



DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

31 CFR Part 285

RIN 1530-AA32

Public Dissemination of the Identity of a Delinquent Debtor

AGENCY: Bureau of the Fiscal Service, Department of the Treasury

ACTION: Notice of proposed rulemaking.

SUMMARY: The Debt Collection Improvement Act of 1996 (DCIA) authorizes Federal agencies to publicly disseminate information regarding the identity of persons owing delinquent nontax debts to the United States for the purpose of collecting the debts. The Department of the Treasury, Bureau of the Fiscal Service (Fiscal Service), proposes to promulgate this rule to establish the minimum procedures Federal agencies must follow prior to publicly disseminating information regarding the identity of delinquent debtors and the standards for determining when use of this debt collection tool is appropriate.

DATES: Written comments must be submitted (for electronic comments) or postmarked (for paper comments) by [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. No late comments will be accepted and commenters should be aware that the electronic Federal Docket Management System will not accept comments after Midnight Eastern Time on the last day of the comment period.

ADDRESSES: All comments must include the agency name (“Bureau of the Fiscal Service”) and docket number (“FISCAL-2023-0001”) for this rulemaking. In general, comments will be published on Regulations.gov without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public

disclosure. Due to mail processing delays, Fiscal Service encourages the electronic submission of comments but also accepts paper submission of comments. Comments may be submitted as follows:

Electronic Comments: Fiscal Service encourages that all comments be submitted through the Federal eRulemaking Portal, which provides the ability to comment on, search, and view publicly available rulemaking materials, including comments received on rules. Please go to <http://www.regulations.gov> and follow the online instructions at that site for submitting comments.

Paper Comments: Paper comments that duplicate an electronic submission are not necessary and are discouraged. Should you wish to mail a paper comment in lieu of an electronic comment, it should be sent via regular or express mail to: Director, Policy and Oversight Division, Disbursing and Debt Management, Bureau of the Fiscal Service, Landover Warehouse, 3201 Pennsy Drive, Landover, MD 20785.

FOR FURTHER INFORMATION CONTACT: Director, Policy and Oversight Division, Disbursing and Debt Management, Bureau of the Fiscal Service, at (202) 874-6810.

SUPPLEMENTARY INFORMATION:

I. Background

Section 31001(r)(1) of the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104-134, 110 Stat. 1321-358 (1996), codified at 31 U.S.C. 3720E, authorizes the head of an agency to publish or otherwise publicly disseminate information regarding the identity of persons owing delinquent nontax debts to the United States for the purpose of collecting the debts, subject to certain conditions. The DCIA directs the Secretary of the Treasury to issue regulations establishing procedures and requirements to carry out this authority. For the collection of nontax debt for the Federal Government, Fiscal Service is responsible for promulgating the regulations governing this and other provisions of the DCIA on behalf of the Secretary of the Treasury.

This proposed rule establishes standards so that actions under this authority are directed,

as required by the DCIA, toward those debtors with the ability to pay their delinquent nontax debts. This proposed rule also establishes procedures and requirements so that actions under this authority are not taken until debtors are afforded the opportunity to verify, contest, and compromise their debts and so that persons are not incorrectly identified. The proposed rule limits the types of debts subject to publication under this rule to nontax debts arising from civil or criminal penalties or fines, fraud, presentation of false claim, misrepresentation, or circumstances where the agency has an enforcement goal. Generally, this rule does not apply to other types of debts owed to the federal government, such as delinquent small business loans or student loans, where there is no civil or criminal adjudication.

II. Section-by-Section Analysis

This section describes, section-by-section, the reasoning for each provision of this new rule.

(a) Definitions

Paragraph (a) of this section sets forth definitions applicable to this rule. Terms used in this section are defined for purposes of this section only.

This rule proposes to define the term “debt” consistent with, though more narrowly than, the statutory definition of debt in 31 U.S.C. 3701(b). Specifically, this rule would apply only to debts arising from civil or criminal penalties or fines, fraud, presentation of false claim, misrepresentation, or circumstances where the agency has determined that it has an enforcement goal. This definition allows agencies to focus on the categories of debts where the Government’s collection equities are the strongest. This definition also most closely serves the purpose of maximizing collections by holding violators publicly accountable for their actions.

