

## § 178.208

(c) *Payment of claim.* Claims for money due will be paid by the appropriate agency only after settlement by the Office of Merit Systems Oversight and Effectiveness occurs.

[62 FR 68139, Dec. 31, 1997, as amended at 65 FR 40967, July 3, 2000]

### § 178.208 Applicability of general procedures.

When not in conflict with this subpart, the provisions of subpart A of this part relating to procedures applicable to claims generally are also applicable to the settlement of account of deceased civilian officers and employees.

## PART 179—CLAIMS COLLECTION STANDARDS

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AUTHORITY: 31 U.S.C. 952; 5 U.S.C. 1103; Reorganization Plan No. 2 of 1978; 5 U.S.C. 5514; 5 CFR part 550 subpart K; 31 U.S.C. 3701; 31 U.S.C. 3711; 31 U.S.C. 3716; 31 U.S.C. 3720A.

## Subpart A—General Provisions and Administration

### § 179.101 General collection standards.

The general standards and procedures governing the collection, compromise, termination, and referral to the Department of Justice of claims for money and property that are prescribed in the regulations issued jointly by the General Accounting Office and the Department of Justice pursuant to the Federal Claims Collection Act of 1966 (4 CFR part 101 *et seq.*), apply to the administrative claim collection activities of OPM.

[33 FR 12406, Sept. 4, 1968]

### § 179.102 Delegation of authority.

(a) The Chief Financial Officer and his or her delegates are designated by the Director and authorized to perform all the duties for which the Director is responsible under the Debt Collection Act of 1982 and Office of Personnel Management regulations with the exception of debts arising from the Civil Service Retirement and Disability Fund, the Employees' Life Insurance Fund, the Retired Federal Employees Health Benefits Act (74 Stat. 849), and the Employees Health Benefits Fund. However, the Chief Financial Officer and his or her delegates will request a review by the General Counsel or his or her designee for all claims processed (in amounts of \$2500 or more) for compromise, suspension, and termination of collection action.

(b) The Associate Director for Retirement and Insurance and his or her delegates are designated by the Director and authorized to perform all the duties for which the Director is responsible under the Debt Collection Act of

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1982 and Office of Personnel Management regulations on debts caused by payments from the Civil Service Retirement and Disability Fund (subchapter III of chapter 83 or chapter 84), claims under the provisions of the Federal Employees' Life Insurance Fund (chapter 87), the Retired Federal Employees Health Benefits Act (74 Stat. 849), the Employees Health Benefits Fund (chapter 89), the Panama Canal Construction Annuity Act (58 Stat. 257), and, the Lighthouse Service Widows' Annuity Act (64 Stat. 465).

[59 FR 35216, July 11, 1994]

### Subpart B—Salary Offset

SOURCE: 59 FR 35216, July 11, 1994, unless otherwise noted.

#### § 179.201 Purpose.

The purpose of the Debt Collection Act of 1982 (Pub. L. 97-365), is to provide a comprehensive statutory approach to the collection of debts due the Federal Government. These regulations implement section 5 of the Act which authorizes the collection of debts owed by Federal employees to the Federal Government by means of salary offset, except that no claim may be collected by such means if outstanding for more than 10 years after the agency's right to collect the debt first accrued, 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. These regulations are consistent with the regulations on salary offset published by the Office of Personnel Management (OPM) on July 3, 1984 (49 FR 27470) in 5 CFR part 550, subpart K.

#### § 179.202 Scope.

(a) These regulations provide procedures for the collection of monies from a Federal employee's pay by salary offset to satisfy certain debts owed the Government.

(b) These regulations apply to all collections by the Director of OPM (except collections involving debts because of payments made from the Civil

Service Retirement and Disability Fund, payments made under the Retired Federal Employees Health Benefits Act (74 Stat. 849), the Panama Canal Construction Annuity Act and the Lighthouse Service Widows' Annuity Act and payments or premiums relating to the Federal Employees' Life Insurance Fund or the Federal Employees Health Benefits Fund) from:

(1) Federal employees who owe debts to OPM; and

(2) OPM employees who owe debts to other agencies.

(c) These regulations do not apply to debts or claims arising under the Internal Revenue Code of 1954, as amended (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; or to 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).

(d) Section 179.207 does not apply to any adjustment to pay arising from 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 these regulations precludes the compromise, suspension, or termination of collection actions, where appropriate, under the standards implementing the Federal Claims Collection Act (31 U.S.C. 3711 *et seq.*, 4 CFR parts 101-105, 38 CFR 1.900 *et seq.*).

