

3. In appendix C to part 4022, Rate Set 94, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i ₁	i ₂	i ₃	n ₁	n ₂
94	8-1-01	9-1-01	4.75	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. In appendix B to part 4044, a new entry, as set forth below, is added to the

table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i _t are:					
	i _t	for t =	i _t	for t =	i _t	for t =
August 2001	.0640	1-20	.0625	>20	N/A	N/A

Issued in Washington, DC, on this 10th day of July 2001.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 01-17574 Filed 7-12-01; 8:45 am]

BILLING CODE 7708-01-P

DEPARTMENT OF THE TREASURY

31 CFR Part 29

Federal Benefit Payments Under Certain District of Columbia Retirement Plans

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Interim rule with request for comments.

SUMMARY: The Department of the Treasury, Departmental Offices, is issuing an interim rule and requesting comments on this rule, which implements the provisions of the Balanced Budget Act of 1997, as amended (Act). The Act assigns the Secretary of the Treasury responsibility for payment of benefits (hereafter, Federal Benefit Payments) under the District of Columbia (District) retirement plans for police officers and firefighters, and teachers for benefits based on credit for service accrued as of June 30, 1997, and under the District retirement plan for judges. The interim rule establishes the general rules for the Treasury

Department's processes for (1) debt collections arising from overpayments of Federal Benefit Payments or debt claims by Federal agencies, and (2) waiver of recovery of overpaid benefits or amounts otherwise owed to the retirement plans.

DATES: Interim rule effective August 13, 2001; comments must be received on or before September 11, 2001.

ADDRESSES: Send comments to Ronald A. Glaser, Director, Office of Personnel Policy, Department of the Treasury, Metropolitan Square Building, Room 6075, 15th Street and Pennsylvania Avenue, NW, Washington, DC 20220. Comments may also be submitted by electronic mail to dcpensions@do.treas.gov.

FOR ADDITIONAL INFORMATION CONTACT: Harold L. Siegelman, (202) 622-1540, Department of the Treasury, Metropolitan Square Building, Room 6033, 15th Street and Pennsylvania Avenues, NW, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: Title XI of the Balanced Budget Act of 1997, Public Law 105-33, 111 Stat. 251, 712-731, 756-759, enacted August 5, 1997, as amended by the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, Public Law 105-277, 112 Stat. 2681, 2681-530 through 538, 2681-552, and as further amended by the Consolidated Appropriations Act of 2001, Public Law 106-554, 114 Stat. 2763, transferred

certain unfunded pension liabilities from the District government to the Federal Government. The Act requires the Federal Government to assume responsibility for payment of certain benefits that accrued on or before June 30, 1997, under the retirement plans for District teachers (Teachers Plan) and police officers and firefighters (Police Officers and Firefighters Plan) as they existed on June 29, 1997, and for past and future benefits under the retirement plan for judges (Judges Plan) (collectively, the Retirement Funds). The Act also required the District government to establish replacement retirement plans that will provide retirement benefits for service after June 30, 1997, for current and future teachers, police, and firefighters.

The Office of D.C. Pensions developed the interim rule in consultation with the Department of the Treasury's Financial Management Service and acknowledges its constructive assistance.

1. *Requirement to establish processes for debt collection and waivers of debt collection.* The interim rule implements section 11021(3) of the Act (codified at D.C. Code Ann. 1-763.1) and section 11251 (c)(2)(B) of the Act (amending D.C. Code Ann. 11-1570). These statutes provide for the collection of, or waiver of collection of, overpayments of Federal Benefit Payments.

The interim rule is based in part on the Office of Personnel Management (OPM) regulations with respect to

similar debt collection functions for retirement programs that OPM administers. For the most part, the principles that affect debt collection activities are the same for OPM and the Retirement Funds for which the Treasury Department is responsible. This is especially true for debt collection matters in which OPM and the Treasury Department are implementing the same statute—the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, and implemented by 31 CFR 900.1 et seq., the Federal Claims Collection Standards.

With respect to the collection of, or waiver of collection of, overpayments of Federal Benefit Payments, the Treasury Department intends to follow the practices and guidelines OPM has already established. To that end, the interim rule closely adheres to the OPM debt collection regulations. With respect to the collection of other Federal debts against the payment of Federal Benefit Payments, this interim rule refers to the general debt collection regulations promulgated by the Treasury Department in parts 5 and 285 of Title 31 of the Code of Federal Regulations.

2. *Contracting for administrative services.* Section 11035(a) and (b) and section 11251(b)(1) of the Act provide for the selection of a Trustee to administer the Department's responsibilities for the Retirement Funds under the Act, including collection of, or waiver of collection of, overpayments of Federal Benefit Payments.

Sections 11035(c) and 11251(b)(1) of the Act authorize the Trustee to subcontract with the District government or any person to provide services to the Trustee in connection with the Trustee's performance of its contract with the Secretary.

Section 11035(d) of the Act authorizes the Secretary to perform any function of the Trustee if the Secretary determines that, in the interest of economy and efficiency, the Secretary rather than the Trustee should perform such function.

Section 11041(a) of the Act (codified at D.C. Code Ann. 1-765.1) requires the District to continue to discharge its duties with respect to making Federal Benefit Payments until such time as the Secretary notifies the District that he has directed the Trustee to carry out the duties and responsibilities required under the contract or determines that the Secretary shall carry out those functions.

Because it is likely that, after the interim period is over, the Retirement

Funds will be administered by the Trustee, a subcontractor of the Trustee, or another agent of the Secretary, the interim rule uses the term "Benefits Administrator" throughout this subpart to denote the entity charged with recovering or recouping overpayments of Federal Benefit Payments and collecting other Federal debts against the payment of Federal Benefit Payments. The term "Benefits Administrator" is also used in the interim regulations in subpart D to identify the entity charged with making Federal Benefit Payment determinations. It is anticipated that, after the interim period is over, the same entity will act as Benefits Administrator for purposes of this subpart and subpart D. It should be noted, however, that potentially the Secretary may be the Benefits Administrator for the purpose of this subpart.

