

Millennium Challenge Corporation

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response to a request made in accordance with §1305.10, or if the court or other competent authority rules that the demand must be complied with irrespective of the instructions from the General Counsel not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand (*United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951)).

§ 1305.12 No private right of action.

This part is intended only to provide guidance for the internal operations of MCC, and is not intended to, and does not, and may not be relied upon, to create a right or benefit, substantive or procedural, enforceable at law by a party against the United States.

PART 1306—DEBT COLLECTION

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AUTHORITY: 31 U.S.C. 3701–3719; 5 U.S.C. 5514; 31 CFR part 285; 31 CFR parts 900–904; 5 CFR part 550 subpart K.

SOURCE: 81 FR 59441, Aug. 30, 2016, unless otherwise noted.

Subpart A—General Provisions

§ 1306.1 Purpose.

The regulations in this part prescribe the procedures to be used by the Millennium Challenge Corporation (MCC) in the collection and/or disposal of non-tax debts owed to MCC and to the United States.

§ 1306.2 Scope.

(a) *Applicability of Federal Claims Collection Standards (FCCS).* MCC hereby adopts the provisions of the Federal Claims Collections Standards (31 CFR parts 900–904) and, except as set forth in this part or otherwise provided by law, MCC will conduct administrative actions to collect claims (including offset, compromise, suspension, termination, disclosure and referral) in accordance with the FCCS.

(b) This part is not applicable to any debt or claim for which collection is explicitly provided for or prohibited under other statutory authorities. This includes, but is not limited to:

(1) MCC claims against another Federal agency, any foreign country or any political subdivision thereof, or any public international organization.

(2) Debts arising out of acquisitions subject to the Federal Acquisition Regulation (FAR) which shall be determined, collected, compromised, terminated, or settled in accordance with the regulations published at 48 CFR part 32.

(3) Debts arising from the audit of transportation accounts pursuant to 31 U.S.C. 3726 which shall be determined, collected, compromised, terminated, or settled in accordance with the regulations published at 41 CFR parts 102–118.

(4) Debts based in whole or in part on conduct in violation of the antitrust laws, or in regard to which there is an indication of fraud, presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim,

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which shall be referred to the Department of Justice for compromise, suspension, or termination of collection action.

(5) Tax debts.

§ 1306.3 Definitions.

For purposes of this part:

(a) *Administrative offset* means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt owed by the person to the United States.

(b) *Administrative wage garnishment* means the process by which a Federal agency orders a non-Federal employer to withhold amounts from a debtor's wages to satisfy a debt owed to the United States.

(c) *Compromise* means that the creditor agency accepts less than the full amount of an outstanding debt in full satisfaction of the entire amount of the debt.

(d) *Creditor agency* means the Federal agency to which a debt is owed including a debt collection center when acting in behalf of a creditor agency in matters pertaining to the collection of a debt (as provided in 5 CFR 550.1110).

(e) *Debt or claim* means an amount of money which has been determined to be owed to the United States from any person. A debtor's liability arising from a particular contract or transaction shall be considered a single claim for purposes of the monetary ceilings of the FCCS.

(f) *Debtor* means a person who owes the Federal government money.

(g) *Delinquent debt* means a debt that has not been paid by the date specified in MCC's written notification or applicable contractual agreement, unless other satisfactory arrangements have been made by that date, or that has not been paid in accordance with a payment agreement with MCC.

(h) *Discharge* means the release of a debtor from personal liability for a debt. Further collection action is prohibited.

(i) *Disposable pay* means the amount that remains from an employee's 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 required deductions for

Federal, State and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; normal premiums for life and health insurance benefits and such other deductions that are required by law to be withheld, excluding garnishments.

(j) *FCCS* means the Federal Claims Collection Standards published jointly by the Departments of the Treasury and Justice and codified at 31 CFR parts 900-904.

(k) *Person* means an individual, corporation, partnership, association, organization, State or local government, or any other type of entity other than a Federal agency, Foreign Government, or public international organization.

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

(m) *Suspension* means the temporary cessation of active debt collection pending the occurrence of an anticipated event.

