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some other reasonable cause. If the debt is an unsecured claim for administrative collection, attempts should be made to obtain an executed confess-judgment note, comparable to the Department of Justice Form USA–70a, from a debtor when the total amount of the deferred installments will exceed $750. Such notes may be sought when an unsecured obligation of a lesser amount is involved. When attempting to obtain confess-judgment notes, Departmental units should provide their debtors with written explanation of the consequences of signing the note, and should maintain documentation sufficient to demonstrate that the debtor has signed the note knowingly and voluntarily. Security for deferred payments other than a confess-judgment note may be accepted in appropriate cases. A Departmental units head (or designee) may accept installment payments notwithstanding the refusal of a debtor to execute a confess-judgment note or to give other security.

(b) If the debtor owes more than one debt and designates how a voluntary installment payment is to be applied as among those debts, that designation must be followed. If the debtor does not designate the application of the payment, the Department debt collection official should apply payments to the various debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

§ 21.19 Additional administrative collection action.

Nothing contained in this subpart is intended to preclude the utilization of any other administrative remedy which may be available.

PART 22—SALARY OFFSET

Sec.

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AUTHORITY: 5 U.S.C. 5514; 5 CFR 550.1104.

SOURCE: 52 FR 7, Jan. 2, 1987, unless otherwise noted.

§ 22.1 Scope.

(a) These regulations provide Department procedures for collection by salary offset of a Federal employee's pay to satisfy certain debts owed the Government.

(b) These regulations apply to collections by the Secretary from:

(1) Federal employees who owe debts to the Department; and

(2) Current employees of the Department who owe debts to other agencies.

(c) These regulations do not apply to debts or claims arising under the Internal Revenue Code of 1954, as amended (26 U.S.C. 1 *et seq.);* the Social Security Act (42 U.S.C. 301 *et seq.);* the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(d) These regulations do not apply to any adjustment to pay arising out of an 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 less.

(e) Nothing in these regulations precludes the compromise, suspension, or termination of collection actions where appropriate.

§ 22.2 Definitions.

(a) *Agency* means:

(1) An Executive department, military department, Government corporation, or independent establishment as defined in 5 U.S.C. 101, 102, 103, and 104, respectively;

(2) The United States Postal Service;

(3) The Postal Rate Commission;

(4) An agency or court of the judicial branch; and

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

(b) *Creditor agency* means the agency to which the debt is owed.

(c) *Days* means calendar days.

(d) *Debt* means:

(1) An amount of money owed the United States from sources which include loans insured or guaranteed by the United States; from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, fines and forfeitures (except those arising under the Uniform Code of Military Justice);

(2) An amount owed to the United States by an employee for pecuniary losses, including, but not limited to:

(i) Theft, misuse, or loss of Government funds;

(ii) False claims for services and travel;

(iii) Illegal or unauthorized obligations and expenditures of Government appropriations;

(iv) Authorization of the use of Government owned or leased equipment, facilities, supplies, and services for other than official or approved purposes;

(v) Vehicle accidents where the employee is determined to be liable for the repair or replacement of a Government owned or leased vehicle; and

(vi) Erroneous entries on accounting records or reports for actions for which the employee can be held liable.

(e) *Department* or *DOC* means the United States Department of Commerce.

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

(g) *Employee* means:

(1) A civilian employee as defined in 5 U.S.C. 2105;

(2) A member of the Armed Forces or Reserves of the United States, or of a uniformed service, including a commissioned officer of the National Oceanic and Atmospheric Administration;

(3) An employee of the United States Postal Service or the Postal Rate Commission;

(4) An employee of an agency or court of the judicial branch; and

(5) An employee of the legislative branch, including the U.S. Senate and the U.S. House of Representatives.

(h) *FCCS* means the Federal Claims Collection Standards jointly published by the Department of Justice and the General Accounting Office at 4 CFR 101.1 *et seq*.

(i) *Offset* means a deduction from the disposable pay of an employee to satisfy a debt with or without the employee's consent.

(j) *Pay* means basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay.

