

Securities and Exchange Commission

§ 204.32

and flag the debtor's account in anticipation of the time when the debtor requests or becomes eligible to receive payments from the fund. This will satisfy any requirements that offset be initiated prior to expiration of the statute of limitations.

(c) If the Commission collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, the Commission shall act promptly to modify or terminate its request for offset.

(d) This section does not require or authorize the fund servicing agency to review the merits of Commission's determination relative to the debt.

§ 204.11 Jeopardy procedure.

The Commission may effect an administrative offset against a payment to be made to the debtor prior to the completion of the procedures required by § 204.4(c) if failure to take the offset would substantially jeopardize the Commission's ability to collect the debt, and the time available before the payment is to be made does not reasonably permit the completion of those procedures. Such prior offset shall be promptly followed by the completion of those procedures. Amounts recovered by offset but later found not to be owed to the Commission shall be promptly refunded.

§§ 204.12—204.29 [Reserved]

Subpart B—Salary Offset

AUTHORITY: 5 U.S.C. 5514.

SOURCE: 58 FR 38520, July 19, 1993, unless otherwise noted.

§ 204.30 Purpose and scope.

(a) This regulation provides procedures for the collection by administrative offset against a federal employee's current pay account without his/her consent under 5 U.S.C. 5514 to satisfy certain debts owed to the Commission. This regulation does not apply when the employee consents to recovery from his/her current pay account.

(b) This regulation does not preclude an employee from requesting a waiver or questioning the amount or validity of a debt by submitting a claim to the

General Accounting Office in accordance with procedures prescribed by the General Accounting Office.

(c) This Salary Offset plan is for internal use and Government-wide claims collections. 5 CFR 550.1104(a). This regulation implements 5 U.S.C. 5514; 5 CFR part 550, subpart K.

§ 204.31 Excluded debts or claims.

This regulation does not apply to:

(a) Debts or claims arising under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1), the Social Security Act (42 U.S.C. 301) or the tariff laws of the United States.

(b) Any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute, such as travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108.

§ 204.32 Definitions.

The following definitions apply to this regulation:

Chairman means the Chairman of the Securities and Exchange Commission.

Commission means the Securities and Exchange Commission.

Creditor agency means the agency to which the debt is owed.

Debt means an amount owed to the United States from sources which include but are not necessarily limited to, erroneous payments made to employees such as overpayment of benefits, salary or other allowances; loans when insured or guaranteed by the United States; and other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayment, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice) and all other similar sources.

Disposable pay means the amount that remains from an employee's federal pay after required deductions for federal, state and local income taxes; Social Security taxes, including Medicare taxes; federal retirement programs; premiums for life and health insurance benefits; and such other deductions that are required by law to be withheld. (See 5 CFR 581.105(b) through

§ 204.33

17 CFR Ch. II (4-1-01 Edition)

(f) for items required by law to be withheld, and therefore excluded from disposable pay for the purposes of this regulation.)

Employee means a current employee of the Securities and Exchange Commission, or other agency, including an active duty member or reservist in the U.S. Armed Forces or a former employee (or former active duty member or Reservist in the Armed Forces) with a current pay account.

FCCS means the Federal Claims Collection Standards jointly published by the Justice Department and the General Accounting Office at 4 CFR part 101.

Hearing official means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and who renders a decision on the basis of such hearing. A hearing official may not be under the Chairman's supervision or control, except that nothing in this regulation shall be construed to prohibit the appointment of an administrative law judge.

Pay means basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an individual not entitled to basic pay, other authorized pay.

Program official means, for the purpose of implementing this offset regulation, the Comptroller or designee.

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

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

§ 204.33 Pre-offset notice.

A program official must provide an employee with written notice at least 30 calendar days prior to offsetting his/her salary. A program official need not notify an employee of adjustments to pay in connection with the employee's election of coverage or change in coverage under a Federal benefits program requiring periodic deductions from pay,

if the amount to be recovered was accumulated over four pay periods or less. When required, the written notice must include the following:

(a) The nature, origin and amount of the indebtedness determined by the Commission to be due;

(b) The intention of the Commission to collect the debt through deductions from the employee's current disposable pay account;

(c) The amount, frequency, proposed beginning date, and duration of the intended deductions;

(d) An explanation of the Commission's policy concerning interest, penalties, and administrative costs, including a statement that such assessments must be made unless excused in accordance with the FCCS;

(e) The employee's right to inspect and copy Commission records relating to the debt (if copies of such records are not attached), or if the employee or his or her representative cannot personally inspect the records, the right to request and receive a copy of such records. The Commission will respond to a request for inspection and/or copying as soon as practicable;

(f) The opportunity, under terms agreeable to the Commission, to enter into a written agreement to establish a schedule for repayment in lieu of offset. The agreement must be in writing, signed by both the employee and the Commission, and documented in the Commission's files (4 CFR 102.2(e));

(g) The employee's right to a hearing conducted by an official arranged by the Commission if a petition is filed as prescribed by §204.35, Petition for pre-offset hearing. Such hearing official will be either an administrative law judge or at the chief administrative law judge's discretion, another hearing official who is also not under the control of the head of the agency;

(h) The method and time period for petitioning for a hearing, including a statement that the timely filing of a petition for hearing will stay the commencement of collection proceedings;

(i) If a hearing is requested, the hearing official will issue a final decision, based on information presented to the hearing official, at the earliest practicable date, but no later than 60 days after the petition for the hearing is