

## Department of Justice

## § 11.8

(l) *Notice of Intent to Offset* or *Notice of Intent* means a written notice from a creditor agency to an employee, organization, or entity stating that the debtor is indebted to the creditor agency and apprising the debtor of certain procedural rights.

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

(n) *Organization* means the bureaus individually and the offices, boards, and divisions collectively.

(o) *Organization head* means any Director, Administrator, or Commissioner of the respective Department bureaus, the Director of the United States Trustee System, the Director of the Executive Office for United States Attorneys, and the Assistant Attorney General for Administration, who shall serve as the organization head for the offices, boards, and divisions.

(p) *Paying agency* means the agency of the federal government that employs the individual who owes a debt to an agency of the federal government. In some cases, the Department may be both the creditor agency and the paying agency.

(q)(1) *Payroll office* means the payroll office in the paying agency that is primarily responsible for the payroll records and the coordination of pay matters with the appropriate personnel office with respect to an employee.

(2) *Applicable payroll office* means the Federal Bureau of Investigation voucher and Payroll Section with respect to FBI employees and the Justice Employee Data Service for all other employees of the Department.

(r) *Salary offset coordination officer* means an official designated by an organization head who is responsible for coordinating the debt collection activities of that organization.

[Order No. 1625-92, 57 FR 44107, Sept. 24, 1992, as amended by Order No. 2650-2003, 68 FR 4928, Jan. 31, 2003]

### § 11.7 Salary adjustments.

Any negative 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 shall not be considered collection of a "debt" for the purposes of this subpart if the amount to be recovered was accumulated over four pay periods or less. In such cases, the Department need not comply with § 11.8, but it will endeavor to provide a clear and concise statement in the employee's earnings statement advising the employee of the previous overpayment at the time the adjustment is made.

### § 11.8 Salary offset.

(a) *Notice requirements before offset.* Deductions under the authority of 5 U.S.C. 5514 will not be made unless the creditor agency provides the employee with a written Notice of Intent to Offset a minimum of 30 calendar days before salary offset is initiated. When the Department is the creditor agency, this Notice of Intent shall be hand-delivered or sent by certified mail to the Assistant Director, Justice Employee Data Service, or to the Section Chief, Voucher and Payroll Section, Administrative Services Division, FBI, who shall then transmit the Notice of Intent to the debtor-employee. The Notice of Intent shall state:

(1) That the organization head has reviewed the records relating to the claim and has determined that a debt is owed, including the amount of the debt and the facts giving rise to the debt;

(2) The organization head'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 is paid in full;

(3) A repayment schedule that includes the amount, frequency, proposed beginning date, and duration of the intended deductions;

(4) The opportunity for the employee to propose an alternative written schedule for the voluntary repayment of the debt, in lieu of offset, on terms acceptable to the Department. The employee shall include a justification in the request for the alternative schedule. The schedule shall be agreed to and signed by both the employee and the organization head;

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(5) An explanation of the Department's policy concerning interest, penalties, and administrative costs, including a statement that such assessments must be made unless excused in accordance with the Federal Claims Collection Standards;

(6) The employee's right to inspect and copy all records of the Department pertaining to the debt claimed or to receive copies of such records if the debtor is unable personally to inspect the records, due to geographical or other constraints;

(7) The name, address, and telephone number of an officer or employee of the Department to whom requests for access to Department records relating to the debt must be sent;

(8) The employee's right to a hearing conducted by an impartial hearing official (an administrative law judge or other hearing official not under the supervision or control of the Attorney General) 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 paragraph (c)(1) of this section.

(9) The name, address, and telephone number of the officer or employee of the Department to whom a proposal for voluntary repayment must be sent; and the name, address, and telephone number of an officer or employee of the Department who may be contacted concerning procedures for requesting a hearing;

(10) The method and deadline for requesting a hearing;

(11) That the timely filing of a petition for a hearing on or before the 15th calendar day following receipt of the Notice of Intent will stay the commencement of collection proceedings;

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

(13) That the Department will initiate certification procedures to implement a salary offset not less than 30 days from the date of receipt of the Notice of Intent to Offset, unless the employee files a timely petition for a hearing;

(14) That a final decision on whether a hearing will be held (if one is re-

quested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing;

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

(i) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, 31 U.S.C. 3729-3731, or under any other applicable statutory authority; or

(iii) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or under any other applicable statutory authority;

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

(17) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted from debts that are later waived or found not to be owed to the United States will be promptly refunded to the employee, and

(i) Interest shall be paid on any amount paid on or deducted from a debt that is found not to be owed to the United States; and

(ii) Interest shall not be paid on any amount paid on or deducted from a debt that is later waived; and

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

(b) *Review of Departmental records related to the debt.* (1) An employee who desires to inspect or copy Department records related to the debt must send a letter to the official designated in the Notice of Intent requesting access to the relevant records. The letter must be received in the office of the salary offset coordination official within 15 days after the employee's receipt of the Notice of Intent.

