

(d) The request adheres to the requirements set forth in § 19.4; and

(e) The notice requirements set forth in section 1108(4) of the Act, or the requirements pertaining to delay of notice in section 1109 of the Act are satisfied, except in situations where no notice is required (e.g., section 1113(g)).

#### § 19.4 Contents of request.

The formal written request shall be in the form of a letter or memorandum to an appropriate official of the financial institution from which financial records are requested. The request shall be signed by an issuing official of the requesting Departmental unit, as specified in § 19.3(c). It shall set forth that official's name, title, business address and business phone number. The request shall also contain the following:

(a) The identity of the customer or customers to whom the records pertain;

(b) A reasonable description of the records sought;

(c) Any other information that the issuing official deems appropriate, e.g., the date on which the requesting Departmental unit expects to present a certificate of compliance with the applicable provisions of the Act, the name and title of the individual to whom disclosure is to be made, etc.

(d) In cases where customer notice is delayed by a court order, a copy of the court order shall be attached to the formal written request.

#### § 19.5 Certification.

Prior to obtaining the requested records pursuant to a formal written request, a senior official designated by the head of the requesting Departmental unit shall certify in writing to the financial institution that the Departmental unit has complied with the applicable provisions of the Act.

## PART 20—FEDERAL CLAIMS COLLECTION

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AUTHORITY: 31 U.S.C. 3711 *et seq.*; Subpart D is also issued under 5 U.S.C. 5514; Subpart E is also issued under 31 U.S.C. 3720A.

SOURCE: 50 FR 5202, Feb. 6, 1985, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 20 appear at 57 FR 31451, July 16, 1992.

**Subpart A—Disclosure of Information to Credit Reporting Agencies**

**§ 20.1 Purpose and scope.**

The regulations in this subpart establish procedures to implement section 3 of the Debt Collection Act of 1982 (Pub. L. 97-365), 31 U.S.C. 3711(f). This statute, and other applicable authority, authorizes Department heads to disclose to credit reporting agencies information concerning claims owed the United States under programs administered by the Department head. This disclosure is limited to certain information and must be in accordance with

procedures set forth in the Debt Collection Act and other applicable laws. This subpart specifies the agency procedures and debtor rights that will be followed in making a disclosure to a credit reporting agency.

**§ 20.2 Definitions.**

For purposes of this subpart—

(a) The term *commercial debt* means any non-tax business debt in excess of \$100, arising from loans, loan guarantees, overpayments, fines, penalties or other causes.

(b) The term *consumer debt* means any non-tax debt of an individual in excess of \$100, arising from loans—loan guarantees, overpayments, fines, penalties, or other causes.

(c) A debt is considered delinquent if it has not been paid by the date specified in the agency's initial demand letter (§20.4), unless satisfactory payment arrangements have been made by that date, or if, at any time thereafter, the debtor fails to satisfy his obligations under a payment agreement with the Department of Labor, or any agency thereof.

(d) The term *claim* and *debt* are deemed synonymous and interchangeable. They refer to an amount of money or property which has been determined by an appropriate agency official to be owed to the United States from any person, organization, or entity, except another federal agency.

**§ 20.3 Agency responsibilities.**

(a) As authorized by law, each Department of Labor agency may report all delinquent consumer debts to consumer credit reporting agencies and may also report all commercial debts to appropriate commercial credit reporting agencies.

(b) Information provided to a consumer credit reporting agency on delinquent consumer debts from a system of records subject to the Privacy Act of 1974, 5 U.S.C. 552a, must be maintained by the Department of Labor in accordance with that Act, except as otherwise modified by law. Furthermore, no disclosure may be made until the appropriate notice of system of records has been amended in accordance with 5 U.S.C. 552a(e)(11).

(c) The Chief Financial Officer, or his or her designee, shall have the responsibility for obtaining satisfactory assurances from each credit reporting agency to which information will be provided, concerning compliance by the credit reporting agency with the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*) and any other Federal law governing the provision of credit information.

(d) The information disclosed to the credit reporting agency is limited to: (1) The name, address, taxpayer identification number, and other information necessary to establish the identity of the individual, (2) the amount, status, and history of the claim, and (3) the Department of Labor agency or program under which the claim arose.

(e) The agency official providing information to a credit reporting agency: (1) Shall promptly disclose to each credit reporting agency to which the original disclosure was made, any substantial change in the status or amount of the claim; and (2) shall within 30 days whenever feasible, or otherwise promptly verify or correct, as appropriate, information concerning the claim upon the request of any such credit reporting agency for verification of any or all information so disclosed.

(f) Each Department of Labor agency is responsible for ensuring the continued accuracy of calculations and records relating to its claims, and for the prompt notification to the credit reporting agency of any substantial change in the status or amount of the claim. The agencies shall promptly follow-up on any allegation made by a debtor that the records of the agency concerning a claim are in error. Agencies should respond promptly to communications from the debtor, within 30 days whenever feasible.

(g) The agency official responsible for providing information to a consumer credit reporting agency shall take reasonable action to locate the individual owing the debt prior to disclosing any information to a consumer credit reporting agency.

**§ 20.4 Determination of delinquency; notice.**

(a) The agency head (or designee) responsible for carrying out the provi-

sions of this subpart with respect to the debt shall send to the debtor appropriate written demands for payment in terms which inform the debtor of the consequences of failure to cooperate. In accordance with guidelines established by the Chief Financial Officer, a total of three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that a further demand would be futile and the debtor's response does not require rebuttal. In determining the timing of the demand letters, agencies should give due regard to the need to act promptly so that, as a general rule, if necessary to refer the debt to the Department of Justice for litigation, such referral can be made within one year of the final determination of the fact and the amount of the debt. When the agency head (or designee) deems it appropriate to protect the government's interests (for example, to prevent the statute of limitations, 28 U.S.C. 2415, from expiring), written demand may be preceded by other appropriate actions, including immediate referral for litigation.

(b) Prior to disclosing information to a consumer credit reporting agency in accordance with this subpart, the agency head (or designee) responsible for administering the program under which the debt arose shall review the claim and determine that the claim is valid and overdue. In cases where the debt arises under programs of two or more Department of Labor agencies, or in such other instances as the Chief Financial Officer or his or her designee may deem appropriate, the Chief Financial Officer, or his or her designee, may determine which agency, or official, shall have responsibility for carrying out the provisions of this subpart.

(c) In accordance with guidelines established by the Chief Financial Officer, the agency official responsible for disclosure of the debt to a consumer credit reporting agency shall send written notice to the individual debtor informing such debtor:

- (1) Of the basis for the indebtedness;
- (2) That the payment of the claim is overdue;

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(3) That the agency intends to disclose to a consumer credit reporting agency, within not less than sixty days after sending such notice, that the individual is responsible for such claim;

(4) Of the specific information intended to be disclosed to the credit reporting agency;

(5) Of the rights of such debtor to a full explanation of the claim, to dispute any information in the records of the agency concerning the claim, and of the name of an agency employee who can provide a full explanation of the claim;

(6) Of the debtor's right to administrative appeal or review with respect to the claim and how such review shall be obtained; and,

(7) Of the date on which or after which the information will be reported to the consumer credit reporting agency.

(d) Where the disclosure concerns a commercial debt, the responsible agency head (or designee) shall send written notice to the commercial debtor informing such debtor of the information discussed in paragraphs (c)(1), (4), (5), and (6) of this section.

(e) Agencies shall also include in their demand letters the notice provisions to debtors required by other regulations of the Labor Department, pertaining to waiver, assessment of interest, penalties and administrative costs, administrative offset, and salary offset to the extent that such inclusion is appropriate and practicable.

(f) The responsible agency head (or designee) shall exercise due care to insure that demand letters are mailed or hand-delivered on the same day that they are actually dated. If evidence suggests that the debtor is no longer located at the address of record, reasonable action shall be taken to obtain a current address.

