

## § 18.23

### § 18.23 Judicial review.

Judicial review of final agency decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

### § 18.24 Payment of award.

An applicant seeking payment of an award by the Department shall submit a copy of the final decision granting the award, accompanied by a certification that the applicant will not seek review of the decision in the United States courts to the General Counsel, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 5870, Washington, D.C. 20230. The Department will pay the amount awarded to the applicant within 60 calendar days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

[47 FR 13510, Mar. 31, 1982, as amended at 53 FR 6800, Mar. 3, 1988]

## PART 19—COMMERCE DEBT COLLECTION

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AUTHORITY: 31 U.S.C. 3701, *et seq.*

SOURCE: 72 FR 18871, Apr. 16, 2007, unless otherwise noted.

### Subpart A—General Provisions

#### § 19.1 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” can include, but is not limited to, 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 orders a non-Federal employer to withhold amounts from a debtor’s wages to satisfy a debt, as authorized by 31 U.S.C. 3720D, 31 CFR 285.11, and this Part.

*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.

*Commerce debt* means a debt owed to a Commerce entity by a person.

*Commerce Department* means the United States Department of Commerce.

*Commerce entity* means a component of the Commerce Department, including offices or bureaus. Commerce offices currently include the Office of the Secretary of Commerce, and the Office of Inspector General. Commerce bureaus currently include the Bureau of Industry and Security, the Economics and Statistics Administration (including the Bureau of Economic Analysis, and the Bureau of the Census), the Economic Development Administration, the International Trade Administration, the Minority Business Development Agency, the National Oceanic and Atmospheric Administration, the National Telecommunications and Information Administration, the U.S. Patent and Trademark Office, and the Technology Administration (including the National Institute of Standards and Technology, and the National Technical Information Service).

*Creditor agency* means any Federal agency that is owed a debt.

*Day* means calendar day except when express reference is made to business day, which reference shall mean Monday through Friday. For purposes of time computation, the last day of the

period provided will be included in the calculation unless that day is a Saturday, a Sunday, or a Federal legal holiday; in which case, the next business day will be included.

*Debt* means any amount of money, funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person. As used in this Part, the term “debt” can include a Commerce debt but does not include debts arising under the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*).

*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 agency’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.

*Delinquent Commerce debt* means a delinquent debt owed to a Commerce entity.

*Disposable pay* has the same meaning as that term is defined in 5 CFR 550.1103.

*Employee or Federal employee* means a current employee of the Commerce Department or other Federal agency, including a current member of the uniformed services, including the Army, Navy, Air Force, Marine Corps, Coast Guard, Commissioned Corps of the National Oceanic and Atmospheric Administration, and Commissioned Corps of the Public Health Service, including the National Guard and the reserve forces of the uniformed services.

*FCCS* means the Federal Claims Collection Standards, which were jointly published by the Departments of the Treasury and Justice and codified at 31 CFR Parts 900-904.

*Financial Management Service* 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.

*Payment agency or Federal payment agency* means any Federal agency that transmits payment requests in the form of certified payment vouchers, or

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other similar forms, to a disbursing official for disbursement. The payment agency may be the agency that employs the debtor. In some cases, the Commerce Department may be both the creditor agency and payment agency.

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

*Salary offset* means a type of administrative offset to collect a debt under 5 CFR 5514 by deductions(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

*Secretary* means the Secretary of Commerce.

*Tax refund offset* is defined in 31 CFR 285.2(a).

### **§ 19.2 Why has the Commerce Department issuing these regulations and what do they cover?**

(a) *Scope.* This Part provides procedures for the collection of Commerce debts. This Part also provides procedures for collection of other debts owed to the United States when a request for offset of a payment for which Commerce is the payment agency is received by the Commerce Department from another agency (for example, when a Commerce Department employee owes a debt to the United States Department of Education).

(b) *Applicability.* (1) This Part applies to the Commerce Department when collecting a Commerce debt, to persons who owe Commerce debts, to persons controlled by or controlling persons who owe Federal agency debts, and to Federal agencies requesting offset of a payment issued by the Commerce Department as a payment agency (including salary payments to Commerce Department employees).

(2) This Part does not apply to tax debts nor to any debt for which there is an indication of fraud or misrepresentation, as described in §900.3 of the FCCS, unless the debt is returned by the Department of Justice to the Commerce Department for handling.

(3) Nothing in this Part precludes collection or disposition of any debt

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under statutes and regulations other than those described in this Part. See, for example, 5 U.S.C. 5705, Advances and Deductions, which authorizes Commerce entities to recover travel advances by offset of up to 100% of a Federal employee's accrued pay. See, also, 5 U.S.C. 4108, governing the collection of training expenses. To the extent that the provisions of laws, other regulations, and Commerce Department enforcement policies differ from the provisions of this Part, those provisions of law, other regulations, and Commerce Department enforcement policies apply to the remission or mitigation of fines, penalties, and forfeitures, and to debts arising under the tariff laws of the United States, rather than the provisions of this Part.

(c) *Additional policies and procedures.* Commerce entities may, but are not required to, promulgate additional policies and procedures consistent with this Part, the FCCS, and other applicable Federal law, policies, and procedures, subject to the approval of Deputy Chief Financial Officer.

(d) *Duplication not required.* Nothing in this Part requires a Commerce entity to duplicate notices or administrative proceedings required by contract, this Part, or other laws or regulations, including but not limited to those required by financial assistance awards such as grants, cooperative agreements, loans or loan guarantees.

(e) *Use of multiple collection remedies allowed.* Commerce entities and other Federal agencies 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 and appropriate collection remedies. These remedies are not listed in any prescribed order to provide Commerce entities with flexibility in determining which remedies will be most efficient in collecting the particular debt.

