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- (1) Issues of jurisdiction;
- (2) The timeliness of the appeal; and
- (3) Affirmative defenses.

(c) *Affirmative defenses.* Under 5 U.S.C. 7701(c)(2), the Secretary's determination may not be sustained, even where the agency met the evidentiary standard stated in paragraph (a) of this section, if the appellant shows that:

(1) The agency, in rendering its determination, committed harmful error in the application of its procedures;

(2) The decision was based on any prohibited personnel practice described in 5 U.S.C. 2302(b); or

(3) The determination is not otherwise in accordance with law.

(d) *Penalty review.* As set forth in paragraph (a) of this section, proof of the agency's charge(s) by preponderant evidence creates a presumption that the Secretary's decision to remove or transfer the appellant was warranted. An appellant may rebut this presumption by establishing that the imposed penalty was unreasonable under the circumstances of the case, in which case the action is reversed. However, the administrative judge may not mitigate the Secretary's decision to remove or transfer the appellant.

[79 FR 48943, Aug. 19, 2014, as amended at 79 FR 49423, Aug. 21, 2014]

§ 1210.19 Bench decisions.

(a) *General.* The administrative judge may issue a bench decision at the close of the hearing. A bench decision is effective when issued.

(b) *Transcription of bench decision.* A transcribed copy of the decision will be prepared by the court reporter under the administrative judge's supervision to memorialize the oral decision. The official issuance of a bench decision is the date the administrative judge announces the decision and not the date the administrative judge signs the transcription.

§ 1210.20 Effective date of a decision issued by an administrative judge; continuing jurisdiction over certain ancillary matters.

(a) A decision by an administrative judge under this part will be effective upon issuance.

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(b) Pursuant to 38 U.S.C. 713(e)(2), a decision by the administrative judge is not subject to further appeal.

(c) A decision by the administrative judge is nonprecedential. Such a decision may be cited as persuasive authority only in an appeal filed pursuant to 38 U.S.C. 713(e)(2). Such a decision may not be cited in any appeal not filed pursuant to 38 U.S.C. 713(e)(2).

(d) Following issuance of a decision by the administrative judge under this part, the MSPB retains jurisdiction over the appeal covered by this part for purposes of the following ancillary matters:

(1) *Enforcement of decisions and orders.* The procedures set forth in subpart F of 5 CFR part 1201 are applicable to petitions for enforcement filed after the administrative judge issues a decision in an appeal filed under this part; and,

(2) *Attorney fees, witness fees, litigation expenses, and damages.* The procedures set forth in subpart H of 5 CFR part 1201 (attorney fees, costs, expert witness fees, and litigation expenses, where applicable, and damages) are applicable to requests for fees and damages filed after the administrative judge issues a decision in an appeal filed under this part. (5 U.S.C. 7701(g)).

PARTS 1211–1214 [RESERVED]

PART 1215—DEBT MANAGEMENT

Subpart A—Salary Offset

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SOURCE: 54 FR 50603, Dec. 8, 1989, unless otherwise noted. Redesignated at 72 FR 56885, Oct. 5, 2007.

Subpart A—Salary Offset

AUTHORITY: 5 U.S.C. 5514, Executive Order 11809 (redesignated Executive Order 12107), and 5 CFR 550 subpart K.

§ 1215.1 Purpose and scope.

(a) This regulation 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. These regulations apply to all Federal employees who owe debts to the MSPB and to current employees of the MSPB who owe debts to other Federal agencies. This regulation does not apply when the employee consents to recovery from his/her current pay account.

(b) This regulation does not apply to debts or claims arising under:

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

(2) The Social Security Act, 42 U.S.C. 301 *et seq.*;

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

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

(c) This regulation does not apply to any adjustment to pay arising out of an employee's selection 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.

(d) This regulation does not preclude the compromise, suspension, or termination of collection action where appropriate under the standards imple-

menting the Federal Claims Collection Act, 31 U.S.C. 3711 *et seq.* 4 CFR parts 101 through 105; 5 CFR part 1215.

(e) This regulation does not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774 or 32 U.S.C. 716 or in any way questioning the amount of validity of the debt by submitting a subsequent claim to the General Accounting Office. This regulation does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

(f) Matters not addressed in these regulations should be reviewed in accordance with the Federal Claims Collection Standards at 4 CFR 101.1 *et seq.*

§ 1215.2 Definitions.

