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statutes, regulations, or common law to settle disputed claims relating to a contract; or

(2) The Secretary from redetermining a claim.

(Authority: 20 U.S.C. 1082(a) (5) and (6), 1087hh, 1221e–3(a)(1), 1226a–1, and 1234a(f), 31 U.S.C. 3711(e))

[53 FR 33425, Aug. 30, 1988]

Subpart G [Reserved]

PART 31—SALARY OFFSET FOR FEDERAL EMPLOYEES WHO ARE INDEBTED TO THE UNITED STATES UNDER PROGRAMS ADMINISTERED BY THE SECRETARY OF EDUCATION

Sec.

31.1 Scope.
31.2 Definitions.
31.3 Pre-offset notice.
31.4 Request to inspect and copy documents relating to a debt.
31.5 Request for hearing on the debt or the proposed offset.
31.6 Location and timing of oral hearing.
31.7 Hearing procedures.
31.8 Rules of decision.
31.9 Decision of the hearing official.
31.10 Request for repayment agreement.
31.11 Offset process.

AUTHORITY: 5 U.S.C. 5514; 31 U.S.C. 3716.

SOURCE: 54 FR 31821, Aug. 19, 1989, unless otherwise noted.

§31.1 Scope.

(a) *General.* The Secretary establishes the standards and procedures in this part that apply to the offset from disposable pay of a current or former Federal employee or from amounts payable from the Federal retirement account of a former Federal employee to recover a debt owed the United States under a program adminstered by the Secretary of Education.

(b) *Exclusions.* This part does not apply to—

(1) Offsets under 34 CFR part 32 to recover for overpayments of pay or allowances to an employee of the Department;

(2) Offsets under 34 CFR part 30; or

(3) Offsets under section 124 of Pub. L. 97–276 to collect debts owed to the United States on judgments.

(c) *Reports to consumer reporting agency.* The Secretary may report a debt to a consumer reporting agency after notifying the employee, in accordance with 34 CFR 30.35, of the intention to report the debt, and after providing the employee an opportunity to inspect documents, receive a hearing, and enter into a repayment agreement under this part.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3711; 31 U.S.C. 3716)

§31.2 Definitions.

As used in this part:

Agency means—

(1) An Executive agency as defined in 5 U.S.C. 105, including the U.S. Postal Service and the U.S. Postal Rate Commission;

(2) A military department as defined in 5 U.S.C. 102;

(3) An agency or court in the judicial branch, including a court as defined in 28 U.S.C. 610, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation;

(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(5) Any other independent establishment that is an entity of the Federal Government.

Days refer to calendar days.

Department means the Education Department.

Disposable pay means the amount that remains from an employee's pay after required deductions for Federal, State, and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; premiums for basic life insurance and health insurance benefits; and such other deductions that are required by law to be withheld.

Employee means a current or former employee of an agency. In the case of an offset proposed to collect a debt owed by a deceased employee, the references in this part to the employee shall be read to refer to the payee of benefits from the Federal retirement account or other pay of the employee.

Federal retirement account means an account of an employee under the Civil Service Retirement System or the Federal Employee Retirement System.

Offset means a deduction from the pay of an employee, or a payment due from the Federal retirement account of an employee, to satisfy a debt.

Pay means basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an individual not entitled to basic pay, other authorized pay, including severance pay or lump sum payments for accrued annual leave, and amounts payable from the Federal retirement account of an employee.

Secretary means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 31.3 Pre-offset notice.

