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20 CFR Part 422

Collection of Administrative Debts; Proposed Rule

SOCIAL SECURITY ADMINISTRATION**20 CFR Part 422****[Docket No. SSA–2011–0053]****RIN 0960–AH36****Collection of Administrative Debts****AGENCY:** Social Security Administration.**ACTION:** Notice of proposed rulemaking.

SUMMARY: We propose to create our own administrative debt collection regulations. Currently, we collect these debts under the authority of the Department of Health and Human Services regulations from 1995. However, under the regulations issued by the Department of Justice and Department of the Treasury (Treasury), to perform certain debt collection activities, agencies must publish their own regulations. Therefore, we propose this regulation to improve our authorities to pursue collection of administrative debts from current and separated employees and non-employee debtors as authorized by the Debt Collection Act (DCA) of 1982, amended by the Debt Collection Improvement Act (DCIA) of 1996 and other existing debt collection statutes.

DATES: To ensure that your comments are considered, we must receive them no later than May 23, 2014.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2011–0053 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. Internet: We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at <http://www.regulations.gov>. Use the Search function to find docket number SSA–2011–0053. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. Fax: Fax comments to (410) 966–2830.

3. Mail: Mail your comments to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at <http://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT:

Jennifer C. Pendleton, Office of Payment and Recovery Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–5652. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:**Background**

Employee debts include, but are not limited to, salary overpayments, advanced travel pay, and debts resulting from overpayments of benefit premiums. Non-employee debts include, but are not limited to, vendor overpayments, reimbursable agreements, and civil monetary penalties.

This change will authorize us to pursue collection of Administrative debts under the authorities prescribed in the following statutes and legislations:

- Debt Collection Act (DCA) 1982, Public Law 97–365 (5 U.S.C. 5514; 31 U.S.C. 3701 *et seq.*)
- Debt Collection Improvement Act (DCIA) 1996, Public Law 104–134 (5 U.S.C. 5514; 31 U.S.C. 3701 *et seq.*)
- 5 U.S.C. 5512—Withholding pay; individuals in arrears
- 5 U.S.C. 5514—Installment deduction for indebtedness to the United States
- 31 U.S.C. 3711—Collection and compromise
- 31 U.S.C. 3716—Administrative offset
- 31 U.S.C. 3717—Interest and penalty on claims
- 31 U.S.C. 3720A—Reduction of tax refund by amount of debt
- 31 U.S.C. 3720B—Barring delinquent federal debtors from obtaining federal loans or loan insurance guarantees
- 31 U.S.C. 3720C—Debt Collection Improvement Account
- 31 U.S.C. 3720D—Garnishment
- 31 U.S.C. 3720E—Dissemination of information regarding identity of delinquent debtors
- Office of Personnel Management (OPM) Regulations (5 CFR part 550—Salary Offset)

- Federal Claims Collection Standards (31 CFR parts 901–904)
- Department of the Treasury Regulations (31 CFR part 285)

Changes to Our Regulations

We propose to change our regulations to conform to the Department of the Treasury's regulations and OPM's requirements for Salary Offset. Therefore, we propose to add Subpart I of Part 422 of chapter III of title 20 of the Code of Federal Regulations.

Clarity of These Proposed Rules

Executive Order 12866 as supplemented by Executive Order 13563 requires each agency to write all rules in plain language. In addition to your substantive comments on this final rule, we invite your comments on how to make the rules easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rule clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format make the rule easier to understand, (e.g. grouping and order of sections, use of headings, paragraphing)?

When Will We Start To Use This Rule?

We will not use this proposed rule until we evaluate public comments and publish a final rule in the **Federal Register**. Any final rule we issue includes an effective date. We will continue to use the current rule until that date. If we publish a final rule, we will include a summary of those relevant comments we received along with responses and an explanation of how we will apply the new rule.

Regulatory Procedures

Executive Order 12866 as supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this proposed rule does not meet the criteria for a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Thus, OMB did not review the proposed rule.

Regulatory Flexibility Act

We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities

because it applies to individuals only. Thus, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

This rule does not contain information collection requirements. Therefore, we need not submit the rule to Office of Management and Budget for review under the Paperwork Reduction Act.

List of Subjects in 20 CFR Part 422

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Social Security.

Dated: March 14, 2014.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

For the reasons set out in the preamble, we propose to add Subpart I of part 422 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 422—ORGANIZATION AND PROCEDURES

■ 1. Add Subpart I to Part 422 to read as follows:

Subpart I—Administrative Claims Collection

Authority: Sec. 97, Public Law 97–365, 96 Stat. 1749; Sec. 104, Pub. L. 104–134, 110 Stat. 1321; 5 U.S.C. 552; 5 U.S.C. 553; 31 U.S.C. 3711; 31 U.S.C. 3716; 31 U.S.C. 3717; 31 U.S.C. 3720A; 31 U.S.C. 3720B; 31 U.S.C. 3720C; 31 U.S.C. 3720D; 31 U.S.C. 3720E; 31 CFR parts 901–904; 31 CFR part 285; 5 U.S.C. 5514; 5 CFR part 550; 42 U.S.C. 902(a)(5).

- Sec.
- 422.801 Scope of this subpart.
- 422.803 Collection activities.
- 422.805 Demand for payment.
- 422.807 Interest, penalties, and administrative costs.
- 422.809 Collection in installments.
- 422.810 Salary offset for current employees.
- 422.811 Discretionary referral for cross-servicing.
- 422.813 Mandatory referral for cross-servicing.
- 422.815 Referral of administrative debts to the Department of the Treasury.
- 422.817 Required certification.
- 422.819 Fees.
- 422.821 Administrative offset.
- 422.822 Notification of intent to collect by administrative offset.
- 422.823 Debtor rights to review or copy records, submit repayment proposals, or request administrative review.
- 422.824 Non-centralized administrative offset.
- 422.825 Centralized administrative offset.
- 422.827 Offset against tax refunds.
- 422.829 Federal salary offset.

- 422.833 Administrative wage garnishment for administrative debts.
- 422.835 Debt reporting and use of credit reporting agencies.
- 422.837 Contracting with private collection contractors and with entities that locate and recover unclaimed assets.
- 422.839 Offset against amounts payable from civil service retirement and disability fund and the Federal employees' retirement system.
- 422.842 Liquidation of collateral.
- 422.846 Bases for compromise.
- 422.848 Suspension and termination of collection activities.
- 422.850 Referrals to the Department of Justice.

Subpart I—Administrative Claims Collection

§ 422.801 Scope of this subpart.

(a) The regulations in this part are issued under the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of (DCIA) 1996 (31 U.S.C. 3701, *et seq.*) and the Federal Claims Collection Standards (31 CFR parts 901–904) issued pursuant to the DCIA by the Department of the Treasury (Treasury) and the Department of Justice (DOJ). These authorities prescribe government-wide standards for administrative collection, compromise, suspension, or termination of agency collection action, disclosure of debt information to credit reporting agencies, referral of claims to private collection contractors for resolution, and referral to the DOJ for litigation to collect debts owed the Government. The regulations under this part also are issued under the Commissioner's general rule-making authority in the Social Security Act at section 702(a)(5), 42 U.S.C. 902(a)(5), the Treasury's regulations implementing the DCIA (31 CFR part 285), and related statutes and regulations governing the offset of Federal salaries (5 U.S.C. 5512, 5514; 5 CFR part 550, subpart K) and the Administrative Offset of tax refunds (31 U.S.C. 3720A).

(b) This subpart describes the procedures relating to the collection, compromise, and suspension of administrative debts owed to us.

(c) Administrative debts include claims against current employees, separated employees, and non-employee debtors.

(1) Employee debts include salary overpayments, advanced sick and annual leave, advanced religious compensatory time, overpayments of health benefit premiums, leave buy back, emergency employee payments, travel, and transit subsidies.

(2) Non-employee debts include vendor overpayments, reimbursable agreements, Supplemental Security

Income Medicaid determinations, and economic recovery payments.

(d) This subpart does not apply to programmatic overpayments described in subparts D and E of this part, §§ 404.527 and 416.590 of this chapter.

(e) This subpart does not apply to civil monetary penalties arising from sections 1129 and 1140 of the Social Security Act and collected pursuant to part 498 of this chapter.

§ 422.803 Collection activities.

(a) We will collect all administrative debts arising out of our activities or that are referred or transferred to us for collection actions. We will send an initial written demand for payment no later than 30 days after an appropriate official determines that a debt exists.

(b) In accordance with 31 CFR 285.12(c) and (g), we transfer legally enforceable administrative debts that are 180 days or more delinquent to the Department of the Treasury (Treasury) for debt collection services (i.e., cross-servicing). This requirement does not apply to any debt that:

- (1) Is in litigation or foreclosure;
- (2) Will be disposed of under an approved asset sale program within one year of becoming eligible for sale;
- (3) Has been referred to a private collection contractor for a period acceptable to the Secretary of the Treasury;

(4) Is at a debt collection center for a period of time acceptable to Treasury (*see* paragraph (c) of this section);

(5) Will be collected under internal offset procedures within three years after the debt first became delinquent; or

(6) Is exempt from this requirement based on a determination by Treasury that exemption for a certain class of debt is in the best interest of the United States.

(c) Pursuant to 31 CFR 285.12(h), we may refer debts less than 180 days delinquent to Treasury or, with the consent of Treasury, to a Treasury-designated debt collection center to accomplish efficient, cost effective debt collection. Referrals to debt collection centers will be at the discretion of, and for a period acceptable to, the Secretary of the Treasury. Referrals may be for servicing, collection, compromise, suspension, or termination of collection action.

(d) We may refer delinquent administrative debts to Treasury for offset through the Treasury Offset Program (TOP). Administered by Treasury, TOP's centralized offset process permits Treasury to withhold funds payable by the United States to a person in order to collect and satisfy

delinquent debts the person owes Federal agencies and States.

(e) We may collect an administrative debt by using Administrative Wage Garnishment.

(f) We may collect an administrative debt by using Federal Salary Offset.

§ 422.805 Demand for payment.

(a) *Written demand for payment.* (1) We will make a written demand, as described in paragraph (b) of this section, promptly to a debtor in terms that inform the debtor of the consequences of failing to cooperate with us to resolve the debt.

(2) We will send a demand letter no later than 30 days after the appropriate official determines that the debt exists. We will send the demand letter by certified mail to the debtor's last known address.

(3) When necessary to protect the Government's interest, we may take appropriate action under this part, including immediate referral to the Department of Justice (DOJ) for litigation, before sending the written demand for payment.

(b) *Demand letters.* The specific content, timing, and number of demand letters will depend upon the type and amount of the debt and the debtor's response, if any, to our letters or telephone calls.

(1) The written demand for payment will include the following information:

(i) The nature and amount of the debt, including the basis for the indebtedness;

(ii) The date by which payment should be made to avoid late charges and enforced collection, which must be no later than 30 days from the date the demand letter is mailed;

(iii) Where applicable, the standards for imposing any interest, penalties, or administrative costs are specified under § 422.807;

(iv) The rights, if any, the debtor may have to:

(A) Seek review of our determination of the debt, and for purposes of salary offset or Administrative Wage Garnishment, to request a hearing see §§ 422.810(h) and 422.833(f); and

(B) Enter into a reasonable repayment agreement when necessary and authorized.

