

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

Debt Collection Through Offset

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to amend its regulations on Debt Collection Through Offset. SBA proposes to amend these regulations to conform with the Debt Collection Procedures Act of 1996 and the Debt Collection Improvement Act of 1996. The amendments will allow other Federal agencies to offset debts owed to SBA and will allow SBA to participate in the Government-wide Treasury Offset Program administered by the Department of the Treasury.

SBA is currently publishing the proposed language for its regulations on General Rules and Debt Collection Through Offset. At a later date, SBA will publish the proposed language for its regulations on Debt Collection Through Administrative Wage Garnishment and proposed amendments that define terms used in that future proposal.

DATES: Submit comments on or before February 22, 1999.

ADDRESSES: Address 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.

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

SUPPLEMENTARY INFORMATION: 13 CFR Part 140 established procedures for SBA to collect past-due debts through administrative or salary offset. SBA now proposes to amend this rule, pursuant to the Debt Collection Improvement Act of 1996, Pub. L. 104-134, authorizing the Agency to: participate in the mandatory Government-wide payment offset

system known as the Treasury Offset Program administered by the Department of Treasury.

To participate in the Treasury Offset Program, the administrative or salary offset procedures must be available not only to SBA, but to other agencies as well. This proposed rule would make the changes necessary to allow SBA or another Federal agency to collect past-due debts through administrative or salary offset. This proposed rule also amends SBA's offset procedures, and contains plain language revisions and clarifications.

The following is a section by section analysis of each provision of SBA's regulations that would be affected by this proposed rule:

- Section 140.1 would be amended to incorporate plain language principles.
- Section 140.2 would be deleted and replaced with a definition section.
- Section 140.3 would be deleted.

The offset procedures would now be located in § 140.6.

- Section 140.5 would be added to explain the purpose and scope of the offset procedures.
- Section 140.6 would be added to set forth the offset procedures. The new procedures establish two steps for offset. The first entails the verification of a debt. SBA will send a notice to the debtor and review any response to determine whether the debt is past due and enforceable. The SBA Office of Hearings and Appeals would no longer review administrative offsets, and would only review salary offsets. The second steps involves SBA's implementation of an administrative or salary offset or referral of a debt to the Department of the Treasury or another Federal agency for offset. In addition, SBA would now be able to implement an offset action upon referral from another Federal agency.

- Section 134.202 paragraph (b) would also be amended to refer only to salary offsets.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this rule would not have a significant economic impact on a substantial number of small entities within the meaning of Executive Order 12866 or the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This proposed rule

only applies to individuals who have outstanding debts to the United States. It is not likely to have an annual economic effect of \$100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule contains no new reporting or record keeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, under the standards set forth in Section 2 of that Order.

List of Subjects

13 CFR Part 134

Administrative practice and procedure.

13 CFR Part 140

Claims, Government employees, Income taxes, 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—[AMENDED]

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. Revise § 134.202(b) to read as follows:

§ 134.202 Commencement of cases.

* * * * *

(b) In debt collection proceedings under part 140, subpart B, of this chapter, no later than 15 days after you receive of a notice of indebtedness and plan to collect such debt by salary offset;

* * * * *

PART 140—[AMENDED]

3. Amend the heading for part 140 to read as follows:

PART 140—DEBT COLLECTION

4. The authority citation for part 140 is revised to read as follows:

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, the Debt Collection Improvement Act of 1996.

5–6. Add a subpart heading for §§ 140.1 through 140.2, to read as follows:

Subpart A—General Rules

7. Revise § 140.1 to read as follows:

§ 140.1 What does this part cover?

This part establishes procedures we may use to collect past-due debts owed to the Government. You cannot use our failure to follow these regulations to defend against a suit to collect a debt.

8. Revise § 140.2 to read as follows:

§ 140.2 Definitions.

Unless otherwise noted, the following definitions apply to subpart B.