(a) *Agency*. An executive agency as is defined at 5 U.S.C. 105 including the U.S. Postal Service, the U.S. Postal Commission, a military department as defined at 5 U.S.C. 102, an agency or court in the judicial branch, an agency of the legislative branch including the U.S. Senate and House of Representatives and other independent establishments that are entities of the Federal government.

(b) *Chairman*. The Chairman of the MSPB or the Chairman's designee.

(c) *Creditor agency*. The agency to which the debt is owed.

(d) *Debt*. An amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales or real or personal property, overpayments, penalties, damages, interests, fines, forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

(e) *Disposable pay*. The amount that remains from an employee's Federal pay after required deductions for social security, Federal, state or local income tax, health insurance premiums, retirement contributions, life insurance premiums, Federal employment taxes, and any other deductions that are required to be withheld by law.

(f) *Hearing official*. An individual responsible for conducting any hearing

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with respect to the existence or amount of a debt claimed, and who renders a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Chairman of the MSPB.

(g) *Paying Agency.* The agency that employs the individual who owes the debt and authorizes the payment of his/her current pay.

(h) *Salary offset.* An administrative offset to collect a debt pursuant to 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/her consent.

§ 1215.3 Applicability.

(a) These regulations are to be followed when:

(1) The MSPB is owed a debt by an individual currently employed by another Federal agency;

(2) The MSPB is owed a debt by an individual who is a current employee of the MSPB; or

(3) The MSPB employs an individual who owes a debt to another Federal agency.

§ 1215.4 Notice requirements.

(a) Deductions shall not be made unless the employee is provided with written notice signed by the Chairman of the debt at least 30 days before salary offset commences.

(b) The written notice shall contain:

(1) A statement that the debt is owed and an explanation of its nature, and amount;

(2) The agency's intention to collect the debt by deducting from the employee's current disposable pay account;

(3) The amount, frequency proposed beginning date, and duration of the intended deduction(s);

(4) An explanation of interest, penalties, and administrative charges, including a statement that such charges will be assessed unless excused in accordance with the Federal Claims Collections Standards at 4 CFR 101.1 *et seq.*;

(5) The employee's right to inspect, request, or receive a copy of government records relating to the debt;

(6) The opportunity to establish a written schedule for the voluntary repayment of the debt;

(7) The right to a hearing conducted by an impartial hearing official;

(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 knowingly false or frivolous statements, representations, or evidence may subject the employee to appropriate disciplinary procedures;

(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.

§ 1215.5 Hearing.

(a) *Request for hearing.* (1) An employee must file a petition for a hearing in accordance with the instructions outlined in the agency's notice to offset.

(2) A hearing may be requested by filing a written petition addressed to the Chairman of the MSPB stating why the employee disputes the existence or amount of the debt. The petition for a hearing must be received by the Chairman no later than fifteen (15) calendar days after the date of the notice to offset unless the employee can show good cause for failing to meet the deadline date.

(b) *Hearing procedures.* (1) The hearing will be presided over by an impartial hearing official.

(2) The hearing shall conform to procedures contained in the Federal Claims Collection Standards 4 CFR 102.3(c). The burden shall be on the employee to demonstrate that the existence or the amount of the debt is in error.

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§ 1215.6 Written decision.

(a) The hearing official shall issue a written opinion no later than 60 days after the hearing.

(b) The written opinion will include: A statement of the facts presented to demonstrate the nature and origin of the alleged debt; the hearing official's analysis, findings and conclusions; the amount and validity of the debt, and the repayment schedule.

§ 1215.7 Coordinating offset with another Federal agency.

(a) *The MSPB as the creditor agency.* (1) When the Chairman determines that an employee of a Federal agency owes a delinquent debt to the MSPB, the Chairman shall as appropriate:

(i) Arrange for a hearing upon the proper petitioning by the employee;

(ii) Certify in writing that the employee owes the debt, the amount and basis of the debt, the date on which payment is due, the date the Government's right to collect the debt accrued, and that MSPB regulations for salary offset have been approved by the Office of Personnel Management;

(iii) Advise the paying agency of the amount or percentage of disposable pay to be collected in each installment, if collection is to be made in installments;

(iv) Advise the paying agency of the actions taken under 5 U.S.C. 5514(b) and provide the dates on which action was taken unless the employee has consented to salary offset in writing or signed a statement acknowledging receipt of procedures required by law. The written consent or acknowledgment must be sent to the paying agency;

(v) If the employee is in the process of separating, MSPB must submit its debt claim to the paying agency as provided in this part. The paying agency must certify any amounts already collected, notify the employee, and send a copy of the certification and notice of the employee's separation to the creditor agency. If the paying agency is aware that the employee is entitled to Civil Service Retirement and Disability Fund or similar payments, it must certify to the agency responsible for making such payments the amount

of the debt and that the provisions of this part have been followed; and

(vi) If the employee has already separated and all payments due from the paying agency have been paid, the Chairman may request unless otherwise prohibited, that money payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be collected by administrative offset.