(v) An explanation of how the debtor may exercise any of the rights described in paragraph (b)(1)(iv) of this section;

(vi) The name, address, and phone number of a contact person or office to address any debt-related matters; and

(vii) Our remedies to enforce payment of the debt, which may include:

(A) Garnishing the debtor's wages through Administrative Wage Garnishment;

(B) Offsetting any Federal or State payments due the debtor, including income tax refunds, salary, certain benefit payments;

(C) Referring the debt to a private collection contractor;

(D) Reporting the debt to a credit bureau or other automated database;

(E) Referring the debt to the DOJ for litigation; and

(F) Referring the debt to the Department of the Treasury for any of the collection actions described in paragraphs (b)(1)(vii)(A) through (E) of this section.

(2) The written demand for payment should also include the following information:

(i) The debtor's right to review our records pertaining to the debt, or if the debtor or the debtor's representative cannot personally review the records, to request and receive copies of such records;

(ii) Our willingness to discuss alternative methods of payment with the debtor;

(iii) If a Federal employee, the debtor may be subject to disciplinary action under 5 CFR part 752 or other applicable authority;

(iv) Any amounts collected and ultimately found to not have been owed by the debtor will be refunded;

(v) For salary offset, up to 15 percent of the debtor's current disposable pay may be deducted every pay period until the debt is paid in full; and

(vi) Dependent upon applicable statutory authority, the debtor may be entitled to consideration for a waiver.

(c) *Evidence retention.* We will retain evidence of service indicating the date of mailing of the demand letter. The evidence of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

(d) *Pursue offset.* Prior to, during, or after the completion of the demand process, if we determine to pursue, or are required to pursue offset, the procedures applicable to offset should be followed (see § 422.821). The availability of funds for debt satisfaction by offset and our determination to pursue collection by offset will release us from the necessity of further compliance with paragraphs (a), (b), and (c) of this section.

(e) *Communications from debtors.* Where feasible, we will respond promptly to communications from debtors within 30 days, and will advise debtors who dispute debts to furnish available evidence to support their contentions.

(f) *Exception.* This section does not require duplication of any notice

already contained in a written agreement, letter, or other document signed by, or provided to, the debtor.

§ 422.807 Interest, penalties, and administrative costs.

(a) Except as provided in paragraphs (g), (h), and (i) of this section, we will charge interest, penalties, and administrative costs on delinquent debts owed to the United States. These charges will continue to accrue until the debtor pays the debt in full or otherwise resolves the debt through compromise, termination, or an approved waiver.

(b) *Interest.* We will charge interest on delinquent administrative debts owed the agency as follows:

(1) Interest will accrue from the date of delinquency or as otherwise provided by law. For debts not paid by the date specified in the written demand for payment made under § 422.805, the date of delinquency is the date of mailing of the notice. The date of delinquency for an installment payment is the due date specified in the payment agreement.

(2) Unless a different rate is prescribed by statute, contract, or a repayment agreement, the rate of interest charged will be the rate established annually by the Treasury pursuant to 31 U.S.C. 3717. We may charge a higher rate if necessary to protect the rights of the United States, and the Commissioner has determined and documented a higher rate for delinquent debt is required to protect the Government's interests.

(3) Unless prescribed by statute or contract, the initial rate of interest charged will remain fixed for the duration of the indebtedness. A debtor who defaults on a repayment agreement may seek to enter into a new agreement. If we agree to a new agreement, we may require additional financial information and payment of interest at a new rate that reflects the Treasury rate in effect at the time the new agreement is executed or at a higher rate consistent with subsection (b)(2). Interest will not be compounded. That is, we will not charge interest on the interest, penalties, or administrative costs required by this section, except as permitted by statute or contract. If, however, the debtor defaults on a previous repayment agreement, we will add charges that accrued but were not collected under the defaulted agreement to the principal of any new repayment agreement.

(c) *Penalty.* Unless otherwise established by contract, repayment agreement, or statute, we will charge a penalty pursuant to 31 U.S.C. 3717(e)(2) and 31 CFR 901.9 on the amount due on a debt that is delinquent for more than

90 days. This charge will accrue from the date of delinquency.

(d) *Administrative costs.* We will assess administrative costs incurred for processing and handling delinquent debts. The calculation of administrative costs will be based on actual costs incurred or a valid estimate of the actual costs. Calculation of administrative costs will include all direct (personnel, supplies, etc.) and indirect collection costs, including the cost of providing a hearing or any other form of administrative review requested by a debtor and any costs charged by a collection agency under § 422.837. These charges will be assessed monthly or per payment period throughout the period that the debt is overdue. Such costs may also be in addition to other administrative costs if collection is being made for another Federal agency or unit.

(e) *Cost of living adjustment.* When there is a legitimate reason to do so, such as when calculating interest and penalties on a debt would be extremely difficult because of the age of the debt, an administrative debt may be increased by the cost of living adjustment in lieu of charging interest and penalties under this section. The cost of living adjustment is the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the debt was determined or last adjusted. Such increases to administrative debts will be computed annually.

(f) *Priority.* When a debt is paid in partial or installment payments, amounts received will be applied first to outstanding penalties, second to administrative charges, third to interest, and last to principal.

(g) *Waiver.* (1) We will waive the collection of interest and administrative costs imposed pursuant to this section on the portion of the debt that is paid within 30 days after the date on which interest began to accrue. Excepting debt affected by fraud or other misconduct, we may extend this 30-day period on a case-by-case basis if we determine that such action is in the best interest of the Government or is otherwise warranted by equity and good conscience.

(2) We may waive interest, penalties, and administrative charges charged under this section, in whole or in part, without regard to the amount of the debt, based on:

(i) The criteria set forth at § 422.846(b)(1) for the compromise of debts; or

(ii) A determination by the agency that collection of these charges is:

(A) Against equity and good conscience; or

(B) Not in the best interest of the United States.

(h) *Review.* (1) Except as provided in paragraph (h)(2) of this section, administrative review of a debt will not suspend the assessment of interest, penalties, and administrative costs. While agency review of a debt is pending, the debtor may either pay the debt or be liable for interest and related charges on the uncollected debt. When agency review results in a final determination that any amount was properly a debt and the debtor failed to pay the full amount of the disputed debt, we will collect from the debtor the amount determined to be due, and interest, penalties and administrative costs on the debt amount. We will calculate and assess interest, penalties, and administrative costs under this section starting from the date the debtor was first made aware of the debt and ending when the debt is repaid.

(2) *Exception.* Interest, penalties, and administrative cost charges will not be imposed on a debt for periods during which collection activity has been suspended under § 422.848(c)(1) pending agency review or consideration of waiver, if a statute prohibits collection of the debt during this period. This exception does not apply to interest, penalties, and administrative cost charges on debts affected by fraud or other misconduct unless a statute so requires.

(i) *Common law or other statutory authority.* We may impose and waive interest and related charges on debts not subject to 31 U.S.C. 3717 in accordance with the common law or other statutory authority.

§ 422.809 Collection in installments.

(a) Whenever feasible, we will collect the total amount of a debt in one lump sum payment. If a debtor claims a financial inability to pay a debt in one lump sum, by funds or Administrative Offset, we may accept payment in regular installments provided the debtor establishes the financial need and no evidence indicates that fraud or similar fault affected the debt. We will request financial statements from debtors who represent that they are unable to pay in one lump sum and independently verify such representations as described in § 422.846.

(1) When we agree to accept payments in regular installments, we will obtain a legally enforceable written agreement from the debtor that specifies all the terms and conditions of the agreement and includes a provision accelerating the debt in the event of a default.

(2) The size and frequency of the payments will reasonably relate to the size of the debt and the debtor's ability to pay. Whenever feasible, the installment agreement will provide for full payment of the debt, including interest and charges, in three years or less.

(3) When appropriate, the agreement will include a provision identifying security obtained from the debtor for the deferred payments, such as a surety bond or confession of judgment supporting a lien on any property of the debtor.

(4) An approved installment agreement does not prevent the use of Administrative Wage Garnishment or other collection tools in this subpart.

§ 422.810 Salary offset for current employees.

(a) *Purpose.* This part prescribes the agency's standards and procedures for the collection of debts owed by current Social Security Administration (SSA) employees to the United States through involuntary salary offset.

(b) *Authority.* 5 U.S.C. 5514; 5 CFR Part 550.

(c) *Scope.* (1) This part applies to internal collections of debt by Administrative Offset from the current pay accounts of SSA employees without his or her consent. The part does not apply to current SSA employees indebted to another Federal agency or employees who separate from SSA.

(2) The procedures contained in this part do not apply to any case where an employee consents to collection through deduction(s) from the employee's pay account, or to debts arising under the Internal Revenue Code or the tariff laws of the United States, or where another statute explicitly provides for or prohibits collection of a debt by salary offset (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(3) This part does not preclude an employee from requesting a 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. Similarly, this part does not preclude an employee from requesting waiver of the collection of a debt under any other applicable statutory authority.

(4) Provided a debt is not affected by fraud and does not exceed \$100,000, nothing in this part precludes the compromise of the debt or the suspension or termination of collection actions in accordance with §§ 422.846 and 422.848 of this title.

(d) *Definitions*—

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

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, a 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 on behalf of a creditor agency in matters pertaining to the collection of a debt.

Day means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, Sunday, or a Federal holiday, in which case the next business day will be considered the last day of the period.

Debt means an amount of funds or other property determined by an appropriate official of the Federal Government to be owed to the United States from any person, organization, or entity or any other debt that meets the definition of "claim" or "debt" under 31 U.S.C. 3701(b), excluding program overpayments made under title II or title XVI of the Social Security Act.

Debt collection center means the Department of the Treasury (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).

Debtor means an employee currently employed by SSA who owes a delinquent non-tax debt to the United States.

Delinquent debt means a debt that the debtor does not pay or otherwise resolve by the date specified in the initial demand for payment, or in an applicable written repayment agreement or other instrument, including a post-delinquency repayment agreement.

Disposable pay means that part of the debtor's current basic, special, incentive, retired, and retainer pay, or other authorized pay remaining after deduction of amounts required by law to be withheld. For purposes of calculating disposable pay, legally required deductions that must be applied first include: Tax levies pursuant to the Internal Revenue Code (title 26, United States Code); properly withheld taxes; Federal Insurance Contributions Act (FICA); Medicare; health, dental, vision, and life insurance

premiums; and Thrift Savings Plan and retirement contributions. Amounts deducted under garnishment orders, including child support garnishment orders, are not legally permissible deductions when calculating disposable pay as specified in 5 CFR 550.1103.

Employee means any individual currently employed by SSA, as defined in this section, including seasonal and temporary employees and current members of the Armed Forces or a Reserve of the Armed Forces (Reserves).

Evidence of service means information retained by the agency indicating the nature of the document to which it pertains, the date of mailing the document, and the address and name of the debtor to whom it is being sent. A copy of the dated and signed notice provided to the debtor pursuant to this part may be considered evidence of service for purposes of this part. Evidence of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

Hearing means a review of the documentary evidence to confirm the existence or amount of a debt or the terms of a repayment schedule. If we determine that the issues in dispute cannot be resolved by such a review, such as when the validity of the claim turns on the issue of credibility or veracity, we may provide an oral hearing.

Hearing official means an administrative law judge or appropriate alternate.

Paying agency means the agency employing the employee and authorizing the payment of his or her current pay.

Salary offset means an Administrative Offset to collect a debt under 5 U.S.C. 5514 owed by a current SSA employee through deductions at one or more officially established pay intervals from the current pay account of the current SSA employee without his or her consent.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt owed by an employee to the agency or another agency as required or permitted by 5 U.S.C. 5584, 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or any other law.

(e) *General rule.* (1) Whenever an employee owes us a delinquent debt, we may, subject to paragraph (e)(3) of this section, involuntarily offset the amount of the debt from the employee's disposable pay.