Fiscal Service reserves the right, as authorized under 31 U.S.C. 3720E, to later determine that it is appropriate to expand or further limit the definition of “debt” for the purposes of this rule.

(b) General rule

Paragraph (b) states the general rule that agencies may publish information regarding the identity of a person owing a delinquent debt to the United States and the existence of the debt for the purpose of collecting the debt.

(c) Agency procedures

Paragraph (c) states that agencies must prescribe their own written procedures governing the publication of the identity of delinquent debtors, provided such rules are consistent with this section. This rule provides high-level guidance that agencies should tailor to their collection needs. Because the programs giving rise to these debts vary widely across the Government, a “one-size-fits-all” approach would not be practical or effective. What exact protections and procedures are appropriate may differ significantly from agency to agency, and among different types of debts or debtors. As such, this rule defers to agencies and their expertise to develop the procedures that are appropriate for their classes of debts and debtors.

For example, what constitutes proper notice will differ based on what is reasonable under the circumstances. Generally, notice sent to the debtor’s address last known to the agency suffices. However, if an agency knows that the debtor did not receive a notice (e.g., the notice was returned undelivered), in some circumstances, the agency may determine it should or must (or may determine it need not) conduct further investigation for a better address; whether the agency should conduct further investigation may depend on the factors the agency considers appropriate, such as the age of the debt, the characteristics of debtor population, the obligation of the debtor to keep the agency informed of address changes, or the possibility that the agency has failed to update its address records properly.

Agencies must certify to the Secretary of the Treasury that they have complied with the requirements of this section prior to taking action under this section. Because the exact protections and procedures that are appropriate may differ significantly from agency to agency, based on debt type, debtor type, agency goals, or other relevant factors, Fiscal Service has determined that it is appropriate to rely on the expertise of the certifying agency, which is best

equipped to understand the nuances of its debt portfolio and debtor populations. An agency need only certify its compliance with these rules to the Secretary when it first adopts or modifies its procedures and need not certify compliance each time information regarding the identity of delinquent debtors is made public. Fiscal Service's receipt and acceptance of the agency's certification constitutes "review" of the Secretary, as required by 31 U.S.C. 3720E, and Fiscal Service may further prescribe in guidance the manner in which the certification must be made and the manner in which the acceptance will be documented.

Nothing in this rule makes any publication of the identity of delinquent debtors under 31 U.S.C. 3720E and this rule subject to the general non-disclosure provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Trade Secrets Act (18 U.S.C. 1831 through 1839), 18 U.S.C. 905, or other laws generally prohibiting disclosure of information. However, agencies should ensure that any publication is consistent with applicable law. For example, an agency may determine it should specify as a routine use under its system of records notice that it may publish names and identities of delinquent debtors or, alternatively, may determine that such disclosure is permissible without any such routine use.

(d) Determination of ability to pay

Paragraph (d) provides standards agencies must use to determine if a debtor has the ability to pay their debt. Under paragraph (d), agencies may base a determination that the debtor has the ability to pay on information concerning the financial condition of the debtor including, but not limited to, credit reports, financial statements, and tax returns. Because the statute requires that publication be directed toward delinquent debtors that have an ability to pay, the agency may, where appropriate, also consider in its ability to pay analysis common characteristics of a class of debtors that indicate such debtors would have sufficient assets or income to pay their debts.

Paragraph (d) also permits an agency to make a determination that the debtor has the ability to pay a debt where no reliable financial information is available, provided that the agency

requested that the debtor provide financial information and the debtor, despite proper notice, either failed to do so or provided incomplete or unreliable financial information.

(e) Notice to the debtor

Paragraph (e) describes the contents of the notice which must be provided to a debtor and a description of the rights available to the debtor. An agency must provide a debtor with notice, at least 30 days in advance, of the agency's intention to publish information concerning the identity of the debtor and the existence of the debt and a description of the information to be published and the manner in which it will be published. The notice must also contain an explanation of the debtor's rights and an explanation of the timeframe within which the debtor may exercise these rights. This notice may be combined with and made a part of any other notice that an agency sends to the debtor regarding collection of the debt.

