

## Federal Deposit Insurance Corporation

## § 313.124

whose wages were subject to garnishment, in whole or in part, for a period of one (1) year.

### §§ 313.102–313.119 [Reserved]

#### Subpart E—Tax Refund Offset

##### § 313.120 Scope.

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

##### § 313.121 Definitions.

For purposes of this subpart E:

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

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

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

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

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

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

such as wage garnishment, either separately or in conjunction with tax refund offset.

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

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

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

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

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

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

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

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

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

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

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

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

(b) For purposes of § 313.123(c)(3), if evidence presented by a debtor is considered by an agent of the FDIC, or