

previously produced data (that qualifies as CSC data), provided that such data has not been released to others or furnished to NASA with any previously prescribed Notice. Further, the Grantee is authorized to substitute the July 1990 Notice for any previously prescribed Notice for any data that has been released to others or delivered to NASA provided that: (A) The Grantee identifies the data; (B) the protection afforded such data under the previously described Notice is still in force; and (C) the recipient (other than NASA) agrees to the substitution, or in the case of NASA, the Grants Officer is requested to make the substitution for specifically identified data. In this latter, event, the effective data inserted in the Notice shall be the Grantee's best estimate of the date the data was released to others or furnished to NASA.

(4) The Government shall have unlimited rights at the end of the period set forth in the "CSC Rights Notice," as to any CSC data delivered in accordance with subparagraph (2), above, provided, however, that if the Grantee or any of its licensees or assigns have plans and intentions to pursue commercial utilization of any items, components or processes (including computer software) which any delivered CSC data discloses, the aforesaid period will be expended for such data up to an additional 5 (five) years upon request made at any time prior to the end of the period provided in the "CSC Rights Notice."

(e) Omitted or Incorrect Markings.

(1) Data delivered to the Government without any notice authorized by paragraph (d) above, and without a copyright notice, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data have not been disclosed without restriction outside the Government, the Grantee may request, within 6 (six) months (or a longer time approved by the Grants Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Grantee's expense, and the Grants Officer may agree to do so if the Grantee—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Grants Officer may also (i) permit correction, at the Grantee's expense, of incorrect notices if the Grantee identifies the data on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(f) Protection of Limited Rights Data and Restricted Computer Software. When data other than that listed in paragraph (b)(1) are specified to be delivered under this grant and such data qualify as either limited-rights data or restricted computer software, the Grantee,

if the Grantee desires to continue protection of such data, shall withhold such data and not furnish them to the Government under this grant. As a condition to this withholding, the Grantee shall identify the data being withheld and furnish form, fit, and function data in lieu thereof.

(g) Subcontracting. The Grantee has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Grantee's obligations to the Government under this grant. If a subcontractor refuses to accept terms affording the Government such rights, the Grantee shall promptly bring such refusal to the attention of the Grants Officer and not proceed with subcontract award without further authorization.

(h) Relationship to Patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(i) Transfer of Rights.

(1) Notwithstanding any other provisions of this clause, the Grantee agrees that it will neither assign any rights nor grant any exclusive rights in the United States to CSC data or copyrighted data first produced in the performance of this Agreement unless the assignee or licensee agrees that any products or processes depicted by the CSC data or expressed by the copyrighted data will be manufactured or practiced substantially in the United States. However, in individual cases the requirement for such an agreement may be waived by NASA upon a showing that reasonable but unsuccessful efforts have been made to assign grants or rights on similar terms to potential assignees or licensees that would be likely to manufacture or practice substantially in the United States or that under the circumstances domestic manufacture or practice is not commercially feasible.

(2) The Grantee agrees that it will not grant to any person or entity any exclusive right to use or sell in the United States any product or process that embodies CSC data or is expressed by copyrighted data first produced in the performance of this Agreement unless the person or entity agrees that such products or processes will be manufactured or practiced substantially in the United States. However, in individual cases the requirement for such may be waived by NASA upon a showing that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture or practice substantially in the United States or that under the circumstances, domestic manufacture or practice is not commercially feasible.

#### **§ 1260.134 [Amended]**

7. Amend § 1260.134 in paragraph (a) by removing "§ 1260.33(b)" and adding "§ 1260.133(b)" in its place.

#### **§ 1260.152 [Amended]**

8. Amend § 1260.152 by removing paragraph (b) and redesignating paragraph (c) as paragraph (b). [FR Doc. 01-26623 Filed 10-25-01; 8:45 am]

BILLING CODE 7510-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

### **17 CFR Part 204**

[Release No. 34-44965]

RIN 3235-AI34

### **Debt Collection—Amendments to Collection Rules and Adoption of Wage Garnishment Rules**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission (Commission) is amending its debt collection rules. The amendments update procedures and make technical amendments to the Commission's rules for debt collection by administrative offset, federal salary offset, and tax refund offset, and add new rules for administrative wage garnishment. The changes are required by the Debt Collection Improvement Act of 1996.

**EFFECTIVE DATE:** November 26, 2001.

**FOR FURTHER INFORMATION CONTACT:** Kenneth H. Hall, Office of Chief Counsel, Division of Enforcement at (202) 942-4635, or at 450 5th Street, NW., Washington, DC 20549-0506.

**SUPPLEMENTARY INFORMATION:** We are amending the Commission's debt collection rules to conform them to the Debt Collection Improvement Act of 1996 (DCIA) and related rules adopted by federal agencies with responsibilities for government-wide debt collection. Currently, the Commission has rules for collecting its unpaid debts through three offset methods: administrative, salary and tax offset.<sup>1</sup> The Commission also has rules concerning contracts for collection services to recover delinquent debts. The Commission adopted all of its debt collection rules in 1993 in accordance with then existing provisions of the Debt Collection Act, the Federal Claims Collection Standards (FCCS), and other authorities governing the collection of federal debts. On September 17, 1996, the Commission entered into an agreement with the Financial Management Service (FMS), a bureau of the Department of the

<sup>1</sup> 17 CFR part 204.

Treasury (Treasury), by which FMS performs collection services pursuant to the DCIA on the Commission's behalf. In November 2000, the Treasury and the Department of Justice (Justice) adopted a new version of the FCCS, governing the collection of federal debts generally.<sup>2</sup> As a result of the promulgation of a series of rules issued since the passage of the DCIA, the Commission's existing rules for debt collection by offset need to be conformed and updated. In particular, the DCIA and revised government-wide regulations contemplate that Treasury will conduct centralized offset against amounts owed by the government to debtors. Under this centralized Treasury Offset Program (TOP), federal agencies are to refer delinquent debts to Treasury, which compares them to amounts to be paid out by the government. Treasury can then cause those amounts to be withheld in satisfaction of the debts. To participate in TOP, federal agencies are required to conform their debt collection rules to government-wide regulations regarding administrative, salary and tax refund offset.

The most significant change to the Commission's debt collection rules is the addition of administrative wage garnishment for non-federal employee wages.<sup>3</sup> Previously, administrative wage garnishment was available only against federal employees, through federal salary offset. To garnish the wages of non-federal employees, federal agencies had to obtain a court order. As a result of the DCIA and Treasury's implementing rules,<sup>4</sup> the Commission, or a federal agency collecting debts on behalf of the Commission, has the authority to issue a wage garnishment order. Such an order could direct an employer to withhold an employee's wages and pay the amount withheld to the Commission, or the appropriate agency, to satisfy the delinquent debt. The DCIA authorizes federal agencies to garnish up to 15% of the disposable pay of a debtor to satisfy delinquent nontax debts owed to the United States.

Other changes to the Commission's debt collection rules are primarily technical in nature. The changes conform the Commission's rules to make them consistent with changes to

federal debt collection law and regulations promulgated by Treasury, Justice, and the Office of Personnel Management (OPM).

