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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206-AH63

Pay Administration (General); Collection by Offset From Indebted Government Employees

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to make changes in the salary offset regulations to comply with the Debt Collection Improvement Act of 1996. The principal changes relate to the roles played by disbursing officials and debt collection centers with respect to salary offset. Also included are new expedited salary offset procedures for certain types of recent or small-amount debts.

EFFECTIVE DATE: February 1, 1999.

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SUPPLEMENTARY INFORMATION: On April 16, 1998, the Office of Personnel Management (OPM) published regulations proposing changes in the salary offset regulations to comply with the Debt Collection Improvement Act of 1996. The principal changes relate to the roles played by disbursing officials and debt collection centers with respect to salary offset. Also included are new expedited salary offset procedures for certain types of recent or small-amount debts. Comments were received from one labor organization and four Federal agencies.

The labor organization requested clarification regarding the effect of these changes on Federal Aviation Administration (FAA) employees. FAA has informed OPM that, under the authority of section 347 of the 1996 Department of Transportation Appropriations Act, FAA employees are no longer covered by the provisions of title 5 of the United States Code and related regulations. FAA has established policies paralleling the provisions of title 5 of the United States Code in many areas. One such area is salary offset under 5 U.S.C. 5514. FAA is considering whether or not to adopt as FAA policy the amendments made by this rule.

The labor organization's first recommendation was that Federal agencies should be directed to enter into appropriate bargaining with their respective unions over this change. We believe it would be inappropriate for

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our regulations to require agencies to bargain over the implementation of these regulations. That decision is a matter more appropriately resolved by management and the exclusive representatives.

Secondly, the labor organization recommended that the decision about whether a flat amount or a percentage of the indebtedness is

deducted from the employee's pay should be the employee's choice. Under the salary offset law (5 U.S.C. 5514), the creditor agency establishes the repayment schedule; however, the employee may request a hearing regarding the terms of the repayment schedule. The decision to use a flat dollar amount or a percentage-based offset is simply one aspect of the repayment schedule.

An agency asked for clarification of the new section 550.1108 regarding who would determine the amount to be offset (collected) from an employee's salary payments. Section 550.1108 deals with centralized administrative offset by disbursing officials, such as those in the Department of the Treasury. In applying centralized administrative offsets, disbursing officials follow the instructions of the creditor agency. The creditor agency is responsible for determining the debt repayment schedule (i.e., the schedule of salary offsets) and for providing notice to the employee. (See section 550.1104(b)(2)(ii) and (d)(3).) A creditor agency may also authorize a debt collection center to act in its behalf in establishing the terms of the repayment schedule, subject to any rules or conditions established by the creditor agency. (See section 550.1110 and the definition of ``debt collection center'' in section 550.1103.) We are making some minor clarifying language changes in section 550.1108 of these final regulations, including changes in the fourth sentence. As originally drafted in the proposed rule, the wording of this sentence implied that only a single payment is available for offset. The revised sentence references plural payments.

Two agencies commented that the regulations should provide that the decision of a hearing official in a salary offset proceeding concerning the existence or the amount of an employee's indebtedness is binding on the agency as well as on the employee for all purposes. After careful review, we have decided not to include such a provision in the final regulations. The position reflected in the proposed regulations is in accord with well-reasoned decisions of the Comptroller General, who concluded that under the express terms of 5 U.S.C. 5514(a), as amended by the Debt Collection Act of 1982, Pub. L. No. 97-365, section 5, 96 Stat. 1749 (1982), a hearing official's determination concerning the existence or the amount of an indebtedness in a salary offset proceeding is made only for purposes of determining whether to allow a salary offset. The creditor agency remains legally responsible for administering the program under which the debt arose. Thus, a hearing official's determination does not supersede the finding by the creditor agency that a debt is owed and does not affect the Government's ability to recoup the indebtedness through alternative collection methods. See Comptroller General decisions Secretary of Energy, B-211626, December 19, 1984, and Alfred H. Varga, B-260909, December 17, 1996.

The Department of Defense (DOD) made two comments. First, that under the modification of the definition of ``agency'' in the proposed regulation, DOD would constitute one agency for salary offset purposes, including the designation of hearing officials. Under the current regulatory definition of ``agency,'' there are four agencies within DOD: the Department of Defense (which encompasses the DOD agencies other than the military services), the Department of the Army, the Department of the Navy, and the Department of the Air Force. Thus, the current regulations allow one military department to provide a hearing official for another military department or a Defense agency. If the proposed change in the definition of ``agency'' were to be made final, DOD would have to make other arrangements for hearing officials, which would create an otherwise unnecessary and undue administrative burden on DOD. In response to this comment, we have revised the definition of ``agency'' to make clear that, for the purposes of this subpart, a military department will be treated as a separate agency.

