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project and shall provide the project applicant with any policies or information deemed appropriate in order to permit effective and timely review by the Trust of a proposal once it is submitted to the decision-maker for approval.

§ 1010.15 Actions where lead agency designation is necessary.

(a) Consistent with 40 CFR 1501.5, where a proposed action by the Trust involves one or more other Federal agencies, or where actions by the Trust and one or more Federal agencies are directly related to each other because of their functional interdependence or geographical proximity, the Trust will seek designation as lead agency for those actions that relate solely to the Presidio Trust Area.

(b) For an action that qualifies as one for which the Trust will seek designation as lead agency, the Trust will promptly consult with the appropriate Federal agencies to establish lead agency, joint lead agency, and/or cooperating agency designations.

(c) For an action as to which the Trust undertakes lead, joint lead, or cooperating agency status, the Trust is authorized to enter into a memorandum of understanding or agreement to define the rights and responsibilities of the relevant agencies.

§ 1010.16 Actions to encourage agency cooperation early in the NEPA process.

Consistent with 40 CFR 1501.6, the Trust may request the NPS to be a cooperating agency for actions or projects significantly affecting the quality of the Presidio. In addition, upon request of the Trust, any other Federal, State, local, or tribal agency that has jurisdiction by law or special expertise with respect to any environmental issue that should be addressed in the analysis may be a cooperating agency. The Trust shall use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise to the maximum extent possible consistent with its responsibility as lead or joint lead agency.

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§ 1010.17 Actions to eliminate duplication with State and local procedures.

Consistent with 40 CFR 1506.2, the Trust shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements. Such cooperation shall to the fullest extent possible include:

- (a) Joint planning processes;
- (b) Joint environmental research and studies;
- (c) Joint public hearings (except where otherwise provided by statute); and
- (d) Joint environmental assessments and/or Environmental Impact Statements/Environmental Impact Reports.

PART 1011—DEBT COLLECTION

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Subpart A—General Provisions

§ 1011.1 What definitions apply to the regulations in this part?

As used in this part:

Administrative offset or *offset* means withholding funds payable by the United States (including funds payable by the United States on behalf of a State Government) to, or held by the United States for, a person to satisfy a debt owed by the person. The term “administrative offset” includes, without limitation, the offset of federal salary, vendor, retirement, and Social Security benefit payments. The terms “centralized administrative offset” and “centralized offset” refer to the process by which the Treasury Department's Financial Management Service offsets federal payments through the Treasury Offset Program.

Administrative wage garnishment means the process by which a Federal agency may, without first obtaining a court order, order a non-Federal employer to withhold amounts from a

debtor's wages to satisfy a delinquent debt.

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

Certification means a written statement received by a paying agency or disbursing official that requests the paying agency or disbursing official to offset the salary of an employee and specifies that required procedural protections have been afforded the employee.

Compromise means the settlement or forgiveness of all or a portion of a debt.

Creditor agency means any Federal agency that is owed a debt and includes a debt collection center when it is acting on behalf of the Presidio Trust.

Debt means any amount of money, funds or property that has been determined by an appropriate agency official to be owed to the United States by a person. As used in this part, the term “debt” does not include debts arising under the Internal Revenue Code.

Debt collection center means the Treasury Department or any agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies.

Debtor means a person who owes a debt to the United States.

Delinquent debt means a debt that has not been paid by the date specified in the Presidio Trust's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made.

Disposable pay means that part of an employee's pay that remains after deductions that are required by law to be withheld have been made.

Employee or *Federal employee* means a current employee of the Presidio Trust or other Federal agency, including a current member of the Armed Forces, Reserve of the Armed Forces of the United States or of the National Guard.

FCCS means the Federal Claims Collection Standards, which were jointly published by the Departments of the

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Treasury and Justice and codified at 31 CFR parts 900-904.

FMS means the Financial Management Service, a bureau of the Treasury Department, which is responsible for the centralized collection of delinquent debts through the offset of Federal payments and other means.

IRS means the Internal Revenue Service.

Paying agency means any agency that is making payments of any kind to a debtor. In some cases, the Presidio Trust may be both the paying agency and the creditor agency.

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

Private collection contractor means a private debt collector under contract with an agency to collect a non-tax debt owed to the Presidio Trust.

Salary offset means a type of administrative offset to collect a debt owed by a Federal employee from the current pay account of the employee.

Tax refund offset means the reduction of a tax refund by the amount of a delinquent debt owed to the Presidio Trust.

Treasury Department means the United States Department of the Treasury.

Treasury Offset Program means the Treasury Department's program for withholding funds payable by the United States to a person to satisfy a debt owed by the person utilizing the Financial Management Service's system that compares information about payments with information about debts.

§ 1011.2 Why is the Presidio Trust issuing these regulations and what do they cover?

(a) *Scope.* The Presidio Trust is issuing these regulations to provide procedures for the collection of debts owed to the Presidio Trust. This part also provides procedures for collection of other debts owed to the United States when a request for offset of a Treasury payment is received by the Treasury Department from another agency (for example, when a Presidio Trust employee owes a debt to the

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United States Department of Education).

(b) *Applicability.* (1) This part applies to the Presidio Trust when collecting a debt and to persons who owe a debt to the Presidio Trust, or to Federal agencies requesting offset of a payment issued by the Presidio Trust as a paying agency (including salary payments to Presidio Trust employees).