(a) At least 65 days before initiating an offset against the pay of an employee, the Secretary sends a written notice to the employee stating—

(1) The nature and amount of the debt;

(2) A demand for payment of the debt;

(3) The manner in which the Secretary charges interest, administrative costs, and penalties on the debt;

(4) The Secretary's intention to collect the debt by offset against—

(i) 15 percent of the employee's current disposable pay; and

(ii) If the debt cannot be satisfied by offset against current disposable pay, a specified amount of severance pay, a lump sum annual leave payment, a final salary check, or payments from the Federal retirement account of the employee;

(5) The amount, frequency, approximate beginning date and duration of the proposed offset;

(6) The employee's opportunity to—

(i) Inspect and copy Department records pertaining to the debt;

(ii) Obtain a pre-offset hearing before a hearing official who is not under the control or supervision of the Secretary regarding the existence or amount of the debt, or the proposed offset schedule; and

(iii) Enter into a written agreement with the Secretary to repay the debt;

(7) The date by which the employee must request an opportunity set forth under paragraph (a)(6) of this section;

(8) The grounds for objecting to collection of the debt by offset;

(9) The applicable hearing procedures and requirements;

(10) That the Secretary grants any request for access to records, for a hearing, or for a satisfactory repayment agreement made by an employee;

(11) That the Secretary does not delay the start of the proposed offset, or suspend an offset already commenced, unless—

(i) An employee makes the request for access to records or for a hearing, or enters into a repayment agreement that is acceptable to the Secretary, before the deadlines described in this part; or

(ii) An employee requests a hearing after the deadlines established in § 31.5(a), but submits evidence satisfactory to the Secretary that the request was not made in a timely manner because the employee did not have notice of the proposed offset, or was prevented from making the request by factors beyond his or her control, until after the deadlines had passed;

(12) That a final decision on the hearing will be issued not later than 60 days after the date on which the employee files a request for a hearing under § 31.5, unless a delay in the proceedings is granted at the request of the employee;

(13) That submission by the employee of knowingly false statements, representations or evidence may subject the employee to applicable disciplinary procedures, or civil or criminal penalties; and

(14) That any amounts paid or collected by offset on a debt later determined to be unenforceable or canceled will be refunded to the employee.

(b)(1) In determining whether an employee has requested an opportunity set forth under paragraph (a)(6) of this section in a timely manner, the Secretary relies on—

(i) A legibly dated U.S. Postal Service postmark for the employee's request; or

(ii) A legibly stamped U.S. Postal Service mail receipt for the employee's request.

(2) The Secretary does not rely on either of the following as proof of mailing:

(i) A private metered postmark.

(ii) A mail receipt that is not dated by the U.S. Postal Service.

(c) Payment by offset under this part of all or part of a debt does not constitute an acknowledgment of the debt or a waiver of rights available to the employee under this part or other applicable law if the employee has not agreed in writing to the offset.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§31.4 Request to inspect and copy documents relating to a debt.

(a) The Secretary makes available for inspection and copying before offset under this part those Department documents that relate to the debt, if the employee—

(1) Files a written request to inspect and copy the documents within 20 days of the date of the pre-offset notice under §31.3, and

(2) Files the request at the address specified in that notice.

(b) A request filed under paragraph (a)(1) of this section must contain—

(1) All information provided to the employee in the pre-offset notice under §31.3 that identifies the employee and the debt, including the employee's Social Security number and the program under which the debt arose, together with any corrections of that identifying information; and

(2) A reasonably specific identification of the documents that the employee wishes to have available for inspection and copying.

(c) The Secretary makes available documents for inspection and copying upon request by the employee. However, the Secretary may initiate an offset before making the requested documents available if the employee fails to request inspection and copying in accordance with this section.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§31.5 Request for hearing on the debt or the proposed offset.

(a) *Deadlines.* (1) The Secretary provides a hearing before offset on the existence, amount, or enforceability of the debt described in the pre-offset notice provided under §31.3, or on the amount or frequency of the offsets as proposed in that notice, if the employee—

(i) Files a request for the hearing within the later of—

(A) 65 days after the date of the pre-offset notice provided under §31.3; or

(B) 15 days after the date on which the Secretary makes available to the employee the relevant, requested documents if the employee had requested an opportunity to inspect and copy documents within 20 days of the date of the pre-offset notice provided under §31.3; and

(ii) Files a request at the address specified in that notice.