(f) Nothing in these regulations precludes an employee from requesting a waiver of the debt under applicable statute; under the standards and procedures specified by the Federal Claims Collection Standards (FCCS); or waiver of salary overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, by submitting a subsequent claim to the General Accounting Office in accordance with procedures established by the General Accounting Office.

#### § 179.203 Definitions.

As used in this subpart the following definitions shall apply:

*Agency* means:

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(1) An Executive Agency as defined by section 105 of title 5, United States Code;

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

(3) An agency or court of the judicial branch including a court as defined in section 610 of title 28, United States Code, the District Court for the Northern Mariana Islands and the Judicial Panel and Multidistrict Litigation;

(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(5) Other independent establishments that are entities of the Federal Government.

*Certification* means a written debt claim, as prescribed by § 179.209, that is received from a creditor agency and which requests the paying agency to offset the salary of an employee.

*Claim* See debt.

*Creditor agency* means an agency of the Federal Government to which the debt is owed. For purposes of this part *creditor agency* includes OPM, unless otherwise noted.

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

*Delinquent* means the failure to pay an obligation or debt by the date specified in the initial notification or applicable contractual agreement, unless other payment arrangements have been agreed to by OPM and the debtor by that date, or if, at any time thereafter, the debtor fails to satisfy the obligations under a payment agreement with the creditor agency.

*Director* means the Director of OPM or his or her designee.

*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 re-

maining after the deduction of any amount required by law to be withheld. OPM shall allow the following deductions, and any others required by law to be withheld, in determining disposable pay subject to salary offset;

(1) Federal employment taxes;

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

(3) Fines and forfeitures ordered by a court martial or by a commanding officer;

(4) Federal, state or local income taxes no greater than would be the case if the employee claimed all dependents to which he or she is entitled and such additional amounts for which the employee presents evidence of a tax obligation supporting the additional withholding;

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

(6) Amounts deducted for Medicare;

(7) Health insurance premiums;

(8) Normal retirement contributions as explained in 5 CFR 581.105(e) (e.g., Civil Service Retirement deductions, Survivor Benefit Plan or Retired Serviceman's Family Protection Plan); and

(9) Normal life insurance premiums (e.g., Serviceman's Group Life Insurance and basic Federal Employee's Group Life Insurance premiums) exclusive of optional life insurance premiums.

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

*FCCS* means the Federal Claims Collection Standards jointly published by the Department of Justice and the General Accounting Office of 4 CFR 101.1 *et seq.*

*Hearing official* means an individual (including an administrative law judge) responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and rendering a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Director of OPM when OPM is the creditor agency.

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*Notice of intent to offset* or *notice of intent* means a written notice from a creditor agency to an employee that states the creditor agency's determination that the employee owes a debt to the creditor agency and apprises the employee of certain administrative rights.

*Notice of salary offset* means a written notice from the paying agency to an employee after a certification has been issued by the creditor agency, informing the employee that salary offset will begin at the next officially established pay interval.

*Office* means the central and regional offices of the Office of Personnel Management.

*Paying agency* means the agency of the Federal Government which employs the individual who owes a debt to an agency of the Federal Government. In some cases, OPM may be both the creditor agency and the paying agency.

*Payroll office* means the payroll office in the paying agency which is primarily responsible for the payroll records and the coordination of pay matters with the appropriate personnel office with respect to an employee. Payroll office, with respect to OPM, means the central payroll office.

*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.

*Salary Offset Coordinator* means an official, designated by the Director of OPM, who is responsible for coordinating debt collection activities for OPM.

*Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to OPM or another agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C. 716, or any other law.

### § 179.204 Applicability of regulations.

These regulations are to be followed for all OPM collections (except those involving retirement, life, and health insurance debts for recovery by the Associate Director for Retirement and Insurance) in instances where:

(a) OPM is owed a debt by an individual currently employed by another agency;

(b) OPM is owed a debt by an individual who is a current employee of OPM; or

(c) OPM currently employs an individual who owes a debt to another Federal agency. Upon receipt of proper certification from the creditor agency, OPM will offset the debtor-employee's salary in accordance with these regulations.

### § 179.205 Waiver requests and claims to the General Accounting Office.

These regulations do not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with the procedures prescribed by the General Accounting Office. These regulations do not preclude an employee from requesting a waiver pursuant to other statutory provisions pertaining to the particular debt being collected.