3. *Development of these procedures.* Subpart E establishes debt collection procedures and standards for waiver of collection of overpayments of Federal Benefit Payments. This subpart is in three groups of sections.

Sections 29.501 through 29.506 provide general information helpful in understanding the regulations throughout subpart E. This information includes a description of the purpose and scope of the subpart, definitions of terms used in the subpart, and statements of general principles that apply throughout the subpart. This information also refers to regulations that govern other aspects of debt collection not addressed in this subpart, specifically those governing the compromise, suspension, or termination of collection action, and the procedures for Federal agencies to submit requests to the Department to offset Federal Benefit Payments to collect a debt.

Sections 29.511 through 29.520 establish procedures for collection of debts due the Retirement Funds. The procedures are intended to fulfill the Department's obligations under the Federal Claims Collection Standards, 31 CFR 900.1 et seq. These sections establish safeguards to, in most cases, allow recipients to administratively appeal the determination of a debt or seek waiver or compromise of the debt before offset of Federal Benefit Payments occurs. See section 29.516(e). This interim rule also establishes a limit to the amount that can be offset from monthly Federal Benefit Payments to protect those recipients who depend upon these payments for all or a substantial part of their income. Section 29.516(d) establishes a formula for calculating the maximum amount which may be offset from a monthly Federal

Benefit Payment. This formula is identical to one set forth in 31 CFR 285.4(e), which limits the amount that can be offset from benefit payments under the Social Security Act, the Black Lung Benefits Act, and laws administered by the Railroad Retirement Board. It is intended that section 29.516(d) be interpreted in an identical manner as 31 CFR 285.4(e).

Sections 29.521 through 29.526 establish standards for the waiver of collection of overpayments of Federal Benefit Payments. The standards are intended to have the same general effect as the corresponding OPM regulations.

Pursuant to section 553(b)(3)(B) of title 5, United States Code, it has been determined that good cause exists for waiving a general notice of proposed rulemaking for the rule. Overpayments of Federal Benefit Payments must be collected expeditiously to protect and maintain the integrity of the Trust Funds from which Federal Benefit Payments are made. Delaying implementation of this rule could forestall efforts to collect overpayments promptly. Moreover, beneficiaries who are subject to debt collection action to collect overpayments of Federal Benefit Payments need the clear procedures provided in the rule for seeking review of such decisions or waiver of the overpayments. Delaying implementation of these provisions would be contrary to the public interest.

E.O. 12866, Regulatory Review

Because the interim rule is not a significant regulatory action for purposes of E.O. 12866, a regulatory assessment is not required.

Regulatory Flexibility Act

It is hereby certified that the rule will not have a significant economic impact on a substantial number of small entities. The rule will only affect the determination of the Federal portion of retirement benefits to certain former employees of the District of Columbia. Accordingly, a regulatory flexibility analysis is not required by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 31 CFR Part 29

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Intergovernmental relations, Law enforcement officers, Pensions, Retirement, Teachers.

Department of the Treasury.

James Flyzik,

Acting Assistant Secretary of the Treasury.

Accordingly, the Department of the Treasury is amending part 29 of Title 31 of the Code of Federal Regulations, as follows:

1. The authority citation for part 29 is amended to read as follows:

Authority: Sections 11083 and 11251(a) of Public Law 105-33, 111 Stat. 730 and 756, as amended by Public Law 105-277, 112 Stat. 2681-530 through 538, and as further amended by Public Law 106-554, 114 Stat. 2763; subpart D also issued under section 11022 of Public Law 105-33, 111 Stat. 730 and 756, as amended by Public Law 105-277, 112 Stat. 2681-530 through 538, and as further amended by Public Law 106-554, 114 Stat. 2763.

2. In section 29.102, paragraph (a) is revised and paragraph (f) is added to read as follows:

§ 29.102 Related regulations.

(a) This part contains the following subparts:

- (1) General Provisions (Subpart A);
- (2) Coordination with the District Government (Subpart B);
- (3) Split Benefits (Subpart C);¹
- (4) Claims and Appeals Procedures (Subpart D); and
- (5) Debt Collection and Waivers of Collection (Subpart E).

* * * * *

(f) Parts 835 and 845 and subparts M, N, and R of part 831 of title 5, Code of Federal Regulations, contain information about debt collection and waiver of collection under the Civil Service Retirement System and the Federal Employees Retirement System.

3. In § 29.103, paragraph (a) is revised by adding in alphabetical order definitions of the terms "Act," "Benefits Administrator," "Reconsideration," and "Retirement Funds" to read as follows:

§ 29.103 Definitions.

(a) * * *

Act means the Balanced Budget Act of 1997, Public Law 105-33, 111 Stat. 251, 712-731, 756-759, enacted August 5, 1997, as amended by the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, Public Law 105-277, 112 Stat. 2681, 2681-530 through 538, 2681-552, and by the Consolidated Appropriations Act of 2001, Public Law 106-554, 114 Stat. 2763.

Benefits Administrator means:

(1) During the interim administration period under section 11041(a) of the

Act, the District of Columbia government; or

(2) After the end of the interim administration period,

(i) The Trustee selected by the Department under section 11035(a) of the Act;

(ii) The Department if a determination is made under section 11035(d) of the Act that, in the interest of economy and efficiency, the Trustee's functions shall be performed by the Department rather than the Trustee; or

(iii) Any other agent of the Department designated to make initial benefit determinations and to recover or recoup or waive recovery or recoupment of overpayments of Federal Benefit Payments, or to recover or recoup debts owed to the Federal Government by annuitants.

* * * * *

Reconsideration means the process of reexamining an individual's entitlement to benefits or liability for a debt to determine whether—

(1) The law and regulations were properly applied; and/or

(2) The mathematical computation of the benefit or liability is correct.

