

Subpart E—Administrative Offset

- 1201.50 Under what circumstances will NARA collect amounts that I owe to NARA (or some other Federal agency) by offsetting the debt against payments that NARA (or some other Federal agency) owes me?
- 1201.51 How will NARA request that my debt to NARA be collected by offset against some payment that another Federal agency owes me?
- 1201.52 What procedures will NARA use to collect amounts I owe to a Federal agency by offsetting a payment that NARA would otherwise make to me?
- 1201.53 When may NARA make an offset in an expedited manner?
- 1201.54 Can a judgment I have obtained against the United States be used to satisfy a debt that I owe to NARA?

Subpart F—Administrative Wage Garnishment

- 1201.55 How will NARA collect debts through Administrative Wage Garnishment?

AUTHORITY: 5 U.S.C. 5514; 31 U.S.C. 3701-3720A, 3720D; 44 U.S.C. 2104(a).

SOURCE: 67 FR 44757, July 5, 2002, unless otherwise noted.

Subpart A—Introduction**§ 1201.1 Why is NARA issuing these regulations?**

(a) NARA is issuing these regulations to inform the public of procedures that may be used by NARA for the collection of debt.

(b) These regulations provide that NARA will attempt to collect debts owed to it or other Government agencies either directly, or by other means including salary, administrative, tax refund offsets, or administrative wage garnishment.

(c) These regulations also provide that NARA may enter a cross-servicing agreement with the U.S. Department of the Treasury (Treasury) under which the Treasury will take authorized action to collect amounts owed to NARA.

§ 1201.2 Under what authority does NARA issue these regulations?

(a) NARA is issuing the regulations in this part under the authority of 31 U.S.C. Chapter 37, 3701-3720A and 3720D. These sections implement the requirements of the Federal Claims Collection

Act of 1966, as amended by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996.

(b) NARA is also issuing the regulations in this part to conform to the Federal Claims Collection Standards (FCCS), which prescribe standards for handling the Federal Government's claims for money or property. The FCCS are issued by the Department of Justice (DOJ) and the Treasury at 31 CFR Chapter IX, Parts 900-904. NARA adopts those standards without change. The regulations in this part supplement the FCCS by prescribing procedures necessary and appropriate for NARA operations.

(c) NARA is also issuing the regulations in this part to conform to the standards for handling Administrative Wage Garnishment processing by the Federal Government. The standards are issued by the Treasury at 31 CFR 285.11. NARA adopts those standards without change. The regulations in this part supplement the standards by prescribing procedures necessary and appropriate for NARA operations.

(d) NARA is further issuing the regulations in this part under the authority of 5 U.S.C. 5514, and the salary offset regulations published by the Office of Personnel and Management at 5 CFR part 550, subpart K.

(e) All of these claims collection regulations are issued under NARA's authority under 44 U.S.C. 2104(a).

§ 1201.3 What definitions apply to the regulations in this part?

As used in this part:

Administrative 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 claim.

Administrative Wage Garnishment means a process whereby a Federal agency may, without first obtaining a court order, order an employer to withhold up to 15 percent of your wages for payment to the Federal agency to satisfy a delinquent non-tax debt.

Agency means a department, agency, court, court administrative office, or

instrumentality in the executive, judicial, or legislative branch of government, including a government corporation.

Archivist means the Archivist of the United States, or his or her designee.

Certification means a written statement received by a paying agency or disbursing official from a creditor agency that requests the paying agency or disbursing official to offset the salary of an employee and specifies that required procedural protections have been afforded the employee.

Claim (see definition of debt in this section).

Compromise means the settlement or forgiveness of a debt.

Creditor agency means the agency to which the debt is owed, including a debt collection center when acting on behalf of the creditor agency.

Day means calendar day. To count days, include the last day of the period unless it is a Saturday, a Sunday, or a Federal legal holiday.

Debt collection center means the Treasury or any other agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies.

Debt and *claim* are deemed synonymous and interchangeable. These terms mean an amount of money, funds, or property that has been determined by an agency official to be due the United States from any person, organization, or entity except another Federal agency. For the purpose of administrative offset under 31 U.S.C. 3716 and subpart E of these regulations, the terms, "debt" and "claim" also include money, funds or property owed by a person to a State (including past-due support being enforced by a State); the District of Columbia; American Samoa; Guam; the United States Virgin Islands; the Commonwealth of the Northern Mariana Islands; or the Commonwealth of Puerto Rico.

