appeals in order to expand the scope of those regulations to hearings in administrative wage garnishment cases.

DATES: This rule is effective on June 6, 2005 without further action, unless adverse comment is received by May 9, 2005. If adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by RIN number 3245-AE50, by any of the following methods: (1) Federal rulemaking portal at <http://www.regulations.gov>; (2) e-mail: walter.intlekofer@sba.gov, include RIN number 3245-AE50 in the subject line of the message; (3) mail to: Walter C. Intlekofer, Director Portfolio Management Division, 409 3rd Street, SW., Mail Code: 7021, Washington, DC 20416; and (4) Hand Delivery/Courier: 409 3rd Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Walter C. Intlekofer, Director Portfolio Management Division, (202) 205-7543.

SUPPLEMENTARY INFORMATION:

Background

Section 31001(o) of the Debt Collection Improvement Act of 1996, which is codified at 31 U.S.C. 3720D, authorizes Federal agencies to use an administrative procedure to garnish the disposable pay of an individual to collect delinquent non-tax debt owed to the United States in accordance with regulations promulgated by the Secretary of the Treasury. Wage garnishment is a process whereby an employer withholds amounts from an employee's wages and pays those amounts to the employee's creditor pursuant to a withholding order. Under the DCIA agencies may garnish up to 15% of a delinquent non-tax debtor's disposable wages. Prior to the enactment of the DCIA, agencies were generally required to obtain a court judgment before garnishing the wages of non-Federal employees.

DCIA requires the Secretary of the Treasury to issue regulations implementing the administrative wage garnishment requirements. These implementing regulations, which are at 31 CFR 285.11, provide for due process for nontax debtors and require agencies to publish regulations for administrative wage garnishment hearings. This direct final rule implements that requirement.

SBA previously published a proposed wage garnishment rule on June 27, 2000, at 65 FR 124. The Agency received no comments. However, since SBA has made changes to the proposed rule to more closely conform it to the Treasury final rule, SBA is issuing this as a direct final rule to provide the public with a final opportunity to comment. SBA must receive comments by the deadline stated above, which is no later than 30 days after this notice appears in the **Federal Register**.

SBA is publishing this rule as a direct final rule because it believes the rule is not controversial as it merely conforms SBA's administrative wage garnishment procedures to those used by the rest of the Government and contains the same substantive and procedural requirements as the Treasury final rule on wage garnishment. The changes implemented by this rule are beneficial to all affected parties by providing exact procedures for SBA's administrative wage garnishment process. SBA believes that this rule will not elicit any significant adverse comments. However, if adverse comments are received, SBA will publish a timely notice of withdrawal in the **Federal Register**.

Section-by-Section Analysis

Part 134

SBA is amending 13 CFR Part 134, Rules of Procedure Governing Cases before the Office of Hearings and Appeals, to expand the scope of the procedures to debt collection cases under DCIA, including administrative wage garnishment cases. SBA is not amending the actual procedural process. SBA is amending the following specific sections of Part 134.

Section 134.102(i) lists the types of cases over which OHA has jurisdiction. SBA is amending this section to add debt collection under DCIA to this list of cases.

Section 134.202 describes how a party, including SBA, may commence a case before OHA and the time period within which a party other than SBA must commence such cases. SBA is amending § 134.202 to add how and when a party may request a hearing on an administrative wage garnishment case.

Section 134.222(a) explains the conditions for obtaining an oral hearing; SBA is amending § 134.222(a) to add when an oral hearing is available for administrative wage garnishment cases.

Section 134.226(b) provides that OHA must render a decision within 60 days after a petition is filed in debt collection cases under the Debt Collection Act of 1982 and Part 140 of the SBA

regulations. SBA is amending § 134.226(b) to add debt collection under DCIA to the group of cases in which OHA must render a decision within 60 days.

Section 134.227(a) describes the cases in which OHA's decision constitutes a final agency decision. SBA is amending this section to include debt collection under DCIA to this group of cases.

Part 140

SBA's debt collection regulations can be found at 13 CFR Part 140. SBA is amending this Part to establish procedures for administrative wage garnishment in accordance with DCIA and the Treasury regulations implementing that statute. First, SBA is amending the title to Part 140 to make it more descriptive of the Part's coverage, by changing the title from "Debt Collection Through Offset" to "Debt Collection." Second, in order to simplify the organization of Part 140, SBA is dividing it into Subpart A, Overview; Subpart B, Offset; and Subpart C, Administrative Wage Garnishment.

