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and safety privileged information so that the report is put in a publically releasable format.

(d) Nothing in this section voids or otherwise displaces the Board's legal obligations with respect to compliance with the Freedom of Information Act, the Government in the Sunshine Act, or any procedures or requirements contained in the Board's regulations issued pursuant to those Acts.

§ 1708.116 Procedure after safety investigations.

(a) If a formal safety investigation results in a finding that an event or practice has adversely affected, or may adversely affect, public health and safety, the Board may take any appropriate action authorized to it under its enabling statute, including, but not limited to, making a formal recommendation to the Secretary of Energy, convening a hearing, or establishing a reporting requirement.

(b) If a safety investigation yields information relating to violations of federal criminal law involving government officers and employees, the Board shall expeditiously refer the matter to the Department of Justice for disposition.

(c) If in the course of a safety investigation, a safety issue or concern is found to be outside the Board's jurisdiction, that safety issue or concern shall be referred to the appropriate entity with jurisdiction for disposition.

(d) Statements made in connection with testimony provided to the Board in an investigation are subject to the provisions of 18 U.S.C. 1001.

PART 1709—DEBT COLLECTION PROCEDURES

Sec.

1709.101 Cross-reference to executive branch-wide debt collection regulations.

AUTHORITY: 31 U.S.C. 3716(b); 31 U.S.C. 3711(d)(2); 31 CFR parts 900 through 904.

SOURCE: 88 FR 44032, July 11, 2023, unless otherwise noted.

§ 1709.101 Cross-reference to executive branch-wide debt collection regulations.

The Defense Nuclear Facilities Safety Board adopts the regulations at 31

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CFR parts 900 through 904 governing the administrative collection, offset, compromise, and the suspension or termination of collection activity for debts or civil claims for money, funds or property owed to the United States government as defined by 31 U.S.C. 3701(b).

PART 1710—FEDERAL EMPLOYEE SALARY OFFSET PROCEDURES FOR THE COLLECTION OF A DEBT OWED TO THE FEDERAL GOVERNMENT

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AUTHORITY: 5 U.S.C. 5514; 5 CFR part 550 subpart K.

SOURCE: 88 FR 64354, Sept. 19, 2023, unless otherwise noted.

Subpart A—General Provisions

§ 1710.101 Scope.

(a) This part provides procedures for the collection by administrative offset of a federal employee's salary without his/her consent to satisfy certain debts owed to the federal government. This part applies to all federal employees who owe debts to the Defense Nuclear Facilities Safety Board (Board) and to current employees of the Board who owe debts to other federal agencies. This part does not apply when the employee consents to recovery from his/her current pay account.

(b) These procedures do not apply to debts or claims arising under:

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(1) The Internal Revenue Code of 1954, as amended, 26 U.S.C. 1 *et seq.*;

(2) The tariff laws of the United States; or

(3) Any case where a collection of a debt is explicitly provided for or prohibited by another statute.

(c) These procedures do not preclude the compromise, suspension, or termination of collection action where appropriate under the standards implementing the revised Federal Claims Collection Standards (FCCS), 31 U.S.C. 3711 *et seq.*, 31 CFR chapter IX, parts 900 through 904.

(d) This part does not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584 or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the Board. This part does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

(e) The Board is not limited to collection remedies contained in the revised FCCS. The FCCS is not intended to impair common law remedies.

§ 1710.103 Definitions.

Administrative charges are those amounts assessed by the Board to cover the costs of processing and handling delinquent debts due the government.

Administrative offset means withholding money payable by the United States Government to, or held by the government for, a person to satisfy a debt the person owes the United States Government.

Agency means any agency of the executive, legislative, and judicial branches of the federal government, including government corporations.

Centralized salary offset computer matching describes the computerized process used to match delinquent debt records with federal salary payment records when the purpose of the match is to identify federal employees who owe debts to the federal government.