Retirement Funds means the District of Columbia Federal Pension Liability Trust Fund established under section 11031 of the Act (codified at D.C. Code Ann. 1-764.1), the Federal Supplemental District of Columbia Pension Fund established under section 11051 of the Act (codified at D.C. Code Ann. 1-766.1), and the District of Columbia Judicial Retirement and Survivors Annuity Fund established under section 11252 of the Act (codified at D.C. Code Ann. 1-714).

* * * * *

4. Subpart E is added to read as follows:

Subpart E—Debt Collection and Waivers of Collection

Sec.

29.501 Purpose; incorporation by reference; scope.

29.502 Definitions.

29.503 Prohibition against collection of debts.

29.504 Status of debts.

29.505 Compromise of claims; termination and suspension of collection actions.

29.506 Recovery of other debts owed to the United States.

Collection of Overpayments

29.511 Demand letters.

29.512 Reconsideration by the Benefits Administrator.

29.513 Appeals to the Department.

29.514 Requests for waiver and/or compromise.

29.515 Judicial review.

29.516 Collection of overpayments.

29.517 Collection by offset.

29.518 Reporting delinquent debts to credit bureaus.

29.519 Referral to a collection agency.

29.520 Referral for litigation.

Standards for Waiver of Overpayments

29.521 Conditions for waiver and other adjustments.

29.522 Fault.

29.523 Equity and good conscience.

29.524 Financial hardship.

29.525 Ordinary and necessary living expenses.

29.526 Waiver precluded.

Subpart E—Debt Collection and Waivers of Collection

§ 29.501 Purpose; incorporation by reference; scope.

(a) This subpart regulates—

(1) The recovery of overpayments of Federal Benefit Payments;

(2) The standards for waiver of recovery of overpayments of Federal Benefit Payments; and

(3) The use of Federal Benefit Payments to recover certain other debts due the United States.

(b) The regulations of this subpart incorporate by this reference all provisions of the Federal Claims Collection Standards (FCCS) (parts 900-904 of Title 31, Code of Federal Regulations), and supplement those regulations by the prescription of procedures and directives necessary and appropriate for the operation and administration of the Retirement Funds. To the extent they are not inconsistent with the regulations contained in this subpart, the regulations in part 5 of title 31, Code of Federal Regulations, also apply to the collection of debts under this subpart.

(c)(1) *Debts based on fraud, misrepresentation, or the presentation of a false claim.* This subpart does not apply to any overpayments of Federal Benefit Payments which arose, in whole or in part, due to fraud, misrepresentation, or the presentation of a false claim by the debtor or any party having an interest in the claim. Such debts should be referred by the Benefits Administrator immediately to the U.S. Justice Department for action pursuant to 31 CFR 900.3.

(2) *Tax debts.* This subpart does not apply to tax debts.

(d)(1) Sections 29.501 through 29.506 state the rules of general applicability to this subpart.

(2) Sections 29.511 through 29.520 prescribe procedures to be followed by the Benefits Administrator which are consistent with the FCCS in the collection of debts owed to the Retirement Funds.

(3) Sections 29.521 through 29.526 prescribe the standards that the

¹ The effective date for section 29.102(a)(3) and Subpart C, originally scheduled for March 31, 2001, has been postponed indefinitely.

Department will apply in decisions to waive recoupment or recovery of overpayments from the Retirement Funds under sections 11021(3) and 11251(c)(2)(B) of the Act.

§ 29.502 Definitions.

For purposes of this subpart—

Additional charges means interest, penalties, and/or administrative costs owed on a debt.

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

Agency means:

(1) An Executive agency as defined in section 105 of title 5, United States Code, including the U.S. Postal Service and the U.S. Postal Rate Commission;

(2) A military department, as defined in section 102 of title 5, United States Code;

(3) An agency or court in the judicial branch, including a court as defined in section 610 of title 28, United States Code, 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.

Annuitant means a retired participant, former spouse, spouse, widow(er), child or other beneficiary receiving recurring Federal Benefit Payments.

Annuity means the monthly benefit (including a retirement salary under the Judges Plan) of indefinite duration payable to an annuitant.

Anticipated expenses means expenditures which are expected to occur and for which the debtor can provide documentation of the estimated cost.

Beneficiary means an individual designated by a participant, or by the terms of the Judges Plan, Police Officers and Firefighters Plan, or Teachers Plan, who is or may become entitled to a benefit under those plans.

Change of position for the worse means an individual would be left in a worse financial position after recovery of the overpayment than prior to the receipt of the overpayment because the individual reasonably relied on the amount of the overpayment to his or her detriment. For example, an individual has “changed position for the worse” if he or she made expenditures or assumed new liabilities that he or she would not have otherwise done, and he or she is unable to withdraw from the

commitment without incurring significant financial loss.

Compromise means accepting less than payment in full in satisfaction of a debt.

Consent means the debtor has agreed in writing to administrative offset of one or more Federal Benefit Payments after receiving notice of the available rights under 31 U.S.C. 3716 and this subpart; to Federal salary offset after receiving notice of the available rights under 5 U.S.C. 5514 and 31 CFR part 5; and to judgment offset under section 124 of Public Law 97–276, 96 Stat. 1195–1196.

Credit bureau has the same meaning as the definition of “consumer reporting agency” provided in 31 U.S.C. 3701(a)(3).

Creditor agency means the agency to which a debt is owed.

Debt has the same meaning as the definition of “debt” provided in 31 U.S.C. 3701(b)(1), and includes an overpayment of Federal Benefit Payments.

Debtor means a person who owes a debt or from whom a debt is to be recovered, including an annuitant.

Delinquent means delinquent as defined in 31 CFR 900.2(b).

Department means the Secretary of the Treasury or a designee authorized to exercise the Secretary’s authority with respect to Federal Benefit Payments under the Act.

FCCS means the Federal Claims Collection Standards (parts 900–904 of Title 31, Code of Federal Regulations).