(2) Except as provided in paragraph (e)(3) of this section, prior to initiating collection through salary offset under

this part, we will first provide the employee with the following:

(i) A notice as described in paragraph (f) of this section; and

(ii) An opportunity to petition for a hearing, and, if a hearing is provided, to receive a written decision from the hearing official within 60 days on the following issues:

(A) The determination concerning the existence or amount of the debt; and

(B) The repayment schedule, unless it was established by written agreement between the employee and us.

(3) The provisions of paragraph (e)(2) of this section do not apply to:

(i) 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 deduction from pay, if the amount to be recovered was accumulated over four pay periods or less;

(ii) 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 a notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(iii) Any adjustment to collect a debt amounting to \$30 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided a notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

(f) *Notice requirements before offset.*

(1) At least 30 days before the initiation of salary offset under this part, we will mail, by certified mail, to the employee's last known address, a notice informing the debtor of the following:

(i) We have reviewed the records relating to the debt and have determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(ii) Our intention to collect the debt by means of deduction from the employee's current disposable pay until the debt and all accumulated interest, penalties, and administrative costs are paid in full;

(iii) The amount, stated either as a fixed dollar amount or as a percentage of pay not to exceed 15 percent of disposable pay, the frequency, the commencement date, and the duration of the intended deductions;

(iv) An explanation of our policies concerning the assessment of interest, penalties, and administrative costs,

stating that such assessments must be made unless waived in accordance with 31 CFR 901.9 and § 422.807 of this subpart;

(v) The employee's right to review and copy all of our records pertaining to the debt or, if the employee or the employee's representative cannot personally review the records, to request and receive copies of such records;

(vi) If not previously provided, the opportunity to establish a schedule for the voluntary repayment of the debt through offset or to enter into an agreement to establish a schedule for repayment of the debt in lieu of offset provided the agreement is in writing, signed by both the employee and us, and documented in our files;

(vii) The right to a hearing conducted by an impartial hearing official with respect to the existence and amount of the debt, or the repayment schedule, so long as a petition is filed by the employee as prescribed in paragraph (h) of this section;

(viii) Time limits and other procedures or conditions for reviewing our records pertaining to the debt, establishing an alternative repayment agreement, and requesting a hearing;

(ix) The name, address, and telephone number of the person or office who may be contacted concerning the procedures for reviewing our records, establishing an alternative repayment agreement, and requesting a hearing;

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

(xi) A timely and properly filed petition for a hearing will suspend the commencement of the collection proceeding;

(xii) We will initiate action to effect salary offset not less than 30 days from the date of mailing the notice, unless the employee properly files a timely petition for a hearing,

(xiii) A final decision on a hearing, if one is requested, will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceeding;

(xiv) Notice that an employee who knowingly makes false or frivolous statements or submits false or frivolous representations or evidence may be subject to disciplinary procedures under chapter 75 of title 5, United States Code, Part 752 of title 5, CFR, or any other applicable statutes or regulations;

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

(xvi) Unless there are applicable contractual or statutory provisions to the contrary, 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

(xvii) Proceedings with respect to such debt are governed by 5 U.S.C. 5514.

(2) We will retain evidence of service indicating the date of mailing of the notice.

(g) *Review of records relating to the debt.* (1) To review or copy our records relating to the debt, the employee must send a written request stating his or her intention. The written request must be received by SSA within 15 days from the employee's receipt of the notice.

(2) In response to a timely request as described in paragraph (g)(1) of this section, we will notify the employee of the location and time when the employee may review and copy such records. If the employee or employee's representative is unable to review personally such records as the result of geographical or other constraints, we will arrange to send copies of such records to the employee.

(h) *Hearings—(1) Petitions for hearing.* (i) To request a hearing concerning the existence or amount of the debt or the offset schedule established by us, the employee must send a written petition to the office we identified in the notice (see paragraph (f)(1)(x) of this section) within 15 days of receipt of the notice.

(ii) The petition must:

(A) Be signed by the employee;

(B) Fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, that the employee believes support his or her position; and

(C) Specify whether an oral or paper hearing is requested. If an oral hearing is requested, the request should explain why the matter cannot be resolved by a paper hearing, which is a determination of the request for reconsideration based upon a review of the written record.

(iii) The timely filing of a petition for hearing will suspend any further collection proceedings.

(2) *Failure to timely request a hearing.*

(i) If the petition for hearing is filed after the 15-day period provided in paragraph (h)(1)(i) of this section, we may grant the request if the employee can establish either that the delay was the result of circumstances beyond the employee's control or that the employee failed to receive actual notice of the filing deadline.

(ii) An employee waives the right to a hearing and will have his or her

disposable pay offset in accordance with the offset schedule established by us, if the employee:

(A) Fails to file a timely request for a hearing unless such failure is excused; or

(B) Fails to appear at an oral hearing of which the employee was notified unless the hearing official determines that the failure to appear was due to circumstances beyond the employee's control.

(3) *Form of hearings—(i) General.* After the employee requests a hearing, the hearing official must notify the employee of the type of the hearing that will occur. If an oral hearing will occur, the notice will state the date, time, and location of the hearing. If a paper hearing will occur, the employee will be notified and required to submit evidence and arguments in writing to the hearing official by the date specified in the notice, after which the record will be closed.

(ii) *Oral hearing.* An employee who requests an oral hearing will be provided an oral hearing if the hearing official determines that the matter cannot be resolved by review of documentary evidence alone because an issue of credibility or veracity is involved. Where an oral hearing is appropriate, the hearing is not an adversarial adjudication and need not take the form of an evidentiary hearing, (e.g., the formal 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 will be given full opportunities to present evidence, witnesses, and arguments;

(B) Informal meetings in which the hearing official interviews the employee by phone or videoconferencing; or

(C) Formal written submissions with an opportunity for oral presentations.

(iii) *Paper hearing.* If the hearing official determines that an oral hearing is not necessary, the hearing official will make the determination based upon a review of the available written record.

(iv) *Record.* The hearing official will maintain a summary record of any hearing conducted under this part. Witnesses who testify in oral hearings will do so under oath or affirmation.

(4) *Written decision—(i) Date of decision.* The hearing officer will 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 hearing petition was received by the creditor agency, unless the employee requested

a delay in the proceedings in which case the 60-day decision period will be extended by the number of days by which the hearing was postponed. The recipient of an employee's request for a hearing must forward the request expeditiously to the hearing official to avoid jeopardizing the hearing official's ability to issue a decision within this 60-day period.

(ii) *Content of decision.* The written decision will include:

(A) A statement of the facts presented to support the origin, nature, and amount of the debt;

(B) The hearing official's findings, analysis, and conclusions, including a determination whether the employee's petition for hearing was baseless and resulted from an intent to delay the creditor agency's collection activity; and

(C) The terms of any repayment schedule, if applicable.

(5) *Failure to appear.* In the absence of good cause shown, an employee who fails to appear at a hearing will be deemed, for the purpose of this part, to admit the existence and amount of the debt as described in the notice. If the representative of the creditor agency fails to appear, the hearing official will proceed with the hearing as scheduled and make a determination based upon oral testimony presented and the documentary evidence submitted by both parties. With the agreement of both parties, the hearing official will schedule a new hearing date, and both parties will be given notice of the time and place of the new hearing.

(i) *Obtaining the services of a hearing official.* The office designated in paragraph (f)(1)(x) of this section will schedule a hearing, if one is requested by an employee, before a hearing official.

(1) When we cannot provide a prompt and appropriate hearing before an administrative law judge or a hearing official furnished pursuant to another lawful arrangement, the office designated in paragraph (f)(1)(x) of this section may contact an agent of any agency designated in 5 CFR part 581, Appendix A to arrange for a hearing official.

(2)(i) When another agency is the creditor agency, it is the responsibility of that agency to arrange for a hearing if one is requested. We will provide a hearing official upon the request of a creditor agency when the debtor is employed by us and the creditor agency cannot provide a prompt and appropriate hearing before a hearing official furnished pursuant to another lawful arrangement.

(ii) Services rendered to a creditor agency under paragraph (i)(2)(i) of this

section will be provided on a fully reimbursable basis pursuant to the Economy Act of 1932, as amended by, 31 U.S.C. 1535.

(3) The determination of a hearing official designated under this section is considered an official certification regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514 and this part. A creditor agency may make a certification to the Secretary of the Treasury under 5 CFR 550.1108 or a paying agency under 5 CFR 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 we find that the debt is still valid, we may still seek collection of the debt through other means, such as offset of other Federal payments or litigation.

(j) *Voluntary repayment agreement in lieu of salary offset.* (1)(i) In response to the notice, the employee may propose to establish an alternative schedule for the voluntary repayment of the debt by submitting a written request. An employee who wishes to repay the debt without salary offset will also submit a proposed written repayment agreement. The proposal will admit the existence of the debt, and the agreement must be in such form that it is legally enforceable. The agreement must:

(A) Be in writing;

(B) Be signed by both the employee and the agency;

(C) Specify all the terms of the arrangement for payment; and

(D) Contain a provision accelerating the debt in the event of default by the employee, but such an increase may not result in a deduction that exceeds 15 percent of the employee's disposable pay unless the employee has agreed in writing to a deduction of a greater amount.

(ii) Any proposal under paragraph (j)(1)(i) of this section must be received within 30 days of the date of the notice.

(2) In response to a timely request as described in paragraph (j)(1) of this section, we will notify the employee whether the proposed repayment schedule is acceptable. It is within our discretion to accept a proposed alternative repayment schedule and to set the necessary terms of a voluntary repayment agreement.

(3) No voluntary repayment agreement will be binding on us unless it is in writing and signed by both us and the employee.

(k) *Special review.* (1) An employee subject to salary offset or a voluntary repayment agreement may, at any time, request a special review by the agency

of the amount of the salary offset or voluntary repayment installments based on materially changed circumstances, such as, but not limited to, catastrophic illness, divorce, death, or disability.

(2)(i) In determining whether an offset would prevent the employee from meeting essential subsistence expenses, (e.g., food, housing, clothing, transportation, and medical care), the employee must submit a detailed statement and supporting documents for the employee, his or her spouse, and dependents indicating:

(A) Income from all sources;

(B) Assets and liabilities;

(C) Number of dependents;

(D) Food, housing, clothing, transportation, and medical expenses; and

(E) Exceptional and unusual expenses, if any.

(ii) When requesting a special review under this section, the employee must file an alternative proposed offset or payment schedule and a statement, with supporting documents as described in paragraph (k)(2)(i) of this section, stating why the current salary offset or payments result in an extreme financial hardship to the employee.

(3)(i) We will evaluate the statement and supporting documents and determine whether the original offset or repayment schedule impose extreme financial hardship on the employee.

(ii) Within 30 calendar days of the receipt of the request and supporting documents, we will notify the employee in writing of such determination, including, if appropriate, a revised offset or repayment schedule.

(4) If the special review results in a revised offset or repayment schedule, we will do a new certification based on the result of the review.

(l) *Procedures for salary offset.* (1) Method and source of deductions.

Unless the employee and the agency have agreed to an alternative repayment arrangement under paragraph (j) of this section, the agency will collect a debt in a lump sum or by installment deductions at officially established pay intervals from an employee's current pay account.

(2) Limitation on amount of deduction. Ordinarily, the size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay. However, the amount deducted for any pay period must 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, as outlined in paragraph (j) of this section.

(3) *Duration of deductions*—(i) *Lump sum*. If the amount of the debt is equal to or less than 15 percent of the employee's disposable pay for an officially established pay interval, the agency will collect the debt in one lump-sum deduction including lump-sum annual leave amounts.