Creditor agency means the agency to which the debt is owed, including a debt collection center when acting on behalf of a creditor agency in matters pertaining to the collection of a debt.

Debt and *claim* are used synonymously to refer to an amount of money, funds, or property that has been determined by an agency official to be owed to the United States from any person, organization, or entity, except another federal agency. For the purposes of administrative offset under 31 U.S.C. 3716, the terms “debt” and “claim” include an amount of money, funds, or property owed by a person to a state (including past-due support being enforced by a state), the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico.

Debt collection center means the Department of the Treasury or other government agency or division designated by the Secretary of the Treasury, with authority to collect debts on behalf of creditor agencies.

Delinquent debt record refers to the information about a debt that an agency submits to Treasury when the agency refers the debt for collection by offset in accordance with the provision of 31 U.S.C. 3716.

Disbursing official means an official who has authority to disburse federal salary payments pursuant to 31 U.S.C. 3321 or another law.

Disposable pay means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of:

(1) Any amount required by law to be withheld;

(2) Amounts properly withheld for federal, state, or local income tax purposes;

(3) Amounts deducted as health insurance premiums;

(4) Amounts deducted as normal retirement contributions, not including amounts deducted for supplementary coverage; and

(5) Amounts deducted as normal life insurance premiums, not including amounts deducted for supplementary coverage.

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Employee is any individual employed by any agency of the executive, legislative, and judicial branches of the federal government, including government corporations.

FCCS means the Federal Claims Collection Standards jointly published by the Department of the Treasury and the Department of Justice at 31 CFR parts 900 through 904.

Hearing official means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed or the repayment schedule if not established by written agreement between the employee and the Board, and who renders a decision on the basis of this hearing.

Paying agency means the agency that employs the individual who owes the debt and authorizes the payment of his/her current pay.

Salary offset means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

Treasury means the Department of the Treasury.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 5 U.S.C. 8346(b), or any other law.

§ 1710.105 Application.

The regulations in this part are to be followed when:

- (a) The Board is owed a debt by an individual currently employed by another federal agency;
- (b) The Board is owed a debt by an individual who is a current employee of the Board; or
- (c) The Board employs an individual who owes a debt to another federal agency.

Subpart B—Notice, Hearing, and Salary Offset Process

§ 1710.107 Notice requirements.

- (a) Deductions under the authority of 5 U.S.C. 5514 shall not be made unless the creditor agency provides the employee with written notice that he/she owes a debt to the Federal government

a minimum of 30 calendar days before salary offset is initiated. When the Board is the creditor agency, this notice of intent to offset an employee's salary shall be hand-delivered at work, or sent by registered mail, return receipt requested, to the employee's most current address that is available to the Board. The written notice will contain:

- (1) A statement that the debt is owed and an explanation of its origin, nature, and amount;
- (2) The creditor agency's intention to collect the debt by deducting from the employee's current disposable pay account until the debt and all accumulated interest are paid in full;
- (3) The amount and frequency of the intended deduction (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay) and the intention to continue the deduction until the debt is paid in full or otherwise resolved;
- (4) An explanation of interest, penalties, and administrative charges, including a statement that these charges will be assessed unless excused in accordance with the Federal Claims Collection Standards at 31 CFR parts 900 through 904;
- (5) The employee's right to inspect and copy government records pertaining to the debt or, if the employee or his or her representative cannot personally inspect the records, to request and receive a copy of these records;
- (6) If not previously provided, the opportunity (under terms agreeable to the Board) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset (31 CFR 901.2) (the agreement must be in writing, signed by the employee and the Board, and documented in the Board's files);
- (7) The employee's right to a hearing conducted by an official arranged for by the Board (an administrative law judge, or alternatively, a hearing official not under the control of the head of the agency) if a petition is filed as prescribed in § 1710.109;
- (8) The methods and time period for petitioning for hearings;
- (9) A statement that the timely filing of a petition for a hearing will stay the

commencement of collection proceedings;

(10) A statement that a final decision on the hearing will be issued not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

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

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

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

(iii) Criminal penalties under sections 286, 287, 1001, and 1002 of title 18, United States Code or any other applicable statutory authority.