Debtor means a person, organization, or entity, except another Federal agency, who owes a debt. Use of the terms "I," "you," "me," and similar references to the reader of the regulations in this part are meant to apply to debtors as defined in this paragraph.

Delinquent debt means a debt that has not been paid by the date specified in

NARA'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.

Disposable pay means the part of an employee's pay that remains after deductions that are required to be withheld by law have been made.

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

Federal Claims Collection Standards (FCCS) means the standards currently published by DOJ and the Treasury at 31 CFR parts 900-904.

NARA means the National Archives and Records Administration.

Paying agency means any agency that is making payments of any kind to a debtor. In some cases, NARA may be both the creditor agency and the paying agency.

Payroll office means the office that is primarily responsible for payroll records and the coordination of pay matters with the appropriate personnel office.

Person includes a natural person or persons, profit or non-profit corporation, partnership, association, trust, estate, consortium, state or local government, or other entity that is capable of owing a debt to the United States; however, agencies of the United States are excluded.

Private collection contractor means a private debt collector under contract with an agency to collect a non-tax debt owed to the United States.

Salary offset means a payroll procedure to collect a debt under 5 U.S.C. 5514 and 31 U.S.C. 3716 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee, without his or her consent.

Tax refund offset means the reduction of a tax refund by the amount of a past-due legally enforceable debt owed to NARA or any other Federal agency.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt.

Withholding order means any order for withholding or garnishment of pay

issued by an agency, or judicial or administrative body.

§ 1201.4 What types of claims are excluded from these regulations?

The following types of claims are excluded:

(a) Debts or claims arising under the Internal Revenue Code (26 U.S.C. 1 *et seq.*) or the tariff laws of the United States, or the Social Security Act (42 U.S.C. 301 *et seq.*); except as provided under sec. 204(f) and 1631 (42 U.S.C. 404(f) and 1383(b)(4)(A)).

(b) Any case to which the Contract Disputes Act (41 U.S.C. 601 *et seq.*) applies;

(c) Any case where collection of a debt is explicitly provided for or provided by another statute, *e.g.*, travel advances under 5 U.S.C. 5705 and employee training expenses under 5 U.S.C. 4108, or, as provided for by title 11 of the United States Code, when the claims involve bankruptcy;

(d) Any debt based in whole or in part on conduct in violation of the antitrust laws or involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, as described in the FCCS, unless DOJ authorizes NARA to handle the collection;

(e) Claims between Federal agencies;

(f) Unless otherwise provided by law, administrative offset of payments under the authority of 31 U.S.C. 3716 to collect a debt may not be initiated more than 10 years after the Government's right to collect the debt first accrued. (Exception: The 10-year limit does not apply if facts material to the Federal Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts.) The 10-year limitation also does not apply to debts reduced to a judgment; and

(g) Unless otherwise stated, claims which have been transferred to Treasury or referred to the Department of Justice will be collected in accordance with the procedures of those agencies.

§ 1201.5 If a claim is not excluded from these regulations, may it be compromised, suspended, terminated, or waived?

Nothing in this part precludes:

(a) The compromise, suspension, or termination of collection actions, where appropriate under the FCCS, or the use of alternative dispute resolution methods if they are consistent with applicable law and regulations.

(b) 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 from questioning the amount or validity of a debt, in the manner set forth in this part.

§ 1201.6 What is a claim or debt?

A claim or debt is an amount of money, funds, or property that has been determined by an agency official to be due the United States from any person, organization, or entity except another Federal agency (*see* § 1201.3).

§ 1201.7 Why does NARA have to collect debts?

Federal agencies are required to try to collect claims of the Federal Government for money, funds, or property arising out of the agency's activities.

§ 1201.8 What action might NARA take to collect debts?

(a) There are a number of actions that NARA is permitted to take when attempting to collect debts. These actions include:

(1) Salary, tax refund or administrative offset, or administrative wage garnishment (*see* subparts C, D, E, and F of this part respectively); or

(2) Using the services of private collection contractors.

(b) In certain instances, usually after collection efforts have proven unsuccessful, NARA transfers debts to the Treasury for collection or refers them to the DOJ for litigation (*see* §§ 1201.10 and 1201.11).

§ 1201.9 What rights do I have as a debtor?

As a debtor you have several basic rights. You have a right to:

(a) Notice as set forth in these regulations (*see* § 1201.14);