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24 CFR Part 17

HUD Debt Collection: Revisions and Update to the Procedures for the
Collection of Claims; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 17

[Docket No. FR-5166-P-01]

RIN 2501-AD36

HUD Debt Collection: Revisions and Update to the Procedures for the Collection of Claims

AGENCY: Office of the Chief Financial Officer, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise and update HUD's regulations governing the procedures for the collection of claims by HUD. This proposed rule would primarily revise HUD's debt collection regulations to implement the Debt Collection Improvement Act of 1996 (DCTA) and the revised Federal Claims Collection Standards (FCCS). The DCTA and FCCS generally apply to the collection of nontax debt owed to the Federal Government and require referral of all eligible delinquent nontax debt to the Department of the Treasury for collection by centralized offset and to a designated debt collection center for debt servicing when a debt becomes 180 days delinquent. This proposed rule would also update and make technical corrections to HUD's salary offset provisions to conform to the changes made to HUD's debt collection regulations.

DATES: *Comment Due Date:* September 6, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, 451 Seventh Street, SW., Room 10276, Department of Housing and Urban Development, Washington, DC 20410-0001. Communications must refer to the above docket number and title. There are two methods for submitting public comments.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0001.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to

prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule. *No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All comments and communications properly submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Scott Moore, Financial Operations Analyst, Financial Policy and Procedures Division, Office of the Chief Financial Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 3210, Washington, DC 20410; telephone number 202-402-2277 (this is not a toll-free number). Persons with hearing or speech challenges may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

Introduction

The Debt Collection Improvement Act of 1996 (DCIA), Public Law 104-134, 110 Stat. 1321, 1358 (approved April 26, 1996) (codified in scattered sections of 31 U.S.C. ch. 37), consolidated within the Department of the Treasury responsibility for the collection of most delinquent nontax debts owed to the Federal Government. Prior to passage of the DCIA, the Department of the Treasury, through its Financial Management Service, assisted the Office

of Management and Budget in providing Federal agencies with guidance on collecting nontax debt owed to the government. Methods for agencies' collection of nontax debt include administrative offset, which is authorized at 31 U.S.C. 3716, and tax refund offset under 26 U.S.C. 6402(d), 31 U.S.C. 3720A, and implementing regulations at 31 CFR 285.2. The passage of the DCIA represented a comprehensive effort to reform the management of federal nontax receivables, while responding to the increase in the amount of delinquent nontax debt owed to the United States. The DCIA is implemented through the Treasury's regulations promulgated at 31 CFR part 285 and the revised Federal Claims Collection Standards (FCCS), issued jointly by the Secretary of the Treasury and the Attorney General, which are codified at 31 CFR parts 900 through 904.¹

The DCIA and FCCS establish a framework for improved Federal Governmentwide debt collection by centralizing the management of debts that are over 180 days delinquent within the Department of the Treasury and by providing federal agencies with more effective debt collection tools, including recovery through centralized administrative offsets and administrative wage garnishments. Generally, the DCIA requires federal agencies to take prompt action to recover debts, aggressively monitor all accounts, properly screen potential borrowers in the case of credit programs, and resolve the outstanding debt through a variety of options, including referring the debt to the Department of Justice for litigation, notifying the Department of the Treasury of all debts that are 180 days delinquent for purposes of offset, and, unless exempt by law, transferring all eligible debts that are over 180 days delinquent to a designated debt collection center. To further facilitate the collection of debts, the 10-year statute of limitations that applied to collection of debt through administrative offset under the DCIA was eliminated by Congress in 2008 (Pub. L. 110-234, sec. 14219) through amendment to 31 U.S.C. 3716(e).

¹ The Federal Claims Collection Standards (FCCS) are issued jointly by the Secretary of the Treasury and the Attorney General. These regulations prescribe the standards for the administrative collection, compromise, termination of agency collection, and the referral to the Department of Justice for litigation of civil claims by the Federal Government for money or property.

The Treasury Offset Program and Cross-Servicing

The Treasury Offset Program (TOP) is a centralized debt collection program that matches information about delinquent debts with information about payments being disbursed by federal and state disbursing officials, including the Department of the Treasury, the Department of Defense and the U.S. Postal Service payment files. When an eligible match occurs, the payment to the debtor is intercepted, and the payment is offset up to the amount of the debt or up to the maximum amount allowed by law. Cross-servicing is the designated debt collection center operated by the Treasury Department.

In order to effectively collect debts referred by federal agencies, the Department of the Treasury takes all appropriate steps to collect the debt on behalf of the agency to which the debt is owed. As part of that process, it issues demand letters, conducts telephone follow-up, initiates skip tracing, refers debts for administrative offset, performs administrative wage garnishment, and refers debts to the Department of Justice and to private collection agencies.

