

Commission on Civil Rights

§ 708.1

Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Office of General Counsel.

(d) The Agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The Agency may extend this time period for good cause.

(e) If the Agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The Agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, 42 U.S.C. 4151 through 4157, is not readily accessible to and usable by individuals with disabilities.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the Agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the Agency of the letter required by paragraph (g) of this section. The Staff Director may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Staff Director or the Staff Director's designee.

(j) The Agency shall notify the complainant in writing of the results of the appeal within 60 days of the receipt of the request. If the head of the Agency determines that additional information is needed from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (d), (g), (h), and (j) of this sec-

tion may be extended for an individual case when the Staff Director determines that there is good cause, based on the particular circumstances of that case, for the extension.

(l) The Agency may delegate its authority for conducting complaint investigations to other Federal agencies; however, the authority for making the final determination may not be delegated to another Agency.

PART 708—COLLECTION BY SALARY OFFSET FROM INDEBTED CURRENT AND FORMER EMPLOYEES

Sec.

708.1 Purpose and scope.

708.2 Policy.

708.3 Definitions.

708.4 Applicability.

708.5 Notice.

708.6 Petitions for hearing.

708.7 Hearing procedures.

708.8 Written decision.

708.9 Coordinating offset with another Federal agency.

708.10 Procedures for salary offset.

708.11 Refunds.

708.12 Statute of limitations.

708.13 Non-waiver of rights by payments.

708.14 Interest, penalties, and administrative costs.

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§ 708.1 Purpose and scope.

(a) The regulations in this part provide the procedure pursuant to 5 U.S.C. 5514 and 5 CFR 550.1101 through 550.1110 for the collection by administrative offset of a Federal employee's salary without his or her consent to satisfy certain debts owed to the Federal government. This procedure applies to all Federal employees who owe debts to the U.S. Commission on Civil Rights (Commission). This provision does not apply when the employee consents to recovery from his or her current pay account.

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

(1) The Internal Revenue Code (26 U.S.C. 1 *et seq.*);

(2) The Social Security Act (42 U.S.C. 301 *et seq.*);

§ 708.2

(3) The tariff laws of the United States; or

(4) To any case where collection of a debt 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).

(c) The Commission shall except from salary offset provisions any adjustments to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic payroll deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

(d) These procedures do not preclude an employee or former employee from requesting a waiver of a salary overpayment under 5 U.S.C. 5584 or 10 U.S.C. 2774 or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the General Accounting Office (GAO) in accordance with procedures prescribed by the GAO. In addition, this procedure does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

§ 708.2 Policy.

It is the policy of the Commission to apply the procedures in the regulations in this part uniformly and consistently in the collection of internal debts from its current and former employees.

§ 708.3 Definitions.

For the purposes of the regulations in this part the following definitions apply:

(a) *Agency* means:

(1) An Executive agency as defined in 5 U.S.C. 105, including the U.S. Postal Service and the U.S. Postal Rate Commission;

(2) A military department as defined in 5 U.S.C. 102;

(3) An agency or court in the judicial branch, including a court as defined in 28 U.S.C. 610, the District Court for the Northern Mariana Islands, and the Judicial panel on Multidistrict Litigation;

(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

45 CFR Ch. VII (10–1–12 Edition)

(5) Other independent establishments that are entities of the Federal Government.

(b) *Creditor agency* means the agency to which the debt is owed.

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

(d) *Deputy Staff Director* means the Deputy Staff Director of the Commission or in his or her absence, or in the event of a vacancy in the position or its elimination, the Director of Human Resources.

(e) *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 from an employee's Federal pay after required deductions for social security, Federal, state or local 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.

(f) *Employee* means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

(g) *Former employee* means an employee who is no longer employed with the Commission but is currently employed with another Federal agency.

(h) *FCCS* means the Federal Claims Collection Standards jointly published by the Department of Justice and the General Accounting Office at 4 CFR chapter I.

(i) *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 may not be under the supervision or control of the Deputy Staff Director of the Commission.

Commission on Civil Rights

§ 708.5

(j) *Paying agency* means the agency employing the individual who owes the debt and is responsible for authorizing the payment of his or her current pay.

(k) *Pay interval* will normally be the biweekly pay period but may be some regularly recurring period of time in which pay is received.

(l) *Retainer pay* means the pay above the maximum rate of an employee's grade that he or she is allowed to keep in special situations rather than having the employee's rate of basic pay reduced.

(m) *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.

(n) *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 5 U.S.C. 8346(b), or any other law.

§ 708.4 Applicability.

The regulations in this part are to be followed when:

(a) The Commission is owed a debt by an individual who is a current employee of the Commission; or

(b) The Commission is owed a debt by an individual currently employed by another Federal agency; or

(c) The Commission employs an individual who owes a debt to another Federal agency.

§ 708.5 Notice.

