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Chairman of the Panel, as appropriate, will appear, if necessary, at the stated time and place, produce a copy of this part, state that the employee has been advised by counsel not to provide the requested testimony or produce documents, and respectfully decline to comply with the demand or request, citing *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

[81 FR 63364, Sept. 15, 2016]

Subpart C—Schedule of Fees

§ 2417.301 Fees.

(a) *Generally.* The Chairman of the FLRA, the General Counsel, or the Chairman of the Panel, as appropriate, may condition the production of records or appearance for testimony upon advance payment of a reasonable estimate of the costs.

(b) *Fees for records.* Fees for producing records will include fees for searching, reviewing, and duplicating records; costs for employee time spent reviewing the request; and expenses generated by materials and equipment used to search for, produce, and copy the responsive information. The FLRA will calculate and charge these fees, costs, and expenses as it charges like fees and costs arising from requests made pursuant to the Freedom of Information Act regulations in part 2411 of this chapter.

(c) *Witness fees.* Fees for attendance by a witness will include fees, expenses, and allowances prescribed by the court's rules. If no such fees are prescribed, witness fees will be determined based upon the rule of the Federal district court closest to the location where the witness will appear and on 28 U.S.C. 1821, as applicable. Such fees will include costs for time spent by the witness to prepare for testimony, to travel to the legal proceeding, and to attend the legal proceeding.

(d) *Payment of fees.* A requester must pay witness fees for current employees and any record certification fees by submitting to the Office of the Solicitor a check or money order for the appropriate amount made payable to the Treasury of the United States. In the case of testimony of former employees, the requester must pay applicable fees

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directly to the former employee in accordance with 28 U.S.C. 1821 or other applicable statutes.

(e) *Waiver or reduction of fees.* The Chairman of the FLRA, the General Counsel, or the Chairman of the Panel, as appropriate, in his or her sole discretion, may, upon a showing of reasonable cause, waive or reduce any fees in connection with the testimony, production, or certification of records.

(f) *De minimis fees.* The FLRA will not assess fees if the total charge would be \$10.00 or less.

[81 FR 63364, Sept. 15, 2016]

Subpart D—Penalties

§ 2417.401 Penalties.

(a) An employee who discloses official records or information, or who gives testimony relating to official information, except as expressly authorized by the Chairman of the FLRA, the General Counsel, or the Chairman of the Panel, as appropriate, or as ordered by a Federal court after the FLRA has had the opportunity to be heard, may face the penalties provided in 18 U.S.C. 641 and other applicable laws. Additionally, former employees are subject to the restrictions and penalties of 18 U.S.C. 207 and 216.

(b) A current employee who testifies or produces official records and information in violation of this part may be subject to disciplinary action.

[74 FR 11640, Mar. 19, 2009, as amended at 81 FR 63364, Sept. 15, 2016]

PART 2418—FLRA DEBT COLLECTION

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APPENDIX A TO PART 2418—WAIVING CLAIMS AGAINST FLRA EMPLOYEES FOR ERRONEOUS PAYMENTS

AUTHORITY: 5 U.S.C. 5514; 5 U.S.C. 5584; 5 U.S.C. 6402; 31 U.S.C. 3701, 3711; 3716, 3717, 3718, 3720A, 3720D.

SOURCE: 80 FR 24780, May 1, 2015, unless otherwise noted.

Subpart A—General Provisions

§ 2418.1 What definitions apply to the regulations in this part?

As used in this part:

Administrative offset or *offset* means withholding funds payable by the United States (including funds payable by the United States on behalf of a State Government) to, or held by the United States for, a person to satisfy a debt owed by the person. The term “administrative offset” includes, but is not limited to, the offset of Federal salary, vendor, retirement, and Social Security-benefit payments. The terms “centralized administrative offset” and “centralized offset” refer to the process by which the Treasury Department's Financial Management Service offsets Federal payments through the Treasury Offset Program.

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, as authorized by 31 U.S.C. 3720D, 31 CFR 285.11, and this part.

Agency or *federal agency* means a department, agency, court, administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including government corporations.

Chairman means the Chairman of the FLRA or his or her designee.

Creditor agency means any Federal agency that is owed a debt.

Debt means any amount of money, funds, or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person. As used in this part, the term “debt” does not include, as described in 31 U.S.C. 3701(d), debts arising under: The Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*), except to the extent provided under sections 204(f) and 1631(b)(4) of such Act [42 U.S.C. 404(f) and 1383(b)(4)] and section 3716(c) [31 U.S.C. 3716(c)], or the tariff laws of the United States.

Debtor means a person who owes a debt to the United States.

Delinquent debt means a debt that has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made.

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Delinquent FLRA debt means a delinquent debt owed to the FLRA.

Disposable pay has the same meaning as that term is defined in 5 CFR 550.1103.

Employee or Federal employee means a current employee of the FLRA or other Federal agency, including a current member of the Armed Forces, Reserve of the Armed Forces of the United States, or the National Guard.

Executive Director means the Executive Director of the FLRA or his or her designee.

FCCS means the Federal Claims Collection Standards, which were jointly published by the Departments of the Treasury and Justice and codified at 31 CFR parts 900 through 904.

Financial Management Service means the Financial Management Service, a bureau of the Treasury Department, which is responsible for the centralized collection of delinquent debts through the offset of Federal payments and other means.

FLRA means the Federal Labor Relations Authority and all of its components.

FLRA debt means a debt that a person owes the FLRA.

Payment agency or Federal payment agency means any Federal agency that transmits payment requests in the form of certified payment vouchers, or other similar forms, to a disbursing official for disbursement. The “payment agency” may be the agency that employs the debtor. In some cases, the FLRA may be both the creditor agency and the payment agency.

Person means an individual, corporation, partnership, association, organization, State or local government, or any other type of entity other than a Federal agency.

Salary offset means a type of administrative offset to collect, from the current pay account of a Federal employee, a debt that the employee owes.

Tax refund offset is defined in 31 CFR 285.2(a).

Treasury Department means the United States Department of the Treasury. *Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774,

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32 U.S.C. 716, 5 U.S.C. 8346(b), 42 U.S.C. 404(b), or any other law.

§ 2418.2 Why is the FLRA issuing these regulations, and what do they cover?