### § 179.206 Notice requirements before offset.

(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 OPM 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 Office and will state:

(1) That the creditor agency 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;

(2) The creditor agency'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;

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

(4) An explanation of OPM's policy concerning interest, penalties and administrative costs including a statement that such assessments must be made unless excused in accordance with the FCCS, 4 CFR 101.1 *et seq.* (§179.214);

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

(6) If not previously provided, the opportunity to establish a schedule for the voluntary repayment of the debt through offset or to enter into an agreement to establish a schedule for repayment of the debt in lieu of offset (4 CFR 102.2(e)). The agreement must contain terms agreeable to the Office and must be in such form that it is legally enforceable. The agreement must:

- (i) Be in writing;
- (ii) Be signed by both the employee and the creditor agency;
- (iii) Specify all the terms of the arrangement for payment; and
- (iv) Contain a provision accelerating the debt in the event of a default by the debtor, but such an increase may not result in a deduction that exceeds 15 percent of the employee's disposable pay unless the employee has agreed in writing to the deduction of a greater amount (5 CFR 550.1104(i)).

(7) The right to a hearing conducted by an impartial hearing official (an administrative law judge, or alternatively, a hearing official not under the supervision or control of the Director) with respect to the existence and amount of the debt claimed, or the repayment schedule (*i.e.*, the percentage of disposable pay to be deducted each pay period), so long as a petition is filed by the employee as prescribed in §179.207;

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

(9) The name, address and phone number of an official or employee of the Office who may be contacted concerning procedures for requesting a hearing;

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

(11) That a timely and properly filed petition for hearing will stay the commencement of collection proceedings (a timely filing must be received in the office specified under paragraph (a)(10) of this section within 15 calendar days after receipt of such notice of intent to offset);

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

(13) That a final decision on the hearing (if a hearing is requested) will be issued at the earliest practical date, but 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;

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

- (i) Disciplinary procedures appropriate under chapter 75 of title 5, United States code; part 752 of title 5, Code of Federal Regulations; or any other applicable statute or regulations;
- (ii) Penalties under the False Claims Act, sections 3729 through 3731 of title 31, United States Code, or any other applicable statutory authority; and
- (iii) Criminal penalties under sections 286, 287, 1001, and 1002 of title 18, United States code, or any other applicable statutory authority;

(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 section 5 of the Debt Collection Act of 1982 (5 U.S.C. 5514).

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(b) The Office is not required to comply with paragraph (a) of this section for any adjustment to pay arising from:

(1) 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; or

(2) An employee's consent to make voluntary withholdings from his or her current pay account.

### § 179.207 Hearing.

(a) *Request for hearing.* Except as provided in paragraph (b) of this section, an employee who desires a hearing concerning the existence or amount of the debt or the proposed offset schedule must send such a request to the office designated in the notice of intent (§179.207(a)(10)). The request (or petition) for hearing must be received by the designated office not later than 15 calendar days following the employee's receipt of the notice. The employee's request (or petition) must:

(1) Be signed by the employee;

(2) Fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, that the employee believes support his or her position; and

(3) 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 (4 CFR 102.3(c)).

(b) *Failure to timely submit.* (1) If the employee files a petition for a hearing after the expiration of the 15 calendar day period provided for in paragraph (a) of this section, the Office may accept the request if the employee can show that the delay was the result of circumstances beyond his or her control or failure to receive actual notice of the filing deadline (unless the employee had actual notice of the filing deadline).

(2) An employee waives the right to a hearing, and will have his or her disposable pay offset in accordance with the Office offset schedule, if the employee:

(i) Fails to file a timely request for a hearing unless such failure is excused; or

(ii) Fails to appear at an oral hearing of which he or she was notified unless the hearing official determines that failure to appear was due to circumstances beyond the employee's control.

(c) *Representation at the hearing.* The creditor agency may be represented by legal counsel. The employee may represent himself or herself or may be represented by an individual of his or her choice and at his or her expense.

(d) *Review of Office records related to the debt.* (1) An employee who intends to inspect or copy creditor agency records related to the debt, as provided by §179.207(a)(5), must send a letter to the official designated in the notice of intent to offset stating his or her intention. The letter must be received within 15 calendar days after the employee's receipt of the notice.

(2) In response to a timely request submitted by the debtor, the designated official will notify the employee of the location and time when the employee may inspect and copy records related to the debt.

(3) If personal inspection is impractical, arrangements shall be made to end copies of such records to the employee.

(e) *Hearing official.* The Office may request an administrative law judge to conduct the hearing, or the Office may obtain a hearing official who is not under the supervision or control of the Director of OPM.