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

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(3) If the employee is unable personally to inspect the records, due to geographical or other constraints, the salary offset coordination official shall arrange to send copies of such records to the employee.

(c) *Opportunity for a hearing where the Department is the creditor agency.* (1) *Request for a hearing.* (i) An employee who requests a hearing on the existence or amount of the debt held by the Department or on the offset schedule proposed by the Department must send such request to the office designated in the Notice of Intent. The request or petition for a hearing must be received by the designated office on or before the 15th calendar day following receipt by the employer of the notice.

(ii) The employee must specify whether an oral 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. The request must be signed by the employee and must fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, that the employee believes support his or her position.

(2) *Failure to timely submit.* If the employee files a request or petition for hearing after the expiration of the 15-calendar-day period provided for in paragraph (c)(1) of this section, the organization head may accept the request if the employee can show that the delay was the result of circumstances beyond his or her control or that he or she failed to receive actual notice of the filing deadline.

(3) *Obtaining the services of hearing official.* (i) When the debtor is not a Department employee and the Department cannot provide a prompt and appropriate hearing before an administrative law judge or other hearing official, the Department may request a hearing official from an agent of the paying agency, as designated in 5 CFR part 581, appendix A, or as otherwise designated by the paying agency.

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

(4) *Procedure—(i) Notice.* 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, which must occur no more than 30 days after the request is received. If the hearing will be conducted by examination of documents, the employee shall be notified within 30 days that he or she should submit evidence and arguments in writing to the hearing official.

(ii) *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 need not be an adversarial adjudication, and rules of evidence need not apply. Oral hearings may take the form of, but are not limited to:

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

(B) Informal meetings in which the hearing examiner interviews the employee; or

(C) Formal written submissions followed by an opportunity for oral presentation.

Witnesses who testify in oral hearings shall do so under oath or affirmation.

(iii) *Documentary hearing.* If the hearing official determines that an oral hearing is not necessary, he or she shall make the determination based upon a review of the written record.

(iv) *Record.* The hearing official shall maintain a summary record of any hearing conducted under this section.

(5) *Date of decision.* The hearing official shall issue a written opinion stating his or her decision, based upon all 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 Department, unless the hearing was delayed at the request of the employee, in which case the 60 day decision period shall be extended by the number of days by which the hearing was postponed. Decisions

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not timely rendered shall result in the waiver of penalty and interest costs. The decision of the hearing official shall be final.

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

(i) A summary of the facts concerning 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.

(7) *Failure to appear.* If, in the absence of good cause shown (*e.g.*, illness), the employee or the representative of the Department fails to appear, the hearing official shall proceed with the hearing as scheduled, and make his or her determination based upon the oral testimony presented and the documentation submitted by both parties. At the request of both parties, the hearing official may schedule a new hearing date. Both parties shall be given reasonable notice of the time and place of this new hearing.

(d) *Certification where the Department is the creditor agency.* (1) The salary offset coordination officer shall provide a certification to the appropriate payroll office in all cases where:

(i) The hearing official determines that a debt exists; or

(ii) The employee admits the existence and amount of the debt by failing to request a hearing.

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

(i) That the employee owes the debt;

(ii) The amount and basis of the debt;

(iii) The date the government's right to collect the debt first accrued;

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

(v) If the collection is to be made by lump-sum payment, the amount and data such payment will be collected;

(vi) If the collection is to be made in installments, the number of installments to be collected, the amount of each installment, and the commencing date of the first installment, if a date other than the next officially established pay period; and

(vii) The date the employee was notified of the debt, the action(s) taken

under 5 U.S.C. 5514(a), and the dates such actions were taken.

(e) *Voluntary repayment agreements as alternative to salary offset where the Department is the creditor agency.* (1) In response to a Notice of Intent, an employee may propose to repay the debt in accordance with scheduled installment payments. Any employee who wishes to repay a debt without salary offset shall submit in writing a proposed agreement to repay the debt. The proposal shall set forth a proposed repayment schedule. Any proposal under this subsection must be received by the office of the official designated in the notice within 15 calendar days after receipt of the Notice of Intent.