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

(d) **Day.** Day means calendar day. To count days, include the last day of the period unless it is a Saturday, a Sunday, or a Federal legal holiday.

(e) **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.

(f) **Debtor/You/Your.** Debtor/You/Your means a person, organization, or entity, other than a Federal agency, that owes a debt.

(g) **Disposable pay.** 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.

(h) **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 10 years.

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

(j) **Past-Due.** 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.

(k) **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 and 31 U.S.C. 3716.

(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 salary offsets and are not subject to the 15-percent limitation in paragraph (k)(1) of this section.

(l) **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 6 months of the initial notice), it needs to review your debt only once under subpart B of this part and its authorizing statutes.

(m) **Treasury Offset Program.** The Treasury Offset Program is a centralized process which 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. The Treasury operates the Treasury Offset Program through the Financial Management Service.

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

9. Remove § 140.3 and add a subpart heading for §§ 140.5 through 140.6 to read as follows:

Subpart B—Debt Collection Through Offset

10. Add § 140.5 to read as follows:

§ 140.5 What does this subpart cover?

This subpart establishes procedures we may use to collect, through offset, past-due debts you owe to the United States. An offset occurs when we or another Federal agency withhold(s) money to which you may be entitled to satisfy a debt that you owe to the United States. These regulations set forth procedures for how we determine if a debt is past due and legally enforceable, and thus appropriate for offset. These regulations also set forth procedures we follow when implementing an offset action or referring the debt to another agency for offset. You cannot use our failure to follow these regulations to defend against a suit to collect the debt.

9. Add 9. § 140.6 to read as follows:

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

(a) **Verifying a debt.** (1) At least 30 days before starting an offset action or referring a debt to another agency for offset, we must send you a written notice.

(2) Our written notice must state the nature and amount of the debt; that we or another Federal agency may attempt an offset; that you may present evidence that the debt does not exist, is not past due, or is not legally enforceable; that you may inspect and copy, at your expense, Government records relating to the debt; that, to avoid the offset, you may reach an agreement with us on a schedule for repayment; and that, if you do not reach agreement on repayment or seek review of the debt, we or another agency may offset without further notice. If we propose a schedule for repayment of your debt, you may present evidence that you cannot meet this schedule. If a written agreement establishes this schedule, you cannot challenge the schedule.

(3) We also must tell you that, unless you respond to the notice as provided in paragraph (a)(4) or (a)(5) of this section, we or the agency to which we refer your debt may disclose to consumer reporting agencies (also known as credit bureaus or credit agencies) that you are responsible for the debt, and the specific information necessary to establish your identity, including the amount, status, history of

the debt, and agency program under which it arose. If you respond to us within the 15- or 60-day periods set forth in paragraphs (a)(4) and (a)(5) of this section, we will not disclose the information to consumer reporting agencies and will not refer the debt to another Federal agency until we consider your response and determine that you owe a past-due, legally enforceable debt.

(4) If we notify you that we intend to start a salary offset to satisfy your debt, you may request a hearing from SBA's Office of Hearings and Appeals (OHA). Part 134 of this title governs OHA proceedings. To have a hearing before OHA, you must request a hearing within 15 days of receiving the notice. If you file your request in time, we must stop collection proceedings until OHA's Administrative Law Judge (ALJ) decides your case. You must state in your request for an OHA hearing the date you received the notice and present the evidence you believe shows the debt is not past due or legally enforceable. You also must send a copy of your submission to the SBA Associate General Counsel for Litigation, Office of General Counsel, at the Small Business Administration, 409 Third Street, SW., Washington, DC 20416. OHA's ALJ will issue a decision within 60 days after you filed your request for a hearing with OHA.