(a) Deductions shall not be made unless the employee who owes the debt has been provided with written notice signed by the Deputy Staff Director or in his or her absence, or in the event of a vacancy in that position or its elimination, the Director of Human Resources (or the U.S. Department of Agriculture, National Finance Center acting on behalf of the Commission) of the debt at least 30 days before salary offset commences.

(b) The written notice from the Deputy Staff Director, acting on behalf of the Commission, as the creditor agency, shall contain:

(1) A statement that the debt is owed and an explanation of its origin, 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 the requirements concerning the current interest rate, penalties, and administrative costs, including a statement that such charges will be assessed unless excused in accordance with the Federal Claims Collections Standards (4 CFR chapter I);

(5) The employee's right to inspect, request, or receive a copy of the government records relating to the debt;

(6) The employee's right to enter into a written repayment schedule for the voluntary repayment of the debt in lieu of offset;

(7) The right to a hearing conducted by an impartial hearing official (either an administrative law judge or an official who is not under the control of the Commission);

(8) The method and time period for petitioning for a hearing;

(9) A statement that the timely filing (*i.e.*, within 15 calendar days) of a petition for a hearing will stay the commencement of collection proceedings;

(10) A statement that a final decision on the hearing (if one is requested) will be issued at the earliest practical date but 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 an employee knowingly submitting false or frivolous statements (5 CFR 550.1101), representations, or evidence may subject the employee to disciplinary procedures under 5 U.S.C. 7501 *et seq.* and 5 CFR part 752; penalties under the False Claims Act, 31 U.S.C. 3729-3731; or criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002;

(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;

§ 708.6

(13) A statement that an employee will be promptly refunded any amount paid or deducted for a debt that is later waived or found not valid unless there are applicable contractual or statutory provisions to the contrary; and

(14) The name, address, and phone number of an official who can be contacted concerning the indebtedness.

§ 708.6 Petitions for hearing.

(a) Except as provided in paragraph (d) of this section, an employee who wants a hearing must file a written petition for a hearing to be received by the Deputy Staff Director not later than 15 calendar days from the date of receipt of the Notice of Offset. The petition must state why the employee believes the determination of the Commission concerning the existence or amount of the debt is in error.

(b) The petition must be signed by the employee and should identify and explain with reasonable specificity and brevity the facts, evidence, and witnesses that the employee believes support his or her position.

(c) If the employee objects to the percentage of disposable pay to be deducted from each check, the petition should state the objection and the reasons for it.

(d) If the employee files a petition for a hearing later than the 15 calendar days from the date of receipt of the Notice of Offset, as described in paragraph (a) of this section, the hearing official may accept the request if the employee can show that there was good cause (such as due to circumstances beyond his or her control or because he or she was not informed or aware of the time limit) for failing to meet the deadline date.

(e) An employee will not be granted a hearing and will have his or her disposable pay offset in accordance with the Deputy Staff Director's offset schedule if he or she fails to show good cause why he or she failed to file the petition for a hearing within the stated time limits.

§ 708.7 Hearing procedures.

(a) If an employee timely files a petition for a hearing under § 708.6, the Deputy Staff Director shall select the

45 CFR Ch. VII (10–1–12 Edition)

time, date, and location for the hearing.

(b) The hearing shall be conducted by an impartial hearing official.

(c) The Commission, as the creditor agency, will have the burden of proving the existence of the debt.

(d) The employee requesting the hearing shall have the burden of proof to demonstrate that the existence or amount of the debt is in error.

§ 708.8 Written decision.

(a) The hearing official shall issue a written opinion no later than sixty (60) days after the filing of the petition for hearing; or no longer than sixty (60) days from the proceedings if an extension has been granted pursuant to § 708.5(b)(10).

(b) The written opinion will include: A statement of the facts presented to demonstrate the nature and origin of the alleged debt; the hearing official's analysis, findings, and conclusions; the amount and validity of the debt; and, if applicable, the repayment schedule.

§ 708.9 Coordinating offset with another Federal agency.

(a) The Commission is the creditor agency when the Deputy Staff Director determines that an employee of another Federal agency owes a delinquent debt to the Commission. The Deputy Staff Director shall, as appropriate:

(1) Arrange for a hearing upon the proper petitioning by the employee;

(2) Certify in writing that the employee of the paying agency owes the debt, the amount, and basis of the debt, the date on which payment is due, the date the Government's right to collect the debt first accrued, and that the Commission's regulations for salary offset have been approved by the Office of Personnel Management;

(3) If the collection must be made in installments, the Commission, as the creditor agency, will advise the paying agency of the amount or percentage of disposable pay to be collected in each installment and the number and the commencement date of the installments;

(4) Advise the paying agency of the actions taken under 5 U.S.C. 5514(a) and provide the dates on which action was taken, unless the employee has

Commission on Civil Rights

§ 708.10

consented to salary offset in writing or signed a statement acknowledging receipt of procedures required by law. The written consent or acknowledgement must be sent to the paying agency;

(5) If the employee is in the process of separating, the Commission will submit its debt claim to the paying agency as provided in this part. The paying agency must certify any amounts already collected, notify the employee, and send a copy of the certification of the monies already collected and notice of the employee's separation to the Commission. If the paying agency is aware that the employee is entitled to Civil Service or Foreign Service Retirement and Disability Fund or similar payments, it must provide written notification to the agency has been rendered in favor of the Commission.

