

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 17

[Docket No. FR-4711-P-01]

RIN 2501-AC85

Administrative Wage Garnishment

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the authority established under the Debt Collection Improvement Act of 1996 (DCIA) for HUD to collect the Department's past due indebtedness through administrative wage garnishment. The proposed rule would adopt, without change, the hearing procedures issued by the Department of the Treasury implementing administrative wage garnishment under the DCIA. This proposed rule would apply only to individuals who are not Federal employees. The proposed rule also would amend regulations on procedures for the collection of claims to conform HUD regulations to applicable provisions of the DCIA.

DATES: *Comment Due Date:* May 7, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Communications should refer to the above docket number and title.

Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Samuel B. Rothman, Senior Attorney, Office of General Counsel, Room 9253, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708-4184 (this is not a toll-free number). Hearing and speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

Since 1984 HUD has had regulations (subpart C of 24 CFR part 17) that govern various types of administrative offset (i.e., offset conducted administratively rather than through a court of record). These regulations,

issued pursuant to the Debt Collection Act of 1982 (31 U.S.C. 3701 *et seq.*) and the Federal Claims Collection Standards, were promulgated jointly by the General Accounting Office and the Department of Justice (4 CFR parts 101-105).

In 1996, Congress enacted the Debt Collection Improvement Act of 1996 (Pub. L. 104-134, 110 Stat. 1321-1358, approved April 26, 1996), which amended the Debt Collection Act of 1982. Section 31001(o) of the DCIA authorizes collection of Federal agency debt by administrative wage garnishment (section 31001(o) is codified at 31 U.S.C. 3720D). Wage garnishment is a legal process whereby an employer withholds amounts from an employee's wages and pays those amounts to the employee's creditor in satisfaction of a withholding order. The DCIA authorizes Federal agencies to garnish up to 15% of the disposable pay of a debtor to satisfy delinquent nontax debt owed to the United States. Prior to the enactment of the DCIA, agencies were required to obtain a court judgment before garnishing the wages of non-Federal employees.

The DCIA directed the Secretary of the Treasury to issue implementing regulations (*see* 31 U.S.C. 3720D(h)). On May 6, 1998 (63 FR 25136), the Department of the Treasury published a final rule implementing the statutory administrative wage garnishment requirements at 31 CFR 285.11. Paragraph (f) of 31 CFR 285.11 provides that "[a]gencies shall prescribe regulations for the conduct of administrative wage garnishment hearings consistent with this section or shall adopt this section without change by reference."

This proposed rule would amend HUD's regulations at 24 CFR part 17, subpart C to adopt 31 CFR 285.11 in its entirety. Specifically, the proposed rule would establish a new § 17.170 that would contain a cross-reference to 31 CFR 285.11. New § 17.170 also would provide that, to the extent situations arise that are not covered by 31 CFR 285.11, those situations would be governed by the HUD hearing procedures in 24 CFR part 26, subpart A.

Additionally, the proposed rule would amend the existing regulations that govern income tax refund offset to include offset against other eligible Federal payments. Under the DCIA the Treasury Department serves as a coordinator for Federal debt collection through its Treasury Offset Program. The proposed rule would recognize that status by adding the phrase "and the Department of the Treasury"

immediately after references to the IRS in the existing regulations.

II. Overview of the Administrative Wage Garnishment Process

Readers should refer to the Department of the Treasury regulation at 31 CFR 285.11 for details regarding the administrative wage garnishment procedures that would be adopted by this proposed rule. For the convenience of readers, the following presents a very brief overview of the rules and procedures codified at 31 CFR 285.11.

1. *Notice to debtor.* At least 30 days before the agency initiates garnishment proceedings, the agency will give the debtor written notice informing him or her of the nature and amount of the debt, the intention of the agency to collect the debt through deductions from pay, and an explanation of the debtor's rights regarding the proposed action.

2. *Rights of debtor.* The agency 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 concerning the existence or amount of the debt and the terms of a repayment schedule. A hearing must be held prior to the issuance of a withholding order if the debtor's request is timely received. For hearing requests that are not received in the specified timeframe, the agency need not delay the issuance of a withholding order prior to conducting a hearing. An agency may not garnish the wages of a debtor who has been involuntarily separated from employment until that individual has been reemployed continuously for at least 12 months. The debtor bears the responsibility of notifying the agency of the circumstances surrounding an involuntary separation from employment.

