

(d) The Assistant Secretary shall, on the basis of the application and such other data as may be available, compute the amount to which such carrier is entitled.

(e) Subject to the provisions of §91.13(b), upon approving the computation made by the Assistant Secretary, the Secretary shall issue such certificate as will entitle each such carrier to payment from the account maintained by the Secretary of the Treasury for this purpose.

§91.11 Standards.

(a) To minimize the burden of implementing this part on the United States, on U.S. flag air carriers and on foreign air carriers, estimates and periodic adjustments will be used to determine the amount of discrimination and compensatory charges therefor.

(b) For the purpose of determining the amount of excessive or otherwise discriminatory charges imposed upon U.S. flag air carriers by an entity:

(1) A service or use of airport or airway property includes, but is not limited to, fueling, food service, ticketing, baggage handling, runways, ramps, parking areas, navigational aids, communications facilities or any other service necessary and incidental to the conduct of a flight.

(2) An excessive or otherwise discriminatory charge includes, but is not limited to, a charge substantially above the cost of providing a service or any charge for a service that is substantially inferior to that which the U.S. flag air carrier could have provided for itself, at the same cost, by contract or otherwise (*see also* §91.3).

(c) In determining the amount of compensatory charge:

(1) The total amount of excessive or otherwise discriminatory charges levied against U.S. flag air carriers will be estimated in dollars.

(2) The total volume of operations to the United States by air carriers of the nation concerned will be estimated for the succeeding six-month period.

(3) The total amount of excessive or otherwise discriminatory charges in paragraph (c)(1) of this section will be divided by the total volume of operations in paragraph (c)(2) of this section, and

(4) The quotient thus computed (which may be adjusted to reflect the type of aircraft) will constitute the compensatory charge to be collected as a condition to acceptance of the general declaration at the time of landing or takeoff of such air carriers of the nation concerned.

§91.13 Refunds.

(a) Where, in his discretion, the Secretary finds that good cause has been shown, the Secretary may authorize a refund of collected compensatory charges. For purposes of this section, good cause includes, but is not limited to, an error of fact, a miscalculation, or a determination that an original conclusion of entitlement was insufficient, invalid, erroneous or invalidated by subsequent events.

(b) Notwithstanding the provisions of §91.9(e) the Secretary may suspend for a reasonable time the issuance of a certificate of entitlement upon a showing by a payor of compensatory charges that there is a substantial likelihood that the payor will make a showing of good cause under §91.13(a).

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the issuance of a certificate of entitlement under §91.9(e) or the distribution to U.S. flag air carriers of funds collected under this part shall be with prejudice to any claim for refund under this section.

PART 92—RECOVERING DEBTS TO THE UNITED STATES BY SALARY OFFSET

Sec.

92.1 Purpose.

92.3 Scope.

92.5 Definitions.

92.7 Notice, hearing, written response and decision.

92.9 Exceptions to notice, hearing, written response, and final decision.

92.11 Demand for payment.

92.13 Request for hearing.

92.15 Request for hearing after time expires.

92.17 Form of hearings and written decisions.

92.19 Obtaining the services of a hearing official.

92.21 Deduction from pay.

92.23 Collection.

92.25 Source of deductions.

92.27 Duration of deductions.

§ 92.1

- 92.29 Limitation on amount of deductions.
- 92.31 Liquidation from final payment.
- 92.33 Recovery from other payments due a separated employee.
- 92.35 Interest, penalties and administrative costs.
- 92.37 Non-waiver of rights by payment.
- 92.39 Refunds.
- 92.41 Requesting recovery when the Department is not the paying agency.
- 92.43 Requests for recovery when the Department is the paying agency.
- 92.45 Other debt collections.

AUTHORITY: 5 U.S.C. 5514, as amended; 5 CFR part 550, subpart K; 4 CFR parts 101–105.

SOURCE: 53 FR 4171, Feb. 12, 1988, unless otherwise noted.

§ 92.1 Purpose.