(2) This part does not apply to tax debts.

(3) Nothing in this part precludes collection or disposition of any debt under statutes and regulations other than those described in this part.

(c) *Additional policies, guidelines and procedures.* The Presidio Trust may adopt additional policies, guidelines and procedures consistent with this part and other applicable law.

(d) *Duplication not required.* Nothing in this part requires the Presidio Trust to duplicate notices or administrative proceedings required by contract, this part or other laws or regulations.

(e) *Use of multiple collection remedies allowed.* The Presidio Trust may simultaneously use multiple collection remedies to collect a debt, except as prohibited by law. This part is intended to promote aggressive debt collection, using for each debt all available collection remedies. These remedies are not listed in any prescribed order to provide the Presidio Trust with flexibility in determining which remedies will be most efficient in collecting the particular debt.

(f) *Cross-servicing with the Treasury Department.* These regulations authorize the Presidio Trust to enter a cross-servicing agreement with the Treasury Department under which the Treasury Department will take authorized action to collect debts owed to the Presidio Trust.

§ 1011.3 Do these regulations adopt the Federal Claims Collections Standards?

This part adopts and incorporates all provisions of the FCCS. This part also supplements the FCCS by prescribing procedures consistent with the FCCS, as necessary and appropriate for Presidio Trust operations.

Subpart B—Procedures To Collect Presidio Trust Debts

§ 1011.4 What notice will the Presidio Trust send to a debtor when collecting a debt?

(a) *Notice requirements.* The Presidio Trust will aggressively collect debts. The Presidio Trust will send at least one written notice to a debtor informing the debtor of the consequences of failing to pay or otherwise resolve a debt. The notice(s) will be sent to the debtor's most current address for the debtor in the records of the Presidio Trust. Except as otherwise provided in paragraph (b) of this section, the written notice(s) will explain to the debtor:

(1) The amount, nature and basis of the debt;

(2) How interest, penalty charges and administrative costs are added to the debt, the date by which payment should be made to avoid such charges, and that such assessments must be made unless waived (see § 1011.5 of this part);

(3) The date by which payment is due and that the debt will be considered delinquent if payment is not received by the Presidio Trust by the due date, which date will not be less than 30 days after the date of the notice, and the date by which payment must be received by the Presidio Trust to avoid the enforced collection actions described in paragraph (a)(6) of this section, which date will not be less than 60 days after the date of the notice;

(4) How the debtor may enter into a written agreement to repay the debt voluntarily under terms acceptable to the Presidio Trust (see § 1011.6 of this part);

(5) The name, address and telephone number of a contact person within the Presidio Trust;

(6) The Presidio Trust's intention to enforce collection if the debtor fails to pay or otherwise resolve the debt, by taking one or more of the following actions:

(i) Use administrative offset or other offset to offset the debtor's federal payments, including, without limitation, income tax refunds, salary, certain benefit payments (such as Social Security), retirement, vendor, travel reimbursements and advances, and other

federal payments (see § 1011.10 through 1011.12 of this part);

(ii) Refer the debt to a private collection agency (see § 1011.15 of this part);

(iii) Report the debt to a credit bureau (see § 1011.14 of this part);

(iv) Garnish the debtor's wages through administrative wage garnishment (see § 1011.13 of this part);

(v) Refer the debt to the Department of Justice to initiate litigation to collect the debt (see § 1011.16 of this part);

(vi) Refer the debt to the FMS for collection (see § 1011.9 of this part);

(7) That debts over 180 days delinquent must be referred to the FMS for the collection actions described in paragraph (a)(6) of this section (see § 1011.9 of this part);

(8) How the debtor may inspect and obtain copies of disclosable records related to the debt;

(9) How the debtor may request a review of the Presidio Trust's determination that the debtor owes a debt.

(10) How a debtor may request a hearing if the Presidio Trust intends to garnish the debtor's non-Federal wages (see § 1011.13(a) of this part), including:

(i) The method and time period for requesting a hearing;

(ii) That the timely filing of a request for a hearing on or before the 15th business day following the date of the notice will stay the commencement of administrative wage garnishment, but not necessarily other collection procedures; and

(iii) The name and address of the office to which the request for a hearing should be sent.

(11) How a debtor who is a Federal employee subject to Federal salary offset may request a hearing (see § 1011.12(e) of this part), including:

(i) The method and time period for requesting a hearing;

(ii) That the timely filing of a request for a hearing on or before the 15th business day following the date of the notice will stay the commencement of salary offset, but not necessarily other collection procedures;

(iii) The name and address of the office to which the request for a hearing should be sent;

(iv) That the Presidio Trust will refer the debt to the debtor's employing agency or to the FMS to implement

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salary offset, unless the employee files a timely request for a hearing;

(v) That a final decision on the hearing, if requested, will be issued at the earliest practical date, but not later than 60 days after the filing of the request for a hearing, unless the employee requests and the hearing official grants a delay in the proceedings;

(vi) That any knowingly false or frivolous statements, representations or evidence may subject the Federal employee to penalties under the False Claims Act (31 U.S.C. 3729–3731) or other applicable statutory authority, and criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or other applicable statutory authority;

(vii) That unless prohibited by contract or statute, amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee; and

(viii) That proceedings with respect to such debt are governed by 5 U.S.C. 5514 and 31 U.S.C. 3716;

(12) That the debtor may request a waiver of the debt;

(13) That the debtor's spouse may claim the spouse's share of a joint income tax refund by filing Form 8379 with the IRS;

(14) That the debtor may exercise other statutory or regulatory rights and remedies available to the debtor;

(15) That the Presidio Trust may suspend or revoke any licenses, permits, leases, privileges or services for failure to pay a debt (see §1011.17 of this part); and

(16) That the debtor should advise the Presidio Trust of a bankruptcy proceeding of the debtor or another person liable for the debt being collected.