## I. Discussion of Amendments

### A. Administrative Offset

The Commission adopting amendments to Subpart A of its debt collection rules, which set forth procedures for collection by administrative offset.<sup>5</sup> Administrative offset is the general procedure by which debts are collected through the withholding of funds payable to the debtor by the government.<sup>6</sup> The Commission is amending its regulations to make clear that debts can be processed through TOP.<sup>7</sup> As amended, Subpart A is consistent with the statutory procedures for administrative offset<sup>8</sup> and the FCCS.<sup>9</sup>

### B. Federal Salary Offset

The Commission is amending Subpart B of its debt collection rules, which sets forth procedures for collection by federal salary offset.<sup>10</sup> Federal salary offset is the collection of a debt owed by a federal employee by withholding up to 15% of the employee's disposable pay.<sup>11</sup> The procedures for salary offset are governed by 5 U.S.C. 5514, and by OPM regulations.<sup>12</sup> OPM amended its rules to make clear that salary offset should be conducted through TOP,<sup>13</sup> and the Commission is amending its regulations to reflect this preference. OPM also requires agencies to specify in their regulations that the notice and hearing provisions that are otherwise applicable to not apply when offset is effected within four pay periods to correct clerical errors or to collect amounts of \$50 or less,<sup>14</sup> and requires that agency rules specify the maximum percentage (15% of disposable pay) that can be withheld.<sup>15</sup> As amended, the Commission's rules add conforming language. As amended, Subpart B is consistent with government-wide salary offset authorities.

### C. Tax Refund Offset

The Commission is amending Subpart C of its rules for collection by tax refund

offset,<sup>16</sup> which is the collection of a debt through the withholding of federal tax refunds owed to the debtor.<sup>17</sup> This form of offset previously was addressed by Internal Revenue Service regulations, but is now governed by Treasury regulations,<sup>18</sup> with which agency regulations must be consistent.<sup>19</sup> As amended, the Commission's rules make clear that debts will be referred to Treasury, and hence may be processed through TOP. As amended, Subpart C is consistent with the DCIA and Treasury's regulations.

### D. Garnishment of Non-Federal Wages

The Commission is adopting new administrative wage garnishment regulations,<sup>20</sup> authorized by the DCIA.<sup>21</sup> Prior law required federal agencies to obtain a court order for garnishment of non-federal wages, but the DCIA permits agencies to collect debts by ordering a non-federal employer to deduct amounts up to 15% of an employee's disposable pay (or a greater amount to which the employee consents). Treasury regulations require agencies to adopt regulations for the conduct of administrative wage garnishment hearings,<sup>22</sup> The Commission's rules essentially track Treasury's regulations. A debtor will be provided 30 days notice of the Commission's intent to collect by garnishment, and will be provided an opportunity to inspect and copy records relating to the debt, an opportunity to enter into a written repayment agreement, and an opportunity for a hearing on the existence or amount of the debt. If the debtor does not request a hearing, a wage garnishment order will be sent to the debtor's employer within 30 days after the end of the 15-day period allowed for the debtor's response. If the debtor requests a hearing within 15 days of mailing of the Commission's initial notice, a hearing will be provided, and a decision will be rendered within 60 days after the hearing. If the Commission determines after the hearing to proceed with garnishment, a garnishment order will be sent to the debtor's employer within 30 days of its decision. The Commission's regulations are consistent with the DCIA and Treasury regulations.<sup>23</sup>

<sup>2</sup> 65 FR 70390 (Nov. 22, 2000) (adopting 31 CFR parts 900 through 904).

<sup>3</sup> Garnishment refers to the process of withholding amounts from an employee's disposable pay and paying those amounts to a creditor in satisfaction of a debt. 31 CFR 285.11(c).

<sup>4</sup> The DCIA authorized Treasury to issue rules governing administrative wage garnishment. 31 U.S.C. 3720D. Treasury's implementing rules went into effect on June 5, 1998. 63 FR 25136 (May 6, 1998) (adopting 31 CFR 285.11).

<sup>5</sup> 17 CFR 204.1 through 204.11.

<sup>6</sup> 31 U.S.C. 3701(a)(1), 3716.

<sup>7</sup> 17 CFR 204.3 and 204.9.

<sup>8</sup> 31 U.S.C. 3716.

<sup>9</sup> 31 CFR 901.3.

<sup>10</sup> 17 CFR 204.30 through 204.44.

<sup>11</sup> 5 U.S.C. 5514(a).

<sup>12</sup> 5 CFR part 550, subpart K, 63 FR 72098 (Dec. 31, 1998).

<sup>13</sup> 5 CFR 550.1108, 1109.

<sup>14</sup> 5 CFR 550.1104(c).

<sup>15</sup> 5 CFR 550.1104(d).

<sup>16</sup> 17 CFR 204.50 through 204.56.

<sup>17</sup> 31 U.S.C. 3720A.

<sup>18</sup> 31 CFR 285.2.

<sup>19</sup> 31 CFR 285.2(c).

<sup>20</sup> 17 CFR 204.60 through 204.65.

<sup>21</sup> 31 U.S.C. 3720D.

<sup>22</sup> 31 CFR 285.11(f)(1).

<sup>23</sup> Under Treasury's garnishment rules, an employer receiving a garnishment order must return a certification, in a form determined by Treasury,

### *E. Miscellaneous*

The Commission is adopting technical amendments to its regulations concerning use of collection services and reporting of debts to consumer reporting agencies. These changes are principally to update statutory and regulatory references, and to conform to the DCIA and the FCCS.

## **II. Section-by-Section Analysis**

### *A. Administrative Offset*

The following summarizes the contents of 17 CFR 204, Subpart A, as amended.

#### **1. Section 204.1 Applicability and Scope**

This section states the authority for the administrative offset regulations. It is amended solely to update statutory references and to substitute the Department of the Treasury for the General Accounting Office as an agency responsible for the implementation of the FCCS.

#### **2. Section 204.2 Definitions**

This section provides definitions of "administrative offset" and "person." It is amended solely to track the definition of "administrative offset" in the Debt Collection Act.

#### **3. Section 204.3 General**

This section sets forth the conditions for administrative offset. The considerations to be weighed in deciding whether to use administrative offset originally tracked requirements in the pre-DCIA version of the FCCS, which required agencies to determine the appropriateness of offset on a case-by-case basis. Because the TOP system contemplates automatic use of this form of offset, these conditions are removed. The regulation is also amended to permit referral of debts to Treasury for administrative offset through TOP.

#### **4. Section 204.4 Demand for Payment—Notice**

The FCCS requires agencies to adopt regulations regarding notice to the debtor. The pre-DCIA version of the FCCS required three progressively stronger letters to the debtor prior to administrative offset, a requirement that has been dropped in the current FCCS as too restrictive. This requirement is deleted from the Commission's regulations as well, and the content of

that addresses matters such as information about the debtor's employment status and disposable pay available for withholding. 5 CFR 285.11(h). In addition, employers are forbidden to discharge, refuse to employ, or take disciplinary action against a debtor due to the issuance of a withholding order. 5 CFR 285.11(m).

notice letters is conformed to the current FCCS.

#### **5. Section 204.5 Debtor's Failure to Respond**

This provision alerts debtors that offset will be effected if no timely response is made. No substantive changes have been made.

#### **6. Section 204.6 Agency Review**

This section is amended to make clear that no attempts to reargue or collaterally attack the findings that resulted in a judicial or administrative order establishing a debt will be considered. With respect to debts established by a judicial or administrative order, a debtor may request a hearing limited to consideration of the issue of payment or other discharge of the debt.

#### **7. Section 204.7 Hearing**

This section describes the circumstances under which an oral hearing may be required. No substantive change has been made.

