

§ 201.205

19 CFR Ch. II (4–1–10 Edition)

otherwise provided for in the certification.

(ii) *Incomplete claim.* When the Commission receives an incomplete certification of debt from a creditor agency, the Commission shall return the debt claim with notice that procedures under 5 U.S.C. 5514 and 5 CFR 550.1104 must be followed and that a properly certified debt claim must be received before action will be taken to collect from the employee's current pay account.

(iii) *Review.* The Commission is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(iv) *Employees who transfer from one paying agency to another agency.* If, after the creditor agency has submitted the debt claim to the Commission, the employee transfers to an agency outside the Commission before the debt is collected in full, the Commission must certify the total amount collected on the debt. One copy of the certification shall be furnished to the employee and one copy shall be sent to the creditor agency along with notice of the employee's transfer. If the Commission is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that the requirements set forth herein and in the Office of Personnel Management's regulation (5 CFR part 550) have been fully met.

(j) *Interest, Penalties, and Administrative Costs.* Where the Commission is the creditor agency, it shall assess interest, penalties, and administrative costs pursuant to 31 U.S.C. 3717 and 31 CFR 901.9.

(k) *Refunds.* (1) Where the Commission is the creditor agency, it shall promptly refund any amount deducted under the authority of 5 U.S.C. 5514 when:

(i) The debt is compromised or otherwise found not to be owing to the United States; or

(ii) An administrative or judicial order directs the Commission to make a refund.

(2) Unless required by law or contract, refunds under this paragraph (k) shall not bear interest.

(1) *Request from a creditor agency for the services of a hearing official.* (1) The Commission may provide a hearing official upon request of the creditor agency when the debtor is employed by the Commission and the creditor agency cannot provide a prompt and appropriate hearing before a hearing official furnished pursuant to another lawful arrangement.

(2) The Commission may provide a hearing official upon request of a creditor agency when the debtor works for the creditor agency and that agency cannot arrange for a hearing official.

(3) The Director shall arrange for qualified personnel to serve as hearing officials.

(4) Services rendered under this paragraph (1) shall be provided on a fully reimbursable basis pursuant to 31 U.S.C. 1535.

(m) *Non-waiver of rights by payments.* A debtor's payment, whether voluntary or involuntary, of all or any portion of a debt being collected pursuant to this section shall not be construed as a waiver of any rights that the debtor may have under any statute, regulation, or contract except as otherwise provided by law or contract.

(n) Exception to due process procedures. The procedures set forth in this section shall not apply to adjustments described in 5 U.S.C. 5514(a)(3) and 5 CFR 550.1104(c).

[62 FR 38019, July 16, 1997, as amended at 68 FR 32976, June 3, 2003]

§ 201.205 Salary adjustments.

Any negative adjustment to pay arising out of an employee's election of coverage, or a change in coverage, under a Federal benefits program requiring periodic deductions from pay shall not be considered collection of a "debt" for the purposes of this section if the amount to be recovered was accumulated over four pay periods or less. In such cases, the Commission need not comply with § 201.204, but it

will provide a clear and concise statement in the employee's earnings statement advising the employee of the previous overpayment at the time the adjustment is made.

§ 201.206 Administrative offset.

(a) *Collection.* The Director may collect a claim pursuant to 31 U.S.C. 3716 from a person, organization, or entity other than an agency of the United States Government by administrative offset of monies payable by the Government. Collection by administrative offset shall be undertaken where the claim is certain in amount, where offset is feasible and desirable and not otherwise prohibited, where the applicable statute of limitations has not expired, and where the offset is in the best interest of the United States.

(b) *Offset prior to completion of procedures.* Prior to the completion of the procedures described in paragraph (c) of this section, the Commission may effect offset if:

(1) Failure to offset would substantially prejudice the Commission's ability to collect the debt; and

(2) The time before the payment is to be made does not reasonably permit completion of the procedures described in paragraph (c) of this section. Such prior offsetting shall be followed promptly by the completion of the procedures described in paragraph (c) of this section.

(c) *Debtor's rights.* (1) Unless the procedures described in paragraph (b) of this section are used, prior to collecting any claim by administrative offset or referring such claim to another agency for collection through administrative offset, the Director shall provide the debtor with the following:

(i) Written notification of the nature and amount of the claim, the intention of the Director to collect the claim through administrative offset, and a statement of the rights of the debtor under this paragraph;

(ii) An opportunity to inspect and copy the records of the Commission not exempt from disclosure with respect to the claim;

(iii) An opportunity to have the Commission's determination of indebtedness reviewed by the Director. Any request for review by the debtor shall be

in writing and be submitted to the Commission within 30 calendar days of the date of the notice of the offset. The Director may waive the time limit for requesting review for good cause shown by the debtor. The Commission shall provide the debtor with a reasonable opportunity for an oral hearing when:

(A) An applicable statute authorizes or requires the Commission to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or

(B) The debtor requests reconsideration of the debt and the Commission determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although the Commission shall document all significant matters discussed at the hearing. In those cases where an oral hearing is not required by this section, the Commission shall nevertheless accord the debtor a "paper hearing," (i.e., the Commission will make its determination on the request for waiver or reconsideration based upon a review of the written record); and

(iv) An opportunity to enter into a written agreement for the repayment of the amount of the claim at the discretion of the Commission.

(2) If the procedures described in paragraph (b) of this section are employed, the procedures described in this paragraph shall be effected after offset.

(d) *Interest.* Pursuant to 31 U.S.C. 3717 and 31 CFR 901.9, the Commission shall assess interest, penalties and administrative costs on debts owed to the United States. The Commission is authorized to assess interest and related charges on debts that are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

(e) *Refunds.* Amounts recovered by offset but later found not to be owed to the Government shall be promptly refunded.