(b) *Exceptions to notice requirements.* The Presidio Trust may omit from a notice to a debtor one or more of the provisions contained in paragraphs (a)(6) through (a)(16) of this section if the Presidio Trust, in consultation with its General Counsel, determines that any provision is not legally required given the collection remedies to be applied to a particular debt.

(c) *Respond to debtors.* The Presidio Trust will respond promptly to communications from debtors.

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§ 1011.5 What interest, penalty charges and administrative costs will the Presidio Trust add to a debt?

(a) *Interest.* (1) The Presidio Trust will assess interest on all delinquent debts unless prohibited by statute, regulation or contract.

(2) Interest begins to accrue on all debts from the date the debt becomes delinquent. The Presidio Trust will waive collection of interest on that portion of the debt that is paid within 30 days after the date on which interest begins to accrue. The Presidio Trust will assess interest at the rate established by the Treasury Department under 31 U.S.C. 3717, unless a different rate is established by a contract, repayment agreement or statute. The Presidio Trust will notify the debtor of the basis for the interest rate assessed.

(b) *Penalty.* The Presidio Trust will assess a penalty of not more than 6% a year, or such other higher rate as authorized by law, on any portion of a debt that is delinquent for more than 90 days.

(c) *Administrative costs.* The Presidio Trust will assess charges to cover administrative costs incurred as a result of the debtor's failure to pay a debt. The Presidio Trust will waive collection of administrative costs on that portion of the debt that is paid within 30 days after the date on which the administrative costs begin to accrue. Administrative costs include the costs of processing and handling a debt, obtaining a credit report, using a private collection contractor, costs of a hearing including, the costs of a hearing officer, and service fees charged by a Federal agency for collection activities undertaken on behalf of the Presidio Trust.

(d) *Allocation of payments.* A partial or installment payment by a debtor will be applied first to outstanding penalty assessments, second to administrative costs, third to accrued interest, and fourth to outstanding debt principal.

(e) *Additional authority.* The Presidio Trust may have additional policies, guidelines and procedures regarding how interest, penalties and administrative costs are assessed on particular types of debts. The Presidio Trust will

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explain in the notice to the debtor described in §1011.4 of this part how interest, penalties, administrative costs and other charges are assessed, unless the requirements are included in a contract or repayment agreement.

(f) *Waiver.* (1) The Presidio Trust may waive collection of all or part of accrued interest, penalties and administrative costs when it would be against equity and good conscience or not in the Presidio Trust's best interest to collect such charges.

(2) A decision to waive interest, penalties or administrative costs may be made at any time before a debt is paid. However, unless otherwise provided in these regulations, when these charges have been collected before the waiver decision, they will not be refunded.

(g) *Accrual during suspension of debt collection.* In most cases, interest, penalties and administrative costs will continue to accrue during any period when collection has been suspended for any reason (for example, when the debtor has requested a hearing). The Presidio Trust may suspend accrual of any or all of these charges when accrual would be against equity and good conscience or not in the Presidio Trust's best interest.

[70 FR 73588, Dec. 13, 2005; 71 FR 2109, Jan. 12, 2006]

§ 1011.6 When will the Presidio Trust allow a debtor to enter into a repayment agreement?

(a) *Voluntary repayment.* In response to a notice of a debt, the debtor may propose to the Presidio Trust the voluntary repayment of the debt in lieu of the Presidio Trust taking other collection actions under this part.

(b) *Debtor's request.* The request from the debtor must:

- (1) Be in writing;
- (2) Admit the existence of the entire debt; and
- (3) Either propose payment of the debt (together with interest, penalties and administrative costs) in a lump sum, or set forth a proposed repayment schedule.

(c) *Repayment schedule.* The Presidio Trust will collect debts in one lump sum whenever feasible. The Presidio Trust may accept payment in regular

installments that bear a reasonable relationship to the size of the debt.

(d) *Repayment agreement.* The Presidio Trust will consider a request to enter into a voluntary repayment agreement in accordance with the FCCS. The Presidio Trust may request additional information from the debtor, including, without limitation, financial statements, in order to determine whether to enter into a voluntary repayment agreement. The Presidio Trust will set the necessary terms of any repayment agreement. No repayment agreement will be binding on the Presidio Trust unless it is in writing and signed by both the debtor and an authorized Presidio Trust representative. The Presidio Trust is not required to enter into a repayment agreement.

§ 1011.7 When will the Presidio Trust compromise a debt?

(a) *Authority.* The Presidio Trust may compromise a debt in accordance with the FCCS and such procedures as the Presidio Trust may adopt. (See §1011.16 of this subpart).