(b) *MSPB as the paying agency.* (1) Upon receipt of a properly certified debt claim from another agency, deductions will be scheduled to begin at the next established pay interval. The employee must receive written notice that the MSPB has received a certified debt claim from the creditor agency, the amount of the debt, the date salary offset will begin, and the amount of the deduction(s). The MSPB shall not review the merits of the creditor agency's determination of the validity or the amount of the certified claim.

(2) If the employee transfers to another agency after the creditor agency has submitted its debt claim to the MSPB and before the debt is collected completely, the MSPB must certify the total amount collected. One copy of the certification must be furnished to the employee. A copy must be furnished the creditor agency with notice of the employee's transfer.

§ 1215.8 Procedures for salary offset.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the Chairman's notice of intention to offset as provided in § 1215.4. Debts will be collected in one lump sum where possible. If the employee is financially unable to pay in one lump sum, collection must be made in installments.

(b) Debts will be collected by deduction at officially established pay intervals from an employee's current pay account unless alternative arrangements for repayment are made.

(c) Installment deductions will be made over a period not greater than the anticipated period of employment. The size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay. The deduction for the pay intervals for any period must not

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exceed 15 percent of disposable pay unless the employee has agreed in writing to a deduction of a greater amount.

(d) Unliquidated debts may be offset against any financial payment due to a separated employee including but not limited to final salary payment or leave in accordance with 31 U.S.C. 3716.

§ 1215.9 Refunds.

(a) The MSPB will refund promptly any amounts deducted to satisfy debts owed to the MSPB when the debt is waived, found not owed to the MSPB, or when directed by an administrative or judicial order.

(b) The creditor agency will promptly return any amounts deducted by MSPB to satisfy debts owed to the creditor agency when the debt is waived, found not owed, or when directed by an administrative or judicial order.

(c) Unless required by law, refunds under this subsection shall not bear interest.

§ 1215.10 Statute of limitations.

If a debt has been outstanding for more than 10 years after the agency's right to collect the debt first accrued, the agency may not collect by salary offset unless facts material to the Government's right to collect were not known and could not reasonably have been known by the official or officials who were charged with the responsibility for discovery and collection of such debts.

§ 1215.11 Nonwaiver 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 employee may have under 5 U.S.C. 5514 or any other provision of contract law unless there are statutes or contract(s) to the contrary.

§ 1215.12 Interest, penalties, and administrative costs.

Charges may be assessed for interest, penalties, and administrative costs in accordance with the Federal Claims Collection Standards, 4 CFR 102.13. Dated: July 24, 1987.

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Subpart B—Claims Collection

AUTHORITY: The authority for this part is the Federal Claims Collection Act of 1966, as amended, 31 U.S.C. 3711 and 3716-3719; the Federal Claims Collection Standards at 4 CFR parts 101-105, as amended by 49 FR 8889, 5 U.S.C. 552a, and Office of Management and Budget Circular A-129.

§ 1215.21 Purpose and scope.

This part prescribes standards and procedures for officers and employees of the MSPB who are responsible for the collection and disposition of debts owed to the United States. The activities covered include: Collecting claims in any amount; compromising claims, or suspending or terminating the collection of claims that do not exceed \$20,000 exclusive of interest and charges; and referring debts that cannot be disposed of by the MSPB to the Department of Justice or to the General Accounting Office for further administrative action or litigation.

§ 1215.22 Definitions.

(a) *Claim or debt.* An amount or property owed to the United States which includes, but is not limited to: Overpayments to program beneficiaries; overpayments to contractors and grantees, including overpayments arising from audit disallowances; excessive cash advances to grantees and contractors; and civil penalties and assessments. A debt is overdue or delinquent if it is not paid by the due date specified in the initial notice of the debt (see §1215.26) or if the debtor fails to satisfy his or her obligation under a repayment agreement.

(b) *Debtor.* An individual, organization, group, association, partnership, or corporation indebted to the United States, or the person or entity with legal responsibility for assuming the debtor's obligation.