This part implements 5 U.S.C. 5514 (Installment Deduction for Indebtedness to the United States), as amended by the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749, 1751). It supplements 5 CFR part 550, subpart K, and the Federal Claims Collections Standards (4 CFR parts 101–105) issued jointly by the Comptroller General of the United States and the Attorney General of the United States under 31 U.S.C. 3711(e)(2). It sets forth the procedures by which the Department of Transportation (DOT), including its operating elements (see 49 CFR 1.3):

- (a) Collects debts owed to the United States by current and former DOT employees;
- (b) Determines and collects interest and other charges on that indebtedness.
- (c) Offsets the salary of DOT employees to collect debts owed to the United States by those employees; and,
- (d) Obtains salary offset to collect debts owed to the United States by employees of other agencies under programs administered by DOT.

§ 92.3 Scope.

The provisions of this part are applicable to the indebtedness of a current or former employee of DOT incurred under any program administered by DOT. The provisions of this part do not apply to the collection of indebtedness by authority other than 5 U.S.C. 5514.

§ 92.5 Definitions.

As used in this part:

49 CFR Subtitle A (10–1–20 Edition)

(a) *Agency* means an Executive Agency as defined by section 105 of title 5, United States Code, the U.S. Postal Service, the U.S. Postal Rate Commission, a Military Department as defined by section 102 of title 5, United States Code, an agency or court in the judicial branch, an agency of the legislative branch, and any other independent establishments which are entities of the Federal Government. In DOT each operating element will act for the agency in collecting debts under this rule.

(b) *Creditor agency* means the agency to which the debt is owed.

(c) *Debt* means an amount owed to the United States from sources which include, but are not necessarily limited to, erroneous payments made to employees, overpayments of benefits, salary or other allowances, 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. This term does not include a Government claim arising under the Internal Revenue Code of 1954 (26 U.S.C. 1–9602) as amended; the Social Security Act (42 U.S.C. 301–1397f); the tariff laws of the United States; or any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., emergency and travel advances under 5 U.S.C. 5522, 5705 or 5724 and employee training expenses under 5 U.S.C. 4108).

(d) *Debt Claim Form* means the form used by DOT when requesting that an agency, other than DOT, assist in the recovery of funds.

(e) *Delinquent debt* means a debt which has not been paid by the date specified in the agency's initial written notification or applicable contractual agreement, unless other satisfactory payment arrangements have been made by that date, or if, at any time thereafter, the debtor fails to satisfy obligations under a payment agreement with the creditor agency.

(f) *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. (See 5 CFR 581.105 (b) through (f) for items required by law to be withheld, and therefore excluded from disposable pay for the purposes of this regulation).

(g) *DOT operating element* (see 49 CFR 1.3) means a DOT Operating Administration including—

- (1) U.S. Coast Guard.
- (2) Federal Aviation Administration.
- (3) Federal Highway Administration.
- (4) Federal Railroad Administration.
- (5) National Highway Traffic Safety Administration.
- (6) Urban Mass Transportation Administration.
- (7) St. Lawrence Seaway Development Corporation.
- (8) Maritime Administration.
- (9) Research and Special Program Administration.
- (10) The Office of the Secretary.

(h) *Employee* means a current or former employee of a Federal agency, including a member of the Armed Forces (including retired members) or a Reserve of the Armed Forces (Reserves). However, employees paid from non-appropriated funds are not included.

(i) *FCCS* means the Federal Claims Collection Standards, 4 CFR Ch. II, jointly published by the Department of Justice and the General Accounting Office.

(j) *Hearing* means an informal conference before a hearing official in which the employee and the DOT operating element are given an opportunity to present evidence, witnesses, and argument. The hearing official shall be either an administrative law judge or an individual not under the supervision or control of the Department.

(k) *Paying agency* means the agency authorizing the payment of the employee's current pay.

(l) *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 a present or former employee with or without his or her consent. It includes

a single offset from the final salary of an employee whose employment ends.

(m) *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, 5 U.S.C. 8346(b), 10 U.S.C. 2774, or 32 U.S.C. 716, or any other law.

§ 92.7 Notice, hearing, written response and decision.

(a) Except as provided in § 92.9 of this part, each employee from whom the department proposes to offset a debt against the Federal pay of an employee who is indebted to the United States under a program administered by DOT under these regulations is entitled to receive a minimum of 30 days written notice as described in § 92.11 of this part (see also § 92.21(a)).