(g) To the extent that the requirements under this section have been provided to the debtor in relation to the same debt under some other statutory or regulatory authority, the agency is not required to duplicate such efforts.

[50 FR 5202, Feb. 5, 1985; 50 FR 8608, Mar. 4, 1985]

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### § 20.5 Examination of records relating to the claim; opportunity for full explanation of the claim.

Following receipt of the notice specified in § 20.4, the debtor may request to examine and copy the information to be disclosed to the consumer credit reporting agency, in accordance with 5 U.S.C. 552a.

### § 20.6 Opportunity for repayment.

The Department of Labor agency responsible for collecting the claim shall afford the debtor the opportunity to repay the debt or enter into a repayment plan which is agreeable to the head of the agency and is in a written form signed by such debtor. The head of the agency (or designee) may deem a repayment plan to be abrogated if the debtor should, after the repayment plan is signed, fail to comply with the terms of the plan.

### § 20.7 Review of the obligation.

(a) The debtor shall have the opportunity to obtain review by the responsible agency of the initial decision concerning the existence or amount of the debt.

(b) The debtor seeking review shall make the request in writing to the reviewing official or employee, not more than 15 days from the date the initial demand letter was received by the debtor. The request for review shall state the basis for challenging the initial determination. If the debtor alleges that specific information to be disclosed to a credit reporting agency is not accurate, timely, relevant or complete, such debtor shall provide information or documentation to support this allegation.

(c) The review shall ordinarily be based on written submissions and documentation by the debtor. However a reasonable opportunity for an oral hearing shall be provided an individual debtor when the responsible agency determines that:

(1) An applicable statute authorizes or requires the agency 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

(2) An individual debtor requests reconsideration of the debt and the agency 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; or

(3) In other situations in which the agency deems an oral hearing appropriate. Unless otherwise required by law an oral hearing under this section is not required to be a formal evidentiary-type hearing, although the reviewing official should carefully document all significant matters discussed at the hearing.

(d) Upon receipt of a timely request for review, the agency shall suspend its schedule for disclosure of a delinquent consumer debt to a consumer credit reporting agency until such time as a final decision is made on the request.

(e) Upon completion of the review, the reviewing official shall transmit to the debtor a written notification of the decision. If appropriate, this notification shall inform the debtor of the scheduled date on or after which information concerning the debt will be provided to credit reporting agencies. The notification shall, also if appropriate, indicate any changes in the information to be disclosed to the extent such information differs from that provided in the initial notification.

(f) Nothing in this subpart shall preclude an agency, upon request of the debtor alleged by the agency to be responsible for a debt, or on its own initiative, from reviewing the obligation of such debtor, including an opportunity for reconsideration of the initial decision concerning the debt, and including the accuracy, timeliness, relevance, and completeness of the information to be disclosed to a credit reporting agency.

(g) To the extent that the requirements under this section have been provided to the debtor in relation to the same debt under some other statutory or regulatory authority, the agency is not required to duplicate such efforts.

(Approved by the Office of Management and Budget under control number 1225-0030)

### § 20.8 Disclosure to credit reporting agencies.

(a) In accordance with guidelines established by the Chief Financial Officer, the responsible Department of Labor agency shall make the disclosure of information on the debtor to the credit reporting agency. Such disclosure to consumer credit reporting agencies shall be made on or after the date specified in the § 20.4 notification to the individual owing the claim, and shall be comprised of the information set forth in the initial determination, or any modification thereof.

(b) This section shall not apply to individual debtors when—

(1) Such debtor has repaid or agreed to repay his or her obligation, and such agreement is still valid, as provided in § 20.6; or

(2) Such debtor has filed for review of the claim under § 20.7(b), and the reviewing official or employee has not issued a decision on the review.

(c) In addition, the agency may determine not to make a disclosure of information to a credit reporting agency when the agency, on its own initiative, is reviewing and has not concluded such review of its initial determination of the claim under § 20.7(f).

### § 20.9 Waiver of credit reporting.

The agency head (or designee) may waive reporting a commercial debt or delinquent consumer debt to a credit reporting agency, if otherwise appropriate and if reporting the debt would not be in the best interests of the United States.

### § 20.10 Responsibilities of the Chief Financial Officer.

The Chief Financial Officer, or his or her designee, shall provide appropriate and binding, written or other guidance to Department of Labor agencies and officials in carrying out this subpart, including the issuance of guidelines and instructions, which he or she may deem appropriate. The Chief Financial Officer shall also take such administrative steps as may be appropriate to carry out the purposes and ensure the effective implementation of this regulation, including the designation of credit reporting agencies authorized to

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receive and disseminate information under this subpart.

### Subpart B—Administrative Offset

#### § 20.19 Purpose and scope.

The regulations in this subpart establish procedures to implement section 10 of the Debt Collection Act of 1982 (Pub. L. 97-365), 31 U.S.C. 3716(d). Among other things, this statute authorizes the head of each agency to collect a claim arising under an agency program by means of administrative offset, except that no claim may be collected by such means if outstanding for more than 10 years after the agency'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. This subpart specifies the agency procedures that will be followed by the Department of Labor for an administrative offset.

#### § 20.20 Definitions.

For purposes of this subpart—

(a) The term *administrative offset* means the withholding of money payable by the United States to or held by the United States on behalf of a person to satisfy a debt owned the United States by that person; and

(b) The term *person* does not include any agency of the United States, or any state or local government.

(c) The terms *claim* and *debt* are deemed synonymous and interchangeable. They refer to an amount of money or property which has been determined by an appropriate agency official to be owed to the United States from any person, organization, or entity, except another federal agency.

(d) A debt is considered delinquent if it has not been paid by the date specified in the agency's initial demand letter (§ 20.22), unless satisfactory payment arrangements have been made by that date, or if, at any time thereafter, the debtor fails to satisfy his obligations under a payment agreement with the Department of Labor, or any agency thereof.

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#### § 20.21 Agency responsibilities.

(a) Each Department of Labor agency which has delinquent debts owed under its program is responsible for collecting its claims by means of administrative offset, in accordance with guidelines established by the Chief Financial Officer.

(b) Before collecting a claim by means of administrative offset, the responsible agency must ensure that administrative offset is feasible, allowable and appropriate, and must notify the debtor of the Department's policies for collecting a claim by means of administrative offset.

(c) Whether collection by administrative offset is feasible is a determination to be made by the creditor agency on a case-by-case basis, in the exercise of sound discretion. Agencies shall consider not only whether administrative offset can be accomplished, both practically and legally, but also whether offset is best suited to further and protect all of the Government's interests. In appropriate circumstances, agencies may give due consideration to the debtor's financial condition, and are not required to use offset in every instance in which there is an available source of funds. Agencies may also consider whether offset would substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated.

(d) Before advising the debtor that the delinquent debt will be subject to administrative offset, the agency head (or designee) responsible for administering the program under which the debt arose shall review the claim and determine that the debt is valid and overdue. In the case where a debt arises under the programs of two or more Department of Labor agencies, or in such other instances as the Chief Financial Officer, or his or her designee, may deem appropriate, the Chief Financial Officer, or his or her designee, may determine which agency (or agencies), or official (or officials), shall have responsibility for carrying out the provisions of this subpart.

(e) Administrative offset shall be considered by agencies only after attempting to collect a claim under Section 3(a) of the Federal Claims Collection Act, except that no claim under this Act that has been outstanding for more than 10 years after the Government's right to collect the debt first accrued may be collected by means of administrative offset, unless facts material to the right to collect the debt were not known and could not reasonably have been known by the official of the Agency who was charged with the responsibility to discover and collect such debts. When the debt first accrued should be determined according to existing laws regarding the accrual of debts, such as under 28 U.S.C. 2415.