(k) *Paying agency* means the agency employing the individual and authorizing his or her current pay.

(l) *Payroll office* means the Departmental or other office providing payroll services to the employee.

(m) *Secretary* means the Secretary of Commerce, or his/her designee.

§ 22.3 Pay subject to offset.

(a) An offset from an employee's pay may not exceed 15 percent of the employee's disposable pay, unless the employee agrees in writing to a larger offset amount.

(b) An offset from pay shall be made at the officially established pay intervals from the employee's current pay account.

(c) If an employee retires, resigns, or is discharged, or if his or her employment period or period of active duty otherwise ends, an offset may be made from subsequent payment on any amount due to the individual from the Federal Government.

§ 22.4 Determination of indebtedness.

In determining that an employee is indebted, the Secretary will review the debt to make sure that it is valid and past due.

§ 22.5 Notice requirements before offset.

Except as provided in § 22.1, deductions will not be made unless the Secretary provides the employee with a minimum of 30 calendar days written notice. This Notice of Intent to offset an employee's salary (Notice of Intent) will state:

(a) That the Secretary has reviewed the records relating to the claim and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(b) The Secretary's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest are paid in full;

(c) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(d) An explanation of the Department's requirements concerning interest, penalties and administrative costs unless such payments are excused in accordance with § 22.15;

(e) The employee's right to inspect and to request and receive a copy of Department records relating to the debt;

(f) The right to a hearing conducted by an administrative law judge of the Department or a hearing official, not under the control of the Secretary, on the Secretary's determination of the debt, the amount of the debt, or the repayment schedule (*i.e.*, the percentage of disposable pay to be deducted each pay period), so long as a petition is filed by the employee as prescribed by the Secretary;

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

(h) That the timely filing of a petition for hearing will stay the collection proceedings; (See § 22.6);

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

(j) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(k) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under 5 U.S.C. 7501 *et seq.*, 5 CFR Part 752, or any other applicable statutes or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or any other applicable statutory authority; or

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or any other applicable statutory authority.

(l) Unless there are applicable contractual or statutory provisions to the contrary, 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.

§ 22.6 Request for hearing-prehearing submission(s).

(a) An employee must file a petition for a hearing in accordance with the instructions in the Notice of Intent. This petition must be filed by the time stated in the notice described in § 22.5 if an employee wants a hearing concerning:

(1) The existence or amount of the debt; or

(2) The Secretary's proposed offset schedule.

(b) If the employee files his or her required submissions within 5 days after the deadline date established under § 22.5 and the hearing official finds that the employee has shown good cause for failure to comply with the deadline date, the hearing official may find that an employee has not waived his or her right to a hearing.

§ 22.7 Hearing procedures.

(a) The hearing will be presided over by either:

(1) A Department administrative law judge; or

(2) A hearing official not under the control of the Secretary.

(b) The hearing shall conform to §102.3(c) of the Federal Claims Collection Standards (4 CFR 102.3(c)).

(c)(1) If the Secretary's determination regarding the existence or amount of the debt is contested, the burden is on the employee to demonstrate that the Secretary's determination was erroneous.

(2) If the hearing official finds the Secretary's determination of the amount of the debt was erroneous, the hearing official shall indicate the amount owed by the employee, if any.

(d)(1) If the Secretary's offset schedule is contested, the burden is on the employee to demonstrate that the payments called for under the Secretary's schedule will produce an extreme financial hardship for the employee under §22.9.

(2) If the hearing official finds that the payments called for under the Secretary's offset schedule will produce 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.

§22.8 Written decision following a hearing.

(a) The hearing official shall issue to the Secretary and the employee a written opinion stating his or her decision, with a rationale supporting that decision, as soon as practicable after the hearing, but not later than 60 days after the employee files the petition requesting the hearing as provided in §22.5(i).

(b) The written decision following a hearing will include:

(1) A statement of the facts presented to support the nature and origin of the alleged debt;

(2) The hearing official's analysis, findings, and conclusions, in light of the hearing, concerning the employee's or the Department's grounds;

(3) The amount and validity of the alleged debt; and

(4) The repayment schedule if applicable.