(f) *Obtaining the services of a hearing official when OPM is the creditor agency.*

(1) When the debtor is not an OPM employee and the Office cannot provide a prompt and appropriate hearing before a hearing official furnished pursuant to another lawful arrangement, the Office may contact an agent of the paying agency designated in 5 CFR part 581, appendix A, or other individual designated by the paying agency, and request a hearing official.

(2) When the debtor is an OPM employee, the Office may contact any agent of another agency designated in 5 CFR part 581, appendix A, or otherwise designated by that agency, to request a hearing official.

(g) *Procedure*—(1) *General*. 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, the 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. Oral hearings may take the form of, but are not limited to:

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

(ii) Informal meetings with an interview of the employee; or

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

(3) *Paper hearing*. If the hearing official determines that an oral hearing is not necessary, he or she will make a determination based upon a review of the available written record (4 CFR 102.3(c) (2) and (3)).

(4) *Record*. The hearing official must maintain a summary record of any hearing provided by this subpart (4 CFR 102.3(c)(1)(ii)). Witnesses who testify in oral hearings will do so under oath or affirmation.

(h) *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 petition was received by the creditor agency, unless the employee requests a delay in the proceedings. In such case the 60-day decision period shall be extended by the number of

days by which the hearing was postponed.

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

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

(2) The hearing official's findings, analysis, and conclusions including a determination whether the debtor's petition for hearing was baseless and resulted from an intent to delay creditor agency collection activity and whether the Office should pursue other actions against the debtor as provided by 5 CFR 550.1104(d)(11); and

(3) The terms of any repayment schedules, if applicable.

(j) *Failure to appear*. In the absence of good cause shown (e.g., illness), an employee who fails to appear at a hearing shall be deemed, for the purpose of this subpart, to admit the existence and amount of the debt as described in the notice of intent. If the representative of the creditor agency fails to appear, the hearing official shall proceed with the hearing as scheduled and make his/her determination based upon the oral testimony presented and the documentary evidence submitted by both parties. With the agreement of both parties, the hearing official shall schedule a new hearing date. Both parties shall be given reasonable notice of the time and place of the new hearing.

#### § 179.208 Certification.

(a) OPM salary offset coordinator shall provide a certification to the paying agency in all cases where:

(1) The hearing official determines that a debt exists;

(2) The employee fails to contest the existence and amount of the debt by failing to request a hearing; or

(3) The employee fails to contest the existence of the debt by failing to appear at a hearing.

(b) The certification must be in writing and must state:

(1) That the employee owes the debt;

(2) The amount and basis of the debt;

(3) The date the Government's right to collect the debt first accrued;

(4) That the Office's regulations have been approved by OPM pursuant to 5 CFR part 550, subpart K;

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(5) The date on which payment(s) is due;

(6) If the collection is to be made in installments, the number of installments to be collected, the amount of each installment or percentage of disposable pay, and the commencement date of the first installment, if a date other than the next officially established pay period is required; and

(7) The date(s) of any action(s) taken under 5 U.S.C. 5514(b).

### **§ 179.209 Voluntary repayment agreement as alternative to salary offset.**

(a)(1) In response to a notice of intent, an employee may propose to repay the debt by making voluntary installment payments as an alternative to salary offset. An employee who wishes to repay a debt without salary offset shall submit in writing a proposed agreement to repay the debt. The proposal shall admit the existence of the debt, and the agreement must be in such form that it is legally enforceable. The agreement must:

- (i) Be in writing;
- (ii) Be signed by both the employee and the creditor agency;
- (iii) Specify all the terms of the arrangement for payment; and
- (iv) Contain a provision accelerating the debt in the event of default by the debtor, but such an increase may not result in a deduction that exceeds 15 percent of the employee's disposable pay unless the employee has agreed in writing to deduction of a greater amount (5 CFR 550.1104(i)).

(2) Any proposal under paragraph (a) of this section must be received by the official designated in the notice of intent within 30 calendar days after receipt of the notice.

(b) The creditor agency will review a timely and properly submitted repayment proposal by the employee debtor and notify the employee whether the proposed written agreement for repayment is acceptable. It is within the creditor agency's discretion to accept a repayment agreement instead of proceeding by offset.

(c) If the creditor agency decides that the proposed repayment agreement is unacceptable, the employee will have 15 days from the date he or she received notice of that decision to file a

petition for a hearing or a special review as provided by § 179.210.