(f) Opportunity to contest

Paragraph (f) describes the opportunities an agency must provide to a debtor prior to publication, including the opportunity to inspect and copy agency records, request a review of the agency's determination of indebtedness, enter into a repayment agreement (e.g., a compromise to extend the time period over which the debt must be paid or a compromise to reduce the amount that must be paid), and demonstrate that the debtor lacks the ability to pay the debt, even in a compromise or with a partial payment.

(g) Information to be published

Paragraph (g) describes the information which must be included in any publication to ensure that the person who owes the debt is properly identified. This section is intended to ensure that only information which is reasonably necessary to identify the debtor is made public.

Paragraph (g) also describes the information which must be published concerning the existence of the debt. Information identifying the party to whom the debt is owed will generally identify the agency under which the debt arose. This information may also include the particular program within an agency which gave rise to the debt, but such information is not

required. Since the existence and amount of a debt can change rapidly, the information published must include the date as of which the information is accurate. Agencies may, but are not required to, publish the amount of the debt and the length of time the debt has been delinquent.

Paragraph (g) also requires agencies to include with their publication information sufficient for the debtor whose information has been published to pay the debt and to contact the agency with questions about the debt.

(h) Corrections and retractions

Paragraph (h) provides that, where a person has been incorrectly identified as a delinquent debtor or inaccurate information has been made public which is substantially adverse to the debtor, agencies must publish a retraction or correction of the erroneous information upon the request of the person adversely affected. Agencies are not required to retract or clarify information which is accurate, even if a third party, such as a person with a name similar to the debtor, may be adversely affected. Nothing in this section is intended to impose any liability on agencies for incorrectly identifying a person as a delinquent debtor, for the publication of inaccurate information, or for the publication of accurate information which may adversely affect a third party. Nevertheless, agencies must ensure that they comply with all relevant laws prior to publication.

(i) Agencies not required to publish all debts

Paragraph (i) states that an agency does not have to publish information on all delinquent debts owed to the agency that fall under the definition of “debt” in this rule; instead, an agency may determine to publish information on particular debts based upon applicable agency laws, regulation, guidance, and policy. For example, an agency may choose to publish debtor information based on debt type, debtor type, amount of debt, length of delinquency, or any other characteristic that the agency determines is appropriate.

(j) No private right of action

Paragraph (j) states that the provisions of this section do not create any private right of action. Fiscal Service notes that 28 U.S.C. 2680(h) bars suits against the United States under the Federal Tort Claims Act for libel or slander.

III. Procedural Analyses

Federalism

This proposed rule has been reviewed under Executive Order 13132, 64 FR 43255 (Aug. 4, 1999). This proposed rule would not have substantial direct effects on States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This proposed rule would not impose information-collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, et seq.

Regulatory Flexibility Act Analysis

It is hereby certified that the proposed rule would not have a significant economic impact on a substantial number of small entities because this rule only impacts persons who are delinquent on debts owed to Federal agencies or States. Accordingly, an initial regulatory flexibility analysis under the Regulatory Flexibility Act is not required. Fiscal Service seeks comment on whether the certification made herein should be reconsidered and, if so, on what basis.

Executive Orders 12866, 13563, and 14192—Regulatory Planning and Review

Fiscal Service has determined that this proposed rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review. Accordingly, this proposed rule has not been reviewed by OMB. This proposed rule has been

drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review”; Executive Order 13563 “Improving Regulation and Regulatory Review”; and Executive Order 14192, “Unleashing Prosperity Through Deregulation.”

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the same act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. *See* 2 U.S.C. 1535. Fiscal Service has determined that this rule would not result in expenditures by State, local, and Tribal governments, or by the private sector, of \$100 million or more in any one year. Accordingly, Fiscal Service has not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

List of Subjects in 31 CFR Part 285

Administrative practice and procedure, Black lung benefits, Child support, Child welfare, Claims, Credits, Debts, Disability benefits, Federal employees, Garnishment of wages, Hearing and appeal procedures, Income taxes, Loan programs, Payments, Privacy, Railroad retirement, Railroad unemployment insurance, Salaries, Social Security benefits, Supplemental Security Income, Taxes, Unemployment compensation, Veteran’s benefits, Wages.