II. This Proposed Rule—Proposed Amendments to Part 17

The purpose of this proposed rule is to revise and replace HUD's regulations in subpart C of 24 CFR part 17, which govern the procedures for the collection of claims by the government, to conform to the DCIA and the revised FCCS, which apply to the collection of debt owed to HUD. The revised regulations in subpart C of part 17 would be further grouped under four headings. The first heading, General Provisions, would include the purpose and scope of, as well as definitions that apply to, subpart C. The second heading, Administrative Offset and Other Actions, would include the procedures that apply when HUD seeks satisfaction of debts owed to HUD by administrative offset of nonsalary payments by the Federal Government and when HUD takes other administrative actions for nonpayment of debt. The third heading, Administrative Wage Garnishment, would include the procedures that apply when HUD seeks to satisfy a debt owed to HUD out of the debtor's compensation from an employer other than the Federal Government. The fourth heading, Salary Offset, would include procedures that apply in certain cases when HUD seeks to satisfy a debt owed to it through offset of the salary of a Federal Government employee.

The revisions proposed by this rule primarily apply to regulations under the

second heading under subpart C, Administrative Offset and Other Actions, to conform to the DCIA and the revised FCCS, which apply to the collection of debt owed to HUD. As part of this streamlining effort, this proposed rule would eliminate provisions in HUD regulations that no longer conform to the DCIA and FCCS or that simply repeat requirements under the DCIA and FCCS. The revisions in this proposed rule will enable HUD to streamline its procedures for collecting debts, consequently enabling it to collect debts more efficiently, in less time, and with less costs incurred. HUD estimates that a substantial amount of debt will be transferred to the Department of the Treasury for debt collection through cross-servicing or TOP. By transferring debt to an agency with significant expertise and infrastructure to operate as a debt collector, HUD will benefit by decreasing its expenditures of time and funds on debt collection.

This proposed rule also eliminates throughout subpart C references to the 10-year statute of limitations for administrative offset that Congress repealed in 2008 (the 10-year limitation for tax refund offset, which was not required by statute following an earlier amendment of the Debt Collection Act of 1982 (see Pub. L. 110-234, section 14219, 22 Stat. 923 (approved May 22, 2008)), was repealed by regulation on December 28, 2009 (see 74 FR 68537)). Finally, this proposed rule redesignates, updates, and makes technical corrections to provisions under the fourth heading under subpart C, Salary Offset, to conform to the changes made to HUD's regulations under the heading Administrative Offset and Other Actions.

The revisions proposed to be made to HUD's regulations in subpart C of 24 CFR part 17 are as follows:

A. General Provisions

1. Purpose and Scope

Proposed § 17.61 addresses the general purpose and scope of subpart C, cross-references the FCCS, and cites other statutes and regulations that remain applicable to the collection of debt owed to HUD. Proposed § 17.61(a) provides that HUD will undertake debt collection pursuant to the DCIA and the revised FCCS, and such other additional provisions as noted in subpart C. Proposed § 17.61(b) provides that, while generally applicable to the collection of all federal debt, the DCIA does not preclude other authority to collect, settle, compromise, or close claims; for example, the authority to take such action under Title I and section 204(g)

of Title II of the National Housing Act (12 U.S.C. 1703(c)(2) and 1710(g)) and the authority to take such action against debts arising out of the business operations of the Government National Mortgage Association. This rule acknowledges, at § 17.61(b), such other authorities. Proposed 17.61(c) describes the organization of subpart C.

2. Definitions

Proposed § 17.63 contains the definitions of "Department or HUD," "Office," "Secretary," "Office of Appeals," "Treasury," and "United States." The definition of "Department or HUD" is provided to include a person authorized to act for HUD. This definition will allow for flexibility in the administrative assignment of responsibility within HUD for debt collection activities. The definitions solely applicable to the Department's salary offset procedures are contained at § 17.83(f).

B. Administrative Offset and Other Actions

1. Demand and Notice of Intent To Collect

Proposed § 17.65 contains the procedures HUD will follow when notifying the debtor that an amount is past due and payable to the Department. With respect to the timing of actions taken under the DCIA, although a 180-day delinquency triggers the requirement to transfer a debt, a federal agency is not required to wait until that threshold is reached and may transfer a delinquent debt sooner. The implementing regulations issued jointly by the Treasury Department and the Department of Justice require that federal agencies "aggressively collect all debts," (see 31 CFR 901.1(a)) and specifically provide that "[a]gencies should consider referring debts that are less than 180 days delinquent to Treasury or to Treasury-designated 'debt collection centers' to accomplish efficient, cost effective debt collection." (See 31 CFR 901.1(d)).

To address the Treasury's mandate of aggressive debt collection, proposed § 17.65 codifies the Department's current practice, consistent with the DCIA and 31 CFR parts 900-904, of providing appropriate notice to the debtor and referring unpaid debts to the Treasury Department for collection.