(2) The Secretary provides a hearing upon request by the employee. However, if the employee does not submit, within the deadlines in paragraph (a)(1) of this section, a request that meets the requirements of paragraphs (b) and (c) of this section, the Secretary does not delay the start of an offset, or suspend an offset already commenced, unless the employee submits evidence satisfactory to the Secretary that the request was not made in a timely manner because the employee did not have notice of the proposed offset, or was otherwise prevented from making the request by factors beyond his or her control, until after the deadlines had passed.

(b) *Contents of request for a hearing.* A request for a hearing must contain—

(1) All information provided to the employee in the pre-offset notice under §31.3 that identifies the employee and the particular debt, including the employee's Social Security number and the program under which the debt arose, together with any corrections needed with regard to that identifying information;

(2) An explanation of the reasons why the employee believes that—

(i) The debt as stated in the pre-offset notice is not owing or is not enforceable by offset; or

(ii) The amount of the proposed offset described in the pre-offset notice will cause extreme financial hardship to the employee;

(3) If the employee contends that the amount of the proposed offset will

cause extreme financial hardship under the standards set forth in § 31.8(b)—

(i) An alternative offset proposal;

(ii) An explanation, in writing, showing why the offset proposed in the notice would cause an extreme financial hardship for the employee; and

(iii) Documents that show for the employee and for the spouse and dependents of the employee, for the one-year period preceding the Secretary's notice and for the repayment period proposed by the employee in his or her offset schedule—

(A) Income from all sources,

(B) Assets,

(C) Liabilities,

(D) Number of dependents,

(E) Expenses for food, housing, clothing, and transportation,

(F) Medical expenses, and

(G) Exceptional expenses, if any; and

(4) Copies of all documents that the employee wishes to have considered to support the objections raised by the employee regarding the enforceability of the debt or the claim of extreme financial hardship.

(c) *Request for oral hearing.* (1) If the employee wants the hearing to be conducted as an oral hearing, the employee must submit a request that contains the information listed in paragraph (b) and must include with the request—

(i) An explanation of reasons why the employee believes that the issues raised regarding the enforceability of the debt or a claim of extreme financial hardship cannot be resolved adequately by a review of the written statements and documents provided with the request for a hearing;

(ii) An identification of—

(A) The individuals that the employee wishes to have testify at the oral hearing;

(B) The specific issues about which each individual is prepared to testify; and

(C) The reasons why each individual's testimony is necessary to resolve the issue.

(2) The Secretary grants a request for an oral hearing if—

(i) The employee files a request for an oral hearing that meets the requirements of paragraphs (b) and (c) of this section; and

(ii) The Secretary determines that the issues raised by the employee require a determination of the credibility of testimony and cannot be adequately resolved by a review of the written statements and documents submitted by the employee and documents contained in the Department's records relating to the debt.

(3) The Secretary may decline a request for an oral hearing if the Secretary accepts the employee's proffer of testimony made in the request for an oral hearing under paragraph (c)(1) of this section, and considers the facts at issue to be established as stated by the employee in the request.

(4) If the Secretary grants a request for an oral hearing, the Secretary—

(i) Notifies the employee in writing of—

(A) The date, time, and place of the hearing;

(B) The name and address of the hearing official;

(C) The employee's right to be represented at the hearing by counsel or other representatives;

(D) The employee's right to present and cross-examine witnesses; and

(E) The employee's right to waive the requested oral hearing and receive a hearing in the written record; and

(ii) Provides the hearing official with a copy of all written statements submitted by the employee with the request for a hearing, and all documents pertaining to the debt or the amount of the offset contained in the Department's files on the debt or submitted with the request for a hearing.

(d) *Employee choice of oral hearing or hearing on written submissions.* An employee who has been sent notice under paragraph (c)(4) that an oral hearing will be provided must, within 15 days of the date of that notice, state in writing to the hearing official and the Secretary—

(1) Whether the employee intends to proceed with the oral hearing, or wishes a decision based on the written record; and

(2) Any changes in the list of the witnesses the employee proposes to produce for the hearing, or the facts about which a witness will testify.