#### § 20.22 Notifications.

(a) The agency head (or designee) responsible for carrying out the provisions of this subpart with respect to the debt shall send appropriate written demands to the debtor in terms which inform the debtor of the consequences of failure to cooperate. In accordance with guidelines established by the Chief Financial Officer, a total of three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that a further demand would be futile and the debtor's response does not require rebuttal. In determining the timing of the demand letters, agencies should give due regard to the need to act promptly so that, as a general rule, if necessary to refer the debt to the Department of Justice for litigation, such referral can be made within one year of the final determination of the fact and the amount of the debt. When the agency head (or designee) deems it appropriate to protect the government's interests (for example, to prevent the statute of limitations, 28 U.S.C. 2415, from expiring), written demand may be preceded by other appropriate actions, including immediate referral for litigation.

(b) In accordance with guidelines established by the Chief Financial Officer, the agency official responsible for collection of the debt shall send written notice to the debtor, informing such debtor as appropriate:

(1) Of the nature and amount of the indebtedness;

(2) That the agency intends to collect, as appropriate, interest, penalties and administrative costs; and, in accordance with guidelines of the Chief Financial Officer, of the applicable standards for collecting such payments;

(3) Of the date by which payment is to be made (which normally should be not more than 30 days from the date that the initial notification was mailed or hand-delivered);

(4) Of the agency's intention to collect by administrative offset and of the debtor's rights in conjunction with such an offset;

(5) Of the debtor's entitlement to waiver, where applicable, and of the debtor's rights in conjunction with waiver;

(6) Of the debtor's opportunity to enter into a written agreement with the agency to repay the debt;

(7) Of the rights of such debtor to a full explanation of the claim, of the opportunity to inspect and copy the agency records with respect to the claim and to dispute any information in the records of the agency concerning the claim;

(8) Of the debtor's right to administrative appeal or review with respect to the claim and how such review shall be obtained; and

(9) Of the date on which or after which an administrative offset will begin.

(c) Agencies shall also include in their demand letters the notice provisions to debtors required by other regulations of the Labor Department, pertaining to disclosures to credit reporting agencies, salary offset, and assessment of interest, penalties and administrative costs, to the extent inclusion of such is appropriate and practicable.

(d) The responsible agency head (or designee) shall exercise due care to insure that demand letters are mailed or hand-delivered on the same day that they are actually dated. If evidence suggests that the debtor is no longer located at the address of record, reasonable action shall be taken to obtain a current address.

(e) The agency responsible for collecting the claim shall, in the initial

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demand letter to the debtor, provide the name of an agency employee who can provide a full explanation of the claim.

### **§ 20.23 Examination of records relating to the claim; opportunity for full explanation of the claim.**

Following receipt of the initial demand letter specified in § 20.22, the debtor may request to examine and copy agency records pertaining to the debt.

### **§ 20.24 Opportunity for repayment.**

(a) The Department of Labor agency responsible for collecting the claim shall afford the debtor the opportunity to repay the debt or enter into a repayment plan which is agreeable to the agency head (or designee) and is in a written form signed by such debtor. The head of the agency (or designee) may deem a repayment plan to be abrogated if the debtor should, after the repayment plan is signed, fail to comply with the terms of the plan.

(b) Agencies have discretion and should exercise sound judgment in determining whether to accept a repayment agreement in lieu of offset. The determination should balance the Government's interest in collecting the debt against fairness to the debtor. If the debt is delinquent and the debtor has not disputed its existence or amount, an agency should effect an offset unless the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

### **§ 20.25 Review of the obligation.**

(a) The debtor shall have the opportunity to obtain review by the responsible agency of the determination concerning the existence or amount of the debt.

(b) The debtor seeking review shall make the request in writing to the reviewing official or employee, not more than 15 days from the date the initial demand letter was received by the debtor. The request for review shall state the basis for challenging the determination. If the debtor alleges that the agency's information relating to the debt is not accurate, timely, relevant or complete, such debtor shall

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provide information or documentation to support this allegation.

(c) The review shall ordinarily be based on written submissions and documentation by the debtor. However a reasonable opportunity for an oral hearing shall be provided an individual debtor when the responsible agency determines that:

(1) An applicable statute authorizes or requires the agency 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

(2) An individual debtor requests reconsideration of the debt and the agency 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; or

(3) In other situations in which the agency deems an oral hearing appropriate. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary-type hearing, although the reviewing official should carefully document all significant matters discussed at the hearing.

(d) Agencies may effect an administrative offset against a payment to be made to a debtor prior to the completion of the due process procedures required by this subpart, if failure to take the offset would substantially prejudice the agency's ability to collect the debt; for example, if the time before the payment is to be made would not reasonably permit the completion of due process procedures. Offset prior to completion of due process procedures must be promptly followed by the completion of those procedures. Amounts recovered by offset but later found not owed to the agency should be promptly refunded.

(e) Upon completion of the review, the reviewing official shall transmit to the debtor a written notification of the decision. If appropriate, this notification shall inform the debtor of the scheduled date on or after which administrative offset will begin. The notification shall also, if appropriate, indicate any changes in the information



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to the extent such information differs from that provided in the initial notification under § 20.22.

(f) Nothing in this subpart shall preclude an agency, upon request of the debtor alleged by the agency to be responsible for a debt, or on its own initiative, from reviewing the obligation of such debtor, including an opportunity for reconsideration of the determination concerning the debt, and including the accuracy, timeliness, relevance, and completeness of the information on which the debt is based.

(Approved by the Office of Management and Budget under control number 1225-0030)

### § 20.26 Request for waiver or administrative review.

(a) If the statute under which waiver or administrative review is sought is *mandatory*, that is, if it prohibits the agency from collecting the debt prior to the agency's consideration of the request for waiver or review (see *Califano v. Yamasaki*, 442 U.S. 682 (1979)), then collection action must be suspended until either

(1) The agency has considered the request for waiver/review, or

(2) The applicable time limit for making the waiver/review request, as prescribed in the agency's regulations, has expired and the debtor, upon proper notice, has not made such a request.

(b) If the applicable waiver/review statute is *permissive*, that is, if it does not require all requests for waiver/review to be considered, and if it does not prohibit collection action pending consideration of a waiver/review request (for example, 5 U.S.C. 5584), collection action may be suspended pending agency action on a waiver/review request based upon appropriate consideration, on a case-by-case basis, as to whether:

(1) There is a reasonable possibility that waiver will be granted, or that the debt (in whole or in part) will be found not owing from the debtor;

(2) The Government's interests would be protected, if suspension were granted, by reasonable assurance that the debt could be recovered if the debtor does not prevail; and

(3) Collection of the debt will cause undue hardship.

(c) If the applicable statutes and regulations would not authorize refund by

the agency to the debtor of amounts collected prior to agency consideration of the debtor's waiver/review request in the event the agency acts favorably on it, collection action should ordinarily be suspended, without regard to the factors specified in paragraph (b) of this section, unless it appears clear, based on the request and the surrounding circumstances, that the request is frivolous and was made primarily to delay collection.

### § 20.27 Cooperation with other DOL agencies and Federal agencies.

(a) Appropriate use should be made of the cooperative efforts of other DOL agencies and Federal agencies in effecting collection by administrative offset. Generally, agencies should comply with requests from other agencies to initiate administrative offset to collect debts owed to the United States, unless the requesting agency has not complied with the applicable regulations or the request would otherwise be contrary to law or the best interests of the United States.

(b) Unless otherwise prohibited by law, a DOL agency may request that monies due and payable to a debtor by another DOL agency or a Federal agency outside the Department be administratively offset in order to collect debts owed the creditor DOL agency by the debtor. In requesting an administrative offset, the creditor DOL agency must provide the DOL agency or other Federal agency holding funds of the debtor with written certification stating

(1) That the debtor owes the creditor agency a debt (including the amount of debt); and

(2) That the creditor agency has complied with the applicable Federal Claims Collection Standards, including any hearing or review.

