

under the plan), how can a plan sponsor identify which benefits are based on disability?

3. For participants who have not yet retired:

a. What practical issues should be considered as a result of the fact that their benefits are not yet fixed (for example, their benefits could vary as a result of future accruals, when they decide to retire and which optional form of benefit they select)?

b. What practical issues should be considered in the case of a suspension of benefits that is combined with a reduction of future accruals or a reduction of section 432(e)(8) adjustable benefits (such as subsidized early retirement factors) under a rehabilitation plan?

4. For participants who have retired, what practical issues should be considered regarding the section 432(e)(9)(D)(ii) age limitations on suspensions, the application of the section 432(e)(9)(E) rules on benefit improvements, or other provisions?

5. With respect to the section 432(e)(9)(F) requirement to provide notice of the proposed suspension to plan participants and beneficiaries concurrently with the submission of the application for approval:

a. What suggestions do commenters have for the steps that are needed to satisfy the requirement to provide notice to the plan participants and beneficiaries “who may be contacted by reasonable efforts,” including the application of that requirement to terminated vested participants?

b. What practical issues do plan sponsors anticipate in providing individual estimates of the effect of the proposed suspensions on each participant and beneficiary?

c. If the suspension is combined with other reductions as described in request number 3.b, how will the notice of proposed suspension interact with the notices required for those other reductions?

d. What issues arise in coordinating benefit protections that are measured as of the date of suspension (such as the restriction on suspensions that apply to a participant or beneficiary who has attained age 75 as of the effective date of the suspension) with the timing of the application, notice, and voting process?

6. With respect to item 5, please provide any examples of notices of proposed suspension that commenters would like to be considered in the development of a model notice.

7. What issues arise in connection with the section 432(e)(9)(G)(ii) requirement to solicit comments on an application for suspension of benefits?

a. Should the comments received from contributing employers, employee organizations, participants and beneficiaries, and other interested parties be made available to the public?

b. How long should the comment period last?

8. With respect to the section 432(e)(9)(H) participant vote, what issues arise in connection with:

a. Preparing the ballot, including developing a statement in opposition to the suspension compiled from comments and obtaining approval of the ballot within the statutory time constraints for conducting a vote; and

b. Conducting the vote and obtaining certification of the results of the vote?

9. What other practical issues do commenters anticipate will arise in the course of implementing these provisions?

#### Timing of Applications and Notices

Section 201(b)(7) of MPRA provides that, not later than 180 days after the date of the enactment of this Act, the Treasury Secretary, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall publish appropriate guidance to implement section 432(e)(9). In addition, section 432(e)(9)(F)(i) provides that no suspension of benefits may be made unless notice of the proposed suspension has been given by the plan sponsor concurrently with an application for approval of the suspension, and section 432(e)(9)(F)(iii)(I) provides that notice must be “provided in a form and manner prescribed in guidance.” Section 432(e)(9)(G)(i) provides that the Treasury Secretary, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall approve an application for suspension upon finding that the plan has satisfied the criteria of section 432(e)(9)(C), (D), (E), and (F). Because appropriate guidance is required to implement section 432(e)(9), including the procedures for the plan sponsor to submit an application for approval of a suspension of benefits and provide concurrent notice, a plan sponsor should not submit an application for a suspension of benefits until a date specified in that future guidance.

Dated: February 11, 2015.

**David G. Clunie,**

*Executive Secretary, Department of the Treasury.*

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## DEPARTMENT OF JUSTICE

### Office of the Attorney General

#### 28 CFR Part 11

[JMD Docket No. 152; A.G. Order No. 3493-2015]

RIN 1105-NYD

#### Department of Justice Debt Collection Regulations

**AGENCY:** Department of Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This rule proposes to amend the regulations that govern debt collection at the Department of Justice (Department) to bring the regulations into conformity with government-wide standards, to update or delete obsolete references, and to make other clarifying or technical changes.

**DATES:** Written comments must be postmarked and electronic comments must be submitted on or before April 20, 2015. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System (FDMS) will accept comments until Midnight Eastern Time at the end of that day.