(b) *Report to IRS.* The uncollected portion of a debt owed to the Presidio Trust that is not recovered as the result of a compromise will be reported to the IRS as income to the debtor in accordance with IRS and Presidio Trust procedures.

§ 1011.8 When will the Presidio Trust suspend or terminate debt collection on a debt?

If, after pursuing all appropriate means of collection, the Presidio Trust determines that a debt is uncollectible, the Presidio Trust may suspend or terminate debt collection activity in accordance with the FCCS and the Presidio Trust's procedures.

§ 1011.9 When will the Presidio Trust transfer a debt to the Financial Management Service for collection?

(a) *Cross-servicing.* The Presidio Trust will transfer any eligible debt that is more than 180 days delinquent to the FMS for debt collection services, a process known as "cross-servicing." The Presidio Trust may transfer debts delinquent 180 days or less to the FMS in accordance with the procedures described in 31 CFR 285.12. The FMS

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takes appropriate action to collect or compromise the transferred debt, or to suspend or terminate collection action thereon, in accordance with the statutory and regulatory requirements and authorities applicable to the debt and the collection action to be taken. Appropriate action includes, without limitation, contact with the debtor, referral of the debt to the Treasury Offset Program, private collection agencies or the Department of Justice, reporting of the debt to credit bureaus, and administrative wage garnishment.

(b) *Notice; certification.* At least 60 days prior to transferring a debt to the FMS, the Presidio Trust will send notice to the debtor as required by § 1011.4 of this part. The Presidio Trust will certify to the FMS, in writing, that the debt is valid, delinquent, legally enforceable and that there are no legal bars to collection. In addition, the Presidio Trust will certify its compliance with all applicable due process and other requirements as described in this part and other Federal laws.

(c) *Treasury Offset Program.* As part of its debt collection process, the FMS uses the Treasury Offset Program to collect debts by administrative and tax refund offset. The Treasury Offset Program is a centralized offset program administered by the FMS to collect delinquent debts owed to Federal agencies and states (including past-due child support). Under the Treasury Offset Program, before a federal payment is disbursed, the FMS compares the name and taxpayer identification number (TIN) of the payee with the names and TINs of debtors that have been submitted by Federal agencies and states to the Treasury Offset Program database. If there is a match, the FMS (or, in some cases, another Federal disbursing agency) offsets all or a portion of the federal payment, disburses any remaining payment to the payee, and pays the offset amount to the creditor agency. Federal payments eligible for offset include, without limitation, income tax refunds, salary, travel advances and reimbursements, retirement and vendor payments, and Social Security and other benefit payments.

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§ 1011.10 How will the Presidio Trust use administrative offset (offset of non-tax federal payments) to collect a debt?

(a) *Centralized administrative offset through the Treasury Offset Program.* (1) If not already transferred to the FMS under § 1011.9 of this part, the Presidio Trust will refer any eligible debt over 180 days delinquent to the Treasury Offset Program for collection by centralized administrative offset. The Presidio Trust may refer any eligible debt less than 180 days delinquent to the Treasury Offset Program for offset.

(2) At least 60 days prior to referring a debt to the Treasury Offset Program, in accordance with paragraph (a)(1) of this section, the Presidio Trust will send notice to the debtor in accordance with the requirements of § 1011.4 of this part. The Presidio Trust will certify to the FMS, in writing, that the debt is valid, delinquent, legally enforceable and that there are no legal bars to collection by offset. In addition, the Presidio Trust will certify its compliance with the due process requirements under 31 U.S.C. 3716(a) and with the requirements described in this part.

(b) *Non-centralized administrative offset for a debt.* (1) When centralized administrative offset through the Treasury Offset Program is not available or appropriate, the Presidio Trust may collect delinquent, legally enforceable debts through non-centralized administrative offset. In these cases, the Presidio Trust may offset a payment internally or make an offset request directly to a federal paying agency.

(2) At least 30 days prior to offsetting a payment internally or requesting a federal paying agency to offset a payment, the Presidio Trust will send notice to the debtor in accordance with the requirements of § 1011.4 of this part. When referring a debt for offset under this paragraph (b), the Presidio Trust will certify, in writing, that the debt is valid, delinquent, legally enforceable and that there are no legal bars to collection by offset. In addition, the Presidio Trust will certify its compliance with the due process requirements under 31 U.S.C. 3716(a) and with these regulations concerning administrative offset.

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(c) *Administrative review.* The notice described in §1011.4 of this part will explain to the debtor how to request an administrative review of the Presidio Trust determination that the debtor owes a debt and how to present evidence that the debt is not delinquent or legally enforceable. In addition to challenging the existence and amount of the debt, the debtor may seek a review of the terms of repayment. In most cases, the Presidio Trust will provide the debtor with a “paper hearing” based upon a review of the written record, including documentation provided by the debtor. The Presidio Trust will provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and the Presidio Trust determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although the Presidio Trust will document all significant matters presented at the hearing. The Presidio Trust may suspend collection through administrative offset and/or other collection actions pending the resolution of a debtor’s dispute. The Presidio Trust may establish policies, guidelines and procedures concerning the administrative review process consistent with the FCCS and the regulations in this section.

