

## Office of the Secretary, Commerce

## §21.17

determined necessary to ensure the Department's position in collection of the delinquent debt.

### §21.14 Procedures for administrative offset: multiple debts.

The Departmental units will follow the procedures identified in (§21.13) for the administrative offset of a single debt. However, when collecting multiple debts by administrative offset, responsible Departmental officials should 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, paying special attention to applicable statutes of limitations.

### §21.15 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.

(a) Unless otherwise prohibited by law, the Department may request that monies which are due and payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset in reasonable amounts in order to collect debts owed to the United States by the debtor. Such requests shall be made by the Departmental unit workout officials to the appropriate officials of the Office of Personnel Management (OPM) in accordance with their regulations and procedures.

(b) When making a request for administrative offset under paragraph (a) of the section, the responsible workout group debt collection official shall include a written certification that:

(1) The debtor owes the United States a debt, including the amount and basis for the debt;

(2) The Department has complied with all applicable statutes, regulations, and procedures of the Office of Personnel Management; and

(3) The Department has complied with the requirements of the applicable provisions of the Federal Claims Collection Standards and these regulations, including any required hearing or review.

(c) If a Departmental unit workout group decides to request administrative offset under paragraph (a) of this section, the responsible debt collection

official should make the request as soon as practical after completion of the applicable due process procedures so the Office of Personnel Management may identify and "flag" the debtor's account in anticipation of the time when the debtor becomes eligible and requests to receive payments from the fund. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the fund, and if at least a year has elapsed since the administrative offset request was originally made, the debtor should be permitted to offer a satisfactory repayment plan in lieu of offset upon establishing to the appropriate Departmental unit head (or designee) that changed financial circumstances would render the offset unjust.

(d) If the Department collects part or all of the debt by other means before deductions are made or completed under paragraph (a) of this section, the Department official responsible for collecting the debt will act promptly to modify or terminate the agency's request for administrative offset under paragraph (a) of this section.

(e) In accordance with procedures established by the Office of Personnel Management, the Department may request an offset from the Civil Service Retirement and Disability Fund prior to completion of due process procedures.

### §21.16 Collection against a judgment.

Collection by administrative offset against a judgment obtained by a debtor against the United States shall be accomplished in accordance with 31 U.S.C. 3728.

### §21.17 Liquidation of collateral.

If the Department holds security or collateral which may be liquidated through the exercise of a power of sale in the security instrument, or a non-judicial foreclosure, liquidation should be accomplished by such procedures if the debtor fails to pay the debt within a reasonable time after demand or pursuant to the contract of the parties, unless the cost of disposing of the collateral would be disproportionate to its value or special circumstances require

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judicial foreclosure. The Department collection official should provide the debtor with reasonable notice of the sale, an accounting of any surplus proceeds, and any other procedures required by contract or law. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety or insurance concern unless such action is expressly required by statute or contract.

### §21.18 Collection in installments.

(a) Whenever feasible, and unless otherwise provided by law, debts owed to the United States, together with interest, penalties, and administrative costs should be collected in one lump sum. This is true whether the debt is being collected by administrative offset or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum, the responsible Departmental official(s) may accept repayment in regular installments (See §21.6). Prior to approving such repayments, financial statements shall be required from the debtor who represents that he/she is unable to pay the debt in one lump sum. A responsible Departmental official who agrees to accept payment in regular installments should obtain a legally enforceable written agreement from the debtor which specifies all of the terms of the arrangement and which contains a provision accelerating the debt in the event the debtor defaults. The size and frequency of installment payments should bear a reasonable relationship to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the Government's claim in not more than three years. Installment payments of less than \$50 per month should be accepted only if justifiable on the grounds of financial hardship or for some other reasonable cause. If the debt is an unsecured claim for administrative collection, attempts should be made to obtain an executed confess-judgment note, comparable to the Department of Justice Form USA-70a, from a debtor when the total amount of the deferred installments will exceed

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\$750. Such notes may be sought when an unsecured obligation of a lesser amount is involved. When attempting to obtain confess-judgment notes, Departmental units should provide their debtors with written explanation of the consequences of signing the note, and should maintain documentation sufficient to demonstrate that the debtor has signed the note knowingly and voluntarily. Security for deferred payments other than a confess-judgment note may be accepted in appropriate cases. A Departmental units head (or designee) may accept installment payments notwithstanding the refusal of a debtor to execute a confess-judgment note or to give other security.

(b) If the debtor owes more than one debt and designates how a voluntary installment payment is to be applied as among those debts, that designation must be followed. If the debtor does not designate the application of the payment, the Department debt collection official should apply payments to the various debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

### §21.19 Additional administrative collection action.

Nothing contained in this subpart is intended to preclude the utilization of any other administrative remedy which may be available.

## PART 22—SALARY OFFSET

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