### § 20.28 DOL agency as organization holding funds of the debtor.

(a) Whenever a DOL agency is holding funds of a debtor from which administrative offset is sought by another DOL agency or other Federal agency, the DOL agency holding funds should not initiate the requested offset until it has been provided by the creditor organization with an appropriate

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written certification that the debtor owes a debt (including the amount) and that applicable provisions of the Federal Claims Collection Standards have been fully complied with.

(b) Moreover, the DOL agency holding funds of the debtor should determine whether collection by offset would be in the best interests of the United States; for example, if the debtor is a contractor for the DOL agency holding funds, whether administrative offset would impair the contractor's ability to perform under the terms of the contract. The creditor organization should be notified promptly of the determination.

### § 20.29 Notice of offset.

Prior to effecting an administrative offset, the agency holding funds of a debtor should advise the debtor of the impending offset. This notice should state that the debtor has been provided his/her rights under the Federal Claims Collection Standards, that a determination has been made that collection by administrative offset would be in the best interests of the United States, the amount of the offset, and the source of funds from which the offset will be made.

### § 20.30 Multiple debts.

When collecting multiple debts by administrative offset, agencies should apply the recovered amounts to those debts, in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

### § 20.31 Administrative offset against amounts payable from Civil Service Retirement and Disability fund.

(a) Unless otherwise prohibited by law, agencies may request that moneys which are due and payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset in reasonable amounts in order to collect debts owed to the United States by the debtor. Such requests shall be made to the appropriate officials of the Office of Personnel Management in accordance with such regu-

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lations as may be prescribed by the Director of that Office.

(b) When making a request for administrative offset under paragraph (a) of this section, an agency shall include a written certification that:

(1) The debtor owes the United States a debt, including the amount of the debt;

(2) The requesting agency has complied with all applicable statutes, regulations, and procedures of the Office of Personnel Management; and

(3) The requesting agency has complied with the requirements of the applicable provisions of the Federal Claims Collection Standards, including any required hearing or review.

(c) Once an agency decides to request administrative offset under paragraph (a) of this section, it should make the request as soon as practical after completion of the applicable due process procedures in order that the Office of Personnel Management may identify and "flag" the debtor's account in anticipation of the time when the debtor becomes eligible and requests to receive payments from the Fund. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the Fund, if at least a year has elapsed since the offset request was originally made, the debtor should be permitted to offer a satisfactory repayment plan in lieu of offset upon establishing that changed financial circumstances would render the offset unjust.

(d) In accordance with procedures established by the Office of Personnel Management, agencies may request an offset from the Civil Service Retirement and Disability Fund prior to completion of due process procedures.

(e) If the requesting agency collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, the agency shall act promptly to modify or terminate its request for offset under paragraph (a).

### § 20.32 Liquidation of collateral.

An agency holding security or collateral which may be liquidated and the proceeds applied on debts due it

through the exercise of a power of sale in the security instrument or a non-judicial foreclosure should do so by such procedures if the debtor fails to pay the debt within a reasonable time after demand, unless the cost of disposing of the collateral will be disproportionate to its value or special circumstances require judicial foreclosure. The agency should provide the debtor with reasonable notice of the sale, an accounting of any surplus proceeds, and any other procedures required by contract or law. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety or insurance concern unless such action is expressly required by statute or contract.

#### § 20.33 Collection in installments.

(a) Whenever feasible, and except as otherwise provided by law, debts owed to the United States, together with interest, penalties, and administrative costs should be collected in full in one lump sum. This is true whether the debt is being collected by administrative offset or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments. Agencies should obtain and may require financial statements from debtors who represent that they are unable to pay the debt in one lump sum. Agencies which agree to accept payment in regular installments should obtain a legally enforceable written agreement from the debtor which specifies all of the terms of the arrangement and which contains a provision accelerating the debt in the event the debtor defaults. The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the Government's claim in not more than 3 years. Installment payment of less than \$50 per month should be accepted only if justifiable on the grounds of financial hardship or for some other reasonable cause. An agency holding an unsecured claim for administrative col-

lection should attempt to obtain an executed confess-judgment note, comparable to the Department of Justice Form USA-70a, from a debtor when the total amount of the deferred installments will exceed \$750. Such notes may be sought when an unsecured obligation of a lesser amount is involved. When attempting to obtain confess-judgment notes, agencies should provide their debtors with written explanation of the consequences of signing the note, and should maintain documentation sufficient to demonstrate that the debtor has signed the note knowingly and voluntarily. Security for deferred payments other than a confess-judgment note may be accepted in appropriate cases. An agency may accept installment payments notwithstanding the refusal of a debtor to execute a confess-judgment note or to give other security, at the agency's option.

(b) If the debtor owes more than one debt and designates how a voluntary installment payment is to be applied as among those debts, that designation must be followed. If the debtor does not designate the application of the payment, agencies should apply payments to the various debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

#### § 20.34 Exclusions.

(a) Agencies are not authorized by section 10 of the Debt Collection Act of 1982 (31 U.S.C. 3716) to use administrative offset with respect to: (1) Debts owed by any State or local Government; (2) debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States; or (3) any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by another statute. However, unless otherwise provided by contract or law, debts or payments which are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the

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common law or other applicable statutory authority, pursuant to this paragraph or agency regulations established pursuant to such other statutory authority.

(b) This section should not be construed as prohibiting use of these authorities or requirements when collecting debts owed by persons employed by agencies administering the laws cited in the preceding paragraph unless the debt "arose under" those laws.

(c) Collection by offset against a judgment obtained by a debtor against the United States shall be accomplished in accordance with 31 U.S.C. 3728.

### § 20.35 Additional administrative collection action.

Nothing contained in this subpart is intended to preclude the utilization of any other administrative remedy which may be available.

### § 20.36 Prior provision of rights with respect to debt.

To the extent that the rights of the debtor in relation to the same debt have been previously provided under some other statutory or regulatory authority, the agency is not required to duplicate those efforts before taking administrative offset.

### § 20.37 Responsibilities of the Chief Financial Officer.

The Chief Financial Officer, or his or her designee, shall provide appropriate and binding written or other guidance to Department of Labor agencies and officials in carrying out this subpart, including the issuance of guidelines and instructions, which he or she may deem appropriate. The Chief Financial Officer shall also take such administrative steps as may be appropriate to carry out the purposes and ensure the effective implementation of this regulation.

## Subpart C—Interest, Penalties and Administrative Costs

### § 20.50 Purpose and scope.

The regulations in this subpart establish the policies and procedures to implement section 11 of the Debt Col-

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lection Act of 1982 (Pub. L. 97-365), 31 U.S.C. 3717. Among other things, this statute authorizes the head of each agency to assess interest, penalties and administrative costs against debtors with respect to delinquent debts arising under the agency's program. This subpart establishes the standards and procedures that will be followed by the Department of Labor in assessing such charges.

### § 20.51 Exemptions.

(a) The provisions of 31 U.S.C. 3717 do not apply:

(1) To debts owed by any State or local government;

(2) To debts arising under contracts which were executed prior to, and were in effect on (i.e., were not completed as of), October 25, 1982;

(3) To debts where an applicable statute, regulation required by statute, loan agreement, or contract either prohibits such charges or explicitly fixes the charges that apply to the debts involved; or

(4) To debts arising under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States.

(b) Agencies are authorized to assess interest and related charges on debts which are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

### § 20.52 Definitions.

For purposes of this subpart—

(a) The terms *claim* and *debt* are deemed synonymous and interchangeable. They refer to an amount of money or property which has been determined by an appropriate agency official to be owed to the United States from any person, organization or entity, except another federal agency.

(b) A debt is considered delinquent if it has not been paid by the date specified in the agency's initial demand letter (§20.54), unless satisfactory payment arrangements have been made by that date, or if, at any time thereafter, the debtor fails to satisfy his obligations under payment agreement with the Department of Labor, or any agency thereof.