(5) If we notify you that we intend to start an administrative offset or to refer your debt to another Federal agency for possible offset, you may request review from the SBA official identified in the notice. To obtain review of the debt, you must submit to the designated official, within 60 days of the notice, the evidence showing the debt is not past due or legally enforceable. By failing to request review within this period, you waive any objection to the offset action. If you request review of the debt, the relevant SBA official will notify you in writing of the final decision and whether we will continue with the offset action or refer your debt to another agency for offset.

(6) We need not follow these procedures to verify that a debt is past due and legally enforceable if another Federal agency already has made this determination.

(b) *Actions after SBA verifies a past-due, legally enforceable debt.* (1) After verifying a past-due, legally enforceable debt, we may—

(i) Begin an offset action to recover the debt;

(ii) Refer the debt to another agency for offset;

(iii) Notify consumer reporting agencies of the debt; or

(iv) Begin other appropriate action to attempt collection of the debt.

(2) If you are subject to an offset action, you may be required to pay, in addition to your debt, interest, penalties, and administrative costs, such as the costs of collection. We or another Federal agency will provide notice of any such interest, penalties, and administrative costs.

(3) If another Federal agency asks us to offset a debt, we may rely on the creditor agency's determination that a debt is past due and legally enforceable. We will not begin an offset until the creditor agency has provided written notice that you owe a past-due, legally enforceable debt, and of its amount, and that the agency has fully complied with its regulations concerning administrative offsets. After receiving such notice, we will provide you notice that we will begin an offset. You are not entitled to further review from us that the debt is valid or the offset proper.

(4) If we refer the debt to a consumer reporting agency and the status or amount of your debt substantially changes, we will report that change promptly to each consumer reporting agency we originally contacted. We will obtain satisfactory assurances from each consumer reporting agency that the consumer reporting agency has complied with all Federal laws relating to provision of consumer credit information.

(5) If another agency is beginning an offset of your debt and you make any additional payments to us, we will notify the other agency of these payments and your new balance as soon as reasonably possible.

(c) We or another Federal agency may make an offset prior to completing the procedures described in this part, if failure to make an offset would substantially prejudice the Government's ability to collect the debt; and the time before the Government otherwise would make payment to you does not reasonably permit the completion of the procedures. If we initiate the offset action, we then must provide you with an opportunity to present evidence that the debt is not past due or legally enforceable and take appropriate action in response to this evidence.

(d) If you owe us a past-due, legally enforceable debt that is over 180 days delinquent, including non-tax debt administered by a third party acting as an agent for the Federal Government, we must, as required by 31 U.S.C. 3716(c)(6), notify the Treasury of all such non-tax debts for purposes of administrative offset.

Dated: January 6, 1999.

Aida Alvarez,
Administrator.

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1213, 1500, and 1513

Bunk Beds; Extension of Time To Issue Proposed Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Extension of time to issue proposed rule.

SUMMARY: On January 22, 1998, the Consumer Product Safety Commission ("CPSC") or "Commission") issued an advance notice of proposed rulemaking ("ANPR") that began a rulemaking proceeding addressing possibly unreasonable risks of injury and death associated with children's entrapments in bunk beds. 63 FR 3280.

A rule mandating bunk bed performance requirements to reduce this hazard could be issued under either the Federal Hazardous Substances Act ("FHSA") or the Consumer Product Safety Act ("CPSA"), or both. The CPSA provides that a proposed standard under that act must be issued within 12 months of publication of the ANPR, unless the 12-month period is extended by the Commission for good cause. In this notice, the Commission extends the period for issuing any proposed CPSA rule until March 22, 1999.

ADDRESSES: Mail requests for documents concerning this rulemaking should be directed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207-0001.

Documents may be obtained or examined at the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504-0800. The Commission also may be contacted by telefacsimile to (301) 504-0127 or by e-mail to cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: John Preston, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0494, ext. 1315.

SUPPLEMENTARY INFORMATION: Under Section 9(c) of the CPSA, the Commission must propose a consumer product safety rule within 12 months of the publication of an ANPR, unless the Commission extends that period for