

§ 22.3

uniformed service, including a commissioned officer of the National Oceanic and Atmospheric Administration;

(3) An employee of the United States Postal Service or the Postal Rate Commission;

(4) An employee of an agency or court of the judicial branch; and

(5) An employee of the legislative branch, including the U.S. Senate and the U.S. House of Representatives.

(h) *FCCS* means the Federal Claims Collection Standards jointly published by the Department of Justice and the General Accounting Office at 4 CFR 101.1 *et seq.*

(i) *Offset* means a deduction from the disposable pay of an employee to satisfy a debt with or without the employee's consent.

(j) *Pay* means basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay.

(k) *Paying agency* means the agency employing the individual and authorizing his or her current pay.

(l) *Payroll office* means the Departmental or other office providing payroll services to the employee.

(m) *Secretary* means the Secretary of Commerce, or his/her designee.

§ 22.3 Pay subject to offset.

(a) An offset from an employee's pay may not exceed 15 percent of the employee's disposable pay, unless the employee agrees in writing to a larger offset amount.

(b) An offset from pay shall be made at the officially established pay intervals from the employee's current pay account.

(c) If an employee retires, resigns, or is discharged, or if his or her employment period or period of active duty otherwise ends, an offset may be made from subsequent payment on any amount due to the individual from the Federal Government.

§ 22.4 Determination of indebtedness.

In determining that an employee is indebted, the Secretary will review the debt to make sure that it is valid and past due.

15 CFR Subtitle A (1-1-03 Edition)

§ 22.5 Notice requirements before offset.

Except as provided in § 22.1, deductions will not be made unless the Secretary provides the employee with a minimum of 30 calendar days written notice. This Notice of Intent to offset an employee's salary (Notice of Intent) will state:

(a) That the Secretary has reviewed the records relating to the claim and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(b) The Secretary's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest are paid in full;

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

(d) An explanation of the Department's requirements concerning interest, penalties and administrative costs unless such payments are excused in accordance with § 22.15;

(e) The employee's right to inspect and to request and receive a copy of Department records relating to the debt;

(f) The right to a hearing conducted by an administrative law judge of the Department or a hearing official, not under the control of the Secretary, on the Secretary's determination of the debt, the amount of the debt, or the repayment schedule (i.e., the percentage of disposable pay to be deducted each pay period), so long as a petition is filed by the employee as prescribed by the Secretary;

(g) The method and time period for requesting a hearing;

(h) That the timely filing of a petition for hearing will stay the collection proceedings; (See § 22.6);

(i) That a final decision on the hearing 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 proceedings;

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

(k) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under 5 U.S.C. 7501 *et seq.*, 5 CFR Part 752, or any other applicable statutes or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729-3731, or any other applicable statutory authority; or

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or any other applicable statutory authority.

(l) Unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

§ 22.6 Request for hearing-prehearing submission(s).

(a) An employee must file a petition for a hearing in accordance with the instructions in the Notice of Intent. This petition must be filed by the time stated in the notice described in § 22.5 if an employee wants a hearing concerning:

(1) The existence or amount of the debt; or

(2) The Secretary's proposed offset schedule.

(b) If the employee files his or her required submissions within 5 days after the deadline date established under § 22.5 and the hearing official finds that the employee has shown good cause for failure to comply with the deadline date, the hearing official may find that an employee has not waived his or her right to a hearing.

§ 22.7 Hearing procedures.

(a) The hearing will be presided over by either:

(1) A Department administrative law judge; or

(2) A hearing official not under the control of the Secretary.

(b) The hearing shall conform to § 102.3(c) of the Federal Claims Collection Standards (4 CFR 102.3(c)).

(c)(1) If the Secretary's determination regarding the existence or amount of the debt is contested, the burden is on the employee to demonstrate that the Secretary's determination was erroneous.

(2) If the hearing official finds the Secretary's determination of the amount of the debt was erroneous, the hearing official shall indicate the amount owed by the employee, if any.

(d)(1) If the Secretary's offset schedule is contested, the burden is on the employee to demonstrate that the payments called for under the Secretary's schedule will produce an extreme financial hardship for the employee under § 22.9.

(2) If the hearing official finds that the payments called for under the Secretary's offset schedule will produce an extreme financial hardship for the employee, the hearing official shall establish an offset schedule that will result in the repayment of the debt in the shortest period of time without producing an extreme financial hardship for the employee.

§ 22.8 Written decision following a hearing.

(a) The hearing official shall issue to the Secretary and the employee a written opinion stating his or her decision, with a rationale supporting that decision, as soon as practicable after the hearing, but not later than 60 days after the employee files the petition requesting the hearing as provided in § 22.5(i).

(b) The written decision following a hearing will include:

(1) A statement of the facts presented to support the nature and origin of the alleged debt;

(2) The hearing official's analysis, findings, and conclusions, in light of the hearing, concerning the employee's or the Department's grounds;

(3) The amount and validity of the alleged debt; and

(4) The repayment schedule if applicable.

(c) In determining whether the Secretary's determination of the existence or amount of the employee's debt was erroneous, the hearing official is governed by the relevant Federal statutes and regulations authorizing and implementing the programs giving rise to the debt, and by State law, if relevant.