(a) *Scope.* This part provides procedures for the collection of FLRA debts. This part also provides procedures for collection of other debts owed to the United States when the FLRA receives, from another agency, a request for offset of an FLRA payment (for example, when an FLRA employee owes a debt to the United States Department of Education).

(b) *Applicability.* (1) This part applies to the FLRA when collecting an FLRA debt, to persons who owe FLRA debts, and to Federal agencies requesting offset of a payment issued by the FLRA as a payment agency (including salary payments to FLRA employees).

(2) This part does not apply to tax debts or to any debt for which there is an indication of fraud or misrepresentation, as described in 31 CFR 900.3 of the FCCS, unless the Department of Justice returns the debt to the FLRA for handling.

(3) Nothing in this part precludes collection or disposition of any debt under statutes and regulations other than those described in this part. See, for example, 5 U.S.C. 5705, Advancements and Deductions, which authorizes agencies to recover travel advances by offset of up to 100% of a Federal employee’s accrued pay. See, also, 5 U.S.C. 4108, governing the collection of training expenses. To the extent that the provisions of laws and other regulations differ from the provisions of this part, those provisions of law and other regulations—and not the provisions of this part—apply to the remission or mitigation of fines, penalties, and forfeitures, as well as debts arising under the tariff laws of the United States.

(c) *Duplication not required.* Nothing in this part requires the FLRA to duplicate notices or administrative proceedings required by contract, this part, or other laws or regulations.

(d) *Use of multiple collection remedies allowed.* The FLRA and other Federal agencies may simultaneously use multiple collection remedies to collect a debt, except as prohibited by law. This

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part is intended to promote aggressive debt collection, using for each debt all available collection remedies. These remedies are not listed in any prescribed order, so that the FLRA may have flexibility in determining which remedies will be most efficient in collecting the particular debt.

§ 2418.3 Do these regulations adopt the Federal Claims Collection Standards (FCCS)?

This part adopts and incorporates all provisions of the FCCS. This part also supplements the FCCS by prescribing procedures consistent with the FCCS, as necessary and appropriate for FLRA operations.

Subpart B—Procedures to Collect FLRA Debts

§ 2418.4 What notice will the FLRA send to a debtor when collecting an FLRA debt?

(a) *Notice requirements.* The FLRA shall aggressively collect FLRA debts. The FLRA shall promptly send at least one written notice to a debtor informing the debtor of the consequences of failing to pay or otherwise resolve an FLRA debt. The notice(s) shall be sent to the debtor at the most current address of the debtor in the FLRA's records. Generally, before starting the collection actions described in §§ 2418.5 and 2418.9 through 2418.16, the FLRA will send no more than two written notices to the debtor. The purpose of the notice(s) is to explain why the debt is owed, the amount of the debt, how a debtor may pay the debt or make alternative payment arrangements, how a debtor may review documents related to the debt, how a debtor may dispute the debt, the collection remedies available to the FLRA if the debtor refuses to pay the debt, and other consequences to the debtor if the debt is not paid. Except as otherwise provided in paragraph (b) of this section, the written notice(s) shall explain to the debtor:

(1) The nature and amount of the debt, and the facts giving rise to the debt;

(2) How interest, penalties, and administrative costs are added to the debt, the date by which payment

should be made to avoid such charges, and that such assessments must be made unless excused in accordance with 31 CFR 901.9 (see § 2418.5);

(3) The date by which payment should be made to avoid the enforced collection actions described in paragraph (a)(6) of this section;

(4) The FLRA's willingness to discuss alternative payment arrangements and how the debtor may enter into a written agreement to repay the debt under terms acceptable to the FLRA (see § 2418.6);

(5) The name, address, and telephone number of a contact person or office within the FLRA;

(6) The FLRA's intention to enforce collection if the debtor fails to pay or otherwise resolve the debt, by taking one or more of the following actions:

(i) *Offset.* Offset the debtor's Federal payments, including income-tax refunds, salary, certain benefit payments (such as Social Security), retirement, vendor, travel reimbursements and advances, and other Federal payments (see §§ 2418.10 through 2418.12);

(ii) *Private collection agency.* Refer the debt to a private collection agency (see § 2418.15);

(iii) *Credit-bureau reporting.* Report the debt to a credit bureau (see § 2418.14);

(iv) *Administrative wage garnishment.* Garnish the debtor's wages through administrative wage garnishment (see § 2418.13);

(v) *Litigation.* Refer the debt to the Department of Justice to initiate litigation to collect the debt (see § 2418.16);

(vi) *Treasury Department's Financial Management Service.* Refer the debt to the Financial Management Service for collection (see § 2418.9);

(7) That Treasury debts over 180 days delinquent must be referred to the Financial Management Service for the collection actions described in paragraph (a)(6) of this section (see § 2418.9);

(8) How the debtor may inspect and copy records related to the debt;

(9) How the debtor may request a review of the FLRA's determination that the debtor owes a debt and present evidence that the debt is not delinquent or legally enforceable (see §§ 2418.10(c) and 2418.11(c));

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(10) How a debtor may request a hearing if the FLRA intends to garnish the debtor's private-sector (*i.e.*, non-Federal) wages (see § 2418.13(a)), including:

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

(ii) That the timely filing of a request for a hearing on or before the 15th business day following the date of the notice will stay the commencement of administrative wage garnishment, but not necessarily other collection procedures; and

(iii) The name and address of the office to which the request for a hearing should be sent.

(11) How a debtor who is a Federal employee subject to Federal salary offset may request a hearing (see § 2418.12(e)), including:

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

(ii) That the timely filing of a request for a hearing on or before the 15th calendar day following receipt of the notice will stay the commencement of salary offset, but not necessarily other collection procedures;

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

(iv) That the FLRA will refer the debt to the debtor's employing agency or to the Financial Management Service to implement salary offset, unless the employee files a timely request for a hearing;

(v) That a final decision on the hearing, if requested, will be issued at the earliest practical date, but not later than 60 days after the filing of the request for a hearing, unless the employee requests and the hearing official grants a delay in the proceedings;

(vi) That any knowingly false or frivolous statements, representations, or evidence may subject the Federal employee to penalties under the False Claims Act (31 U.S.C. 3729–3731) or other applicable statutory authority, and criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or other applicable statutory authority;

(vii) That, unless prohibited by contract or statute, amounts paid on or deducted for the debt that are later waived or found not owed to the United States will be promptly refunded to the employee; and

(viii) That 5 U.S.C. 5514 and 31 U.S.C. 3716 govern proceedings with respect to such debt.

