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34 CFR Subtitle A (7-1-02 Edition)

(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

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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.

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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 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)

§ 32.3 Pre-offset notice.

At least 30 days before initiating a deduction from the disposable pay of an employee to recover an overpayment of pay or allowances, the Secretary sends a written notice to the employee stating—

(a) The origin, nature and amount of the overpayment;

(b) How interest is charged and administrative costs and penalties will be assessed, unless excused under 31 U.S.C. 3716;

(c) A demand for repayment, providing for an opportunity for the employee to enter into a written repayment agreement with the Department;

(d) Where a waiver of repayment is authorized by law, the employee's right to request a waiver;

(e) The Department's intention to deduct 15 percent of the employee's disposable pay, or a specified amount if the disposable pay is severance pay and/or a lump sum annual leave payment, to recover the overpayment if a waiver is not granted by the Secretary and the employee fails to repay the overpayment or enter into a written repayment agreement;

(f) The amount, frequency, approximate beginning date and duration of the intended deduction;

(g) If Government records on which the determination of overpayment are not attached, how those records will be

made available to the employee for inspection and copying;

(h) The employee's right to request a pre-offset hearing concerning the existence or amount of the overpayment or an involuntary repayment schedule;

(i) The applicable hearing procedures and requirements, including a statement that a timely petition for hearing will stay commencement of collection proceedings and that a final decision on the hearing will be issued not later than 60 days after the hearing petition is filed, unless a delay is requested and granted;

(j) That any knowingly false or frivolous statements, representations or evidence may subject the employee to applicable disciplinary procedures, civil or criminal penalties; and

(k) That where amounts paid or deducted are later waived or found not owed, unless otherwise provided by law, they will be promptly refunded to the employee.

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

§ 32.4 Employee response.

(a) *Voluntary repayment agreement.* Within 7 days of receipt of the written notice under § 32.3, the employee may submit a request to the Secretary to arrange for a voluntary repayment schedule. To arrange for a voluntary repayment schedule, the employee shall submit a financial statement and sign a written repayment agreement approved by the Secretary. An employee who arranges for a voluntary repayment schedule may nonetheless request a waiver of the overpayment under paragraph (b) of this section.

(b) *Waiver.* An employee seeking a waiver of collection of the debt that is authorized by law must request the waiver in writing to the Secretary within 10 days of receipt of the written notice under § 32.3. The employee must state why he or she believes a waiver should be granted.

(c) *Involuntary repayment schedule.* If the employee claims that the amount of the involuntary deduction will cause extreme financial hardship and should be reduced, he or she must submit a written explanation and a financial statement signed under oath or affirmation to the Secretary within 10 days of receipt of the written notice under