(f) All citations in this Part, such as to statutes, regulations and the Department of Commerce Credit and Debt Management Operating Procedures Handbook, are intended to be references to cited sources as each currently stands and as each may be amended from time to time.

**§ 19.3 Do these regulations adopt the Federal Claims Collection Standards (FCCS)?**

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 Commerce Department operations.

**Subpart B—Procedures To Collect Commerce Debts**

**§ 19.4 What notice will Commerce entities send to a debtor when collecting a Commerce debt?**

(a) *Notice requirements.* Commerce entities shall aggressively collect Commerce debts. Commerce entities shall promptly send at least one written notice to a debtor informing the debtor of the consequences of failing to pay or otherwise resolve a Commerce debt. The notice(s) shall be sent to the debtor at the most current address of the debtor in the records of the Commerce entity collecting the Commerce debt. Generally, before starting the collection actions described in §§ 19.5 and 19.9 through 19.17 of this Part, Commerce entities will send no more than two written notices to the debtor. The notice(s) explain why the Commerce debt is owed, the amount of the Commerce debt, how a debtor may pay the Commerce debt or make alternate repayment arrangements, how a debtor may review non-privileged documents related to the Commerce debt, how a debtor may dispute the Commerce debt, the collection remedies available to Commerce entities if the debtor refuses or otherwise fails to pay the Commerce debt, and other consequences to the debtor if the Commerce debt is not paid. Except as otherwise provided in paragraph (b) of this section, the written notice(s) shall explain to the debtor:

- (1) The nature and amount of the Commerce debt, and the facts giving rise to the Commerce debt;
- (2) How interest, penalties, and administrative costs are added to the Commerce debt, the date by which payment should be made to avoid such charges, and that such assessments must be made unless excused in accord-

ance with 31 CFR 901.9 (see § 19.5 of this Part);

(3) The date by which payment should be made to avoid the enforced collection actions described in paragraph (a)(6) of this section;

(4) The Commerce entity's willingness to discuss alternative payment arrangements and how the debtor may enter into a written agreement to repay the Commerce debt under terms acceptable to the Commerce entity (see § 19.6 of this Part);

(5) The name, address, and telephone number of a contact person or office within the Commerce entity;

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

(i) *Offset.* Offset the debtor's Federal payments, including income tax refunds, salary, certain benefit payments (such as Social Security), retirement, vendor, travel reimbursements and advances, and other Federal payments (see §§ 19.10 through 19.12 of this Part);

(ii) *Private collection agency.* Refer the Commerce debt to a private collection agency (see § 19.15 of this Part);

(iii) *Credit bureau reporting.* Report the Commerce debt to a credit bureau (see § 19.14 of this Part);

(iv) *Administrative wage garnishment.* Garnish the individual debtor's wages through administrative wage garnishment (see § 19.13 of this Part);

(v) *Litigation.* Refer the Commerce debt to the Department of Justice to initiate litigation to collect the Commerce debt (see § 19.16 of this Part);

(vi) *Treasury Department's Financial Management Service.* Refer the Commerce debt to the Financial Management Service for collection (see § 19.9 of this Part);

(7) That Commerce debts over 180 days delinquent must be referred to the Financial Management Service for the collection actions described in paragraph (a)(6) of this section (see § 19.9 of this Part);

(8) How the debtor may inspect and copy non-privileged records related to the Commerce debt;

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(9) How the debtor may request a review of the Commerce entity's determination that the debtor owes a Commerce debt and present evidence that the Commerce debt is not delinquent or legally enforceable (see §§ 19.10(c) and 19.11(c) of this Part);

(10) How a debtor who is an individual may request a hearing if the Commerce entity intends to garnish the debtor's private sector (i.e., non-Federal) wages (see § 19.13(a) of this Part), including:

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

(ii) That a request for a hearing, timely filed on or before the 15th business day following the date of the mailing of the notice, will stay the commencement of administrative wage garnishment, but not 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 an individual and a Federal employee subject to Federal salary offset may request a hearing (see § 19.12(e) of this Part), including:

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

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

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

(iv) That the Commerce entity will refer the Commerce debt to the debtor's employing agency or to the Financial Management Service to implement 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

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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 Commerce 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 Commerce debt are governed by 5 U.S.C. 5514 and 31 U.S.C. 3716.

(12) How the debtor may request a waiver of the Commerce debt, if applicable. See, for example, § 19.5 and § 19.12(f) of this Part.

(13) How the debtor's spouse may claim his or her share of a joint income tax refund by filing Form 8379 with the Internal Revenue Service (see <http://www.irs.gov>);

(14) How the debtor may exercise other rights and remedies, if any, available to the debtor under programmatic statutory or regulatory authority under which the Commerce debt arose.

(15) That certain debtors and, if applicable, persons controlled by or controlling such debtors, may be ineligible for Federal Government loans, guaranties and insurance, grants, cooperative agreements or other sources of Federal funds (see 28 U.S.C. 3201(e); 31 U.S.C. 3720B, 31 CFR 285.13, and § 19.17(a) of this Part);

(16) If applicable, the Commerce entity's intention to deny, suspend or revoke licenses, permits or privileges (see § 19.17(b) of this Part); and

(17) That the debtor should advise the Commerce entity of a bankruptcy proceeding of the debtor or another person liable for the Commerce debt being collected.

(b) *Exceptions to notice requirements.* A Commerce entity may omit from a notice to a debtor one or more of the provisions contained in paragraphs (a)(6) through (a)(17) of this section if the Commerce entity, in consultation with its legal counsel, determines that any provision is not legally required given the collection remedies to be applied to a particular Commerce debt.