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

(13) Unless there are contractual or statutory provisions to the contrary, a statement 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.

(b) Entitlement to hearing:

(1) An employee who has received a notice under paragraph (a) that his or her debt will be collected by means of salary offset may request a hearing concerning the existence or amount of the debt.

(2) If a hearing is given, the employee is entitled to receive a written decision from the official holding the hearing on the following issues:

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

(ii) The repayment schedule, if it was not established by written agreement between the employee and the creditor agency."

(c) Exceptions to entitlement to notice, hearing, written responses, and final decisions:

(1) Any adjustment to pay arising out of any 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;

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

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

§ 1710.109 Hearing.

(a) *Request for hearing.* An employee shall file a petition for a hearing in accordance with the instructions outlined in the creditor agency's notice of salary offset.

(1) If the Board is the creditor agency, a hearing may be requested by filing a written petition stating why the employee disputes the existence or amount of the debt or the repayment schedule if it was not established by written agreement between the employee and the Board. The employee shall sign the petition and fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, which the employee believes support his or her position. The petition for a hearing must be received no later than fifteen (15) calendar days after receipt of the notice of offset unless the employee can show that the delay in meeting the deadline date was because of circumstances beyond his or her control or because of failure to receive notice of the time limit (unless he or she was otherwise aware of it).

(2) [Reserved]

(b) *Failure to submit timely request for hearing.* If the employee fails to submit a request for hearing within the time

period described in paragraph (a)(1) of this section, the employee will have waived the right to a hearing, and salary offset may be initiated. The Board, however, shall accept a late request for hearing if the employee can show that the late request was the result of circumstances beyond the employee's control or because of a failure to receive actual notice of the filing deadline.

(c) *Hearing official.* The Board must obtain the services of a hearing official who is not under the supervision or control of the Board. The Board may contact the Chief Financial Officer to request a hearing official.

(d) *Notice of hearing.* After the employee requests a hearing, the designated hearing official shall inform the employee of the form of the hearing to be provided. For oral hearings, the notice shall set forth the date, time, and location of the hearing. For paper hearings, the notice shall notify the employee of the date by which he or she should submit written arguments to the designated hearing official. The hearing official shall give the employee reasonable time to submit documentation in support of the employee's position. The hearing official shall schedule a new hearing date if requested by both parties. The hearing official shall give both parties reasonable notice of the time and place of a rescheduled hearing.

(e) *Oral hearing.* The hearing official will conduct an oral hearing if he or she determines that the matter cannot be resolved by review of documentary evidence alone (for example, when an issue of credibility or veracity is involved). The hearing need not take the form of an evidentiary hearing, but may be conducted in a manner determined by the hearing official, including but not limited to:

(1) Informal conferences with the hearing official, in which the employee and agency representative will be given full opportunity to present evidence, witnesses, and argument;

(2) Informal meetings with an interview of the employee by the hearing official; or

(3) Formal written submissions, with an opportunity for oral presentation.

(f) *Paper hearing.* If the hearing official determines that an oral hearing is not necessary, he or she will make the determination based upon a review of the available written record, including any documentation submitted by the employee in support of his or her position.

(g) *Failure to appear or submit documentary evidence.* In the absence of good cause shown (for example, excused illness), if the employee fails to appear at an oral hearing or fails to submit documentary evidence as required for a paper hearing, the employee will have waived the right to a hearing, and salary offset may be initiated. Further, the employee will have been deemed to admit the existence and amount of the debt as described in the notice of intent to offset. If the Board's representative fails to appear at an oral hearing, the hearing official shall proceed with the hearing as scheduled and will make his or her determination based upon the oral testimony presented and the documentary evidence submitted by both parties.