2. Review of Departmental Records Related to the Debt

Proposed § 17.67 outlines the process for debtors who intend to inspect or copy departmental records related to the debt, as allowed under the Treasury's

regulations at 31 CFR 901.3. Proposed § 17.67 requires the debtor to send a letter to HUD stating his or her intention to review the departmental records and requires HUD to respond to the debtor with information concerning the location and time that such records may be inspected or copied. HUD may charge the debtor a reasonable fee to compensate for the cost of providing a copy of the departmental records relating to the debt.

3. Procedures and Standards for Review and Collection of Claims

Proposed § 17.69 permits a debtor to request review of a determination that an amount is past due and payable to the Department. The debtor must notify the HUD Office of Appeals (OA) that he or she intends to present evidence showing that all or part of the debt is not past due. The OA must make a determination based upon a review of the evidence and, as appropriate, provide an oral hearing. In order to request a hearing, proposed § 17.71 requires the debtor to file the request with the OA. The hearing procedures set forth in 24 CFR part 26 will apply to hearings in administrative offset cases.

Proposed § 17.73 requires an administrative judge of the OA to issue a written decision that includes the supporting rationale concerning whether a debt is past due and legally enforceable. Such a written decision constitutes final agency action. If a determination by an administrative judge of the OA is made in HUD's favor, HUD may refer the debt to the Treasury Department for collection.

In addition to offering debtors due process protections, including the opportunity for review within HUD, proposed §§ 17.75 and 17.79 also permit HUD to postpone or withdraw referral of the debt to the Treasury Department and provide for a stay of the offset when the debtor exercises his or her right to review HUD's initial determination that the debtor owes to HUD an amount which is past due and enforceable.

4. Administrative Actions for Nonpayment of Debt

Proposed § 17.79 requires HUD to take administrative action against a contractor, grantee, or other participant in a HUD-sponsored program if such contractor, grantee, or other participant fails to pay its debt to HUD within a reasonable time after demand. HUD must refer such party to the Office of General Counsel for investigation and possible debarment or suspension, and, in the case of fraud or suspected fraud, refer such party to HUD's Office of Inspector General for investigation.

However, the failure to pay HUD within a reasonable time after demand is not a prerequisite for referral for fraud or suspected fraud. Depending on the outcome of a referral to the Office of General Counsel or Office of Inspector General, proposed § 17.79 also requires HUD to ensure that such party is placed on the Excluded Parties List System, which is maintained by the General Services Administration.

C. Administrative Wage Garnishment

Proposed § 17.81 of subpart C permits HUD to collect a debt by using administrative wage garnishment. Section 17.81 authorizes HUD to use the regulations in 31 CFR 285.11 to collect money from a debtor's disposable pay to satisfy delinquent debt owed to HUD. To the extent that 31 CFR 285.11 does not apply, HUD is governed by its hearing procedures in 24 CFR part 26.

D. Salary Offset

Proposed §§ 17.83 through 17.113 of subpart C contain HUD's procedures to implement salary offset. This proposed rule redesignates the salary offset provisions and makes technical changes to the cross-references contained within. It more specifically describes the applicability of HUD's salary offset provisions in § 17.83(b), in recognition of the fact that salary offset is now generally carried out through centralized procedures by the Treasury Department's Financial Management Service. (See 5 CFR 550.1108 and 31 CFR 285.7.) Section 17.83(d) is revised to reference the employee's right to propose a repayment agreement in lieu of offset, which the Secretary may accept upon balancing of the Department's interest in collecting the debt against hardship to the employee under § 17.99. (Financial hardship may also be a factor that the hearing official considers under § 17.91 in reviewing the Secretary's proposed offset schedule.) The proposed rule makes five additional changes.

First, proposed § 17.89(d) requires the Department to include, in its Notice of Intent to Offset Salary, an explanation of the Department's requirements concerning interest. Prior to the proposed rule, the Department's requirements contained an exception if payments were excused in accordance with § 17.72. However, because this proposed rule revises HUD's debt collection regulations to implement the DCIA, § 17.72 is no longer applicable. As such, proposed § 17.89(d) requires that HUD provide an explanation of the interest, penalties, and administrative costs, including a statement that such

assessments must be made unless excused in accordance with the FCCS.

Second, proposed § 17.101(c) provides that, if the employee retires or resigns before collection of the amount of the indebtedness is complete, the remaining indebtedness will be collected from the employee under the procedures for collecting claims owed to the Department, as provided in §§ 17.61 through 17.69 of this proposed rule. Prior to the proposed rule, the Department collected remaining indebtedness according to the procedures for administrative offset under §§ 17.100 through 17.118, which have subsequently been amended by this proposed rule.

Third, proposed § 17.103 would clarify that debts for travel advances and training expenses will be collected in a lump sum, rather than in installments. Collection of such debts in lump sum is in conformance with 5 U.S.C. 4108, 5 U.S.C. 5705, and Financial Management Service guidance. (See Managing Federal Receivables, May 2005, p. 6–41.)

Fourth, proposed § 17.107 requires that the Department charge interest on indebtedness in accordance with the FCCS. Previously, the salary offset regulations required interest to be collected in accordance with § 17.72. However, because this proposed rule revises HUD's debt collection regulations to implement the DCIA, § 17.72 is no longer applicable.