(n) *Termination* means the cessation of all active debt collection action for the foreseeable future.

(o) *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. 5522, 5 U.S.C. 5584, 5 U.S.C. 5922, 5 U.S.C. 8346(b), or any other law.

§ 1306.4 Other procedures or actions.

(a) Nothing contained in this part is intended to require MCC to duplicate administrative proceedings required by contract or other laws or regulations.

(b) Nothing in this part is intended to preclude utilization of informal administrative actions or remedies which may be available.

(c) Nothing contained in this part is intended to deter MCC from demanding the return of specific property or from demanding the return of the property or the payment of its value.

(d) The failure of MCC to comply with any provision in this part shall not serve as defense to the debt.

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§ 1306.5 Interest, penalties, and administrative costs.

Except as otherwise provided by statute, contract or excluded in accordance with the FCCS, MCC will assess:

(a) Interest on delinquent debts in accordance with 31 CFR 901.9.

(b) Penalties at the rate of 6 percent a year or such other rate as authorized by law on any portion of a debt that is delinquent for more than 90 days.

(c) Administrative costs to cover the costs of processing and calculating delinquent debts.

(d) Late payment charges under paragraphs (a) and (b) of this section shall be computed from the date of delinquency.

(e) When a debt is paid in partial or installment payments, amounts received shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and then to outstanding principal.

(f) MCC shall consider waiver of interest, penalties and/or administrative costs in accordance with the FCCS, 31 CFR 901.9(g).

§ 1306.6 Collection in installments.

(a) Whenever feasible, and except as required otherwise by law, debts owed to the United States, together with interest, penalties, and administrative costs as required by this part, should be collected in one lump sum. This is true whether the debt is being collected under administrative offset, including salary offset, or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum or the amount of debt exceeds 15 percent of disposable pay for an officially established pay interval collection must be made in regular installments. If possible, the installment payments should be sufficient in size and frequency to liquidate the Government's claim within three years, and in the case of a current MCC employee, installment repayment plans must be made over a period not greater than the anticipated period of employment, except as provided in paragraph (b) in this section. However, the amount deducted for any period under this section and § 1306.16 may not exceed 15 percent of the disposable pay from which

the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount or a higher deduction has been ordered by a court.

(b) If the employee retires or resigns or if his or her employment ends before collection of the debt is completed, MCC may collect the debt from subsequent payments of any nature (e.g., final salary payment, lump-sum leave, etc.) due the employee from the paying agency as of the date of separation to the extent necessary to liquidate the debt. Following the employee's separation, MCC may collect any later payments of any kind that are due to the former employee from the United States to the extent necessary to liquidate the debt.

§ 1306.7 Designation.

The Chief Financial Officer is delegated authority and designated to perform all the duties for which head of the agency is responsible under the foregoing statutes and joint regulations. The authority delegated hereunder may be further delegated by the Chief Financial Officer subject to applicable laws, regulations and MCC policies.

§ 1306.8 Application.

(a) MCC shall aggressively collect claims and debts in accordance with this part and applicable law.

(b) In accordance with the FCCS:

(1) MCC will transfer to the Department of the Treasury, Financial Management Service (FMS) any past due, legally enforceable non-tax debt that has been delinquent for 180 days or more so that FMS may take appropriate action to collect the debt or take other appropriate action in accordance with applicable law and regulation; and

(2) MCC may transfer any past due, legally enforceable debt that has been delinquent for fewer than 180 days to FMS for collection in accordance with applicable law and regulation. (See 31 CFR part 285).

§ 1306.9 Administrative wage garnishment.

MCC hereby adopts the administrative wage garnishment rules issued by

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the Department of the Treasury at 31 CFR 285.11.

§ 1306.10 Scope.

(a) This subpart sets forth MCC's procedures for the collection of a Federal employee's current pay by salary offset to satisfy certain debts owed to the United States.

(b) This subpart applies to:

- (1) Current employees of MCC and other agencies who owe debts to MCC;
- (2) Current employees of MCC who owe debts to other agencies.

(c) This subpart does not apply to:

- (1) Debts or claims arising under the Internal Revenue Code of 1954 (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*); the tariff laws of the United States.