Subpart A will provide an overview of the scope of Part 140. Section 140.1 which currently provides an overview of the coverage of Part 140 will fall under Subpart A and is being amended to add administrative wage garnishment to the scope of cases that are covered by Part 140.

Subpart B will apply to the procedures for debt collection through offset of a federal employee's salary, any money that is due to a debtor from SBA or other Federal agencies and a debtor's IRS tax refund. Existing §§ 140.2 and 140.3 specifically address debt collection through offset and will be part of Subpart B. SBA is not amending these sections at this time.

A new section, designated as 140.11 is being added under Subpart C to establish the rules and procedures for debt collection through administrative wage garnishment.

(a) *General*. Subsection (a) describes the administrative wage garnishment process and provides the statutory authority for SBA to use that process.

(b) *Scope*. Subsection (b)(1) states that § 140.11 provides procedures for SBA to collect delinquent non-tax debt through administrative wage garnishment.

As provided in the DCIA, subsection (b)(2) explains that the wage garnishment provisions in § 140.11 apply despite any State law covering such process.

Subsection (b)(3) explains that SBA's use of this collection tool does not interfere with its discretion to

compromise a debt, or to suspend or terminate collection of the debt.

Subsection (b)(4) explains that administrative wage garnishment is one of many debt collection remedies available to SBA and it may use administrative wage garnishment concurrently with other collection remedies, even if the Agency is receiving payments under wage garnishment.

Subsection (b)(5) distinguishes Federal salary offset from administrative wage garnishment. Federal salary offset procedures, whereby Federal salary payments payable to Federal employees who owe debt to the United States are withheld to satisfy that debt, are set forth in 5 U.S.C 5514 and the implementing regulations.

Subsection (b)(6) provides that SBA is not required to duplicate notices or proceedings that are otherwise required.

(c) *Definitions*. Subsection (c) contains the definitions that apply to actions under Part 140.

Agency. The term "agency" as used in this section refers to SBA.

Business day. The term "business day" means Monday through Friday and will be calculated consistent with Rule 6(a) of the Federal Rules of Civil Procedure.

Day means calendar day and will be calculated consistent with Rule 6(a) of the Federal Rules of Civil Procedure.

Debt or claim. For the purposes of this rule, the terms "debt" and "claim" refer to delinquent nontax debt. The term "delinquent nontax debt" refers to debt that is past-due.

Debtor. The term "debtor" refers to an individual who owes a delinquent nontax debt to the United States.

Delinquent non-tax debt refers to any debt other than one owed under the Internal Revenue Code and that has not been paid by the date specified in SBA's initial written demand for payment.

Disposable pay. "Disposable pay" is all of a debtor's compensation except health insurance premiums and those amounts required to be withheld by law, such as social security taxes. Lump sum payments, such as bonuses and back pay, are included in disposable pay. For purposes of calculating disposable pay, voluntary withholdings, such as savings allotments, are not deducted from a debtor's compensation.

Employer. The term "employer" refers to a person or entity that employs the services of others and includes State and local Governments. For purposes of this section, however, the Federal Government is not an "employer" because debts owed by Federal employees are collected in accordance

with the Federal salary offset procedures.

Evidence of Service. This term refers to the information that SBA will retain as proof that it has mailed a given document, including to whom, date of mailing and nature of the document.

Garnishment. The term “garnishment” refers to the process of withholding amounts from an employee’s pay and forwarding those amounts to a creditor in satisfaction of a withholding order.

Withholding order. The term “withholding order” refers to any order for withholding or garnishment of pay, whether issued under the provisions of this section or otherwise. A withholding order may be issued by an agency, or a judicial or administrative body. For purposes of this proposed rule, the terms “wage garnishment order” and “garnishment order” have the same meaning as “withholding order.”

(d) *Initiating Proceedings.* Subsection (d) sets forth when SBA may initiate an administrative wage garnishment proceeding.

(e) *Notice Requirements.* Subsection (e)(1) contains the DCIA requirement that SBA give the debtor written notice at least 30 days before initiating garnishment proceedings. The notice will inform the debtor of the nature and amount of the debt and that SBA will collect the debt through deductions from pay, as well as an explanation of the debtor’s rights regarding the proposed action.

Subsection (e)(2) explains that pursuant to the DCIA SBA will provide the debtor with an opportunity to inspect and copy records related to the debt, to establish a repayment agreement, and to receive a hearing. This subsection also provides that a debtor is entitled to a hearing only with respect to (1) the existence of the debt; (2) the amount of the debt; or (3) the terms of the proposed repayment schedule under the garnishment order. However, the debtor is not entitled to a hearing on the terms of the proposed repayment schedule if those terms have been established by written agreement between the debtor and SBA.