(12) How the debtor may request a waiver of the debt, if applicable (see Appendix A of this part);

(13) How the debtor's spouse may claim his or her share of a joint-income-tax refund by filing Form 8379 with the Internal Revenue Service (see <http://www.irs.gov>);

(14) How the debtor may exercise other statutory or regulatory rights and remedies available to the debtor;

(15) That an employee's involuntary payment of all or any portion of a debt being collected will not be construed as a waiver of any rights that the employee may have under any provision of contract or law, unless there are statutory, regulatory, or contractual provisions to the contrary; and

(16) That the debtor should advise the FLRA of a bankruptcy proceeding of the debtor or another person liable for the debt being collected.

(b) *Exceptions to notice requirements.* The FLRA may omit from a notice to a debtor one or more of the provisions contained in paragraphs (a)(6) through (16) of this section if the FLRA, in consultation with its legal counsel, determines that any provision is not legally required given the collection remedies to be applied to a particular debt.

(c) *Respond to debtors; comply with FCCS.* The FLRA will respond promptly to communications from debtors and comply with other FCCS provisions applicable to the administrative collection of debts. See 31 CFR part 901.

§ 2418.5 How will the FLRA add interest, penalty charges, and administrative costs to an FLRA debt?

(a) *Assessment and notice.* The FLRA shall assess interest, penalties, and administrative costs on FLRA debts in accordance with the provisions of 31 U.S.C. 3717 and 31 CFR 901.9. Interest shall be charged in accordance with the requirements of 31 U.S.C. 3717(a). Penalties shall accrue at the rate of 6% per year, or such other higher rate as authorized by law. The FLRA shall determine administrative costs, that is, the costs of processing and handling a delinquent debt. In the notice to the debtor described in § 2418.4, the FLRA

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must explain how interest, penalties, costs, and other charges are assessed, unless the requirements are included in a contract or repayment agreement.

(b) *Waiver of interest, penalties, and administrative costs.* Unless otherwise required by law, the FLRA may not charge interest if the amount due on the debt is paid within 30 days after the date from which the interest accrues. See 31 U.S.C. 3717(d). The FLRA may waive interest, penalties, and administrative costs, or any portion thereof, when it would be against equity and good conscience or not in the FLRA's best interest to collect such charges, in accordance with FLRA guidelines for waiving claims against FLRA employees for erroneous overpayments. See appendix A of this part.

(c) *Accrual during suspension of debt collection.* In most cases, interest, penalties, and administrative costs will begin and continue to accrue 30 days after notice is given to the employee and during any period when collection has been suspended for any reason (for example, when the debtor has requested a hearing). The FLRA may suspend accrual of any or all of these charges when accrual would be against equity and good conscience or not in the FLRA's best interest, in accordance with FLRA guidelines for waiving claims against FLRA employees for erroneous overpayments. See appendix A of this part.

§ 2418.6 When will the FLRA allow a debtor to pay an FLRA debt in installments instead of one lump sum?

If a debtor is financially unable to pay the debt in one lump sum, then the FLRA may accept payment of an FLRA debt in regular installments, in accordance with 31 CFR 901.8.

§ 2418.7 When will the FLRA compromise an FLRA debt?

If the FLRA cannot collect the full amount of an FLRA debt, then the FLRA may compromise the debt in accordance with 31 CFR part 902.

§ 2418.8 When will the FLRA suspend or terminate debt collection on an FLRA debt?

If, after pursuing all appropriate means of collection, the FLRA deter-

mines that an FLRA debt is uncollectible, then the FLRA may suspend or terminate debt-collection activity in accordance with the provisions of 31 CFR part 903 and the FLRA's policies and procedures.

§ 2418.9 When will the FLRA transfer an FLRA debt to the Treasury Department's Financial Management Service for collection?

(a) The FLRA will transfer any eligible debt that is more than 180 days delinquent to the Financial Management Service for debt-collection services, a process known as "cross-servicing." See 31 U.S.C. 3711(g) and 31 CFR 285.12. The FLRA may transfer debts delinquent 180 days or less to the Financial Management Service in accordance with the procedures described in 31 CFR 285.12. The Financial Management Service takes appropriate action to collect or compromise the transferred debt, or to suspend or terminate collection action thereon, in accordance with the statutory and regulatory requirements and authorities applicable to the debt and the collection action to be taken. See 31 CFR 285.12(c)(2). Appropriate action includes, but is not limited to: Contact with the debtor; referral of the debt to the Treasury Offset Program, private collection agencies, or the Department of Justice; reporting of the debt to credit bureaus; and administrative wage garnishment.

(b) At least sixty (60) days before transferring an FLRA debt to the Financial Management Service, the FLRA will send notice to the debtor as required by § 2418.4. The FLRA will certify to the Financial Management Service, in writing, that the debt is valid, delinquent, legally enforceable, and that there are no legal bars to collection. In addition, the FLRA will certify its compliance with all applicable due-process and other requirements as described in this part and other Federal laws. See 31 CFR 285.12(i) regarding the certification requirement.

(c) As part of its debt-collection process, the Financial Management Service uses the Treasury Offset Program to collect Treasury debts by administrative and tax-refund offset. See 31 CFR 285.12(g). The Treasury Offset Program

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is a centralized offset program administered by the Financial Management Service to collect delinquent debts owed to Federal agencies and states (including past-due child support). Under the Treasury Offset Program, before a Federal payment is disbursed, the Financial Management Service compares the name and taxpayer identification number (TIN) of the payee with the names and TINs of debtors that have been submitted by Federal agencies and states to the Treasury Offset Program database. If there is a match, the Financial Management Service (or, in some cases, another Federal disbursing agency) offsets all or a portion of the Federal payment, disburses any remaining payment to the payee, and pays the offset amount to the creditor agency. Federal payments eligible for offset include, but are not limited to, income-tax refunds, salary, travel advances and reimbursements, retirement and vendor payments, and Social Security and other benefit payments.

§ 2418.10 How will the FLRA use administrative offset (offset of non-tax Federal payments) to collect an FLRA debt?