(2) Any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108); or

(3) Any other debts excluded by the Federal Claims Collections Standards (31 CFR parts 900-904) or 31 CFR part 285.

(d) This part does not preclude an employee from requesting waiver of the debt, if waiver is available under subpart C of this part or by other regulation or statute.

(e) Nothing in this part precludes the compromise, suspension or termination of collection actions where appropriate under § 1306.18 or other regulations or statutes.

§ 1306.11 Coordinating offset with another Federal agency.

(a) When MCC is owed a debt by an employee of another agency, MCC shall provide the agency with a written certification that the debtor owes MCC a debt (including the amount and basis of the debt and the due date of payment) and that MCC has complied with this part.

(b) When another agency is owed the debt, MCC may use salary offset against one of its employees who is indebted to another agency, if requested to do so by that agency. Such request must be accompanied by a certification that the person owes the debt (including the amount and basis of the debt

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and the due date of payment) and that the agency has complied with its regulations as required by 5 U.S.C. 5514 and 5 CFR part 550, subpart K.

§ 1306.12 Notice requirements before offset.

(a) Deductions under the authority of 5 U.S.C. 5514 shall not be made unless the creditor agency first provides the employee with written notice that he/she owes a debt to the Federal Government at least 30 calendar days before salary offset is to be initiated. When MCC is the creditor agency this notice of intent to offset an employee's salary shall be hand-delivered or sent by certified mail to the most current address that is available. The written notice will state:

(1) That MCC has reviewed the records relating to the claim and has determined that a debt is owed, its origin and nature, and the amount of the debt;

(2) The intention of MCC to collect the debt by means of deduction from the employee's current disposable pay account until the debt, all accumulated interest, penalties and administrative costs are paid in full;

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

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

(5) The employee's right to inspect and copy all records of MCC pertaining to the debt claimed or to receive copies of such records if personal inspection is impractical;

(6) If not previously provided, the opportunity (under terms agreeable to MCC) 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. The agreement must be in writing, signed by both the employee and MCC, and documented in MCC's files;

(7) The employee's right to a hearing conducted by a hearing official (an administrative law judge, or alternatively, an individual not under the

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supervision or control of MCC, but in each case arranged by MCC) with respect to the existence and amount of the debt claimed, or the repayment schedule, so long as a petition is filed by the employee in accordance with this part;

(8) The name, address and telephone number of an official to whom questions and correspondence regarding this notice may be directed;

(9) The method and time period for requesting a hearing;

(10) That the timely filing of a petition for a hearing as prescribed by this part will stay the commencement of collection proceedings;

(11) The name and address of the office to which the petition for hearing should be sent;

(12) That MCC will initiate certification procedures to implement a salary offset, as appropriate, (which may not exceed 15 percent of the employee's disposable pay) not less than 30 calendar days from the date of delivery of the notice of debt, unless the employee files a timely petition for a hearing;

(13) That a final decision on the hearing (if one is requested) 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 official grants a delay in the proceedings;

(14) That any knowingly false or frivolous statements, representation, or evidence may subject the employee to disciplinary procedures (5 U.S.C. Chapter 75, 5 CFR part 752 or other applicable statutes or regulations); penalties (31 U.S.C. 3729–3731 or other applicable statutes or regulations); or criminal penalties (18 U.S.C. 286, 287, 1001, and 1002 or other applicable statutes or regulations);

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

(16) That unless there are applicable contractual or statutory provisions to the contrary, 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

(17) That proceedings with respect to such debt are governed by 5 U.S.C. 5514.

(b) MCC is not required to provide prior notice to an employee when the following adjustments are made by MCC to an MCC employee's pay:

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

(2) A routine 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 a point of contact for contesting the adjustment; or

(3) Any adjustment to collect a debt of \$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 of the amount of the adjustment and a point of contact for contesting the adjustment.

§ 1306.13 Employee response.