(e) *Dismissal of request for hearing.* The Secretary considers the employee to

have waived the request for a hearing of any kind—

(1) If an employee does not provide the hearing official in a timely manner the written statement required under paragraph (d) of this section; or

(2) If the employee does not appear for a scheduled oral hearing.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§31.6 Location and timing of oral hearing.

(a) If the Secretary grants a request for an oral hearing, the Secretary selects the time, date, and location of the hearing. The Secretary selects, to the extent feasible, the location that is most convenient for the employee.

(b) For a current military employee, the Secretary selects the time, date, and location of the hearing after consultation with the Secretary of Defense.

(c) For a current Coast Guard employee, the Secretary selects the time, date, and location of the hearing after consultation with the Secretary of Transportation.

(d) For an employee not described in paragraph (a) or (b) of this section, the hearing will be held in Washington, DC, or in one of the following cities: Boston, Philadelphia, New York, Atlanta, Chicago, Dallas, Kansas City, Denver, San Francisco, or Seattle.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§31.7 Hearing procedures.

(a) *Independence of hearing official.* A hearing provided under this part is conducted by a hearing official who is neither an employee of the Department nor otherwise under the supervision or control of the Secretary.

(b) *Lack of subpoena authority or formal discovery.* (1) Neither the hearing official nor the Secretary has authority to issue subpoenas to compel the production of documents or to compel the attendance of witnesses at an oral hearing under this part. The Secretary will attempt to make available during an oral hearing the testimony of a current official of the Department if—

(i) The employee had identified the official in the request for a hearing under §31.5(b) and demonstrated that the testimony of the official is necessary to resolve adequately an issue of fact raised by the employee in the request for a hearing; and

(ii) The Secretary determines that the responsibilities of the official permit his or her attendance at the hearing.

(2) If the Secretary determines that the testimony of a Department official is necessary, but that the official cannot attend an oral hearing to testify, the Secretary attempts to make the official available for testimony at the hearing by means of a telephone conference call.

(3) No discovery is available in a proceeding under this part except as provided in §31.4.

(c) *Hearing on written submissions.* If a hearing is conducted on the written submissions, the hearing official reviews documents and responses submitted by the Secretary and the employee under §31.5.

(d) *Conduct of oral hearing.* (1) The hearing official conducts an oral hearing as an informal proceeding. The official—

(i) Administers oaths to witnesses;

(ii) Regulates the course of the hearing;

(iii) Considers the introduction of evidence without regard to the rules of evidence applicable to judicial proceedings; and

(iv) May exclude evidence that is redundant, or that is not relevant to those issues raised by the employee in the request for hearing under §31.5 that remain in dispute.

(2) An oral hearing is generally open to the public. However, the hearing official may close all or any portion of the hearing if doing so is in the best interest of the employee or the public.

(3) The hearing official may conduct an oral hearing by telephone conference call—

(i) If the employee is located in a city outside the Washington, DC Metropolitan area.

(ii) At the request of the employee.

(iii) At the discretion of the hearing official.

(4) No written record is created or maintained of an oral hearing provided under this part.

(e) *Burden of proof.* In any hearing under this part—

(1) The Secretary bears the burden of proving, by a preponderance of the evidence, the existence and amount of the debt, and the failure of the employee to repay the debt, as the debt is described in the pre-offset notice provided under § 31.3; and

(2) The employee bears the burden of proving, by a preponderance of the evidence—

(i) The existence of any fact that would establish that the debt described in the pre-offset notice is not enforceable by offset; and

(ii) The existence of any fact that would establish that the amount of the proposed offset would cause an extreme financial hardship for the employee.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 31.8 Rules of decision.

(a) *Enforceability of debt by offset.* In deciding whether the Secretary has established that the debt described in the pre-offset under § 31.3 is owed by the employee, or whether the employee has established that the debt is not enforceable by offset, the hearing official shall apply the principles in this paragraph.

(1) The statutes and Department regulations authorizing and implementing the program under which the debt arose must be applied in accordance with official written interpretations by the Department.