#### **8. Section 204.8 Written Agreement for Repayment**

This section states that a debtor will be provided an opportunity to enter into a written repayment agreement. No substantive change has been made.

#### **9. Section 204.9 Administrative Offset Procedures**

This section provides the basic procedures for effecting administrative offset after the debtor's due process rights have been exhausted. The rule continues to permit the Commission to engage in non-centralized offset with other federal agencies. Section 204.9(b), regarding travel advances, reflects a separate provision of law under which the Commission may offset such advances against other amounts due an employee. The rule is amended to permit the Commission to request that FMS collect the debt through TOP.

#### **10. Section 204.10 Civil and Foreign Service Retirement Fund**

Prior to the DCIA, federal retirement payments were subject to separate offset rules. Such payments are now subject to the general rules for administrative offset, and thus there is no longer a need to address these payments separately. The entire section has been deleted.

#### **11. Section 204.11 Jeopardy Procedure**

In some cases, there may be insufficient time to effect offset through TOP before a payment has been made to the debtor. In such cases, the FCCS permits a creditor agency to seek offset

directly from the agency that is about to make the payment, and to omit the notice and opportunity for review otherwise required prior to offset. After offset is effected, the agency must provide notice and an opportunity for review, and must refund amounts found not to be owing to the government. Under the revised FCCS, this jeopardy provision applies only when an agency is conducting non-centralized offset under 31 CFR 901.3(c). The section is amended to indicate that it applies only to non-centralized offset.

### *B. Salary Offset*

The following summarizes the contents of 17 CFR 204, Subpart B, as amended.

#### **1. Section 204.30 Purpose and Scope**

This purpose section describes federal salary offset generally, and indicates that it applies both to the Commission's own employees and to employees of other agencies.

#### **2. Section 204.31 Excluded Debts or Claims**

This section exempts certain types of debts from salary offset. The DCIA amended the Social Security Act to permit the Commissioner of Social Security to collect delinquent claims by salary offset; OPM has conformed its regulations by deleting the exemption for debts arising under the Social Security Act. The effect of the changes is that the Social Security Administration can now offset debts owed by Commission employees, either through TOP or by submitting a request directly to the Commission. The rule is amended to delete reference to the prior Social Security exemption.

#### **3. Section 204.32 Definitions**

This section contains definitions applicable to this subpart. No substantive changes have been made.

#### **4. Section 204.33 Pre-Offset Notice**

This section describes the rights of the debtor that must be included in the pre-offset notice. The DCIA amended the salary offset statute to permit agencies to omit notice when correcting a minor error within four pay periods of the error, or when collecting amounts of \$50 or less. OPM also amended its regulations to make clear that the amount of a salary offset may be expressed in the pre-offset notice to the debtor as a percentage of pay, not to exceed 15%, and to remove the requirement that agencies include in their notices information about the commencement date and duration of deductions. The amendments to the

Commission's rules adopt the language of the OPM amendments.

#### 5. Section 204.34 Employee Response

This section provides guidance on employee responses to pre-offset notices. Employees must be given 15 days to request a hearing, and a timely request stays offset until after the hearing. The employee must be given an opportunity to enter into a written repayment agreement. No amendments to this section have been made.

#### 6. Section 204.35 Petition for Pre-Offset Hearing

this section provides that an employee's request for pre-offset review must state with reasonable specificity the basis for the employee's belief that the Commission's determination on the debt is in error, and must identify facts, evidence and witnesses. This section is amended solely to clarify that no attempts to reargue or collaterally attack the findings that resulted in a judicial or administrative order establishing a debt will be considered. With respect to debts established by a judicial or administrative order, a debtor may request a hearing limited to consideration of the issue of payment or other discharge of the debt.

#### 7. Section 204.36 Granting of a Pre-offset Hearing

This section provides that the Commission will arrange for an independent hearing official (who may be an Administrative Law Judge) to conduct pre-offset hearings. No substantive amendments have been made.

#### 8. Section 204.37 Extensions of time

This section provides the hearing official with discretion to control the time limits set in the Commission's salary offset regulations, except for the 30-day initial notice and 60-day final decision periods that are established by law. No amendments have been made.

#### 9. Section 204.38 Pre-offset Hearing

This section permits the hearing official to determine the form and content of hearings, consistent with the FCCS. No substantive amendments have been made.

#### 10. Section 204.39 Written Decision

This section provides that the hearing official must issue a written opinion within 60 days of the filing of a petition for a pre-offset hearing. No amendments have been made.

#### 11. Section 204.40 Deductions

This section provides guidance on when deductions may begin, the source

of deductions, and the duration of deductions. It also provides that any interest, penalties or administrative costs of collection will be imposed according to provisions of the FCCS. No substantive amendments have been made.

#### 12. Section 204.41 Non-waiver of Rights.

The section provides that involuntary collection by offset does not constitute a waiver of an employee's rights under the offset law or any other applicable law. No amendment has been made.

#### 13. Section 204.42 Refunds

This section provides that the Commission will promptly refund amounts if a debt is waived or found not to be owing, but that such refunds will not bear interest unless required by law. No amendments have been made.

#### 14. Section 204.43 Coordinating Offset with Another Federal Agency

This section provides guidance on requesting offset by another federal employer. The DCIA contemplates that agencies will normally process requests for salary offset through TOP, and OPM has amended its regulations to require that preference be given to centralized offset through TOP. However, there may be circumstances in which direct coordination with another agency may be preferable, and this method of conducting offset has been retained. This section is amended to make clear that centralized offset under the OPM regulations is to be attempted whenever possible; no other substantive changes have been made.

#### 15. Section 204.44 Interest, Penalties, and Administrative Costs

This section provides that interest, penalties and administrative costs of collection are to be assessed in accordance with the FCCS. No substantive amendments have been made.

#### *C. Tax Refund Offset.*

The following summarizes the contents of CFR part 204, Subpart C, as amended.

#### 1. Section 204.50 Purpose

This purpose section is amended to reflect the requirement that tax refunds be sought through Treasury and not directly through the IRS. References to pre-DCIA provisions are deleted.

#### 2. Section 204.51 Past-due Legally Enforceable Debt

This section stated the preconditions for referral to IRS under prior law.

Because tax refund offset will be processed through the TOP system, these provisions are no longer needed. The section is deleted in its entirety.

#### 3. Section 204.52 Notification of Intent to Collect

This section describes the content of the Commission's notice to the debtor. This section is amended to make clear that no attempts to reargue or collaterally attack the findings that resulted in a judicial or administrative order establishing a debt will be considered. With respect to debts established by a judicial or administrative order, a debtor may request a hearing limited to consideration of the issue of payment or other discharge of the debt.

#### 4. Section 204.53 Reasonable Attempt to Notify

This section reflects prior IRS regulations that required agencies to rely solely upon addresses obtained from the IRS when sending pre-offset notices. Treasury has determined that agencies may in fact have better addresses in their debt files, and thus has not made this a requirement in its regulations. This section is deleted in its entirety.

#### 5. Section 204.54 Commission Action as a Result of Consideration of Evidence Submitted in Response to the Notice of Intent

Before a tax refund offset can be effected, agencies are required to consider evidence submitted by the debtor, and to determine that the debt is in fact past due and legally enforceable. Prior IRS regulations required that debtors be provided with the opportunity to dispute a debt before the debt was referred to IRS for tax refund offset. Agencies are now to refer all delinquent debt to Treasury for processing through TOP. This regulation is amended to reflect the changes in processing of requests for tax refund offset.