(b) Each employee owing a debt to the United States which will be collected by salary offset is entitled to petition for a hearing before collection starts. This petition shall be filed directly with the accounting or finance office of the DOT creditor operating element which shall make appropriate hearing arrangements consistent with law and regulations. The DOT creditor operating element shall provide an explanation of the rights of the employee. If a hearing is provided, the following issues shall be heard:

(1) The determination of the DOT creditor operating element concerning the existence and amount of the debt; and

(2) The terms of the repayment schedule, if not previously established by written agreement between the employee and the DOT creditor operating element. (See § 92.21(c) regarding copy of written decision by hearing officer describing method and amount of salary offset).

§ 92.9 Exceptions to notice, hearing, written response, and final decision.

(a) *Exceptions*. The procedural requirements of 5 U.S.C. 5514 do not apply to recovery by way of retroactive

§ 92.11

deductions for administrative adjustments associated with the Federal benefits program. In such cases the content of the notification to employees is stated in § 92.9(b).

(b) *Simplified procedures to be followed.* In the event that a retroactive deduction from pay or allowances is required to recover an insufficiency of deductions arising through normal processing delays, and those insufficient deductions did not occur in more than four pay periods, rather than following the specific procedures required by 5 U.S.C. 5514(a)(2), and set forth in §§ 92.11 through 92.17 of this part, the DOT creditor operating element shall issue in advance of the collection a simplified notice to the employee that:

(1) Because of the employee's election for changes in voluntary payroll deduction, corresponding deductions shall be imposed on the employee's salary to cover the period between the effective date of the election and the first regular withholding. The employee may dispute the amount of the retroactive collection by notifying his or her accounting or finance officer;

(2) Due to a normal ministerial adjustment in pay or allowances which could not be placed into effect immediately, future pay will be reduced to permit the DOT creditor operating element to recover any excess pay or allowances received by the employee. The employee may dispute the amount of the retroactive collection by notifying his or her accounting or finance officer.

(c) *Limitation on exceptions.* The exceptions described in paragraph (a) of this section shall not include a recovery required to be made for any reason other than routine processing delays in putting the change into effect, even if the period of time for which the amounts must be retroactively recovered is less than four pay periods. If normal processing delays exceed four pay periods, then the full procedures prescribed under 5 U.S.C. 5514 and §§ 92.11 through 92.17 of this part will be extended to the employee.

[53 FR 4171, Feb. 12, 1988, as amended at 53 FR 51279, Dec. 21, 1988]

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

§ 92.11 Demand for payment.

(a) The DOT creditor operating element shall send a debtor a total of three progressively stronger written demands at not more than 30-day intervals, 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 (see also § 92.21(a)). Other information may also indicate that additional written demands are unnecessary.

(b) The initial written demand for payment shall inform the debtor of:

(1) The basis for the indebtedness;

(2) The amount of the claim;

(3) The date by which payment is to be made;

(4) The debtor's liability for interest, penalties and administrative charges in accordance with 31 U.S.C. 3717 and § 92.35 of this part, if payment is not received within 30 days of the due date (see § 92.35 for details regarding interest, penalties and administrative costs);

(5) The intent of the agency to collect by salary offset, including asking the assistance of other Federal agencies to help in the offset whenever possible, if the debtor:

(i) Has not made payment by the payment due date;

(ii) Has not requested a review of the claim within the agency as set out in paragraph (b)(8) of this section; or

(iii) Has not made an arrangement for payment by the payment due date;

(6) The possible submission of claims to a collection agency or referral to the General Accounting Office or the Department of Justice for litigation in accordance with the procedures in 4 CFR part 105.

(7) The right of the debtor to inspect and copy the records of the agency related to the claim. Any reasonable costs associated with the inspection and copying of these records shall be borne by the debtor. The debtor shall give reasonable notice in advance to the agency of the date upon which he or she intends to inspect and copy the records involved.

(8) The right of the debtor to a review of the claim within the agency. If the claim is disputed in full or in part, the debtor shall respond to the demand by

making a request in writing for a review of the claim within the agency by the payment due date stated in the demand. The debtor's written response shall state the basis for the dispute. If only part of the claim is disputed, the undisputed portion shall be paid by the due date. The DOT creditor operating element shall acknowledge receipt of the request for a review, and upon completion of consideration shall notify the debtor whether its determination has been sustained, amended, or canceled within 15 days of the receipt of the request for a review. If the DOT operating element either sustains or amends its determination, it shall notify the debtor of its intent to collect by salary offset unless payment is received within 15 days of the mailing of the notification of its decision following a review of the claim.