(d) If the creditor agency decides that the proposed repayment agreement is acceptable, the alternative arrangement must be in writing, signed by both the employee and the creditor agency designee and meet the other requirements of this section for a voluntary repayment agreement.

### **§ 179.210 Special review.**

(a) An OPM employee subject to salary offset or a voluntary repayment agreement, may, at any time, request a special review by the Office of the amount of the salary offset or voluntary payment, based on materially changed circumstances such as, but not limited to, catastrophic illness, divorce, death, or disability.

(b) In determining whether an offset would prevent the employee from meeting essential subsistence expenses (food, housing, clothing, transportation and medical care), the employee shall submit a detailed statement and supporting documents for the employee, his or her spouse, and dependents indicating:

- (1) Income from all sources;
- (2) Assets;
- (3) Liabilities;
- (4) Number of dependents;
- (5) Expenses for food, housing, clothing and transportation;
- (6) Medical expenses; and
- (7) Exceptional expenses, if any.

If an OPM employee requests a special review under this section, the employee shall file an alternative proposed offset or payment schedule and a statement, with supporting documents (§ 179.210(b)), stating why the current salary offset or payments result in an extreme financial hardship to the employee.

(c) The Director shall evaluate the statement and supporting documents, and determine whether the original offset or repayment schedule imposes an extreme financial hardship on the employee. The Director shall notify the employee in writing of such determination, including, if appropriate, a revised offset or repayment schedule.

(d) If the special review results in a revised offset or repayment schedule, the OPM salary offset coordinator shall



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provide a new certification to the payroll office.

### § 179.211 Notice of salary offset.

(a) Upon receipt of proper certification from a creditor agency, the OPM payroll office will send the OPM employee, identified in the certification as the debtor, a written notice of salary offset. Such notice shall, at a minimum:

(1) State that OPM has received a properly certified debt claim from a creditor agency;

(2) Contain a copy of the certification received from the creditor agency;

(3) Advise the employee that salary offset will be initiated at the next officially established pay interval; and

(4) State the amount of the claim and amount of deductions.

(b) The payroll office shall provide a copy of the notice to the creditor agency and advise such agency of the dollar amount to be offset and the pay period when the offset will begin.

### § 179.212 Procedures for salary offset.

(a) The Director or his or her designee shall coordinate salary deductions under this subpart.

(b) OPM payroll office shall determine the amount of an employee's disposable pay and implement the salary offset.

(c) Deductions shall begin effective the pay period following receipt by OPM's payroll office of proper certification of the debt (§ 179.208).

(d) *Types of collection*—(1) *Lump-sum payment*. A debt will be collected in a lump sum if possible. If an employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments.

(2) *Installment deductions*. Installment deductions will be made over a period not greater than the anticipated period of employment and, except in rare circumstances, not to exceed 3 years. 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. 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.

(3) *Lump-sum deductions from final check*. A lump-sum deduction exceeding the 15 percent disposable pay limitation may be made from any final salary payment pursuant to 31 U.S.C. 3716 in order to liquidate the debt, whether the employee is being separated voluntarily or involuntarily.

(4) *Lump-sum deductions from other sources*. When an employee subject to salary offset is separated from OPM and the balance of the debt cannot be liquidated by offset of the final salary check, the Office, pursuant to 31 U.S.C. 3716, the FCCS and OPM's implementing regulations, may offset the balance of the debt against any financial payment due the employee from the U.S. Government.

(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, OPM payroll 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 OPM*. For OPM employees, debts owed to the Office generally take precedence over debts owed to other agencies. In the event that a debt to the Office is certified while an employee is subject to a salary offset to repay another agency, the OPM payroll 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 the Office can be collected in one pay period, the payroll office may suspend the salary offset to the other agency for that pay period in order to liquidate the office debt.

(g) 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 OPM payroll office, in making this determination, will be guided primarily by the statute of limitations that affects the collection of the debt(s).

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### § 179.213 Coordinating salary offset with other agencies.

(a) *Responsibility of OPM as the creditor agency.* (1) The Director or his or her designee shall coordinate debt collections with other agencies and shall, as appropriate:

(i) Arrange for a hearing or special review upon proper petitioning by a Federal employee; and

(ii) Prescribe, upon consultation with the General Counsel, such additional practices and procedures as may be necessary to carry out the intent of this regulation.

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

(i) Ensuring that each notice of intent to offset is consistent with the requirements of § 179.206;

(ii) Ensuring that each certification of debt that is sent to a paying agency is consistent with the requirements of § 179.208;

(iii) Obtaining hearing officials from other agencies pursuant to § 179.207(f); and

(iv) Ensuring that hearings are properly scheduled.

