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ten years after the FDIC's right of action accrues;

(c) The FDIC has made reasonable efforts to obtain payment of the debt, in that it has:

(1) Submitted the debt to FMS for collection by administrative offset and complied with the provisions of 31 U.S.C. 3716(a) and related regulations;

(2) Notified, or has made a reasonable attempt to notify, the debtor that the debt is past-due, and unless repaid within 60 days after the date of the notice, will be referred to FMS for tax refund offset;

(3) Given the debtor at least 60 days to present evidence that all or part of the debt is not past-due or legally enforceable, considered any evidence presented by the debtor, and determined that the debt is past-due and legally enforceable; and

(4) Provided the debtor with an opportunity to make a written agreement to repay the debt; and

(d) The debt is at least \$25.

§ 313.124 Pre-offset notice and consideration of evidence.

(a) For purposes of § 313.123(c)(2), the FDIC has made a reasonable effort to notify the debtor if it uses the current address information contained in its records related to the debt. The FDIC may, but is not required to, obtain address information from the IRS pursuant to 26 U.S.C. 6103(m)(2), (4), (5).

(b) For purposes of § 313.123(c)(3), if evidence presented by a debtor is considered by an agent of the FDIC, or other entities or persons acting on behalf of the FDIC, the debtor must be accorded at least 30 days from the date the agent or other entity or person determines that all or part of the debt is past-due and legally enforceable to request review by an officer or employee of the FDIC of any unresolved dispute. The FDIC must then notify the debtor of its decision.

§ 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

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and review opportunities prior to initiating tax refund offset.

[71 FR 75661, Dec. 18, 2006]

§ 313.126 Referral of past-due, legally enforceable debt.

The FDIC shall submit past-due, legally enforceable debt information for tax refund offset to FMS, as prescribed by FMS. For each debt, the FDIC will include the following information:

(a) The name and taxpayer identification number (as defined in 26 U.S.C. 6109) of the debtor;

(b) The amount of the past-due and legally enforceable debt;

(c) The date on which the debt became past-due; and

(d) The designation of FDIC as the agency referring the debt.

[67 FR 48527, July 25, 2002. Redesignated at 71 FR 75661, Dec. 18, 2006]

§ 313.127 Correcting and updating referral.

If, after referring a past-due legally enforceable debt to FMS as provided in § 313.125, the FDIC determines that an error has been made with respect to the information transmitted to FMS, or if the FDIC receives a payment or credits a payment to the account of the debtor referred to FMS for offset, or if the debt amount is otherwise incorrect, the FDIC shall promptly notify FMS and make the appropriate correction of the FDIC's records. FDIC will provide certification as required under § 313.123 for any increases to amounts owed. In the event FMS rejects an FDIC certification for failure to comply with § 323.123, the FDIC may resubmit the debt with a corrected certification.

[67 FR 48527, July 25, 2002. Redesignated at 71 FR 75661, Dec. 18, 2006]

§ 313.128 Disposition of amounts collected.

FMS will transmit amounts collected for past-due, legally enforceable debts, less fees charged under this section, to the FDIC's account. The FDIC will reimburse FMS and the IRS for the cost of administering the tax refund offset program. FMS will deduct the fees from amounts collected prior to disposition and transmit a portion of the fees deducted to reimburse the IRS for

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its share of the cost of administering the tax refund offset program. To the extent allowed by law, the FDIC may add the offset fees to the debt.

[67 FR 48527, July 25, 2002. Redesignated at 71 FR 75661, Dec. 18, 2006]

§§ 313.129–313.139 [Reserved]

Subpart F—Civil Service Retirement and Disability Fund Offset

§ 313.140 Future benefits.

Unless otherwise prohibited by law, the FDIC may request that a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) be administratively offset in accordance with regulations at 5 CFR 831.1801 through 831.1808.

§ 313.141 Notification to OPM.

When making a request for administrative offset under § 313.140, the FDIC shall provide OPM with a written certification that:

- (a) The debtor owes the FDIC a debt, including the amount of the debt;
- (b) The FDIC has complied with the applicable statutes, regulations, and procedures of OPM; and
- (c) The FDIC has complied with the requirements of 31 CFR parts 900 through 904, including any required hearing or review.

§ 313.142 Request for administrative offset.

The Director shall request administrative offset under § 313.140, as soon as practical after completion of the applicable procedures in order to help ensure that offset be initiated prior to expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the Fund, if at least a year has elapsed since the offset request was originally made, the debtor shall be permitted to offer a satisfactory repayment plan in lieu of offset upon establishing that changed financial circumstances would render the offset unjust.

§ 313.143 Cancellation of deduction.

If the FDIC collects part or all of the debt by other means before deductions

are made or completed pursuant to § 313.140, the FDIC shall act promptly to modify or terminate its request for such offset.

Subpart G—Mandatory Centralized Administrative Offset

§ 313.160 Treasury notification.

(a) In accordance with 31 U.S.C. 3716, the FDIC as a creditor agency must notify the Secretary of the Treasury of all debts that are delinquent (over 180 days past due), as defined in the FCCS, to enable the Secretary to seek collection by centralized administrative offset. This includes debts the FDIC seeks to recover from the pay account of an employee of another agency by means of salary offset.

(b) For purposes of centralized administrative offset, a claim or debt is not delinquent if:

- (1) It is in litigation or foreclosure;
- (2) It will be disposed of under an asset sale program within one year after becoming eligible for sale;
- (3) It has been referred to a private collection contractor for collection;
- (4) It has been referred to a debt collection center;
- (5) It will be collected under internal offset, if such offset is sufficient to collect the claim within three years after the date the debt or claim is first delinquent; and
- (6) It is within a specific class of claims or debts which the Secretary of the Treasury has determined to be exempt, at the request of an agency.

§ 313.161 Certification of debt.

Prior to referring a delinquent debt to the Secretary of the Treasury, the Director must have complied with the requirements of 5 U.S.C. 5514, and 5 CFR part 550, subpart K, governing salary offset, and the FDIC regulations. The Director shall certify, in a form acceptable to the Secretary, that:

- (a) The debt is past due and legally enforceable; and
- (b) The FDIC has complied with all due process requirements under 31 U.S.C. 3716 and the FDIC's administrative offset regulations.