(9) The right of the debtor to offer to make a written agreement to repay the amount of the claim (see § 92.23). The acceptance of such an agreement is discretionary with the agency. If the debtor requests a repayment arrangement because a payment of the amount due would create a financial hardship, the DOT creditor operating element will analyze the debtor's financial condition. Depending on its evaluation of the financial strength of the debtor, the DOT operating element may agree to a written installment repayment schedule with the debtor. The debtor shall execute a confession of judgment note which specifies all of the terms of the arrangement. 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. Interest, penalties and administrative charges shall be provided in the note (see § 92.35). The debtor shall be provided with a written explanation of the consequences of signing a confession of judgment note. The debtor shall sign a statement acknowledging receipt of the written explanation which shall recite that the statement was read and understood before execution of the note and that the note is being signed knowingly and voluntarily. Some form of evidence of these facts shall be maintained in the agency's file on the debtor.

(10) The right to an oral hearing or a hearing based on written submissions conducted by an administrative law judge or by a hearing official not under the control of the head of the Department in accordance with § 92.13 of this part.

(11) The consequences of any knowingly false statements, representations, or evidence provided by the employee, which may include:

(i) Disciplinary procedures under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable statutes or regulations;

(ii) Criminal penalties under 18 U.S.C. 286, 287, 1001 and 1002, or any other applicable statute; or,

(iii) Penalties under the False Claims Act, 31 U.S.C. 3729, *et seq.*, or any other applicable statute.

(12) Proceedings under any other statutory authority for the collection of claims of the DOT operating element.

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

(14) The name, address, and telephone number of the accounting or finance officer who may be contacted if the employee wishes to review the records or to obtain information.

§ 92.13 Request for hearing.

(a) The employee shall be advised in the notification that a hearing may be requested by filing a written petition within 15 calendar days of receipt of the notification, addressed to the chief of the paying agency's accounting or finance office.

(b) The petition shall state the grounds upon which the employee disputes the proposed collection of the alleged debt. The petition shall identify and explain with reasonable specificity the facts, evidence which, and witnesses who the employee believes support his or her position.

(c) The timely filing of a petition for hearing shall stay any further collection proceedings. A decision by the administrative law judge or other hearing official (see § 92.5(j)) will be issued at

§ 92.15

the earliest practical date, but no later than 60 days after the filing of a petition for hearing, unless a delay is granted at the request of the employee.

§ 92.15 Request for hearing after time expires.

The Department may accept late requests for a hearing if the employee can show that delay in requesting a hearing beyond the period provided in the notice described in § 92.11 of this part was caused by circumstances beyond his or her control or because of failure to receive notice of the time limit (unless he or she was otherwise aware of it) or because of new information.

§ 92.17 Form of hearings and written decisions.

(a) Hearings shall consist of informal conferences before an administrative law judge or other hearing official (see § 92.5(j)) in which the employee and the DOT creditor operating element are given full opportunity to present evidence, witnesses, and argument. The DOT operating element will maintain a summary record of a hearing provided under these procedures.

(b) Written decisions provided after a request for hearing shall, at a minimum, summarize the evidence alleged to substantiate the nature and origin of the alleged debt; the administrative law judge's or other hearing official's analysis, findings, and conclusions; the amount and validity of the alleged debt; and, where applicable, the repayment schedule.

(c) A copy of the administrative law judge's or other hearing official's final decision shall be provided to the employee as well as the chief of the office authorized to collect debts by deduction from salary.

(d) The decision of the administrative law judge or other hearing official shall be final and binding on the parties.

§ 92.19 Obtaining the services of a hearing official.

(a) Where a DOT operating element is the creditor agency, the chief of the appropriate accounting or finance office shall schedule a hearing before an ad-

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

ministrative law judge or other hearing official.

(b) If another (non-DOT) agency is the creditor agency, then it is the responsibility of that agency to arrange for a hearing if one is requested.

(c) Agents for the paying agency are designated in appendix A to 5 CFR part 581. (This appendix lists the agents designated to accept legal process for the executive branch, the U.S. Postal Service, the Postal Rate Commission, the District of Columbia, American Samoa, Guam, the Virgin Islands, and the Smithsonian Institution.)