#### 6. Section 204.55 Change in Notification to Internet Revenue Service

In some cases, the amount referred for tax refund offset may be subject to change (for example, as a result of payments by the debtor or clerical errors by an agency). This section governs the Commission's requests for changes in the amount referred for tax refund offset. Treasury's regulations permit upward adjustments, so long as the debtor is provided additional notice and opportunity to be heard as to the amount of the increase. The Section has been amended to remove references to

the IRS and to conform to Treasury regulations.

#### 7. Section 204.56 Administrative Charges

The DCIA requires Treasury to specify in government-wide regulations that agencies are to pay a fee to reimburse Treasury for conducting tax refund offset. Treasury's tax refund offset fee provision allows agencies, to the extent permitted by law, to add this fee to the amount of the debt. This section is amended to conform to Treasury's regulation.

#### D. Administrative Wage Garnishment.

The following summarizes the contents of 17 CFR part 204, Subpart D.

##### 1. Section 204.60 Purpose.

This purpose section states that the Commission may use administrative wage garnishment to collect debts. The provisions tracks the language of the corresponding purpose section in Treasury's regulations.

##### 2. Section 204.61 Scope.

This scope section makes clear that administrative wage garnishment may be conducted in conjunction with other methods of collection, including other forms of offset. The section excludes collection from the salaries of federal employees governed by the federal salary offset statute.

##### 3. Section 204.62 Definitions

Key definitions of "disposable pay," "employer," "garnishment," and "withholding order" are taken verbatim from the Treasury regulations. A definition of "debt or delinquent nontax debt" has been added.

##### 4. Section 204.63 Notice

This section requires notice to the debtor at least 30 days prior to the initiation of garnishment, and specifies the contents of the notice and the rights to be provided the debtor. This section provides that no attempts to reargue or collaterally attack the findings that resulted in a judicial or administrative order establishing a debt will be considered. With respect to debts established by a judicial or administrative order, a debtor may request a hearing limited to consideration of the issue of payment or other discharge of the debt.

##### 5. Section 204.64 Hearing

This section describes the form and content of the hearing that may be sought by a debtor to contest administrative wage garnishment. A hearing must be sought within 15 days

of the Commission's notice to the debtor. A hearing may be presided over by the Commission or by a hearing official such as an administrative law judge. It is anticipated that should any hearings be sought, they would routinely be assigned to an administrative law judge. A decision must be rendered within 60 days after the request for a hearing. These provisions are derived from the corresponding hearing provisions in Treasury's regulations.

#### 6. Section 204.65 Wage Garnishment Order

This section describes the procedures for issuing a wage garnishment order. If the debtor does not respond within 15 days of the Commission's initial notice, the Commission may send a garnishment order to the debtor's employer. The order must be sent within 30 days after the end of the 15-day period allowed for the debtor's response. Alternatively, if the debtor requests a hearing, the garnishment order must be sent to the debtor's employer within 30 days of the final decision to proceed with garnishment. These provisions, as well as the provisions regarding the form of the withholding order, the guidance on the amounts to be withheld, exclusions, financial hardship, ending garnishment, and refunds are derived from the corresponding provisions in Treasury's regulations.

#### E. Miscellaneous: Credit Bureau Reporting, Collection Services

The following summarizes the contents of 17 CFR part 204, Subpart E, as amended.

##### 1. Section 204.75 Collection Services

This section states generally that the Commission may enter into collection contracts, provided that authority to resolve disputes about debts or to end collection rests with the Commission, and that any contractor will be subject to the Privacy Act of 1974 and other debt collection statutes. No substantive amendments have been made.

##### 2. Section 204.76 Use of Credit Bureau or Consumer Reporting Agencies

This section provides that the Commission may refer debts to consumer reporting agencies. No substantive amendments have been made.

##### 3. Section 204.77 Referrals to Collection Agencies.

This section provides that the Commission may employ collection agencies. The section is revised to clear

that contractors must provide any data requested by the Commission in connection with a referral to Justice. The section has also been revised to delete a provision stating that the Commission would not use collection agencies to collect a debt from current or retired employees when salary or annuity offset was available. Annuity offset is no longer a distinct form of offset, and requests for salary offset are to be processed through Treasury, which is authorized to employ collection agencies to act on the Commission's behalf.

### III. Related Matters

#### A. Administrative Procedure Act

No notice of proposed rulemaking is required under the Administrative Procedure Act (APA) because these rules relate solely to agency procedure and practice.<sup>24</sup>

#### B. Regulatory Flexibility Act

A regulatory flexibility analysis under the Regulatory Flexibility Act (RFA)<sup>25</sup> is required only when an agency must publish a general notice of proposed rulemaking. As already noted, the APA's notice and comment procedures are not required for these amendments. Thus, the RFA does not require a regulatory flexibility analysis.<sup>26</sup>

#### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply to collections of information during the conduct of administrative actions by an agency against specific individuals or entities. Commissions debt collection actions are taken only against specifically identified individuals or entities. Thus, Office of Management and Budget review is not required.

#### D. Cost-Benefit Analysis

The Commission's amendments to its debt collection rules merely conform those rules in accordance with the requirements of the DCIA and related federal regulations including rules adopted by the Department of the Treasury and the Department of Justice. Upon adoption of the DCIA, Congress determined that the adopted changes would maximize collection of delinquent debts while minimizing the costs of debt collections.<sup>27</sup>

Any costs that might be incurred are attributable to changes in the statutory provisions. Because the Commission

<sup>24</sup> 5 U.S.C. 553(b)(3)(A).

<sup>25</sup> 5 U.S.C. 603.

<sup>26</sup> 5 U.S.C. 601-12.

<sup>27</sup> Debt Collection Improvements, Pub. L. No. 104-134, § 31001(b), 110 Stat. 1321 (1996).

already has in place rules for administrative offset of debts owed, the principal costs of the rule will be in connection with administrative wage garnishment rules and will mainly be imposed on employers.<sup>28</sup> An employer served with a withholding order will be required to complete and return a certification form to the agency.<sup>29</sup>

The Commission reviewed civil and administrative judgments in enforcement actions in which a monetary sanction was ordered in calendar year 2000, to approximate the number of employers that might receive garnishment orders in a given year.<sup>30</sup> In 2000, the Commission obtained orders for 707 monetary sanctions, including disgorgement, penalties assessed under the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, and/or insider trading penalties. Currently, 146 individuals owing monetary sanctions have yet to pay either all or some portion of the amounts imposed upon them. Thus, if each unpaid sanction pertained to an employee of a different employer, no more than 146 employers could potentially receive garnishment orders.

In its analysis of the DCIA's administrative wage garnishment program for the entire federal government, the Department of the Treasury determined that even if an employer were served with withholding orders on several employees over the course of a year, the cost imposed on the employer to comply with the orders would not have a significant impact on that entity.<sup>31</sup> In adopting government-wide regulations, Treasury also stated that although a substantial number of employees from small entities will be subject to the garnishment regulations,<sup>32</sup> its rules "will not have a significant economic impact on these entities."<sup>33</sup> Based on the Department of Treasury's analysis, we do not anticipate that the Commission's regulations will result in significant costs to employers. The benefit provided by administrative wage garnishment will be enhanced recovery

of delinquent debts owned to the government.