(2) In response to a timely proposal by the debtor, the organization head shall notify the employee whether the employee's proposed written agreement for repayment is acceptable. It is within the organization head's discretion to accept or reject a repayment agreement.

(3) If the organization head decides that the proposed repayment agreement is unacceptable, the employee shall have 15 days from the date he or she received notice of the decision in which to file a petition for a hearing.

(4) If the organization head decides that the proposed repayment agreement is acceptable, the arrangement shall be put in writing and signed by both the employee and the organization head.

(f) *Special review where the Department is the creditor agency.* (1) An employee subject to salary offset or a voluntary repayment agreement may, at any time, request a special review by the Department of the amount of the salary offset or voluntary payment, based on materially changed circumstances, including but not limited to catastrophic illness, divorce, death, or disability.

(2) In determining whether, as a result of materially changed circumstances, an offset would prevent the employee from meeting essential subsistence expenses (costs incurred for 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:

- (i) Income for all sources;
- (ii) Assets;
- (iii) Liabilities;
- (iv) Number of dependents;
- (v) Expenses for food, housing, clothing, and transportation;
- (vi) Medical expenses; and
- (vii) Exceptional expenses, if any.

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

(4) The organization head 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 organization head shall notify the employee in writing within 30 days of such determination, including, if appropriate, his or her acceptance of a revised offset or payment schedule.

(5) If the special review results in a revised offset or repayment schedule, the salary offset coordination officer shall provide a new certification to the paying agency.

(g) *Notice of salary offset where the Department is the paying agency.* (1) Upon receipt of proper certification from the creditor agency, the applicable payroll office shall send the employee a written notice of salary offset. Such notice shall advise the employee that:

- (i) The certification has been received from the creditor agency; and
- (ii) Salary offset will be initiated at the next officially established pay interval.

(2) The applicable 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.

(h) *Procedures for salary offset where the Department is the paying agency—(1) Generally.* (i) The salary offset coordination officer shall coordinate salary deductions under this section.

(ii) The applicable payroll office shall determine the amount of an employee's disposable pay and offset salary.

(iii) Deductions shall begin the pay period following receipt by the applicable payroll office of the certification or as soon thereafter as possible.

(2) *Types of collection—(i) Lump-sum payment.* If the amount of the debt is equal to or less than 15 percent of the employee's disposable pay, such debt ordinarily will be collected in one lump-sum payment.

(ii) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. 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. However, the amount deducted from 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. The installment payment should normally be sufficient in size and frequency to liquidate the debt in no more than three years. Installment payments of less than \$50 should be accepted only in the most unusual circumstances.

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

(iv) *Lump-sum deductions from other sources.* Whenever an employee subject to salary offset is separated from the Department, and the balance of the debt cannot be liquidated by offset of the final salary check, the Department, pursuant to 31 U.S.C. 3716, may offset any later payments of any kind against the balance of the debt.

(3) *Multiple debts.* Where two or more creditor agencies are seeking salary offset, or where two or more debts are owed to a single creditor agency, the applicable payroll office may, at its discretion, determine whether one or

more debts should be offset simultaneously within the 15 percent limitation. The best interests of the government shall be the primary consideration in the determination by the payroll office of the order of the debt collection.

(4) *Precedence of salary deductions by the Department.* (i) For Department employees, debts owed shall be paid out of disposable pay in the following order of precedence:

(A) Indebtedness due the Department.

(B) Indebtedness due other agencies.

(C) Garnishments for alimony and child support payments.

(D) Court-ordered bankruptcy payments under the Bankruptcy Code.

(E) Optional life insurance premiums.

(F) Other voluntary deductions including allotments and assignments, in the order determined by the paying agency.

(ii) In the event that a debt to the Department is certified while an employee is subject to salary offset to repay another agency, the applicable payroll office may decide whether the debt to the other agency should be repaid in full before collecting the Department's claim or whether changes should be made in the salary deduction being sent to the other agency. If debts owed to the Department 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 Department's debt.

(i) *Coordinating salary offset with other agencies—(1) Responsibility of the Department as the creditor agency.* (i) The salary offset coordination officer shall be responsible for:

(A) Arranging for hearing upon proper petition by a federal employee;

(B) Preparing the Notice of Intent to Offset consistent with the requirements of paragraph (a) of this section;

(C) Obtaining hearing officials from other agencies pursuant to paragraph (c)(3) of this section; and

(D) Ensuring that each certification of debt is sent to a paying agency pursuant to paragraph (d)(2) of this section.