(d) *Procedures for expedited offset.* Under the circumstances described by the FCCS, the Presidio Trust may effect an offset against a payment to be made to the debtor prior to sending a notice to the debtor, as described in §1011.4 of this part, or completing the procedures described in paragraph (b)(2) and (c) of this section. The Presidio Trust will give the debtor notice and an opportunity for review as soon as practicable and promptly refund any money ultimately found not to have been owed to the Government.

§ 1011.11 How will the Presidio Trust use tax refund offset to collect a debt?

(a) *Tax refund offset.* In most cases, the FMS uses the Treasury Offset Program to collect debts by the offset of tax refunds and other federal payments. See §1011.9(c) of this part. If not already transferred to the FMS under §1011.9 of this part, the Presidio Trust will refer to the Treasury Offset Program any delinquent, legally enforceable debt for collection by tax refund offset.

(b) *Notice; certification.* At least 60 days prior to referring a debt to the Treasury Offset Program, the Presidio Trust will send notice to the debtor in accordance with the requirements of §1011.4 of this part. The Presidio Trust will certify to the FMS’s Treasury Offset Program, in writing, that the debt is delinquent and legally enforceable in the amount submitted and that the Presidio Trust has made reasonable efforts to obtain payment of the debt. In addition, the Presidio Trust will certify its compliance with all applicable due process and other requirements described in this part and other applicable law.

(c) *Administrative review.* The notice described in §1011.4 of this part will provide the debtor with at least 60 days prior to the initiation of tax refund offset to request an administrative review as described in §1011.10(c) of this part. The Presidio Trust may suspend collection through tax refund offset and/or other collection actions pending the resolution of the debtor’s dispute.

§ 1011.12 How will the Presidio Trust offset a Federal employee’s salary to collect a debt?

(a) *Federal salary offset.* (1) Salary offset is used to collect debts owed to the United States by Federal employees. If a Presidio Trust employee owes a debt, the Presidio Trust may offset the employee’s federal salary to collect the debt in the manner described in this section. For information on how a Federal agency other than the Presidio Trust may collect a debt from the salary of a Presidio Trust employee, see §1011.21 and 1011.22, subpart C, of this part.

(2) Nothing in this part requires the Presidio Trust to collect a debt in accordance with the provisions of this section if Federal law allows otherwise.

(b) *Centralized salary offset through the Treasury Offset Program.* As described in §1011.9(a) of this part, the Presidio Trust will refer debts to the FMS for collection by administrative offset, including salary offset, through the Treasury Offset Program.

(c) *Non-centralized salary offset for Treasury debts.* The Presidio Trust may collect delinquent debts through non-centralized salary offset. In these cases, the Presidio Trust may offset a payment internally or make a request directly to a paying agency to offset a salary payment to collect a delinquent debt owed by a Federal employee. At least 30 days prior to offsetting internally or requesting a Federal agency to offset a salary payment, the Presidio Trust will send notice to the debtor in accordance with the requirements of §1011.4 of this part. When referring a debt for offset, the Presidio Trust will certify to the paying agency, in writing, that the debt is valid, delinquent and legally enforceable in the amount stated, and there are no legal bars to collection by salary offset. In addition, the Presidio Trust will certify that all due process and other prerequisites to salary offset have been met. See 5 U.S.C. 5514, 31 U.S.C. 3716(a), and this section for a description of the process for salary offset.

(d) *When prior notice not required.* The Presidio Trust is not required to provide prior notice to a Presidio Trust employee when the following adjustments are made:

(1) Any adjustment to pay arising out of a Presidio Trust employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or fewer;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment, and, at the time of such adjust-

ment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to \$50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

(e) *Hearing procedures.* (1) *Request for a hearing.* A Presidio Trust employee who has received a notice that a debt will be collected by means of salary offset may request a hearing concerning the existence or amount of the debt. The employee also may request a hearing concerning the amount proposed to be deducted from the employee's pay each pay period. The employee must send any request for hearing, in writing, to the office designated in the notice described in §1011.4(a)(11). The request must be received by the designated office on or before the 15th business day following the employee's receipt of the notice. The employee must sign the request and specify whether an oral or paper hearing is requested. If an oral hearing is requested, the employee must explain why the matter cannot be resolved by review of the documentary evidence alone.

(2) *Failure to submit timely request for hearing.* If the employee fails to submit a request for hearing within the time period described in paragraph (e)(1) of this section, the employee will have waived the right to a hearing, and salary offset may be initiated. However, the Presidio Trust may accept a late request for hearing if the employee can show that the late request was the result of circumstances beyond the employee's control or because of a failure to receive actual notice of the filing deadline.

(3) *Hearing official.* The Presidio Trust hearing must be conducted by a hearing official who is not under the supervision or control of the Board of Directors of the Presidio Trust. The hearing official need not be an employee of the Federal Government.

(4) *Notice of hearing.* After the employee requests a hearing, a designated

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hearing official will inform the employee of the form of the hearing to be provided. For oral hearings, the notice will set forth the date, time and location of the hearing. For paper hearings, the notice will notify the employee of the date by which the employee should submit written arguments to the designated hearing official. The hearing official will give the employee reasonable time to submit documentation in support of the employee's position. The hearing official will schedule a new hearing date if requested by both parties. The hearing official will give both parties reasonable notice of the time and place of a rescheduled hearing.