#### List of Subjects in 17 CFR Part 204

Claims, Debt collection, Government employees, Wages.

#### Text of Amendments

For the reasons stated in the preamble, part 204 of title 17 of the Code of Federal Regulations is amended as follows:

### PART 204—RULES RELATING TO DEBT COLLECTION

#### Subpart A—Administrative Offset

1. The authority citation for Subpart A is revised to read as follows:

**Authority:** 31 U.S.C. 3716, 31 CFR 901.3.

2. Section 204.1 is amended by revising paragraph (b) to read as follows:

#### § 204.1 Applicability and scope.

(b) The provisions of this subpart apply to the collection of debts owed to the United States arising from transactions with the Securities and Exchange Commission (Commission). These regulations are consistent with the Debt Collection Act and the Federal Claims Collection Standards on administrative offset issued jointly by the Department of Justice and the Department of the Treasury (31 CFR 901.3).

#### § 204.2 [Amended]

3. Section 204.2 is amended by revising paragraph (a) to read as follows:

(a) *Administrative offset* as defined in 31 U.S.C. 3701(a)(1) means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a claim.

4. Section 204.3 is amended by:

a. Removing paragraph (a);  
b. Redesignating paragraphs (b) through (f) as paragraphs (a) through (e); and

c. Revising newly redesignated paragraphs (b), (c), and (e) to read as follows:

#### § 204.3 General.

(b) The Chairperson (or designee) may notify the Department of the Treasury of delinquent debts for purposes of administrative offset, and may request another agency which holds funds payable to a Commission debtor to offset that debt against the funds held; the

Commission will provide certification that:

(1) The debt is past due and legally enforceable; and

(2) The person has been afforded the necessary due process rights.

(c) No collection by administrative offset shall be made on any debt that has been outstanding for more than 10 years unless facts material to the Government's right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering the debt. This limitation does not apply to debts reduced to judgment.

(e) The procedures for administrative offset in this subpart do not apply to the offset of Federal salaries under 5 U.S.C. 5514 or Federal tax refunds under 31 U.S.C. 3720A and 31 CFR 285.2.

5. Section 204.4 is amended by:  
a. Removing paragraphs (a) and (b);  
b. Redesignating paragraphs (c) and (d) as paragraphs (a) and (b); and  
c. Revising newly redesignated paragraph (a) to read as follows:

#### § 204.4 Demand for payment—notice.

(a) Before offset is made, a written notice will be sent to the debtor. This notice will include:

(1) The type and amount of the debt;  
(2) The date when payment is due (not less than thirty days from the date of mailing or hand delivery of the notice);

(3) The agency's intention to collect the debt by administrative offset, including asking the assistance of other Federal agencies to help in the offset whenever possible, if the debtor has not made payment by the payment due date or has not made an arrangement for payment by the payment due date;

(4) The right of the debtor to inspect and copy the Commission's records related to the claim;

(5) The right of the debtor to request a review of the determination of indebtedness and, in the circumstances described in § 204.7, to request an oral hearing from the Commission's designee; and

(6) The right of the debtor to enter into a written agreement with the agency to repay the debt in some other way.

6. The introductory text of § 204.5 is revised to read as follows:

#### § 204.5 Debtor's failure to respond.

If the debtor fails to respond to the notice described in § 204.4(a) by the proposed effective date specified in the notice, the Commission may take further

<sup>28</sup> Administrative offset applies when collecting debt owned both by entities and individuals. Administrative wage garnishment applies only when collecting debts from individuals.

<sup>29</sup> 31 CFR 285.11(h).

<sup>30</sup> We choose calendar year 2000 as the appropriate base year because these amendments require a minimum of 180 days non-payment before the case can be transferred to the TOP program. Therefore, monetary sanctions imposed in December 2000 would only have become eligible for the program in June 2001.

<sup>31</sup> 63 FR 25136, 25139 (May 6, 1998).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

action under this section or under the Federal Claims Collection Standards (31 CFR 901.3). The commission may collect by administrative offset if the debtor:

\* \* \* \* \*

7. Section 204.6 is amended by revising paragraphs (a) and (d) to read as follows:

**§ 204.6 Agency reviews.**

(a) To the extent that a debt owed has not been established by judicial or administrative order, a debtor may request a hearing concerning the existence or amount of the debt or the terms of repayment. With respect to debts established by a judicial or administrative order, a debtor may request a hearing concerning the payment or other discharge of the debt. A request to review a disputed debt must be submitted to the Commission official who provided notification within 30 calendar days of the receipt of the written notice described in § 204.4(c).

\* \* \* \* \*

(d) During the review period, interest, penalties, and administrative costs will continue to accrue.

8. Section 204.7 is amended by revising the word "credibility" to read "credibility" in paragraph (a)(1)(iii).

9. Section 204.8 is amended by revising the first and last sentences of the section to read as follows:

**§ 204.8 Written agreement for repayment.**

If the debtor requests a repayment agreement in place of offset, the Commission has discretion to determine whether to accept a repayment agreement in place of offset. \* \* \* Notwithstanding the provisions of this section, any reduction or compromise of a claim will be governed by the Debt Collection Act, 31 U.S.C. 3711–3720E, and the Federal Claims Collection Standards, 31 CFR 900.1–904.4.

10. Section 204.9 is amended by revising paragraphs (c) and (d) to read as follows:

**§ 204.9 Administrative offset procedures.**

\* \* \* \* \*

(c) *Requests for offset to the Department of the Treasury or other Federal agencies.* The Chairperson (or his or her designee) may notify the Department of the Treasury of delinquent debts for purposes of administrative offset, and may request that a debt owed to the Commission be administratively offset against funds due and payable to a debtor by another Federal agency. In requesting administrative offset, the Commission,

as creditor, will certify in writing to the Federal agency holding funds of the debtor that:

(1) The debtor owes the past due and legally enforceable debt; and

(2) The debtor has been afforded the necessary due process rights.

(d) *Requests for offset from other Federal agencies.* Any Federal agency may request that funds due and payable to its debtor by the Commission be administratively offset in order to collect a debt owed to such Federal agency by the debtor. The Commission shall initiate the requested offset only upon:

(1) Receipt of written certification from the creditor agency that:

(i) The debtor owes the past due and legally enforceable debt; and

(ii) The debtor has been afforded the necessary due process rights.

(2) A determination by the Commission that collection by offset against funds payable by the Commission would be in the best interest of the United States as determined by the facts and circumstances of the particular case, and that such offset would not otherwise be contrary to law.

11. Section 204.10 is removed and reserved.

**§ 204.10 [Removed]**

12. Section 204.11 is amended by revising the reference "§ 204.4(c)" in the first sentence to read "§ 204.4(a)", and by adding a sentence to the end of the section to read as follows:

**§ 204.11 Jeopardy procedure.**

\* \* \* This section applies only to administrative offset pursuant to 31 CFR 901.3(c), and does not apply when debts are referred to the Department of the Treasury for mandatory centralized administrative offset under 31 CFR 901.3(b)(1).

**Subpart B—Salary Offset**

13. The authority citation for Subpart B is revised to read as follows:

Authority: 5 U.S.C. 5514, 5 CFR 550.1104.

14. Section 204.31(a) is amended by removing the words "the Social Security Act (42 U.S.C. 301)".

**§ 204.32 [Amended]**

15. Section 204.32 is amended by revising the phrase "General Accounting Office at 4 CFR part 101" in the definition of FCCS to read "Department of the Treasury at 31 CFR parts 900–904".