(c) *Respond to debtors; comply with FCCS.* Commerce entities should respond promptly to communications

from debtors and comply with other FCCS provisions applicable to the administrative collection of debts. See 31 CFR part 901.

**§ 19.5 How will Commerce entities add interest, penalty charges, and administrative costs to a Commerce debt?**

(a) *Assessment and notice.* Commerce entities shall assess interest, penalties and administrative costs on Commerce debts in accordance with the provisions of 31 U.S.C. 3717 and 31 CFR 901.9. Interest shall be charged in accordance with the requirements of 31 U.S.C. 3717(a). Penalties shall accrue at a rate of not more than 6% per year or such other higher rate as authorized by law. Administrative costs, that is, the costs of processing and handling a delinquent debt, shall be determined by the Commerce entity collecting the debt, as directed by the Office of the Deputy Chief Financial Officer. Commerce entities may have additional policies regarding how interest, penalties, and administrative costs are assessed on particular types of debts, subject to the approval of the Deputy Chief Financial Officer. Commerce entities are required to explain in the notice to the debtor described in §19.4 of this Part how interest, penalties, costs, and other charges are assessed, unless the requirements are included in a contract or other legally binding agreement.

(b) *Waiver of interest, penalties, and administrative costs.* Unless otherwise required by law or contract, Commerce entities may not charge interest if the amount due on the Commerce debt is paid within 30 days after the date from which the interest accrues. See 31 U.S.C. 3717(d). Commerce entities may waive interest, penalties, and administrative costs, or any portion thereof, when it would be against equity and good conscience or not in the United States' best interest to collect such charges, in accordance with Commerce guidelines for such waivers. Legal counsel approval to waive such charges is required. See Department of Commerce Credit and Debt Management Operating Standards and Procedures Handbook (currently at <http://www.osec.doc.gov/ofm/credit/cover.htm>).

(c) *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). Commerce entities may suspend accrual of any or all of these charges when accrual would be against equity and good conscience or not in the United States' best interest, in accordance with Commerce guidelines for such waivers. See Department of Commerce Credit and Debt Management Operating Standards and Procedures Handbook (currently at <http://www.osec.doc.gov/ofm/credit/cover.htm>).

**§ 19.6 When will Commerce entities allow a debtor to pay a Commerce debt in installments instead of one lump sum?**

If a debtor is financially unable to pay the Commerce debt in one lump sum, a Commerce entity may accept payment of a Commerce debt in regular installments, in accordance with the provisions of 31 CFR 901.8 and the Commerce entity's policies and procedures.

**§ 19.7 When will Commerce entities compromise a Commerce debt?**

If a Commerce entity cannot collect the full amount of a Commerce debt, the Commerce entity may compromise the Commerce debt in accordance with the provisions of 31 CFR part 902 and the Commerce entity's policies and procedures. Legal counsel approval to compromise a Commerce debt is required as described in Department of Commerce Credit and Debt Management Operating Standards and Procedures Handbook (currently at <http://www.osec.doc.gov/ofm/credit/cover.htm>).

**§ 19.8 When will Commerce entities suspend or terminate debt collection on a Commerce debt?**

If, after pursuing all appropriate means of collection, a Commerce entity determines that a Commerce debt is uncollectible, the Commerce entity may suspend or terminate debt collection activity in accordance with the provisions of 31 CFR part 903 and the

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Commerce entity's policies and procedures. Legal counsel approval to suspend or terminate collection on a Commerce debt is required as described in Department of Commerce Credit and Debt Management Operating Standards and Procedures Handbook (currently at <http://www.osec.doc.gov/ofm/credit/cover.htm>). Termination of debt collection activity by a Commerce entity does not discharge the indebtedness.

### **§ 19.9 When will Commerce entities transfer a Commerce debt to the Treasury Department's Financial Management Service for collection?**

(a) Commerce entities will transfer any Commerce debt that is more than 180 days delinquent to the Financial Management Service for debt collection services, a process known as "cross-servicing." See 31 U.S.C. 3711(g) and 31 CFR 285.12. Commerce entities may transfer Commerce debts delinquent 180 days or less to the Financial Management Service in accordance with the procedures described in 31 CFR 285.12. The Financial Management Service takes appropriate action to collect or compromise the transferred Commerce debt, or to suspend or terminate collection action thereon, in accordance with the statutory and regulatory requirements and authorities applicable to the Commerce debt and the collection action to be taken. See 31 CFR 285.12(b) and 285.12(c)(2). Appropriate action can include, but is not limited to, contact with the debtor, referral of the Commerce debt to the Treasury Offset Program, private collection agencies or the Department of Justice, reporting of the Commerce debt to credit bureaus, and administrative wage garnishment.

(b) At least sixty (60) days prior to transferring a Commerce debt to the Financial Management Service, Commerce entities will send notice to the debtor as required by § 19.4 of this Part. Commerce entities will certify to the Financial Management Service, in writing, that the Commerce debt is valid, delinquent, legally enforceable, and that there are no legal bars to collection. In addition, Commerce entities will certify their compliance with all applicable due process and other requirements as described in this Part

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and other Federal laws. See 31 CFR 285.12(i) regarding the certification requirement.

(c) As part of its debt collection process, the Financial Management Service uses the Treasury Offset Program to collect Commerce debts by administrative and tax refund offset. See 31 CFR 285.12(g). The Treasury Offset Program is a centralized offset program administered by the Financial Management Service 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 Financial Management Service 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 Financial Management Service (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, but are not limited to, income tax refunds, salary, travel advances and reimbursements, retirement and vendor payments, and Social Security and other benefit payments.