(2) The principles of res judicata and collateral estoppel apply to resolution of disputed facts in those instances in which the debt or material facts in dispute have been the subject of prior judicial decision.

(3) The act or omission of an institution of higher education at which the employee was enrolled does not constitute a defense to repayment of an obligation with regard to a grant or loan under a program authorized under Title IV of the Higher Education Act or similar authority, except to the extent that—

(i) The act or omission constitutes a defense to the debt under applicable Federal or State law;

(ii) The institution owed the employee a refund under its refund policy and failed to pay that refund to the employee or to a lender holding a loan made to the employee; or

(iii) The institution ceased teaching activity while the employee was in attendance and during the academic period for which the grant or loan was made, and failed to refund to the employee or holder of a loan to the employee a proportionate amount of the grant or loan funds used to pay tuition and other institutional charges for that academic period.

(4)(i) A debt otherwise established as owed by the employee is enforceable by offset under this part if the Secretary sends the pre-offset notice for the debt within the ten year period following the later of—

(A) The date on which the Secretary acquired the debt by assignment or referral, or

(B) The date of a subsequent partial payment reaffirming the debt.

(ii) Periods during which the statute of limitations applicable to a lawsuit to collect the debt has been tolled under 11 U.S.C. 108, 28 U.S.C. 2416, 50 U.S.C. App. 525, or other authority are excluded from the calculation of the ten year period described in paragraph (a)(4)(i) of this section.

(b) *Extreme financial hardship.* (1) In deciding whether an employee has established that the amount of the proposed offset would cause extreme financial hardship to the employee, the hearing official shall determine whether the credible, relevant evidence submitted demonstrates that the proposed offset would prevent the employee from meeting the costs necessarily incurred for essential subsistence expenses of the employee and his or her spouse and dependents.

(2) For purposes of this determination, essential subsistence expenses include costs incurred only for food, housing, clothing, essential transportation and medical care.

(3) In making this determination, the hearing official shall consider—

(i) The income from all sources of the employee, and his or her spouse and dependents;

(ii) The extent to which the assets of the employee and his or her spouse and dependents are available to meet the offset and the essential subsistence expenses;

(iii) Whether these essential subsistence expenses have been minimized to the greatest extent possible;

(iv) The extent to which the employee and his or her spouse and dependents can borrow to satisfy the debt to be collected by offset or to meet essential expenses; and

(v) The extent to which the employee and his or her spouse and dependents have other exceptional expenses that should be taken into account, and whether these expenses have been minimized.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§31.9 Decision of the hearing official.

(a) The hearing official issues a written opinion within sixty days of the date on which the employee filed a request for a hearing under §31.5, unless a delay in the proceedings has been granted at the request of the employee. In the opinion, the hearing official states his or her decision and the findings of fact and conclusions of law on which the decision is based.

(b) If the hearing official finds that a portion of the debt described in the pre-offset notice under §31.3 is not enforceable by offset, the official shall state in the opinion that portion which is enforceable by offset.

(c) If the hearing official finds that the amount of the offset proposed in the pre-offset notice will cause an extreme financial hardship for the employee, the hearing official shall establish an offset schedule that will result in the repayment of the debt in the shortest period of time without producing an extreme financial hardship for the employee.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§31.10 Request for repayment agreement.

(a) The Secretary does not initiate an offset under this part if the employee agrees in writing to repay the debt under terms acceptable to the Secretary and makes the first payment due under the agreement on or before the latest of—

(1) The seventh day after the date of the decision of the hearing official, if the employee timely requested a hearing under §31.5 (a) and (d);

(2) The sixty-fifth day after the date of the pre-offset notice under §31.3 if the employee did not timely request either a hearing in accordance with §31.5 (a) and (d) or an opportunity to inspect and copy documents related to the debt under §31.4; or

(3) The fifteenth day after the date on which the Secretary made available documents related to the debt, if the employee filed a timely request for documents under §31.4.

(b) In the agreement, the Secretary and the employee may agree to satisfaction of the debt from sources other than an offset under this part, or may modify the amount proposed to be offset in the pre-offset notice or estimated in the decision of the hearing official.