Liquid asset means cash or other property readily convertible into cash with little or no loss of value.

Lump-sum credit means:

(1) Under the Judges Plan, the Police Officers and Firefighters Plan, and the Teachers Plan, the unrefunded amount consisting of—

(i) Retirement contributions from the basic salary of a participant;

(ii) Amounts deposited covering earlier creditable service; and

(iii) Such interest as authorized by statute to be included in the payment of refunds of retirement contributions; and

(2) Under the Judges Plan, “lump-sum credit for survivor annuity” is defined in section 11–1561(10) of the D.C. Code.

Offset means to withhold the amount of a debt, or a portion of that amount, from one or more payments due the debtor. Offset also means the amount withheld in this manner.

Ordinary and necessary living expenses means such expenses as rent, mortgage payments, utilities, maintenance, food (including expenses for dining out), clothing, insurance (life, health, and accident), taxes, installment payments, medical expenses, reasonable

expenses for recreation and vacations, expenses for support of a dependent when the debtor holds primary or joint legal responsibility for such support, and other miscellaneous expenses that the debtor can establish as being ordinary and necessary.

Overpayment or *overpayment debt* means a payment of one or more Federal Benefit Payments to an individual in the absence of entitlement or in excess of the amount to which an individual is properly entitled.

Participant means an individual who is or may become eligible to receive a benefit under the Police Officers and Firefighters Plan or Teachers Plan based on credit for service accrued as of June 30, 1997, or under the Judges Plan, or whose beneficiaries may be eligible to receive any such benefit.

Refund means the payment of a lump-sum credit to an individual who meets all requirements for payment and files an application for it.

Relinquish a valuable right means the individual has relinquished a valuable privilege, claim, entitlement, or benefit having monetary worth because of the overpayment or because of notice that such a payment would be made.

Repayment schedule means the amount of each payment and the number of payments to be made to liquidate the debt as determined by the Department or the Benefits Administrator.

Salary offset means any offset authorized by 5 U.S.C. 5514 and 31 U.S.C. 3716.

Substantially all, as used in § 29.524, means that a debtor’s income is less than or equal to his or her ordinary and necessary expenses plus a reasonable monthly allowance for unexpended or emergency expenses and does not allow for the deduction of a reasonable monthly installment payment to recover the debt.

Voluntary repayment agreement means an agreement wherein the debtor makes installment payments to repay an overpayment debt in accordance with a repayment schedule agreed to by the Benefits Administrator or the Department.

Waiver means a decision not to recover all or part of an overpayment debt owed to the Retirement Funds under authority of sections 11021(3) or 11251(c)(2)(B) of the Act.

§ 29.503 Prohibition against collection of debts.

(a) Debts may be collected from Federal Benefit Payments only to the extent expressly authorized by Federal debt collection statutes and any other applicable Federal law.

(b) When collection of a debt from Federal Benefit Payments is authorized under paragraph (a) of this section, the collection will be made in accordance with this subpart and other applicable federal law.

§ 29.504 Status of debts.

A payment of a Federal Benefit Payment to a debtor because of an error on the part of the Department or Benefits Administrator, or the failure of the creditor agency to properly and/or timely submit a debt claim, does not erase the debt or affect the validity of the claim by the creditor agency.

§ 29.505 Compromise of debts; termination and suspension of collection actions.

The procedures for compromise of a claim for an overpayment or the termination or suspension of a collection action seeking to recover an overpayment, other than waiver of an overpayment under §§ 29.521 through 29.526, are controlled exclusively by the FCCS and 31 CFR part 5.

§ 29.506 Recovery of other debts owed to the United States.

(a) *Procedures for Creditor Agencies.* Agencies seeking to recover a debt by offset of Federal Benefit Payments payable to the debtor must comply with the offset procedures set forth in 31 U.S.C. 3716 and the FCCS. A creditor agency may seek to collect a debt through offset of Federal Benefit Payments pursuant to the Department's procedures for administrative offset set forth in 31 CFR part 5.

(b) *Offset by the Benefits Administrator.* As required by 31 U.S.C. 3716(c), the Benefits Administrator must compare payment records of the Retirement Funds with records of debts submitted to the Financial Management Service for collection by administrative offset, and must offset payments to satisfy, in whole or in part, debts owed by any annuitant.

Collection of Overpayments

§ 29.511 Demand letters.

Except as provided in § 29.516(e), before starting collection action to recover an overpayment, the Benefits Administrator must send a demand letter that informs the debtor in writing—

(a) That an overpayment has occurred, the amount of the overpayment, and the facts giving rise to the overpayment;

(b) The date by which payment of the debt should be made to avoid additional charges (i.e., interest, penalties and administrative costs) permitted by the FCCS and enforced collection;

(c) The requirement that any overpayment debt delinquent for more than 180 days be transferred to the Department of the Treasury's Financial Management Service for collection;

(d) The name, address, and phone number of the appropriate person or office the debtor may contact about the debt;

(e) The remedies which may be used to enforce payment of the debt, including assessment of interest, administrative costs and penalties; administrative wage garnishment; the use of collection agencies; Federal salary offset; tax refund offset; administrative offset; and litigation.

(f) Whether offset is available and, if so, the types of payment(s) to be offset or eligible for offset, the repayment schedule (if any), the right to request an adjustment in the repayment schedule, and the right to request a voluntary repayment agreement in lieu of offset;

(g) An explanation of the Department's policy on interest, penalties, and administrative costs as set forth in 31 CFR part 5, the FCCS, and 31 U.S.C. 3717, including a statement that such assessments must be made unless excused in accordance with the FCCS;

(h) The debtor's opportunity to request repayment in installments if the debtor can show an inability to repay the debt in one lump sum;

(i) The debtor's opportunity to inspect and/or receive a copy of the records relating to the overpayment;

(j) The method and time period (60 calendar days) for requesting reconsideration, waiver, and/or compromise of the overpayment;

(k) That all requests for waiver or compromise must be accompanied by a disclosure of the debtor's financial condition and ability to pay the debt;

(l) The standards used by the Department in deciding requests for waiver (set forth in §§ 29.521 through 29.526) and compromise (set forth in 31 CFR 902.2); and

(m) The fact that a timely filing of a request for reconsideration, waiver and/or compromise, or a subsequent timely appeal of a reconsideration decision, will stop collection proceedings, unless—

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

(2) The time before the payment is to be made does not reasonably permit the completion of these procedures.