**§ 20.53 Agency responsibilities.**

(a) The Department of Labor agency responsible for administering the program under which a delinquent debt arose shall assess interest and related charges on the debt, in accordance with guidelines established by the Chief Financial Officer. In the case where a debt arises under the program of two or more Department of Labor agencies, or in such other instances as the Chief Financial Officer, or his or her designee, may deem appropriate, the Chief Financial Officer, or his or her designee, may determine which agency, or official, shall have responsibility for carrying out the provisions of this subpart.

(b) Before assessing any charges on a delinquent debt, the responsible agency must notify the debtor of the Department's policies for assessing interest, penalties and administrative costs and must ensure that the debt is overdue for the respective periods specified in these regulations.

(c) Each Department of Labor agency is responsible for ensuring the continued accuracy of calculations and records relating to its assessment of charges, and for the prompt notification of the debtor of any substantial change in the status or amount of the claim. As appropriate, the Agencies should promptly follow up on any allegation made by a debtor that principal or charges is in error. Agencies should respond promptly to communication from the debtor, within 30 days whenever feasible.

**§ 20.54 Notification of charges.**

The agency head (or designee) responsible for carrying out the provisions of this subpart shall mail or hand-deliver an initial demand for payment to the debtor. In the initial demand, the debtor shall be notified that interest on the debt will start to accrue from the date on which the notice is mailed or hand-delivered, but that payment of interest will be waived if the debt is paid by the due date, or within 30 days of the date of notice, if no due date is specified. The initial demand shall also state that administrative costs of recovering the delinquent debt will be assessed if payment is not received by the due date.

**§ 20.55 Second and subsequent notifications.**

(a) In accordance with guidelines established by the Chief Financial Officer, the responsible agency head (or designee) shall send progressively stronger second and subsequent demands for payment, if payment or other appropriate response is not received within the time specified by the initial demand. Unless a response to the first or second demand indicates that a further demand would be futile or the debtor's response does not require rebuttal, the second and subsequent demands shall generally be made at 30 day intervals from the first, and shall state that a 6 percent per annum penalty will be assessed after the debt has been delinquent 90 days, accruing from the date it became delinquent. The second and subsequent demands shall also identify the amount of interest then accrued on the debt, as well as administrative costs thus far assessed. In determining the timing of the demand letters, agencies should give due regard to the need to act promptly so that, as a general rule, if necessary to refer the debt to the Department of Justice for litigation, such referral can be made within one year of the final determination of the fact and the amount of the debt. When the agency head (or designee) deems it appropriate to protect the government's interests (for example, to prevent the statute of limitations 28 U.S.C. 2415, from expiring), written demand may be preceded by other appropriate actions, including immediate referral for litigation.

(b) Agencies shall also include in their demand letters the notice provisions to debtors required by other regulations of the Labor Department, pertaining to waiver of the indebtedness, administrative offset, salary offset and disclosure of information to credit reporting agencies, to the extent that such inclusion is appropriate and practicable.

**§ 20.56 Delivery of notices.**

The responsible agency head (or designee) shall exercise due care to ensure that demand letters are dated and mailed or hand-delivered on the same day that they are actually dated. If evidence suggests that the debtor is no

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longer located at the address of record, reasonable action shall be taken to obtain a current address.

### § 20.57 Accrual of interest.

Interest shall accrue from the date on which notice of the debt and the interest requirements is first mailed or hand-delivered to the debtor, using the most current address that is available to the agency.

### § 20.58 Rate of interest.

(a) The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury as published in the FEDERAL REGISTER (as of the date the notice is sent), unless another rate is specified by statute, regulations or preexisting contract condition. The Office of the Chief Financial Officer will notify agencies promptly of the current Treasury rate. The responsible agency may assess a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the interests of the United States, and such rate is agreed to by the Chief Financial Officer (or his designee). The rate of interest prescribed in section 6621 of the Internal Revenue Code shall be sought for backwages recovered in litigation by the Department.

(b) The rate of interest as initially assessed shall remain fixed for the duration of the indebtedness, except that where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, the agency may set a new interest rate which reflects the current value of funds to the Treasury at the time the new agreement is executed.

(c) Interest shall not be assessed on interest, penalties or administrative costs required by this subpart. However, if the debtor defaults on a previous repayment agreement, charges which accrued but were not collected under the defaulted agreement shall be added to the principal to be paid under a new repayment agreement.

### § 20.59 Assessment of administrative costs.

(a) The Department of Labor agency responsible for collecting the claim shall assess against debtors charges to

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cover administrative costs incurred as a result of the delinquent debt; that is, the additional costs incurred in processing and handling the debt because it became delinquent. Calculation of administrative costs shall be based on cost analyses establishing an average of actual additional costs incurred by the agency in processing and handling claims against other debtors in similar stages of delinquency.

(b) In addition to assessing the costs listed in the administrative cost fee schedule, the responsible agency may include the costs incurred in obtaining a credit report or in using a private debt collector, to the extent they are attributable to delinquency.

(c) The Chief Financial Officer shall issue each year a schedule providing the costs associated with various common activities required to collect delinquent debts.

### § 20.60 Application of partial payments to amounts owed.

When a debt is paid in partial or installment payments, amounts received by the responsible agency should be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and third to outstanding principal.

### § 20.61 Waiver.

(a) The Department of Labor agency responsible for collecting the claim shall waive the collection of interest on the debt or any portion of the debt which is paid within 30 days after the date on which interest began to accrue. This 30-day period may be extended for another 30 days on a case-by-case basis, if the agency reasonably determines that such action is appropriate, and is in accordance with these regulations. Also, the responsible agency may waive charges assessed under this subpart, based on criteria specified in the Federal Claims Collection Standards relating to the compromise of claims (without regard to the amount of the debt), or if the agency determines that collection of these charges would be against equity and good conscience or not be in the best interests of the United States. Waiver under the first sentence of this

paragraph is mandatory. Under the second and third sentences waiver is permissive and may be exercised only in accordance with the standards set by these regulations.

(b) Agencies may waive interest and other charges under appropriate circumstances, including, for example:

(1) Pending consideration of a request for reconsideration, administrative review, or waiver under a permissive statute,

(2) If the agency has accepted an installment plan, there is no fault or lack of good faith on the part of the debtor, and the amount of interest is large enough in relation to the size of the debt and the amount of the installments that the debtor can reasonably afford to pay so that the debt can never be repaid, or

(3) If repayment of the full amount of the debt is made after the date upon which interest and other charges became payable and the estimated costs of recovering the residual interest balance exceed the amount owed the Agency.

(c) Where a mandatory waiver or review statute applies, interest and related charges may not be assessed for those periods during which collection action must be suspended.

#### § 20.62 Responsibilities of the Chief Financial Officer.

The Chief Financial Officer, or his or her designee, shall provide appropriate and binding written or other guidance to Department of Labor agencies and officials in carrying out this subpart, including the issuance of guidelines and instructions, which he or she may deem appropriate. The Chief Financial Officer shall also take such administrative steps as may be appropriate to carry out the purposes and ensure the effective implementation of this regulation.

#### Subpart D—Salary Offset

SOURCE: 52 FR 3772, Feb. 5, 1987, unless otherwise noted.

#### § 20.74 Purpose.

(a) The regulations in this subpart establish procedures to implement section 5 of the Debt Collection Act of 1982

(Pub. L. 97-365), 5 U.S.C. 5514. This statute authorizes the head of each agency to deduct from the current pay account of an employee (*salary offset*) when the employee owes money to the United States. This subpart specifies the agency procedures that will be available in a *salary offset* by the Department of Labor of an employee's current pay account.

(b) Administrative offset is defined in 31 U.S.C. 3701(a)(1) as "withholding money payable by the United States Government, to or held by the Government for a person to satisfy a debt the person owes the Government."