16. Section 204.33 is amended by revising the introductory text and

paragraph (c) and, in the second sentence of paragraph (f), by revising the reference "4 CFR 102.2(e)" to read "31 CFR 901.3(b)". The revisions read as follows:

**§ 204.33 Pre-offset notice.**

A program official must provide an employee with written notice at least 30 calendar days prior to offsetting his/her salary. A program official need not notify an employee of: any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less; a routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or any adjustment to collect a debt amounting to \$50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment. When required, the written notice must include the following:

\* \* \* \* \*

(c) The frequency and amount of the intended deductions (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay) and the intention to continue the deductions until the debt is paid in full or otherwise resolved;

\* \* \* \* \*

17. Section 204.35, paragraph (a) is amended by adding two sentences to the end to read as follows:

**§ 204.35 Petition for pre-offset hearing.**

(a) \* \* \* To the extent that a debt has not been established by judicial or administrative order, a debtor may request a pre-offset hearing concerning the existence or amount of the debt or the terms of repayment. With respect to debts established by a judicial or administrative order, a debtor may request a pre-offset hearing concerning the payment or other discharge of the debt.

**§ 204.36 [Amended]**

18. Section 204.36, paragraph (b), second sentence, is amended by revising



the reference “4 CFR 102.3(c)” to read “31 CFR 901.3(e)”.

#### **§ 204.38 [Amended]**

19. Section 204.38, paragraph (a), first sentence, is amended by revising the reference “4 CFR 102.3(c)” to read “31 CFR 901.3(e)”.

#### **§ 204.40 [Amended]**

20. Section 204.40 is amended by:

- a. Revising the reference “4 CFR part 101” in the introductory text of paragraph (b) to read “the FCCS”;
- b. Revising the reference “4 CFR 102.13” in paragraph (b)(2) to read “the FCCS”; and
- c. Revising the reference “4 CFR 102.13” in paragraph (e) to read “31 CFR 901.9”.

21. Section 204.43 is amended by revising the reference “4 CFR part 101” in paragraph (a)(6) to read “the FCCS”, and by revising the introductory text of paragraph (a) to read as follows:

#### **§ 204.43 Coordinating offset with another federal agency.**

(a) *Responsibility of the Commission as the Creditor Agency.* When possible, salary offset through the centralized administrative offset procedures in 5 CFR 550.1108 shall be attempted before applying the procedures in this section. If centralized administrative offset is not possible, the Commission shall request recovery from the current paying agency. Upon completion of the procedures established in these regulations and pursuant to 5 U.S.C. 5514, 5 CFR 550.1109 the Commission must:

\* \* \* \* \*

#### **§ 204.44 [Amended]**

22. Section 204.44 is amended by revising the reference “4 CFR 102.13” to read “31 CFR 901.9”.

#### **Subpart C—Tax Refund Offset**

23. The authority citation for Subpart C is revised to read as follows:

**Authority:** 31 U.S.C. 3720A, 31 CFR 285.2(c).

24. Section 204.50 is revised to read as follows:

#### **§ 204.50 Purpose.**

This subpart establishes procedures for the Commission’s referral of past-due legally enforceable debts to the Department of the Treasury’s Financial Management Service (FMS) for offset against the income tax refunds of the debtor.

25. Section 204.51 is removed and reserved.

#### **§ 204.51 [Reserved]**

26. Section 204.52 is amended by:

- a. Revising paragraph (a);
- b. Removing “IRS” in the introductory text of paragraph (b);
- c. Revising the phrase “the IRS to reduce” to read “a reduction of” in paragraph (b)(2); and
- d. Adding paragraph (c) to read as follows:

#### **§ 204.52 Notification of intent to collect.**

(a) *Notification before tax refund offset.* Reduction of an income tax refund will be made only after the Commission makes a determination that an amount is owed and past-due and gives or makes a reasonable attempt to give the debtor 60 days written notice of the intent to collect by tax refund offset.

\* \* \* \* \*

(C) To the extent that a debt owed has not been established by judicial or administrative order, a debtor may dispute the existence or amount of the debt or the terms of repayment. With respect to debts established by a judicial or administrative order, Commission review will be limited to issues concerning the payment or other discharge of the debt.

27. Section 24.53 is removed and reserved.

#### **§ 204.53 [Removed and reserved]**

28. Section 204.54 is amended by:

- a. Altering the phrase “any notice to the IRS” “tax refund offset” in the introductory text of paragraph (a);
- b. Removing paragraph (b); and
- c. Redesignating paragraph (c) as paragraph (b) and revising newly redesignated paragraph (b) to read as follows:

#### **§ 204.54 Commission action as a result of consideration of evidence submitted in response to the notice of intent.**

\* \* \* \* \*

(b) *Commission action on the debt.* (1) The Commission will notify the debtor of its intent to offset against the debtor’s Federal income tax refund if it sustains its decision that the debt is past-due and legally enforceable. The Commission will also notify the debtor whether the amount of debt remains the same or is modified; and

(2) The Commission will not request offset against the debtor’s Federal income tax refund if it reverses its decision that the debt is past due and legally enforceable.

29. Section 204.55 is revised to read as follows:

#### **§ 204.55 Change in notification to Financial Management Service.**

After the Commission sends FMS notification of an individual’s liability

for a debt, the Commission will promptly notify FMS of any change in the notification, if the Commission:

(a) Determines that an error has been made with respect to the information contained in the notification;

(b) Receives a payment or credits a payment to the account of the debtor named in the notification that reduces the amount of the debt referred to FMS for offset; or

(c) If the debt amount is otherwise incorrect, except that the amount of a debt referred to FMS will not be increased unless the Commission has complied with the due process requirements of this subpart and the Federal Claims Collection Standards as to the amount of the increase.

30. Section 204.56 is revised to read as follows:

#### **§ 204.56 Administrative charges.**

To the extent permitted by law, all administrative charges incurred in connection with the referral of the debts for tax refund offset will be assessed on the debt and thus increase the amount of the offset.

#### **§§ 204.57–204.59 [Reserved]**

31. Subpart D is redesignated as Subpart E, and new Subpart D is added to read as follows:

#### **Subpart D—Administrative Wage Garnishment**

Sec.

204.60 Purpose.

204.61 Scope.

204.62 Definitions.

204.63 Notice.

204.64 Hearing.

204.65 Wage Garnishment Order.

**Authority:** 31 U.S.C. 3720D, 31 CFR 285.11(f).

#### **§ 204.60 Purpose.**

This subpart provides procedures for the Commission to collect money from a debtor’s disposable pay by means of administrative wage garnishment to satisfy a delinquent nontax debt owed to the United States.

#### **§ 204.61 Scope.**

(a) The receipt of payments pursuant to this subpart does not preclude the Commission from pursuing other debt collection remedies, including the offset of Federal payments to satisfy a delinquent nontax debt owed to the United States. The Commission may pursue such debt collection remedies separately or in conjunction with administrative wage garnishment.

(b) This subpart does not apply to the collection of delinquent nontax debt owed to the United States from the



wages of Federal employees from their Federal employment. Federal pay is subject to the Federal salary offset procedures set forth in 5 U.S.C. 5514 and other applicable laws.