**ADDRESSES:** The Department encourages that all comments be submitted electronically through <http://www.regulations.gov> using the electronic comment form provided on that site. An electronic copy of this document is also available at the <http://www.regulations.gov> Web site for easy reference. Paper comments that duplicate the electronic submission are not necessary as all comments submitted to <http://www.regulations.gov> will be posted for public review and are part of the official docket record. Should you wish to submit written comments via regular or express mail, however, they should be sent to: Dennis Dauphin, Director, Debt Collection Management Staff, Justice Management Division, U.S. Department of Justice, Washington, DC 20530.

#### FOR FURTHER INFORMATION CONTACT:

Dennis Dauphin, Director, Debt Collection Management Staff, or Morton J. Posner, Assistant General Counsel, Justice Management Division, U.S. Department of Justice, Washington, DC 20530, (202) 514-5343 or (202) 514-3452.

**SUPPLEMENTARY INFORMATION:** This rule updates the Department's debt collection regulations at 28 CFR part 11, subpart A—Retention of Private Counsel for Debt Collection, Subpart B—

Administration of Debt Collection, and Subpart C—Treasury Offset Program for Collection of Debts, and proposes a new Subpart D—Administrative Wage Garnishment.

Subpart A sets forth the Department's procedures governing the retention of private counsel for debt collection authorized in 31 U.S.C. 3718(b). The Federal Debt Recovery Act initiated a pilot program authorizing the Department to contract with private counsel on a provisional basis in a limited number of judicial districts. Public Law 99-578 (1986). The Debt Collection Improvement Act of 1996 (DCIA), Public Law 104-134, sec. 31001, made the pilot program permanent and authorized the Department to contract with private counsel in as many judicial districts as necessary. The Department proposes to amend this rule by removing references to the private counsel program as a "pilot"; by replacing the term "Contracting Officer's Technical Representative (COTR)" with "Contracting Officer's Representative (COR)" to align with the definitions in Federal Acquisition Regulation. See 48 CFR 1.602-2, 2.101; by adding the term "qualified HUBZone small business concerns" as defined in section 3(p)(5) of the Small Business Act, 15 U.S.C. 632(p)(5), to conform to the DCIA; and by changing the obsolete references to a federal procurement statute and to the database used for notifying the public of federal procurement bidding opportunities. Another change corrects a typographical error.

Subpart B prescribes the standards and procedures for collecting a debt through administrative offset. The ten-year statute of limitations for administrative offset was repealed, Public Law 110-264, sec. 14219 (codified at 31 U.S.C. 3716(e)), the Department of the Treasury deleted the limitations period from its regulation, 74 FR 68149 (Dec. 23, 2009), and the Department proposes to delete the corresponding time limit from its own regulation.

Subpart C prescribes the standards and procedures for submitting past due, legally enforceable debts to the Department of the Treasury for collection by offset. These standards and procedures are authorized under the offset provisions of the Deficit Reduction Act of 1984, and the DCIA, codified in relevant part at 31 U.S.C. 3716 and 3720A, and the Department of the Treasury's implementing regulations at 31 CFR 285.2 and 285.5. The Department proposes to amend this subpart to conform to subsequent legal changes. The obsolete ten-year statute of

limitations is being removed. Because the DCIA now mandates that agencies report consumer debt to credit bureaus, 31 U.S.C. 3711(e), it is no longer necessary to address the subject in Subpart C. The Department of the Treasury incorporated the Internal Revenue Service's former tax refund offset program into the Treasury Offset Program, so references to it are being updated. Other revisions provide clarity, make technical corrections, or correct a typographical error.

Proposed Subpart D would implement the Department's authority under the DCIA, 31 U.S.C. 3720D, to collect past due indebtedness through administrative wage garnishment. Wage garnishment is a 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 issue administrative wage withholding orders to garnish up to 15 percent of the disposable pay of a debtor to satisfy delinquent nontax debt owed to the United States. The Department of the Treasury's implementing rule at 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." The Department proposes to add a Subpart D consistent with 31 CFR 285.11. Subpart D would apply to wages to be garnished by non-Federal employers.

