

Merit Systems Protection Board

§ 1210.1

must decide whether there is a substantial likelihood that the appellant will prevail on the merits of the appeal, and whether the stay would result in extreme hardship to the agency.

(3) If the judge grants a stay, the order must specify the effective date and duration of the stay.

[55 FR 28592, July 12, 1990, as amended at 59 FR 65243, Dec. 19, 1994]

§ 1209.11 Duration of stay; interim compliance.

(a) *Duration of stay.* A stay becomes effective on the date specified in the judge's order. The stay will remain in effect for the time period set forth in the order or until the Board issues a final decision on the appeal of the underlying personnel action that was stayed, or until the Board vacates or modifies the stay, whichever occurs first.

(b) *Interim compliance.* An agency must immediately comply with an order granting a stay request. Although the order granting a stay request is not a final order, petitions for enforcement of such orders are governed by 5 CFR part 1201, subpart F.

Subpart D—Reports on Applications for Transfers

§ 1209.12 Filing of agency reports.

When an employee who has applied for a transfer to another position in an Executive agency under 5 U.S.C. 3352 asks the agency head to review a rejection of his or her application for transfer, the agency head must complete the review and provide a written statement of findings to the employee and the Clerk of the Board within 30 days after receiving the request.

Subpart E—Referrals to the Special Counsel

§ 1209.13 Referral of findings to the Special Counsel.

When the Board determines in a proceeding under this part that there is reason to believe that a current Federal employee may have committed a prohibited personnel practice described at 5 U.S.C. 2302(b)(8), the Board will refer the matter to the Special Counsel

to investigate and take appropriate action under 5 U.S.C. 1215.

[62 FR 17048, Apr. 9, 1997]

PART 1210—DEBT MANAGEMENT

Subpart A—Salary Offset

Sec.

- 1210.1 Purpose and scope.
- 1210.2 Definitions.
- 1210.3 Applicability.
- 1210.4 Notice requirements.
- 1210.5 Hearing.
- 1210.6 Written decision.
- 1210.7 Coordinating offset with another Federal agency.
- 1210.8 Procedures for salary offset.
- 1210.9 Refunds.
- 1210.10 Statute of limitations.
- 1210.11 Nonwaiver of rights.
- 1210.12 Interest, penalties, and administrative costs.

Subpart B—Claims Collection

- 1210.21 Purpose and scope.
- 1210.22 Definitions.
- 1210.23 Other remedies.
- 1210.24 Claims involving criminal activity or misconduct.
- 1210.25 Collection.
- 1210.26 Notices to debtor.
- 1210.27 Interest, penalties, and administrative costs.
- 1210.28 Administrative offset.
- 1210.29 Use of credit reporting agencies.
- 1210.30 Collection services.
- 1210.31 Referral to the Department of Justice or the General Accounting Office.
- 1210.32 Compromise, suspension and termination.
- 1210.33 Omissions not a defense.

SOURCE: 54 FR 50603, Dec. 8, 1989, unless otherwise noted.

Subpart A—Salary Offset

AUTHORITY: 5 U.S.C. 5514, Executive Order 11809 (redesignated Executive Order 12107), and 5 CFR 550 subpart K.

§ 1210.1 Purpose and scope.

(a) This regulation provides procedures for the collection by administrative offset of a Federal employee's salary without his/her consent to satisfy certain debts owed to the Federal Government. These regulations apply to all Federal employees who owe debts to the MSPB and to current employees of the MSPB who owe debts to other Federal agencies. This regulation does not

§ 1210.2

apply when the employee consents to recovery from his/her current pay account.

(b) This regulation does not apply to debts or claims arising under:

(1) The Internal Revenue Code of 1954, as amended, 26 U.S.C. 1 *et seq.*;

(2) The Social Security Act, 42 U.S.C. 301 *et seq.*;

(3) The tariff laws of the United States; or

(4) Any case where a collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(c) This regulation does not apply to any adjustment to pay arising out of an employee's selection of coverage or a 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.

(d) This regulation does not preclude the compromise, suspension, or termination of collection action where appropriate under the standards implementing the Federal Claims Collection Act, 31 U.S.C. 3711 *et seq.* 4 CFR parts 101 through 105; 5 CFR part 1210.

(e) This regulation does not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774 or 32 U.S.C. 716 or in any way questioning the amount of validity of the debt by submitting a subsequent claim to the General Accounting Office. This regulation does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

(f) Matters not addressed in these regulations should be reviewed in accordance with the Federal Claims Collection Standards at 4 CFR 101.1 *et seq.*

§ 1210.2 Definitions.

(a) *Agency*. An executive agency as is defined at 5 U.S.C. 105 including the U.S. Postal Service, the U.S. Postal Commission, a military department as defined at 5 U.S.C. 102, an agency or court in the judicial branch, an agency of the legislative branch including the U.S. Senate and House of Representatives and other independent establishments that are entities of the Federal government.

5 CFR Ch. II (1-1-01 Edition)

(b) *Chairman*. The Chairman of the MSPB or the Chairman's designee.

(c) *Creditor agency*. The agency to which the debt is owed.

(d) *Debt*. An amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales or real or personal property, overpayments, penalties, damages, interests, fines, forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

(e) *Disposable pay*. The amount that remains from an employee's Federal pay after required deductions for social security, Federal, state or local income tax, health insurance premiums, retirement contributions, life insurance premiums, Federal employment taxes, and any other deductions that are required to be withheld by law.

(f) *Hearing official*. 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 supervision or control of the Chairman of the MSPB.

(g) *Paying Agency*. The agency that employs the individual who owes the debt and authorizes the payment of his/her current pay.

(h) *Salary offset*. An administrative offset to collect a debt pursuant to 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/her consent.

§ 1210.3 Applicability.

(a) These regulations are to be followed when:

(1) The MSPB is owed a debt by an individual currently employed by another Federal agency;

(2) The MSPB is owed a debt by an individual who is a current employee of the MSPB; or

(3) The MSPB employs an individual who owes a debt to another Federal agency.