(ii) *Installment deductions*. If the employee is deemed financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of the employee's disposable pay for an officially established pay interval, the agency will collect the debt in installments. Except as provided in paragraphs (k)(5) and (6) of this section, installment deductions must be made over a period no longer than the anticipated period of active duty or employment.

(4) *When deductions may begin*. (i) Deductions will begin on the date stated in the notice, unless the agency and individual have agreed to an alternative repayment agreement under paragraph (j) of this section or the employee has filed a timely request for a hearing.

(ii) If the employee files a timely petition for hearing as provided in paragraph (h) of this section, the agency will begin deductions after the hearing official has provided the employee with a hearing and a final written decision has been rendered in favor of the agency.

(5) *Liquidation from final check*. If an employee retires, resigns, or the period of employment ends before collection of the debt is completed, the agency will offset the remainder under 31 U.S.C. 3716 from subsequent payments of any nature (e.g., final salary payment or lump-sum leave) due the employee from the paying agency as of the date of separation.

(6) *Recovery from other payments due a separated employee*. If the debt cannot be satisfied by offset from any final payment due the employee on the date of separation, we will liquidate the debt, where appropriate, by Administrative Offset under 31 U.S.C. 3716 from later payments of any kind due the former employee (e.g., lump-sum leave payment).

(m) *Exception to internal salary offset*. SSA may follow Administrative Offset notification requirements when attempting the collection of delinquent travel advances and training expenses, not those associated with Federal employee salary offset. Once the notification procedures have been followed, SSA has the authority to withhold all or part of an employee's salary, retirement benefits, or other amount due the employee including lump-sum payments to recover the

amounts owed. No statutory or regulatory limits exist on the amount that can be withheld or offset.

(n) *Salary offset when we are the paying agency but not the creditor agency*. When we are the paying agency and another agency is the creditor agency, the creditor agency must provide written certification to Treasury that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that the Office of Personnel Management has approved the creditor agency's regulations implementing 5 U.S.C. 5514. We are not required or authorized to review the merits of the determination with respect to the amount or validity of the debt certified by the creditor agency.

(o) *Interest, penalties, and administrative costs*. Debts owed will be assessed interest, penalties, and administrative costs in accordance with § 422.807.

(p) *Non-waiver of rights*. An employee's involuntary payment of all or any portion of a debt collected under this part will not be construed as a waiver of any rights the employee may have under 5 U.S.C. 5514 or any other provision of law or contract unless there are statutory or contractual provisions to the contrary.

(q) *Refunds*. (1) We will promptly refund any amounts paid or deducted under this part when:

(i) A debt is waived or otherwise found not owed to us; or

(ii) We are directed by administrative or judicial order to refund amount deducted from the employee's current pay.

(2) Unless required or permitted by law or contract, refunds will not bear interest.

(r) *Additional administrative collection action*. Nothing contained in this part is intended to preclude the use of any other appropriate administrative remedy.

§ 422.811 Discretionary referral for cross-servicing.

We may refer legally enforceable non-tax administrative debts that are less than 180 days delinquent to the Department of the Treasury (Treasury) or to Treasury-designated "debt collection centers" in accordance with 31 CFR 285.12 to accomplish efficient, cost effective debt collection.

§ 422.813 Mandatory referral for cross-servicing.

(a) Pursuant to the cross-servicing process, creditor agencies must transfer any eligible debt more than 180 days

delinquent to the Department of the Treasury (Treasury) for debt collection services. As one such agency, pursuant to 31 CFR 285.12, we are required to transfer to Treasury any legally enforceable nontax debt in excess of \$25, or combination of debts less than \$25 that exceeds \$25 (in the case of a debtor whose taxpayer identification number (TIN) is unknown, the applicable threshold is \$100) that has or have been delinquent for a period of 180 days. Treasury will take appropriate action on behalf of the creditor agency to collect, compromise, suspend, or terminate collection of the debt, including use of debt collection centers and private collection contractors to collect the debt or terminate collection action.

(b) Debts not eligible for mandatory referral of paragraph (a) of this section include:

- (1) Debts owed by a Federal agency;
- (2) Debts owed by a deceased debtor;
- (3) Debts not legally enforceable.

A debt is considered legally enforceable for purposes of referral to the Treasury's, Bureau of the Fiscal Service if there has been a final agency determination that the debt is due and there are no legal bars to collection;

(4) Debts that are the subject of an administrative appeal until the appeal is concluded and the amount of the debt is fixed;

(5) Debts owed by a debtor who has filed for bankruptcy protection or the debt has been discharged in bankruptcy proceeding; or

(6) Debts that are less than \$25 (including interest, penalties, and administrative costs).

(c) A debt is considered delinquent for purposes of this section if it is 180 days past due and is legally enforceable. A debt is past due if it 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. A debt is legally enforceable if there has been a final agency determination that the debt, in the amount stated, is due and there are no legal bars to collection action. Where, for example, a debt is the subject of a pending administrative review process required by statute or regulation and collection action during the review process is prohibited, the debt is not considered legally enforceable for purposes of mandatory transfer to the Treasury and is not to be transferred even if the debt is more than 180 days past due. When a final agency determination is made after an administrative appeal or review process,

the creditor agency must transfer such debt to Treasury, if more than 180 days delinquent, within 30 days after the date of the final decision.

(d) We may also refer debts owed by a foreign country upon consultation with our Office of General Counsel.

§ 422.815 Referral of administrative debts to the Department of the Treasury.

(a) Agencies are required by law to transfer delinquent, nontax, and legally enforceable debts to Department of the Treasury (Treasury) for collection through cross-servicing and through centralized Administrative Offset. Additionally, we may transfer debts to the Treasury for collection through Administrative Wage Garnishment. Agencies need not make duplicate referrals to Treasury for all these purposes; we may refer a debt to Treasury for purposes of simultaneous collection by cross-servicing, centralized Administrative Offset, and Administrative Wage Garnishment where applicable. However, in some instances a debt exempt from cross-servicing collection may be subject to collection by centralized Administrative Offset, so simultaneous referrals are not always appropriate.

(b) When we refer or transfer administrative debts to Treasury, or Treasury-designated debt collection centers under the authority of 31 U.S.C. 3711(g), Treasury will service, collect, or compromise the debts, or Treasury will suspend or terminate the collection action, in accordance with the statutory requirements and authorities applicable to the collection of such debts.

(c) Debts that are not required for referral include:

- (1) Debts delinquent for 180 days or less;
- (2) Debts less than \$100 and we are unable to obtain the debtor's taxpayer identification number;
- (3) Debts in litigation or foreclosure as defined in 31 CFR 385.12 (d)(2);
- (4) Debts that have been referred to a private collection contractor for a period acceptable to Treasury;
- (5) Debts that will be disposed of under an approved asset sale program as defined in 31 CFR 285.12(d)(3)(i);
- (6) Debts that will be collected under internal offset procedures within three years after the debt first became delinquent;
- (7) Debts at a debt collection center for a period of time acceptable to Treasury; or
- (8) Debts exempt from this requirement based on a determination by the Secretary of the Treasury that exemption for a certain class of debt is in the best interest of the United States.

Federal agencies may request that the Secretary of the Treasury exempt specific classes of debts. Any such request by an agency must be sent to the Fiscal Assistant Secretary of the Treasury by the agency Chief Financial Officer.

§ 422.817 Required certification.

Before referring delinquent administrative debts to the Department of the Treasury (Treasury) for collection, we will certify, in writing, that:

- (a) The debts we are transferring are valid and legally enforceable;
- (b) There are no legal bars to collection; and
- (c) We have complied with all prerequisites to a particular collection action under the laws, regulations, or policies applicable to us, unless we agree that Treasury will do so on our behalf.

§ 422.819 Fees.

Federal agencies operating Department of the Treasury-designated debt collection centers are authorized to charge a fee for services rendered regarding referred or transferred debts. The fee may be paid out of amounts collected and may be added to the debt as an administrative cost.

§ 422.821 Administrative offset.

(a) *Scope.* (1) Administrative Offset is the withholding of funds payable by the United States to, or held by the United States for, a person to satisfy a debt. We will use Administrative Offset to recover administrative debts.

(2) This section does not apply to:

- (i) Debts arising under the Social Security Act;
 - (ii) Payments made under the Social Security Act, except as provided for in 31 U.S.C. 3716(c), and 31 CFR 285.4;
 - (iii) Debts arising under, or payments made under the Internal Revenue Code or the tariff laws of the United States;
 - (iv) Offsets against Federal salaries to the extent these standards are inconsistent with regulations published to implement such offsets under 5 U.S.C. 5514 and 31 U.S.C. 3716 (see 5 CFR Part 550, subpart K; 31 CFR 285.7; §§ 422.810 and 422.829 of this subpart);
 - (v) Offsets under 31 U.S.C. 3728 against a judgment obtained by a debtor against the United States;
 - (vi) Offsets or recoupments under common law, State law, or Federal statutes specifically prohibiting offsets or recoupments for particular types of debts; or
 - (vii) Offsets in the course of judicial proceedings, including bankruptcy.
- (3) Unless otherwise provided by contract or law, debts or payments that

are not subject to Administrative Offset under 31 U.S.C. 3716 may be collected by Administrative Offset under the common law or other applicable statutory authority.

(4) In bankruptcy cases, the agency may seek legal advice from the Office of General Counsel concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 106, 362, and 553, on pending or contemplated collections by offset.

§ 422.822 Notification of intent to collect by administrative offset.

(a) Prior to initiation of collection by Administrative Offset, we will:

(1) Send the debtor a notice by mail or hand-delivery. The notice will include the type and amount of the debt, the intention of the agency to use non-centralized Administrative Offset to collect the debt 30 days after the date of the notice, and the name of the Federal agency from which the creditor agency wishes to collect in the case of a non-centralized Administrative Offset. In addition, it will include the intent to refer the debt to the Department of the Treasury (Treasury) for collection through centralized Administrative Offset, including offset of tax refunds 60 days after the date of the notice if the debt is not satisfied by offset within the Social Security Administration or by agreement with another Federal agency, and an explanation of the debtor's rights under 31 U.S.C. 3716.

(2) Give the debtor the opportunity:

- (i) To make a voluntary payment;
- (ii) To review and copy agency records related to the debt;
- (iii) For a review within the agency of the determination of indebtedness;
- (iv) To make a written agreement to repay the debt.

(b) The procedures set forth in paragraph (a) of this section are not required when:

- (1) The offset is in the nature of a recoupment;
- (2) The debt arises under a contract subject to the Contracts Disputes Act or Federal Acquisition Regulations;
- (3) In the case of a non-centralized Administrative Offset, the agency first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. When prior notice and an opportunity for review are omitted, we will give the debtor such notice and an opportunity for review as soon as practicable and will promptly refund any money ultimately found not to have been owed to the agency; or
- (4) The agency previously has given a debtor any of the notice and review

opportunities required under this part, with respect to a particular debt. Subsequently, any interest accrued or any installments coming due after we initiate an offset would not require a new notice and opportunity to review.

(c) The notice will be included as part of a demand letter issued under § 422.805 to advise the debtor of all debt collection possibilities that the agency will seek to employ.

§ 422.823 Debtor rights to review or copy records, submit repayment proposals, or request administrative review.

(a) A debtor who intends to review or copy our records with respect to the debt must notify us in writing within 30 days of the date of the notice as described in section § 422.822. In response, we will notify the debtor of the location, time, and any other conditions for reviewing and copying. The debtor may be liable for reasonable copying expenses.