(a) *Voluntary repayment agreement.* An employee may submit a request to enter into a written repayment agreement of the debt in lieu of offset. The request must be made within 7 days of receipt of notice under § 1306.12 to the official identified in § 1306.12(a)(8). The agreement must be in writing signed by both the employee and the appropriate official within MCC. Acceptance of such an agreement is discretionary with the Agency. An employee who enters into such an agreement may, nevertheless, seek a waiver under § 1306.18.

(b) *Reconsideration.* (1) An employee may seek a reconsideration of MCC's determination regarding the existence and/or amount of the debt. The request must be made within 7 days of receipt of notice under § 1306.12 to the official identified in § 1306.12(a)(8). Within 20 days of receipt of this notice, the employee must submit a detailed statement of reasons for reconsideration

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that must be accompanied by supporting documentation.

(2) An employee may seek a reconsideration of MCC's proposed offset schedule. The request must be made within 7 days of receipt of notice under §1306.12 to the official identified in §1306.12(a)(8). Within 20 days of receipt of this notice, the employee must submit an alternative repayment schedule accompanied by a detailed statement, supported by documentation, evidencing financial hardship resulting from MCC's proposed schedule. Acceptance of the request is at MCC's discretion. MCC will notify the employee in writing of its decision concerning the request to reduce the rate of an involuntary deduction.

§ 1306.14 Request for a hearing for certain debts.

(a) Except as provided in paragraphs (d) and (e) of this section, an employee must file a request that is received by the official identified in the notice provided pursuant to §1306.12(a)(11) not later than 15 calendar days from the date of MCC's notice if an employee wants a hearing concerning:

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

(2) MCC's proposed offset schedule.

(b) The request must be signed by the employee and should identify and explain with reasonable specificity and brevity the facts, evidence and witnesses, if any, which the employee believes support his or her position. If the employee objects to the percentage of disposable pay to be deducted from each check, the request should state the objection and the reasons for it.

(c) The employee must also specify whether an oral or paper hearing is requested. If an oral hearing is desired, the request should explain why the matter cannot be resolved by review of the documentary evidence alone.

(d) If the employee files a request for a hearing later than the required 15 calendar days as described in paragraph (a) of this section, MCC 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 em-

ployee otherwise has actual notice of the filing deadline).

(e) If the employee files a timely request for reconsideration pursuant to §1306.13(b), the employee must file a request for a hearing by the official identified in the notice provided pursuant to §1306.12(a)(11) not later than 15 calendar days from the date of MCC's written decision concerning the reconsideration request.

(f) An employee waives the right to a hearing and will have his or her pay offset if the employee fails to file a petition for a hearing in accordance with this section.

§ 1306.15 Hearings.

(a) If an employee timely files a request for a hearing under §1306.14, pursuant to 5 U.S.C. 5514(a)(2), the hearing official shall select the time, date, and location of the hearing.

(b) Hearings shall be conducted by a hearing official not under the supervision or control of MCC or an administrative law judge.

(c) *Procedure.* (1) After the employee requests a hearing, the hearing official shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, notice shall set forth the date, time and location of the hearing. If the hearing will be paper, the employee shall be notified that he or she should submit arguments in writing to the hearing official by a specified date after which the record shall be closed. This date shall give the employee reasonable time to submit documentation.

(2) *Oral hearing.* An employee who requests an oral hearing shall be provided an oral hearing if the hearing official determines that the matter cannot be resolved by review of documentary evidence alone (e.g., when an issue of credibility or veracity is involved). The hearing is not an adversarial adjudication, and need not take the form of an evidentiary hearing.

(3) *Paper hearing.* If the hearing official determines that an oral hearing is not necessary, he or she will make a decision based upon a review of the available written record.

(4) *Record.* The hearing official must maintain a summary record of any

hearing provided by this subpart. Witnesses who provide testimony will do so under oath or affirmation.

(5) *Content of decision.* The written decision shall include:

(i) A statement of the facts presented to support the origin, nature, and amount of the debt;

(ii) The hearing official's findings, analysis, and conclusions; and

(iii) The terms of any repayment schedules, or the date salary offset will commence, if applicable.