#### **Regulatory Flexibility Act**

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The Department proposes to collect delinquent nontax debt owed it through an administrative wage garnishment (AWG) process. When an AWG order is issued, employers (including small businesses) that employ workers from whom the Department is collecting a delinquent debt will be required to certify the employee's employment and earnings, garnish wages, and remit withheld wages to the Department. Such procedures are mandated by Department of the Treasury regulations issued to implement the Debt Collection Improvement Act. Employment and salary information is contained in an employer's payroll records. Therefore, it will not take a significant amount of time or result in a significant cost for an employer to certify employment and

earnings. Employers of delinquent debtors may be subject at any time to garnishment orders issued by a court to collect delinquent debts of their employees owed to governmental or private creditors. The addition of an AWG process will not significantly increase the burden to which employers are already subject to collect the delinquent debt of their employees.

#### **Executive Orders 12866 and 13563—Regulatory Review**

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review," section 1(b), Principles of Regulation, and in accordance with Executive Order 13563, "Improving Regulation and Regulatory Review," section 1(b), General Principles of Regulation.

The Department of Justice has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Further, both Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has assessed the costs and benefits of this regulation and believes that the regulatory approach selected maximizes net benefits.

#### **Executive Order 12988—Civil Justice Reform**

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

#### **Executive Order 13132—Federalism**

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

### Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

### Paperwork Reduction Act

This rule imposes no information collection or record keeping requirements.

### List of Subjects in 28 CFR Part 11

Administrative practice and procedure, Claims, Debt collection, Government contracts, Government employees, Income taxes, Lawyers, Wages.

Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509 and 510, part 11 of title 28 of the Code of Federal Regulations is proposed to be amended as follows:

### PART 11—DEBT COLLECTION

■ 1. The authority citation for part 11 is revised to read as follows:

**Authority:** 5 U.S.C. 301, 5514; 28 U.S.C. 509, 510; 31 U.S.C. 3711, 3716, 3718, 3720A, 3720D.

#### Subpart A—Retention of Private Counsel for Debt Collection

##### § 11.1 [Amended]

- 2. Amend § 11.1 as follows:
  - a. Remove the word “pilot” from the first sentence; and
  - b. Remove the word “Administration” and add in its place the word “Administration”.

##### § 11.2 [Amended]

- 3. Amend § 11.2 as follows:

- a. In the heading, remove the words “Pilot program” and add in their place the words “Private counsel debt collection program”;
- b. In the first two sentences, remove the word “pilot”;
- c. In the third sentence, remove the words “Contracting Officer’s Technical Representative (COTR)” and add in their place the words “Contracting Officer’s Representative (COR)”;
- d. In the fourth sentence, remove the term “COTRs” and add in its place the term “CORs”.

##### § 11.3 [Amended]

- 4. Amend § 11.3 as follows:
  - a. In the first sentence, remove the words “the Federal Property and Administrative Services Act of 1949, 41 U.S.C. 251 *et seq.*” and add in their place the words “41 U.S.C. 3307”.
  - b. In the second sentence, adding the phrase “and law firms that are qualified HUBZone small business concerns” after the phrase “socially and economically disadvantaged individuals”;
  - c. In the second sentence and third sentence, remove the word “pilot” and add in its place the word “program”;
  - d. In the third sentence, remove the words “Commerce Business Daily” and add in their place the term “FedBizOpps”.

#### Subpart B—Administration of Debt Collection

##### § 11.4 [Amended]

- 5. Amend § 11.4 as follows:
  - a. Remove the second sentence of paragraph (a); and
  - b. In paragraph (b)(3)(i), add the number “1” after the words “26 U.S.C.”.
- 6. Revise the heading of subpart C to read as follows:

#### Subpart C—Collection of Debts by Administrative and Tax Refund Offset

- 7. Revise § 11.10 to read as follows:

##### § 11.10 [Amended]

(a) The provisions of 31 U.S.C. 3716 allow the head of an agency to collect a debt through administrative offset. The provisions of 31 U.S.C. 3716 and 3720A authorize the Secretary of the Treasury, acting through the Bureau of the Fiscal Service (BFS) and other Federal disbursing officials, to offset certain payments to collect delinquent debts owed to the United States. This subpart authorizes the collection of debts owed to the United States by persons, organizations, and other entities by means of offsetting Federal and certain state payments due to the

debtor. It allows for collection of debts that are past due and legally enforceable through offset, regardless of whether the debts have been reduced to judgment.