(6) If the employee has already separated and all payments due from the paying agency have been paid, the Assistant Staff Director for Management may request, unless otherwise prohibited, that money payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be collected by administrative offset. The Commission will provide the agency responsible for these payments with a properly certified claim.

(b) The Commission is the paying agency when an employee of this agency owes a debt to another Federal agency that is the creditor agency.

(1) Upon receipt of a properly certified debt claim from a creditor agency, deductions will be scheduled to begin at the next established pay interval.

(2) The Commission must give the employee written notice that it has received a certified debt claim from a creditor agency (including the amount), and the date that deductions will be scheduled to begin and the amount of the deduction.

(3) The Commission shall not review the merits of the creditor agency's determination of the amount of the certified claim or of its validity.

(4) If the employee transfers to another paying agency after the creditor agency has submitted its debt claim but before the debt is collected com-

pletely, the Commission must certify the total amount collected to the creditor agency with notice of the employee's transfer. One copy of this certification must be furnished to the employee. The creditor agency will submit a properly certified claim to the new paying agency before collection can be resumed.

(5) When the Commission, as a paying agency, receives an incomplete debt claim from a creditor agency, it must return the debt claim with a notice that procedures under 5 U.S.C. 5514 and this subpart must be provided and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

§ 708.10 Procedures for salary offset.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the Assistant Staff Director for Management's written notice of intent to collect from the employee's current pay, unless alternative arrangements for repayment are made.

(b) If the employee filed a petition for a hearing with the Assistant Staff Director for Management before the expiration of the period provided, then deductions will begin after the hearing official has provided the employee with a hearing, and a final written decision has been rendered in favor of the Commission.

(c) A debt will be collected in a lump sum if possible.

(d) If an employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments. The size of the installment deduction(s) will bear a reasonable relationship to the size of the debt and the deduction will be established for a period not greater than the anticipated period of employment. The deduction for the pay intervals for any period must not exceed 15% of disposable pay unless the employee has agreed in writing to a deduction of a greater amount. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in no more than three years.

§ 708.11

45 CFR Ch. VII (10–1–12 Edition)

(e) Installment payments may be less than 15 percent of disposable pay if the Assistant Staff Director for Management determines that the 15 percent deduction would create an extreme financial hardship.

(f) Installment payments of less than \$25.00 per pay period or \$50.00 per month, will only be accepted in the most unusual circumstances.

(g) Unliquidated debts may be offset by the paying agency under 31 U.S.C. 3716 against any financial payment due to a separating employee including but not limited to final salary payment, retired pay, or lump sum leave, etc. as of the date of separation to the extent necessary to liquidate the debt.

(h) If the debt cannot be liquidated by offset from any final payment due a separated employee it may be recovered by the offset in accordance with 31 U.S.C. 3716 from any later payments due the former employee from the United States.

§ 708.11 Refunds.

(a) The Commission will refund promptly any amounts deducted to satisfy debts owed to the Commission when the debt is waived, found not owed to the Commission, or when directed by an administrative or judicial order; or the creditor agency will promptly return any amounts deducted and forwarded by the Commission to satisfy debts owed to the creditor agency when the debt is waived, found not owed, or when directed by an administrative or judicial order.

(b) Upon receipt of monies returned in accordance with paragraph (a) of this section, the Commission will refund the amount to the current or former employee.

(c) Unless required by law, refunds under this section shall not bear interest nor shall liability be conferred to the Commission for debt or refunds owed by other creditor agencies.

§ 708.12 Statute of limitations.

If a debt has been outstanding for more than 10 years after the agency's right to collect the debt first accrued, the agency may not collect by salary offset unless facts material to the government's right to collect were not known and could not reasonably have been known by the official or officials who were charged with the responsibility for discovery and collection of such debts.

§ 708.13 Non-waiver of rights by payments.

An employee's involuntary payment of all or any part of a debt collected under the regulations in this part will not be construed as a waiver of any rights that employee may have under 5 U.S.C. 5514 or any other provision of contract or law unless there are statutory or contractual provisions to the contrary.

§ 708.14 Interest, penalties, and administrative costs.

Charges may be assessed for interest, penalties, and administrative costs.

**CHAPTER VIII—OFFICE OF PERSONNEL MANAGEMENT
[RESERVED]**