(a) *Centralized administrative offset through the Treasury Offset Program.* (1) In most cases, the Financial Management Service uses the Treasury Offset Program to collect Treasury debts by the offset of Federal payments. See § 2418.9(c). If not already transferred to the Financial Management Service under § 2418.9, the FLRA will refer any eligible debt over 180 days delinquent to the Treasury Offset Program for collection by centralized administrative offset. See 31 U.S.C. 3716(c)(6); 31 CFR part 285, subpart A; and 31 CFR 901.3(b). The FLRA may refer any eligible debt less than 180 days delinquent to the Treasury Offset Program for offset.

(2) At least sixty (60) days prior to referring a debt to the Treasury Offset Program, in accordance with paragraph (a)(1) of this section, the FLRA will send notice to the debtor in accordance with the requirements of § 2418.4. The FLRA will certify to the Financial Management Service, in writing, that the debt is valid, delinquent, legally enforceable, and that there are no legal

bars to collection by offset. In addition, the FLRA will certify its compliance with the requirements described in this part.

(b) *Non-centralized administrative offset for FLRA debts.* (1) When centralized administrative offset through the Treasury Offset Program is not available or appropriate, the FLRA may collect past-due, legally enforceable FLRA debts through non-centralized administrative offset. See 31 CFR 901.3(c). In these cases, the FLRA may offset a payment internally or make an offset request directly to a Federal payment agency.

(2) At least thirty (30) days prior to offsetting a payment internally or requesting a Federal payment agency to offset a payment, the FLRA will send notice to the debtor in accordance with the requirements of § 2418.4. (For debts outstanding more than ten (10) years on or before June 11, 2009, the FLRA will comply with the additional notification requirements of 31 CFR 285.7(d).) When referring a debt for offset under this paragraph (b), the FLRA will certify, in writing, that the debt is valid, delinquent, legally enforceable, and that there are no legal bars to collection by offset. In addition, the FLRA will certify its compliance with these regulations concerning administrative offset. See 31 CFR 901.3(c)(2)(ii).

(c) *Administrative review.* The notice described in § 2418.4 shall explain to the debtor how to request an administrative review of the FLRA's determination that the debtor owes an FLRA debt and how to present evidence that the debt is not delinquent or legally enforceable. In addition to challenging the existence and amount of the debt, the debtor may seek a review of the terms of repayment. In most cases, the FLRA will provide the debtor with a "paper hearing" based upon a review of the written record, including documentation provided by the debtor. The FLRA shall provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and the FLRA determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or

veracity. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although the FLRA will carefully document all significant matters discussed at the hearing. The FLRA may suspend collection through administrative offset and/or other collection actions pending the resolution of a debtor's dispute.

(d) *Procedures for expedited offset.* Under the circumstances described in 31 CFR 901.3(b)(4)(iii), the FLRA may effect an offset against a payment to be made to the debtor prior to sending a notice to the debtor, as described in §2418.4, or completing the procedures described in paragraph (b)(2) and (c) of this section. The FLRA shall give the debtor notice and an opportunity for review as soon as practicable and promptly refund any money ultimately found not to have been owed to the Government.

§2418.11 How will the FLRA use tax-refund offset to collect an FLRA debt?

(a) *Tax-refund offset.* In most cases, the Financial Management Service uses the Treasury Offset Program to collect FLRA debts by the offset of tax refunds and other Federal payments. See §2418.9(c). If not already transferred to the Financial Management Service under §2418.9, the FLRA will refer to the Treasury Offset Program any past-due, legally enforceable debt for collection by tax-refund offset. See 26 U.S.C. 6402(d), 31 U.S.C. 3720A and 31 CFR 285.2.

(b) *Notice.* At least sixty (60) days before referring a debt to the Treasury Offset Program, the FLRA will send notice to the debtor in accordance with the requirements of §2418.4. The FLRA will certify to the Financial Management Service's Treasury Offset Program, in writing, that the debt is past due and legally enforceable in the amount submitted and that the FLRA has made reasonable efforts to obtain payment of the debt as described in 31 CFR 285.2(d). In addition, the FLRA will certify its compliance with all applicable due-process and other requirements described in this part and other Federal laws. See 31 U.S.C. 3720A(b) and 31 CFR 285.2.

(c) *Administrative review.* The notice described in §2418.4 shall provide the debtor with at least 60 days prior to the initiation of tax-refund offset to request an administrative review as described in §2418.10(c). The FLRA may suspend collection through tax-refund offset and/or other collection actions pending the resolution of the debtor's dispute.

§2418.12 How will the FLRA offset a Federal employee's salary to collect an FLRA debt?

(a) *Federal salary offset.* (1) Salary offset is used to collect debts that FLRA employees and other Federal employees owe to the United States. If a Federal employee owes an FLRA debt, then the FLRA may offset the employee's Federal salary to collect the debt in the manner described in this section. For information on how a Federal agency other than the FLRA may collect debt from the salary of an FLRA employee, see §§2418.19 and 2418.20.

(2) Nothing in this part requires the FLRA to collect an FLRA debt in accordance with this section if Federal law allows otherwise. See, for example, 5 U.S.C. 5705 (travel advances not used for allowable travel expenses are recoverable from the employee or his estate by setoff against accrued pay and other means) and 5 U.S.C. 4108 (recovery of training expenses).

(3) The FLRA may use the administrative-wage-garnishment procedure described in §2418.13 to collect a debt from an individual's non-Federal wages.

(b) *Centralized salary offset through the Treasury Offset Program.* As described in §2418.9(a), the FLRA will refer FLRA debts to the Financial Management Service for collection by administrative offset, including salary offset, through the Treasury Offset Program. When possible, the FLRA will attempt salary offset through the Treasury Offset Program before applying the procedures in paragraph (c) of this section. See 5 CFR 550.1109.