(b) Nothing in this subpart precludes the Department from pursuing other debt collection procedures to collect a debt that has been submitted to the Department of the Treasury under this subpart. The Department may use such debt collection procedures separately or in conjunction with the offset collection procedures of this subpart.

- 8. Amend § 11.11 by revising paragraphs (a) and (b), and adding a paragraph (e) to read as follows:

##### § 11.11 [Amended]

(a) *Debt*. Debt means any amount of funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person, organization, or entity other than another Federal agency. For purposes of this section, the term debt does not include debts arising under the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*), the tariff laws of the United States, or the Social Security Act (42 U.S.C. 301 *et seq.*), except to the extent provided in sections 204(f) and 1631(b)(4) of such Act (42 U.S.C. 404(f) and 1383(b)(4)(A), respectively) and 31 U.S.C. 3716(c). Debts that have been referred to the Department of Justice by other agencies for collection are included in this definition.

(b) *Past due*. A past due debt means a debt that has not been paid or otherwise resolved by the date specified in the initial demand for payment, or in an applicable agreement or other instrument (including a post-delinquency repayment agreement), unless other payment arrangements satisfactory to the Department have been made. Judgment debts remain past due until paid in full.

\* \* \* \* \*

(e) *Legally enforceable*. Legally enforceable means that there has been a final agency determination that the debt, in the amount stated, is due, and there are no legal bars to collection by offset.

- 9. Amend § 11.12 as follows:
  - a. Revise the section heading and paragraphs (a), (b)(2), (b)(3), and (c);
  - b. Remove paragraph (b)(4);
  - c. In paragraph (d)(5), remove the number “65” and add in its place the number “60”;
  - d. In paragraph (d)(6) and paragraph (e), remove the term “IRS” and add in its place the term “BFS”;
  - e. In the second sentence of paragraph (d)(6), remove the word “of” the second time it occurs and add in its place the word “or”; and

■ f. Add paragraph (f).

The addition and revisions read as follows:

**§ 11.12 Centralized offset.**

(a) The Department must refer any legally enforceable debt more than 120 days past due to BFS for administrative offset purposes pursuant to 31 U.S.C. 3716(c)(6). The Department must refer any past due, legally enforceable debt to BFS for tax refund offset purposes pursuant to 31 U.S.C. 3720A(a) at least once a year. Prior to referring debts for offset, the Department must certify to BFS compliance with the provisions of 31 U.S.C. 3716(a) and 3720A(b). There is no time limit on when a debt can be collected by offset.

(b) \* \* \*

(2) The Department intends to refer the debt to BFS for offset purposes;

(3) The debtor has 60 days from the date of notice in which to present evidence that all or part of the debt is not past due, that the amount is not the amount currently owed, that the outstanding debt has been satisfied, or, if a judgment debt, that the debt has been satisfied, or that collection action on the debt has been stayed, before the debt is referred to BFS for offset purposes.

\* \* \* \* \*

(c) If the debtor neither pays the amount due nor presents evidence that the amount is not past due or is satisfied or that collection action is stayed, the Department will refer the debt to BFS for offset purposes.

\* \* \* \* \*

(f) In the event that more than one debt is owed, payments eligible for offset will be applied in the order in which the debts became past due.

■ 10. Add a new § 11.13 to read as follows:

**§ 11.13 Non-centralized offset.**

(a) When offset under § 11.12 of this part is not available or appropriate, the Department may collect past due, legally enforceable debts through non-centralized administrative offset. See 31 CFR 901.3(c). In these cases, the Department may offset a payment internally or make an offset request directly to a Federal payment agency.

(b) At least 30 days prior to offsetting a payment internally or requesting a Federal payment agency to offset a payment, the Department will send notice to the debtor in accordance with the requirements of 31 U.S.C. 3716(a). When referring a debt for offset under this paragraph (b), the Department will certify, in writing, that the debt is valid, delinquent, and legally enforceable, and that there are no legal bars to collection

by offset. In addition, the Department will certify its compliance with these regulations concerning administrative offset. See 31 CFR 901.3(c)(2)(ii).