For the reasons set forth in the preamble, Fiscal Service proposes to amend 31 CFR part 285 as follows:

1. The authority citation for Part 285 is revised to read as follows: 5 U.S.C. 5514; 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3719, 3720A, 3720B, 3720D, 3720E; 42 U.S.C. 664; E.O. 13019, 61 FR 51763, 3 CFR, 1996 Comp., p. 216.
2. Section 285.14 is added to subpart B to read as follows:

§ 285.14 Public dissemination of the identity of a delinquent debtor.

(a) Definitions. As used in this section:

Ability to pay means a debtor has the assets or income sufficient to pay their delinquent nontax debt.

Agency means a department, agency or subagency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including government corporations.

Debt means a nontax debt owed to the United States as defined in 31 U.S.C. 3701(b)(1) that arises from a civil or criminal penalty or fine, fraud, presentation of false claim, misrepresentation, or a circumstance where the agency has determined that it has an enforcement goal. The term does not include a debt or claim under the Internal Revenue Code of 1986.

Debtor means a person who owes a debt.

Delinquent refers to the status of a debt and means that a debt has not been paid by the date specified in the agency's initial written demand for payment, or applicable agreement or instrument, unless other payment arrangements satisfactory to the agency have been made.

Person means an individual, corporation, partnership, association, organization, State or local government, or any other type of entity other than an agency.

Publication or *publishing* means any form of communication or public dissemination of information intended to reach the public including, without limitation: publication in the Federal Register, newspapers, periodicals, or sites accessed via the internet; media such as radio, television, and internet broadcasts; inclusion in social media accessible by the public; or posting information in a place frequented by, or visible to, the public. The term "publish" means the act of publishing.

(b) General rule. Pursuant to 31 U.S.C. 3720E, an agency may publish the identity of a delinquent debtor and the existence of the debt if the agency has made a final administrative determination that the debt is owed by the debtor in the amount stated and is delinquent. An

agency may publish this information if the agency has the purpose of collecting the debt and its publication actions are directed toward delinquent debtors who have the ability to pay. This section applies only to publication pursuant to 31 U.S.C. 3720E and does not affect an agency's authority to publish pursuant to any other authority.

(c) Agency procedures. (1) Before an agency publishes information about delinquent debts or debtors, the agency must prescribe its own written procedures governing the publication, which are consistent with this section. At a minimum, agency procedures must include processes for:

- i. Verifying information necessary to minimize the risk of improperly identifying persons with names similar to the debtor, including, for example, the debtor's name, current mailing and physical address, taxpayer identification number, or other similar information;
- ii. Verifying the validity, existence, and amount of the delinquent debt owed by the debtor;
- iii. Verifying that the debt arises from a civil or criminal penalty or fine, fraud, presentation of false claim, misrepresentation, or a circumstance where the agency has an enforcement goal;
- iv. Determining that the debtor has the ability to pay, as described under subsection (d);
- v. Verifying that the agency has provided proper notice as required under subsection (e), considering appropriate factors, which may differ significantly from agency to agency, and among different types of debts or debtors;
- vi. Considering any impacts to the safety of any populations that may be impacted by publication;
- vii. Verifying that the agency has provided any opportunities required under subsection (f) of this section;

viii. Excluding from publication information that may not be made public pursuant to any applicable law;

ix. Determining whether and when consultation with the Department of Justice or other agencies is appropriate or required, such as when the agency has referred, or anticipates referring, the debt to the Department of Justice for enforcement, collection, or other legal action; when the agency has referred the debt to a designated debt collection center for collection action; or where publication might interfere with a federal law enforcement investigation;

x. Correcting and/or retracting any information about a debt or debtor that was inaccurate at the time of initial publication, in accordance with paragraph (h) of this section.

xi. Verifying that the publication of debt or debtor information serves a debt collection purpose.

xii. Ensuring that any publication does not violate the automatic stay or discharge injunction under the Bankruptcy Code, 11 U.S.C. 101 through 1532.

(2) Prior to publishing information concerning the identity of delinquent debtors, an agency must certify to the Secretary of the Treasury, in the manner prescribed by the Fiscal Service, that it has established procedures in compliance with the requirements of this section.

(3) Agency procedures required under this section may be combined with other agency procedures for establishing the existence and collection of a delinquent debt.