#### § 204.62 Definitions.

The following definitions apply to this subpart:

*Debt or delinquent nontax debt* means any money, funds or property that has been determined to be owed to the Commission by an individual that has not been paid by the date specified in the demand or order for payment, or applicable agreement. For purposes of this subpart, the terms "debt" and "claim" are synonymous.

*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 subpart, "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.

*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 subpart, the terms "wage garnishment order" and "garnishment order" have the same meaning as "withholding order."

#### § 204.63 Notice.

(a) At least 30 days before the initiation of garnishment proceedings, the Commission will mail, by first class mail to the debtor's last known address, a written notice informing the debtor of:

- (1) The nature and amount of the debt;
- (2) The Commission's intention to initiate proceedings to collect the debt through deductions from pay until the debt and all accumulated interest, penalties and administrative costs are paid in full; and
- (3) An explanation of the debtor's rights, including those set forth in paragraph (b) of this section, and the

time frame within which the debtor may exercise these rights.

(b) The debtor will be afforded the opportunity:

- (1) To inspect and copy records related to the debt;
  - (2) To enter into a written repayment agreement with the Commission, under terms agreeable to the Commission; and
  - (3) To the extent that a debt owed has not been established by judicial or administrative order, to request a hearing concerning the existence or amount of the debt or the terms of the debt's repayment schedule. With respect to debts established by a judicial or administrative order, a debtor may request a hearing concerning the payment or other discharge of the debt. The debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement under paragraph (b)(2) of this section.
- (c) The notice required by this section may be included with the Commission's demand letter required by subpart A of this part.
- (d) The Commission will keep a copy of the certificate of service indicating the date of mailing of the notice.

#### § 204.64 Hearing.

(a) *Request for hearing.* The Commission will order a hearing, which at the Commission's option may be oral or written, if the debtor submits a written request for a hearing concerning, for debts not previously established by judicial or administrative order, the existence or amount of the debt or the terms of the repayment schedule (for repayment schedules established other than by written agreement under § 204.63(b)(2)), or for debts established by judicial or administrative order, the payment or other discharge of the debt.

(b) *Type of hearing or review.* (1) For purposes of this subpart, whenever the Commission is required to afford a debtor a hearing, the Commission will provide the debtor with a reasonable opportunity for an oral hearing when the Commission determined that the issues in dispute cannot be resolved by review of the documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity.

(2) If the Commission determines that an oral hearing is appropriate, the time and location of the hearing shall be established by the Commission. An oral hearing may, at the debtor's option, be conducted either in-person or by telephone conference. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All

telephonic charges incurred during the hearing will be the responsibility of the agency.

(3) In those cases when an oral hearing is not required by this section, the Commission will nevertheless accord the debtor a "paper hearing," that is, the Commission will decide the issues in dispute based upon a review of the written record.

(c) *Effect of timely request.* Subject to paragraph (l) of this section, if the debtor's written request is received by the Commission on or before the 15th business day following the mailing of the notice of the Commission's intent to seek garnishment, the Commission will not issue a withholding order until the debtor has been provided the requested hearing, and a decision in accordance with paragraphs (i) and (j) of this section has been rendered.

(d) *Failure to timely request a hearing.* If the debtor's written request is received by the agency after the 15th business day following the mailing of the notice of the Commission's intent to seek garnishment, the Commission shall provide a hearing to the debtor.

However, the Commission will not delay issuance of a withholding order unless the Commission determines that the delay in filing the request was caused by factors over which the debtor had no control, or the Commission receives information that the Commission believes justifies a delay or cancellation of the withholding order.

(e) *Hearing official.* All hearings shall be presided over by the Commission, or if the Commission so orders, by a hearing official. When the Commission designates that the hearing official shall be an administrative law judge, the Chief Administrative Law Judge shall select, pursuant to 17 CFR 200.30-10, the administrative law judge to preside.

(f) *Procedure.* After the debtor requests a hearing, the hearing official shall notify the debtor of:

- (1) The date and time of a telephonic hearing;
- (2) The date, time, and location of an in-person oral hearing; or
- (3) The deadline for the submission of evidence for a written hearing.

(g) *Burden of proof.* (1) The Commission will have the burden of going forward to prove the existence or amount of the debt.

(2) Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must prove by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the debtor may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to the

debtor, or that collection of the debt may not be pursued due to operation of law.

(h) *Record.* The hearing official will maintain a 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.

(i) *Date of decision.* The hearing official shall issue a written opinion stating his or her decision, as soon as practicable, but not later than sixty (60) days after the date on which the request for such hearing was received by the Commission. If the Commission is unable to provide the debtor with a hearing and a decision is not rendered within sixty (60) days after the receipt of the request for such hearing:

(1) A withholding order will not be issued until the hearing is held and a decision rendered; or

(2) If a withholding order had previously been issued to the debtor's employer, the withholding order will be suspended beginning on the 61st day after the receipt of the hearing request and continuing until a hearing is held and a decision is rendered.

(j) *Content of decision.* The written decision shall include:

(1) A summary of the facts presented;

(2) The findings, analysis and conclusions; and

(3) The terms of any repayment schedules, if applicable.

(k) *Finality of agency action.* Unless the Commission on its own initiative orders review of a decision by a hearing official pursuant to 17 CFR 201.431(c), a decision by a hearing official shall become the final decision of the Commission for the purpose of judicial review under the Administrative Procedure Act.

(l) *Failure to appear.* In the absence of good cause shown, a debtor who fails to appear at a scheduled hearing will be deemed as not having timely filed a request for a hearing.

#### **§ 204.65 Wage garnishment order.**

(a) Unless the Commission receives information that the Commission believes justifies a delay or cancellation of the withholding order, the Commission will send, by first class mail, a withholding order to the debtor's employer within 30 days after the debtor fails to make a timely request for a hearing (*i.e.*, within 15 business days after the mailing of the notice of the Commission's intent to seek garnishment) or, if a timely request for a hearing is made by the debtor, within 30 days after a decision to issue a withholding order becomes final.

(b) The withholding order sent to the employer will be in the form prescribed by the Secretary of the Treasury, on the Commission's letterhead, and signed by the Chairperson or his or her delegatee. The order will contain the information necessary for the employer to comply with the withholding order. This information includes the debtor's name, address, and social security number, as well as instructions for withholding and information as to where payments should be sent.

(c) The Commission will keep a copy of the certificate of service indicating the date of mailing of the order.

(d) *Certification by employer.* Along with the withholding order, the Commission will send to the employer a certification in a form prescribed by the Secretary of the Treasury. The employer shall complete and return the certification to the Commission within the time frame prescribed in the instructions to the form. The certification will address matters such as information about the debtor's employment status and disposable pay available for withholding.

(e) *Amounts withheld.* (1) After receipt of the garnishment order issued under this section, the employer shall deduct from all disposable pay paid to the applicable debtor during each pay period the amount of garnishment described in paragraph (e)(2) of this section.

(2) Subject to the provisions of paragraphs (e)(3) and (e)(4) of this section, the amount of garnishment shall be the lesser of:

(i) The amount indicated on the garnishment order up to 15% of the debtor's disposable pay; or

(ii) The amount set forth in 15 U.S.C. 1673(a)(2) (Restriction on Garnishment). The amount set forth at U.S.C. 1673(a)(2) is the amount by which the debtor's disposable pay exceeds an amount equivalent to thirty times the minimum wage *See* 29 CFR 870.10.