§ 92.21 Deduction from pay.

(a) After other, less severe collection actions have failed, the DOT operating element (see § 92.5(g)) may implement steps to obtain collection by salary offset. The method and the amount of the salary offset shall be the method and amount stated in the creditor agency's demand letter (see § 92.11) or notice (see § 92.7), or, if applicable, in the decision of an administrative law judge or other hearing official after an employee-requested hearing on the matter. If a DOT operating element is the creditor, the procedures stated in § 92.11 shall be followed.

(b) Before a collection by salary offset may be made, the chief of the accounting or finance office of the paying DOT operating element shall be furnished with certified documentation by the creditor agency indicating that the creditor agency has sent the employee a demand letter pursuant to § 92.11 of this part stating as a minimum:

(1) The nature and amount of the indebtedness and the intention of the agency to initiate, at the expiration of thirty days, a proceeding to collect the debt by salary offset; and an explanation of the rights of the employee under this subsection;

(2) That the employee has the opportunity to inspect and copy Government records relating to the debt;

(3) That the employee has an opportunity to enter into a written agreement with the agency to establish a schedule for the repayment of the debt;

(4) That the employee has an opportunity for a hearing on the determination of the agency concerning the existence or the amount of the debt, and

in the case of an individual whose repayment schedule is established other than by a written agreement as described in paragraph (b)(3) of this section concerning the terms of the repayment schedule; and

(5) That the creditor agency's regulations implementing 5 U.S.C. 5514 have been approved by OPM (see 5 CFR 550.1108(a)).

(c) Where a hearing has been held, a copy of the decision of the administrative law judge or other hearing official must be furnished to the chief of the accounting or finance office of the paying DOT operating element before collection of the indebtedness by salary offset may be initiated. The method and amount of the offset will be as stated in the decision.

§ 92.23 Collection.

(a) A debt shall be collected in a lump sum or by installment deductions at officially established pay intervals from an employee's current pay account, unless the employee and the DOT operating element agree to alternative arrangements for payment (see § 92.11(b)(9) describing such voluntary repayment arrangements). The alternative arrangement shall be in writing, signed by both the employee and the chief of the appropriate accounting or finance office, and shall be documented in the DOT operating element's files.

(b) Under 31 U.S.C. 3716 and 4 CFR 102.3(b)(3), agencies may not initiate offset to collect a debt more than 10 years after the Government's right to collect the debt accrued, unless facts material to the Government's rights to collect the debt were not known by the DOT operating element's official or officials charged with the responsibility to discover and collect the debt.

§ 92.25 Source of deductions.

Except as provided in § 92.31 and § 92.33 of this part (with respect to separated employees), the paying DOT operating element will make deductions only from disposable pay (see § 92.5(f)).

§ 92.27 Duration of deductions.

Debts shall 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 payable in one pay period, collection will be made in installments. Such installment deductions will be made over a period not greater than the anticipated period of employment or active duty, as the case may be, except as provided in §§ 92.29, 92.31, and 92.33 of this part.

§ 92.29 Limitation on amount of deductions.

The size and frequency of installment deductions shall bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period may 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.

§ 92.31 Liquidation from final payment.

If the employee retires, resigns his or her employment, is terminated, or the employment or period of active duty ends before collection of the debt is completed, there shall be an offset from subsequent payments of any nature (e.g., final salary, lump sum leave, etc.) due the employee from the DOT operating element on the date of separation to the extent necessary to liquidate the debt.

§ 92.33 Recovery from other payments due a separated employee.

If the debt cannot be liquidated by offset from any final payment due the employee as of the date of separation, the DOT operating element shall liquidate the debt by administrative offset pursuant to 31 U.S.C. 3716 from later payments of any kind due the former employee from the United States, where appropriate (see § 92.41(b)(2)(ii)).

§ 92.35 Interest, penalties and administrative costs.

(a) Where a DOT creditor operating element (see § 92.5(g)) is the creditor, it shall charge interest on an outstanding debt at the rate published by the Secretary of the Treasury in accordance with 31 U.S.C. 3717. The rate of interest

§ 92.37

assessed shall be the rate of the current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate), as prescribed and published by the Secretary of the Treasury in the FEDERAL REGISTER and the Treasury Financial Manual Bulletins annually or quarterly, in accordance with 31 U.S.C. 3717. The DOT creditor operating element shall charge a penalty of six percent a year, in addition to interest, on any portion of a debt that is more than 90 days past due. It shall assess administrative charges to cover additional costs incurred in processing and handling the debt beyond the payment due date. The imposition of interest, penalties and administrative charges is made in accordance with 31 U.S.C. 3717 and 4 CFR 102.13.