(ii) Upon completion of the procedures established in paragraphs (a)

through (f) of this section, the salary offset coordination officer shall submit a debt claim and an installment agreement or other instruction on the payment schedule, if applicable, to the employee's paying agency.

(iii) If the employee is in the process of separating from government employment, the Department shall submit its debt claim to the employee's paying agency for collection by lump-sum deductions from the employee's final check. The paying agency shall certify the total amount of its collection and furnish a copy of the certification to the Department and to the employee.

(iv) If the employee is already separated and all payments due from his or her former paying agency have been paid, the Department may, unless otherwise prohibited, request that money due and payable to the employee from the federal government be administratively offset to collect the debt.

(v) When an employee transfers to another paying agency, the Department shall not repeat the procedures described in paragraphs (a) through (f) of this section in order to resume collecting the debt. Instead, the Department shall review the debt upon receiving the former paying agency's notice of the employee's transfer and shall ensure the collection is resumed by the new paying agency.

(2) *Responsibility of the Department as the paying agency—(i) Complete claim.* When the Department receives a certified claim from a creditor agency, the employee shall be given written notice of the certification, the date salary offset will begin, and the amount of the periodic deductions. Deductions shall be scheduled to begin at the next officially established pay interval or as soon thereafter as possible.

(ii) *Incomplete claim.* When the Department receives an incomplete certification of debt from a creditor agency, the Department shall return the debt claim with notice that procedures under 5 U.S.C. 5514 and 5 CFR 550.1104 must be followed and that a properly certified debt claim must be received before action will be taken to collect from the employee's current pay account.

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(iii) *Review.* The Department 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.

(iv) *Employees who transfer from one paying agency to another.* If, after the creditor agency has submitted the debt claim to the Department, the employee transfers to an agency outside the Department before the debt is collected in full, the Department must certify the total amount collected on the debt. One copy of the certification shall be furnished to the employee and one copy shall be sent to the creditor agency along with notice of the employee's transfer.

(j) *Interest, penalties, and administrative costs.* Where the Department is the creditor agency, it shall assess interest, penalties, and administrative costs pursuant to 31 U.S.C. 3717 and 4 CFR 102.13.

(k) *Refunds.* (1) Where the Department is the creditor agency, it shall promptly refund any amount deducted under the authority of 5 U.S.C. 5514 when:

(i) The debt is compromised or otherwise found not to be owing to the United States; or

(ii) An administrative or judicial order directs the Department to make a refund.

(2) Unless required by law or contract, refunds under this paragraph (k) shall not bear interest.

(l) *Request from a creditor agency for the services of a hearing official.* (1) The Department may provide a hearing official upon request of the creditor agency when the debtor is employed by the Department and the creditor agency cannot provide a prompt and appropriate hearing before a hearing official furnished pursuant to another lawful arrangement.

(2) The Department may provide a hearing official upon request of a creditor agency when the debtor works for the creditor agency and that agency cannot arrange for a hearing official.

(3) The salary offset coordination officer shall arrange for qualified personnel to serve as hearing officials.

(4) Services rendered under this paragraph (l) shall be provided on a fully re-

imbursable basis pursuant to 31 U.S.C. 1535.

(m) *Non-waiver of rights by payments.* A debtor's payment, whether voluntary or involuntary, of all or any portion of a debt being collected pursuant to this section shall not be construed as a waiver of any rights that the debtor may have under any statute, regulation, or contract except as otherwise provided by law or contract.

### § 11.9 Administrative offset.

(a) *Collection.* The organization head may collect a claim pursuant to 31 U.S.C. 3716 from a person, organization, or entity other than an agency of the United States Government by administrative offset of monies other than salaries payable by the government. Collection by administrative offset shall be undertaken where the claim is certain in amount, where offset is feasible and desirable and not otherwise prohibited, where the applicable statute of limitations has not expired, and where the offset is in the best interest of the United States.

(b) *Withholding of payment.* Prior to the completion of the procedures described in paragraph (c) of this section, the Department may withhold a payment to be made to a debtor, if:

(1) Failure to withhold payment would substantially prejudice the Department's ability to collect the debt; and

(2) The time before the payment is to be made does not reasonably permit completion of the procedures described in paragraph (c) of this section. Such prior withholding shall be followed promptly by the completion of the procedures described in paragraph (c) of this section.

(c) *Debtor's rights.* Unless the procedures described in paragraph (b) of this section are used, prior to collecting any claim by administrative offset, the organization head shall provide the debtor with the following:

(1) Written notification of the nature and amount of the claim, the intention of the organization head to collect the claim through administrative offset, and a statement of the rights of the debtor under this paragraph;