

## Federal Mediation and Conciliation Service

## § 1450.19

matter for litigation is retained by the agency;

(2) The contractor shall be subject to the Privacy Act of 1974, as amended to the extent specified in 5 U.S.C. 552a(m), and to applicable Federal and State laws and regulations pertaining to debt collection practices, such as the Fair Debt Collection Practices Act, 15 U.S.C. 1692;

(3) The contractor must be required to account strictly for all amounts collected;

(4) The contractor must agree that uncollectible accounts shall be returned with appropriate documentation to enable FMCS to determine whether to pursue collection through litigation or to terminate collection efforts, and

(5) The contractor must agree to provide any data contained in its files relating to paragraphs (a) (1), (2), and (3) of §105.2 of the Federal Claims Collection Standards (4 CFR part 105) upon returning an account to FMCS for subsequent referral to the Department of Justice for litigation.

(b) Funding of collection service contracts: (1) FMCS may fund a collection service contract on a fixed-fee basis, that is, payment of a fixed fee determined without regard to the amount actually collected under the contract. Payment of the fee under this type of contract must be charged to available agency appropriations.

(2) FMCS may also fund a collection service contract on a contingent-fee basis, that is, by including a provision in the contract permitting the contractor to deduct its fee from amounts collected under the contract. The fee should be based on a percentage of the amount collected, consistent with prevailing commercial practice.

(3) FMCS may enter into a contract under paragraph (b)(1) of this section only if and to the extent provided in advance in its appropriation acts or other legislation, except that this requirement does not apply to the use of a revolving fund authorized by statute.

(4) Except as authorized under paragraph (b)(2) of this section, or unless the receipt qualifies as a refund to the appropriation, or unless otherwise specifically provided by law, FMCS must deposit all amounts recovered under

collection service contracts (or by agency employees on behalf of the agency) in the Treasury as miscellaneous receipts pursuant to 31 U.S.C. 3302.

(c) FMCS will consider the use of collection agencies at any time after the account is 61 days past due. In all cases accounts that are six months or more past due shall be turned over to a collection agency unless referred for litigation or unless arrangements have been made for a workout procedure, or the agency has exercised its authority to write off the debt pursuant to §1450.14.

(d) FMCS will generally not use a collection agency to collect a delinquent debt owed by a currently employed or retired Federal employee, if collection by salary or annuity offset is available.

### Subpart C—Salary Offset

#### § 1450.18 Purpose.

This subpart provides the standards to be followed by FMCS in implementing 5 U.S.C. 5514 to recover a debt from the pay account of an FMCS employee, and establishes procedural guidelines to recover debts when the employee's creditor and paying agencies are not the same.

#### § 1450.19 Scope.

(a) *Coverage.* This subpart applies to agencies and employees as defined by §1450.20.

(b) *Applicability.* This subpart and 5 U.S.C. 5514 apply in recovering certain debts by offset, except where the employee consents to the recovery, from the current pay account of that employee. Because it is an administrative offset, debt collection procedures for salary offset which are not specified in U.S.C. 5514 and these regulations should be consistent with the provisions of the Federal Claims Collection Standards (4 CFR parts 101–105).

(1) *Excluded debts or claims.* The procedures contained in this subpart do not apply to debts or claims arising under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1 *et seq.*), the Social Security Act (42 U.S.C. 301 *et seq.*) or the tariff laws of the United States, or to any case where collection of a debt

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by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(2) *Waiver requests and claims to the General Accounting Office.* This subpart does not preclude an employee from requesting waiver of a salary 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 a debt by submitting a subsequent claim to the General Accounting Office in accordance with procedures prescribed by the General Accounting Office. Similarly, in the case of other types of debts, it does not preclude an employee from requesting waiver, if waiver is available under any statutory provision pertaining to the particular debt being collected.

(c) *Time limit.* Under 4 CFR 102.3(b)(3), offset may not be initiated more than 10 years after the Government's right to collect the debt first accrued, unless an exception applies as stated in § 102.3(b)(3).

### § 1450.20 Definitions.

For purposes of this subpart—

*Agency* means the Federal Mediation and Conciliation Service (FMCS) or means any other agency of the U.S. Government as defined by section 105 of title 5 U.S.C., including the U.S. Postal Service, and the U.S. Postal Rate Commission, a military department as defined by section 102 of title 5 U.S.C., an agency or court of the judicial branch, and an agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives.

*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 and forfeitures (except those arising under the Uniform Code Military Justice), and all other similar sources.

*Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. FMCS will exclude deductions described in 5 CFR 581.105 (b) through (f) to determine disposable pay subject to salary offset.

*Employee* means a current employee of FMCS or of another agency, including a current member of the Armed Forces or a Reserve of the Armed Forces

*FCCS* means the Federal Claims Collection Standards jointly published by the Justice Department and the General Accounting Office at 4 CFR parts 101-105.

*Paying agency* means the agency employing the individual and authorizing the payment of his or her current pay.

*Salary offset* means an administrative offset to collect a debt under 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 or her consent.

*Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly 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. 710, 5 U.S.C. 8346(b), or any other law.

### § 1450.21 Notification.

(a) Salary offset deductions shall not be made unless the Director of the Financial Management Staff of FMCS, or such other official as may be named in the future by the Director of FMCS, provides to the employee—at least 30 days before any deduction—a written notice stating at a minimum:

(1) The agency's determination that a debt is owed, including the origin, nature, and amount of the debt;

(2) The agency's intention to collect the debt by means of deduction from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date, and duration of the intended deductions;

(4) An explanation of the agency's policy concerning interest, penalties,