

**§ 845.304**

- (a) It would cause financial hardship to the person from whom it is sought;
- (b) The recipient of the overpayment can show (regardless of his or her financial circumstances) that due to the notice that such payment would be made or because of the incorrect payment he or she either has relinquished a valuable right or has changed positions for the worse; or
- (c) Recovery would be unconscionable under the circumstances.

**§ 845.304 Financial hardship.**

Financial hardship may be deemed to exist in, but not limited to, those situations when the annuitant from whom collection is sought needs substantially all of his or her current income and liquid assets to meet current ordinary and necessary living expenses and liabilities.

(a) *Considerations.* Some pertinent considerations in determining whether recovery would cause financial hardship are as follows:

(1) The individual's financial ability to pay at the time collection is scheduled to be made.

(2) Income to other family member(s), if such member's ordinary and necessary living expenses are included in expenses reported by the annuitant.

(b) *Exemptions.* Assets exempt from execution under State law should not be considered in determining an individual's ability to repay the indebtedness. Rather primary emphasis will be placed upon the annuitant's liquid assets and current income in making such determinations.

**§ 845.305 Ordinary and necessary living expenses.**

An individual's ordinary and necessary living expenses include rent, mortgage payments, utilities, maintenance, transportation, food, clothing, insurance (life, health, and accident), taxes, installment payments, medical expenses, support expenses for which the annuitant is legally responsible, and other miscellaneous expenses that the individual can establish as being ordinary and necessary.

**§ 845.306 Waiver precluded.**

Waiver of an overpayment cannot be granted when—

**5 CFR Ch. I (1–1–13 Edition)**

- (a) The overpayment was obtained by fraud; or
- (b) The overpayment was made to an estate.

**§ 845.307 Burdens of proof.**

(a) *Burden of OPM.* The Associate Director must establish by the preponderance of the evidence that an overpayment occurred.

(b) *Burden of annuitant.* The recipient of an overpayment must establish by substantial evidence that he or she is eligible for waiver or an adjustment.

**Subpart D—Agency Requests to OPM for Recovery of a Debt From the Civil Service Retirement Fund**

**§ 845.401 Purpose.**

This subpart prescribes the procedures to be followed by a Federal agency when it requests the Office of Personnel Management (OPM) to recover a debt owed to the United States by administrative offset against money due and payable to the debtor from the Fund. This subpart also prescribes the procedures that OPM must follow to make these administrative offsets.

**§ 845.402 Scope.**

This subpart applies to agencies and debtors, as defined by § 845.403.

**§ 845.403 Definitions.**

In this subpart—

*Act* means the Federal Claims Collection Act of 1966 as amended by the Debt Collection Act of 1982 and implemented by 4 CFR 101.1 *et seq.*, the Federal Claims Collection Standards (FCCS).

*Administrative offset* means withholding money payable from the Fund to satisfy a debt to the United States under 31 U.S.C. 3716.

*Agency* means—

(a) An Executive agency as defined in § 105 of title 5, United States Code, including the U.S. Postal Service and the U.S. Postal Rate Commission;

(b) A military department, as defined in § 102 of title 5, United States Code;

(c) An agency or court in the judicial branch, including a court as defined in § 610 of title 28, United States Code, the