(c) *Non-centralized salary offset for FLRA debts.* When centralized salary offset through the Treasury Offset Program is not available or appropriate, the FLRA may collect delinquent FLRA debts through non-centralized

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salary offset. See 5 CFR 550.1109. In these cases, the FLRA may offset a payment internally or make a request directly to a Federal payment agency to offset a salary payment to collect a delinquent debt that a Federal employee owes. At least thirty (30) days prior to offsetting internally or requesting a Federal agency to offset a salary payment, the FLRA will send notice to the debtor in accordance with the requirements of § 2418.4. (For debts outstanding more than ten (10) years on or before June 11, 2009, the FLRA will comply with the additional notification requirements of 31 CFR 285.7(d).) When referring a debt for offset, the FLRA will certify to the payment agency, in writing, that the debt is valid, delinquent, and legally enforceable in the amount stated, and that there are no legal bars to collection by salary offset. In addition, the FLRA will certify that all due-process and other prerequisites to salary offset have been met. See 5 U.S.C. 5514, 31 U.S.C. 3716(a), and this section for a description of the due-process and other prerequisites for salary offset.

(d) *When prior notice not required.* The FLRA is not required to provide prior notice to an employee when the FLRA makes the following adjustments to an FLRA employee's pay:

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

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

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

and the amount of the adjustment and a point of contact for contesting such adjustment.

(e) *Hearing procedures*—(1) *Request for a hearing.* A Federal employee who has received a notice that his or her FLRA debt will be collected by means of salary offset may request a hearing concerning the existence or amount of the debt. The Federal employee also may request a hearing concerning the amount proposed to be deducted from the employee's pay each pay period. The employee must send any request for hearing, in writing, to the office designated in the notice described in § 2418.4. See § 2418.4(a)(11). The request must be received by the designated office on or before the 15th calendar day following the employee's receipt of the notice. The employee must sign the request and specify whether an oral or paper hearing is requested. If an oral hearing is requested, then the employee must explain why the matter cannot be resolved by review of the documentary evidence alone. An oral hearing may, at the debtor's option, be conducted either in-person or by telephone conference. All travel expenses incurred by the Federal employee in connection with an in-person hearing will be borne by the employee. All telephonic charges incurred during the hearing will be the responsibility of the agency.

(2) *Failure to submit timely request for hearing.* If the employee fails to submit a request for hearing within the time period described in paragraph (e)(1) of this section, then the employee will have waived the right to a hearing, and salary offset may be initiated. However, the FLRA will accept a late request for hearing if the employee can show that the late request was the result of circumstances beyond the employee's control or because of a failure to receive actual notice of the filing deadline.

(3) *Hearing official.* The FLRA must obtain the services of a hearing official who is not under the supervision or control of the Chairman. The FLRA may contact an agent of any agency designated in appendix A to 5 CFR part 581 (List of Agents Designated to Accept Legal Process) to request a hearing official.

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

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

(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 by the hearing official; or

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

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

(7) *Failure to appear or submit documentary evidence.* In the absence of good cause shown (for example, excused illness), if the employee fails to appear at an oral hearing or fails to submit documentary evidence as required for a paper hearing, then the employee will have waived the right to a hearing, and salary offset shall be initiated. If the

FLRA representative fails to appear at an oral hearing, then the hearing official shall proceed with the hearing as scheduled, and make his or her determination based upon the oral testimony presented and the documentary evidence submitted by both parties.

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

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

(10) *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 FLRA received the request for hearing. If the employee requests a delay in the proceedings, then the deadline for the decision may be postponed by the number of days by which the hearing was postponed. When a decision is not timely rendered, the FLRA shall waive penalties applied to the debt for the period beginning with the date the decision is due and ending on the date the decision is issued.

(11) *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, if applicable.

(12) *Final agency action.* The hearing official's decision shall be final.

(f) *Waiver not precluded.* Nothing in this part precludes an employee from requesting waiver of an overpayment

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under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or other statutory authority.

(g) *Salary-offset process*—(1) *Determination of disposable pay*. The FLRA's Office of the Executive Director will determine the amount of an FLRA employee's disposable pay (as defined in § 2418.1) and will implement salary offset when requested to do so by the FLRA, as described in paragraph (c) of this section, or another agency, as described in § 2418.19. If the debtor is not employed by the FLRA, then the agency employing the debtor will determine the amount of the employee's disposable pay and will implement salary offset upon request.

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

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

(i) If the amount of the debt is equal to or less than 15 percent of the disposable pay, then such debt generally will be collected in one lump-sum payment;

(ii) Installment deductions will be made over a period of no greater than the anticipated period of employment. An installment deduction will not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount, or a higher deduction has been ordered by a court under section 124 of Public Law 97-276 (96 Stat. 1195), or the creditor agency has determined that smaller deductions are appropriate based on the employee's ability to pay.

(4) *Final salary payment*. After the employee has separated either voluntarily or involuntarily from the payment agency, the payment agency may make a lump-sum deduction exceeding 15 percent of disposable pay from any final salary or other payments pursuant to 31 U.S.C. 3716 in order to satisfy a debt.

(h) *Payment agency's responsibilities*.

(1) As required by 5 CFR 550.1109, if the employee separates from the payment agency from which the FLRA has requested salary offset, then the payment agency must certify the total

amount of its collection and notify the FLRA and the employee of the amounts collected. If the payment agency is aware that the employee is entitled to payments from the Civil Service Retirement Fund and Disability Fund, the Federal Employee Retirement System, or other similar payments, then it must provide written notification to the payment agency responsible for making such payments that the debtor owes a debt, the amount of the debt, and that the FLRA has complied with the provisions of this section. The FLRA must submit a properly certified claim to the new payment agency before the collection can be made.

(2) If the employee is already separated from employment and all payments due from his or her former payment agency have been made, then the FLRA may request that money due and payable to the employee from the Civil Service Retirement Fund and Disability Fund, the Federal Employee Retirement System, or other similar funds, be administratively offset to collect the debt. Generally, the FLRA will collect such monies through the Treasury Offset Program as described in § 2418.9(c).

(3) When an employee transfers to another agency, the FLRA should resume collection with the employee's new payment agency in order to continue salary offset.

§ 2418.13 How will the FLRA use administrative wage garnishment to collect an FLRA debt from a debtor's wages?