Finally, the 10-year statute of limitations previously implemented in § 17.114 is eliminated in accordance with Section 14219(a) of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–234, approved May, 22, 2008), which amended the Debt Collection Improvement Act at 31 U.S.C. 3716(e) to remove the statute of limitations.

III. Findings and Certifications

Environmental Impact

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction; or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposed rule revises HUD's regulations at 24 CFR part 17, subpart C, which govern HUD's procedures for the collection of claims owed to HUD or to another federal agency. These revisions to HUD's regulations are mandated by the DCIA, which directs federal agencies to update their regulations, and are directed to all entities, small or large, in addition to individuals such as federal employees. The revisions impose no significant economic impact on a substantial number of small entities. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Notwithstanding HUD's view that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempts state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule will not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of UMRA.

List of Subjects in 24 CFR Part 17

Administrative practice and procedure, Claims, Government employees, Income taxes, Wages.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 17 to read as follows:

PART 17—ADMINISTRATIVE CLAIMS

1. The authority citation for part 17 continues to read as follows:

Authority: 5 U.S.C. 5514; 31 U.S.C. 3701, 3711, 3716–3720E; and 42 U.S.C. 3535(d).

2. Revise subpart C to read as follows:

Subpart C—Procedures for the Collection of Claims by the Government**General Provisions**

- 17.61 Purpose and scope.
17.63 Definitions.

Administrative Offset and Other Actions

- 17.65 Demand and notice of intent to collect.
17.67 Review of departmental records related to the debt.
17.69 Review within HUD of a determination that an amount is past due and legally enforceable.
17.71 Request for hearing.
17.73 Determination of the HUD Office of Appeals.
17.75 Postponements, withdrawals, and extensions of time.
17.77 Stay of referral for offset.
17.79 Administrative actions for nonpayment of debt.

Administrative Wage Garnishment

- 17.81 Administrative wage garnishment.

Salary Offset

- 17.83 Scope and definitions.
17.85 Coordinating offset with another federal agency.
17.87 Determination of indebtedness.
17.89 Notice requirements before offset.
17.91 Request for a hearing.
17.93 Result if employee fails to meet deadlines.
17.95 Written decision following a hearing.
17.97 Review of departmental records related to the debt.
17.99 Written agreement to repay debt as an alternative to offset.
17.101 Procedures for salary offset: when deductions may begin.
17.103 Procedures for salary offset: types of collection.
17.105 Procedures for salary offset: methods of collection.
17.107 Procedures for salary offset: imposition of interest.
17.109 Nonwaiver of rights.
17.111 Refunds.
17.113 Miscellaneous provisions: correspondence with the Department.

Subpart C—Procedures for the Collection of Claims by the Government**General Provisions****§ 17.61 Purpose and scope.**

(a) *In general.* HUD will undertake debt collection pursuant to this subpart

in accordance with the Debt Collection Improvement Act of 1996, codified in scattered sections of 31 U.S.C. chapter 37; the revised Federal Claims Collection Standards, codified at 31 CFR parts 900 through 904; the Treasury debt collection regulations set forth in 31 CFR part 285; and such additional provisions as provided in this subpart.

(b) *Applicability of other statutes and regulations.* (1) Nothing in this subpart precludes the authority under statutes and regulations other than those described in this subpart to collect, settle, compromise, or close claims, including, but not limited to:

(i) Debts incurred by contractors under contracts for supplies and services awarded by HUD under the authority of subpart 32.6 of the Federal Acquisition Regulation (FAR);

(ii) Debts arising out of the business operations of the Government National Mortgage Association; and

(iii) Debts arising under Title I or section 204(g) of Title II of the National Housing Act (12 U.S.C. 1701 *et seq.*).

(2) This subpart is not applicable to tax debts or to any debt for which there is an indication of fraud or misrepresentation, unless the debt is returned by the Department of Justice to HUD for handling.

(c) *Scope.* Sections 17.65 through 17.79, under the heading Administrative Offset and Other Actions, includes the procedures that apply when HUD seeks satisfaction of debts owed to HUD by administrative offset of payments by the Federal Government other than federal salary payments, and when HUD takes other administrative actions for nonpayment of debt. Section 17.81, under the heading Administrative Wage Garnishment, includes the procedures that apply when HUD seeks to satisfy a debt owed to HUD out of the debtor's compensation from an employer other than the Federal Government. Sections 17.83 through 17.113, under the heading Salary Offset, include procedures that apply when HUD or another federal agency seeks to satisfy a debt owed to it through offset of the salary of a current federal employee.

§ 17.63 Definitions.

As used in this subpart:

Department or HUD means the Department of Housing and Urban Development, and includes a person authorized to act for HUD.

Office means the organization of each Assistant Secretary of HUD or other HUD official at the Assistant Secretary level, and each Field Office.