(3) When a debtor's pay is subject to withholding orders with priority, the following shall apply:

(i) Unless otherwise provided by Federal law, withholding orders issued under this section shall be paid in the amounts set forth under paragraph (e)(2) of this section and shall have priority over other withholding orders which are served later in time. However, withholding orders for family support shall have priority over withholding orders issued under this section.

(ii) If amounts are being withheld from a debtor's pay pursuant to a withholding order served on an employer before a withholding order issued pursuant to this section, or if a

withholding order for family support is served on an employer at any time, the amounts withheld pursuant to the withholding order issued under this section shall be the lesser of:

(A) The amount calculated under paragraph (e)(2) of this section; or

(B) An amount equal to 25% of the debtor's disposable pay less the amount(s) withheld under the withholding order(s) with priority.

(iii) If a debtor owes more than one debt to the Commission, the Commission may issue multiple withholding orders. The total amount garnished from the debtor's pay for such orders will not exceed the amount set forth in paragraph (e)(2) of this section.

(4) An amount greater than that set forth in paragraphs (e)(2) and (e)(3) of this section may be withheld upon the written consent of the debtor.

(5) The employer shall promptly pay to the Commission all amounts withheld in accordance with the withholding order issued pursuant to this section.

(6) An employer shall not be required to vary its normal pay and disbursement cycles in order to comply with the withholding order.

(7) Any assignment or allotment by the employee of the employee's earnings shall be void to the extent it interferes with or prohibits execution of the withholding order under this section, except for any assignment or allotment made pursuant to a family support judgment or order.

(8) The employer shall withhold the appropriate amount from the debtor's wages for each pay period until the employer receives notification from the Commission to discontinue wage withholding. The garnishment order shall indicate a reasonable period of time within which the employer is required to commence wage withholding.

(f) *Exclusions from garnishment.* The Commission will not garnish the wages of a debtor it knows has been involuntarily separated from employment until the debtor has been reemployed continuously for at least 12 months. The debtor has the burden of informing the Commission of the circumstances surrounding an involuntary separation from employment.

(g) *Financial hardship.* (1) A debtor whose wages are subject to a wage withholding order under this section, may, at any time, request a review by the Commission of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.

(2) A debtor requesting a review under this section shall submit the basis for claiming that the current amount of garnishment results in a financial hardship to the debtor, along with supporting documentation.

(3) If a financial hardship is found, the Commission will downwardly adjust, by an amount and for a period of time agreeable to the Commission, the amount garnished to reflect the debtor's financial condition. The Commission will notify the employer of any adjustments to the amounts to be withheld.

(h) *Ending garnishment.* (2) Once the Commission has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs consistent with the Federal Claims Collection Standards (31 CFR 901.9), the Commission will send the debtor's employer notification to discontinue wage withholding.

(2) At least annually, the Commission will review its debtors' accounts to ensure that garnishment has been terminated for accounts that have been paid in full.

(i) *Actions prohibited by the employer.* The Debt Collection Act prohibits an employer from discharging, refusing to employ, or taking disciplinary action against the debtor due to the issuance of a withholding order under this section (31 U.S.C. 3720D(e)).

(j) *Refunds.* (1) If a hearing official determines that a debt is not legally due and owing to the United States, the Commission shall promptly refund any amount collected by means of administrative wage garnishment.

(2) Unless required by Federal law or contract, refunds under this section shall not bear interest.

(k) *Right of action.* The Commission may sue any employer for any amount that the employer fails to withhold from wages owed and payable to an employee in accordance with this section. However, a suit will not be filed before the termination of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations. For purposes of this section, "termination of the collection action" occurs when the agency has terminated collection action in accordance with the Federal Claims Collection Standards (31 CFR 903.1-903.5) or other applicable standards. In any event, termination of the collection action will have been deemed to occur if the Commission has not received any payments to satisfy the debt from the particular debtor whose wages were subject to garnishment, in

whole or in part, for a period of one (1) year.

#### **Subpart E—Miscellaneous: Credit Bureau Reporting, Collection Services**

32. The authority citation for newly redesignated Subpart E continues to read as follows:

**Authority:** 31 U.S.C. 3701, 3711, 3718.

#### **§ 204.76 [Amended]**

33. Section 204.76, paragraph (a), fourth sentence, is amended by revising the reference "31 U.S.C. 3711(f)" to read "31 U.S.C. 3711(e)".

34. Section 204.77 is amended by removing paragraph (c) and by revising paragraphs (a) and (b)(5) to read as follows:

#### **§ 204.77 Referrals to collection agencies.**

(a) The Commission has authority to contract for collection services to recover delinquent debts in accordance with 31 U.S.C. 3718(a) and the Federal Claims Collection Standards (31 CFR 901.5).

(b) \* \* \*

(5) The contractor must agree to provide any data in its files requested by the Commission upon returning the account to the Commission for subsequent referral to the Department of Justice for litigation.

By the Commission.

Dated: October 22, 2001.

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## **DEPARTMENT OF STATE**

### **22 CFR Part 42**

#### **[Public Notice 3814]**

#### **Visas: Documentation of Immigrants Under the Immigration and Nationality Act—Diversity Visas**

**AGENCY:** Bureau of Consular Affairs, State.

**ACTION:** Final rule.

**SUMMARY:** This rule makes final (with minor modification) the Department of State's interim regulations published in the **Federal Register** on July 31, 2001 (66 FR 39435). The July 31st rule amended the Department's regulations regarding registration for the Diversity Visa (DV) Program. The regulations were amended to clarify the Department's interpretation of the statute with respect to the DV Program and to further enhance the Department's

ability to combat fraudulent practices in the DV Program. The rule also amended the regulations as they pertain to the use of the "Dictionary of Occupational Titles" formerly used to determine the required work experience since the document is no longer current. Consular officers must now make determinations regarding work experience based upon the U.S. Department of Labor's O\*Net OnLine. [Further information may be found on the Consular Affairs website at <http://travel.state.gov>.] This rule makes final the Department's interim regulations with slight modification to the photograph requirements.

**DATES:** Effective date: This rule takes effect on October 26, 2001.

**FOR FURTHER INFORMATION CONTACT:** Pam Chavez, Office of Legislation and Regulations, Visa Office, by phone (202) 663-1206, or by e-mail at [chavezpr@state.gov](mailto:chavezpr@state.gov).

#### **SUPPLEMENTARY INFORMATION:**

#### **What Is the Background for This Final Rule?**

In an effort to eliminate fraudulent applications in the Diversity Visa (DV) Program, the Department published an interim rule [66 FR 39435], with a request for comments, which amended the regulations at 22 CFR 42.33 regarding registration for the DV Program. The interim rule amended the Department's regulations by requiring that the applicant sign the DV entry in his or her native alphabet as this more naturally fulfills the requirement for a usual and customary signature on the DV entry. The interim regulations also required that, beginning with the DV 2003 registration, the entry must include photographs of the applicant, the applicant's spouse, and all of his or her unmarried children under age 21 years (including natural children as well as legally-adopted children and stepchildren). Photographs for all dependents must be submitted regardless of their nationality. Photographs are required even though the spouse or child no longer resides with the applicant and regardless of whether or not the dependent will accompany or follow to join the applicant in the United States. The name and date of birth of the family member must be printed on the back of his or her photograph. The Department is publishing this final rule to make final the interim regulations.

#### **What Comments Were Received in Response to the Interim Rule?**

The Department's interim rule solicited comments regarding the regulatory changes. During the comment