(h) *Burden of proof.* The Board will have the initial burden to prove the existence and amount of the debt. Thereafter, if the employee disputes the existence or amount of the debt, the employee must prove by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the employee may present evidence that the proposed terms of the repayment schedule are unlawful, would cause a financial hardship to the employee, or that collection of the debt may not be pursued due to operation of law.

(i) *Record.* The hearing official shall maintain a summary record of any hearing provided by this part. Witnesses will testify under oath or affirmation in oral hearings.

(j) *Date of decision.* The hearing official shall issue a written opinion stating his or her decision, based upon documentary evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than 60 days after the date on which the request for hearing was received by the Board. If the employee requests a delay in the proceedings, the deadline for the decision may be postponed by

the number of days by which the hearing was postponed. When a decision is not timely rendered, the Board shall waive penalties applied to the debt for the period beginning with the date the decision is due and ending on the date the decision is issued. The written decision must include:

- (1) A statement of the facts presented to demonstrate the nature and origin of the alleged debt;
- (2) The hearing official's analysis, findings, and conclusions;
- (3) The amount and validity of the debt; and
- (4) The repayment schedule, where appropriate.

§ 1710.111 Procedures for salary offset.

(a) *Determination of disposable pay.* The Board will determine an employee's disposable pay (as defined in §1710.103) and will implement salary offset as described in paragraph (c) of this section, or when requested by another agency, as described in §1710.113(c). If the debtor is not employed by the Board, the Board will request the agency employing the debtor to determine the amount of the employee's disposable pay and implement salary offset upon request.

(b) *When salary offset begins.* Deductions will begin within three official pay periods following receipt of the creditor agency's request for offset.

(c) *Amount of salary offset.* The amount to be offset from each salary payment will be up to 15 percent of a debtor's disposable pay, as follows:

- (1) If the amount of the debt is equal to or less than 15 percent of the disposable pay, such debt generally will be collected in one lump sum payment;
- (2) Installment deductions will be made over a period of no greater than the anticipated period of employment. An installment deduction 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. An installment deduction may be less than 15 percent of disposable pay if the creditor agency has determined that smaller deductions are appropriate based on the employee's ability to pay.

(d) *Final salary payment.* After the employee has separated either volun-

tarily or involuntarily from the payment agency, the payment agency may make a lump sum deduction exceeding 15 percent of disposable pay from any final salary or other payments pursuant to 31 U.S.C. 3716 in order to satisfy the debt.

(e) *Multiple debts.* In instances where two or more creditor agencies are seeking salary offset, or where two or more debts are owed to a single creditor agency, the Board's finance office may, at its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

(f) *Precedence of debts owed to the Board.* For Board employees, debts owed to the Board generally take precedence over debts owed to other agencies. In the event that a debt to the Board is certified while an employee is subject to a salary offset to repay another agency, the Board's finance office may decide whether to have that debt repaid in full before collecting its claim or whether changes should be made in the salary deduction being sent to the other agency. If debts owed to the Board can be collected in one pay period, the finance office may suspend the salary offset to the other agency for that pay period in order to liquidate the Board debt.

(g) *Order of debt collection.* When an employee owes two or more debts, the best interests of the government shall be the primary consideration in determining the order of debt collection. The Board's finance office, in making this determination, will be guided primarily by the statute of limitations that affects the collection of the debt(s).

§ 1710.113 Coordinating salary offset with other agencies.

(a) *Responsibility of the Board as the creditor agency.* The Chairperson or his or her designee shall coordinate debt collections with other agencies and shall, as appropriate:

- (1) Arrange for a hearing or special review upon proper petitioning by a federal employee; and
- (2) Prescribe, upon consultation with the General Counsel, such additional practices and procedures as may be

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necessary to carry out the intent of this regulation.