Office of Appeals or OA means the HUD Office of Appeals within the HUD Office of Hearings and Appeals.

Secretary means the Secretary of HUD.

Treasury means the Department of the Treasury.

United States includes an agency of the United States.

Administrative Offset and Other Actions

§ 17.65 Demand and notice of intent to offset.

HUD will make written demand upon the debtor pursuant to the requirements of 31 CFR 901.2 and send written notice of intent to offset to the debtor pursuant to the requirements of 31 CFR 901.3 and 31 CFR part 285, subpart A. The Secretary shall mail the demand and notice of intent to offset to the debtor, at the most current address that is available to the Secretary. HUD may refer the debt to the Treasury for collection and shall request that the amount of the debt be offset against any amount payable by the Treasury as a federal payment, at any time after 60 days from the date such notice is sent to the debtor.

§ 17.67 Review of departmental records related to the debt.

(a) *Notification by the debtor.* A debtor who intends to inspect or copy departmental records related to the debt pursuant to 31 CFR 901.3 must, within 20 calendar days after the date of the notice in § 17.65, send a letter to HUD, at the address indicated in the notice of intent to offset, stating his or her intention. A debtor may also request, within 20 calendar days from the date of such notice, that HUD provide the debtor with a copy of departmental records related to the debt.

(b) *HUD's response.* In response to a timely notification by the debtor as described in paragraph (a) of this section, HUD shall notify the debtor of the location and the time when the debtor may inspect or copy departmental records related to the debt. If the debtor requests that HUD provide a copy of departmental records related to the debt, HUD shall send the records to the debtor within 10 calendar days from the date that HUD receives the debtor's request. HUD may charge the debtor a reasonable fee to compensate for the cost of providing a copy of the departmental records related to the debt.

§ 17.69 Review within HUD of a determination that an amount is past due and legally enforceable.

(a) *Notification by the debtor.* A debtor who receives notice of intent to offset pursuant to § 17.65 has the right to a review of the case and to present evidence that all or part of the debt is

not past due or not legally enforceable. The debtor may send a copy of the notice with a letter notifying the Office of Appeals of his or her intention to present evidence. Failure to give this notice shall not jeopardize the debtor's right to present evidence within the 60 calendar days provided for in paragraph (b) of this section. If the Office of Appeals has additional procedures governing the review process, a copy of the procedures shall be mailed to the debtor after the request for review is received and docketed by the Office of Appeals.

(b) *Submission of evidence.* If the debtor wishes to submit evidence showing that all or part of the debt is not past due or not legally enforceable, the debtor must submit such evidence to the Office of Appeals within 60 calendar days after the date of the notice of intent to offset. Failure to submit evidence will result in a dismissal of the request for review by the OA.

(c) *Review of the record.* After timely submission of evidence by the debtor, the OA will review the evidence submitted by the Department that shows that all or part of the debt is past due and legally enforceable. The decision of an administrative judge of the OA will be based on a preponderance of the evidence as to whether there is a debt that is past due and whether it is legally enforceable. The administrative judge of the OA shall make a determination based upon a review of the evidence that comprises the written record, except that the OA may order an oral hearing if the administrative judge of the OA finds that:

(1) An applicable statute authorizes or requires the Department to consider a waiver of the indebtedness and the waiver determination turns on credibility or veracity; or

(2) The question of indebtedness cannot be resolved by review of the documentary evidence.

(d) *Previous decision by an administrative judge of the Office of Appeals.* The debtor is not entitled to a review of the Department's intent to offset if an administrative judge of the OA has previously issued a decision on the merits that the debt is past due and legally enforceable, except when the debt has become legally unenforceable since the issuance of that decision, or the debtor can submit newly discovered material evidence that the debt is presently not legally enforceable.

§ 17.71 Request for hearing.

The debtor shall file a request for a hearing with the OA at the address specified in the notice or at such other

address as the OA may direct in writing to the debtor.

§ 17.73 Determination of the HUD Office of Appeals.

(a) *Determination.* An administrative judge of the OA shall issue a written decision that includes the supporting rationale for the decision. The decision of the administrative judge of the OA concerning whether a debt or part of a debt is past due and legally enforceable is the final agency decision with respect to the past due status and enforceability of the debt.

(b) *Copies.* Copies of the decision of the administrative judge of the OA shall be distributed to HUD's General Counsel, HUD's Chief Financial Officer (CFO), or other appropriate HUD program official, the debtor, and the debtor's attorney or other representative, if any.

(c) *Notification to the Department of the Treasury.* If the decision of the administrative judge of the OA affirms that all or part of the debt is past due and legally enforceable, HUD shall notify the Treasury after the date that the determination of the OA has been issued under paragraph (a) of this section and a copy of the determination has been received by HUD's CFO or other appropriate HUD program official. No referral shall be made to the Treasury if the review of the debt by an administrative judge of the OA subsequently determines that the debt is not past due or not legally enforceable.

§ 17.75 Postponements, withdrawals, and extensions of time.

