

§ 141.1

- 141.3 Applicability.
- 141.4 Notice requirements.
- 141.5 Hearing.
- 141.6 Written decision.
- 141.7 Coordinating offset with another Federal agency.
- 141.8 Procedures for salary offset.
- 141.9 Refunds.
- 141.10 Statute of limitations.
- 141.11 Non-waiver of rights.
- 141.12 Interest, penalties, and administrative costs.

AUTHORITY: 5 U.S.C. 5514, E.O. 11609 (redesignated E.O. 12197), 5 CFR part 550, subpart K, and 7 U.S.C. 4a(j), unless otherwise noted.

SOURCE: 55 FR 5207, Feb. 14, 1990, unless otherwise noted.

§ 141.1 Purpose and scope.

(a) This regulation provides procedures for the collection by administrative offset of a federal employee's salary without his/her consent to satisfy certain debts owed to the federal government. These regulations apply to employees of other federal agencies and current employees of the Commission who owe debts to the Commission and to current employees of the Commission who owe debts to other federal agencies. This regulation does not apply when the employee consents to recovery from his/her current pay account.

(b) This regulation does not apply to debts or claims arising under:

- (1) The Internal Revenue Code of 1954, as amended, 26 U.S.C. 1 *et seq.*;
- (2) The Social Security Act, 42 U.S.C. 301 *et seq.*;
- (3) The tariff laws of the United States; or
- (4) Any case where a collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(c) This regulation does not apply to any adjustment to pay arising out of an employee's selection 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.

(d) This regulation does not preclude the compromise, suspension, or termination of collection action where appropriate under the standards implementing the Federal Claims Collection

17 CFR Ch. I (4-1-11 Edition)

Act, 31 U.S.C. 3711 *et seq.*, 4 CFR parts 101 through 105, 45 CFR part 1177.

(e) This regulation does not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774 or 32 U.S.C. 716 or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the General Accounting Office in accordance with General Accounting Office procedures. This regulation does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected. Neither the requesting of a waiver nor the filing of a claim with the General Accounting Office will affect the amount or validity of the debt being collected until a waiver has been granted or the debt has been determined to be for an incorrect amount or invalid.

(f) Matters not addressed in these regulations should be reviewed in accordance with the Federal Claims Collection Standards at 4 CFR 101.1 *et seq.*

§ 141.2 Definitions.

For the purposes of this part the following definitions will apply:

Agency means an executive agency as defined at 5 U.S.C. 105 including the U.S. Postal Service, the U.S. Postal Commission, a military department as defined at 5 U.S.C. 102, an agency or court in the judicial branch, an agency of the legislative branch including the U.S. Senate and House of Representatives and other independent establishments that are entities of the Federal government.

Creditor agency means the agency to which the debt is owed.

Debt means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interests, fines, forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

Disposable pay means the amount that remains from an employee's federal pay after required deductions for social security, federal, state or local

Commodity Futures Trading Commission

§ 141.5

income tax, health insurance premiums, retirement contributions, life insurance premiums, federal employment taxes, and any other deductions that are required to be withheld by law.

Hearing official means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and who renders a decision on the basis of such hearing. A hearing official shall be an impartial member of the Office of the Executive Director not under the supervision or control of the head of the Commission.

Paying agency means the agency that employs the individual who owes the debt and authorizes the payment of his/her current pay.

Salary offset means an administrative offset to collect a debt pursuant to 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his/her consent.

§ 141.3 Applicability.

These regulations are to be followed when:

- (a) The Commission is owed a debt by an individual currently employed by another federal agency;
- (b) The Commission is owed a debt by an individual who is a current employee of the Commission;
- (c) The Commission employs an individual who owes a debt to another federal agency.

§ 141.4 Notice requirements.

- (a) Deductions shall not be made unless the employee is provided with written notice of the debt at least 30 days before salary offset commences.
- (b) The written notice shall contain:
 - (1) A statement that the debt is owed and an explanation of its nature, and amount;
 - (2) The agency's intention to collect the debt by deducting from the employee's current disposable pay account;
 - (3) The amount, frequency, proposed beginning date, and duration of the intended deduction(s);
 - (4) An explanation of interest, penalties, and administrative charges, including a statement that such charges will be assessed unless excused in ac-

cordance with the Federal Claims Collections Standards at 4 CFR 101.1 *et seq.*;

- (5) The employee's right to inspect, request, and receive a copy of government records relating to the debt;
- (6) The opportunity to establish a written schedule for the voluntary repayment of the debt;
- (7) The right to a hearing conducted by an impartial hearing official;
- (8) The methods and time period for petitioning for hearings;
- (9) A statement that the timely filing of a petition for a hearing will stay the commencement of collection proceedings;
- (10) A statement that a final decision on the hearing will be issued 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;
- (11) A statement that knowingly false or frivolous statements, representations, or evidence may subject the employee to:
 - (i) Disciplinary procedures appropriate under chapter 75 of 5 U.S.C., 5 CFR part 752, or any other applicable statutes or regulations;
 - (ii) Penalties under the False Claims Act, 31 U.S.C. 3729-3731, or any other applicable statutory authority; or
 - (iii) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or any other applicable statutory authority.
- (12) A statement of other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and
- (13) Unless there are contractual or statutory provisions to the contrary, a statement that 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.

§ 141.5 Hearing.

- (a) *Request for hearing.* (1) An employee must file a petition for a hearing in accordance with the instructions outlined in the Commission's notice to offset.
- (2) A hearing may be requested by filing a written petition addressed to the Executive Director stating why the