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

(i) 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 Office's regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management;

(ii) 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);

(iii) Advise the paying agency of the action(s) taken under 5 U.S.C. 5514(b) and give the date(s) and action(s) was 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);

(iv) Submit a debt claim certification containing the information specified in paragraphs (a)(3)(i), (a)(3)(ii) and (a)(3)(iii) of this section and an installment agreement (or other instruction on the payment schedule), if applicable, to the employee's paying agency; and

(v) Submit the debt claim, as provided in § 179.208, to the employee's 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 paying agency must certify the total amount of its collection on the debt and send a copy of the certification to the employee and another copy to the creditor agency. If the paying agency's collection does not fully satisfy the debt, and the paying agency is aware that the debtor is entitled to payments from the Civil Service Retirement and Disability Fund or other similar payments that may be due the debtor employee from other Federal Government sources, the paying agency will provide written notification of the outstanding debt to the agency responsible for making such other payments to the debtor employee. The written notification shall state that the employee owes a debt (including the amount) and that the provisions of this section have been fully complied with. The Office must submit a properly certified claim to the agency responsible for making such payments before the collection can be made.

(4) *Separated employee.* If the employee is already separated and all payments due from his or her former paying agency have been paid, the Office 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).

(5) *Employee transfer.* When an employee transfers from one paying agency to another paying agency, the Office is not required to repeat the due process procedures described in 5 U.S.C.

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5514 and this subpart to resume the collection. The Office will submit a properly certified claim to the new paying agency and will subsequently review the debt to make sure the collection is resumed by the new paying agency.

(b) *Responsibility of the Office as the paying agency*—(1) *Complete claim*. When the Office receives a certified claim from a creditor agency, deductions should be scheduled to begin at the next officially established pay interval. Before deductions can begin, the employee must receive written notice from the Office including:

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

(ii) The amount of the debt claim;

(iii) The date salary offset deductions will begin, and

(iv) The amount of such deductions.

(2) *Incomplete claim*. When the Office receives an incomplete certification of debt from a creditor agency, the Office must return the debt claim with notice that procedures under 5 U.S.C. 5514 and 5 CFR 550.1101 *et seq.* must be followed and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

(3) *Review*. The Office is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(4) *Employees who transfer from one paying agency to another*. If, after the creditor agency has submitted the debt claim to the Office, the employee transfers from OPM to a different paying agency before the debt is collected in full, the Office 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.

### § 179.214 Interest, penalties and administrative costs.

The office shall assess interest, penalties and administrative costs on debts owed pursuant to 31 U.S.C. 3717 and 4 CFR part 101.1 *et seq.* Penalties and administrative costs will be assessed on all delinquent debts.

(a) In cases of default on a previous repayment agreement, the Office reserves the right to set a new interest rate which reflects the current value of funds to the Treasury at the time a new repayment agreement is executed.

(b) The Office, on a case-by-case basis, may waive all interest accrued on debts paid in full within 60 days of the due date if there is no indication of fault or lack of good faith on the part of the debtor.

(c) The Office may waive, in whole or in part, the collection of interest, penalties, and/or administrative costs assessed under this section under the criteria specified in part 103 of 4 CFR, chapter II, relating to the compromise of claims (without regard to the amount of the debt).

(d) The Office may waive, in whole or in part, the collection of interest, penalties, and/or administrative costs assessed under this section if the Office determines that collection of these charges would be against equity and good conscience or not in the best interests of the United States.

(e) The Office shall waive the accrual of interest pending consideration of a request for reconsideration, administrative review, or waiver of the underlying debt under provisions of a permissive statute providing for such review related to the debt.

(f) The Office shall waive interest on repayment agreements when the amount of interest accruing equals or exceeds the amount of installments the debtor can reasonably afford and there is no indication of fault or lack of good faith on the part of the debtor.

### § 179.215 Refunds.

(a) The Office shall promptly refund any amounts deducted under the authority of 5 U.S.C. 5514 when:

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

(2) An administrative or judicial order directs the Office to make a refund.

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

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## § 179.303

### **§ 179.216 Request for the services of a hearing official when the creditor agency is not OPM.**

(a) The Office will provide a hearing official upon request of the creditor agency when the debtor is employed by the Office and the creditor agency cannot provide a prompt and appropriate hearing before a hearing official furnished pursuant to another lawful arrangement.