(d) Determination of ability to pay. An agency must direct its publication actions toward delinquent debtors who have the ability to pay, whether in full or pursuant to a repayment agreement. An agency may base a determination that the debtor has the ability to pay on any information that the agency believes is appropriate including, but not limited to, credit reports, financial statements, expense receipts, pay stubs, appraisals or valuation studies, and tax returns. If the agency has insufficient financial information, the agency may determine that the debtor has

the ability to pay the debt, provided that the agency requested that the debtor provide financial information, and the debtor either failed to do so despite proper notice or provided incomplete or unreliable financial information. The agency does not have to revisit any previous determination of the debtor's ability to pay the debt, unless the debtor has submitted information regarding changed financial circumstances.

(e) Notice to the debtor.

(1) The agency may publish information concerning a delinquent debtor only after giving the debtor written notice, at least 30 days in advance of publication, of the type and amount of the debt, the agency's intention to publish information concerning the debt, a description of the information to be published and the manner in which it will be published, an explanation of the rights of the debtor under this section, including the opportunities specified in subsection (f), and an explanation of the timeframe within which the debtor may exercise their rights as described in this section;

(2) This notice may be combined with and made a part of any notice of intent to use other collection tools that an agency sends to the debtor.

(3) Notwithstanding this subsection (e) or subsection (f), an agency is not required to duplicate notices or review opportunities that an agency has previously provided to a debtor. For example, if any agency has already provided a debtor with a review regarding the existence and amount of a debt, the agency does not have to provide a second review prior to publishing information pursuant to this section.

(f) Opportunity to contest. Agency procedures must include the opportunity for the debtor to, within 30 days of the agency's notice:

(1) inspect and copy the records of the agency;

(2) request a review within the agency of the determination of indebtedness, including the opportunity to present evidence that all or part of the debt is not delinquent or legally enforceable;

(3) enter into a written repayment agreement with the agency based on the debtor's ability to pay; and

(4) demonstrate that the debtor lacks the ability to pay the debt, even in a compromise or with a partial payment.

(g) Information to be published.

(1) Information to identify the debtor. An agency will include the debtor's name and such other information as may be necessary to ensure proper identification of the debtor by the intended audience and to reduce as much as practicable, the risk that others, such as persons with names similar to the debtor, are improperly identified. Other information could include, for example, an alias name, a full or partial physical or mailing address, or a professional title (such as doctor, attorney-at-law, or professor). Published information must not include the debtor's social security number unless otherwise appropriate and authorized by law, but generally may include other taxpayer identification numbers, such as an employer identification number.

(2) Information concerning the existence of the debt. An agency will include information that the debt is owed and that the debt is delinquent and may include the amount of the debt (including interest, penalties, and administrative costs) and the length of time that the debt has been delinquent. An agency may also include other appropriate information regarding the debt. The publication will also include the date as of which the information is accurate.

(3) Payment and Contact Information. An agency will include with the publication information sufficient for the debtor whose information has been published to pay the debt and to contact the agency with questions about the debt.

(h) Corrections and retractions. If, after publication of the identity of a delinquent debtor in accordance with this section, the agency determines that a person has been incorrectly identified as a delinquent debtor or that inaccurate information which is materially adverse to the debtor has been made public, the agency, upon the request of the person adversely affected, will, within

a reasonable time following the determination, issue a retraction or correction of the inaccurate information. To the extent feasible, the agency will publish the retraction or correction in the same manner in which the initial publication was made. If publication in the same manner is not possible or is impractical, the retraction or correction will be made in a manner most likely to reach the same audience which received information being retracted or corrected. Nothing in this section is intended to impose any liability on an agency for incorrectly identifying a person as a delinquent debtor, for the publication of inaccurate information, or for the publication of accurate information which may adversely affect a third party.

(i) Agencies not required to publish all debts. An agency may determine, in their sole discretion, whether to publish information regarding certain classes of debts or debtors who meet all conditions for publishing described in this section, or may determine that no publication is appropriate. Also, an agency may identify the names of specific debtors within a class and not other debtors within the same class.

(j) No private right of action. The provisions of this section do not create any right, benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, its officers, or any other person; nor shall the failure of an agency to comply with any of the provisions of this section be available to any debtor as a defense.

Gary Grippo,

Acting Fiscal Assistant Secretary.

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