Subsection (e)(3) states that SBA will keep a copy of the certificate of service.

(f) *Hearing.* Subsection (f)(1) states that OHA’s procedural rules also apply to wage garnishment hearings; subsection (f)(2) addresses how a debtor can obtain such a hearing.

Under subsection (f)(3) SBA addresses the two types of hearings that are available; explains when the debtor may receive either a paper hearing or an oral hearing and, if the latter, whether the

hearing will be conducted in person or by telephone.

Subsection (f)(4) provides that if a request for hearing is timely received, SBA will not issue a garnishment order until the Judge renders a decision. Timely received means that the request for a hearing is received by SBA on or before the 15th business day following the mailing of the notice described in Subsection (e)(1) of this section. SBA is required to inform the debtor of the deadline for requesting a hearing prior to the issuance of a withholding order.

Subsection (f)(5) addresses hearing requests received after the 15th business day following the mailing of the notice described in Subsection (e)(1) of this section. As provided in the DCIA, SBA does not have to delay issuance of the withholding order prior to conducting a hearing if the request for a hearing is not timely received.

Subsection (f)(6) provides that any Judge as designated by the Assistant Administrator for Hearings and Appeals may be the hearing official.

Subsection (f)(7) requires the Judge to notify the SBA and the debtor about the type of hearing to be held, the date and time of the hearing, and any deadline for the submission of evidence.

Subsection (f)(8) describes the burden of proof on SBA and the debtor. SBA must present evidence as to the existence or amount of the debt. To dispute the debt, the debtor must show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. If the terms of the repayment schedule are an issue, the debtor must show that such terms are unreasonable or unlawful.

Subsection (f)(9) provides that the hearing official will maintain a summary record of the hearing and that testimony at oral hearings will be under oath.

As required by the DCIA, subsection (f)(10) states that the OHA Judge must issue a written decision no later than sixty (60) days after OHA received the request for a hearing. This subsection also explains that if SBA had previously issued a withholding order, the agency must suspend garnishment until the Judge holds a hearing and issues a decision.

Subsection (f)(11) sets forth the information that must be included in the hearing official’s written decision.

Subsection (f)(12) states that the OHA Judge’s decision is the final agency action for judicial review purposes under the Administrative Procedures Act (5 U.S.C. 701).

Subsection (f)(13) provides that failure of a debtor to appear at an oral

hearing, without showing good cause, will be deemed an untimely filing.

(g) *Wage Garnishment Order.* In accordance with the provisions of the DCIA, Subsection (g)(1) provides that if the debtor did not file a timely request for a hearing, SBA will send the garnishment order to the debtor’s employer within 30 days following the 15th business day after SBA mailed the pre-garnishment, or if debtor makes a timely request, 30 days after the Judge renders a final decision to proceed with the garnishment.

Subsection (g)(2) describes the format and content of a withholding order, including debtor’s name, address and social security number.

Subsection (g)(3) requires that SBA retain a copy of the certificate of service to show when the agency mailed the withholding order to the debtor’s employer.

(h) *Certification by Employer.* When a debtor’s employer receives a withholding order, Subsection (h) requires the employer to complete a certification in a form prescribed by the Secretary of the Treasury on matters such as the debtor’s employment status and disposable pay available for garnishment.

(i) *Amounts Withheld.* According to subsection (i)(1), a debtor’s employer must deduct the amount stated in the garnishment order each pay period.

Subsections (i)(2) and (i)(3) describe the restrictions on the amounts that can be withheld from an employee’s pay to satisfy a garnishment order. As provided in the DCIA, under subsection (i)(1) no more than 15% of the debtor’s disposable pay for each pay period may be garnished; subsection (i)(2) describes the amount that may be garnished if, at the time of SBA’s garnishment order, the debtor’s disposable pay is subject to other wage garnishment orders, or where the debtor’s wage is also subject to garnishment for family support, even if filed after SBA’s order.

For example, if the employer is withholding 15% of a debtor’s disposable pay for a family support or prior withholding order, the amount withheld for the subsequent withholding order issued under this section is limited to 10% of the debtor’s disposable pay. When the family support or prior withholding order terminates, the amount withheld for the subsequent withholding order issued under this section may be increased to the maximum 15% allowed under (i)(1).

Subsection (i)(4) allows the debtor to consent in writing to withholding a greater amount than provided in subsections (i)(2) and (i)(3).