DOD also proposed that, while not affected by the proposed rule, the provisions of 5 CFR 550.1104(d)(11) should be changed. This section requires that agency letters notifying the debtor of the agency's intent to collect through salary offset include a statement that any knowingly false or frivolous statements, representations, or evidence

may subject the employee to disciplinary procedures, penalties under the False Claims Act, or criminal penalties. DOD stated the view that because most of the agency's debts are administratively established, the use of this unnecessarily harsh language in debt letters should be within the discretionary authority of the agency. This raises a new issue not mentioned in the proposed rule. As the public has not had a chance to comment, we are unable to make such a change in this final rule. We note this recommendation and will consider it for possible later action.

Covered agencies are required to make necessary conforming changes in their agency salary offset regulations. Under 5 CFR 550.1105(b), significant proposed changes in creditor agency regulations must be submitted to OPM for review and approval. However, as long as these changes in agency regulations are made merely to conform with the changes made in our regulations, no OPM review will be required.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

Office of Personnel Management.
Janice R. Lachance,
Director.

Accordingly, OPM is amending part 550 of title 5 of the Code of Federal Regulations as follows:

PART 550--PAY ADMINISTRATION (GENERAL)

Subpart K--Collection by Offset From Indebted Government Employees

1. The authority citation for subpart K of part 550 continues to read as follows:

Authority: 5 U.S.C. 5514; sec. 8(1) of E.O. 11609; redesignated in sec. 2-1 of E.O. 12107.

2. In Sec. 550.1102, paragraph (b) is revised to read as follows:

Sec. 550.1102 Scope.

* * * * *

(b) Applicability. This subpart and 5 U.S.C. 5514 apply in recovering certain debts by administrative offset, except where the employee consents to the recovery, from the current pay account of the employee. Because salary offset is a type of administrative offset, debt collection procedures for salary offset which are not specified in 5 U.S.C. 5514 and these regulations should be consistent with the provisions of the Federal Claims Collections Standards (FCCS) (dealing with administrative offset generally) and 31 CFR part 285 (dealing with centralized administrative

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offset under 31 U.S.C. 3716). Section 550.1108 addresses the use of centralized administrative offset procedures to effect salary offset. Generally, the procedures under Sec. 550.1109 should apply only when centralized administrative offset cannot be accomplished.

(1) Excluded debts. The procedures contained in this subpart do not apply to debts arising under the Internal Revenue Code (26 U.S.C. 1 et seq.) or 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).

(2) Waiver requests. This subpart does not preclude an employee from requesting waiver of an erroneous payment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt, in the manner prescribed by the head of the responsible agency. Similarly, this subpart does not preclude an employee from requesting waiver of the collection of a debt under any other applicable statutory authority.

3. In Sec. 550.1103, the definitions of agency, creditor agency, disposable pay, and FCCS are revised, and the definition of debt collection center is added in alphabetical order, to read as follows:

Sec. 550.1103 Definitions.

* * * * *

Agency means an executive department or agency; a military department; the United States Postal Service; the Postal Rate Commission; the United States Senate; the United States House of Representatives; any court, court administrative office, or instrumentality in the judicial or legislative branches of the Government; or a Government corporation.

Creditor Agency means the agency to which the debt is owed, including a debt collection center when acting in behalf of a creditor agency in matters pertaining to the collection of a debt (as provided in Sec. 550.1110).

* * * * *

Debt collection center means the Department of the Treasury or other Government agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies in accordance with 31 U.S.C. 3711(g).

Disposable pay means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld (other than deductions to execute garnishment orders in accordance with parts 581 and 582 of this chapter). Among the legally required deductions that must be applied first to determine disposable pay are levies pursuant to the Internal Revenue Code (title 26, United States Code) and deductions described in Sec. 581.105(b) through (f) of this chapter.

* * * * *

FCCS means the Federal Claims Collection Standards published in 4 CFR parts 101 through 105.

* * * * *

4. Section 550.1104 is amended, in paragraph (d), in the second sentence of the introductory text, by removing ``or his designee'' and adding in its place ``(or authorized designee)''; in paragraph (d)(4), by adding ``as defined in Sec. 550.1103'' after ``FCCS''; in paragraph (d)(6), by removing ``(4 CFR 102.2(e))'' and adding in its place ``(see the FCCS)''; in paragraph (e)(1), by adding the word ``creditor'' before the second appearance of the word ``agency''; in paragraph (g)(2), by removing ``4 CFR 102.3(c)'' and adding in its place ``the FCCS''; in paragraph (m), by removing ``4 CFR 102.3'' and adding in its place ``the FCCS''; in paragraph (n), by removing ``4 CFR 102.13'' and adding in its place ``the FCCS''; and by revising paragraphs (c) and (d)(3) to read as follows:

Sec. 550.1104 Agency regulations.