(3) The designated salary offset coordinator will be responsible for:

(i) Ensuring that each notice of intent to offset is consistent with the requirements of §§ 1710.107 and 1710.111 of this part;

(ii) Ensuring that each certification of debt that is sent to a paying agency is consistent with the requirements of paragraph (b) of this section;

(iii) Obtaining hearing officials; and

(iv) Ensuring that hearings are properly scheduled.

(b) *Requesting recovery from current paying agency.* Upon completion of the procedures established in these regulations and pursuant to 5 U.S.C. 5514, the Board must:

(1) Certify, in writing, to the paying agency that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that the Board's regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management;

(2) Advise the paying agency of the amount or percentage of disposable pay to be collected in each installment and the number and commencing date of the installments (if a date other than the next officially established pay period is required);

(3) Advise the paying agency of the action(s) taken under 5 U.S.C. 5514(b) and give the date(s) action(s) were taken (unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures and the written consent or statement is forwarded to the paying agency);

(4) Submit a debt claim certification containing the information specified in paragraphs (b)(1), (2), and (3) of this section and an installment agreement (or other instruction on the payment schedule), if applicable, to the paying agency; and

(5) Submit the debt claim to the paying agency for collection if the employee is in the process of separating, and has not received a final salary check, or other final payment(s) from the paying agency. The Board must submit a properly certified claim to

the agency responsible for making such payments before the collection can be made.

(c) *Separated employee.* If the employee is already separated and all payments due from his or her former paying agency have been paid, the Board may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR 831.1801 *et seq.* or 5 CFR 845.401 *et seq.*), or other similar funds, be administratively offset to collect the debt (31 U.S.C. 3716 and the FCCS).

(d) *Employee transfer.* When an employee transfers from one paying agency to another paying agency, the Board is not required to repeat the due process procedures described in 5 U.S.C. 5514 and this subpart to resume the collection. The Board will submit a properly certified claim to the new paying agency and will subsequently review the debt to verify that the collection is continued by the new paying agency.

§ 1710.115 Notice of salary offset from another agency.

(a) *Complete claim.* When the Board receives a certified claim from a creditor agency, deductions should be scheduled to begin at the next officially established pay interval. The Board's finance office will provide the employee with a notice that contains:

(1) A statement that the Board has received a certified debt claim from the creditor agency;

(2) The amount of the debt claim;

(3) The date salary offset deductions will begin;

(4) The amount of such deductions; and

(5) A copy of the notice received from the creditor agency.

(b) *Notice of Claim.* The Board's finance office will provide a copy of the notice to the creditor agency and advise the creditor agency of the dollar amount to be offset and the pay period when the offset will begin.

(c) *Incomplete claim.* When the Board receives an incomplete certification of debt from a creditor agency, it must return the debt claim with notice that procedures under 5 U.S.C. 5514 and 10 CFR 1710.113 must be followed and a properly certified debt claim received

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before action will be taken to collect from the employee's current pay account.

(d) *Review.* The Board will not review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(e) *Employees who transfer from one paying agency to another.* If, after the creditor agency has submitted the debt claim to the Board, the employee transfers from the Board to a different paying agency before the debt is collected in full, the Board will certify the total amount collected on the debt. One copy of the certification will be furnished to the employee and one copy to the creditor agency, along with notice of the employee's transfer.

§ 1710.117 Refunds.

(a) The Board will refund promptly any amounts deducted to satisfy debts owed to the United States when the

debt is waived, found not owed to the United States, or when directed by an administrative or judicial order.

(b) Unless required or permitted by law or contract, refunds under this section may not bear interest.

§ 1710.119 Non-waiver of rights.

An employee's involuntary payment of all or any part of a debt collected under these regulations will not be construed 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, unless there are statutes or contracts to the contrary.

§ 1710.121 Interest, penalties, and administrative charges.

Charges may be assessed for interest, penalties, and administrative charges in accordance with the FCCS, 31 CFR 901.9.

PARTS 1711-1799 [RESERVED]