

§ 3.35

(4) That the collection of some or all of these charges would be against equity and good conscience or not in the best interests of the United States; or

(5) (For waiver of interest) that a request is pending for reconsideration, administrative review, or waiver of the underlying delinquent debt under a statute allowing but not requiring one or more of these remedies. If the statute under which review or waiver is sought by the debtor prohibits the agency from collecting the delinquent debt before resolution of the review or waiver request, interest, penalties and administrative costs must be waived during the period in which collection action is stayed. Otherwise, interest, penalties and administrative costs will not be waived except for a separate reason included in this section; or

(6) (For waiver of interest) that the agency has agreed to a repayment plan consistent with 4 CFR 102.11 and with § 3.28 of this subpart, there is no indication of fault or lack of good faith by the debtor, and the amount of interest is sufficiently large relative to the size of the installments reasonably affordable by the debtor that the principal debt would never be repaid; or

(7) The debt is repaid after the date on which interest, penalties and administrative costs became payable and the estimated costs of recovering the remaining interest balance exceed the amount owed to the agency.

(d) The creditor agency must document its reasons for waiving interest, penalties, or administrative costs. This documentation must be retained by the agency for at least three years.

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38663, Sept. 20, 1990]

§ 3.35 Disclosure to a credit reporting agency.

(a) The Department may report all commercial debts and all delinquent consumer debts to credit reporting agencies. The Department need not report foreign debts, or the debts of State and local governments, Indian tribal governments, or other public institutions.

(b) Disclosure of delinquent consumer debts must be consistent with the requirements of 31 U.S.C. 3711(f), 4 CFR

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102.3(c), and 5 U.S.C. 552a (the Privacy Act).

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38663, Sept. 20, 1990]

§ 3.36 Use of collection agencies.

USDA agencies should use collection agencies at any time accounts become delinquent. Agencies must refer all accounts 6 months or more delinquent unless other collection actions are being pursued or referral is prohibited by statute.

[55 FR 38663, Sept. 20, 1990]

Subpart C—Salary Offset

AUTHORITY: 5 U.S.C. 5514; 5 CFR part 550, subpart K.

SOURCE: 51 FR 8995, Mar. 17, 1986, unless otherwise noted.

§ 3.51 Scope.

(a) The provisions of this subpart set forth the Department's procedures for the collection of a Federal employee's pay by salary offset to satisfy certain valid and past due debts owed the government.

(b) These regulations apply to:

(1) Current employees of the Department and other agencies 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 (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.

(d) These regulations identify the types of salary offset available to the Department, as well as certain rights provided to the employee, which include a written notice before deductions begin, the opportunity to petition for a hearing and to receive a written decision if a hearing is granted. These employee rights 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) These regulations do not preclude an employee from:

(1) Requesting waiver of a salary overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716;

(2) Requesting waiver of any other type of debt, if waiver is available by statute; or

(3) Questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office.

(f) Nothing in these regulations precludes the compromise, suspension or termination of collection actions where appropriate under the Department's regulations contained elsewhere.

§ 3.52 Definitions.

(a) *Agency* means:

(1) An Executive Agency as defined by section 105 of title 5 U.S.C., the U.S. Postal Service, the U.S. Postal Rate Commission; and

(2) A Military Department as defined by section 102 of title 5, U.S.C.

(b) *Debt* means:

(1) An amount owed to the United States from sources which include, but are not limited to, insured or guaranteed loans, fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, 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 where the employee has been determined to be liable due to his or her negligent, willful, unauthorized or illegal acts, including but not limited to:

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

(ii) False claims for services and travel;

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

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

(v) Lost, stolen, damaged, or destroyed Government property;

(vi) Erroneous entries on accounting records or reports; and

(vii) Deliberate failure to provide physical security and control procedures for accountable officers, if such failure is determined to be the approximate cause for a loss of Government funds.

(c) *Department* or *USDA* means the United States Department of Agriculture.

(d) *Disposable pay* means any pay due an employee that remains after required deductions for Federal, State and Local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; premiums for life and health insurance benefits; and such other deductions required by law to be withheld.

(e) *Employee* means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces.

(f) *Hearing official* means an administrative law judge of the Department or some other individual not under the control of the Secretary.

(g) *Salary offset* means a deduction of a debt by deduction(s) from the disposable pay of an employee without his or her consent.

(h) *Secretary* means the Secretary of the U.S. Department of Agriculture or his or her designee.

(i) *Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, 5 U.S.C. 8346(b) or any other law.

§ 3.53 Coordinating offset with another Federal agency.

(a) *When USDA is owed the debt.* When USDA is owed a debt by an employee of another agency, the other agency shall not initiate the requested offset until USDA provides the agency with a written certification that the debtor owes USDA a debt (including the amount and basis of the debt and the due date of the payment) and that USDA has complied with these regulations.

(b) *When another agency is owed the debt.* The Department may use salary offset against one of its employees who is indebted to another agency, if requested to do so by that agency. Such