(5) *Oral hearing.* The hearing official will conduct an oral hearing if the official determines that the matter cannot be resolved by review of documentary evidence alone (for example, when an issue of credibility or veracity is involved). The hearing official will determine the procedure for the oral hearing, determining, for example, the hearing length.

(6) *Paper hearing.* If the hearing official determines that an oral hearing is not necessary, the official will make the determination based upon a review of the available written record, including any documentation submitted by the employee in support of the employee's position.

(7) *Date of decision.* The hearing official will issue a written opinion setting forth the decision, based upon documentary evidence and information developed at the hearing, as soon as practicable after the hearing.

(8) *Final agency action.* The hearing official's decision will be final.

(f) *Salary offset process.* (1) *Determination of disposable pay.* The Presidio Trust payroll office will determine the amount of the employee's disposable pay (as defined in §1011.1 of this part) and will implement salary offset.

(2) *When salary offset begins.* Deductions will begin within three official pay periods.

(3) *Amount of salary offset.* The amount to be offset from each salary payment will be up to 15% of the employee's disposable pay, as follows:

(i) If the amount of the debt is equal to or less than 15% of the disposable

pay, such debt generally will be collected in one lump sum payment;

(ii) Installment deductions will be made over a period of no greater than the anticipated period of employment. An installment deduction will not exceed 15% of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount.

(4) *Final salary payment.* After the employee's employment with the Presidio Trust ends, the Presidio Trust may make a lump sum deduction exceeding 15% of disposable pay from any final salary or other payments in order to satisfy a debt.

§ 1011.13 How will the Presidio Trust use administrative wage garnishment to collect a debt from a debtor's wages?

(a) *Authority and process.* The Presidio Trust is authorized to collect debts from a debtor's wages by means of administrative wage garnishment in accordance with the requirements of the FCCS and other applicable law. This part adopts and incorporates all of the provisions of 31 CFR 285.11 concerning administrative wage garnishment, including the hearing procedures described therein. The Presidio Trust may use administrative wage garnishment to collect a delinquent debt unless the debtor is making timely payments under an agreement to pay the debt in installments (see §1011.6 of this part). At least 30 days prior to initiating an administrative wage garnishment, the Presidio Trust will send notice to the debtor in accordance with the requirements of §1011.4 of this part, including the requirements of §1011.4(a)(10) of this part. For debts referred to the FMS under §1011.9 of this part, the Presidio Trust may authorize the FMS to send a notice informing the debtor that administrative wage garnishment will be initiated and how the debtor may request a hearing as described in §1011.4(a)(10) of this part. If a debtor makes a timely request for a hearing, administrative wage garnishment will not begin until a hearing is held and a decision is sent to the debtor. If a debtor's hearing request is not timely, the Presidio Trust may suspend

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collection by administrative wage garnishment. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor.

(b) *Not applicable to federal salary offset.* This section does not apply to federal salary offset, the process by which the Presidio Trust collects debts from the salaries of Federal employees (see § 1011.12 of this part).

§ 1011.14 How will the Presidio Trust report debts to credit bureaus?

The Presidio Trust will report delinquent debts to credit bureaus in accordance with the provisions of 31 U.S.C. 3711(e) and the FCCS. At least 60 days prior to reporting a delinquent debt to a consumer reporting agency, the Presidio Trust will send notice to the debtor in accordance with the requirements of § 1011.4 of this part. The Presidio Trust may authorize the FMS to report to credit bureaus those delinquent debts that have been transferred to the FMS under § 1011.9 of this part.

§ 1011.15 How will the Presidio Trust refer debts to private collection contractors?

The Presidio Trust will transfer delinquent debts to the FMS to obtain debt collection services provided by private collection contractors. See § 1011.9 of this part.

§ 1011.16 When will the Presidio Trust refer debts to the Department of Justice?

(a) *Compromise or suspension or termination of collection activity.* The Presidio Trust will refer debts having a principal balance over \$100,000, or such higher amount as authorized by the Attorney General, to the Department of Justice for approval of any compromise of a debt or suspension or termination of collection activity. See the FCCS and § 1011.7 and 1011.8 of this part.

(b) *Litigation.* The Presidio Trust will promptly refer to the Department of Justice for litigation delinquent debts on which aggressive collection activity has been taken in accordance with this part that the Presidio Trust determines should not be compromised, and on which collection activity should not be suspended or terminated. The Pre-

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sidio Trust may authorize the FMS to refer to the Department of Justice for litigation those delinquent debts that have been transferred to the FMS under § 1011.9 of this part.

§ 1011.17 Will a debtor who owes a debt be ineligible for Presidio Trust licenses, permits, leases, privileges or services?

Unless prohibited by law, the Presidio Trust may terminate, suspend or revoke licenses, permits, leases (subject to the terms of the leases), or other privileges or services for any inexcusable or willful failure of a debtor to pay a debt. The Presidio Trust may establish guidelines and procedures governing termination, suspension and revocation for delinquent debtors. If applicable, the Presidio Trust will advise the debtor in the notice required by § 1011.4 of this part of the Presidio Trust's ability to suspend or revoke licenses, permits, leases, or privileges or services.