(6) *Failure to appear.* In the absence of good cause shown (e.g., excused illness), an employee who fails to appear at an oral hearing shall be deemed, for the purpose of this part, to admit the existence and amount of the debt as described in the notice of intent. The hearing official shall schedule a new hearing date upon the request of MCC's representative when good cause is shown.

(d) A hearing official's decision is considered to be an official certification regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514 only.

§ 1306.16 Procedures for salary offset.

Unless otherwise provided by statute, regulation, or contract, the following procedures apply to salary offset:

(a) *Method.* Salary offset will be made by deduction at one or more officially established pay intervals from the current pay account of the employee without his or her consent.

(b) *Source.* The source of salary offset is current disposable pay.

(c) *Types of collection.* (1) *Lump sum payment.* Ordinarily debts will be collected by salary offset in one lump sum if possible. However, if the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, the collection by salary offset must be made in installment deductions, except as provided by other laws or regulations or unless the employee has agreed in writing to a greater amount.

(2) *Installment deductions.* (i) The size of installment deductions must bear a reasonable relation to the size of the debt and the employee's ability to pay. If possible, the size of the deduction

will be that necessary to liquidate the debt in no more than 1 year. However, the amount deducted for any period must not exceed 15 percent of the disposable pay from which the deduction is made, except as provided by other laws or regulations or unless the employee has agreed in writing to a greater amount.

(ii) Installment payments of less than \$50 per pay period will be accepted only in unusual circumstances such as when that amount exceeds 15% of disposable pay.

(iii) Installment deductions should be sufficient in size and frequency to liquidate the Government's claim within three years and must be made over a period not greater than the anticipated period of employment.

§ 1306.17 Non-waiver of rights by payments.

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

§ 1306.18 Waiver of indebtedness.

(a) An employee may request a waiver of indebtedness. When an employee makes a request under a statutory right, further collection may be stayed pending an administrative determination on the request. During the period of any suspension, interest, penalties and administrative charges may be held in abeyance. MCC will not duplicate, for purposes of salary offset, any of the notices/procedures already provided the debtor prior to a request for waiver.

(b) Waiver of indebtedness is an equitable remedy and as such must be based on an assessment of the facts involved in the individual case under consideration. The burden is on the employee to demonstrate that the applicable waiver standard has been met in accordance with MCC's Policy on Waivers of Indebtedness.

(c) A debtor requesting a waiver shall do so in writing to the official identified in §1306.12(a)(8) and within the timeframe stated within the initial notice sent under §1306.12. The debtor's

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written response shall state the basis for the dispute and include any relevant documentation in support.

(d) While a waiver request is pending, MCC may suspend collection, including the accrual of interest and penalties, on the debt if MCC determines that suspension is in the agency's best interest or would serve equity and good conscience.

§ 1306.19 Compromise.

MCC may attempt to effect a compromise with respect to the debt in accordance with the process and standards set forth in the FCCS, 31 CFR part 902.

§ 1306.20 Suspension.

Any suspension of collection action shall be made in accordance with the standards set forth in the FCCS, 31 CFR 903.1–903.2.

§ 1306.21 Termination.

Any termination of a collection action shall be made in accordance with the standards set forth in the FCCS, 31 CFR 903.1 and 903.3–903.4.

§ 1306.22 Discharge.

Once a debt has been closed out for accounting purposes and collection has been terminated, the debt is discharged. MCC must report discharged

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debt as income to the debtor to the Internal Revenue Service per 26 U.S.C. 6050P and 26 CFR 1.6050P–1.

§ 1306.23 Bankruptcy.

A debtor should notify MCC at the contact office provided in the original notice of the debt, if the debtor has filed for bankruptcy. MCC will require documentation from the applicable court indicating the date of filing and type of bankruptcy. Pursuant to the laws of bankruptcy, MCC will suspend debt collection upon such filing unless the automatic stay is no longer in effect or has been lifted. In general, collection of a debt discharged in bankruptcy shall be terminated unless otherwise provided for by bankruptcy law.

§ 1306.24 Refunds.

(a) MCC will refund promptly to the appropriate individual amounts offset under this part when:

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

(2) MCC is directed by an administrative or judicial order to make a refund.

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

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