

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 313

RIN Number

Procedures for Corporate Debt Collection

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final Rule

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is amending Part 313, Procedures for Corporate Debt Collection, to include delinquent criminal restitution debt within the debt covered by Part 313.

EFFECTIVE DATE: This rule is effective upon publication in the Federal Register.

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SUPPLEMENTARY INFORMATION:

1. Background

The Debt Collection Improvement Act of 1996 (DCIA) requires federal agencies to collect debts owed to the United States in accordance with regulations that either adopt, or at least are consistent with, standards prescribed by the Department of Justice (DOJ) and Department of the Treasury (Treasury). 31 U.S.C. § 3711. These standards, known as the Federal Claims Collection Standards (FCCS), became effective on December 22, 2000. 31 C.F.R. Chapter IX and Parts 900-04. The purpose of the DCIA is to enhance the efficiency and effectiveness of the federal government's efforts to collect debt owed to the United States. A principal feature of the DCIA was the creation of the Treasury Offset Program (TOP), a government-wide database of delinquent debtors that offsets (reduces) federal payments to recipients who also owe delinquent debt to the United States and that remits the offset amount to the creditor agency. The FDIC is the creditor agency for delinquent restitution debts owed to the FDIC. The recommended amendments do not affect the FDIC's existing authority under Part 313 to collect certain debts owed to the FDIC in its corporate capacity.

In 2002, the FDIC in compliance with the DCIA promulgated 12 C.F.R. Part 313 governing the collection of certain debt owed to the FDIC in its corporate capacity by federal employees, including FDIC employees, and certain third parties. Part 313 in its present form applies only to [certain] debts owed to and payments made by the FDIC acting in its corporate capacity; that is, in connection with employee matters such as travel-related claims and erroneous overpayments, contracting activities involving

corporate operations, debts related to requests to the FDIC for documents under the Freedom of Information Act (FOIA) or where a request for an offset is received by the FDIC from another federal agency.

12 C.F.R. § 313.1(c). Part 313 also explicitly states that it

does not apply to debts owed to or payments made by the FDIC in connection with the FDIC's liquidation, supervision, enforcement, or insurance responsibilities.

Id.

Under Part 313, when the Director of the Division of Administration (DOA) or the Director of the Division of Finance (DOF) determines that it is appropriate to initiate procedures to collect corporate debt of the type authorized by Part 313, the Director must conform to the procedural standards for collecting such debts set forth in Part 313. These standards generally prescribe the following steps in the debt collection process: prompt demand for payment of the debt; upon the debtor's demand for a final agency determination, verification of the existence and amount of the debt; standards for collecting debts in installment payments; the assessment of interest, penalties, and administrative costs on delinquent debts; standards for the compromise of overdue debt; standards to be followed in determining whether to suspend or terminate collection action; the required referral of delinquent debts to FMS for collection; the reporting of debts to consumer reporting agencies and the use of credit reports; and the sale of delinquent debts. The Director also must follow the procedures for the specific type of offset remedy to be utilized, which are provided by the following Subparts of Part 313: Subpart B (administrative offset), Subpart C (salary offset), Subpart D (administrative wage garnishment), Subpart E (tax refund offset), Subpart F (Civil Service retirement and disability fund offset), and Subpart G (mandatory centralized administrative offset).

The criminal restitution orders that the FDIC holds in almost all instances are initially acquired by the FDIC in its receivership capacity. Over time, the FDIC as receiver has transferred a substantial number of individual restitution orders to the FDIC in its corporate capacity, with the result that today criminal restitution debt is held by the FDIC in both its receivership and corporate capacities. Because Part 313 as currently drafted excludes all of the FDIC's receivership and liquidation functions (among other functions) from its scope, it must be amended for the FDIC to have the authority to collect criminal restitution debt through TOP.

The legal authority for the proposed amendments is found in the DCIA itself. The DCIA's definition of "debt" includes criminal restitution debt owed to federal agencies including the FDIC. Thus, section 3701(b)(1)(D) of the DCIA defines "claim" or "debt" to include:

- (E) any amount the United States is authorized by statute to collect for the benefit of any person.

Criminal restitution debt owed to the FDIC falls squarely within this definition, regardless of whether that debt is owed to the FDIC in its receivership capacity or its corporate capacity.

The United States Department of Justice is primarily responsible for collecting unpaid federal criminal restitution debt. The Mandatory Victims Restitution Act (MVRA) of 1996, 18 U.S.C. §§ 3556 & 3663 *seq.*, which makes imposition of restitution a mandatory component of sentencing for many federal crimes, including banking crimes, expressly provides in section 3664(m) that the United States has the authority to enforce all federal criminal restitution orders in all cases. Moreover, the Federal Debt Collection Procedures Act (FDCPA), 28 U.S.C. § 3001 *et seq.*, originally enacted in 1990, is the primary statutory authority that DOJ uses to collect criminal restitution orders on behalf of the victims identified in those orders, which include the FDIC in the case of restitution orders held by the FDIC. The FDCPA also explicitly defines

“debt” to include “an amount that is owing to the United States on account of . . . restitution.” 28 U.S.C. § 3002(3)(B). United States Attorney’s Offices throughout the United States use the MVRA and FDCPA to collect and enforce criminal restitution debt on behalf of the FDIC and other victims including other federal agencies. If DOJ does not enforce an individual order, the victim named in the order may seek to enforce it instead.