§ 29.512 Reconsideration by the Benefits Administrator.

(a) *Right to reconsideration of overpayment determinations.*

Individuals who receive a demand letter and who wish to contest the existence or amount of the overpayment may ask the Benefits Administrator to reconsider the determination.

(b) *Requests for waiver or compromise.* Individuals who wish to seek waiver or compromise of the overpayment may file such requests with the Department under § 29.514. An individual may file a request for reconsideration in addition to a request for waiver or compromise.

(c) *Form and timing of requests for reconsideration.* (1) A request for reconsideration must be in writing and must state the basis for the request. Individuals requesting reconsideration will be given a full opportunity to present any pertinent information and documentation supporting their position and should, to the extent possible, include such information and documentation in their request.

(2) A request for reconsideration must be received by the Benefits Administrator within 60 calendar days of the date of the demand letter. The Department may extend the time limit for filing when the individual shows that he or she was not notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from making the request within the time limit, or for other good and sufficient reason.

(3) When a request for reconsideration covered by this subpart is properly filed before the death of the debtor, it will be processed to completion unless the relief sought is nullified by the debtor's death.

(d) *Reconsideration decisions.* (1) The Benefits Administrator's decision on a request for reconsideration will be based upon the individual's written submissions, evidence of record, and other pertinent available information.

(2) A reconsideration decision by the Benefits Administrator must—

(i) Be in writing;

(ii) Provide notice of the extent of the individual's liability for the overpayment, if any;

(iii) If the individual is determined to be liable for all or a portion of the overpayment, reaffirm or modify the conditions for the collection of the overpayment previously proposed in the demand letter;

(iv) Provide notice of the right to appeal the Benefits Administrator's decision to the Department, the address to which such an appeal must be submitted, and the time limits applicable to such an appeal; and

(v) State that a timely appeal of the Benefits Administrator's decision to the

Department will suspend action to collect the debt.

(e) *Appeal of reconsideration decisions.* The Department will review an appeal of a reconsideration decision under § 29.513.

§ 29.513 Appeals to the Department.

(a) *Form of appeal.* An appeal of a reconsideration decision under § 29.512 must be in writing and must state the basis for the appeal.

(b) *Time limits on appeals.* (1) An appeal must be received by the Department within 60 calendar days from the date of the reconsideration decision.

(2) The Department may extend the time limit for filing when the individual shows that he or she was not notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from making the request within the time limit, or for other good and sufficient reason.

(c) *Final decision.* After consideration of the appeal, the Department will issue a final decision. The Department's decision will be in writing, will fully set forth the Department's findings and conclusions on the appeal, and will contain notice of the right to judicial review provided in § 29.515. If the Department determines that the individual is liable for all or a portion of the overpayment, the decision also will contain the conditions for the collection of the overpayment. Copies of the final decision will be sent to the individual seeking appeal and to the Benefits Administrator.

§ 29.514 Requests for waiver and/or compromise.

(a) *Right to request waiver and/or compromise.* Individuals who receive a demand letter regarding an overpayment may ask the Department to waive and/or compromise, in whole or part, the amount of the overpayment.

(b) *Requests for reconsideration.* Individuals who have filed a request for reconsideration under § 29.512 may also request a waiver and/or compromise under this section.

(c) *Form and timing of requests for waiver and/or compromise.* (1) A request for waiver and/or compromise must be in writing and must state the basis for the request. Individuals making such requests will be given a full opportunity to present any pertinent information and documentation supporting their position and should, to the extent possible, include such information and documentation in their request. Individuals seeking waiver or compromise of an overpayment must

also submit required financial information identified in the demand letter.

(2) A request for waiver or compromise must be filed with the Department. If the request is sent by mail, it must be postmarked within 60 calendar days of the date of the demand letter. If the request is hand delivered or delivered electronically, it must be received within 60 calendar days of the date of the demand letter. The Department may extend the time limit for filing when the individual shows that he or she was not notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from making the request within the time limit, or for other good and sufficient reason.

(3) When a request for waiver and/or compromise under this section is properly filed before the death of the debtor, it will be processed to completion unless the relief sought is nullified by the debtor's death.

(d) *Waiver and/or compromise decisions.* (1) The Department's decision on a request for waiver and/or compromise will be based upon the individual's written submissions, evidence of record, and other pertinent available information. An individual's request for waiver will be evaluated by the standards set forth in § 29.521 through § 29.526. An individual's request for compromise will be evaluated by the standards set forth in the FCCS in 31 CFR part 902.

(2) A waiver or compromise decision by the Department will—

(i) Be in writing;

(ii) Provide notice of whether the overpayment will be waived or compromised, and the extent to which the individual is still liable for the overpayment, if at all;

(iii) If the individual is determined to be liable for all or a portion of the overpayment, reaffirm or modify the conditions for the collection of the overpayment previously proposed in the demand letter; and

(iv) Be issued within 120 calendar days from the Department's receipt of a timely request for waiver and/or compromise. This time limit does not apply to requests for compromise that are referred to the Department of Justice for consideration pursuant to 31 CFR 902.1(b).

§ 29.515 Judicial review.

An individual whose request for reconsideration has been denied (in whole or part) in a final decision by the Department under § 29.513 may, within 180 days of the date of the final

decision, file a civil action in the United States District Court for the District of Columbia. Any such civil action must be filed in accordance with the rules of that court.