Under subsection (i)(5), the employer is required to promptly pay to SBA amounts withheld under the garnishment order.

As provided in the DCIA, under subsection (i)(6) an employer is not required to vary its pay cycle to comply with a garnishment order.

Subsection (i)(7) provides that a wage garnishment order issued under this section will take priority over any assignment or allotment by an employee of his wages, except for assignments or allotments made because of a family support judgment or order.

Subsection (i)(8) requires the employer to continue to garnish an employee's wages until the agency notifies the employer that garnishment is no longer required.

(j) *Exclusions from Garnishment.* As required by the DCIA, Subsection (j) provides that SBA may not garnish a debtor's wages if he or she has been involuntarily unemployed during the last 12 months and also advises that the debtor is responsible for notifying SBA of any involuntary unemployment.

(k) *Financial Hardship.* Subsection (k)(1) allows a debtor to request a review by SBA of the amount being garnished under a wage garnishment order based on materially changed circumstances which result in a financial hardship.

Subsection (k)(2) requires the debtor to explain and submit evidence of the materially changed circumstances and the effect of the change on the debtor's ability to pay.

Subsection (k)(3) explains that SBA will adjust the amounts withheld under the garnishment order if a financial hardship is found to exist.

(l) *Ending Garnishment.* Subsection (l)(1) provides that SBA will instruct the employer to discontinue garnishment upon its receipt of the full amount of the debt, including interest, penalties, and administrative costs.

Under subsection (l)(2) once the debtor's account has been paid in full, SBA will review the account to ensure that garnishment has been terminated.

(m) *Prohibited Actions by the Employer.* As mandated by the DCIA, subsection (m) prohibits employers from taking action against a debtor based on the fact that the debtor's wages are subject to garnishment.

(n) *Refunds.* Subsection (n)(1) requires SBA to refund promptly to a debtor amounts improperly withheld from wages.

Subsection (n)(2) provides that, unless required by law or contract, refunds shall not bear interest.

(o) *Right of Action.* As authorized by the DCIA, subsection (o) provides that SBA may sue an employer for the

amounts that were not properly withheld from the debtor's wages. SBA may initiate action against an employer only after terminating its collection efforts against the debtor. For purposes of this section, this occurs when SBA (1) has terminated collection action in accordance with the Federal Claims Collection Standards (FCCS) or other applicable standards, or (2) has not received any payments on the debt from any source for at least 1 year.

Finally, since administrative wage garnishment has separate specific authority, SBA is also amending the list of authorities for Part 140 to add 31 U.S.C. 3720D.

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

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule does not constitute a significant regulatory action under Executive Order 12866.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, SBA determines that this direct final rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act of 1995

For purposes of the Paperwork Reduction Act, 44 U.S.C., Chapter 35, SBA has determined that this direct final rule does not impose additional reporting or recordkeeping requirements. Although the employer of a delinquent debtor must certify certain information about the debtor, certifications are not collections of information under the Paperwork Reduction Act.

Regulatory Flexibility Act (5 U.S.C. 601–12)

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative

agencies to consider the effect of their actions on small entities, small non-profit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities.

This final rule would not have a significant economic impact on a substantial number of small entities. Further, the Administrator, in accordance with the RFA, certifies that this rule, including the certification contained in § 140.11(h), would not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.

This rule applies to individuals with outstanding debts to the United States, as well as employers of such individuals. SBA does not believe that a substantial number of small entities will be subject to this regulation and to its certification requirement. SBA has approximately 39,000 Agency-serviced loans that are delinquent or in liquidation status, or are subject to collection processes by the U.S. Department of the Treasury (Treasury). Although SBA cannot predict the number of these loans that will be subject to AWG in the future, SBA estimates, based on the experience of other federal agencies, that no more than one-fourth (less than 10,000) may be subject to wage garnishment procedures. This number is an extremely small percentage of the almost 24 million small businesses in the United States, and consequently the economic impact of compliance with AWG will be minimal.

Further, even though a limited number of small entities may need to comply with these provisions, SBA does not believe that the requirements will have a significant economic impact on these entities. Although 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 to 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 rule.

Although the new procedures will provide for a hearing if specifically requested by the debtor, employers are not required to participate in the hearing. In addition, SBA certified in

the proposed rule that the rule would not have a significant economic impact on a substantial number of small entities. SBA did not receive any comments from small entities that would indicate that the rule was costly or that the certification was incorrect.