(c) If the employee does not enter into a repayment agreement acceptable to the Secretary within the deadlines in this section, the Secretary may initiate an offset under this part. The Secretary continues to collect by offset until an employee enters in a satisfactory repayment agreement for the debt. The Secretary suspends an offset already commenced under circumstances described in §31.5(a)(2).

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§31.11 Offset process.

(a) The Secretary attempts to collect debts under this part within the shortest time authorized under—

(1) The offset schedule proposed in the pre-offset notice, unless modified by agreement or by the decision of a hearing official;

(2) A written repayment agreement with the employee; or

(3) The offset schedule established in the decision of the hearing official.

(b) In proposing an offset schedule under §31.3 or establishing a repayment agreement under §31.10, the Secretary also considers the expected period of Federal employment of the employee.

(c) Unless the Secretary determines, in his discretion, to delay or suspend collection, the Secretary effects an offset under this part—

(1) According to the terms agreed to by the employee pursuant to a timely request under §31.10 to enter into a repayment agreement; or,

(2) After the deadlines in § 31.10(b) for requesting a repayment agreement with the Secretary.

(d) If the employee retires, resigns, or leaves Federal employment before the debt is satisfied, the Secretary collects the amount necessary to satisfy the debt by offset from subsequent payments of any kind, including a final salary payment or a lump sum annual leave payment, due the employee on the date of separation. If the debt cannot be satisfied by offset from any such final payment due the employee on the date of separation, the Secretary collects the debt from later payments of any kind due the employee in accordance with the provisions of 4 CFR 102.4.

(e) The Secretary effects an offset under this part against payments owing to an employee of another Federal agency after completion of the requirements of this part, in accordance with the provisions of 5 CFR 550.1108.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

PART 32—SALARY OFFSET TO RECOVER OVERPAYMENTS OF PAY OR ALLOWANCES FROM DEPARTMENT OF EDUCATION EMPLOYEES

Sec.

32.1 Scope.
32.2 Definitions.
32.3 Pre-offset notice.
32.4 Employee response.
32.5 Pre-offset hearing—general.
32.6 Request for a pre-offset hearing.
32.7 Pre-offset oral hearing.
32.8 Pre-offset hearing on the written submissions.
32.9 Written decision.
32.10 Deductions process.

AUTHORITY: 5 U.S.C. 5514; 31 U.S.C. 3716.

SOURCE: 52 FR 24957, July 1, 1987, unless otherwise noted.

§ 32.1 Scope.

(a) The Secretary establishes the standards and procedures in this part that apply to the deductions through offset from disposable pay of a current or former employee of the Department of Education to recover overpayments of pay or allowances.

(b) This part does not apply to—

(1) Recovery through offset of an indebtedness to the United States by an employee of the Department under a program administered by the Secretary of Education covered under 34 CFR part 31;

(2) The offset of an indebtedness to the United States by a Federal employee to satisfy a judgment obtained by the United States against that employee in a court of the United States;

(3) The offset of any payment to an employee of the Department of Education which is expressly allowed under statutes other than 5 U.S.C. 5514, except as to offsets of severance pay and/or lump sum annual leave payments as authorized under 31 U.S.C. 3716;

(4) Offsets under 34 CFR part 30; or

(5) An employee election of coverage or of a change of coverage under a Federal benefits program which requires periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 32.2 Definitions.

The following definitions apply to this part:

Department means the Department of Education.

Disposable pay means the amount that remains from an employee's pay after required deductions for Federal, State, and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; premiums for health and basic life insurance benefits; and such other deductions that are required by law to be withheld.

Employee means a current or former employee of the Department.

Former employee means a former employee of the Department who is entitled to pay from the Department or another agency.

Pay means basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an individual not entitled to basic pay, other authorized pay, including severance pay and/or lump sum payments for accrued annual leave.

Paying agency means a Federal agency currently employing an individual and authorizing the payment of his or her current pay.

Secretary means the Secretary of the Department of Education or an official