### **§ 19.10 How will Commerce entities use administrative offset (offset of non-tax Federal payments) to collect a Commerce debt?**

(a) *Centralized administrative offset through the Treasury Offset Program.* (1) In most cases, the Financial Management Service uses the Treasury Offset Program to collect Commerce debts by the offset of Federal payments. See § 19.9(c) of this Part. If not already transferred to the Financial Management Service under § 19.9 of this Part, Commerce entities will refer Commerce debt over 180 days delinquent to the Treasury Offset Program for collection by centralized administrative offset. See 31 U.S.C. 3716(c)(6); 31 CFR part 285, subpart A; and 31 CFR 901.3(b). Commerce entities may refer to the Treasury Offset Program for offset any

Commerce debt that has been delinquent for 180 days or less.

(2) At least sixty (60) days prior to referring a Commerce debt to the Treasury Offset Program, in accordance with paragraph (a)(1) of this section, Commerce entities will send notice to the debtor in accordance with the requirements of §19.4 of this Part. Commerce entities will certify to the Financial Management Service, in writing, that the Commerce debt is valid, delinquent, legally enforceable, and that there are no legal bars to collection by offset. In addition, Commerce entities will certify their compliance with the requirements described in this Part.

(b) *Non-centralized administrative offset for Commerce debts.* (1) When centralized administrative offset through the Treasury Offset Program is not available or appropriate, Commerce entities may collect past-due, legally enforceable Commerce debts through non-centralized administrative offset. See 31 CFR 901.3(c). In these cases, Commerce entities may offset a payment internally or make an offset request directly to a Federal payment agency. If the Federal payment agency is another Commerce entity, the Commerce entity making the request shall do so through the Deputy Chief Financial Officer as described in §19.20(c) of this Part.

(2) At least thirty (30) days prior to offsetting a payment internally or requesting a Federal payment agency to offset a payment, Commerce entities will send notice to the debtor in accordance with the requirements of §19.4 of this Part. When referring a Commerce debt for offset under this paragraph (b), Commerce entities making the request will certify, in writing, that the Commerce debt is valid, delinquent, legally enforceable, and that there are no legal bars to collection by offset. In addition, Commerce entities will certify their compliance with these regulations concerning administrative offset. See 31 CFR 901.3(c)(2)(ii).

(c) *Administrative review.* The notice described in §19.4 of this Part shall explain to the debtor how to request an administrative review of a Commerce entity's determination that the debtor owes a Commerce debt and how to present evidence that the Commerce

debt is not delinquent or legally enforceable. In addition to challenging the existence and amount of the Commerce debt, the debtor may seek a review of the terms of repayment. In most cases, Commerce entities will provide the debtor with a "paper hearing" based upon a review of the written record, including documentation provided by the debtor. Commerce entities shall provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the Commerce debt and the Commerce entity determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the Commerce 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 Commerce entities should carefully document all significant matters discussed at the hearing. Commerce entities may suspend collection through administrative offset and/or other collection actions pending the resolution of a debtor's dispute.

(d) *Procedures for expedited offset.* Under the circumstances described in 31 CFR 901.3(b)(4)(iii), Commerce entities may effect an offset against a payment to be made to the debtor prior to sending a notice to the debtor, as described in §19.4 of this Part, or completing the procedures described in paragraph (b)(2) and (c) of this section. Commerce entities shall 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. Legal counsel approval to effect such pre-notice offset is required as described in Department of Commerce Credit and Debt Management Operating Standards and Procedures Handbook (currently at <http://www.osec.doc.gov/ofm/credit/cover.htm>).

**§19.11 How will Commerce entities use tax refund offset to collect a Commerce debt?**

(a) *Tax refund offset.* In most cases, the Financial Management Service uses the Treasury Offset Program to collect Commerce debts by the offset of

tax refunds and other Federal payments. See §19.9(c) of this Part. If not already transferred to the Financial Management Service under §19.9 of this Part, Commerce entities will refer to the Treasury Offset Program any past-due, legally enforceable Commerce debt for collection by tax refund offset. See 26 U.S.C. 6402(d), 31 U.S.C. 3720A and 31 CFR 285.2.

(b) *Notice.* At least sixty (60) days prior to referring a Commerce debt to the Treasury Offset Program, Commerce entities will send notice to the debtor in accordance with the requirements of §19.4 of this Part. Commerce entities will certify to the Financial Management Service's Treasury Offset Program, in writing, that the Commerce debt is past due and legally enforceable in the amount submitted and that the Commerce entities have made reasonable efforts to obtain payment of the Commerce debt as described in 31 CFR 285.2(d). In addition, Commerce entities will certify their compliance with all applicable due process and other requirements described in this Part and other Federal laws. See 31 U.S.C. 3720A(b) and 31 CFR 285.2.

(c) *Administrative review.* The notice described in §19.4 of this Part shall provide the debtor with at least 60 days prior to the initiation of tax refund offset to request an administrative review as described in §19.10(c) of this Part. Commerce entities may suspend collection through tax refund offset and/or other collection actions pending the resolution of the debtor's dispute.

**§19.12 How will Commerce entities offset a Federal employee's salary to collect a Commerce debt?**

(a) *Federal salary offset.* (1) Salary offset is used to collect debts owed to the United States by Commerce Department and other Federal employees. If a Federal employee owes a Commerce debt, Commerce entities may offset the employee's Federal salary to collect the Commerce debt in the manner described in this section. For information on how a Federal agency other than a Commerce entity may collect debt from the salary of a Commerce Department employee, see §§19.20 and 19.21, subpart C, of this Part.