§ 29.516 Collection of overpayments.

(a) *Means of collection.* Collection of an overpayment may be made by means of offset under § 29.517, or under any statutory provision providing for offset of money due the debtor from the Federal Government including, but not limited to, Federal Benefit Payments. Collection may also be effected by referral to the Justice Department for litigation, as provided in § 29.520, or referral to a collection agency as provided in § 29.519, or by other means authorized by federal law.

(b) *Additional charges.* Interest, penalties, and administrative costs will be assessed on the overpayment in accordance with standards established in 31 U.S.C. 3717 and 31 CFR 901.9. Additional charges will be waived when required by the FCCS. The Department will waive the collection of interest on the overpayment pending the Benefits Administrator's consideration of a request for reconsideration and the Department's consideration of a request for waiver and/or compromise or the appeal of a reconsideration decision. In addition, such charges may be waived when the Department determines—

(1) Collection of those charges would be against equity and good conscience under the standards prescribed in §§ 29.523 through 29.525; or

(2) Waiver of those charges would be in the best interest of the United States.

(c) *Collection in installments.* (1) Whenever feasible, overpayments will be collected in one lump sum.

(2) However, installment payments may be effected when—

(i) The debtor establishes that he or she is financially unable to pay in one lump sum; or

(ii)(A) The benefit payable is insufficient to make collection in one lump sum;

(B) The debtor fails to respond to a demand for full payment; and

(C) Offset is available.

(d) *Offset Amount.* (1) The amount offset from a monthly Federal Benefit Payment will be the lesser of:

(i) The amount of the debt, including any interest, penalties and administrative costs;

(ii) An amount equal to 15 percent of the monthly Federal Benefit Payment; or

(iii) The amount, if any, by which the monthly Federal Benefit Payment exceeds \$750.

(2) For purposes of this subsection, the "monthly Federal Benefit Payment"

is the amount of the gross monthly benefit after any reductions or deductions required under law, including reductions made to recover overpayments of Federal Benefit Payments.

(e) *Commencement of collection.* (1) Except as provided in paragraph (e)(2) of this section, collection will begin after the time limits for requesting further rights stated in § 29.512 through § 29.514 expire and no such requests have been made, or after the Benefits Administrator and/or the Department have issued decisions on all timely requests for or appeals of those rights, unless failure to make an offset would substantially prejudice the Department's ability to collect the overpayment and the time before the payment is to be made does not reasonably permit the completion of the proceedings in § 29.511 through § 29.514 or litigation. When offset begins without completion of the administrative review process, these procedures will be completed promptly, and amounts recovered by offset but later found not owed will be refunded promptly.

(2) The procedures identified in § 29.511 through § 29.514 will not be applied when the overpayment is caused by—

(i) A retroactive adjustment in the periodic rate of annuity or any deduction taken from annuity when the adjustment is a result of the annuitant's election of different entitlements under law, if the adjustment is made within 120 days of the effective date of the election; or

(ii) interim estimated payments made before the formal determination of entitlement to annuity, if the amount is recouped from the total annuity payable on the first day of the month following the later of—

(A) The last interim payment or

(B) The date the formal determination is made.

(f) *Collection of delinquent debts.* (1) *Debts delinquent over 180 days.* The Benefits Administrator must refer all overpayment debts that are over 180 days delinquent to the Secretary for collection pursuant to 31 U.S.C. 3711(g) and 3716, and 31 CFR part 901.

(2) *Debts delinquent less than 180 days.* Once an overpayment debt becomes delinquent, the Benefits Administrator should refer it to the Secretary for collection by centralized administrative offset pursuant to 31 CFR 901.3, unless collection of the debt by some other means is likely to occur in a more timely and efficient manner.

(3) Once a debt is referred under this subsection, the Benefits Administrator

has no further obligation to collect the debt.

§ 29.517 Collection by offset.

(a) *Offset from retirement payments.* An overpayment may be collected in whole or in part from any refund payment or recurring Federal Benefit Payments.

(b) *Offset from other payments—(1) Administrative offset.* When offset under subsection (a) is not available, an overpayment may be offset from other Federal payments due the debtor from other agencies under the procedures set forth in 31 CFR part 5 and 31 CFR 901.3(c).

(2) *Salary offset.* When the debtor is an employee of the Federal Government, the Department may effect collection of an overpayment by offset of the debtor's pay in accordance with regulations published to implement such offsets under 5 U.S.C. 5514 (see 5 CFR part 550, subpart K; 31 CFR 285.7; and 31 CFR Part 5). Due process described in the federal salary offset regulations of 31 CFR part 5 will apply. When the debtor did not receive a hearing under those regulations and requests such a hearing, one will be conducted in accordance with 5 CFR part 550, subpart K and 31 CFR part 5.

(3) *Tax refund offset.* The Department may effect collection of an overpayment by offset of the debtor's tax refund in accordance with the Department's tax refund offset regulations found at 31 CFR part 5.

§ 29.518 Reporting delinquent debts to credit bureaus.

(a) *Notice.* If a debtor's response to the demand letter does not result in payment in full, payment by offset, or payment in accordance with a voluntary repayment agreement or other repayment schedule acceptable to the Benefits Administrator, and the debtor's rights under § 29.512 through § 29.514 have been exhausted, the Benefits Administrator must report the debtor to a credit bureau. In addition, a debtor's failure to make subsequent payments in accordance with a repayment schedule must result in a report to a credit bureau. Before making a report to a credit bureau, the Benefits Administrator must notify the debtor in writing that—

(1) The payment is overdue;

(2) The Benefits Administrator intends, after 60 days, to make a report as described in paragraph (b) of this section to a credit bureau;

(3) The debtor's right to dispute the liability has been exhausted under § 29.512 through § 29.514; and

(4) The debtor may avoid having the Benefits Administrator report the debtor

to a credit bureau by paying the debt in one lump sum or making payments current under a repayment schedule.