(a) The FLRA is authorized to collect debts from a debtor's wages by means of administrative wage garnishment in accordance with the requirements of 31 U.S.C. 3720D and 31 CFR 285.11. 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). The FLRA may use administrative wage garnishment to collect a delinquent FLRA debt unless the debtor is making timely payments under an agreement to pay the debt in installments (see § 2418.6). At least thirty (30) days before

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initiating an administrative wage garnishment, the FLRA will send notice to the debtor in accordance with the requirements of § 2418.4 of this part, including the requirements of § 2418.4(a)(10). (For debts outstanding more than ten (10) years on or before June 11, 2009, the FLRA will comply with the additional notification requirements of 31 CFR 285.7(d).) For FLRA debts referred to the Financial Management Service under § 2418.9, the FLRA may authorize the Financial Management Service to send a notice informing the debtor that administrative wage garnishment will be initiated and how the debtor may request a hearing as described in § 2418.4(a)(10). If a debtor makes a timely request for a hearing, administrative wage garnishment will not begin until a hearing is held and a decision is sent to the debtor. See 31 CFR 285.11(f)(4). If a debtor's hearing request is not timely, then the FLRA may suspend collection by administrative wage garnishment in accordance with the provisions of 31 CFR 285.11(f)(5). All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. If a hearing is conducted telephonically, all telephonic charges incurred during the hearing will be the responsibility of the agency.

(b) This section does not apply to Federal salary offset, the process by which the FLRA collects debts from the salaries of Federal employees (see § 2418.12).

§ 2418.14 How will the FLRA report FLRA debts to credit bureaus?

The FLRA shall report delinquent FLRA debts to credit bureaus in accordance with 31 U.S.C. 3711(e), 31 CFR 901.4, and the Office of Management and Budget Circular A-129, "Policies for Federal Credit Programs and Nontax Receivables." For additional information, see Financial Management Service's "Guide to the Federal Credit Bureau Program," which may be found at <http://www.fms.treas.gov/debt>. At least sixty (60) days prior to reporting a delinquent debt to a consumer-reporting agency, the FLRA will send notice to the debtor in accordance with the requirements of § 2418.4. Before disclosing information to a consumer-re-

porting agency, the FLRA shall provide, on request of a person alleged to be responsible for the delinquent debt, for a review of the obligation of the debtor, including an opportunity for reconsideration of the initial decision on the debt. The FLRA may authorize the Financial Management Service to report to credit bureaus those delinquent FLRA debts that have been transferred to the Financial Management Service under § 2418.9.

§ 2418.15 How will the FLRA refer FLRA debts to private collection agencies?

The FLRA will transfer delinquent FLRA debts to the Financial Management Service to obtain debt-collection services provided by private collection agencies. See § 2418.9.

§ 2418.16 When will the FLRA refer FLRA debts to the Department of Justice?

(a) *Compromise or suspension or termination of collection activity.* The FLRA shall refer FLRA debts having a principal balance over \$ 100,000, or such higher amount as authorized by the Attorney General, to the Department of Justice for approval of any compromise of a debt or suspension or termination of collection activity. See §§ 2418.7 and 2418.8; 31 CFR 902.1; 31 CFR 903.1.

(b) *Litigation.* The FLRA shall promptly refer to the Department of Justice for litigation delinquent FLRA debts on which aggressive collection activity has been taken in accordance with this part and that should not be compromised, and on which collection activity should not be suspended or terminated. See 31 CFR part 904. The FLRA may authorize the Financial Management Service to refer to the Department of Justice for litigation those delinquent FLRA debts that have been transferred to the Financial Management Service under § 2418.9.

§ 2418.17 How does a debtor request a special review based on a change in circumstances such as catastrophic illness, divorce, death, or disability?

(a) *Material change in circumstances.* A debtor who owes an FLRA debt may, at any time, request a special review by the FLRA of the amount of any offset, administrative wage garnishment, or

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voluntary payment, based on materially changed circumstances beyond the control of the debtor such as, but not limited to, catastrophic illness, divorce, death, or disability.

(b) *Inability to pay.* For purposes of this section, in determining whether an involuntary or voluntary payment would prevent the debtor from meeting essential subsistence expenses (costs incurred for food, housing, clothing, transportation, and medical care), the debtor shall submit a detailed statement and supporting documents for the debtor, 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) Child-care or elder-care expenses;
- (7) Medical expenses; and
- (8) Exceptional expenses, if any.

(c) *Alternative payment arrangement.* If the debtor requests a special review under this section, the debtor shall submit an alternative proposed payment schedule and a statement to the FLRA, with supporting documents, showing why the current offset, garnishment, or repayment schedule imposes an extreme financial hardship on the debtor. The FLRA will evaluate the statement and documentation and determine whether the current offset, garnishment, or repayment schedule imposes extreme financial hardship on the debtor. The FLRA shall notify the debtor in writing of such determination, including, if appropriate, a revised offset, garnishment, or payment schedule. If the special review results in a revised offset, garnishment, or repayment schedule, then the FLRA will notify the appropriate agency or other persons about the new terms.

§ 2418.18 Will the FLRA issue a refund if money is erroneously collected on a debt?

The FLRA shall promptly refund to a debtor any amount collected on an FLRA debt when the debt is waived or otherwise found not to be owed to the United States, or as otherwise required by law. Refunds under this part shall

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not bear interest unless required by law.

Subpart C—Procedures for Offset of FLRA Payments to Collect Debts Owed to Other Federal Agencies

§ 2418.19 How do other Federal agencies use the offset process to collect debts from payments issued by the FLRA?

(a) *Offset of FLRA payments to collect debts owed to other Federal agencies.* (1) In most cases, Federal agencies submit eligible debts to the Treasury Offset Program to collect delinquent debts from payments issued by the FLRA and other Federal agencies, a process known as “centralized offset.” When centralized offset is not available or appropriate, any Federal agency may ask the FLRA (when acting as a “payment agency”) to collect a debt owed to such agency by offsetting funds payable to a debtor by the FLRA, including salary payments issued to FLRA employees. This section and § 2418.20 apply when a Federal agency asks the FLRA to offset a payment issued by the FLRA to a person who owes a debt to the United States.

(2) This subpart does not apply to FLRA debts. See §§ 2418.10 through 2418.12 for offset procedures applicable to FLRA debts.

(3) This subpart does not apply to the collection of non-FLRA debts through tax refund offset. See 31 CFR 285.2 for tax-refund-offset procedures.