(2) Nothing in this Part requires a Commerce entity to collect a Commerce debt in accordance with the provisions of this section if Federal law allows otherwise. See, for example, 5 U.S.C. 5705 (travel advances not used for allowable travel expenses are recoverable from the employee or his estate by setoff against accrued pay and other means) and 5 U.S.C. 4108 (recovery of training expenses).

(3) Commerce entities may use the administrative wage garnishment procedure described in §19.13 of this Part to collect a Commerce debt from an individual's non-Federal wages.

(b) *Centralized salary offset through the Treasury Offset Program.* As described in §19.9(a) of this Part, Commerce entities will refer Commerce debts to the Financial Management Service for collection by administrative offset, including salary offset, through the Treasury Offset Program. When possible, Commerce entities should attempt salary offset through the Treasury Offset Program before applying the procedures in paragraph (c) of this section. See 5 CFR 550.1108 and 550.1109.

(c) *Non-centralized salary offset for Commerce debts.* When centralized salary offset through the Treasury Offset Program is not available or appropriate, Commerce entities may collect delinquent Commerce debts through non-centralized salary offset. See 5 CFR 550.1109. In these cases, Commerce entities may offset a payment internally or make a request directly to a Federal payment agency to offset a salary payment to collect a delinquent Commerce debt owed by a Federal employee. If the Federal payment agency is another Commerce entity, the Commerce entity making the request shall do so through the Deputy Chief Financial Officer as described in §19.20(c) of this Part. At least thirty (30) days prior to offsetting internally or requesting a Federal agency to offset a salary payment, Commerce entities will send notice to the debtor in accordance with the requirements of §19.4 of this Part. When referring a Commerce debt for offset, Commerce entities will certify to the payment agency, in writing, that the Commerce debt is valid, delinquent and legally enforceable in the amount stated, and there

are no legal bars to collection by salary offset. In addition, Commerce entities 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 due process and other prerequisites for salary offset.

(d) *When prior notice not required.* Commerce entities are not required to provide prior notice to an employee when the following adjustments are made by a Commerce entity to a Commerce employee's pay:

(1) Any adjustment to pay arising out of any 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;

(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 adjustment, 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 Commerce 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 Federal employee who has received a notice that his or her Commerce debt will be collected by means of salary offset may request a hearing concerning the existence or amount of the Commerce debt. The Federal 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 § 19.4. See § 19.4(a)(11). The request must be received by the designated office on or before the 15th 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. All travel expenses incurred by the Federal employee in connection with an in-person hearing will be borne by the employee. See 31 CFR 901.3(a)(7).

(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, Commerce entities should 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.* Commerce entities must obtain the services of a hearing official who is not under the supervision or control of the Secretary. Commerce entities may contact the Deputy Chief Financial Officer as described in § 19.20(c) of this Part or an agent of any Commerce agency designated in Appendix A to 5 CFR part 581 (List of Agents Designated to Accept Legal Process) to request a hearing official.

(4) *Notice of hearing.* After the employee requests a hearing, the designated hearing official shall inform the employee of the form of the hearing to be provided. For oral hearings, the notice shall set forth the date, time and location of the hearing. For paper hearings, the notice shall notify the employee of the date by which he or she should submit written arguments to the designated hearing official. The hearing official shall give the employee reasonable time to submit documentation in support of the employee's position. The hearing official shall schedule a new hearing date if requested by both parties. The hearing official shall 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 he or

she 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 need not take the form of an evidentiary hearing, but may be conducted in a manner determined by the hearing official, including but not limited to:

- (i) Informal conferences with the hearing official, in which the employee and agency representative will be given full opportunity to present evidence, witnesses and argument;
- (ii) Informal meetings with an interview of the employee by the hearing official; or
- (iii) Formal written submissions, with an opportunity for oral presentation.

(6) *Paper hearing.* If the hearing official determines that an oral hearing is not necessary, he or she will make the determination based upon a review of the available written record, including any documentation submitted by the employee in support of his or her position. See 31 CFR 901.3(a)(7).

(7) *Failure to appear or submit documentary evidence.* In the absence of good cause shown (for example, excused illness), if the employee fails to appear at an oral hearing or fails to submit documentary evidence as required for a paper hearing, the employee will have waived the right to a hearing, and salary offset may be initiated. Further, the employee will have been deemed to admit the existence and amount of the Commerce debt as described in the notice of intent to offset. If the Commerce entity representative fails to appear at an oral hearing, the hearing official shall proceed with the hearing as scheduled, and make his or her determination based upon the oral testimony presented and the documentary evidence submitted by both parties.

(8) *Burden of proof.* Commerce entities will have the initial burden to prove the existence and amount of the Commerce debt. Thereafter, if the employee disputes the existence or amount of the Commerce debt, the employee must prove by a preponderance of the evidence that no such Commerce debt exists or that the amount of the Commerce debt is incorrect. In addition, the employee may present evi-

dence that the proposed terms of the repayment schedule are unlawful, would cause a financial hardship to the employee, or that collection of the Commerce debt may not be pursued due to operation of law.

(9) *Record.* The hearing official shall maintain a summary record of any hearing provided by this Part. Witnesses will testify under oath or affirmation in oral hearings. See 31 CFR 901.3(a)(7).

(10) *Date of decision.* The hearing official shall issue a written opinion stating his or her decision, based upon documentary evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than 60 days after the date on which the request for hearing was received by the Commerce entity. If the employee requests a delay in the proceedings, the deadline for the decision may be postponed by the number of days by which the hearing was postponed. When a decision is not timely rendered, the Commerce entity shall waive interest and penalties applied to the Commerce debt for the period beginning with the date the decision is due and ending on the date the decision is issued.