(b) *Report.* If, after being sent the notice described in paragraph (a) of this section, the debtor does not pay the overpayment debt or make payments current under a repayment schedule or fails to respond to the notice, and 60 days have elapsed since the notice was mailed, the Benefits Administrator will report to a credit bureau that the debtor is responsible for an unpaid debt and provide the following information:

(1) The debtor's name, address, taxpayer identification number, and any other information necessary to establish the identity of the individual;

(2) The amount, status, and history of the debt; and

(3) The fact that the debt arose in connection with the administration of Federal Benefit Payments under a District Retirement Fund.

(c) *Subsequent reports.* The Benefits Administrator must update its report to the credit bureau whenever it has knowledge of events that substantially change the status or the amount of the liability.

(d) *Other reporting of delinquent debts.* Pursuant to 31 CFR 901.4, delinquent overpayment debts should be reported to the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS).

(e) *Privacy Act considerations.* A delinquent debt may not be reported under this section unless a notice issued pursuant to the Privacy Act, 5 U.S.C. 552a(e)(4), authorizes the disclosure of information about the debtor to a credit bureau or CAIVRS.

§ 29.519 Referral to a collection agency.

(a) The Department retains the responsibility for resolving disputes, compromising debts, referring overpayment debts for litigation, and suspending or terminating collection action.

(b) The Department may not refer overpayment debts to commercial collection agencies until all procedures required by or requested under § 29.511 through § 29.514 have been completed.

§ 29.520 Referral for litigation.

The Department may refer to the Justice Department for litigation overpayment debts which cannot be compromised or waived, or on which collection activity cannot be suspended or terminated, and which the Department has been unable to recover pursuant to the collection activity described in § 29.511 through § 29.519. (See 31 CFR part 904.) Such debts

should be referred to the Justice Department as early as possible, but at least within 1 year of the date such debts last became delinquent. In the case of overpayments arising from fraud, misrepresentation, or the presentation of a false claim, referral should be made to the Justice Department immediately. (See 31 CFR 900.3(a).) Referral of a debt to the Justice Department will suspend processing under § 29.511 through § 29.519 of this subpart.

Standards for Waiver of Overpayments

§ 29.521 Conditions for waiver and other adjustments.

(a) *General.* Overpayments made from the Retirement Funds will be recovered unless there is substantial evidence that the individual from whom recovery is to be made is eligible for waiver.

(b) *Waiver.* The Department may waive an overpayment from the Retirement Funds (provided there is no indication of fraud, misrepresentation, or lack of good faith on the part of the debtor) under sections 11021(3) or 11251(c)(2)(B) of the Act when it is established by substantial evidence that the individual from whom recovery is to be made—

- (1) Is not at fault in causing or contributing to the overpayment, and
- (2) Recovery would be against equity and good conscience.

(c) *Adjustment in the installment schedule.* (1)(i) An overpayment will not be waived because of financial hardship if a reasonable installment schedule can be established for repayment of the debt by adjusting the installment schedule originally established.

(ii) For example, if the Department finds that the original installment schedule—24 installments at \$125 each—causes the debtor financial hardship, but that repayment in 60 installments at \$50 each does not, it may adjust the installments and recover the debt in full.

(2) Where it has been determined that an individual is ineligible for a waiver, but the individual has shown that collection action pursuant to the original installment schedule would cause him or her financial hardship, the Department may—

- (i) Adjust the installment schedule if the individual shows that it would cause him or her financial hardship to make payments at the rate initially scheduled by the Department; or
- (ii) Terminate the collection action under 31 CFR 903.3 if the costs of collecting the debt are anticipated to exceed the amount recoverable.

§ 29.522 Fault.

(a) *General rule.* A debtor is considered to be at fault if he or she, or any other person having an interest in obtaining a waiver of the claim, caused or contributed to the accrual of the overpayment. The Department considers a debtor or any other person having an interest in obtaining a waiver of the claim to have caused or contributed to the accrual of an overpayment if—

(1) Payment resulted from the individual's incorrect but not fraudulent statement, which the individual knew or should have known to be incorrect; or

(2) Payment resulted from the individual's failure to disclose facts in his or her possession which the individual knew or should have known were material, when the Department has identified that the individual has a duty to report and has clearly notified the individual of this reporting requirement.

(3) The following factors may affect the decision as to whether the debtor is or is not at fault where the debtor submitted an incorrect statement, or the debtor failed to disclose material facts in his or her possession—

- (i) The debtor's age;
- (ii) The debtor's physical and/or mental condition; and
- (iii) The availability and nature of the information provided to the debtor by the Department.

(b) *Knowledge of an overpayment.* (1) Individuals who are aware that they are not entitled to a payment or are aware that a payment is higher than the payment to which they are entitled are not considered to have contributed to the overpayment if they promptly contact the Benefits Administrator and question the correctness of the payment and take no further action in reliance of the overpayment.

(2) Any contact made with the Benefits Administrator concerning the overpayment within 60 days of receipt (if the overpayment is a recurring payment, contact must be made within 60 days of the initial payment) will satisfy the prompt notification requirement.

(c) *Reasonable person standard.* The Department will use a reasonable person standard to determine whether an individual should have known that a statement was incorrect or that material facts in the individual's possession should have been disclosed. The reasonable person standard will take into account the objective factors set forth in paragraph (a)(3) of this section.

§ 29.523 Equity and good conscience.

Recovery is against equity and good conscience when there is substantial evidence that—

(a) It would cause financial hardship to the person from whom it is sought no matter what the amount and length of the proposed installment;

(b) The recipient of the overpayment can show (regardless of his or her financial circumstances) that due to the notice that such payment would be made or because of the incorrect payment he or she either has relinquished a valuable right or has changed positions for the worse; or

(c) Recovery would be unconscionable under the circumstances.

§ 29.524 Financial hardship.