(b) In response to the notice as described in section § 422.822, the debtor may propose a written agreement to repay the debt as an alternative to Administrative Offset. Any debtor who wishes to do this must submit a written proposal for repayment of the debt, which we must receive within 30 days of the date of the notice as described in section § 422.822 or 15 days after the date of a decision adverse to the debtor. In response, we will notify the debtor whether we need additional information, for example, of his or her financial status. We will obtain any necessary authorization required to approve the agreement, and we will issue a written determination whether the proposed agreement is acceptable. In exercising our discretion, we will balance the Government's interest in collecting the debt against fairness to the debtor.

(c) A debtor must request an administrative review of the debt within 30 days of the date of the notice as described in section § 422.822 for purposes of a proposed collection by non-centralized Administrative Offset pursuant to § 422.824. A debtor must request an administrative review of the debt within 60 days of the date of the notice as described in section § 422.822 for purposes of a proposed collection by centralized Administrative Offset for offset against other Federal payments that would include tax refunds pursuant to § 422.825.

(1) For purposes of this section, whenever we are required to provide a debtor a review within the agency, we will give the debtor a reasonable opportunity for an oral hearing, either by telephone or in person, when the

debtor requests reconsideration of the debt and we determine that the question of the indebtedness cannot be resolved by review of the documentary evidence.

(2) Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although we will carefully document all significant matters discussed at the hearing.

(3) An oral hearing is not required with respect to debts where determinations of indebtedness rarely involve issues of credibility or veracity, and we have determined that a review of the written record is adequate to correct prior mistakes.

(4) In those cases when an oral hearing is not required by this section, we will provide the debtor a paper hearing, that is, a determination of the request for reconsideration based upon a review of the written record.

§ 422.824 Non-centralized administrative offset.

(a) Unless otherwise prohibited by law, when centralized Administrative Offset under § 422.825 is not available or appropriate, we may collect a past due, legally enforceable, nontax delinquent debt by conducting non-centralized Administrative Offset internally or in cooperation with the agency certifying or authorizing payments to the debtor. Generally, non-centralized Administrative Offsets are ad hoc case-by-case offsets that an agency conducts at its own discretion, internally or in cooperation with a second agency certifying or authorizing payments to the debtor. In these cases, we may make a request directly to a payment authorizing agency to offset a payment due a debtor to collect a delinquent debt. We adopt the procedures in 31 CFR 901.3(c) so that we may request the Department of the Treasury or any other payment authorizing agency to conduct a non-centralized Administrative Offset.

(b) Administrative Offset may be initiated only after:

(1) The debtor has been sent a notice of the type and amount of the debt, the intention to initiate Administrative Offset to collect the debt, and an explanation of the debtor's rights under 31 U.S.C. 3716; and

(2) The debtor has been given:

(i) The opportunity to review and copy records related to the debt;

(ii) The opportunity for a review within the department of the determination of indebtedness; and

(iii) The opportunity to make a written agreement to repay the debt.

(c) The agency may omit the requirements under paragraph (b) of this section when:

(1) Offset is in the nature of a recoupment (i.e., the debt and the payment to be offset arise out of the same transaction or occurrence);

(2) The debt arises under a contract as set forth in *Cecile Industries, Inc. v. Cheney*, 995 F.2d 1052 (Fed. Cir. 1993) (notice and other procedural protections set forth in 31 U.S.C. 3716(a) do not supplant or restrict established procedures for contractual offsets covered by the Contracts Disputes Act); or

(3) In the case of non-centralized Administrative Offset conducted under paragraph (a) of this section, the agency first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor to allow for prior notice and an opportunity for review. When prior notice and an opportunity for review are omitted, we will give the debtor such notice and an opportunity for review as soon as practical and will promptly refund any money ultimately found not to have been owed to the Government.

(d) When the debtor previously has been given any of the required notice and review opportunities with respect to a particular debt, such as under § 422.805, we need not duplicate such notice and review opportunities before Administrative Offset may be initiated.

(e) Before requesting that a payment authorizing agency conduct non-centralized Administrative Offset, we will:

(1) Provide the debtor with due process as set forth in paragraph (b) of this section; and

(2) Provide the payment authorizing agency written certification that the debtor owes the past due, legally enforceable delinquent debt in the amount stated and that we have fully complied with this section.

(f) When a creditor agency requests that we, as the payment authorizing agency, conduct non-centralized Administrative Offset, we will comply with the request, unless the offset would not be in the best interest of the United States with respect to the program of the agency, or would otherwise be contrary to law. Appropriate use should be made of the cooperative efforts of other agencies in effecting collection by Administrative Offset, including salary offset.

(g) When collecting multiple debts by non-centralized Administrative Offset, we will apply the recovered amounts to those debts in accordance with the best interests of the United States, as

determined by the facts and circumstances of the particular case, particularly the applicable statute of limitations.

§ 422.825 Centralized administrative offset.

(a) *Mandatory referral.* After we provide and meet the notice and review opportunity requirements of § 422.822, we will refer debts that are over 180 days delinquent to the Department of the Treasury (Treasury) for collection through centralized Administrative Offset 61 days after the date of the notice provided in accordance with § 422.822. If the debtor seeks review, referral of the debt must occur within 30 days of the final decision upholding our decision to offset the debt if the debt is more than 180 days delinquent.

(b) *Discretionary referral.* After we provide and meet the notice and review opportunity requirements of § 422.822, and the debtor does not request administrative review or the result of the review is unsuccessful for the debtor, we may refer a debt that is less than 180 days delinquent.

(c) *Procedures for referral.* We will refer debts to Treasury for collection in accordance with Treasury procedures set forth in 31 CFR 285.5 and 31 CFR 901.3 (b).

§ 422.827 Offset against tax refunds.

We will take action to effect Administrative Offset against tax refunds due to debtors in accordance with the provisions of 31 U.S.C. 3720A through referral for centralized Administrative Offset under § 422.825.

§ 422.829 Federal salary offset.

(a) *Referral to the Department of the Treasury for offset.* (1) The Department of the Treasury (Treasury) will recover overdue administrative debts by offsetting Federal payments due the debtor through the Treasury Offset Program (TOP). TOP is a government-wide delinquent debt matching and payment offset process operated by Treasury, whereby debts owed to the Federal Government are collected by offsetting them against Federal payments owed the debtor. Federal payments owed the debtor include current "disposable pay," defined in 5 CFR 550.1103, owed by the Federal Government to a debtor who is an employee of the Federal Government. Deducting from such disposable pay to collect an overdue debt owed by the employee is called "Federal Salary Offset" in this subpart.

(2) Treasury will use Federal Salary Offset to collect overdue administrative debts from Federal employees,

including employees of the Social Security Administration. A Federal employee's involuntary payment of all or part of a debt collected by Federal Salary Offset does not amount to a waiver of any rights that the employee may have under any statute or contract, unless a statute or contract provides for waiver of such rights.

(b) *Debts we will refer.* We will refer all qualifying administrative debts that meet or exceed the threshold amounts used by Treasury for collection from Federal payments, including Federal salaries.

(c) *Notice to debtor.* Before we refer any administrative debt for collection by Administrative Offset, we will send the debtor a notice that explains all of the following:

(1) The nature and amount of the debt;

(2) That we have determined that payment of the debt is overdue; and

(3) That we will refer the debt for Administrative Offset (except as provided in paragraph (c)(9) of this section) at the expiration of not less than 60 calendar days after the date of the notice unless, within that 60-day period:

(i) The debtor pays the full amount of the debt, or

(ii) The debtor takes any of the actions described in paragraphs (c)(6) or (7) of this section.

(4) The frequency and amount of any Federal Salary Offset deduction (the payment schedule) expressed as a fixed dollar amount or percentage of disposable pay.

(5) The debtor may review or copy our records relating to the debt. If the debtor or his or her representative cannot personally review the records, the debtor may request and receive a copy of such records.

(6) The debtor may request a review of the debt by giving us evidence showing that the debtor does not owe all or part of the amount of the debt or that we do not have the right to collect it. The debtor may also request review of any payment schedule for Federal Salary Offset stated in the notice. If the debtor is an employee of the Federal Government and Federal Salary Offset is proposed, an official designated in accordance with 5 U.S.C. 5514(a)(2) will conduct the review.

(7) The debtor may request to repay the debt voluntarily through an installment payment plan.

(8) If the debtor knowingly furnishes any false or frivolous statements, representations, or evidence, the debtor may be subject to appropriate disciplinary procedures under

applicable statutes or regulations when the debtor is a Federal employee.

(9) We will refer the debt for Federal Salary Offset at the expiration of not less than 60 calendar days after the date of the notice unless, within that 60 day period, the debtor takes any actions described in paragraphs (c)(3)(i) or (c)(6) or (7) of this section.

(d) *Federal Salary Offset: amount, frequency and duration of deductions.*

(1) Treasury may collect the overdue debt from an employee of the Federal Government through the deduction of an amount not to exceed 15 percent of the debtor's current disposable pay each payday.

(2) Federal Salary Offset will begin not less than 60 calendar days after the date of the notice to the debtor described in paragraph (c) of this section.

(3) Once begun, Federal Salary Offset will continue until Treasury recovers the full amount of the debt, the debt is otherwise resolved, or the debtor's Federal employment ceases, whichever occurs first.

(4) After Federal Salary Offset begins, the debtor may request a reduction in the amount deducted from disposable pay each payday. When Treasury determines that the amount deducted causes financial harm under the rules in § 422.833(j), they will reduce that amount. Treasury will not reduce the amount from the debtor's disposable pay if the debt was caused by:

(A) An intentional false statement by the debtor, or

(B) The debtor's willful concealment of, or failure to furnish, material information.

(2) "Willful concealment" means an intentional, knowing and purposeful delay in providing, or failure to reveal, material information.

(e) *Refunds.* Treasury will promptly refund to the debtor any amounts collected that the debtor does not owe. Refunds do not bear interest unless required or permitted by law or contract.

§ 422.833 Administrative wage garnishment for administrative debts.

(a) *Purpose.* This part prescribes the standards and procedures for collecting money from a debtor's disposable pay by means of Administrative Wage Garnishment to satisfy delinquent non-tax debts owed to the United States.

(b) *Authority.* These standards and procedures are authorized under the wage garnishment provisions of the Debt Collection Improvement Act of 1996, codified at 31 U.S.C. 3720D, and the Department of the Treasury's (Treasury) Administrative Wage

Garnishment regulation at 31 CFR 285.11.

(1) This part will apply notwithstanding any provision of State law.

(2) Nothing in this part precludes the compromise of a debt or the suspension or termination of collection action in accordance with § 422.803 of this subpart or other applicable law or regulation, and the Commissioner has retained the authority. The Department of Justice has exclusive authority to suspend or terminate collection action on a debt affected by fraud.

(3) The receipt of payments pursuant to this part does not preclude us from pursuing other debt collection remedies, including the offset of Federal or State payments to satisfy delinquent non-tax debt owed to the United States. We will pursue such debt collection remedies separately or in conjunction with Administrative Wage Garnishment.

(4) This section does not apply to the collection of delinquent non-tax debts owed to the United States from the wages of Federal employees from their Federal employment. Federal pay is subject to the Federal Salary Offset procedures set forth in 5 U.S.C. 5514 and other applicable laws.

(5) Nothing in this section requires us to duplicate notices or administrative proceedings required by contract or other laws or regulations.

(c) *Definitions.* In this section, the following definitions will apply:

Business day means Monday through Friday. For purposes of computation, the last day of the period will be included unless it is a Federal legal holiday, in which case the next business day following the holiday will be considered the last day of the period.

Day means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, Sunday, or a Federal legal holiday, in which case the next business day will be considered the last day of the period.