(b) Interest on debt shall begin to accrue on the date on which the debtor is first sent or delivered notice of the debt and of the interest requirements or, in the case of advance billings, on the calendar date following the specified due date of the debt provided the advance billing gives notice of the interest requirements for late payment. Interest on the debt shall continue to accrue until payment is received. Interest shall be calculated only on the principal of the debt (simple interest). The rate of interest charged shall be the rate in effect on the date from which interest begins to accrue, and shall remain fixed for the duration of the indebtedness.

(c) A DOT creditor operating element shall waive the monthly interest on debt that is paid within 30 calendar days after the date on which interest began to accrue.

(d) A DOT creditor operating element may waive interest, penalties and/or administrative charges if it finds that:

(1) The debtor is unable to pay any significant sum toward the claim within a reasonable period of time;

(2) Collection of interest, penalties or administrative charges will jeopardize collection of the principal of the debt; or

(3) It is otherwise in the best interest of the United States, including the situation where an offset or installment payment agreement is in effect.

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

§ 92.37 Non-waiver of rights by payment.

An employee's payment or agreement to pay, whether voluntary or involuntary, of all or any portion of an alleged debt being collected pursuant to these procedures shall not be construed as a waiver of any rights which the employee may have under this part to the extent of such payment or agreement.

§ 92.39 Refunds.

(a) Amounts paid or deducted from the account of a current or former employee of the United States Government, pursuant to this part, for a debt which is found not owing to the United States shall be promptly refunded to the employee.

(b) Amounts which are waived shall, after proper application, be promptly returned after approval of the application.

§ 92.41 Requesting recovery when the Department is not the paying agency.

(a) *Format of the request for recovery.*
(1) Where the DOT operating element is the creditor agency and another agency is the paying agency, the chief of the accounting of finance office of the appropriate DOT operating element (see § 92.5(g)) shall complete and certify the "Debt Claim Form" (see Attachment 1), and attach a copy of the demand letter sent to the employee pursuant to § 92.11 with a statement of the employee's response thereto, or, if a hearing was held pursuant to § 92.13, attach a copy of the decision of the administrative law judge or other hearing official. The DOT creditor operating element shall certify that the employee owes the debt, the amount and basis of the debt, the date on which payment is due, the date the Government's right to collect the debt accrued, and that the Departmental regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management.

(2) If the collection is to be made in voluntary or involuntary installments (see Attachment 1), the DOT creditor operating element shall also advise the paying agency of the amount of the installments and, if a date for the beginning of payments other than the next

officially established pay period is required, the date of the first installment.

(3) Unless the employee has voluntarily agreed to the salary offset in writing or, in the absence of such agreement, has signed a statement acknowledging receipt of the procedures required by 5 U.S.C. 5514(a)(2) and the writing or statement is attached to the debt claim form, the DOT creditor operating element shall also indicate the action(s) taken under 5 U.S.C. 5514 and give the date(s) the action(s) were taken.

(b) *Submitting the request for recovery*—(1) *Current employees.* The DOT creditor operating element shall submit the “Debt Claim Form” (Attachment 1) to the employee’s paying agency.

(2) *Employees who are separating or have separated*—(i) *Employees who are in the process of separating.* If the employee is in the process of separating, the DOT creditor operating element shall submit its debt claim (Attachment 1) to the employee’s paying agency for collection as provided in § 92.31 of this part. The paying agency is required to certify the total amount of its collection made or to be made prior to separation and notify the DOT creditor operating element and the employee as provided in § 92.41 (b)(2)(iii). If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it shall advise the DOT operating element and send a copy of the debt claim and certification to the agency responsible for making such payments as notice that a debt is outstanding.

(ii) *Employees who have already separated.* If the employee has already separated and all payments due from his or her former paying agency have been paid, the DOT operating element may request, unless otherwise prohibited for example by court order, that monies which are due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR 831.1801 et seq.) or other similar funds, be administratively offset in order to collect the debt (see 31 U.S.C. 3716 and the FCCS).