A salary offset is a form of administrative offset and is separately authorized and governed by 5 U.S.C. 5514. This authority is consistent with and supplemented by administrative offset regulations of subpart B of 29 CFR part 20.

#### § 20.75 Scope.

(a) This subpart applies to debts owed to the United States (arising under Labor Department programs) by Labor Department employees, debts owed to the United States (arising under Labor Department programs) by employees of other Federal agencies, and debts owed the United States (arising under programs of other Federal agencies) by Labor Department employees. *Other agency* means:

(1) An executive agency as defined in section 105 of title 5 U.S.C. (but not including the Labor Department), including the U.S. Postal Service and the U.S. Postal Rate Commission;

(2) A military Department as defined in section 102 of title U.S.C.;

(3) An agency or court in the judicial branch, including a court as defined in section 610 of title 28 U.S.C., 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

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

(b) 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.

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301 *et seq.*), or the tariff laws of the United States; or 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) 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 Government Accountability Office in accordance with procedures prescribed by the Government Accountability Office. Similarly, in the case of other types of debts, this subpart does not preclude an employee from requesting waiver, if waiver is available under any statutory provisions pertaining to the particular debt being collected.

[52 FR 3772, Feb. 5, 1987, as amended at 72 FR 37098, July 9, 2007]

### § 20.76 Definitions.

(a) *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. Agencies must exclude deductions described in 5 CFR 581.105 paragraphs (b) through (f) to determine disposal pay subject to salary offset.

(b) As used in this subpart, the terms *claim* and *debt* are deemed synonymous and interchangeable. A *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, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

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

(d) *Paying agency* means the agency employing the individual and author-

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izing the payment of his or her current account.

(e) *Credit agency* means the agency to which the debt is owed.

(f) *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.

(g) *FCCS* means the Federal Claims Collection Standards jointly published by the Justice Department and the Government Accountability Office at 4 CFR 101.1 *et seq.*

(h) *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. 716, 5 U.S.C. 8346(b), or any other law.

[52 FR 3772, Feb. 5, 1987, as amended at 72 FR 37098, July 9, 2007]

### § 20.77 Agency responsibilities.

(a) Each Department of Labor agency which has delinquent debts owed under its program and administrative activities is responsible for collecting its claims by means of salary offset, in accordance with guidelines established by the Chief Financial Officer.

(b) Before collecting a claim by means of salary offset, the responsible agency should be satisfied that salary offset is feasible, allowable and appropriate, and, as otherwise provided in these regulations, must notify the debtor of the Department's policies for collecting a claim by means of salary offset.

(c) Whether collection by salary offset is feasible is a determination to be made by the creditor agency on a case-by-case basis, in the exercise of sound discretion. Agencies shall consider not only whether salary offset can be accomplished, both practically and legally, but also whether offset is best suited to further and protect all of the Government's interests. In appropriate circumstances, agencies may give due consideration to the debtor's financial condition, and are not required to use offset of the full or partial amount of the claim in every instance in which there is an available source of funds.



(d) Before advising the debtor that the delinquent debt will be subject to salary offset, the agency head (or designee) responsible for administering the program under which the debt arose shall review the claim and determine that the debt is valid and overdue. In the case where a debt arises under the programs of two or more Department of Labor agencies, or in such other instances as the Chief Financial Officer, or his or her designee, may deem appropriate, the Chief Financial Officer, or his or her designee, may determine which agency (or agencies), or official (or officials), shall have responsibility for carrying out the provisions of this subpart.

(e) Agencies may not initiate 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 right to collect the debt were not known and could not reasonably have been known by the official of the Agency who was charged with the responsibility to discover and collect such debts. When the debt first accrued should be determined according to existing laws regarding the accrual of debts, such as under 28 U.S.C. 2415.

#### § 20.78 Notifications.

(a) The agency head (or designee) of the creditor Labor Department agency shall send appropriate written demands to the debtor in terms which inform the debtor of the consequences of failure to repay claims. In accordance with guidelines as may be established by the Chief Financial Officer, a total of three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that a further demand would be futile and the debtor's response does not require rebuttal. In determining the timing of the demand letters, agencies should give due regard to the need to act promptly so that a debt to be collected by salary offset will be recovered during the employee's anticipated period of employment with the Government.

(b) In accordance with guidelines as may be established by the Chief Financial Officer, the creditor Labor Department agency shall send (at least 30

days prior to any deduction) written notice to the debtor, informing such debtor as appropriate:

(1) Of the origin, nature and amount of the indebtedness determined by the agency to be due;

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

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

(4) Unless such payments are excused in accordance with the FCCS, of the creditor agency's policy concerning assessment of interest, penalties, and administrative costs;

(5) Of the employee's right to inspect and copy Government records relating to the debt or, if the employee or his or her representative cannot personally inspect the records, to request and receive a copy of such records;

(6) If not previously provided, of the opportunity (under terms agreeable to the creditor agency) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, be signed by both the employee and the creditor agency, and be documented in the creditor agency's files (4 CFR 102.2(e));

(7) Of the employee's right to a hearing conducted by an administrative law judge of the Department of Labor, if a petition is filed as prescribed by the Department of Labor. In the event the debtor is an employee working in the Office of Administrative Law Judges, the notification shall inform such debtor of the right to elect to have the review of the agency's determination heard and decided by a person who is not in the Office of Administrative Law Judges, and not under the supervision and control of the Secretary of Labor; in such a case, all provisions in this subpart will otherwise apply, unless stated otherwise in the notification;

(8) Of the method and time period for petitioning for hearing;

(9) That the timely filing of a petition for hearing will stay the commencement of collection proceedings,

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unless the creditor agency determines that § 20.81(d) applies and further informs the debtor of the basis for its termination;

(10) 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 administrative law judge grants a delay in the proceedings;

(11) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under chapter 75 of title 5 U.S.C., part 752 of title 5, Code of Federal Regulations, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, sections 3729-3731 of title 31 U.S.C., or any other applicable statutory authority; or

(iii) Criminal penalties under sections 286, 287, 1001 and 1002 of title 18 U.S.C., or any other applicable statutory authority;

(12) Of any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

(c) Creditor Labor Department agencies shall also include in their demand letters the notice provisions to debtors required by other regulations of the Labor Department, pertaining to disclosures to credit reporting agencies, administrative offset from other sources of funds, and the assessment of interest, penalties and administrative costs, to the extent inclusion of such is appropriate and practicable.

(d) The responsible agency head (or designee) shall exercise due care to ensure that demand letters are mailed or hand-delivered on the same day that they are actually dated. If evidence suggests that the debtor is no longer located at the address of record, rea-

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sonable action shall be taken to obtain a current address.

(e) The creditor Labor Department agency shall, in the initial demand letter to the debtor, provide the name of an agency employee who can provide a full explanation of the claim.

(f) In any internal Labor Department collection, the provisions of § 20.78 paragraphs (a) through (e) need not be applied to any adjustment to pay which is not considered to be the result of collection of a debt, such as excess pay or allowances caused by:

(1) An employee's election of coverage or a change of coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated in four pay periods or less; or

(2) Ministerial adjustments in pay rates or allowances which cannot be placed into effect immediately because of normal processing delays, if the amount to be recovered was accumulated in four pay periods or less.

### **§ 20.79 Examination of records relating to the claim; opportunity for full explanation of the claim.**

Following receipt of the notice specified in § 20.78(b), the debtor may request to examine and copy agency records pertaining to the debt.

### **§ 20.80 Opportunity for repayment.**

(a) The creditor Labor Department agency shall afford the debtor the opportunity to (1) repay the debt or (2) enter into a repayment plan which is agreeable to the agency head (or designee) and is in a written form signed by such debtor and the creditor agency. The head of the agency (or designee) may deem a repayment plan to be abrogated if the debtor should, after the repayment plan is signed, fail to comply with the terms of the plan.