3. *Hearing official.* The Department of the Treasury regulations authorize the head of each agency to designate any qualified individual as a hearing official. This proposed rule would provide that any hearing required to establish HUD's right to collect a debt through administrative wage garnishment will be conducted by an administrative judge of the HUD Board of Contract Appeals. The hearing official is required to issue a written decision no later than 60 days after the request for a hearing is made. The hearing official's decision is the final agency action for purposes of judicial review.

4. *Employer's responsibilities.* The agency will send to the employer of a delinquent debtor a wage garnishment order directing that the employer pay a portion of the debtor's wages to the

Federal Government. The employer is required to certify certain payment information about the debtor. Employers are not required to vary their normal pay cycles in order to comply with these requirements. Employers are prohibited from taking disciplinary actions against the debtor because the debtor's wages are subject to administrative garnishment. An agency may sue an employer for amounts not properly withheld from the wages payable to the debtor.

5. *Garnishment amounts.* As provided in the DCIA, no more than 15% of the debtor's disposable pay for each pay period may be garnished. Special rules apply to calculating the amount to be withheld from a debtor's pay that is subject to multiple withholding orders. A debtor may request a review by the agency of the amount being garnished under a wage garnishment order based on materially changed circumstances, such as disability, divorce, or catastrophic illness, which result in financial hardship.

III. Findings and Certifications

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Although many small employers will be subject to the requirements of this proposed rule, the requirements will not have a significant economic impact on these entities. Employers of delinquent debtors must certify certain information about the debtor such as the debtor's employment status and earnings. This information is contained in the employer's payroll records. Therefore, it will not take a significant amount of time or result in a significant cost for an employer to complete the certification form. Even if an employer is served with withholding orders on several employees over the course of a year, the cost imposed on the employer to complete the certifications would not have a significant economic impact on an entity. Employers are not required to vary their normal pay cycles in order to comply with a withholding order issued pursuant to this proposed rule.

Notwithstanding HUD's determination that this rule will not have a significant economic impact on small entities, HUD specifically invites comments regarding alternatives to this rule that would meet HUD's objectives as described in this preamble.

Environmental Impact

In accordance with 24 CFR 50.19(c)(1) of the Department's regulations, this proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule would not impose a Federal mandate on any State, local, or tribal government, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 24 CFR Part 17

Administrative practice and procedure, Claims, Government employees, Income taxes, Wages.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 17 as follows:

PART 17—ADMINISTRATIVE CLAIMS

1. The authority citation for 24 CFR part 17, subpart C is revised to read as follows:

Authority: 5 U.S.C. 5514; 31 CFR 3711, 3716–3720E; and 42 U.S.C. 3535(d).

2. The undesignated center heading immediately preceding § 17.150 is revised to read as follows:

IRS Tax Refund and Federal Payment Offset Provisions and Administrative Wage Garnishment

3. Revise § 17.150 to read as follows:

§ 17.150 Scope.

(a) The standards set forth in §§ 17.150 through 17.161 are the Department's procedures for requesting the Internal Revenue Service (IRS) and the Department of the Treasury to offset tax refunds and Federal payments due taxpayers who have a past-due debt obligation to the Department. These procedures are authorized by the Deficit Reduction Act of 1984 (31 U.S.C. 3720A) and apply to the collection of debts as authorized by common law, by 31 U.S.C. 3716, or under other statutory authority.

(b) The Secretary will use the IRS tax refund and the Department of the Treasury Federal payment offset to collect claims which are certain in amount, past due and legally enforceable, and which are eligible for tax refund or Federal payment offset under regulations issued by the Secretary of the Treasury.

(c) The Secretary will not report debts to the IRS and the Department of the Treasury except for the purpose of using the offset procedures described in §§ 17.150 through 17.161. Debts of less than \$100.00, exclusive of interest and other charges, will not be reported.

(d) If not legally enforceable because of lapse of statute of limitations but otherwise valid, the debt will be reported to the IRS and the Department of the Treasury as a forgiven debt on Form 1099C. (Form 1099C is an information return which Government agencies file with the IRS and the Department of the Treasury to report forgiven debt, and the forgiven amount is considered income to the taxpayer.) (See § 17.159.)

4. Amend § 17.151 by revising the introductory text and paragraph (b) to read as follows:

§ 17.151 Notice requirements before offset.