(a) *Postponements and withdrawals.* HUD may, for good cause, postpone or withdraw referral of the debt to the Treasury.

(b) *Extensions of time.* At the discretion of an administrative judge of the OA, time limitations required in these procedures may be extended in appropriate circumstances for good cause.

§ 17.77 Stay of referral for offset.

If the debtor timely submits evidence in accordance with § 17.69(b), the referral to the Treasury in § 17.65 shall be stayed until the date of the issuance of a written decision by an administrative judge of the OA that determines that a debt or part of a debt is past due and legally enforceable.

§ 17.79 Administrative actions for nonpayment of debt.

(a) *Referrals for nonpayment of debt.* When a contractor, grantee, or other participant in a program sponsored by HUD, fails to pay its debt to HUD within

a reasonable time after demand, HUD shall take such measures to:

(1) Refer such contractor, grantee, or other participant to the Office of General Counsel for investigation of the matter and possible suspension or debarment pursuant to 2 CFR part 2424, 2 CFR 180.800, and subpart 9.4 of the Federal Acquisition Regulation (FAR); and

(2) In the case of matters involving fraud or suspected fraud, refer such contractor, grantee, or other participant to the Office of Inspector General for investigation. However, the failure to pay HUD within a reasonable time after demand is not a prerequisite for referral for fraud or suspected fraud.

(b) *Excluded Parties List System (EPLS)*. Depending upon the outcome of the referral in paragraph (a), HUD shall take such measures to insure that the contractor, grantee, or other participant is placed on the EPLS.

(c) *Report to the Treasury*. The failure of any surety to honor its obligations in accordance with 31 U.S.C. 9304 shall be reported to the Chief Financial Officer, who shall inform the Treasury.

Administrative Wage Garnishment

§ 17.81 Administrative wage garnishment.

(a) *In general*. HUD may collect a debt by using administrative wage garnishment pursuant to 31 CFR 285.11. To the extent that situations arise that are not covered by 31 CFR 285.11, those situations shall be governed by 24 CFR part 26, subpart A.

(b) *Hearing official*. Any hearing required to establish HUD's right to collect a debt through administrative wage garnishment shall be conducted by an administrative judge of the OA under 24 CFR part 26, subpart A of part 26.

Salary Offset

§ 17.83 Scope and definitions.

(a) The provisions set forth in §§ 17.83 through 17.113 are the Department's procedures for the collection of delinquent nontax debts by salary offset of a federal employee's pay to satisfy certain debts owed the government, including centralized salary offsets in accordance with 31 CFR part 285.

(b)(1) This section and §§ 17.85 through 17.99 apply to collections by the Secretary through salary offset from current employees of the Department and other agencies who owe debts to the Department; and

(2) This section, § 17.85, and §§ 17.101 through 17.113 apply to HUD's offset of pay to current employees of the Department and of other agencies who owe debts to HUD or other agencies under noncentralized

salary offset procedures, in accordance with 5 CFR 550.1109.

(c) This subpart does not apply to debts or claims arising under the Internal Revenue Code of 1954 (26 U.S.C. 1–9602), the Social Security Act (42 U.S.C. 301–1397f), the tariff laws of the United States, or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(d) This subpart identifies the types of salary offset available to the Department, as well as certain rights provided to the employee, which include a written notice before deductions begin, the opportunity to petition for a hearing, receiving a written decision if a hearing is granted, and the opportunity to propose a repayment agreement in lieu of offset. These employee rights do not apply to any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

(e) Nothing in this subpart precludes the compromise, suspension, or termination of collection actions where appropriate under the Department's regulations contained elsewhere in this subpart (see 24 CFR 17.61 through 17.79).

(f) As used in the salary offset provisions at §§ 17.83 through 17.113: *Agency* means:

- (i) An Executive department, military department, Government corporation, or independent establishment as defined in 5 U.S.C. 101, 102, 103, or 104, respectively;
- (ii) The United States Postal Service; or
- (iii) The Postal Regulatory Commission.

Debt means an amount owed to the United States and past due, from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from assigned mortgages or deeds of trust, direct loans, advances, repurchase demands, fees, leases, rents, royalties, services, sale 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.

Determination means the point at which the Secretary or his designee decides that the debt is valid.

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 deductions required by law.

