



## Office of the Secretary

### 29 CFR Part 20

RIN 1290-AA44

#### Second and Subsequent Notifications

**AGENCY:** Office of the Secretary, Labor.

**ACTION:** Final rule.

**SUMMARY:** This final rule makes two changes. First, the final rule more clearly permits Department of Labor agency heads (or designees) to send second and subsequent demand letters at intervals of time separated by less than thirty days. Second, the final rule encourages debt collection efforts to proceed promptly so that, if needed, uncollected debt may be referred to the Department of Justice in a timely manner.

**DATES:** This final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Erin FitzGerald, Senior Policy Advisor, U.S. Department of Labor, Room S-2312, 200 Constitution Avenue, N.W., Washington, D.C. 20210; telephone: (202) 693-5076 (this is not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### I. Overview of Amendments

Agencies within the Department of Labor (Department) often must collect debt owed them, including debt relating to legal violations such as citation penalties. To collect such debt, agencies sometimes must send multiple demand letters. Prior to this final rule, 29 CFR 20.55(a) provided that “second and subsequent demands shall generally be made at 30 day intervals from the first.” The Department’s Office of the Chief Financial Officer (OCFO) has indicated that agencies may have an increased likelihood of securing debt payments if second and subsequent demands are sent at intervals of time separated by less than thirty days. In particular, in

reviewing enforcement agency debt collection practices, OCFO has noted that agencies that send out demand letters more quickly and at shorter intervals have higher collection rates than agencies that do not. Although agency heads (or designees) could send second and subsequent demand letters at intervals of time separated by less than thirty days pursuant to 29 CFR 20.55(a) as it existed before this final rule, this final rule amends 29 CFR 20.55(a) to provide clearer notice to the public that agency heads (or designees) can send demand letters in their sole discretion more often than every thirty days.

This final rule also amends 29 CFR 20.55(a) to better describe current Department practice. Prior to this final rule, 29 CFR 20.55(a) stated that “agencies should give due regard to the need to act promptly so that, as a general rule, if necessary to refer the debt to the Department of Justice for litigation, such referral can be made within one year of the final determination of the fact and the amount of the debt.” It has been revised to state that “agencies should give due regard to the need to act promptly so that, if necessary, the debt may be referred in a timely manner to the Department of Justice for litigation.” This change better reflects current practice, pursuant to which the Department of Treasury typically seeks to collect federal debt for up to two years.<sup>1</sup> After two years, the Department of Treasury refers uncollected debt back to the relevant agency, including agencies within the Department of Labor. Because debt is not typically referred back to agencies until the debt is at least two years old, referral to the Department of Justice will generally not be made until the debt is at least two years old.

## **II. Administrative Procedure Act**

Pursuant to 5 U.S.C. 553, this rule is being published as a final rule to have immediate effect upon publication in the Federal Register. This final rule deals only with internal operating procedures regarding the Department’s debt-collection practices. This final rule thus qualifies as a rule “of agency organization, procedure, or practice” or a “general statement of policy” under 5

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<sup>1</sup> See OMB Circular No. A-129, Policies for Federal Credit Programs and Non-Tax Receivables. Section V.E.1. January 2013.

U.S.C. 553(b)(A), so it is exempt from the notice-and-comment requirements of the Administrative Procedure Act.

This rule is not a “major rule” under 5 U.S.C. 801(a)(3) nor a “substantive rule” under 5 U.S.C. 553(d) and may also qualify as a “statement[] of policy” under 5 U.S.C. 553(d)(2). Thus it can be effective immediately. The Department is making it effective immediately because of its strong interest in promptly collecting debt, especially debt derived from legal violations. The prompt collection of such debt provides the regulated public a stronger incentive to follow the law by showing that duly levied citations and other penalties must in fact be paid. Collecting debts also strengthens the Department’s fisc, which assists with budgeting and offsets funds that might otherwise be requested from Congress and, ultimately, the nation’s taxpayers. Delaying the effective date of this rule would unnecessarily hinder the Department’s law-enforcement mission.

### **III. Executive Orders 12866, 13563; Small Business Regulatory Enforcement Fairness Act; Regulatory Flexibility; Paperwork Reduction Act; Unfunded Mandates Reform Act**

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of significant regulatory actions. Under the Executive Order, a “significant regulatory action” is one meeting any of a number of specified conditions, including the following: having an annual effect on the economy of \$100 million or more; creating a serious inconsistency or interfering with an action of another agency; materially altering the budgetary impact of entitlements or the rights of entitlement recipients; or raising novel legal or policy issues.

The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) has determined that this rule is not a “significant regulatory action” under Executive Order 12866 and waived review. This final rule deals only with internal operating procedures regarding the Department’s debt collection practices. Because no notice of proposed rulemaking is required for this rule under section 553(b) of the APA, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601) pertaining to regulatory flexibility do not apply to this

rule. See 5 U.S.C. 601(2). Accordingly, the Department is not required to either certify that the final rule would not have a significant economic impact on a substantial number of small entities or conduct a regulatory flexibility analysis. Because, as noted above, no notice of proposed rulemaking is required for this rule, no requirements of the Unfunded Mandates Reform Act of 1995 are triggered. In addition, the amended regulation contain no additional information-collection or record-keeping requirements under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq., and the implementing regulations at 5 CFR part 1320.

### **List of Subjects in 29 CFR Part 20**

Claims, Income taxes, Reporting and recordkeeping requirements, Wages.

For the reasons discussed in the preamble, the Department of Labor amends 29 CFR part 20 as follows:

### **PART 20 - FEDERAL CLAIMS COLLECTION**

1. The authority citation for part 20 continues to read as follows:

Authority: 31 U.S.C. 3711 et seq.; Subpart D is also issued under 5 U.S.C. 5514; Subpart E is also issued under 31 U.S.C. 3720A; Subpart F is also issued under 31 U.S.C. 3720D.

2. Amend § 20.55 by revising paragraph (a) to read as follows:

#### **§20.55 – Second and subsequent notifications**

(a) In accordance with guidelines established by the Chief Financial Officer, the responsible agency head (or designee) shall send progressively stronger second and subsequent demands for payment, if payment or other appropriate response is not received within the time specified by the initial demand. Unless a response to the first or second demand indicates that a further demand would be futile or the debtor's response does not require rebuttal, the second and subsequent demands shall generally be made at 30-day intervals from the first, and shall state that a 6 percent per annum penalty will be assessed after the debt has been delinquent 90 days, accruing from the date it became delinquent. An agency head (or designee), however, in his or her sole discretion can send second and subsequent demands at shorter intervals. The second and

subsequent demands shall identify the amount of interest then accrued on the debt, as well as administrative costs thus far assessed. In determining the timing of the demand letters, agencies should give due regard to the need to act promptly so that, if necessary, the debt may be referred in a timely manner to the Department of Justice for litigation. When the agency head (or designee) deems it appropriate to protect the government's interests (for example, to prevent the statute of limitations 28 U.S.C. 2415, from expiring), written demand may be preceded by other appropriate actions, including immediate referral for litigation.

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Signed on the 18th day of December, 2020, in Washington, D.C.

Eugene Scalia,

Secretary, Department of Labor.

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