■ 11. Amend part 11 by adding a new subpart D to read as follows:

**Subpart D—Administrative Wage Garnishment**

**§ 11.21 Administrative wage garnishment.**

(a) *Purpose.* In accordance with the Department of the Treasury government-wide regulation at 31 CFR 285.11, this section provides procedures for the Department of Justice to collect money from a debtor's disposable pay by means of administrative wage garnishment to satisfy delinquent nontax debt owed to the United States.

(b) *Scope.* (1) This section shall apply notwithstanding any provision of State law.

(2) Nothing in this section precludes the compromise of a debt or the suspension or termination of collection action in accordance with applicable law. See, for example, the Federal Claims Collection Standards (FCCS), 31 CFR parts 900–904.

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

(4) This section 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.

(5) Nothing in this section requires the Department to duplicate notices or administrative proceedings required by contract or other laws or regulations.

(c) *Definitions.* As used in this section the following definitions shall apply:

*Agency* means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including government corporations. For purposes of this section, agency means either the agency that administers the program that gave rise to the debt or the agency that pursues recovery of the debt.

*Business day* means Monday through Friday. For purposes of computation, the last day of the period will be included unless it is a Federal legal holiday.

*Day* means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, a Sunday, or a Federal legal holiday.

*Debt or claim* means any amount of money, funds, or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by an individual, including debt administered by a third party as an agent for the Federal Government.

*Debtor* means an individual who owes a delinquent nontax debt to the United States.

*Delinquent nontax debt* means any nontax debt that has not been paid by the date specified in the agency's initial written demand for payment, or applicable agreement, unless other satisfactory payment arrangements have been made. For purposes of this section, the terms "debt" and "claim" are synonymous and refer to delinquent nontax debt.

*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 section, "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.

*Evidence of service* means information retained by the agency indicating the nature of the document to which it pertains, the date of mailing of the document, and to whom the document is being sent. Evidence of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

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

(d) *General rule.* Whenever the agency determines that a delinquent debt is owed by an individual, the agency may initiate proceedings administratively to garnish the wages of the delinquent debtor.

(e) *Notice requirements.* (1) At least 30 days before the initiation of garnishment proceedings, the agency shall mail, by first class mail, to the debtor's last known address, a written notice informing the debtor of:

- (i) The nature and amount of the debt;
- (ii) The intention of the agency 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
- (iii) An explanation of the debtor's rights, including those set forth in paragraph (e)(2) of this section, and the timeframe within which the debtor may exercise those rights.

(2) The debtor shall be afforded the opportunity:

- (i) To inspect and copy agency records related to the debt;
- (ii) To enter into a written repayment agreement with the agency under terms agreeable to the agency; and
- (iii) For a hearing in accordance with paragraph (f) of this section concerning the existence or the amount of the debt or the terms of the proposed repayment schedule under the garnishment order. However, 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 (e)(2)(ii) of this section.

(3) The agency will retain evidence of service indicating the date of mailing of the notice.

(f) *Hearing—*

(1) *Request for hearing.* The agency shall provide a hearing, which at the agency's option may be oral or written, if the debtor submits a written request for a hearing concerning the existence or amount of the debt or the terms of the repayment schedule (for repayment schedules established other than by written agreement under paragraph (e)(2)(ii) of this section).

(2) *Type of hearing or review.* (i) For purposes of this section, whenever the agency is required to afford a debtor a hearing, the agency shall provide the debtor with a reasonable opportunity for an oral hearing when the agency determines that the issues in dispute cannot be resolved by review of the documentary evidence, as, for example, when the validity of the claim turns on the issue of credibility or veracity.

(ii) If the agency determines that an oral hearing is appropriate, the time and

location of the hearing shall be established by the agency. 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.

(iii) In those cases when an oral hearing is not required by this section, the agency shall nevertheless accord the debtor a "paper hearing," that is, the agency will decide the issues in dispute based upon a review of the written record. The agency will establish a reasonable deadline for the submission of evidence.

(3) *Effect of timely request.* Subject to paragraph (f)(12) of this section, if the debtor's written request is received by the agency on or before the 15th business day following the mailing of the notice described in paragraph (e)(1) of this section, the agency shall not issue a withholding order under paragraph (g) of this section until the debtor has been provided the requested hearing and a decision in accordance with paragraphs (f)(9) and (f)(10) of this section has been rendered.