Deductions from pay include:

(i) Amounts owed by the individual to the United States;

(ii) Amounts withheld for federal employment taxes;

(iii) Amounts properly withheld for federal, state, or local income tax purposes, if the withholding of the amount is authorized or required by law and if amounts withheld are not greater than would be the case if the individual claimed all dependents to which he or she were entitled. The withholding of additional amounts under 26 U.S.C. 3402(i) may be permitted only when the individual presents evidence of tax obligation that supports the additional withholding;

(iv) Amounts deducted as health insurance premiums, including, but not limited to, amounts deducted from civil service annuities for Medicare where such deductions are requested by the Health Care Financing Administration;

(v) Amounts deducted as normal retirement contributions, not including amounts deducted for supplementary coverage. Amounts withheld as Survivor Benefit Plan or Retired Serviceman's Family Protection Plan payments are considered to be normal retirement contributions. Amounts voluntarily contributed toward additional civil service annuity benefits are considered to be supplementary;

(vi) Amounts deducted as normal life insurance premiums from salary or other remuneration for employment, not including amounts deducted for supplementary coverage. Both Servicemembers' Group Life Insurance and "Basic Life" Federal Employees' Group Life Insurance premiums are considered to be normal life insurance premiums; all optional Federal Employees' Group Life Insurance premiums and life insurance premiums paid for by allotment, such as National Service Life Insurance, are considered to be supplementary;

(vii) Amounts withheld from benefits payable under title II of the Social Security Act where the withholding is required by law;

(viii) Amounts mandatorily withheld for the U.S. Soldiers' and Airmen's Home; and

(ix) Fines and forfeitures ordered by a court-martial or by a commanding officer.

Employee means a current employee of a federal agency, including a current member of the Armed Forces or Reserve of the Armed Forces of the United States.

Pay means basic pay, special pay, income pay, retired pay, retainer pay,

or, in the case of an employee not entitled to basic pay, other authorized pay.

Salary offset means a deduction from the pay of an employee without his or her consent to satisfy a debt. Salary offset is one type of administrative offset that may be used by the Department in the collection of claims.

Waiver means the cancellation, remission, forgiveness, or nonrecovery of a debt allegedly owed by an employee of an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C. 716, or 5 U.S.C. 8346(b), or any other law.

§ 17.85 Coordinating offset with another federal agency.

(a) *When HUD is owed the debt.* When the Department is owed a debt by an employee of another agency, the other agency shall not initiate the requested offset until the Department provides the agency with a written certification that the debtor owes the Department a debt (including the amount and basis of the debt and the due date of the payment) and that the Department has complied with this subpart.

(b) *When another agency is owed the debt.* The Department may use salary offset against one of its employees who is indebted to another agency if requested to do so by that agency. Such a request must be accompanied by a certification by the requesting agency that the person owes the debt (including the amount) and that the employee has been given the procedural rights required by 5 U.S.C. 5514 and 5 CFR part 550, subpart K.

§ 17.87 Determination of indebtedness.

In determining that an employee is indebted to HUD, the Secretary will review the debt to make sure that it is valid and past due.

§ 17.89 Notice requirements before offset.

Except as provided in § 17.83(d), deductions will not be made unless the Secretary first provides the employee with a minimum of 30 calendar days written notice. This Notice of Intent to Offset Salary (Notice of Intent) will state:

(a) That the Secretary has reviewed the records relating to the claim and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(b) The Secretary's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest are paid in full;

(c) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(d) An explanation of the Department's requirements concerning interest, penalties, and administrative costs, including a statement that such assessments must be made unless excused in accordance with the Federal Claims Collection Standards as provided in 31 CFR 901.9 (although this information may alternatively be provided in the demand notice pursuant to 24 CFR 17.65);

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

(f) The employee's right to enter into a written agreement with the Secretary for a repayment schedule differing from that proposed by the Secretary, so long as the terms of the repayment schedule proposed by the employee are agreeable to the Secretary;

(g) The right to a hearing, conducted in accordance with subpart A of part 26 of this chapter by an administrative law judge of the Department or a hearing official of another agency, on the Secretary's determination of the debt, the amount of the debt, or percentage of disposable pay to be deducted each pay period, so long as a petition is filed by the employee as prescribed by the Secretary;

(h) That the timely filing of a petition for hearing will stay the collection proceedings (See § 17.91);

(i) That a final decision on the hearing will be issued at the earliest practical date, but not later than 60 calendar days after the filing of the petition requesting the hearing, unless the employee requests and the hearing officer grants a delay in the proceedings;

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

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

(2) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or any other applicable statutory authority; or

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or any other applicable statutory authority.

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

(l) Unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee; and

(m) The method and time period for requesting a hearing, including the address of the Office of Appeals to which the request must be sent.

§ 17.91 Request for a hearing.

(a) Except as provided in paragraph (d) of this section, an employee must file a petition for a hearing that is received by the Office of Appeals not later than 20 calendar days from the date of the Department's notice described in § 17.89 if an employee wants a hearing concerning—

(1) The existence or amount of the debt; or

(2) The Secretary's proposed offset schedule.

(b) The petition must be signed by the employee, must include a copy of HUD's Notice of Intent to Offset Salary, and should admit or deny the existence of or the amount of the debt, or any part of the debt, briefly setting forth any basis for a denial. If the employee objects to the percentage of disposable pay to be deducted from each check, the petition should state the objection and the reasons for it. The petition should identify and explain with reasonable specificity and brevity the facts, evidence, and witnesses that the employee believes support his or her position.

(c) Upon receipt of the petition, the Office of Appeals will send the employee a copy of the Salary Offset Hearing Procedures Manual of the Department of Housing and Urban Development.

