Section-by-Section Analysis

The authority citations are amended by specifying the statutory authority for each of the three debt collection procedures.

The following is a section by section analysis of each provision of this Rule affected by these changes:

140.1: Revises section 140.1 by inserting clear language as to coverage of the regulation.

140.2: Deletes, in most respects, section 140.2 (the definition section). The definitions of administrative offset and salary offset are now included in proposed section 140.2 ("What is a debt and how can the SBA collect it through offset?"). Several other definitions are retained for clarity, but are defined as the terms appear in the text. Section 140.2 also clarifies the three debt collection procedures.

140.3: Current sections 140.3 ("Information disclosure"), 140.4 ("Salary offset"), 140.5 ("Administrative offset"), and 140.6 ("Income tax refund offset") are deleted and replaced with new Section 140.3 ("What rights do you have when SBA tries to collect a debt from you through offset?"). Section 140.3 specifies, in clear language, debtors' rights. These rights apply to all persons affected by SBA debt collection offset procedures.

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

SBA certifies that this rule involves internal administrative procedures and would not be considered a significant rule within the meaning of Executive Order 12866 and would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. It is not likely to have an annual economic effect of \$100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

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

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

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in

accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 140

Claims; Government employees; Income taxes; Wages.

For the reasons set forth above, SBA revises Part 140 of Title 13 of the Code of Federal Regulations to read as follows:

PART 140—DEBT COLLECTION THROUGH OFFSET

Sec.

§ 140.1 What does this part cover? § 140.2 What is a debt and how can the SBA collect it through offset?

§ 140.3 What rights do you have when SBA tries to collect a debt from you through offset?

Authority: 31 U.S.C. 3711, Collection and compromise; 31 U.S.C. 3720A, Reduction of tax refund by amount of debt; 5 U.S.C. 5514, Installment deduction for indebtedness to the United States; 31 U.S.C. 3716, Administrative offset; 15 U.S.C. 634(b)(6), Small Business Act.

§140.1 What does this part cover?

This part establishes procedures which SBA may use in the collection, through offset, of past-due debts owed to the Government. SBA's failure to comply with any provision of the regulations in this part is not available to any debtor as a defense against collection of the debt through judicial process.

§140.2 What is a debt and how can the SBA collect it through offset?

(a) A debt means an amount owed to the United States from loans made or guaranteed by the United States, and from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest, forfeitures, or any other source. You are a debtor if you owe an amount to the United States from any of these sources.

(b) SBA may collect past-due debts through offset by using any of three procedures: administrative offset, salary offset, or IRS tax refund offset. A past-due debt is one which has been reduced to judgment, has been accelerated, or has been due for at least 90 days.

(1) Administrative offset. SBA may withhold money it owes to the debtor in order to satisfy the debt. This procedure is an "administrative offset" and is authorized by 31 U.S.C. 3716.

(2) Salary offset. If the debtor is a federal employee (a civilian employee as defined by 5 U.S.C. 2105, an employee of the U.S. Postal Service or Postal Rate Commission, or a member of the Uniformed Services or Reserve of the Uniformed Services), SBA may

deduct payments owed to SBA or another federal agency from the debtor's paycheck. This procedure is a "salary offset" and is authorized by 5 U.S.C. 5514

- (i) Any amount deducted from salary in any one pay period will not exceed 15 percent of a debtor's disposable pay, unless the debtor agrees in writing to a greater percentage.
- (ii) SBA also may collect against travel advances, training expenses, disallowed payments, retirement benefits, or any other amount due the employee, including lump-sum payments.
- (iii) If an employee has terminated employment after salary offset has been initiated, there are no limitations on the amount that can be withheld or offset.
- (3) IRS tax refund offset. SBA may request that IRS reduce a debtor's tax refund by the amount of the debt, as authorized by 31 U.S.C. 3720A. Where available, administrative and salary offsets must be used before collection is attempted through income tax offset. SBA may refer a debt to the IRS for a tax refund offset and take additional action against the debtor to collect the debt at the same time or in sequence. When SBA makes simultaneous or sequential referrals (within six months of the initial notice), only one review pursuant to the rules in this part and the statutes authorizing them is required.

§ 140.3 What rights do you have when SBA tries to collect a debt from you through offset?

- (a) SBA must write to you and tell you that it proposes to collect the debt by reducing your federal paycheck, withholding money the Government owes you, and/or reducing your tax refund.
- (b) In its written notice to you, SBA must tell you the nature and amount of the debt; that SBA will begin procedures to collect the debt through reduction of your federal paycheck, administrative offset, or reduction of your tax refund; that you have an opportunity to inspect and copy Government records relating to the debt at your expense; and that, before collection begins, you have an opportunity to agree with SBA on a schedule for repayment of your debt.
- (c) SBA also must tell you that unless you respond within 60 days from the date of the notice, it will disclose to consumer reporting agencies (also known as credit bureaus or credit agencies) that you are responsible for the debt and the specific information it intends to disclose in order to establish your identity. The amount, status, history of the debt, and agency program