§ 1011.18 How does a debtor request a special review based on a change in circumstances such as catastrophic illness, divorce, death or disability?

(a) *Material change in circumstances.* A debtor who owes a debt may, at any time, request a special review by the Presidio Trust of the amount of any offset, administrative wage garnishment or voluntary payment, based on materially changed circumstances beyond the control of the debtor such as, without limitation, catastrophic illness, divorce, death or disability.

(b) *Inability to pay.* For purposes of this section, in determining whether an involuntary or voluntary payment would prevent the debtor from meeting essential subsistence expenses (costs incurred for food, housing, clothing, transportation and medical care), the debtor must submit a detailed statement and supporting documents for the debtor, the debtor's, and dependents, indicating:

- (1) Income from all sources;
- (2) Assets;
- (3) Liabilities;
- (4) Number of dependents;
- (5) Expenses for food, housing, clothing and transportation;
- (6) Medical expenses; and
- (7) Exceptional expenses, if any.

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(c) *Alternative payment arrangement.* If the debtor requests a special review under this section, the debtor must submit an alternative proposed payment schedule and a statement to the Presidio Trust, with supporting documents, showing why the current offset, garnishment or repayment schedule imposes an extreme financial hardship on the debtor. The Presidio Trust will evaluate the statement and documentation and determine whether the current offset, garnishment or repayment schedule imposes extreme financial hardship on the debtor. The Presidio Trust will notify the debtor in writing of such determination, including, if appropriate, a revised offset, garnishment or payment schedule. If the special review results in a revised offset, garnishment or repayment schedule, the Presidio Trust will notify the appropriate agency or other persons about the new terms.

§ 1011.19 Will the Presidio Trust issue a refund if money is erroneously collected on a debt?

The Presidio Trust will promptly refund to a debtor any amount collected on a debt when the debt is waived or otherwise found not to be owed to the United States, or as otherwise required by law. Refunds under this part will not bear interest unless required by law.

§ 1011.20 Will the Presidio Trust's failure to comply with these regulations be a defense to a debt?

No, the failure of the Presidio Trust to comply with any standard in the FCCS, these regulations or such other procedures of the Presidio Trust will not be available to any debtor as a defense.

Subpart C—Procedures for Offset of Presidio Trust Payments To Collect Debts Owed To Other Federal Agencies

§ 1011.21 How do other Federal agencies use the offset process to collect debts from payments issued by the Presidio Trust?

(a) *Offset of Presidio Trust payments to collect debts owed to other Federal agencies.* (1) In most cases, Federal agencies

submit eligible debts to the Treasury Offset Program to collect delinquent debts from payments issued by other Federal agencies, a process known as “centralized offset.” When centralized offset is not available or appropriate, any Federal agency may ask the Presidio Trust (when acting as a paying agency) to collect a debt owed to such agency by offsetting funds payable to a debtor by the Presidio Trust, including salary payments issued to the Presidio Trust employees. This section and § 1011.22 of this subpart C apply when a Federal agency asks the Presidio Trust to offset a payment issued by the Presidio Trust to a person who owes a debt to the United States.

(2) This subpart C does not apply to the collection of debts through tax refund offset.

(b) *Administrative offset (including salary offset); certification.* The Presidio Trust will initiate a requested offset only upon receipt of written certification from the creditor agency that the debtor owes the delinquent, legally enforceable debt in the amount stated, and that the creditor agency has fully complied with all applicable due process and other requirements, and the creditor agency's regulations, as applicable. Offsets will continue until the debt is paid in full or otherwise resolved to the satisfaction of the creditor agency.

(c) *Where a creditor agency makes requests for offset.* Requests for offset under this section must be sent to the Presidio Trust, ATTN: Chief Financial Officer, P.O. Box 29052, San Francisco, CA 94129-0052.

(d) *Incomplete certification.* The Presidio Trust will return an incomplete debt certification to the creditor agency with notice that the creditor agency must comply with paragraph (b) of this section before action will be taken to collect a debt from a payment issued by the Presidio Trust.

(e) *Review.* The Presidio Trust is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(f) *When the Presidio Trust will not comply with offset request.* The Presidio

Trust will comply with the offset request of another agency unless the Presidio Trust determines that the offset would not be in the best interests of the United States, or would otherwise be contrary to law.

(g) *Multiple debts.* When two or more creditor agencies are seeking offsets from payments made to the same person, or when two or more debts are owed to a single creditor agency, the Presidio Trust may determine the order in which the debts will be collected or whether one or more debts should be collected by offset simultaneously.

(h) *Priority of debts owed to the Presidio Trust.* For purposes of this section, debts owed to the Presidio Trust generally take precedence over debts owed to other agencies. The Presidio Trust may determine whether to pay debts owed to other agencies before paying a debt owed to the Presidio Trust. The Presidio Trust will determine the order in which the debts will be collected based on the best interests of the United States.

§ 1011.22 What does the Presidio Trust do upon receipt of a request to offset the salary of a Presidio Trust employee to collect a debt owed by the employee to another Federal agency?

(a) *Notice to the Presidio Trust employee.* When the Presidio Trust receives proper certification of a debt owed by one of its employees, the Presidio Trust will begin deductions from the employee's pay at the next officially established pay interval. The Presidio Trust will send a written notice to the employee indicating that a certified debt claim has been received from the creditor agency, the amount of the debt claimed to be owed to the creditor agency, the date deductions from salary will begin, and the amount of such deductions.

