

## Federal Deposit Insurance Corporation

## § 313.22

(q) *Notice of Intent to Offset or Notice of Intent* means a written notice from a creditor agency to an employee, organization, or entity that claims a debt and informs the debtor that the creditor agency intends to collect the debt by administrative offset. The notice also informs the debtor of certain procedural rights with respect to the claimed debt and offset.

(r) *Notice of Salary Offset* means a written notice from a paying agency to its employee informing the employee that salary offset to collect a debt due to the creditor agency will begin at the next officially established pay interval. The paying agency transmits this notice to its employee after receiving a certification from the creditor agency.

(s) *Paying agency* means the agency of the federal government that employs the individual who owes a debt to an agency of the federal government. The same agency may be both the creditor agency and the paying agency.

(t) *Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(u) *Waiver* means the cancellation, remission, forgiveness or non-recovery of a debt allegedly owed by an employee to an agency, as authorized or required by 5 U.S.C. 5584 or any other law.

(v) *Withholding order* means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body. For purposes of administrative wage garnishment, the terms “wage garnishment order” and “garnishment order” have the same meaning as “withholding order.”

### § 313.4 Delegations of authority.

Authority to conduct the following activities is delegated to the Director of DOA or Director of DOF, as applicable, or the applicable Director’s delegate, to:

(a) Initiate and carry out the debt collection process on behalf of the FDIC, in accordance with the FCCS;

(b) Accept or reject compromise offers and suspend or terminate collection actions to the full extent of the

FDIC’s legal authority under 12 U.S.C. 1819(a) and 1820(a), 31 U.S.C. 3711(a)(2), and any other applicable statute or regulation, provided, however, that no such claim shall be compromised or collection action terminated, except upon the concurrence of the FDIC General Counsel or his or her designee;

(c) Report to consumer reporting agencies certain data pertaining to delinquent debts, where appropriate;

(d) Use administrative offset procedures, including salary offset, to collect debts; and

(e) Take any other action necessary to promptly and effectively collect debts owed to the United States in accordance with the policies contained herein and as otherwise provided by law.

### §§ 313.5–313.19 [Reserved]

## Subpart B—Administrative Offset

### § 313.20 Applicability and scope.

The provisions of this subpart apply to the collection of debts owed to the United States arising from transactions with the FDIC. Administrative offset is authorized under the DCIA. This subpart is consistent with the FCCS on administrative offset issued by the Department of Justice.

### § 313.21 Definitions.

(a) *Administrative offset* means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt.

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

### § 313.22 Collection.

(a) The Director may collect a claim from a person by administrative offset of monies payable by the Government only after:

(1) Providing the debtor with due process required under this part; and

(2) Providing the paying agency with written certification that the debtor

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owes the debt in the amount stated and that the FDIC, as creditor agency, has complied with this part.

(b) Prior to initiating collection by administrative offset, the Director should determine that the proposed offset is within the scope of this remedy, as set forth in 31 CFR 901.3(a). Administrative offset under 31 U.S.C. 3716 may not be used to collect debts more than 10 years after the federal government's right to collect the debt first accrued, except as otherwise provided by law. In addition, administrative offset may not be used when a statute explicitly prohibits its use to collect the claim or type of claim involved.

(c) Unless otherwise provided, debts or payments not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under common law, or any other applicable statutory authority.

#### § 313.23 Offset prior to completion of procedures.

The FDIC may collect a debt by administrative offset prior to the completion of the procedures described in § 313.25, if:

(a) Failure to offset a payment would substantially prejudice the FDIC's ability to collect the debt; and

(b) The time before the payment is to be made does not reasonably permit completion of the procedures described in § 313.25. Such prior offsetting shall be followed promptly by the completion of the procedures described in § 313.25.

#### § 313.24 Omission of procedures.

The FDIC shall not be required to follow the procedures described in § 313.25 where:

(a) The offset is in the nature of a recoupment (*i.e.*, the FDIC may offset a payment due to the debtor when both the payment due to the debtor and the debt owed to the FDIC arose from the same transaction); or

(b) The debt arises under a contract as set forth in *Cecile Industries, Inc. v. Cheney*, 995 F.2d 1052 (Fed. Cir. 1993), which provides that procedural protections under administrative offset do not supplant or restrict established procedures for contractual offsets accommodated by the Contracts Disputes Act; or

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(c) In the case of non-centralized administrative offsets, the FDIC first learns of the existence of a debt due when there would be insufficient time to afford the debtor due process under these procedures before the paying agency makes payment to the debtor; in such cases, the Director shall give the debtor notice and an opportunity for review as soon as practical and shall refund any money ultimately found not to be due to the U.S. Government.

#### § 313.25 Debtor's rights.

Unless the procedures described in § 313.23 are used, prior to collecting any claim by administrative offset or referring such claim to another agency for collection through administrative offset, the Director shall provide the debtor with the following:

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

(b) An opportunity to inspect and copy the records of the FDIC with respect to the claim, unless such records are exempt from disclosure;

(c) An opportunity to have the FDIC's determination of indebtedness reviewed by the Director:

(1) Any request by the debtor for such review shall be in writing and shall be submitted to the FDIC within 30 calendar days of the date of the notice of the offset. The Director may waive the time limit for requesting review for good cause shown by the debtor;

(2) Upon acceptance of a request for review by the debtor, the FDIC shall provide the debtor with a reasonable opportunity for an oral hearing when the determination turns on an issue of credibility or veracity, or the Director determines that the question of the indebtedness cannot be resolved by review of the documentary evidence alone. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although the Director shall document all significant matters discussed at the hearing. In cases where an oral hearing is not required by this section, the Director shall