(b) Agencies have discretion and should exercise sound judgment in determining whether to accept a repayment agreement in lieu of offset. The determination should balance the Government's interest in collecting the debt against fairness to the debtor. If the debt is delinquent and the debtor has not disputed its existence or

amount, an agency should effect an offset unless the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience, or the agency otherwise determines that offset would be contrary to sound judgment.

**§ 20.81 Review of the obligation.**

(a) The debtor shall have the opportunity to obtain a hearing by an administrative law judge of the agency's determination concerning the existence or amount of the debt, or the repayment schedule proposed by the agency, and except as provided in § 20.75(c), review by an administrative law judge is to be the exclusive administrative review remedy on the agency's determination under these regulations.

(b) The debtor seeking a hearing shall make the request in writing to the Chief Administrative Law Judge, pursuant to 29 CFR part 18, not more than 15 days from the date the notice of proposed salary offset was received by the debtor. The request for hearing shall be signed by the employee and state the basis for challenging the determination. If the debtor alleges that the agency's information relating to the debt is not accurate, timely, relevant or complete, such debtor shall fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, which the employee believes supports his or her position.

(c) The hearing ordinarily shall be based on written submissions and documentation by the debtor. However, an opportunity for an oral hearing shall be provided an individual debtor when the administrative law judge determines that:

(1) An applicable statute authorizes or requires the agency 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

(2) An individual debtor requests reconsideration of the debt and the administrative law judge determines that the question of the indebtedness cannot be resolved by review of the docu-

mentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity; or

(3) In other situations in which the administrative law judge deems an oral hearing appropriate.

Unless otherwise required by law or these regulations, any oral hearing under this section shall be conducted under the procedures in 29 CFR part 18. Except as provided under § 20.79, the provisions for discovery shall not be applicable unless otherwise ordered by the administrative law judge. Procedural and evidentiary rules shall be relaxed by the administrative law judge to provide informality and to facilitate the hearing.

(d) Agencies may effect a salary offset against the current pay account of a debtor prior to the completion of the hearing procedures required by this subpart, if failure to initiate the offset would substantially prejudice the agency's ability to collect the debt; for example, if the employee's anticipated period of employment with the Government would not reasonably permit the completion of the hearing and recovery of the debt prior to termination of employment. Offset prior to completion of the hearing must be promptly followed by the completion of that hearing.

(e) If the debtor seeking a hearing under this section makes the request for review of the obligation after the expiration of the period for filing as described in paragraph (b) of this section, the administrative law judge may accept the request for hearing if the debtor can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the time limit (unless otherwise aware of it).

(f) Upon completion of the hearing, the administrative law judge shall transmit to the debtor a written decision. This decision shall state, at a minimum: The facts purported to evidence the nature and origin of the alleged debt; the administrative law judge's findings and conclusions, as to the employee's and/or creditor agency's grounds; the amount and validity of the alleged debt; and, where applicable, the repayment schedule. If appropriate, the notification shall also indicate any

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changes in the information to the extent such information differs from that provided in the notification under § 20.78(b).

(Approved by the Office of Management and Budget under control number 1225-0038)

[52 FR 3772, Feb. 5, 1987; 52 FR 13563, Apr. 23, 1987]

### § 20.82 Cooperation with other DOL agencies and Federal agencies.

(a) Appropriate use should be made of the cooperative efforts of other DOL and Federal agencies in effecting collection by salary offset. Generally, paying agencies should comply with requests from other agencies to initiate salary offset to collect debts owed to the United States, unless the creditor agency has not complied with applicable regulations or the request would otherwise be contrary to law.

(b) Unless otherwise prohibited by law, a DOL agency may request that the current pay account of a debtor in another DOL or Federal agency be administratively offset in order to collect debts owed the creditor DOL agency by the debtor. In requesting a salary offset, the creditor DOL agency must provide the paying DOL agency or other paying Federal agency with written certification stating:

(1) That the debtor owes the creditor agency a debt (including the basis and amount of the debt);

(2) The date on which payment was due;

(3) The date on which the Government's right to collect the debt first accrued; and

(4) Where the paying agency is another federal agency, that the creditor agency's regulations under 5 U.S.C. 5514 have been approved by the Office of Personnel Management, and that the creditor agency has followed such regulations to the best of its information and belief.

### § 20.83 DOL agency as paying agency of the debtor.

Whenever a salary offset is sought by another DOL or Federal agency from a paying DOL agency, the paying DOL agency should not initiate the requested offset until it has been provided by the creditor organization with an appropriate written certification as

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described in § 20.82(b). Where the creditor agency is not another DOL agency, the creditor agency must certify that its regulations under 5 U.S.C. 5514 have been approved by the Office of Personnel Management and that it, the creditor agency, has followed such regulations to the best of its information and belief. When the creditor agency is not also the paying DOL agency, the creditor agency should also be required to certify that if an administrative or judicial order is issued directing the paying DOL agency to pay a debtor an amount previously paid to the creditor agency, the creditor agency will reimburse the paying DOL agency or pay the debtor directly within 15 days of the date of the order.

### § 20.84 Collections.

(a) Whenever feasible, and except as otherwise provided by law, debts owed to the United States, together with interest, penalties, and administrative costs should be collected in full in one lump sum. This is true whether the debt is being collected by salary offset or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness 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. Ordinarily, the size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay. However, the amount deducted for any period must not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. Installment deductions must be made over a period not greater than the anticipated period of active duty or employment, as the case may be except as provided in § 20.84 paragraphs (c) and (d). Where a DOL agency is the paying agency, salary offset will ordinarily begin with the salary payment made to the employee for the first full pay period following expiration of the 30 day notice period described in § 20.78(b), or if a hearing is pending under § 20.81, the first full pay period following the date

of the administrative law judge's written decision.

(b) If the debtor owes more than one debt and designates how a voluntary installment payment is to be applied as among those debts, that designation must be followed. If the debtor does not designate the application of the payment, agencies should apply payments to the various debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

(c) If the employee retires or resigns or if his or her employment or period of active duty ends before collection of the debt is completed, under 5 U.S.C. 5514, salary offset shall be from subsequent payments of any nature (e.g., final salary payment, lump-sum leave, etc.) due the employee from the paying agency as of the date of separation to the extent necessary to liquidate the debt.

(d) If the debt cannot be liquidated by salary offset from any final payment due the former employee as of the date of separation, under 5 U.S.C. 5514, administrative offset shall be from later payments of any kind due the former employee from the United States.

#### **§ 20.85 Notice of offset.**

Prior to effecting a salary offset, the paying DOL agency should advise the debtor of the impending offset. This notice should state that the debtor has been provided his/her rights under 5 U.S.C. 5514, that a determination has been made that collection by salary offset would be in the best interests of the United States, the amount of the offset, the date the salary offset will begin, and that the source of funds shall be from current disposable pay, except as provided by (c) and (d) of § 20.84. If evidence suggests that the debtor is no longer located at the address of record, reasonable action shall be taken to obtain a current address.

#### **§ 20.86 Non-waiver of rights by payments.**

An employee's involuntary payment, of all or any portion of a debt being collected under 5 U.S.C. 5514, shall not

be construed as a waiver of any rights which the 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.

#### **§ 20.87 Refunds.**

(a) Agencies shall promptly refund to the appropriate party amounts paid or deducted under this subpart when—

(1) A debt is waived or is otherwise not owing to the United States (unless refund is expressly prohibited by statute or regulation); or

(2) The employee's paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay.

(b) Refunds do not bear interest unless required or permitted by law or contract.

#### **§ 20.88 Additional administrative collection action.**

Nothing contained in this subpart is intended to preclude the utilization of any other administrative remedy which may be available.

#### **§ 20.89 Prior provision of rights with respect to debt.**

To the extent that the rights of the debtor in relation to the same debt have been previously provided by the creditor agency under some other statutory or regulatory authority, the creditor agency is not required to duplicate those efforts before taking salary offset.