(b) *Administrative offset (including salary offset); certification.* The FLRA will initiate a requested offset only upon receipt of written certification from the creditor agency that the debtor owes the past-due, legally enforceable debt in the amount stated, and that the creditor agency has fully complied with all applicable due-process and other requirements contained in 31 U.S.C. 3716, 5 U.S.C. 5514, and the creditor agency’s regulations, as applicable. Offsets will continue until the debt is paid in full or otherwise resolved to the satisfaction of the creditor agency.

(c) *Where a creditor agency makes requests for offset.* Requests for offset under this section shall be sent to the Federal Labor Relations Authority,

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ATTN: Office of the Executive Director, 1400 K Street NW., Washington, DC 20424.

(d) *Incomplete certification.* The FLRA will return an incomplete debt certification to the creditor agency with notice that the creditor agency must comply with paragraph (b) of this section before action will be taken to collect a debt from a payment issued by the FLRA.

(e) *Review.* The FLRA 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.

(f) *When the FLRA will not comply with offset request.* The FLRA will comply with the offset request of another agency unless the FLRA determines that the offset would not be in the best interests of the United States, or would otherwise be contrary to law.

(g) *Multiple debts.* When two or more creditor agencies are seeking offsets from payments made to the same person, or when two or more debts are owed to a single creditor agency, the FLRA may determine the order in which the debts will be collected or whether one or more debts should be collected by offset simultaneously.

(h) *Priority of debts owed to FLRA.* For purposes of this section, debts owed to the FLRA generally take precedence over debts owed to other agencies. The FLRA may determine whether to pay debts owed to other agencies before paying a debt owed to the FLRA. The FLRA will determine the order in which the debts will be collected based on the best interests of the United States.

§ 2418.20 What does the FLRA do upon receipt of a request to offset the salary of an FLRA employee to collect a debt owed by the employee to another Federal agency?

(a) *Notice to the FLRA employee.* When the FLRA receives proper certification of a debt owed by one of its employees, the FLRA will begin deductions from the employee's pay at the next officially established pay period. The FLRA will send a written notice to the employee indicating that a certified debt claim has been received from the creditor agency, the amount of the debt that the creditor agency claims is

owed, the date deductions from salary will begin, and the amount of such deductions.

(b) *Amount of deductions from FLRA employee's salary.* The amount deducted under § 2418.19(b) will be the lesser of the amount of the debt certified by the creditor agency or an amount up to 15% of the debtor's disposable pay. Deductions shall continue until the FLRA knows that the debt is paid in full or until otherwise instructed by the creditor agency. Alternatively, the amount offset may be an amount that the debtor and the creditor agency agree upon in writing. See § 2418.12(g) (salary-offset process).

(c) *When the debtor is no longer employed by the FLRA—(1) Offset of final and subsequent payments.* If an FLRA employee retires or resigns or if his or her employment otherwise ends before collection of the debt is complete, then the FLRA will continue to offset, under 31 U.S.C. 3716, up to 100% of an employee's subsequent payments until the debt is paid or otherwise resolved. Such payments include a debtor's final salary payment, lump-sum leave payment, and other payments payable to the debtor by the FLRA. See 31 U.S.C. 3716 and 5 CFR 550.1104(l) and 550.1104(m).

(2) *Notice to the creditor agency.* If the employee is separated from the FLRA before the debt is paid in full, then the FLRA will certify to the creditor agency the total amount of its collection. If the FLRA is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, Federal Employee Retirement System, or other similar payments, then the FLRA will provide written notice to the agency making such payments that the debtor owes a debt (including the amount) and that the provisions of 5 CFR 550.1109 have been fully complied with. The creditor agency is responsible for submitting a certified claim to the agency responsible for making such payments before collection may begin. Generally, creditor agencies will collect such monies through the Treasury Offset Program as described in § 2418.9(c).

(3) *Notice to the debtor.* The FLRA will provide to the debtor a copy of any notices sent to the creditor agency under paragraph (c)(2) of this section.

(d) *When the debtor transfers to another Federal agency—*(1) *Notice to the creditor agency.* If the debtor transfers to another Federal agency before the debt is paid in full, then the FLRA will notify the creditor agency and will certify the total amount of its collection on the debt. The FLRA will provide a copy of the certification to the creditor agency. The creditor agency is responsible for submitting a certified claim to the debtor's new employing agency before collection may begin.

(2) *Notice to the debtor.* The FLRA will provide to the debtor a copy of any notices and certifications sent to the creditor agency under paragraph (d)(1) of this section.

(e) *Request for hearing official.* The FLRA will provide a hearing official upon the creditor agency's request with respect to an FLRA employee. See 5 CFR 550.1107(a).

APPENDIX A TO PART 2418—WAIVING CLAIMS AGAINST FLRA EMPLOYEES FOR ERRONEOUS PAYMENTS

Date: May 1, 2015.

Subject: Waiving Claims Against FLRA Employees for Erroneous Payments.

1. Purpose

This appendix establishes the FLRA's policies and procedures for waiving claims by the Government against an employee for erroneous payments of: (1) Pay and allowances (e.g., health and life insurance) and (2) travel, transportation, and relocation expenses and allowances.

2. Background

a. 5 U.S.C. 5584 authorizes the waiver of claims by the United States in whole or in part against an employee arising out of erroneous payments of pay and allowances, travel, transportation, and relocation expenses and allowances. A waiver may be considered when collection of the claim would be against equity and good conscience and not in the best interest of the United States, provided that there does not exist, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any

other person having an interest in obtaining a waiver of the claim.

b. The General Accounting Office Act of 1996 (Pub. L. 104-316), Title I, section 103(d), enacted October 19, 1996, amended 5 U.S.C. 5584 by transferring the authority to waive claims for erroneous payments exceeding \$1,500 from the Comptroller General of the United States to the Office of Management and Budget (OMB). OMB subsequently re-delegated this waiver authority to the executive agency that made the erroneous payment. The authority to waive claims not exceeding \$1,500, which was vested in the head of each agency prior to the enactment of Public Law 104-316, was unaffected by the Act.

c. 5 U.S.C. 5514 authorizes the head of each agency, upon a determination that an employee is indebted to the United States for debts to which the United States is entitled to be repaid at the time of the determination, to deduct up to 15%, or a greater amount if agreed to by the employee or a higher deduction has been ordered by a court under section 124 of Public Law 97-276 (96 Stat. 1195), from the employee's pay at officially established pay intervals in order to repay the debt.