(b) *Amount of deductions from a Presidio Trust employee's salary.* The amount deducted under § 1011.21(b) of this part will be the lesser of the amount of the debt certified by the creditor agency or an amount up to 15% of the debtor's disposable pay. Deductions will continue until the Presidio Trust knows that the debt is paid in full or until otherwise instructed by

the creditor agency. Alternatively, the amount offset may be an amount agreed upon, in writing, by the debtor and the creditor agency. See § 1011.12(g) (salary offset process).

(c) *When the debtor is no longer employed by the Presidio Trust—(1) Offset of final and subsequent payments.* If the Presidio Trust employee retires or resigns or if his or her employment ends before collection of the debt is complete, the Presidio Trust will continue to offset up to 100% of an employee's subsequent payments until the debt is paid or otherwise resolved. Such payments include a debtor's final salary payment, lump-sum leave payment, and other payments payable to the debtor by the Presidio Trust.

(2) *Notice to the creditor agency.* If the employee's employment with the Presidio Trust terminates before the debt is paid in full, the Presidio Trust will certify to the creditor agency the total amount of its collection. If the Presidio Trust is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, Federal Employee Retirement System, or other similar payments, the Presidio Trust will provide written notice to the agency making such payments that the debtor owes a debt (including the amount) and that the provisions of 5 CFR 550.1109 have been fully complied with. The creditor agency is responsible for submitting a certified claim to the agency responsible for making such payments before collection may begin. Generally, creditor agencies will collect such monies through the Treasury Offset Program as described in § 1011.9(c) of this part.

(3) *Notice to the debtor.* The Presidio Trust will provide to the debtor a copy of any notices sent to the creditor agency under paragraph (c)(2) of this section.

(d) *When the debtor transfers to another Federal agency—(1) Notice to the creditor agency.* If the debtor transfers to another Federal agency before the debt is paid in full, the Presidio Trust will notify the creditor agency and will certify the total amount of its collection on the debt. The Presidio Trust will provide a copy of the certification to the creditor agency. The creditor agency is responsible for submitting a

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certified claim to the debtor's new employing agency before collection may begin.

(2) *Notice to the debtor.* The Presidio Trust will provide to the debtor a copy of any notices and certifications sent to the creditor agency under paragraph (d)(1) of this section.

(e) *Request for hearing official.* The Presidio Trust will provide a hearing official upon the creditor agency's request with respect to the Presidio Trust employee.

PART 1012—LEGAL PROCESS: TESTIMONY BY EMPLOYEES AND PRODUCTION OF RECORDS

GENERAL INFORMATION

Sec.

1012.1 What does this part cover?

1012.2 What is the Presidio Trust's policy on granting requests for employee testimony or Presidio Trust records?

RESPONSIBILITIES OF REQUESTERS

1012.3 How can I obtain employee testimony or Presidio Trust records?

1012.4 If I serve a subpoena duces tecum, must I also submit a *Touhy* Request?

1012.5 What information must I put in my *Touhy* Request?

1012.6 How much will I be charged?

1012.7 Can I get an authenticated copy of a Presidio Trust record?

RESPONSIBILITIES OF THE PRESIDIO TRUST

1012.8 How will the Presidio Trust process my *Touhy* Request?

1012.9 What criteria will the Presidio Trust consider in responding to my *Touhy* Request?

RESPONSIBILITIES OF EMPLOYEES

1012.10 What must I, as an employee, do upon receiving a request?

1012.11 Must I get approval before testifying as an expert witness other than on behalf of the United States in a Federal proceeding in which the United States is a party or has a direct and substantial interest?

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SOURCE: 74 FR 42030, Aug. 20, 2009, unless otherwise noted.

GENERAL INFORMATION

§ 1012.1 What does this part cover?

(a) This part describes how the Presidio Trust responds to requests or subpoenas for:

(1) Testimony by employees in State, territorial or Tribal judicial, legislative or administrative proceedings concerning information acquired while performing official duties or because of an employee's official status;

(2) Testimony by employees in Federal court civil proceedings in which the United States or the Presidio Trust is not a party concerning information acquired while performing official duties or because of an employee's official status;

(3) Testimony by employees in any judicial or administrative proceeding in which the United States or the Presidio Trust, while not a party, has a direct and substantial interest;

(4) Official records or certification of such records for use in Federal, State, territorial or Tribal judicial, legislative or administrative proceedings.

(b) In this part, "employee" means a current or former Presidio Trust employee, or Board member, including a contractor or special government employee, except as the Presidio Trust may otherwise determine in a particular case.

(c) This part does not apply to:

(1) Congressional requests or subpoenas for testimony or records;

(2) Federal court civil proceedings in which the United States or the Presidio Trust is a party;

(3) Federal administrative proceedings;

(4) Federal, State and Tribal criminal court proceedings;

(5) Employees who voluntarily testify, while on their own time or in approved leave status, as private citizens as to facts or events that are not related to the official business of the Presidio Trust. The employee must state for the record that the testimony represents the employee's own views and is not necessarily the official position of the Presidio Trust. See 5 CFR 2635.702(b), 2635.807(b).