(4) *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 described in paragraph (e)(1) of this section, the agency shall provide a hearing to the debtor. However, the agency will not delay issuance of a withholding order unless the agency determines that the delay in filing the request was caused by factors over which the debtor had no control, or the agency receives information that the agency believes justifies a delay or cancellation of the withholding order.

(5) *Hearing official.* A hearing official may be any qualified individual, as determined by the head of the agency, including an administrative law judge.

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

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

(7) *Burden of proof.* (i) The agency will have the initial burden of proving, by a preponderance of the evidence, the existence or amount of the debt.

(ii) If the agency satisfies its initial burden, 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 or would cause a financial hardship to the debtor, or that collection of the debt may not be pursued due to operation of law.

(8) *Record.* The hearing official must maintain a summary 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 in-person or telephonic hearings will do so under oath or affirmation.

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

(i) The agency may not issue a withholding order until the hearing is held and a decision rendered; or

(ii) If the agency had previously issued a withholding order to the debtor's employer, the agency must suspend the withholding order beginning on the 61st day after the receipt of the hearing request and continuing until a hearing is held and a decision is rendered.

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

- (i) A summary of the facts presented;
- (ii) The hearing official's findings, analysis, and conclusions; and
- (iii) The terms of any repayment schedules, if applicable.

(11) *Final agency action.* The hearing official's decision will be final agency action for purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).

(12) *Failure to appear.* In the absence of good cause shown, a debtor who fails to appear at a hearing scheduled pursuant to paragraph (f)(3) of this section will be deemed as not having timely filed a request for a hearing.

(g) *Wage garnishment order.* (1) Unless the agency receives information that the agency believes justifies a delay or cancellation of the withholding order, the agency will send, by first class mail, a withholding order to the debtor's employer:

(i) 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 described in paragraph (e)(1) of this section), or,

(ii) If a timely request for a hearing is made by the debtor, within 30 days after

a final decision is made by the agency to proceed with garnishment, or

(iii) As soon as reasonably possible thereafter.

(2) The withholding order sent to the employer under paragraph (g)(1) of this section shall be in a form prescribed by the Secretary of the Treasury. The withholding order shall contain the signature of, or the image of the signature of, the head of the agency or his/her delegatee. The order shall contain only the information necessary for the employer to comply with the withholding order. Such 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.

(3) The agency will retain evidence of service indicating the date of mailing of the order.

(h) *Certification by employer.* Along with the withholding order, the agency shall 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 agency within the timeframe 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.

(i) *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 (i)(2) of this section.

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

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

(B) The amount calculated pursuant to the formula set forth in 15 U.S.C. 1673(a)(2) (Restriction on Garnishment). The formula set forth at 15 U.S.C. 1673(a)(2) is the amount by which a debtor's disposable pay exceeds an amount equivalent to thirty times the Federal 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 (i)(2) of this section and shall have priority over withholding orders that are served

later in time. Notwithstanding the foregoing, 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 (i)(2) of this section, or

(B) An amount equal to 25 percent 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 agency, the agency may issue multiple withholding orders provided that the total amount garnished from the debtor's pay for such orders does not exceed the amount set forth in paragraph (i)(2) of this section.

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

(5) The employer shall promptly pay to the agency 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 an employee of his earnings shall be void to the extent it interferes with or prohibits execution of the withholding order issued 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 agency to discontinue wage withholding. The garnishment order shall indicate a reasonable period of time within which the employer is required to commence wage withholding.

(j) *Exclusions from garnishment.* The agency may not garnish the wages of a debtor who it knows has been involuntarily separated from employment until the debtor has been reemployed continuously for at least 12 months. To qualify for this exclusion, upon the request of the agency, the debtor must inform the agency of the circumstances surrounding an

involuntary separation from employment.

(k) *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 agency of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness that results in financial hardship.

(2) A debtor requesting a review under paragraph (k)(1) of 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. Agencies shall consider any information submitted in accordance with procedures and standards established by the agency.

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

(l) *Ending garnishment.* (1) Once the agency has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs consistent with the FCCS, the agency shall send the debtor's employer notification to discontinue wage withholding.

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

(m) *Actions prohibited by the employer.* An employer may not discharge, refuse to employ, or take disciplinary action against the debtor due to the issuance of a withholding order under this section.