(11) *Content of decision.* The written decision shall include:

- (i) A statement of the facts presented to support the origin, nature, and amount of the Commerce debt;
- (ii) The hearing official's findings, analysis, and conclusions; and
- (iii) The terms of any repayment schedules, if applicable.

(12) *Final agency action.* The hearing official's decision shall be final.

(f) *Waiver not precluded.* Nothing in this Part precludes an employee from requesting waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or other statutory authority. Commerce entities may grant such waivers when it would be against equity and good conscience or not in the United States' best interest to collect such Commerce debts, in accordance with those authorities, 5 CFR 550.1102(b)(2), and Commerce policies and procedures. See Department of Commerce Credit and Debt Management Operating Standards and Procedures Handbook (currently at <http://www.osec.doc.gov/ofm/credit/cover.htm>).

(g) *Salary offset process*—(1) *Determination of disposable pay.* The Deputy Chief Financial Officer will consult with the appropriate Commerce entity payroll office to determine the amount of a Commerce Department employee's disposable pay (as defined in §19.1 of this Part) and will implement salary offset when requested to do so by a Commerce entity, as described in paragraph (c) of this section, or another agency, as described in §19.20 of this Part. If the debtor is not employed by the Commerce Department, the agency employing the debtor will determine the amount of the employee's disposable pay and will implement salary offset upon request.

(2) *When salary offset begins.* Deductions shall begin within three official pay periods following receipt of the creditor agency's request for offset.

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

(i) If the amount of the Commerce debt is equal to or less than 15 percent of the disposable pay, such Commerce 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 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 or the creditor agency has determined that smaller deductions are appropriate based on the employee's ability to pay.

(4) *Final salary payment.* After the employee has separated either voluntarily or involuntarily from the payment agency, the payment agency may make a lump sum deduction exceeding 15 percent of disposable pay from any final salary or other payments pursuant to 31 U.S.C. 3716 in order to satisfy a Commerce debt.

(h) *Payment agency's responsibilities.*

(1) As required by 5 CFR 550.1109, if the employee separates from the payment agency from which a Commerce entity has requested salary offset, the payment agency must certify the total amount of its collection and notify the

Commerce entity and the employee of the amounts collected. If the payment agency is aware that the employee is entitled to payments from the Civil Service Retirement Fund and Disability Fund, the Federal Employee Retirement System, or other similar payments, it must provide written notification to the payment agency responsible for making such payments that the debtor owes a Commerce debt, the amount of the Commerce debt, and that the Commerce entity has complied with the provisions of this section. Commerce entities must submit a properly certified claim to the new payment agency before the collection can be made.

(2) If the employee is already separated from employment and all payments due from his or her former payment agency have been made, Commerce entities may request that money due and payable to the employee from the Civil Service Retirement Fund and Disability Fund, the Federal Employee Retirement System, or other similar funds, be administratively offset to collect the Commerce debt. Generally, Commerce entities will collect such monies through the Treasury Offset Program as described in §19.9(c) of this Part.

(3) When an employee transfers to another agency, Commerce entities should resume collection with the employee's new payment agency in order to continue salary offset.

**§ 19.13 How will Commerce entities use administrative wage garnishment to collect a Commerce debt from a debtor's wages?**

(a) Commerce entities are authorized to collect Commerce debts from an individual debtor's wages by means of administrative wage garnishment in accordance with the requirements of 31 U.S.C. 3720D and 31 CFR 285.11. This Part adopts and incorporates all of the provisions of 31 CFR 285.11 concerning administrative wage garnishment, including the hearing procedures described in 31 CFR 285.11(f). Commerce entities may use administrative wage garnishment to collect a delinquent Commerce debt unless the debtor is making timely payments under an agreement to pay the Commerce debt

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in installments (see § 19.6 of this Part). At least thirty (30) days prior to initiating an administrative wage garnishment, Commerce entities will send notice to the debtor in accordance with the requirements of § 19.4 of this Part, including the requirements of § 19.4(a)(10) of this Part. For Commerce debts referred to the Financial Management Service under § 19.9 of this Part, Commerce entities may authorize the Financial Management Service 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 § 19.4(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. See 31 CFR 285.11(f)(4). Even if a debtor's hearing request is not timely, Commerce entities may suspend collection by administrative wage garnishment in accordance with the provisions of 31 CFR 285.11(f)(5). All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor.

(b) This section does not apply to Federal salary offset, the process by which Commerce entities collect Commerce debts from the salaries of Federal employees (see § 19.12 of this Part).

#### § 19.14 How will Commerce entities report Commerce debts to credit bureaus?

Commerce entities shall report delinquent Commerce debts to credit bureaus in accordance with the provisions of 31 U.S.C. 3711(e), 31 CFR 901.4, and the Office of Management and Budget Circular A-129, "Policies for Federal Credit Programs and Non-tax Receivables." For additional information, see Financial Management Service's "Guide to the Federal Credit Bureau Program," which currently may be found at <http://www.fms.treas.gov/debt>. At least sixty (60) days prior to reporting a delinquent Commerce debt to a consumer reporting agency, Commerce entities will send notice to the debtor in accordance with the requirements of § 19.4 of this Part. Commerce entities may authorize the Financial Management Service to report to credit bu-

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reaus those delinquent Commerce debts that have been transferred to the Financial Management Service under § 19.9 of this Part.