Debt means an amount of funds or other property determined by an appropriate official of the Federal Government to be owed to the United States from any person, organization, or entity or any other debt that meets the definition of “claim” or “debt” under 31 U.S.C. 3701(b), excluding program overpayments made under title II or title XVI of the Social Security Act.

Debtor means an individual who owes a delinquent non-tax debt to the United States.

Delinquent debt means any non-tax debt that has not been paid by the date specified in the agency’s initial written demand for payment, or applicable

payment agreement or instrument, unless other satisfactory payment arrangements have been made. For purposes of this part, “delinquent” and “overdue” have the same meaning.

Disposable pay means that part of the debtor’s compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld. For purposes of this part, “amounts required by law to be withheld” include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order.

Employer means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local Governments, but does not include an agency of the Federal Government as defined by 31 CFR 285.11(c).

Garnishment means the process of withholding amounts from an employee’s disposable pay and paying those amounts to a creditor in satisfaction of a withholding order.

Hearing means a review of the documentary evidence concerning the existence or amount of a debt or the terms of a repayment schedule, provided such repayment schedule is established other than by a written agreement entered into pursuant to this part. If the hearing official determines that the issues in dispute cannot be resolved solely by review of the written record, such as when the validity of the debt turns on the issue of credibility or veracity, an oral hearing may be provided.

Hearing official means an administrative law judge or appropriate alternate.

Treasury means the Department of the Treasury.

Withholding order for purposes of this part means “Wage Garnishment Order (SF329B).” Also for purposes of this part, the terms “wage garnishment order” and “garnishment order” have the same meaning as “withholding order.”

(d) *General rule.* (1) Except as provided in paragraph (d)(2) of this section, whenever an individual owes a delinquent debt, the agency or another Federal agency collecting a debt on our behalf (see § 422.803) may initiate administrative proceedings to garnish the wages of the delinquent debtor.

(2) Treasury will not garnish the wages of a debtor who we know has been involuntarily separated from employment until the debtor has been

re-employed continuously for at least 12 months. The debtor has the burden to inform the agency of the circumstances surrounding an involuntary separation from employment.

(e) *Notice*—(1) *Notice requirements.* At least 30 days before the initiation of garnishment proceedings, Treasury will mail, by first class mail, to the debtor’s last known address, a notice informing the debtor of:

(i) The nature and amount of the debt;

(ii) The intention to initiate proceedings to collect the debt through deductions from pay until the debt and all accumulated interest, penalties, and administrative costs are paid in full;

(iii) The debtor’s right:

(A) To review and copy our records related to the debt;

(B) To enter into a written repayment which is agreeable to the agency;

(C) To a hearing, in accordance with paragraph (f) of this section, concerning the existence or the amount of the debt or the terms of the proposed repayment schedule under the garnishment order, except that the debtor is not entitled to a hearing concerning the proposed repayment schedule if the terms were established by written agreement pursuant to paragraph (1)(iii)(B) of this section; and

(iv) The periods within which the debtor may exercise his or her rights.

(2) *Treasury will keep a copy of the dated notice.* The notice may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

(f) *Hearing*—(1) *In general.* Upon timely written request of the debtor, Treasury will provide a paper or oral hearing concerning the existence or amount of the debt, or the terms of a repayment schedule established other than by written agreement under paragraph (e)(1)(iii)(2) of this section.

(2) *Request for hearing.* (i) The request for a hearing must be signed by the debtor, state each issue being disputed, and identify and explain with reasonable specificity all facts and evidence that the debtor believes support the debtor’s position. Supporting documentation identified by the debtor should be attached to the request.

(ii) *Effect of timely request.* Subject to paragraph (f)(10) of this section, if the debtor’s written request is received on or before the 15 business days following the mailing of the notice required under this part, a withholding order will not be issued under paragraph (g) of this section until the debtor has been provided the requested hearing and a decision in accordance with paragraphs

(f)(7) and (8) of this section has been rendered.

(iii) *Failure to timely request a hearing.* If the debtor's written request is received after the 15th business day following the mailing of the notice required under this part, Treasury will provide a hearing to the debtor. However, Treasury may not delay the issuance of a withholding order unless they determine that the delay in submitting such request was caused by factors beyond the control of the debtor, or receive information that they determine justifies a delay or cancellation of the withholding order.

(3) *Oral hearing.* (i) For purposes of this section, a debtor will be provided a reasonable opportunity for an oral hearing when the hearing official determines that the issues in dispute cannot be resolved by review of the documentary evidence, such as when the validity of the claim turns on the issue of credibility or veracity.

(ii) If the hearing official decides to have a hearing, a debtor can specify to Treasury whether he or she wants to appear in person or by telephone. At the debtor's option, the oral hearing may be conducted in person or by telephone conference. The hearing official will notify the debtor of the date, time, and in the case of an in-person hearing, the location of the hearing. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor.

(4) *Paper hearing.* (i) If the hearing official determines an oral hearing is not required by this section, the hearing official will afford the debtor a paper hearing, that is, the issues in dispute will be decided based upon a review of the written record.

(ii) The hearing official will notify the debtor of the deadline for the submission of additional evidence if necessary for a review of the record.

(5) *Burden of proof.* (i) Treasury has the initial burden of proving the existence or amount of the debt.

(ii) Thereafter, if the debtor disputes the existence or amount of the debt must present Treasury preponderant evidence that no debt exists or that the amount is incorrect. Debtors challenging the terms of a repayment schedule must provide preponderant evidence to Treasury that the terms of the repayment schedule are unlawful, would cause the debtor financial hardship, or that operation of law prohibits collection of the debt.

(6) *Record.* The hearing official will maintain a summary record of any hearing provided under this part. A hearing is not required to be a formal evidentiary-type hearing, but witnesses

who testify in an oral hearing must do so under oath or affirmation.

(7) *Date of decision.* (i) The hearing official will issue a written decision, as soon as practicable, but no later than 60 days after the date on which the request for the hearing was received by the agency.

(ii) If the hearing official is unable to provide the debtor with a hearing and render a decision within 60 days after the receipt of the request for such hearing:

(A) A withholding order may not be issued until the hearing is held and a decision is rendered; or

(B) A withholding order previously issued to the debtor's employer must be suspended beginning on the 61st day after the receipt of the hearing request and continuing until a hearing is held and a decision is rendered.

(8) *Content of decision.* The written decision will include:

(i) A summary of the facts presented;

(ii) The hearing official's findings, analysis, and conclusions; and

(iii) The terms of any repayment schedule, if applicable.

(9) *Final agency action.* The hearing official's decision will be the final agency action for the purposes of judicial review under the Administrative Procedure Act. 5 U.S.C. 701 et seq.

(10) *Failure to appear.* In the absence of good cause shown, a debtor who fails to appear at a hearing will be deemed as not having timely filed a request for a hearing.

(g) *Withholding order.* (1) Unless Treasury receives information that determines a justified delay or cancellation of a withholding order, Treasury will send, by first class mail, an SF-329A "Letter to Employer & Important Notice to Employer," an SF-329B "Wage Garnishment Order," an SF-329C "Wage Garnishment Worksheet," and an SF-329D "Employer Certification" to the debtor's employer within 30 days after the debtor fails to make a timely request for a hearing or, if the timely request for a hearing is made by the debtor, within 30 days after a final decision is made by the agency to proceed with garnishment.

(h) *Certification by employer.* The employer must complete and return the SF-329D "Employer Certification" within 20 days of receipt.

(i) *Amounts withheld.* (1) After receipt of a withholding order issued under this part, the employer will deduct from all disposable pay paid to the debtor during each pay period the amount of garnishment described in paragraph (i)(2) of this section. The employer may use the SF-329C "Wage Garnishment

Worksheet" to calculate the amount to be deducted from the debtor's disposable pay.

(2) Subject to paragraphs (i)(3) and (4) of this section, the amount of garnishment will be the lesser of:

(i) The amount indicated on the garnishment order up to 15 percent of the debtor's disposable pay; or

(ii) The amount set forth in 15 U.S.C. 1673(a)(2) (Maximum allowable garnishment). The amount set forth at 15 U.S.C. 1673(a)(2) is the amount by which a debtor's disposable pay exceeds an amount equivalent to thirty times the minimum wage. See 29 CFR 870.10.

(3)(i) Except as provided in paragraph (i)(3)(ii) of this section, when a debtor's pay is subject to multiple withholding orders, unless otherwise provided by Federal law, withholding orders issued pursuant to this part will have priority over other withholding orders that are served later.

(ii) Notwithstanding the foregoing, withholding orders for family support will have priority over withholding orders issued under this part.

(iii) If amounts are being withheld from a debtor's pay pursuant to a withholding order served on an employer before a withholding order issued pursuant to this part, or if a withholding order for family support is served on an employer at any time, the amounts withheld pursuant to a withholding order issued under this part will be the lesser of:

(A) The amount calculated under paragraph (i)(3)(iii)(B) of this section; or

(B) An amount equal to 25 percent of the debtor's disposable pay less the amount(s) withheld under the withholding order(s) with priority.

(4) If the debtor owes more than one debt to the agency, Treasury will issue multiple withholding orders provided that the total amount garnished from the debtor's pay for such orders does not exceed the amount set forth in paragraph (i)(2) of this section.

(5) An amount greater than that set forth in paragraph (i)(2) or (3) of this section may be withheld with the debtor's written consent.

(6) The employer will promptly pay all amounts withheld in accordance with the withholding order issued pursuant to this part.

(7) The employer is not required to vary its normal pay and disbursement cycles in order to comply with the withholding order.

(8) Any assignment or allotment by an employee will be void to the extent it interferes with or prohibits execution of the withholding order issued under this part, except for any assignment or

allotment made pursuant to a family support judgment or order.

(9) The employer will withhold the appropriate amount from the debtor's wages for each pay period until the employer receives notification from the agency to discontinue wage withholding.

(10) The withholding order, SF-329B "Wage Garnishment Order," sent to the employer under paragraph (g) of this section, requires the employer to commence wage withholding on the first payday after the employer receives the order. However, if the first payday is within 10 days after receipt of the order, the employer may elect to begin deductions on the second payday.

(11) An employer may not discharge, refuse to employ, or take disciplinary action against any debtor because of the issuance of a withholding order under this part.

(j) *Financial hardship.* (1) A debtor whose wages are subject to a withholding order may, at any time, request a review by Treasury of the amount garnished, based on materially changed circumstances, such as disability, divorce, or catastrophic illness, which result in financial hardship.

(2) A debtor requesting review under paragraph (j)(1) of this section will submit the basis for the claim that the current amount of garnishment results in a financial hardship to the debtor, along with supporting documentation. Treasury will consider any information submitted in accordance with this part.

(3) If Treasury finds financial hardship, to reflect the debtor's financial condition, Treasury will downwardly adjust the amount garnished by an amount and for a period established by the agency. Treasury will notify the employer of any adjustments in the amount to be withheld.

(k) *Fraud and willful concealment or failure to furnish information.* Treasury will not reduce the amount that the employer withholds from disposable pay if the debt was caused by an intentional false statement.

(l) *Refunds.* (1) If the hearing official, pursuant to a hearing under this part, determines that a debt is not legally due and owing to the United States, Treasury will promptly refund any amount collected by means of Administrative Wage Garnishment.

(2) Unless required by Federal law or contract, refunds under this part will not bear interest.

(m) *Ending garnishment.* (1) Once Treasury has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs assessed pursuant to and in

accordance with § 422.803 of this title, Treasury will send the debtor's employer notification to discontinue wage withholding.

(2) At least annually, Treasury will review debtors' accounts to ensure that garnishment has ended for accounts that have been paid in full.