II. Discussion of the Amendments to Part 313

The amendments would modify Part 313 in three ways:

1. A number of individual sections of Part 313 are amended to provide that Part 313 applies to criminal restitution debt owed to the FDIC in either its corporate or receivership capacity in addition to the already-covered corporate debts currently identified in § 313.1.
2. Section 313.4 is amended to provide that the FDIC Board delegates to the Director of the Division of Resolutions and Receiverships (DRR) authority to refer delinquent criminal restitution debt to FMS.
3. A new Section 313.125 is added to Subpart E, the Tax Refund Offset regulations, to clarify that duplicate notice to a debtor is not required if notice and an opportunity for review were previously provided to the same debtor. This provision is identical to the existing § 313.28 found in the Administrative Offset regulations in Subpart B. While § 313.28 arguably already applies to Subpart E (because tax refund offset is generally considered to be a form of “administrative” offset), the new § 313.125 is added to eliminate any uncertainty in the FDIC’s regulations on this point.

III. Administrative Procedure Act

Neither advance notice of proposed rulemaking nor an opportunity to comment on the amendments to Part 313 is required under the Administrative Procedure Act (APA), because these amendments relate solely to agency procedure and practice. 5 U.S.C. § 553(b)(3)(A).

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, the FDIC hereby certifies that the amendments to Part 313 do not have a significant economic impact on a substantial number of small business entities. As amended, Part 313 applies primarily to federal agencies and to a limited number of individuals and/or business entities. 5 U.S.C. § 605(b).

V. Paperwork Reduction Act

This rule is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501, because it does not contain any new information collection requirements.

VI. Assessment of Impact of Federal Regulation on Families

The FDIC has determined that Part 313 as amended will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act,

1999 (Pub. L. 105-277, 112 Stat. 2681).

VII. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104-121) provides generally for agencies to report rules to Congress for review. The reporting requirement is triggered when the FDIC issues a final rule as defined by the APA at 5 U.S.C. § 551. Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by SBREFA. The Office of Management and Budget has determined that this final rule does not constitute a “major rule” as defined by SBREFA.

List of Subjects in 12 C.F.R. Part 313

Corporate debt collection and criminal restitution debt collection, claims, government employees, wages, hearing procedures, administrative practice and procedure;

For the reasons set forth in the preamble, 12 C.F.R. Part 313 is amended as follows:

PART 313 – PROCEDURES FOR COLLECTION OF CORPORATE DEBT AND CRIMINAL RESTITUTION DEBT

1. The authority citation for Part 313 is amended to read as follows:

Authority: 12 U.S.C. § 1819(a); 5 U.S.C. § 5514; Pub. L. 104-143; 110 Stat. 1321; 31 U.S.C. §§

3701, 3711, & 3716.

2. In section 313.1(c), the text is revised to read as follows:

This part applies only to:

(1) debts owed to and payments made by the FDIC acting in its corporate capacity, that is, in connection with employee matters such as travel-related claims and erroneous overpayments, contracting activities involving corporate operations, debts related to requests to the FDIC for documents under the Freedom of Information Act (FOIA), or where a request for an offset is received by the FDIC from another federal agency; and

(2) criminal restitution debt owed to the FDIC in either its corporate capacity or its receivership capacity.

With the exception of criminal restitution debt noted in § 313.1(c)(2), this Part does not apply to debts owed to or payments made by the FDIC in connection with the FDIC's liquidation, supervision, enforcement, or insurance responsibilities, nor does it limit or affect the FDIC's authority with respect to debts and/or claims pursuant to 12 U.S.C. §§ 1819(a) and 1820(a).

3. In section 313.3, the first sentence of paragraph (d) is revised to add "to FMS for offset," after "salary offset,"; and the second sentence is revised to replace "employee" with "debtor."

4. In section 313.3(h), the first sentence is revised to add "restitution," after "interest," and before "fines".

5. In section 313.3(j), the text is revised to read as follows:

(j) *Director* means the Director of the Division of Finance (DOF), the Director of the Division of Administration (DOA), or the Director of the Division of Resolutions and Receiverships (DRR), as applicable, or the applicable Director's delegate.

6. In section 313.3, subsections 313.3(n) through 313.3(v) are redesignated as subsections 313.3(o) through (w), respectively; and a new section 313.3(n) is added as follows:

(n) *Division of Resolutions and Receiverships* (DRR) means the Division of Resolutions and Receiverships of the FDIC.

7. In the first sentence of section 313.3(r), as newly designated, "or" is deleted, a comma (,) is added after "entity", and "or restitution debtor" is added after "entity,".

8. In section 313.4 the introductory paragraph is revised to read:

Authority to conduct the following activities to collect debt, other than criminal restitution debt, on behalf of the FDIC in its corporate capacity is delegated to the Director of DOA or Director of DOF, as applicable; and authority to collect criminal restitution debt on behalf of the FDIC in either its receivership or corporate capacity is delegated to the Director of DRR; or to the applicable Director's delegate; to:

9. Sections 313.125 through 313.127 are redesignated as sections 313.126 through 313.128, respectively, and a new section 313.125 is added as follows:

§ 313.125 No requirement for duplicate notice.

Where the director has previously given a debtor any of the required notice and review opportunities with respect to a particular debt, the Director is not required to duplicate such notice and review opportunities prior to initiating tax refund offset.

By order of the Board of Directors.

Dated at Washington, D.C., this day of December, 2006