(c) *MSPB.* The Merit Systems Protection Board.

(d) *Administrative offset.* Satisfying a debt by withholding money payable by the United States to or held by the United States for a debtor.

§ 1215.23 Other remedies.

The remedies and sanctions available to the MSPB under this part are not

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intended to be exclusive. The Chairman of the MSPB or his designee may impose other appropriate sanctions upon a debtor for prolonged or repeated failure to pay a debt. For example, the Chairman or his designee may place the debtor's name on a list of debarred, suspended, or ineligible contractors. In such cases the debtor will be advised of the MSPB's action.

§ 1215.24 Claims involving criminal activity or misconduct.

(a) A debtor whose indebtedness involves criminal activity such as fraud, embezzlement, theft, or misuse of government funds or property is subject to punishment by fine or imprisonment as well as to a civil claim by the United States for compensation for the misappropriated funds. The MSPB will refer these cases to the appropriate law enforcement agency for prosecution.

(b) Debts involving fraud, false claims, or misrepresentation shall not be compromised, terminated, suspended, or otherwise disposed of under this rule. Only the Department of Justice is authorized to compromise, terminate, suspend, or otherwise dispose of such debts.

§ 1215.25 Collection.

(a) The MSPB will take aggressive action to collect debts and reduce delinquencies. Collection efforts shall include sending to the debtor's last known address a total of three progressively stronger written demands for payment at not more than 30 day intervals. When necessary to protect the Government's interest, written demand may be preceded by other appropriate action, including immediate referral for litigation. Other contact with the debtor or his or her representative or guarantor by telephone, in person and/or in writing may be appropriate to demand prompt payment, to discuss the debtor's position regarding the existence, amount and repayment of the debt, and to inform the debtor of his or her rights and effect of nonpayment or delayed payment. A debtor who disputes a debt must promptly provide available supporting evidence.

(b) If a debtor is involved in insolvency proceedings, the debt will be referred to the appropriate United States

Attorney to file a claim. The United States may have a priority over other creditors under 31 U.S.C. 3713.

§ 1215.26 Notices to debtor.

The first written demand for payment must inform the debtor of the following:

(a) The amount and nature of the debt;

(b) The date payment is due, which will generally be 30 days from the date the notice was mailed;

(c) The assessment of interest under § 1215.27 from the date the notice was mailed if payment is not received within the 30 days;

(d) The right to dispute the debt;

(e) The office, address and telephone number that the debtor should contact to discuss repayment and reconsideration of the debt; and

(f) The sanctions available to the MSPB to collect a delinquent debt including, but not limited to, referral of the debt to a credit reporting agency, a private collection bureau, or the Department of Justice for litigation.

§ 1215.27 Interest, penalties, and administrative costs.

(a) Interest will accrue on all debts from the date when the first notice of the debt and the interest requirement is mailed to the last known address or hand-delivered to the debtor if the debt is not paid within 30 days from the date the first notice was mailed. The MSPB will charge an annual rate of interest that is equal to the average investment rate for the Treasury tax and loan accounts on September 30 of each year, rounded to the nearest whole per centum. This rate, which represents the current value of funds to the United States Treasury, may be revised quarterly by the Secretary of the Treasury and is published by the Secretary of the Treasury annually or quarterly in the FEDERAL REGISTER and the Treasury Financial Manual Bulletins.

(b) The rate of interest initially assessed will remain fixed for the duration of the indebtedness, except that if a debtor defaults on a repayment agreement interest may be set at the Treasury rate in effect on the date a new agreement is executed.

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(c) The MSPB shall charge debtors for administrative costs incurred in handling overdue debts.

(d) Interest will not be charged on administrative costs.

(e) The MSPB shall assess a penalty charge, not to exceed 6 percent per year on debts which have been delinquent for more than 90 days. This charge shall accrue from the date that the debt became delinquent.

(f) The Chairman or his designee may waive in whole or in part the collection of interest and administrative and penalty charges if determined that collection would be against equity or not in the best interests of the United States. The MSPB shall waive the collection of interest on the debt or any part of the debt which is paid within 30 days after the date on which interest began to accrue.

§ 1215.28 Administrative offset.

(a) The MSPB may collect debts owed by administrative offset if:

(1) The debt is certain in amount;

(2) Efforts to obtain direct payment have been, or would most likely be unsuccessful, or the MSPB and the debtor agree to the offset;

(3) Offset is cost effective or has significant deterrent value; and

(4) Offset is best suited to further and protect the Government's interest.

