

its debtor by the Commission be administratively offset in order to collect a debt owed to such Federal agency by the debtor. The Commission shall initiate the requested offset only upon:

(1) Receipt of written certification from the creditor agency that:

(i) The debtor owes the past due and legally enforceable debt; and

(ii) The debtor has been afforded the necessary due process rights.

(2) A determination by the Commission that collection by offset against funds payable by the Commission would be in the best interest of the United States as determined by the facts and circumstances of the particular case, and that such offset would not otherwise be contrary to law.

[58 FR 64370, Dec. 7, 1993, as amended at 66 FR 54131, Oct. 26, 2001]

§ 204.10 [Reserved]

§ 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(a) 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. This section applies only to administrative offset pursuant to 31 CFR 901.3(c), and does not apply when debts are referred to the Department of the Treasury for mandatory centralized administrative offset under 31 CFR 901.3(b)(1).

[58 FR 64370, Dec. 7, 1993, as amended at 66 FR 54131, Oct. 26, 2001]

§§ 204.12–204.29 [Reserved]

Subpart B—Salary Offset

AUTHORITY: 5 U.S.C. 5514, 5 CFR 550.1104.

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), 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.

[58 FR 38520, July 19, 1993, as amended at 66 FR 54131, Oct. 26, 2001]

§ 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,

§ 204.33

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 (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 Department of the Treasury at 31 CFR parts 900-904.

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 re-

17 CFR Ch. II (4-1-03 Edition)

quired 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.

[58 FR 38520, July 19, 1993, as amended at 66 FR 54131, Oct. 26, 2001]

§ 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: any adjustment to pay arising out of an employee's election 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; a routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or any adjustment to collect a debt amounting to \$50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment. 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 frequency and amount of the intended deductions (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay) and the intention to continue the deductions until the debt is paid in full or otherwise resolved;