(iii) *Employees who transfer from one paying agency to another.* If, after the DOT creditor operating element has submitted the debt claim to the employee’s paying agency, the employee transfers to a position served by a different paying agency before the debt is collected in full, the paying agency from which the employee separates shall certify the total amount of the collection made on the debt. One copy of the certification shall be furnished to the employee and another to the DOT operating element along with notice of the employee’s transfer. The original of the debt claim form shall be inserted in the employee’s official personnel folder along with a copy of the certification of the amount which has been collected. Upon receiving the official personnel folder, the new paying agency shall, in accordance with the DOT operating element’s properly certified claim, resume the collection from the employee’s current pay account and notify the employee and the DOT creditor operating element of the resumption. The DOT operating element is not required to repeat the required collection procedures from the beginning in order to resume the collection. However, it shall be the responsibility of the DOT creditor operating element to review the debt upon receiving the former paying agency’s notice of the employee’s transfer to make sure the collection is resumed by the new paying agency.

§ 92.43 Requests for recovery when the Department is the paying agency.

(a) *Incomplete request for recovery.* If the request for recovery received by the chief of the accounting or finance office of the appropriate DOT operating element is incomplete in any respect (see § 92.21(b)) including, but not limited to, the failure to certify in writing that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the creditor agency’s right to collect the debt first accrued, and that the creditor agency’s regulations implementing 5 U.S.C. 5514 were approved by OPM, the request shall be returned to the creditor agency with a statement of the deficiency. No action to implement salary offset may be initiated

§ 92.45

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

until a complete request has been received.

(b) *Complete request for recovery.* If a complete request for recovery is received by the chief of the accounting or finance office of the appropriate DOT operating element, a copy of the request and any supporting documentation shall be transmitted to the appropriate payroll office, and deductions shall be scheduled to begin at the next

officially established pay interval. A copy of the request and any supporting documentation shall be provided to the debtor, along with a notice of the date deductions will begin.

(c) The DOT operating element may not review the merits of the creditor agency's determination with respect to the amount or validity of the debt as stated in the request for recovery.

§ 92.45 Other debt collections.

Separate rules exist for general collection of debts owed the United States under 31 U.S.C. 3711, 3716-18; 4 CFR Ch. II.

Attachment 1

DEBT CLAIM FORM

1. Paying agency identification		2. Employee identification	
a. Name		a. Name	
b. Address		b. Address	
		c. DOB	d. SSN

To liquidate a debt to the United States, the named creditor agency asks that the debt be collected as shown from the current pay of the employee identified above. Notices and inquiries concerning the debt should be sent to the address shown below.

3. Debt information			
a. Reason for debt:			
b. Date right to collect accrued		c. Debt identification number, if any	
d. Original debt:		e. Number of installments	@ Amount
amount	\$		\$
f. Interest due			\$
(if none, show N/A)	\$		\$
g. Penalty due			\$
(if none, show N/A)	\$		\$
h. Administrative cost			\$
(if none, show N/A)	\$		\$
i. Total collection		j. Commence deductions on (date)	
to be made	\$		
4. Due process: <input checked="" type="checkbox"/> date actions taken; or attach <input checked="" type="checkbox"/> acknowledgement <input checked="" type="checkbox"/> consent			
Creditor agency 30-day		Hearing held	
salary offset notice		Decision for creditor	
Employee did not re-		agency	
spond (consent assumed)		Other -	
Employee requested a hear-			
ing			

I certify the following: (1) the debt identified above is properly due the United States from the named employee in the amount shown; (2) this agency's regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management, and (3) the information concerning this agency's and the employee's actions is correct as stated.

5. Creditor agency information	
a. Name	b. Appropriation/fund (title/symbol #)
c. Address	d. Disbursing officer (name/symbol #)
e. Signature of certifying official	f. Date
g. Title	h. Telephone number

PART 93 [RESERVED]

PART 95 [RESERVED]

PART 98—ENFORCEMENT OF RESTRICTIONS ON POST-EMPLOYMENT ACTIVITIES
Subpart A—Administration of Enforcement Proceedings

Sec.

98.1 Purpose.

98.2 Definitions.

98.3 Reports of apparent violations.