(n) *Employers' responsibilities and right of action.* (1) The employer of a debtor subject to wage withholding pursuant to this part will pay the agency as directed in a withholding order issued under this part.

(2) Treasury may bring suit against an employer for any amount that the employer fails to withhold from wages owed and payable to a debtor in accordance with paragraphs (g) and (i) of this section, plus attorney's fees, costs, and, if applicable, punitive damages.

(3) A suit under this section may not be filed before the end of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. For purposes of this section, "end of collection action" occurs when we have completed taking collection action in accordance with Part 422, subpart I of this title or other applicable law or regulation.

(4) Notwithstanding any other provision or action referred to in this section, the end of the collection action will be deemed to occur one (1) year after the agency does not receive any payment of wages that were subject to a garnishment order issued under this part.

§ 422.835 Debt reporting and use of credit reporting agencies.

(a) *Reporting delinquent debts.* (1) We may report delinquent debts over \$25 to credit bureaus or other automated databases.

(2) We will report administrative debts owed by individuals to consumer reporting agencies pursuant to 5 U.S.C. 552a(b)(12). We may disclose only the individual's name, address, and Social Security number and the nature, amount, status, and history of the debt.

(3) Once we refer a debt the Department of the Treasury (Treasury) for collection, Treasury may handle any subsequent reporting to or updating of a credit bureau or other automated database.

(4) Where there is reason to believe that a debtor has filed a bankruptcy petition, prior to proceeding under this paragraph (a), we will contact the Office of the General Counsel for legal advice concerning the impact of the Bankruptcy Code, particularly with respect to the applicability of the

automatic stay, 11 U.S.C. 362, and the procedures for obtaining relief from such stay.

(5) If the debtor has not received prior notice under § 422.805, before reporting a delinquent debt under this section, we will provide the debtor at least 60 days notice including:

(i) The amount and nature of the debt;

(ii) That the debt is delinquent and that we intend to report the debt to a credit bureau;

(iii) The specific information that we will disclose;

(iv) The right to dispute the accuracy and validity of the information being disclosed; and

(v) If a previous opportunity was not provided, the right to request review of the debt or rescheduling of payment.

(b) *Use of credit reporting agencies.*

We may use credit-reporting agencies to determine a debtor's ability to repay a debt and to locate debtors. In the case of an individual, we may disclose, as a routine use under 5 U.S.C. 552a(b)(3), only the individual's name, address, and Social Security number, and the purpose for which the information will be used.

§ 422.837 Contracting with private collection contractors and with entities that locate and recover unclaimed assets.

(a) Subject to the provisions of paragraph (b) of this section, we may contract with private collection contractors to recover delinquent debts, if:

(1) We retain the authority to resolve disputes, compromise debts, suspend or terminate collection action, and, as appropriate, to refer debts to the Department of Justice for review and litigation;

(2) The private collection contractor is not allowed to offer the debtor, as an incentive for payment, the opportunity to pay the debt less the private collection contractor's fee, unless we have granted such authority prior to the offer;

(3) The contract provides that the private collection contractor is subject to the Privacy Act of 1974 to the extent specified in 5 U.S.C. 552a(m) and to applicable Federal and State laws and regulations pertaining to debt collection practices, including, but not limited to, the Fair Debt Collection Practices Act, 15 U.S.C. 1692; and

(4) The private collection contractor is required to account for all amounts collected.

(b) We will use government-wide debt collection contracts to obtain debt collection services provided by private collection contractors. However, we may refer debts to private collection

contractors pursuant to a contract between the agency and the private collection contractor only if such debts are not subject to the requirement to transfer debts to the Treasury for debt collection under 31 U.S.C. 3711(g) and 31 CFR 285.12(e).

(c) Debts arising under the Social Security Act (which can be collected by private collection contractors only by Department of the Treasury (Treasury) after the debt has been referred to Treasury for collection) are excluded from this section.

(d) We may fund private collection contractor contracts in accordance with 31 U.S.C. 3718(d) or as otherwise permitted by law. A contract under paragraph (a) of this section may provide that the fee a private collection contractor charges the agency for collecting the debt is payable from the amounts collected.

(e) We may enter into contracts for locating and recovering assets of the United States, including unclaimed assets. However, before entering into a contract to recover assets of the United States that may be held by a State Government or financial institution, we must establish procedures that are acceptable to the Secretary of the Treasury.

(f) We enter into contracts for debtor asset and income search reports. In accordance with 31 U.S.C. 3718(d), such contracts may provide that the fee a contractor charges the agency for such services may be payable from the amounts recovered unless otherwise prohibited by statute.

§ 422.839 Offset against amounts payable from civil service retirement and disability fund and the Federal employees' retirement system.

Upon providing the Office of Personnel Management (OPM) written certification that a debtor has been afforded the procedures provided in § 422.823 of this subpart, we may request OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) and the Federal Employees' Retirement System (FERS) in accordance with regulations codified at 5 CFR 831.1801 through 831.1808, and 5 CFR part 845, subpart D. Upon receipt of such a request, OPM will identify and "flag" a debtor's account in anticipation of the time when the debtor requests, or becomes eligible to receive, payments from the Fund or FERS.

§ 422.842 Liquidation of collateral.

(a)(1) If the debtor fails to pay the debt(s) within a reasonable time after demand and if such action is in the best

interests of the United States, we will liquidate security or collateral through the exercise of a power of sale in the security instrument or a non-judicial foreclosure and apply the proceeds to the applicable debt(s).

(2) Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety, insurer, or guarantor unless such action is expressly required by statute or contract.

(3) We will give the debtor reasonable notice of the sale and an accounting of any surplus proceeds and will comply with other requirements under law or contract.

(b) Where there is reason to believe that a bankruptcy petition has been filed with respect to a debtor, we will contact the Office of the General Counsel for legal advice concerning the impact of the Bankruptcy Code, particularly with respect to the applicability of the automatic stay, 11 U.S.C. 362, and the procedures for obtaining relief from such stay prior to proceeding under paragraph (a) of this section.

§ 422.846 Bases for compromise.

(a) *Scope and application*—(1) *Scope*. The standards set forth in this subpart apply to the compromise of administrative debts pursuant to 31 U.S.C. 3711. We may exercise such compromise authority for debts arising out of activities of, or referred or transferred for collection services to, the agency when the amount of the debt then due, exclusive of interest, penalties, and administrative costs, does not exceed \$100,000 or any higher amount authorized by the Attorney General.

(2) *Application*. Unless otherwise provided by law, when the principal balance of a debt, exclusive of interest, penalties, and administrative costs, exceeds \$100,000 or any higher amount authorized by the Attorney General, the authority to accept a compromise rests with the Department of Justice (DOJ). We will evaluate the compromise offer using the factors set forth in this subpart. If an offer to compromise any debt in excess of \$100,000 is acceptable to the agency, we will refer the debt to the Civil Division or other appropriate litigating division in the DOJ using a Claims Collection Litigation Report (CCLR). A CCLR may be obtained from the DOJ's National Central Intake Facility. The referral will include appropriate financial information and a recommendation for the acceptance of the compromise offer. The DOJ approval is not required if we reject a compromise offer.

(b) *Bases for compromise*—(1) *Compromise*. We may compromise a debt if the agency cannot collect the full amount based upon the debtor's inability to pay, inability to collect the full debt, cost of collection, or doubtful debt can be proven in court.

(i) *Inability to pay*. We may compromise a debt if the debtor is unable to pay the full amount in a reasonable time, as verified through credit reports or other financial information. In determining a debtor's inability to pay the full amount of the debt within a reasonable time, we will obtain and verify the debtor's claim of inability to pay by using credit reports and/or a current financial statement from the debtor, executed under penalty of perjury, showing the debtor's assets, liabilities, income, and expenses. We may use a financial information form used in connection with the agency's programs or may request suitable forms from the DOJ or the local United States Attorney's Office. We also may consider other relevant factors such as:

- (A) Age and health of the debtor;
- (B) Present and potential income;
- (C) Inheritance prospects;
- (D) The possibility that assets have been concealed or improperly transferred by the debtor; and
- (E) The availability of assets or income that may be realized by enforced collection proceedings.

(ii) *Inability to collect full debt*. We may compromise a debt if the Government is unable to collect the debt in full within a reasonable time by enforced collection proceedings.

(A) In determining the Government's ability to enforce collection, we will consider the applicable exemptions available to the debtor under State and Federal law, and we may also consider uncertainty as to the price any collateral or other property will bring at a forced sale.

(B) A compromise affected under this section should be for an amount that bears a reasonable relation to the amount that can be recovered by enforced collection procedures, with regard to any exemptions available to the debtor and the time that collection will take.

(iii) *Cost of collection*. We may compromise a debt if the cost of collecting the debt does not justify the enforced collection of the full amount.

(A) The amount accepted in compromise of such debts may reflect an appropriate discount for the administrative and litigation costs of collection, with consideration given to the time it will take to effect collection. Collection costs may be a substantial factor in the settlement of small debts.

(B) In determining whether the costs of collection justify enforced collection of the full amount, we will consider whether continued collection of the debt, regardless of cost, is necessary to further an enforcement principal, such as the Government's willingness to pursue aggressively defaulting and uncooperative debtors.

(iv) *Doubtful debt can be proven in court.* We may compromise a debt if there is significant doubt concerning the Government's ability to prove its case in court.

(A) If significant doubt exists concerning the Government's ability to prove its case in court for the full amount claimed, either because of the legal issues involved or because of a legitimate dispute as to the facts, then the amount accepted in compromise should fairly reflect the probabilities of successful prosecution to judgment, with due regard to the availability of witnesses and other evidentiary support for the Government's claim.

(B) In determining the litigation risks involved, we will consider the probable amount of court costs and attorney fees a court may impose pursuant to the Equal Access to Justice Act, 28 U.S.C. 2412, if the Government is unsuccessful in litigation.

(2) *Installments.* We may not accept compromises payable in installments. This is not an advantageous form of compromise in terms of time and administrative expense. If, however, payment in installments is necessary in cases of compromise based on paragraphs (b)(1)(i) through (iii) of this section, we will obtain a legally enforceable written agreement providing that, in the event of default, the full original principal balance of the debt prior to compromise, less sums paid thereon, is reinstated. In cases of compromise based on paragraph (b)(1)(iv) of this section, we will consult with the Office of the General Counsel concerning the appropriateness of including such a requirement in the legally enforceable written agreement. Whenever possible, we will obtain security for repayment in the manner set forth in § 422.809.

(c) *Enforcement policy.* Subject to the Commissioner's approval, we may compromise statutory penalties, forfeitures, or claims established as an aid to enforcement and to compel compliance if our enforcement policy, in terms of deterrence and securing compliance, present, and future, will be adequately served by the agency's acceptance of the sum to be agreed upon.

(d) *Joint and several liability.* (1) When two or more debtors are jointly

and severally liable, we will pursue collection against all debtors, as appropriate. We will not attempt to allocate the burden of payment between the debtors but will proceed to liquidate the indebtedness as quickly as possible.

(2) We will ensure that a compromise agreement with one debtor does not automatically release the agency's claim against the remaining debtor(s). The amount of a compromise with one debtor will not be considered a precedent or binding in determining the amount that will be required from other debtors jointly and severally liable on the claim.

(e) *Further review of compromise offers.* If we are uncertain whether to accept a firm, written, substantive compromise offer on a debt that is within the agency's statutory compromise authority, we may use a CCLR with supporting data and particulars concerning the debt to refer the offer to the DOJ's Civil Division or other appropriate litigating division. The DOJ may act upon such an offer or return it to the agency with instructions or advice.