(b) The salary offset coordinator will secure qualified personnel to serve as hearing officials.

(c) Services rendered under this section will be provided on a fully reimbursable basis pursuant to the Economy Act of 1932, *as amended*, 31 U.S.C. 1535.

### **§ 179.217 Non-waiver of rights by payments.**

An employee's involuntary payment of all or any portion of a debt collected under this subpart must not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law unless there are statutory or contractual provisions to the contrary.

### **§ 179.218 Additional administrative collection action.**

Nothing contained in this subpart is intended to preclude the use of any other administrative remedy which may be appropriate.

## **Subpart C—Administrative Offset**

SOURCE: 59 FR 35214, July 11, 1994, unless otherwise noted.

### **§ 179.301 Scope of regulations.**

These regulations apply to the collection of debts owed to the United States arising from transactions with OPM other than those involving payments made from the Civil Service Retirement and Disability Fund (the Fund), or where a request for an offset from OPM's administrative accounts—other than the Fund—is received by OPM from another Federal agency. Regulations for other agencies to request OPM's Retirement and Insurance Group to recover a debt from the Fund are provided at subpart R of part 831 and subpart D of part 845 of title 5,

Code of Federal Regulations. These regulations are consistent with the Federal Claims Collection Standards on Administrative Offset issued jointly by the Department of Justice and the General Accounting Office as set forth in 4 CFR 102.3.

### **§ 179.302 Definitions.**

*Administrative offset*, as defined in 31 U.S.C. 3701(a)(1), 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 Government.

*Person*, includes a natural person or persons, profit or non-profit corporation, partnership, association, trust, estate, consortium, or other entity which is capable of owing a debt to the United States Government except that agencies of the United States, or of any State or local government, shall be excluded.

### **§ 179.303 General.**

(a) The Director or his or her designee, after attempting to collect a debt from a person under section 3(a) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(a)), may collect the debt by administrative offset subject to the following:

(1) The debt is certain in amount; and

(2) It is in the best interest of the United States to collect the debt by administrative offset because it is less costly and speeds payment of the debt;

(b) The Director, or his or her designee, may initiate administrative offset with regard to debts owed by a person to another agency of the United States Government, upon receipt of a request from the head of another agency, or his or her designee, and a certification that the debt exists and that the person has been afforded the necessary due process rights.

(c) The Director, or his or her designee, may request another agency that holds funds payable to an OPM debtor to offset the debt against the funds held and will provide certification that:

(1) The debt exists; and

(2) The person has been afforded the necessary due process rights.

(d) If the 6-year period for bringing action on a debt provided in 28 U.S.C.

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2415 has expired, then administrative offset may be used to collect the debt only if the costs of bringing such action are likely to be less than the amount of the debt.

(e) No collection by administrative offset shall be made on any debt that has been outstanding for more than 10 years unless facts material to the Government's right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering and collecting such debt.

(f) These regulations do not apply to:

(1) A case in which administrative offset of the type of debt involved is explicitly provided for or prohibited by another statute.

(2) Debts owed to OPM by other agencies of the United States or by any State or local government.

### **§ 179.304 Notification procedures.**

Before collecting any debt through administrative offset, a notice of intent to offset shall be sent to the debtor by certified mail, return receipt requested, at the most current address that is available to OPM. The notice shall provide:

(a) A description of the nature and amount of the debt and the intention of OPM to collect the debt through administrative offset;

(b) An opportunity to inspect and copy the records of OPM with respect to the debt;

(c) An opportunity for review within OPM concerning OPM's determinations with respect to the debt; and

(d) An opportunity to enter into a written agreement for the repayment of the amount of the debt.

### **§ 179.305 Agency review.**

(a) A debtor may dispute the existence of the debt, the amount of the debt, or the terms of repayment. The request to review a disputed debt must be received by the OPM official identified in the notification within 30 calendar days of the debtor's receipt of the written notice described in § 179.304.

(b) If the debtor requests an opportunity to inspect or copy OPM's records concerning the disputed claim, 10 business days will be granted for the review. The time period will be meas-

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ured from the time the request for inspection is granted or from the time the copy of the records is received by the debtor.

(c) Pending the resolution of a dispute initiated by the debtor, transactions in any of the debtor's account(s) maintained in OPM may be temporarily suspended to the extent of the debt that is owed. Depending on the type of transaction, the suspension could preclude payment, removal, or transfer, as well as prevent the payment of interest or discount due thereon. Should the dispute be resolved in the debtor's favor, the suspension will be lifted immediately.