(c) In determining whether the Secretary's determination of the existence or amount of the employee's debt was erroneous, the hearing official is governed by the relevant Federal statutes and regulations authorizing and implementing the programs giving rise to the debt, and by State law, if relevant.

§22.9 Standards for determining extreme financial hardship.

(a)(1) An offset produces an extreme financial hardship for an employee if the offset prevents the employee from meeting the costs necessarily incurred for essential subsistence expenses of the employee and his or her spouse and dependents.

(2) Ordinarily, essential subsistence expenses include only costs incurred for food, housing, clothing, transportation, and medical care.

(b) In determining whether an offset would prevent the employee from meeting the essential subsistence expenses described in paragraph (a) of this section, the hearing official shall require that the employee submit a detailed financial statement showing assets, liabilities, income and expenses.

§22.10 Review of Departmental records related to the debt.

(a) *Notification by employee.* An employee who intends to inspect or copy Departmental records related to the debt must make arrangements in conformance with the instructions in the Notice of Intent.

(b) *Secretary's response.* In response to a timely request submitted by the debtor, as described in paragraph (a) of this section, the Secretary will notify the employee of the location and time when the employee may inspect and copy Departmental records related to the debt.

§22.11 Coordinating offset with another Federal agency.

(a) *When Commerce is owed the debt.* When the Department is owed a debt by an employee of another agency, the Department will submit a written request to the paying agency to begin salary offset. This request will include certification as to the debt (including the amount and basis of the debt and the due date of the payment) and that the Department has complied with these regulations.

(b) *When another agency is owed the debt.* The Department will use salary offset against one of its employees who is indebted to another agency if requested to do so by that agency. Such a request must be accompanied by a certification by the requesting agency that the person owes the debt (including the amount) and that the procedural requirements of 5 U.S.C. 5514 and 5 CFR part 550, subpart K, have been met.

(c) Requests by another Federal Department or agency for Department cooperation in offsetting the salary of one of its employees must be directed to the Director for Personnel and Civil Rights, Room 5001, U.S. Department of Commerce, Herbert C. Hoover Building, 14th and Constitution Ave., NW., Washington, DC 20230.

§ 22.12 Procedures for salary offset—When deductions may begin.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the Secretary's Notice of Intent to collect from the employee's current pay.

(b) If the employee filed a timely petition for hearing, deductions will begin after the hearing official has provided the employee with a hearing, and the final written decision is in favor of the Secretary.

(c) If an employee retires or resigns before collection of the amount of the indebtedness is completed, the remaining indebtedness will be collected according to the procedures for administrative offset (15 CFR 21).

§ 22.13 Procedures for salary offset—Types of collection.

A debt will be collected in a lump-sum or in installments. Collection will be by lump-sum collections unless the amount of the debt exceeds 15 percent of disposable pay. In these cases, deduction will be by installments.

§ 22.14 Procedures for salary offset—Methods of collection.

(a) *General.* A debt will be collected by deductions at officially established pay intervals from an employee's current pay account, unless the employee and the Secretary agree to alternative arrangements for repayment.

(b) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made; unless the employee has agreed in writing to the deduction of a greater amount. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in three years. Installment payments of less than $25 per pay period or $50 a month will be accepted only in the most unusual circumstances.

(c) *Sources of deductions.* The Department will make deductions from the employee's pay.

§ 22.15 Procedures for salary offset—Imposition of interest, penalties, and administrative costs.

These charges will be made on installment payments in accordance with the Office of Personnel Management regulations (5 CFR 550.1104(n)) and the requirements contained in the FCCS (4 CFR 102.13).

§ 22.16 Non-waiver of rights.

So long as there are no statutory or contractual provisions to the contrary, no employee involuntary payment (of all or a portion of a debt) collected under these regulations will be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514, these implementing regulations, or any other provision of contract or law.

§ 22.17 Refunds.

The Department will refund promptly to the appropriate individual amounts offset under these regulations when:

(a) A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

(b) The Department is directed by an administrative or judicial order to refund amounts deducted from the employee's current pay.