#### § 19.15 How will Commerce entities refer Commerce debts to private collection agencies?

Commerce entities will transfer delinquent Commerce debts to the Financial Management Service to obtain debt collection services provided by private collection agencies. See § 19.9 of this Part.

#### § 19.16 When will Commerce entities refer Commerce debts to the Department of Justice?

(a) *Compromise or suspension or termination of collection activity.* Commerce entities shall refer Commerce 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 Commerce debt or suspension or termination of collection activity. See §§ 19.7 and 19.8 of this Part; 31 CFR 902.1; 31 CFR 903.1.

(b) *Litigation.* Commerce entities shall promptly refer to the Department of Justice for litigation delinquent Commerce debts on which aggressive collection activity has been taken in accordance with this Part and that should not be compromised, and on which collection activity should not be suspended or terminated. See 31 CFR part 904. Commerce entities may authorize the Financial Management Service to refer to the Department of Justice for litigation those delinquent Commerce debts that have been transferred to the Financial Management Service under § 19.9 of this Part.

#### § 19.17 Will a debtor who owes a Commerce or other Federal agency debt, and persons controlled by or controlling such debtors, be ineligible for Federal loan assistance, grants, cooperative agreements, or other sources of Federal funds or for Federal licenses, permits or privileges?

(a) Delinquent debtors are ineligible for and barred from obtaining Federal loans or loan insurance or guaranties. As required by 31 U.S.C. 3720B and 31 CFR 901.6, Commerce entities will not

extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a debt owed to a Federal agency. The Commerce Department may issue standards under which the Commerce Department may determine that persons controlled by or controlling such delinquent debtors are similarly ineligible in accordance with 31 CFR 285.13(c)(2). This prohibition does not apply to disaster loans. Commerce entities may extend credit after the delinquency has been resolved. See 31 CFR 285.13. Waivers of ineligibility may be granted by the Secretary or designee on a person by person basis in accordance with 31 CFR 285.13(g). However, such authority may not be delegated below the Deputy Chief Financial Officer.

(b) A debtor who has a judgment lien against the debtor's property for a debt to the United States is not eligible to receive grants, loans or funds directly or indirectly from the United States until the judgment is paid in full or otherwise satisfied. This prohibition does not apply to funds to which the debtor is entitled as beneficiary. The Commerce Department may promulgate regulations to allow for waivers of this ineligibility. See 28 U.S.C. 3201(e).

(c) Suspension or revocation of eligibility for licenses, permits, or privileges. Unless prohibited by law, Commerce entities with the authority to do so under the circumstances should deny, suspend or revoke licenses, permits, or other privileges for any inexcusable or willful failure of a debtor to pay a debt. The Commerce entity responsible for distributing the licenses, permits, or other privileges will establish policies and procedures governing suspension and revocation for delinquent debtors. If applicable, Commerce entities will advise the debtor in the notice required by § 19.4 of this Part of the Commerce entities' ability to deny, suspend or revoke licenses, permits or privileges. See § 19.4(a)(16) of this Part.

(d) To the extent that a person delinquent on a Commerce debt is not otherwise barred under § 19.17(a)(c) of this Part from becoming or remaining a recipient of a Commerce grant or cooperative agreement, it is Commerce policy that no award of Federal funds shall be

made to a Commerce grant or cooperative agreement applicant who has an outstanding delinquent Commerce debt until:

- (1) The delinquent Commerce debt is paid in full,
- (2) A negotiated repayment schedule acceptable to Commerce is established and at least one payment is received, or
- (3) Other arrangements satisfactory to Commerce are made.

**§ 19.18 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 Commerce debt may, at any time, request a special review by the applicable Commerce entity 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, but not limited to, 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 (*e.g.*, costs incurred for food, housing, clothing, transportation, and medical care), the debtor shall submit a detailed statement and supporting documents for the debtor, his or her spouse, 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;
- (7) Exceptional expenses, if any; and
- (8) Any additional materials and information that the Commerce entity may request relating to ability or inability to pay the amount(s) currently required.

(c) *Alternative payment arrangement.* If the debtor requests a special review under this section, the debtor shall submit an alternative proposed payment schedule and a statement to the Commerce entity collecting the Commerce debt, with supporting documents, showing why the current offset,

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garnishment or repayment schedule imposes an extreme financial hardship on the debtor. The Commerce entity will evaluate the statement and documentation and determine whether the current offset, garnishment, or repayment schedule imposes extreme financial hardship on the debtor. The Commerce entity shall 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 Commerce entity will notify the appropriate Federal agency or other persons about the new terms.

### **§ 19.19 Will Commerce entities issue a refund if money is erroneously collected on a Commerce debt?**

Commerce entities shall promptly refund to a debtor any amount collected on a Commerce debt when the Commerce debt is waived or otherwise found not to be owed to the United States, or as otherwise required by law. Refunds under this Part shall not bear interest unless required by law.

## **Subpart C—Procedures for Offset of Commerce Department Payments To Collect Debts Owed to Other Federal Agencies**

### **§ 19.20 How do other Federal agencies use the offset process to collect debts from payments issued by a Commerce entity?**

(a) *Offset of Commerce entity payments to collect debts owed to other Federal agencies.* (1) In most cases, Federal agencies submit debts to the Treasury Offset Program to collect delinquent debts from payments issued by Commerce entities and other Federal agencies, a process known as “centralized offset.” When centralized offset is not available or appropriate, any Federal agency may ask a Commerce entity (when acting as a “payment agency”) to collect a debt owed to such agency by offsetting funds payable to a debtor by the Commerce entity, including salary payments issued to Commerce entity employees. This section and § 19.21 of this subpart C apply when a Federal agency asks a Commerce entity to off-

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set a payment issued by the Commerce entity to a person who owes a debt to the United States.