(d) During the review period, interest, penalties, and administrative costs authorized under the Federal Claims Collection Act of 1966, as amended, will continue to accrue.

### **§ 179.306 Written agreement for repayment.**

A debtor who admits liability but elects not to have the debt collected by administrative offset will be afforded an opportunity to negotiate a written agreement for the repayment of the debt. If the financial condition of the debtor does not support the ability to pay in one lump-sum, reasonable installment arrangements may be considered. No installment arrangement will be considered unless the debtor submits a financial statement, executed under penalty of perjury, reflecting the debtor's assets, liabilities, income, and expenses. The financial statement must be submitted within 10 business days of OPM's request for the statement. At OPM's option, a confess-judgment note or bond of indemnity with surety may be required for the installment agreement. Notwithstanding the provisions of this section, any reduction or compromise of a claim will be governed by 4 CFR part 103 and 31 U.S.C. 3711.

### **§ 179.307 Administrative offset.**

(a) If the debtor does not exercise the right to request a review within the time specified in § 179.305 or, if as a result of the review, it is determined that the debt is due and no written agreement is executed, then administrative offset shall be ordered in accordance

with these regulations without further notice.

(b) Request for offset to a Federal agency: The Director or his or her designee may request that funds due and payable to a debtor by a Federal agency be administratively offset in order to collect a debt owned to OPM by that debtor. In requesting administrative offset OPM, as creditor, will certify in writing to the Federal agency holding funds of the debtor:

- (1) That the debtor owes the debt;
- (2) The amount and basis of the debt; and

(3) That OPM has complied with the requirements of 31 U.S.C. 3716, its own administrative offset regulations, and the applicable provisions of 4 CFR part 102 with respect to providing the debtor with due process.

(c) Request for offset from a Federal agency: When administrative offset is authorized, any Federal creditor agency may request OPM to make an administrative offset from any OPM funds that are due and payable to a creditor agency's debtor. OPM shall initiate the requested administrative offset only upon:

- (1) Receipt of written certification from the creditor agency:
  - (i) That the debtor owes the debt;
  - (ii) The amount and basis of the debt;
  - (iii) That the agency has prescribed regulations for the exercise of administrative offset; and

(iv) That the agency has complied with its own administrative offset regulations and with the applicable provisions of 4 CFR part 102, including providing any required hearing or review.

(2) A determination by OPM that collection by offset against funds payable by OPM would not otherwise be contrary to law.

#### **§ 179.308 Accelerated procedures.**

OPM may make an administrative offset against a payment to be made to the debtor prior to the completion of the procedures required by §§179.304 and 179.305 if failure to take the offset would substantially jeopardize OPM's ability to collect the debt, and the time before the payment is to be made does not reasonably permit the completion of those procedures. Such prior offset shall be promptly followed by

the completion of those procedures. Amounts recovered by offset but later found not to be owed to OPM shall be promptly refunded.

#### **§ 179.309 Additional administrative procedures.**

Nothing contained in this chapter is intended to preclude the use of any other administrative remedy which may be available.

### **Subpart D—Administrative Wage Garnishment**

AUTHORITY: 15 U.S.C. 46; 31 U.S.C. 3720D; 31 CFR 285.11(f).

#### **§ 179.401 Administrative wage garnishment.**

*General.* OPM may use administrative wage garnishment to collect debts in accordance with the requirements of 31 U.S.C. 3720D and 31 CFR 285.11, including debts it refers to the Bureau of the Fiscal Service, Department of the Treasury, for cross-servicing pursuant to 31 U.S.C. 3711. This part adopts and incorporates all of the provisions of 31 CFR 285.11 concerning administrative wage garnishment, including the hearing procedures described in 31 CFR 285.11(f). This section does not apply to collection of debt by Federal salary offset, under 5 U.S.C. 5514, the process by which OPM collects debts from the salaries of Federal employees.

[79 FR 29072, May 21, 2014]

## **PART 180—EMPLOYEES' PERSONAL PROPERTY CLAIMS**

Sec.

- 180.101 Scope and purpose.
- 180.102 Claimants.
- 180.103 Time limitations.
- 180.104 Allowable claims.
- 180.105 Claims not allowed.
- 180.106 Claims involving carriers and insurers.
- 180.107 Claims procedure.
- 180.108 Settlement of claims.

AUTHORITY: Sec. 3, 78 Stat. 767, as amended; 31 U.S.C. 241.

SOURCE: 43 FR 47163, Oct. 13, 1978, unless otherwise noted.