

#### § 204.4

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

(b) The Chairperson (or designee) may initiate administrative offset with regard to debts owed by a person to another agency of the United States Government, upon receipt of a request from the head of another agency or his or her designee, and a certification that the debt exists and that the person has been afforded the necessary due process rights.

(c) The Chairperson (or designee) may request another agency which holds funds payable to a Commission debtor to offset that debt against the funds held and will provide certification that:

(1) The debt exists; and

(2) The person has been afforded the necessary due process rights.

(d) No collection by administrative offset shall be made on any debt that has been outstanding for more than 10 years unless facts material to the Government's right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering the debt.

(e) Administrative offset under this subpart may not be initiated against:

(1) A debt in which administrative offset of the type of debt involved is explicitly provided for or prohibited by another statute;

(2) Debts owed by other agencies of the United States or by any State or local Government; or

(3) Debts arising under the Internal Revenue Code of 1954; the Social Security Act; or the tariff laws of the United States.

(f) The procedures for administrative offset in this subpart do not apply to the offset of Federal salaries under 5 U.S.C. 5514.

#### § 204.4 Demand for payment—notice.

(a) Whenever possible, the Commission will seek written consent from the debtor to initiate immediate collection before starting the formal notification process.

(b) In cases where written agreement to collect cannot be obtained from the debtor, a formal notification process shall be followed, (4 CFR 102.2). Prior to collecting a claim by administrative offset, the Commission shall send to the debtor, by certified or registered

mail with return receipt, a written demand for payment in terms which inform the debtor of the consequences of failure to cooperate. A total of three progressively stronger written demands at not more than 30 day intervals will normally be made unless a response to the first or second demand indicates that a further demand would be futile or the debtor's response does not require rebuttal, or other pertinent information indicates that additional written demands would be unnecessary. In determining the timing of the demand letters, the Commission should give due regard to the need to act promptly so that, as a general rule, if necessary to refer the debt to the Department of Justice for litigation, such referral can be made within one year of the final determination of the fact and the amount of the debt. When appropriate to protect the Government's interests (for example, to prevent the statute of limitations from expiring), written demand may be preceded by other appropriate actions, including immediate referral for litigation.

(c) Before offset is made, a written notice will be sent to the debtor. This notice will include:

(1) The nature and amount of the debt;

(2) The date when payment is due (not less than thirty days from the date of mailing or hand delivery of the notice);

(3) The agency's intention to collect the debt by administrative offset, including asking the assistance of other Federal agencies to help in the offset whenever possible, if the debtor has not made payment by the payment due date or has not made an arrangement for payment by the payment due date;

(4) Any provision for interest, late payment penalties and administrative charges, if payment is not received by the due date;

(5) The possible reporting of the claim to consumer reporting agencies and the possibility that the Commission will forward the claim to a collection agency;

(6) The right of the debtor to inspect and copy the Commission's records related to the claim;

## Securities and Exchange Commission

## § 204.8

(7) The right of the debtor to request a review of the determination of indebtedness and, in the circumstances described below, to request an oral hearing from the Commission's designee;

(8) The right of the debtor to enter into a written agreement with the agency to repay the debt in some other way; and

(9) In appropriate cases, the right of the debtor to request a waiver.

(d) Claims for payment of travel advances and employee training expenses require notification prior to administrative offset as described in this section. Because no oral hearing is required, notice of the right to a hearing need not be included in the notification.

### § 204.5 Debtor's failure to respond.

If the debtor fails to respond to the notice described in § 204.4 (c) by the proposed effective date specified in the notice, the Commission may take further action under this section or under the Federal Claims Collection Standards (4 CFR parts 101 through 105). The Commission may collect by administrative offset if the debtor:

(a) Has not made payment by the payment due date;

(b) Has not requested a review of the claim within the agency as set out in § 204.6; or

(c) Has not made an arrangement for payment by the payment due date.

### § 204.6 Agency review.

(a) A debtor may dispute the existence of the debt, the amount of the debt, or the terms of repayment. A request to review a disputed debt must be submitted to the Commission official who provided notification within 30 calendar days of the receipt of the written notice described in § 204.4(c).

(b) The Commission will provide a copy of the record to the debtor and advise him/her to furnish available evidence to support his or her position. Upon receipt of the evidence, the written record of indebtedness will be reviewed and the debtor will be informed of the results of that review.

(c) Pending the resolution of a dispute by the debtor, transactions in any of the debtor's accounts maintained by

the Commission may be temporarily suspended. Depending on the type of transaction, the suspension could preclude its payment, removal, or transfer, as well as prevent the payment of interest or discount due thereon. Should the dispute be resolved in the debtor's favor, the suspension will be immediately lifted.

(d) During the review period, interest, penalties, and administrative costs authorized under the Federal Claims Collection Act of 1966, as amended, will continue to accrue.

### § 204.7 Hearing.

(a) A debtor will be provided a reasonable opportunity for an oral hearing by the Commission's designee when:

(1) (i) By statute, consideration must be given to a request to waive the indebtedness;

(ii) The debtor requests waiver of the indebtedness; and

(iii) The waiver determination rests on an issue of creditability or veracity; or

(2) The debtor requests reconsideration and the Commission's designee determines that the question of indebtedness cannot be resolved by reviewing the documentary evidence.

(b) In cases where an oral hearing is provided to the debtor, the Commission's designee will conduct the hearing, and provide the debtor with a written decision 30 days after the hearing.

### § 204.8 Written agreement for repayment.

If the debtor requests a repayment agreement in place of offset, the Commission has discretion and should use sound judgment to determine whether to accept a repayment agreement in place of offset. If the debt is delinquent and the debtor has not disputed its existence or amount, the Commission will not accept a repayment agreement in place of offset unless the debtor is able to establish that offset would cause undue financial hardship or be unjust. No repayment arrangement will be considered unless the debtor submits a financial statement, executed under penalty of perjury, reflecting the debtor's assets, liabilities, income, and expenses. The financial statement must be submitted within