Financial hardship may be deemed to exist when the debtor needs substantially all of his or her current and anticipated income and liquid assets to meet current and anticipated ordinary and necessary living expenses during the projected period of collection. Financial hardship will not be found to exist when the debtor merely establishes that the repayment causes a financial burden, i.e., when it is inconvenient to repay the debt. If there are anticipated changes in income or expenses that would allow for the recovery of the overpayment at a later date, the Department may suspend collection action until a future date.

(a) *Considerations.* Pertinent considerations in determining whether recovery would cause financial hardship include the following:

- (1) The debtor's financial ability to pay at the time collection is scheduled to be made, and
- (2) Income to other family member(s), if such member's ordinary and necessary living expenses are included in expenses reported by the debtor.

§ 29.525 Ordinary and necessary living expenses.

An individual's ordinary and necessary living expenses include rent, mortgage payments, utilities, maintenance, transportation, food, clothing, insurance (life, health, and accident), taxes, installment payments for which the individual is already liable, medical expenses, support expenses for which the individual is legally responsible, and other miscellaneous expenses that the individual can establish as being ordinary and necessary.

§ 29.526 Waiver precluded.

Waivers will not be offered or granted when—

(1) The overpayment was obtained by fraud, misrepresentation, or by improper negotiation of checks or withdrawal of electronic fund transfer payments after the death of the payee; or

(2) The overpayment was made to an estate and a timely demand for repayment is made prior to the final disbursement by the administrator or executor of the estate.

[FR Doc. 01-17545 Filed 7-12-01; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 668

Report On Use of Employees of Non-Federal Entities To Provide Services to Department of the Army

AGENCY: Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs), and Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology), Department of Army, DOD.

ACTION: Final rule.

SUMMARY: This action removes the Department of the Army regulations on Contractor Manhour Reporting Requirement. The Director of Defense Procurement directed the Department of the Army to withdraw the regulations pending approval of, and further rulemaking on, the repetitive use provisions employed in covered Army contracts. In addition, the Office of Management and Budget concluded that the final rule made significant changes to the interim rule in apparent conflict with the Paperwork Reduction Act.

DATES: Effective July 13, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. John R. Conklin, at *john.conklin@saalt.army.mil*, or Dr. John C. Anderson at 703-614-8247 or *John.Anderson@hqda.army.mil*.

SUPPLEMENTARY INFORMATION: 1.

Applicability: No new contract actions containing the requirements cited in 32 CFR Part 668 may be awarded after the effective date of this rule. Contracting officers shall timely notify, in writing, all contractors whose existing contracts contain 32 CFR Part 668 requirements, that the requirement has been eliminated and that no further reporting is required under those contract actions. Any actual modification of such contracts to formally eliminate the requirement must take into account such issues as consideration and best

interest of the Government on a case-by-case basis.

2. *Background:* The Department of the Army, in the **Federal Register** (65 FR 13906) dated Wednesday, March 15, 2000, announced an interim rule to establish and implement basic contractor-reporting requirements to identify the number and value of direct, and associated indirect, labor work year equivalents for contracted services in support of the Army. This requirement was Army's implementation of statutory mandates and FY 2000 Congressional data requirements (10 U.S.C. 129a, 10 U.S.C. 2461(g) and Section 343 of the FY 2000 DoD Authorization Act).

Army contracting officers were directed to include the reporting requirements in all covered contracts involving services for Research and Development or Other Services and Construction. The interim rule was effective on the date of publication. A final rule, published at 65 FR 81357-81362, December 26, 2000, codified regulations at 32 CFR Part 668 that mandated the inclusion of a reporting requirement in certain contract actions as described in the rule.

As a result of a number of legal and technical/procedural issues and significant complaints from industry about the scope and methodology of the Army final rule and the rulemaking process, the Director of Defense Procurement (DDP) in memorandums dated May 5, and June 5, 2001, directed the Army to cease using the standard contract requirements language ("repetitive use clause") in covered contracts absent approval by the DDP and rulemaking in 40 CFR (covering acquisition regulations supplementing and implementing the Federal Acquisition Regulations System). The Office of Management and Budget concluded that the final rule made significant changes to the interim rule without changing the Paperwork Reduction Act estimates and assumptions, and without allowing for additional public comment thereon, in apparent conflict with the requirements of the Paperwork Reduction Act.

Based on the foregoing, the Army hereby removes the resulting regulations from the Code of Federal Regulations (32 CFR Part 668).

General: The Army's requirement for information on unit level contractor manpower equivalents, as stated in the December 26, 2000, final rule, remains. The Army needs this information for a host of reasons, including planning, programming and budgeting, and prioritization and allocation of resources. From March 2000 to the present, the Army collected over \$9.2 billion in

contract data from approximately 1,200 contractors. Although this data has yet to be validated and analyzed in depth, initial indications are that the numbers of contract manpower equivalents reported by contractors were lower (for the associated values) than those estimated employing algorithms currently used by the Department of the Army and the Department of Defense for reporting to Congress.

List of Subjects in 32 CFR Part 668

Government contracting, Reporting and recordkeeping requirements.

PART 668—[REMOVED AND RESERVED]

Accordingly, for the reasons set out in the preamble, 32 CFR Chapter V, Subchapter L, Part 668, *Contractor Manhour Reporting Requirement*, is removed in its entirety.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01-17613 Filed 7-12-01; 8:45 am]

BILLING CODE 3710-08-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

Miscellaneous Rules Relating to Common Carriers

CFR Correction

In Title 47 of the Code of Federal Regulations, parts 40 to 69, revised as of Oct. 1, 2000, in §§ 64.2103, 64.2104 and 64.2105 remove the effective date note.

[FR Doc. 01-55520 Filed 7-12-01; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No.010710169-1169-01; I.D. 060401B]

RIN 0648-AP31

Atlantic Highly Migratory Species; Pelagic Longline Fishery; Sea Turtle Protection Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency rule; request for comments.