A request for deduction from an IRS tax refund or Federal payment will be made only after the Secretary makes a determination that an amount is owed and past due and provides the debtor with 65 calendar days written notice. This Notice of Intent to Collect by IRS Tax Refund or Federal Payment Offset (Notice of Intent) will state:

* * * * *

(b) That unless the debt is repaid within 65 days from the date of the Notice, the Secretary intends to collect the debt by requesting the IRS and the Department of Treasury to reduce any

amounts payable to the debtor by an amount equal to the amount of the debt and all accumulated interest and other charges;

* * * * *

5. Amend § 17.153 by revising paragraph (c) to read as follows:

§ 17.153 Determination of the Administrative Judge.

* * * * *

(c) If the Administrative Judge's decision affirms that all or part of the debt is past due and legally enforceable, the Secretary will notify the IRS and the Department of the Treasury after the Administrative Judge's determination has been issued under paragraph (a) of this section and a copy of the determination is received by the Department's Chief Financial Officer. No referral will be made to the IRS and the Department of the Treasury if review of the debt by the Administrative Judge reverses the initial decision that the debt is past due and legally enforceable.

6. Amend § 17.154 by revising paragraph (a) to read as follows:

§ 17.154 Postponements, withdrawals and extensions of time.

(a) *Postponements and withdrawals.* The Secretary may, for good cause, postpone or withdraw referral of the debt to the IRS and the Department of Treasury. (For example, a delay in the mail between the debtor and the Secretary could normally warrant a postponement; a mathematical error or computer malfunction could be the reason for a withdrawal.)

* * * * *

7. Revise § 17.156 to read as follows:

§ 17.156 Stay of offset.

If the debtor timely notifies the Secretary that he or she is exercising a right described in § 17.152(a) and timely submits evidence in accordance with

§ 17.152(b), any notice to the IRS and the Department of the Treasury will be stayed until the issuance of a written decision by the Administrative Judge which determines that a debt or part of a debt is past-due and legally enforceable.

8. Revise § 17.157 to read as follows:

§ 17.157 Application of offset funds: Single debt.

If the debtor does not timely notify the Secretary that he or she is exercising a right described in § 17.152, the Secretary will notify the IRS and the Department of the Treasury of the debt no earlier than 65 calendar days from the date of the Department's Notice of Intent, and will request that the amount of the debt be offset against any amount payable by the IRS as refund of Federal taxes or by the Department of the Treasury as a Federal payment. Normally, recovered funds will be applied first to costs of collection, then to any special charges provided for in HUD regulations or contracts, then to interest and finally, to the principal owed by the debtor.

9. Revise § 17.159 to read as follows:

§ 17.159 Application of offset funds: Tax refund or other Federal payment is insufficient to cover amount of debt.

If a tax refund or Federal payment is insufficient to satisfy a debt in a given tax year, the Secretary will recertify to the IRS and the Department of the Treasury the following year to collect further on the debt. If, in the following year, the debt has become legally unenforceable because of the lapse of the statute of limitations, the debt will be reported to the IRS and the Department of the Treasury as a forgiven debt in accordance with § 17.150(d).

10. Amend § 17.160 by revising the section heading and paragraph (a) to read as follows:

§ 17.160 Time limitation for notifying the IRS or the Department of the Treasury to request offset of tax refunds or Federal payments due.

(a) The Secretary may not initiate offset of tax refunds or Federal payments due to collect a debt for which authority to collect arises under 31 U.S.C. 3716 more than 10 years after the Secretary's right to collect the debt first accrued, unless facts material to the Secretary's right to collect the debt were not known and could not reasonably have been known by the officials of the Department who were responsible for discovering and collecting such debts.

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11. Add new undesignated center heading following § 17.161 and add new § 17.170 to read as follows:

Administrative Wage Garnishment

§ 17.170 Administrative wage garnishment.

(a) *General.* The Secretary may collect a debt by using administrative wage garnishment. Regulations in 31 CFR 285.11 governs collection through administrative wage garnishment. To the extent situations arise that are not covered by 31 CFR 285.11, those situations shall be governed by part 26, subpart A of this title.

(b) *Hearing official.* Any hearing required to establish the Secretary's right to collect a debt through administrative wage garnishment shall be conducted by an Administrative Judge of the HUD Board of Contract Appeals.

Dated: February 6, 2002.

Mel Martinez,

Secretary.

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