

Dept. of Health and Human Services

§ 33.2

for the collection of debts owed by Federal employees to the United States through involuntary salary offset.

(b) *Authority.* 5 U.S.C. 5514; 5 CFR part 550, subpart K.

(c) *Scope.* (1) This part applies to internal and Government-wide collections of debts owed by Federal employees by administrative offset from the current pay account of the debtor without his or her consent.

(2) The procedures contained in this part do not apply to any case where an employee consents to collection through deduction(s) from the employee's pay account, or to debts arising under the Internal Revenue Code or the tariff laws of the United States, or where another statute explicitly provides for, or prohibits, collection of a debt by salary offset (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(3) This part does not preclude an employee from requesting waiver of an erroneous payment 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, in the manner prescribed by the Secretary. Similarly, this part does not preclude an employee from requesting waiver of the collection of a debt under any other applicable statutory authority.

(4) Nothing in this part precludes the compromise of the debt, or the suspension or termination of collection actions, in accordance with part 30 of this title.

§ 33.2 Definitions.

In this part—

Administrative offset means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt owed by the payee.

Agency means an executive department or agency; a military department; the United States Postal Service; the Postal Rate Commission; the United States Senate; the United States House of Representatives; and court, court administrative office, or instrumentality in the judicial or legislative branches of the Government; or a Government Corporation.

Creditor agency means the agency to which the debt is owed, including a

debt collection center when acting on behalf of a creditor agency in matters pertaining to the collection of a debt.

Day means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, Sunday, or a Federal holiday, in which case the next business day will be considered the last day of the period.

Debt means an amount determined by an appropriate official to be 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, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

Debt collection center means the Department of the Treasury or other Government agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies in accordance with 31 U.S.C. 3711(g).

Debtor means a Federal employee who owes a debt to the United States.

Delinquent debt means a debt which the debtor does not pay or otherwise resolve by the date specified in the initial demand for payment, or in an applicable written repayment agreement or other instrument, including a post-delinquency repayment agreement.

Department means the Department of Health and Human Services, its Staff Divisions, Operating Divisions, and Regional Offices.

Disposable pay means that part of the debtor's current basic, special, incentive, retired, and retainer pay, or other authorized pay, remaining after deduction of amounts required by law to be withheld. For purposes of calculating disposable pay, legally required deductions that must be applied first include: Tax levies pursuant to the Internal Revenue Code (title 26, United States Code); properly withheld taxes, FICA, Medicare; health and life insurance premiums; and retirement contributions. Amounts deducted under garnishment orders, including child

§ 33.3

support garnishment orders, are not legally required deductions for calculating disposable pay.

Employee means any individual currently employed by an agency, as defined in this section, including seasonal and temporary employees and current members of the Armed Forces or a Reserve of the Armed Forces (Reserves).

Evidence of service means information retained by the Department indicating the nature of the document to which it pertains, the date of mailing the document, and the address and name of the debtor to whom it is being sent. A copy of the dated and signed written notice of intent to offset provided to the debtor pursuant to this part may be considered evidence of service for purposes of this part. Evidence of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

Hearing means a review of the documentary evidence to confirm the existence or amount of a debt or the terms of a repayment schedule. If the Secretary determines that the issues in dispute cannot be resolved by such a review, such as when the validity of the claim turns on the issue of credibility or veracity, the Secretary may provide an oral hearing.

Hearing official means a Departmental Appeals Board administrative law judge or appropriate alternate as outlined in § 33.7(a)(2).

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 owed by a federal employee through deductions at one or more officially established pay intervals from the current pay account of the employee without his or her consent.

Secretary means the Secretary of Health and Human Services, or the Secretary's designee within any Staff Division, Operating Division or Regional Office.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt owed by an employee to this Department or another agency as required or permitted by 5 U.S.C. 5584, 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or any other law.

45 CFR Subtitle A (10-1-20 Edition)

§ 33.3 General rule.

(a) Whenever a delinquent debt is owed to the Department by an employee, the Secretary may, subject to paragraphs (b) through (d) of this section, involuntarily offset the amount of the debt from the employee's disposable pay.

(b) Unless provided by another statute pertaining to a particular type of debt (e.g., 42 U.S.C. 292r, Health professionals education, 42 U.S.C. 297b, Nurse education), the Department may not initiate salary offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts.

(c) Except as provided in paragraph (d) of this section, prior to initiating collection through salary offset under this part, the Secretary must first provide the employee with the following:

(1) Written notice of intent to offset as described in § 33.4; and

(2) An opportunity to petition for a hearing, and, if a hearing is provided, to receive a written decision from the hearing official within 60 days on the following issues:

(i) The determination of the Department concerning the existence or amount of the debt; and

(ii) The repayment schedule, unless it was established by written agreement between the employee and Department.

(d) The provisions of paragraph (c) of this section do not apply to:

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a federal benefits program requiring periodic deduction from pay, if the amount to be recovered was accumulated over four pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the