(d) If the employee files a petition for hearing later than the 20 calendar days as described in paragraph (a) of this section, the hearing officer may accept the request if the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the filing deadline (unless the employee has actual notice of the filing deadline).

§ 17.93 Result if employee fails to meet deadlines.

An employee waives the right to a hearing, and will have his or her disposable pay offset in accordance with the Secretary's offset schedule, if the employee:

(a) Fails to file a petition for a hearing as prescribed in § 17.91; or

(b) Is scheduled to appear and fails to appear at the hearing.

§ 17.95 Written decision following a hearing.

Written decisions provided after a request for a hearing will include:

(a) A statement of the facts presented to support the nature and origin of the alleged debt;

(b) The hearing officer's analysis, findings, and conclusions, in light of the hearing, concerning the employee's or the Department's grounds;

(c) The amount and validity of the alleged debt; and

(d) The repayment schedule, if applicable.

§ 17.97 Review of departmental records related to the debt.

(a) *Notification by employee.* An employee who intends to inspect or copy departmental records related to the debt must send a letter to the Secretary stating his or her intention. The letter must be received by the Secretary within 20 calendar days of the date of the Notice of Intent.

(b) *Secretary's response.* In response to timely notice submitted by the debtor as described in paragraph (a) of this section, the Secretary will notify the employee of the location and time when the employee may inspect and copy Department records related to the debt.

§ 17.99 Written agreement to repay debt as alternative to salary offset.

(a) *Notification by employee.* The employee may propose, in response to a Notice of Intent, a written agreement to repay the debt as an alternative to salary offset. Any employee who wishes to do this must submit a proposed written agreement to repay the debt, which is received by the Secretary within 20 calendar days of the date of the Notice of Intent.

(b) *Secretary's response.* In response to timely notice by the debtor as described in paragraph (a) of this section, the Secretary will notify the employee whether the employee's proposed written agreement for repayment is acceptable. It is within the Secretary's discretion to accept a repayment agreement instead of proceeding by offset. In making this determination, the Secretary will balance the Department's interest in collecting the debt against hardship to the employee. If the debt is delinquent and the employee has not disputed its existence or amount, the Secretary will accept a repayment agreement instead of offset only if the employee is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

§ 17.101 Procedures for salary offset: When deductions may begin.

(a) Deductions to liquidate an employee's debt will be by the method

and in the amount stated in the Secretary's Notice of Intent to collect from the employee's current pay.

(b) If the employee filed a petition for hearing with the Secretary before the expiration of the period provided for in § 17.91, then deductions will begin after:

(1) The hearing officer has provided the employee with a hearing; and

(2) The hearing officer has issued a final written decision in favor of the Secretary.

(c) If an employee retires or resigns before collection of the amount of the indebtedness is completed, the remaining indebtedness will be collected according to the procedures for the collection of claims under §§ 17.61 through 17.79.

§ 17.103 Procedures for salary offset: Types of collection.

A debt will be collected in a lump sum or in installments. Collection will be by lump-sum collection unless the debt is for other than travel advances and training expenses, and the employee is financially unable to pay in one lump sum, or the amount of the debt exceeds 15 percent of disposable pay. In these cases, deduction will be by installments.

§ 17.105 Procedures for salary offset: Methods of collection.

(a) *General.* A debt will be collected by deductions at officially established pay intervals from an employee's current pay account, unless the employee and the Secretary agree to alternative arrangements for repayment. The alternative arrangement must be in writing, signed by both the employee and the Secretary.

(b) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period will 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. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in 3 years. Installment payments of less than \$25 per pay period or \$50 a month will

be accepted only in the most unusual circumstances.

(c) *Sources of deductions.* The Department will make deductions only from 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.

§ 17.107 Procedures for salary offset: Imposition of interest.

Interest will be charged in accordance with the Federal Claims Collection Standards as provided in 31 CFR 901.9.

§ 17.109 Nonwaiver of rights.

So long as there are no statutory or contractual provisions to the contrary, no employee involuntary payment (of all or a portion of a debt) collected under this subpart will be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514 or any other provision of contract or law.

§ 17.111 Refunds.

The Department will refund promptly to the appropriate individual amounts offset under this subpart when:

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

(b) The Department is directed by an administrative or judicial order to refund amounts deducted from the employee's current pay.

§ 17.113 Miscellaneous provisions: Correspondence with the Department.

The employee shall file a request for a hearing with the Clerk, OA, 409 3rd Street, SW., 2nd Floor, Washington, DC 20024, on official work days between the hours of 8:45 a.m. and 5:15 p.m. (or such other address as HUD may provide by notice from time to time). All other correspondence shall be submitted to the Departmental Claims Officer, Office of the Chief Financial Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410 (or such other officer or address as HUD may provide by notice from time to time). Documents may be filed by personal delivery or mail.

Dated: June 1, 2011.

Shaun Donovan,
Secretary.

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