(b) The MSPB may offset a debt owed to another Federal agency from amounts due or payable by the MSPB to the debtor or request another Federal agency to offset a debt owed to the MSPB;

(c) Prior to initiating administrative offset, the MSPB will send the debtor written notice of the following:

(1) The nature and amount of the debt and the agency's intention to collect the debt by offset 30 days from the date the notice was mailed if neither payment nor a satisfactory response is received by that date;

(2) The debtor's right to an opportunity to submit a good faith alternative repayment schedule to inspect and copy agency records pertaining to the debt, to request a review of the determination of indebtedness; and to enter into a written agreement to repay the debt; and

(3) The applicable interest.

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(d) The MSPB may effect an administrative offset against a payment to be made to a debtor prior to the completion of the procedures required by paragraph (c) of this section if:

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

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

§ 1215.29 Use of credit reporting agencies.

(a) The MSPB may report delinquent accounts to credit reporting agencies consistent with the notice requirements contained in the §1215.26. Individual debtors must be given at least 60 days written notice that the debt is overdue and will be reported to a credit reporting agency.

(b) Debts may be reported to consumer or commercial reporting agencies. Consumer reporting agencies are defined in 31 U.S.C. 3701(a)(3) pursuant to 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(f). The MSPB may disclose only an individual's name, address, Social Security number, and the nature, amount, status and history of the debt and the program under which the claim arose.

§ 1215.30 Collection services.

(a) The MSPB may contract for collection services to recover outstanding debts. The MSPB may refer delinquent debts to private collection agencies listed on the schedule compiled by the General Services Administration. In such contracts, the MSPB will retain the authority to resolve disputes, compromise claims, terminate or suspend collection, and refer the matter to the Department of Justice or the General Accounting Office.

(b) The contractor shall be subject to the disclosure provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a(m)), and to applicable Federal and state laws and regulations pertaining to debt collection practices, including the Fair Debt Collection Practices Act, 15 U.S.C. 1692. The contractor shall be strictly accountable for all amounts collected.

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(c) The contractor shall be required to provide to the MSPB any data contained in its files relating to the debt account upon agency request or upon returning an account to the MSPB for referral to the Department of Justice for litigation.

§ 1215.31 Referral to the Department of Justice or the General Accounting Office.

Debts over \$600 but less than \$100,000 which the MSPB determines can neither be collected nor otherwise disposed of will be referred for litigation to the United States Attorney in whose judicial district the debtor is located. Claims for amounts exceeding \$100,000 shall be referred for litigation to the Commercial Litigation Branch, Civil Division of the Department of Justice.

§ 1215.32 Compromise, suspension and termination.

(a) The Chairman of the MSPB or his designee may compromise, suspend or terminate the collection of debts where the outstanding principal is not greater than \$20,000. MSPB procedures for writing off outstanding accounts are available to the public.

(b) The Chairman of the MSPB may compromise, suspend or terminate collection of debts where the outstanding principal is greater than \$20,000 only with the approval of, or by referral to the United States Attorney or the Department of Justice.

(c) The Chairman of the MSPB will refer to the General Accounting Office (GAO) debts arising from GAO audit exceptions.

§ 1215.33 Omissions not a defense.

Failure to comply with any provisions of this rule may not serve as a defense to any debtor.

PART 1216—TESTIMONY BY MSPB EMPLOYEES RELATING TO OFFICIAL INFORMATION AND PRODUCTION OF OFFICIAL RECORDS IN LEGAL PROCEEDINGS

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AUTHORITY: 5 U.S.C. 1204(h); 31 U.S.C. 9701.

SOURCE: 71 FR 17967, Apr. 10, 2006, unless otherwise noted.

Subpart A—General Provisions

§ 1216.101 Scope and purpose.

(a) This part establishes policy, assigns responsibilities and prescribes procedures with respect to:

(1) The production or disclosure of official information or records by MSPB employees, advisors, and consultants; and

(2) The testimony of current and former MSPB employees, advisors, and consultants relating to official information, official duties, or the MSPB's record, in connection with federal or state litigation in which the MSPB is not a party.

(b) The MSPB intends this part to:

(1) Conserve the time of MSPB employees for conducting official business;

(2) Minimize the involvement of MSPB employees in issues unrelated to MSPB's mission;

(3) Maintain the impartiality of MSPB employees in disputes between private litigants; and