3. Delegation

The Executive Director is delegated the authority to waive, in whole or in part, a claim of the United States against an employee for an erroneous payment of pay and allowances, travel, transportation, and relocation expenses and allowances, in accordance with the limitations and standards in 5 U.S.C. 5584.

4. Responsibilities

The Office of the Executive Director shall:

(1) Promptly notify an employee upon discovery of an erroneous payment to that employee;

(2) Promptly act to collect the erroneous overpayment, following established debt-collection policies and procedures;

(3) Establish time frames for employees to request a waiver in writing and for the Executive Director to review the waiver request. These time frames must take into consideration the responsibilities of the United States to take prompt action to pursue enforced collection on overdue debts, which may arise from erroneous payments.

(4) Notify employees whose requests for waiver of claims are denied in whole or in part of the basis for the denial.

(5) Pay a refund when appropriate if a waiver is granted;

(6) Fulfill all labor-relations responsibilities when implementing the provisions of this appendix; and

(7) Fulfill any other responsibility of the agency imposed by 5 U.S.C. 5584 or other applicable laws and regulations.

Additionally, the Office of the Executive Director may initiate a waiver application during the processing of a claim under 5 CFR part 2418.

5. Reporting Requirements

a. The FLRA shall maintain a register of waiver actions. The register shall cover each fiscal year and be prepared by December 31 of each year for the preceding fiscal year. The register shall contain the following information:

- (1) The total amount waived by the FLRA;
- (2) The number and dollar amount of waiver applications granted in full;
- (3) The number and dollar amount of waiver applications granted in part and denied in part, and the dollar amount of each;
- (4) The number and dollar amount of waiver applications denied in their entirety; and
- (5) The number of waiver applications referred to the Executive Director for initial action.

b. The FLRA shall retain a written record of each waiver action for 6 years and 3 months. At a minimum, the written record shall contain:

- (1) The FLRA's summary of the events surrounding the erroneous payment;
- (2) Any written comments submitted by the employee from whom collection is sought;
- (3) An account of the waiver action taken and the reasons for such action; and
- (4) Other pertinent information such as any action taken to refund amounts repaid.

6. Effect of Request for Waiver

A request for a waiver of a claim shall not affect an employee's opportunity under 5 U.S.C. 5514(a)(2)(D) for a hearing on the determination of the agency concerning the existence or the amount of the debt, or the terms of the repayment schedule. A request by an employee for a hearing under 5 U.S.C. 5514(a)(2)(D) shall not affect an employee's right to request a waiver of the claim. The determination whether to waive a claim may be made at the discretion of the deciding official either before or after a final decision is rendered pursuant to 5 U.S.C. 5514(a)(2)(D) concerning the existence or the amount of the debt, or the terms of the repayment schedule.

7. Guidelines for Determining Requests

a. A request for a waiver shall not be granted if the deciding official determines there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim.

There are no exceptions to this rule for financial hardship or otherwise.

(1) "Fault" exists if, in light of all the circumstances, it is determined that the employee knew or should have known that an error existed, but failed to take action to have it corrected. Fault can derive from an act or a failure to act. Unlike fraud, fault does not require a deliberate intent to deceive. Whether an employee should have known about an error in pay is determined from the perspective of a reasonable person. Pertinent considerations in finding fault include whether:

- (a) The payment resulted from the employee's incorrect, but not fraudulent, statement that the employee should have known was incorrect;
- (b) The payment resulted from the employee's failure to disclose material facts that were in the employee's possession and that the employee should have known to be material; or
- (c) The employee accepted a payment, that the employee knew or should have known to be erroneous.

(2) Every case must be examined in light of its particular facts. For example, where an employee is promoted to a higher grade but the step level for the employee's new grade is miscalculated, it may be appropriate to conclude that there is no fault on the employee's part because employees are not typically expected to be aware of and understand the rules regarding determination of step level upon promotion. On the other hand, a different conclusion as to fault potentially may be reached if the employee in question is a personnel specialist or an attorney who concentrates on personnel law.

b. If the deciding official finds an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim, then the request for a waiver must be denied.

c. If the deciding official finds no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim, then the employee is not automatically entitled to a waiver. Before a waiver can be granted, the deciding official must also determine that collection of the claim against an employee would be against equity and good conscience and not in the best interests of the United States. Factors to consider when determining whether collection of a claim against an employee would be against equity and good conscience and not in the best interests of the United States include, but are not limited to:

- (1) Whether collection of the claim would cause serious financial hardship to the employee from whom collection is sought.

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(2) Whether, because of the erroneous payment, the employee either has relinquished a valuable right or changed positions for the worse, regardless of the employee's financial circumstances.

(a) To establish that a valuable right has been relinquished, it must be shown that the right was, in fact, valuable; that it cannot be regained; and that the action was based chiefly or solely on reliance on the overpayment.

(b) To establish that the employee's position has changed for the worse, it must be shown that the decision would not have been made but for the overpayment, and that the decision resulted in a loss.

(c) An example of a "detrimental reliance" would be a decision to sign a lease for a more expensive apartment based chiefly or solely upon reliance on an erroneous calculation of salary, and the funds spent for rent cannot be recovered.

(3) The cost of collecting the claim equals or exceeds the amount of the claim;

(4) The time elapsed between the erroneous payment and discovery of the error and notification of the employee;

(5) Whether failure to make restitution would result in unfair gain to the employee;

(6) Whether recovery of the claim would be unconscionable under the circumstances.

d. The burden is on the employee to demonstrate that collection of the claim would be against equity and good conscience and not in the best interest of the United States.

8. Authorities

a. 5 U.S.C. 5584, "Claims for Overpayment of Pay and Allowances, and of Travel, Transportation and Relocation Expenses and Allowances."

b. 31 U.S.C. 3711, "Collection and Compromise."

c. 31 U.S.C. 3716, "Administrative Offset."

d. 31 U.S.C. 3717, "Interest and Penalty on Claims."

e. 5 CFR part 550, subpart K, "Collection by Offset from Indebted Government Employees."

f. 31 CFR part 5, subpart B, "Salary Offset."

g. Determination with Respect to Transfer of Functions Pursuant to Public Law 104–316, OMB, December 17, 1996.

9. Cancellation

FLRA Internal Regulation 2790, dated December 29, 1986, is superseded.