§ 550.1104 Agency regulations.

Under this subpart and 5 U.S.C. 5514, each creditor agency must issue regulations, subject to approval by the Office of Personnel Management (OPM), governing the collection of a debt by salary offset. Each agency is responsible for assuring that the regulations governing collection of internal debts are uniformly and consistently applied to all its employees. Agency regulations issued under authority of 5 U.S.C. 5514 must contain the following minimum provisions:

(a) Applicability or scope. Indicate whether regulations cover internal or Government-wide collections under 5 U.S.C. 5514, or both.

(b) Entitlement to notice, hearing, written responses and decisions. Identify when the employee is entitled to notice, when hearings will be offered, when the employee is entitled to a response or decision after exercising his or her rights under § 5514 and this subpart, and if the hearing official’s decision is not in the employee's favor or the employee chooses not to request a hearing, what other rights and remedies are available under the statutes or regulations governing the program that requires the collection to be made. Except as provided in paragraph (c) of this section, each employee from whom the creditor agency proposes to collect a debt under this subpart is entitled to receive from the creditor agency—

(1) A written notice as described in paragraph (d) of this section;

(2) The opportunity to petition for a hearing and, if a hearing is given, to receive a written decision from the official holding the hearing on the following issues:

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

(ii) The repayment schedule, if it was not established by written agreement between the employee and the creditor agency.
(c) Exception to entitlement to notice, hearing, written responses, and final decisions.

In regulations covering internal collections, an agency must except from the provisions of paragraph (b) of this section—

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over 4 pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the 4 pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment;

(3) Any adjustment to collect a debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

(d) Notification before deductions begin.

Provide for notification before deductions begin. Except as provided in paragraph (c) of this section, deductions under the authority of 5 U.S.C. 5514 must not be made unless the head of the creditor agency (or an authorized designee) provides the employee at least 30 days before any deduction, written notice stating at a minimum:

(1) The creditor agency's determination that a debt is owed, including the origin, nature, and amount of that debt;

(2) The creditor agency's intention to collect the debt by means of deduction from the employee's current disposable pay account, not to exceed 15 percent of disposable pay per pay period, and the employee's opportunity to contest the collection of such an administrative adjustment;

(3) The frequency and amount of the intended deduction or as a percentage of disposable pay per pay period, and the employee's opportunity to contest the collection of such an administrative adjustment;

(4) An explanation of the creditor agency's policy concerning interest, penalties, and administrative costs, including a statement that such assessments must be made unless excused in accordance with the FCCS (see the FCCS);

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

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

(7) The employee's right to a hearing conducted by an official arranged by the creditor agency (an administrative law judge, or alternatively, a hearing official not under the control of the head of the agency) if a petition is filed as prescribed by the creditor agency;

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

(9) That the timely filing of a petition will stay the commencement of collection proceedings;

(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 unless the hearing officer grants a delay in the proceedings; and

(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, United States Code, or part 752 of title 5, Code of Federal Regulations, or any other applicable statute or regulation;

   (ii) Penalties under the False Claims Act, §§ 3729–3731 of title 31, United States Code, or any other applicable statutory authority; or

   (iii) Criminal penalties under §§ 286, 287, 1001, and 1002 of title 18, United States Code.
§ 550.1104

States Code or any other applicable statutory authority.

(12) 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) Unless there are applicable contractual or statutory provisions to the contrary, that 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.

(e) Petitions for hearing. (1) Prescribe the method and time period for petitioning for a hearing. Ordinarily, a hearing may be requested by filing a written petition addressed to the appropriate creditor agency official stating why the employee believes the determination of the creditor agency concerning the existence or amount of the debt is in error.

(2) The employee’s petition or statement must be signed by the employee and fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, which the employee believes support his or her position.

(f) Petitions for hearing made after time expires. Prescribe the action to be taken on a petition for hearing made after the expiration of the period provided in the notice described in paragraph (d) of this section. Ordinarily a creditor agency should accept requests if the employee 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).

(g) Form of hearings, written responses, and final decisions. (1) Define the form and content of hearings, written responses, and written decisions to be provided when the employee exercises his or her rights under §5514 and this subpart.

(2) The form and content of hearings granted under this subpart will depend on the nature of the transactions giving rise to the debts included within each debt collection program. Agencies should refer to the FCCS for information on hearing form and content.

(3) Written decisions provided after a request for hearing must, at a minimum, state the facts purported to evidence the nature and origin of the alleged debt; the hearing official’s analysis, findings and conclusions, in light of the hearing, 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.

(h) Method and source of deductions. Identify the method and source of deductions. At a minimum, agency regulations must identify the method of collection as salary offset and the source of deductions as current disposable pay, except as provided in paragraphs (l) and (m) of this section.

(i) Limitation on amount of deductions. Prescribe the limitations on the amount of the deduction. Ordinarily, the size of installment deductions must bear a reasonable relationship to the size of the debt and the employee’s ability to pay (see the FCCS). 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.

(j) Duration of deductions. Prescribe the duration of deductions. Ordinarily, debts must be collected in one lump-sum where possible. However, if the employee is financially unable to pay in one lump-sum or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments. Such 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 paragraphs (l) and (m) of this section.

(k) When deductions may begin. Prescribe when deductions will be scheduled to begin in internal agency collections.

(l) Liquidation from final check. Provide for offset under 31 U.S.C. 3716, 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, 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.

(m) Recovery from other payments due a separated employee. Provide for offset under 31 U.S.C. 3716 from later payments of any kind due the former employee from the United States, where appropriate, if the debt cannot be liquidated by offset from any final payment due the former employee as of the date of separation. (See the FCCS.)

(n) Interest, penalties, and administrative costs. Provide for the assessment of interest, penalties, and administrative costs on debts being collected under this subpart. These charges and the waiving of them must be prescribed in accordance with the FCCS.

(o) Non-waiver of rights by payments. Provide that an employee’s involuntary payment, of all or any portion of a debt being collected under 5 U.S.C. 5514 must 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.

(p) Refunds. (1) Provide for promptly refunding to the appropriate party, amounts paid or deducted under this subpart when—
   (i) A debt is waived or otherwise found not owing to the United States (unless expressly prohibited by statute or regulation); or
   (ii) The employee’s paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay.

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

§ 550.1107 Obtaining the services of a hearing official.

(a) When the debtor does not work for the creditor agency and the creditor agency cannot provide a prompt and appropriate hearing before an administrative law judge or before a hearing official furnished pursuant to another lawful arrangement, the creditor agency may contact an agent of the paying agency designated in appendix A of part 581 of this chapter to arrange for a hearing official. Agencies must then cooperate as provided by the FCCS as defined in §550.1103 and provide a hearing official.

(b) When the debtor works for the creditor agency, the creditor agency may contact any agent (of another agency) designated in appendix A of part 581 of this chapter to arrange for a hearing official. Agencies must then