(f) *Consideration of tax consequences to the Government.* In negotiating a compromise, we will consider the tax consequences to the Government. In particular, we will consider requiring a waiver of tax-loss-carry-forward and tax-loss-carry-back rights of the debtor. For information on discharge of indebtedness reporting requirements, see § 422.848(e).

(g) *Mutual release of the debtor and the Government.* In all appropriate instances, a compromise that is accepted will be implemented by means of a mutual release. The terms of such mutual release will provide that the debtor is released from further non-tax liability on the compromised debt in consideration of payment in full of the compromise amount, and the Government and its officials, past and present, are released and discharged from any and all claims and causes of action arising from the same transaction that the debtor may have. In the event a mutual release is not executed when a debt is compromised, unless prohibited by law, the debtor is still deemed to have waived any and all claims and causes of action against the Government and its officials related to the transaction giving rise to the compromised debt.

§ 422.848 Suspension and termination of collection activities.

(a) *Scope and application.*—(1) *Scope.* The standards set forth in this subpart apply to the suspension or termination of collection activity pursuant to 31

U.S.C. 3711 on debts that do not appear to be fraudulent or that do not exceed \$100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. Prior to referring a debt to the Department of Justice (DOJ) for litigation, we may suspend or terminate collection under this subpart with respect to such debts that arise out of the activities of, or are referred or transferred for collection services to, the agency.

(2) *Application.* (i) If the debt stems from a claim that appears to be fraudulent, false, or misrepresented by a party with an interest in the claim or after deducting the amount of partial payments or collections, the principal amount of the debt exceeds \$100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with the DOJ.

(ii) If we believe that suspension or termination of any debt that relates to a claim that appears to be fraudulent, false, or misrepresented by a party with an interest in the claim or that exceeds \$100,000 may be appropriate, we will use the Claims Collection Litigation Report to refer the debt to the Civil Division or other appropriate litigating division in the DOJ. The referral will specify the reasons for our recommendation. If, prior to referral to the DOJ, we determine that a debt is plainly erroneous or clearly without merit, we may terminate collection activity regardless of the suspected fraud or amount involved without obtaining the DOJ's concurrence.

(b) Suspension of collection activity.

(1) We may suspend collection activity on a debt when:

- (i) The debtor cannot be located;
- (ii) The debtor's financial condition is not expected to improve; or
- (iii) The debtor has requested a legally permissible waiver or review of the debt.

(2) *Financial condition.* Based on the current financial condition of a debtor, we may suspend collection activity on a debt when the debtor's future prospects justify retention of the debt for periodic review and collection activity, and:

(i) No applicable statute of limitations has expired; or

(ii) Future collection can be effected by Administrative Offset, notwithstanding the expiration of the applicable statute of limitations for litigation of claims, with due regard to any statute of limitation for

Administrative Offset prescribed by 31 U.S.C. 3716(e)(1); or

(iii) The debtor agrees to pay interest on the amount of the debt on which collection will be suspended and suspension is likely to enhance the debtor's ability to pay the full amount of the principal of the debt with interest at a later date.

(3) *Waiver or review.* (i) We will suspend collection activity during the time required for consideration of the debtor's request for waiver or administrative review of the debt if the statute under which the request is sought prohibits us from collecting the debt during that time.

(ii) If the statute under which the waiver or administrative review request is sought does not prohibit collection activity pending consideration of the request, we may use discretion, on a case-by-case basis, to suspend collection. We will ordinarily suspend collection action upon a request for waiver or review if we are prohibited by statute or regulation from issuing a refund of amounts collected prior to agency consideration of the debtor's request. However, we will not suspend collection when we determine that the request for waiver or review is frivolous or was made primarily to delay collection.

(4) *Bankruptcy.* Upon learning that a bankruptcy petition has been filed with respect to a debtor, we must suspend collection activity on the debt, pursuant to the provisions of 11 U.S.C. 362, 1201, and 1301, unless we can clearly establish that the automatic stay has been lifted or is no longer in effect. In such cases, we will consult our Office of the General Counsel for advice. When appropriate, the Offices of the Regional Chief Counsel will take the necessary legal steps to ensure that no funds or money are paid by the agency to the debtor until relief from the automatic stay is obtained.

(c) *Termination of collection activity.* (1) We may terminate collection activity when:

- (i) We are unable to collect any substantial amount through our own efforts or through the efforts of others;
- (ii) We are unable to locate the debtor;
- (iii) Costs of collection are anticipated to exceed the amount recoverable;
- (iv) The debt is legally without merit or enforcement of the debt is barred by any applicable statute of limitations;
- (v) The debt cannot be substantiated; or
- (vi) The debt against the debtor has been discharged in bankruptcy.

(2)(i) Collection activity will not be terminated before we have pursued all appropriate means of collection and

determined, based upon the results of the collection activity, that the debt is uncollectible.

(ii) Termination of collection activity ceases active collection of the debt. The termination of collection activity does not preclude us from retaining a record of the account for purposes of:

(A) Selling the debt, if the Secretary of the Department of the Treasury (Treasury) determines that such sale is in the best interest of the United States;

(B) Pursuing collection at a subsequent date in the event there is a change in the debtor's status or a new collection tool becomes available;

(C) Offsetting against future income or assets not available at the time of termination of collection activity; or

(D) Screening future applicants for prior indebtedness.

(3) We will terminate collection activity on a debt that has been discharged in bankruptcy, regardless of the amount. We may continue collection activity, however, subject to the provisions of the Bankruptcy Code, for any payments provided under a plan of reorganization. Offset and recoupment rights may survive the discharge of the debtor in bankruptcy and, under some circumstances, claims also may survive the discharge. For example, when we are a known creditor of a debtor, the claims of the agency may survive a discharge if we did not receive notice of the bankruptcy proceeding or the debt was affected by fraud. When we believe that the agency has claims or offsets that may have survived the discharge of the debtor, we will contact the Office of the General Counsel for legal advice.

(d) *Exception to termination.* When a significant enforcement policy is involved or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, we may refer debts to the DOJ for litigation even though termination of collection activity may otherwise be appropriate.

(e) *Discharge of indebtedness; reporting requirements.* (1)(i) Before discharging a delinquent debt, also referred to as close out of the debt, we will take all appropriate steps to collect the debt in accordance with 31 U.S.C. 3711(g)(9), and §§ 422.803 and 422.810 of this part, including, as applicable, Administrative Offset; tax refund offset; Federal Salary Offset; credit bureau reporting; Administrative Wage Garnishment; litigation; foreclosure; and referral to the Treasury, Treasury-designated debt collection centers, or private collection contractors.

(ii) Discharge of indebtedness is distinct from termination or suspension of collection activity under this subpart, and is governed by the Internal Revenue

Code. When collection action on a debt is suspended or terminated, the debt remains delinquent and further collection action may be pursued at a later date in accordance with the standards set forth in this part and 31 CFR Parts 900 through 904.

(iii) When we discharge a debt in full or in part, further collection action is prohibited. Therefore, before discharging a debt, we must:

(A) Make the determination that collection action is no longer warranted; and

(B) Terminate debt collection action.

(2) In accordance with 31 U.S.C. 3711(i), we will use competitive procedures to sell a delinquent debt upon termination of collection action if the Secretary of the Treasury determines such a sale is in the best interests of the United States. Since the discharge of a debt precludes any further collection action, including the sale of a delinquent debt, we may not discharge a debt until the requirements of 31 U.S.C. 3711(i) have been met.

(3) Upon discharge of an indebtedness, we must report the discharge to the Internal Revenue Service (IRS) in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P-1. We may request that Treasury or Treasury-designated debt collection centers file such a discharge report to the IRS on our behalf.

(4) When discharging a debt, we must request that litigation counsel release any liens of record securing the debt.

§ 422.850 Referrals to the Department of Justice.

(a) *Prompt referral.* (1)(i) We will promptly refer to the Department of Justice (DOJ) for litigation debts on which aggressive collection activity has been taken in accordance with § 422.803, and that cannot be compromised, or on which collection activity cannot be suspended or terminated, in accordance with § 422.848.

(ii) We may refer debts arising out of activities of, or referred or transferred for collection services to, the agency to DOJ for litigation.

(2)(i) Debts for which the principal amount is over \$100,000 or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs will be referred to the Civil Division or other division responsible for litigating such debts at the DOJ.

(ii) Debts for which the principal amount is \$1,000,000 or less, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs will

be referred to the Nationwide Central Intake Facility at the DOJ as required by the Claims Collections Litigation Report (CCLR) instructions.

(3)(i) Consistent with aggressive agency collection activity and the standards contained in this part and 31 CFR Parts 900 through 904, debts will be referred to the DOJ as early as possible and, in any event, well within the period for initiating timely lawsuits against the debtors.

(ii) We will make every effort to refer delinquent debts to the DOJ for litigation within one year of the date such debts last became delinquent. In the case of guaranteed or insured loans, we will make every effort to refer these delinquent debts to the DOJ for litigation within one year from the date the debt was known to the agency.

(4) The DOJ has exclusive jurisdiction over debts referred to it pursuant to this subpart. Upon referral of a debt to the DOJ, we will:

(i) Immediately terminate the use of any administrative collection activities to collect the debt;

(ii) Advise the DOJ of the collection tools utilized and the results of activities to date; and

(iii) Refrain from having any contact with the debtor and direct all debtor inquiries concerning the debt to the DOJ.

(5) After referral of a debt under this subpart, we will immediately notify the DOJ of any payments credited by the agency to the debtor's account. Pursuant to 31 CFR 904.1(b), after referral of the

debt under this subpart, the DOJ will notify the agency of any payment received from the debtor.

(b) *Claims Collection Litigation Report.* (1)(i) Unless excepted by the DOJ, we will complete a CCLR and associated signed Certificate of Indebtedness to refer all administratively uncollectible claims to the DOJ for litigation.

(ii) We will complete all sections of the CCLR appropriate to each debt as required by the CCLR instructions and furnish such other information as may be required in specific cases.

(2) We will indicate clearly on the CCLR the actions that we wish the DOJ to take with respect to the referred debt. We may indicate specifically any of a number of litigation activities the DOJ may choose to pursue, including enforced collection, judgment lien only, renew judgment lien only, renew judgment lien and enforced collection, program enforcement, foreclosure only, and foreclosure and deficiency judgment.

(3) We will also use the CCLR to refer a debt to the DOJ for the purpose of obtaining any necessary approval of a proposal to compromise a debt or to suspend or terminate administrative collection activity on a debt.

(c) *Preservation of evidence.* We will maintain and preserve all files and records that may be needed by the DOJ to prove our claim in court. When referring debts to the DOJ for litigation, certified copies of the documents that form the basis for the claim should be

provided along with the CCLR. Upon its request, the original documents will be provided to the DOJ.

(d) *Minimum amount of referrals.* (1) Except as provided in paragraph (d)(2) of this section, we will not refer for litigation claims of less than \$2,500 exclusive of interest, penalties, and administrative costs, or such other amount as the Attorney General may prescribe.

(2) We will not refer claims of less than the minimum amount unless:

(i) Litigation to collect such smaller amount is important to ensure compliance with the agency's policies and programs;

(ii) The agency is referring the claim solely for the purpose of securing a judgment against the debtor, which will be filed as a lien against the debtor's property pursuant to 28 U.S.C. 3201 and returned to the agency for enforcement; or

(iii) The debtor has the clear ability to pay the claim and the Government can enforce payment effectively, with due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government.

(3) We should consult with the Financial Litigation Staff of the Executive Office for United States Attorneys at DOJ prior to referring claims valued at less than the minimum amount.

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