(2) This subpart C does not apply to Commerce debts. See §§ 19.10 through 19.12 of this Part for offset procedures applicable to Commerce debts.

(3) This subpart C does not apply to the collection of non-Commerce debts through tax refund offset. See 31 CFR 285.2 for tax refund offset procedures.

(b) *Administrative offset (including salary offset); certification.* A Commerce entity will initiate a requested offset only upon receipt of written certification from the creditor agency that the debtor owes the past-due, legally enforceable debt in the amount stated, and that the creditor agency has fully complied with all applicable due process and other requirements contained in 31 U.S.C. 3716, 5 U.S.C. 5514, 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 shall be sent to the Department of Commerce, ATTN: Deputy Chief Financial Officer, 1401 Constitution Avenue, NW., Room 6827, Washington, DC 20230. The Deputy Chief Financial Officer will forward the request to the appropriate Commerce entity for processing in accordance with this subpart C.

(d) *Incomplete certification.* A Commerce entity 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 a Commerce entity.

(e) *Review.* A Commerce entity 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 Commerce entities will not comply with offset request.* A Commerce entity will comply with the offset request of another agency unless the Commerce entity 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 Commerce entity that has been asked to offset the payments 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 Commerce entity.* For purposes of this section, debts owed to a Commerce entity generally take precedence over debts owed to other agencies. The Commerce entity that has been asked to offset the payments may determine whether to pay debts owed to other agencies before paying a debt owed to a Commerce entity. The Commerce entity that has been asked to offset the payments will determine the order in which the debts will be collected based on the best interests of the United States.

**§ 19.21 What does a Commerce entity do upon receipt of a request to offset the salary of a Commerce entity employee to collect a debt owed by the employee to another Federal agency?**

(a) *Notice to the Commerce employee.* When a Commerce entity receives proper certification of a debt owed by one of its employees, the Commerce entity will begin deductions from the employee's pay at the next officially established pay interval. The Commerce entity 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 by the creditor agency, the date deductions from salary will begin, and the amount of such deductions.

(b) *Amount of deductions from Commerce employee's salary.* The amount deducted under § 19.20(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 shall continue until the Commerce entity 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 § 19.12(g) (salary offset process).

(c) *When the debtor is no longer employed by the Commerce entity—(1) Offset of final and subsequent payments.* If a Commerce entity employee retires or resigns or if his or her employment ends before collection of the debt is complete, the Commerce entity will continue to offset, under 31 U.S.C. 3716, 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 Commerce entity. See 31 U.S.C. 3716 and 5 CFR 550.1104(1) and 550.1104(m).

(2) *Notice to the creditor agency.* If the employee is separated from the Commerce entity before the debt is paid in full, the Commerce entity will certify to the creditor agency the total amount of its collection. If the Commerce entity 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 Commerce entity 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 § 19.9(c) of this Part.

(3) *Notice to the debtor.* The Commerce entity 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 Commerce entity will notify the creditor agency and

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will certify the total amount of its collection on the debt. The Commerce entity will provide a copy of the certification to the creditor agency. The creditor agency is responsible for submitting a certified claim to the debtor's new employing agency before collection may begin.

(2) *Notice to the debtor.* The Commerce entity 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.* A Commerce entity will provide a hearing official upon the creditor agency's request with respect to a Commerce entity employee. See 5 CFR 550.1107(a).

**PART 20—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

**Subpart A—General**

Sec.

20.1 The purpose of DOC's age discrimination regulations.

20.2 Programs or activities to which these regulations apply.

20.3 Definitions.

**Subpart B—Standards for Determining Age Discrimination**

20.4 Rules against age discrimination.

20.5 Exceptions to the rules.

20.6 Burden of proof.

**Subpart C—Responsibilities of DOC Recipients**

20.7 General responsibilities.

20.8 Notice to subrecipients.

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**Subpart D—Investigation, Conciliation, and Enforcement Procedures**

20.10 Compliance reviews.

20.11 Complaints.

20.12 Mediation.

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20.15 Compliance procedure.

20.16 Hearings, decisions, post-termination proceedings.

20.17 Remedial action by recipients.

20.18 Alternative funds disbursement procedure.

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20.19 Private lawsuits after exhaustion of administrative remedies.

AUTHORITY: Age Discrimination Act of 1975, as amended, 42 U.S.C. sec. 6101 *et seq.* and the government-wide regulations implementing the Act, 45 CFR Part 90.

SOURCE: 51 FR 28926, Aug. 13, 1986, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 20 appear at 68 FR 51355, Aug. 26, 2003.

**Subpart A—General**

**§20.1 The purpose of DOC's age discrimination regulations.**

The purpose of these regulations is to set out DOC's policies and procedures under the Age Discrimination Act of 1975 and the general age discrimination regulations at 45 CFR Part 90. The Act and the general regulations prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act and the general regulations permit federally assisted programs or activities, and recipients of Federal funds, to continue to use age distinctions and factors other than age which meet the requirements of the Act and its implementing regulations.

**§20.2 Programs or activities to which these regulations apply.**

(a) The Act and these regulations apply to each DOC recipient and to each program or activity operated by the recipient which receives Federal financial assistance provided by any entity of DOC.

(b) The Act and these regulations do not apply to:

(1) An age distinction contained in that part of a Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body which:

(i) Provides benefits or assistance to persons based on age; or

(ii) Establishes criteria for participation in age-related terms; or

(iii) Describes intended beneficiaries or target groups in age-related terms.

(2) Any employment practice or any employer, employment agency, labor