* * * * *

(c) Exception to entitlement to notice, hearing, written responses,

and final decisions. In regulations covering internal collections, an agency must except from the provisions of paragraph (b) of this section--

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over 4 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 4 pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for 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.

(d) * * *

(3) The frequency and amount of the intended deduction (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay) and the intention to continue the deductions until the debt is paid in full or otherwise resolved;

* * * * *

Sec. 550.1106 [Amended]

5. Section 550.1106 is amended by removing ``4 CFR 102.3(b)(3)'' and adding ``the FCCS as defined in Sec. 550.1103'' in its place.

Sec. 550.1107 Obtaining the services of a hearing official.

6. Section 550.1107 is amended, in paragraph (a), by removing ``4 CFR 102.1'' and adding ``the FCCS as defined in Sec. 550.1103'' in its place; in paragraph (b), by removing ``4 CFR 102.1'' and adding ``the FCCS'' in its place; and by adding a new paragraph (c) to read as follows:

* * * * *

(c) The determination of a hearing official designated under this section is considered to be an official certification regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514. A creditor agency may make a certification to the Secretary of the Treasury under Sec. 550.1108 or a paying agency under Sec. 550.1109 regarding the existence and amount of the debt based on the certification of a hearing official. If a hearing official determines that a debt may not be collected via salary offset, but the creditor agency finds that the debt is still valid, the creditor agency may still seek collection of the debt through other means, such as offset of other Federal payments, litigation, etc.

7. Section 550.1108 is redesignated as Sec. 550.1109 and is amended by removing the ``(b)'' after ``5514'' in paragraph (a)(3), adding ``claim'' after the first appearance of ``debt'' in paragraph (b)(2), removing ``creditor agency's'' in paragraph (b)(3), and adding introductory text at the beginning of the section to read as follows:

Sec. 550.1109 Requesting recovery from the paying agency.

When possible, salary offset through the centralized administrative offset procedures in Sec. 550.1108 should be attempted before applying the procedures in this section.

* * * * *

7a. New Sec. 550.1108 is added to read as follows:

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Sec. 550.1108 Requesting recovery through centralized administrative offset.

Under 31 U.S.C. 3716, creditor agencies must notify the Secretary of the Treasury of all debts that are delinquent as defined in the FCCS (over 180 days) so that recovery may be made by centralized administrative offset. This includes those debts the agency seeks to recover from the pay account of an employee of another agency via salary offset. The Secretary of the Treasury and other Federal disbursing officials will match payments, including Federal salary payments, against these debts. Where a match occurs, and all the requirements for offset have been met, the payments will be offset to collect the debt. Prior to offset of the pay account of an employee, an agency must comply with the requirements of 5 U.S.C. 5514, this subpart, and agency regulations issued thereunder. Specific procedures for notifying the Secretary of the Treasury of a debt for purposes of collection by centralized administrative offset are contained in 31 CFR part 285 and the FCCS. At its discretion, a creditor agency may notify the Secretary of the Treasury of debts that have been delinquent for 180 days or less, including debts the agency seeks to recover from the pay account of an employee via salary offset.

8. A new Sec. 550.1110 is added to read as follows:

Sec. 550.1110 Debt collection centers.

A debt collection center may act in behalf of a creditor agency to collect claims via salary offset consistent with this section, subject to any limitations on its authority established by the creditor agency it represents or by the U.S. Department of the Treasury.

(a) A debt collection center may be authorized to enter into a written agreement with the indebted employee regarding the repayment schedule or, in the absence of such agreement, to establish the terms of the repayment schedule.

(b) A debt collection center may make certifications to the Secretary of the Treasury under Sec. 550.1108 or to a paying agency under Sec. 550.1109 based on the certifications it has received from the creditor agency or a hearing official.

(c) A debt collection center responsible for collecting a particular debt may not act in behalf of a creditor agency for the purpose of making determinations regarding the existence or amount of that debt.

(d) A debt collection center responsible for collecting a particular debt may arrange for a hearing on the existence or amount of the debt or the repayment schedule by an administrative law judge or, alternatively, another hearing official not under the supervision or control of the head of the creditor agency or the debt collection center.

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