

### § 34.19

that an error existed but failed to take corrective action.

(ii) Factors to be considered when determining whether recovery of unpaid deduction resulting from under-withholding would be against equity and good conscience include, but are not limited to:

(A) Whether collection of the claim would cause serious financial hardship to the individual from whom collection is sought.

(B) The time elapsed between the failure to properly withhold and discovery of the failure and notification of the individual;

(C) Whether failure to make restitution would result in unfair gain to the individual;

(D) Whether recovery of the claim would be unconscionable under the circumstances.

(7) *Overpayments of Foreign Service annuities.* For waiver of debts arising from overpayments from the Foreign Service Retirement and Disability Fund under the Foreign Service Retirement and Disability System or the Foreign Service Pension System see 22 CFR part 17.

(8) As otherwise provided by law.

(c) Waiver of indebtedness is an equitable remedy and as such must be based on an assessment of the facts involved in the individual case under consideration.

(d) The burden is on the employee to demonstrate that the applicable waiver standard has been met.

(e) *Requests.* A debtor requesting a waiver shall do so in writing to the contact office by the payment due date stated within the initial notice sent under § 34.8(b) or other applicable provision. The debtor's written response shall state the basis for the dispute and include any relevant documentation in support.

(f) While a waiver request is pending, STATE may suspend collection, including the accrual of interest and penalties, on the debt if STATE determines that suspension is in the Department's best interest or would serve equity and good conscience.

### § 34.19 Compromise.

STATE may attempt to effect compromise in accordance with the stand-

### 22 CFR Ch. I (4-1-10 Edition)

ards set forth in the FCCS, 31 CFR part 902.

### § 34.20 Suspension.

The suspension of collection action shall be made in accordance with the standards set forth in the FCCS, 31 CFR 903.1-903.2

### § 34.21 Termination.

The termination of collection action shall be made in accordance with the standards set forth in the FCCS, 31 CFR 903.1 and 903.3-903.4.

### § 34.22 Discharge.

Once a debt has been closed out for accounting purposes and collection has been terminated, the debt is discharged. STATE must report discharged debt as income to the debtor to the Internal Revenue Service per 26 U.S.C. 6050P and 26 CFR 1.6050P-1.

### § 34.23 Bankruptcy.

A debtor should notify STATE at the contact office provided in the original notice of the debt, if the debtor has filed for bankruptcy. STATE will require documentation from the applicable court indicating the date of filing and type of bankruptcy. Pursuant to the laws of bankruptcy, STATE will suspend debt collection upon such filing unless the automatic stay is no longer in effect or has been lifted. In general, collection of a debt discharged in bankruptcy shall be terminated unless otherwise provided for by bankruptcy law.

### § 34.24 Refunds.

(a) STATE will refund promptly to the appropriate individual amounts offset under this regulation when:

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

(2) STATE is directed by an administrative or judicial order to make a refund.

(b) Refunds do not bear interest unless required or permitted by law or contract.