Treasury published regulations for AWG in 1998 and employers have been subject to collections through AWG since then. The U.S. Department of Education has been using administrative wage garnishment under the Higher Education Act for over a decade. Consequently, employers have been complying with administrative wage garnishments for student loans for many years. Treasury reports that it has not received any complaints that the garnishment procedure is overly taxing or costly for entities affected. Accordingly, SBA concludes that this rule will not have a significant economic impact.

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

Claims, Debts, Garnishment, Government employees, Income taxes, Wages.

■ For the reasons stated in the preamble and under the authority contained in 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6), SBA amends 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), 637(a), 648(l), 656(i), and 687(c); E.O. 12549, 51 FR 6370.

■ 2. Amend § 134.102 by revising paragraph (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;

* * * * *

■ 3. Amend § 134.202 by revising paragraph (a)(2) to read as follows:

§ 134.202 Commencement of cases.

(a) * * *

(2) In proceedings for debt collection under part 140 of this chapter: no later

than 15 days after receipt of a notice of indebtedness and intention to collect such debt by salary or administrative offset; in accordance with the time frames specified in § 140.11 of this chapter with respect to administrative wage garnishment;

* * * * *

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

§ 134.222 Oral hearing.

* * * * *

(a) * * *

(3) The Judge determines that an oral hearing is necessary in administrative wage garnishment proceedings conducted pursuant to § 140.11 of this chapter.

* * * * *

■ 5. Amend § 134.226 by revising paragraph (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. Time limits for decisions in other types of cases, if any, are indicated either in the applicable program regulations or in other subparts of this part 134.

* * * * *

■ 6. Amend § 134.227 by revising paragraph (b)(1) to read as follows:

§ 134.227 Finality of decisions.

* * * * *

(b) * * *

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

* * * * *

PART 140—DEBT COLLECTION

■ 7. Revise the heading of part 140 to read as set forth above.

■ 8. Revise the authority citation of part 140 to read as follows:

Authority: 5 U.S.C. 5514; 15 U.S.C. 634(b)(6); 31 U.S.C. 3711, 3716, 3720, 3720A and 3720D.

■ 9. Add subpart A, consisting of existing § 140.1 to read as follows:

Subpart A—Overview

■ 10. Revise § 140.1 to read:

§ 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.

■ 11. Add subpart B, consisting of existing §§ 140.2 and 140.3, to read as follows:

Subpart B—Offset

■ 12. Add subpart C consisting of a new § 140.11 to read as follows:

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, witnesses 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 withheld 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.

Hector V. Barreto,
Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-20026; Directorate Identifier 2004-NM-150-AD; Amendment 39-14040; AD 2005-07-16]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 767-400ER, 777-200, and 777-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 767-400ER, 777-200, and

777-300 series airplanes. This AD requires replacing, with new parts, the existing tie-down fitting studs that secure galleys, purser work stations, and closets to the seat tracks. This AD is prompted by a report that tie-down fitting studs were found damaged. We are issuing this AD to prevent a galley, purser work station, or closet from detaching from the tie-down fitting studs during an emergency landing, which could injure passengers or crewmembers, or obstruct escape routes and impede emergency evacuation.

DATES: This AD becomes effective May 12, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of May 12, 2005.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street, SW., room PL-401, Washington, DC. This docket number is FAA-2005-20026; the directorate identifier for this docket is 2004-NM-150-AD.

FOR FURTHER INFORMATION CONTACT: Robert Kaufman, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM-150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 917-6433; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain Boeing Model 767-400ER, 777-200, and 777-300 series airplanes. That action, published in the **Federal Register** on January 12, 2005 (70 FR 2064), proposed to require replacing, with new parts, the existing tie-down fitting studs that secure galleys, purser work stations, and closets to the seat tracks.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment that has been submitted on the proposed AD. The commenter supports the proposed AD.

Explanation of Change to Proposed AD

We have changed the number of airplanes in the Costs of Compliance paragraph to reflect information received from the airplane manufacturer.

Conclusion

We have carefully reviewed the available data, including the comment that has been submitted, and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 355 airplanes of the affected design in the worldwide fleet, including about 124 U.S.-registered airplanes. The following table provides the estimated costs for U.S. operators to comply with this proposed AD, at an average labor rate of \$65 per hour.

ESTIMATED COSTS

Airplane model	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
767-400ER	10	\$6,221	\$6,871	6	\$41,226
777-200 and -300	6-30 (depending on configuration).	1,464-19,761	1,854-21,711	118	218,772-2,561,898

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more

detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in

air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on