(n) *Refunds.* (1) If a hearing official, at a hearing held pursuant to paragraph (f)(2) of this section, determines that a debt is not legally due and owing to the United States, the agency 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.

(o) *Right of action.* The agency may sue any employer for any amount that the employer fails to withhold from wages owed and payable to an employee in accordance with paragraphs (g) and (i) of this section. However, a suit may 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 period. For purposes of this section, "termination of

the collection action” occurs when the agency has terminated collection action in accordance with the FCCS or other applicable standards. In any event, termination of the collection action will be deemed to have occurred if the agency 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 1 year.

Dated: February 3, 2015.

**Eric H. Holder, Jr.**  
Attorney General.

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 46 CFR Part 10

[Docket No. USCG-2015-0090]

#### Medical Waivers for Merchant Mariner Credential Applicants With the Following Conditions: Cardiomyopathy; Diabetes Mellitus; Narcolepsy; and Obstructive Sleep Apnea

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed policy clarification and request for comments.

**SUMMARY:** The Coast Guard is seeking public comment on the policy clarification proposed in this document regarding the specific medical documentation the Coast Guard will consider in determining whether a medical waiver is warranted for merchant mariners with cardiomyopathy, diabetes mellitus, or obstructive sleep apnea. Additionally, the proposed policy clarification specifies that narcolepsy, idiopathic hypersomnia, and other hypersomnias of central origin, are medically disqualifying and generally not waivable due to significant risk of sudden and unpredictable incapacitation of individuals who have these conditions.

**DATES:** Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before May 19, 2015 or reach the Docket Management Facility by that date.

**ADDRESSES:** You may submit comments identified by docket number USCG-2015-0090 using any one of the following methods:

(1) *Federal eRulemaking Portal:*  
<http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this document, call or email Lieutenant Ashley Holm, Mariner Credentialing Program Policy Division (CG-CVC-4), U.S. Coast Guard, telephone 202-372-2357, email [MMCPolicy@uscg.mil](mailto:MMCPolicy@uscg.mil). If you have questions on viewing material in the docket, call Docket Operations at 202-366-9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Public Participation**

You may submit comments and related material regarding whether the policy clarification proposed in this document should be incorporated into final policy on the medical evaluation guidelines for mariners with cardiomyopathy, diabetes mellitus, narcolepsy or obstructive sleep apnea. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

*Submitting comments:* If you submit a comment, please include the docket number for this document (USCG-2015-0090) and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number (USCG-2015-0090) in the “SEARCH” box and click “SEARCH.” Click on “Submit a Comment” on the line associated with this document.

If you submit your comments by mail or hand delivery, submit them in an

unbound format, no larger than 8 ½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

*Viewing comments and documents:* To view comments, go to <http://www.regulations.gov>, type the docket number (USCG-2015-0090) in the “SEARCH” box and click “SEARCH.” Click on “Open Docket Folder” on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

*Privacy Act:* Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act system of records notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

#### **Background and Purpose**

46 CFR 10.302 contains the medical standards that merchant mariners must meet prior to being issued a merchant mariner credential (MMC). In cases where the mariner does not meet the medical standards in 46 CFR 10.302, waivers may be granted when the Coast Guard determines that extenuating circumstances warrant special consideration. See 46 CFR 10.303. Current Coast Guard guidance in Enclosure (3) to Navigation and Vessel Inspection Circular 04-08, *Medical and Physical Evaluation Guidelines for Merchant Mariner Credentials* (NVIC 04-08), which is available at <http://www.uscg.mil/hq/cg5/nvic/pdf/2008/NVIC%2004-08%20CH%201%20with%20Enclosures%2020130607.pdf>), states that the conditions of cardiomyopathy, diabetes mellitus, narcolepsy and obstructive sleep apnea<sup>1</sup> require further

<sup>1</sup> Enclosure (3) to Navigation and Vessel Inspection Circular 04-08, *Medical and Physical Evaluation Guidelines for Merchant Mariner Credentials*, Item number 179, specifies that sleep apnea and other sleep disorders are subject to further review. Obstructive sleep apnea (OSA) is one specific type of sleep apnea and is, therefore, subject to further review under the same item number.