#### **§ 20.90 Responsibilities of the Chief Financial Officer.**

The Chief Financial Officer, or his or her designee, shall provide appropriate and binding written or other guidance to Department of Labor agencies and officials in carrying out this subpart, including the issuance of guidelines and instructions, which he or she may deem appropriate. The Chief Financial Officer shall also take such administrative steps as may be appropriate to carry out the purposes and ensure the effective implementation of this subpart.

## § 20.101

### Subpart E—Federal Income Tax Refund Offset

SOURCE: 59 FR 47250, Sept. 15, 1994, unless otherwise noted.

#### § 20.101 Purpose and scope.

The regulations in this subpart establish procedures to implement 31 U.S.C. 3720A. This statute together with implementing regulations of the Internal Revenue Service (IRS) at 26 CFR 301.6402-6, authorizes the IRS to reduce a tax refund by the amount of a past-due legally enforceable debt owed to the United States. The regulations apply to past-due legally enforceable debts owed to the Department by individuals and business entities. The regulations are not intended to limit or restrict debtor access to any judicial remedies to which he/she may otherwise be entitled.

#### § 20.102 Redelegation of authority.

Authority delegated by statute or IRS regulation to the Secretary or Department is redelegated to the heads of the Department's constituent agencies. This authority may be further redelegated as necessary to ensure the efficient implementation of these regulations.

#### § 20.103 Definitions.

For purposes of this subpart:

(a) *Tax refund offset* refers to the IRS income tax refund offset program operated under authority of 31 U.S.C. 3720A.

(b) *Past-due legally enforceable debt* is a delinquent debt administratively determined to be valid, whereon no more than 10 years have lapsed since the date of delinquency, and which is not discharged under a bankruptcy proceeding or subject to an automatic stay under 11 U.S.C. 362.

(c) *Agency* refers to the constituent offices, administrations and bureaus of the Department of Labor.

(d) *Individual* refers to a taxpayer identified by a social security number (SSN).

(e) *Business entity* refers to an entity identified by an employer identification number (EIN).

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(f) *Taxpayer mailing address* refers to the debtor's current mailing address as obtained from IRS.

(g) *Memorandum of understanding* refers to the agreement between the Department and IRS outlining the duties and responsibilities of the respective parties for participation in the tax refund offset program.

#### § 20.104 Agency responsibilities.

(a) As authorized and required by law, each Department of Labor agency may refer past-due legally enforceable debts to IRS for collection by offset from any overpayment of income tax that may otherwise be due to be refunded to the taxpayer.

(b) Prior to actual referral of a past-due legally enforceable debt for tax refund offset, the DOL agency heads (or their designees) must take the actions specified in § 20.107 and, as appropriate, § 20.106 and § 20.108.

(c) DOL agency heads must ensure the confidentiality of taxpayer information as required by IRS in its *Tax Information Security Guidelines*.

#### § 20.105 Minimum referral amount.

The IRS annually establishes the minimum amount for debts otherwise eligible for referral. Minimum referral amounts are established separately for individual debts and business debts, as set forth in the memorandum of understanding. The amount referred may include the principal portion of the debt, as well as any accrued interest, penalties and/or administrative cost charges.

[60 FR 41017, Aug. 11, 1995]

#### § 20.106 Relation to other collection efforts.

(a) Tax refund offset is intended to be an administrative collection remedy of last resort, consistent with IRS requirements for participation in the program, and the costs and benefits of pursuing alternative remedies when the tax refund offset program is readily available. To the extent practical, the requirements of the program will be met by merging IRS requirements into the Department's overall requirements for delinquent debt collection.

(b) The debts of individuals of \$100 or more will be reported to a consumer

credit reporting agency before referral for tax refund offset.

(c) Debts owed by individuals will be screened for salary and administrative offset potential using the most current information reasonably available to the Department, and will not be referred for tax refund offset where such other offset potential is found to exist.

[59 FR 47250, Sept. 15, 1994, as amended at 60 FR 41017, Aug. 11, 1995]

#### § 20.107 Debtor notification.

(a) The agency head (or designee) of the creditor Labor Department agency shall send appropriate written demands to the debtor in terms which inform the debtor of the consequences of failure to repay claims. In accordance with guidelines as may be established by the Department's Chief Financial Officer, a total of three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that a further demand would be futile and the debtor's response does not require rebuttal. In determining the timing of demand letters, agencies should give due regard to the need to act promptly so the ability to refer a debt for tax refund offset will not be unduly delayed.

(b) Before the Department refers a debt to IRS for tax refund offset, it will make a reasonable attempt to notify the debtor that:

(1) The debt is past-due;

(2) Unless the debt is repaid or a satisfactory repayment agreement established within 60 days thereafter, it will be referred to IRS for offset from any overpayment of tax remaining after taxpayer liabilities of greater priority have been satisfied; and

(3) The debtor will have a minimum of 60 days from the date of notification to present evidence that all or part of the debt is not past-due or legally enforceable, and the Department will consider this evidence in a review of its determination that the debt is past-due and legally enforceable. The debtor will be advised where and to whom evidence is to be submitted.

(c) The Department will make a reasonable attempt to notify the debtor by using the most recent address information obtained from the IRS, unless

written notification is received from the debtor that notices from the Department are to be sent to a different address.

(d) The notification required by paragraph (b) of this section and sent to the address specified in paragraph (c) of this section may, at the option of the Department, be incorporated into demand letters required by paragraph (a) of this section.

#### § 20.108 Agency review of the obligation.

(a) The individual responsible for collection of the debt will consider any evidence submitted by the debtor as a result of the notification required by § 20.107(b) and notify the debtor of the result. If appropriate, the debtor will also be advised where and to whom to request a review of any unresolved dispute.

(b) The debtor will be granted at least 30 days from the date of the notification required by paragraph (a) of this section to request a review of the determination of the individual responsible for collection of the debt on any unresolved dispute. The debtor will be advised of the result.

(c) The review required by paragraph (b) of this section will ordinarily be based on written submissions and documentation provided by the debtor. However, a reasonable opportunity for an oral hearing will be provided the debtor when the reviewing official determines that any remaining dispute cannot be resolved by review of the documentary evidence alone. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary-type hearing, although the reviewing official should carefully document all significant matters discussed at the hearing.

#### § 20.109 Prior provision of rights with respect to debt.

To the extent that the rights of the debtor in relation to the same debt have been previously provided under some other statutory or regulatory authority, the Department is not required to duplicate those efforts before referring a debt for tax refund offset.

## § 20.110

### § 20.110 Referral to IRS for tax refund offset.

(a) By the date and in the manner prescribed by the IRS the Department will refer for tax refund offset the following information on past-due legally enforceable debts:

(1) Whether the debtor is an individual or a business entity;

(2) Name and taxpayer identification number (SSN or EIN) of the debtor who is responsible for the debt;

(3) The amount of the debt;

(4) The date on which the debt became past-due;

(5) Department-level, sub-Department-level and (as appropriate) account identifiers.

(b) As necessary to reflect changes in the status of debts/debtors referred for tax refund offset, the Department will submit updated information at the times and in the manner prescribed by IRS. The original submission described in paragraph (a) of this section will not be changed to increase the amount of the debt or to refer additional debtors.

(c) Amounts erroneously offset will be refunded by the Department or IRS in accordance with the Memorandum of Understanding.

### § 20.111 Administrative cost charges.

Costs incurred by the Department in connection with referral of debts for tax refund offset will be added to the debt and thus increase the amount of the offset.

## PART 22—PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

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AUTHORITY: Pub. L. 99–509, §§6101–6104, 100 Stat. 1874, 31 U.S.C. 3801–3812.

SOURCE: 52 FR 48492, Dec. 22, 1987, unless otherwise noted.

### § 22.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Public Law No. 99–509, sections 6101–6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801–3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part (1) establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and (2) specifies the hearing and appeal rights