

§ 30.14

other administrative costs if collection is being made for another Federal agency or unit.

(c) *Late payment penalties.* A penalty charge of 6 percent a year will be assessed on a debt, a payment, or any portion thereof that is more than 90 days overdue. Late payment penalty charges will accrue from the date the debt, or portion thereof, became overdue until the overdue amount is paid. These charges will be assessed monthly, or per payment period. See also § 30.14.

(d) *Social Security Act debts.* (1) Unless specifically authorized by statute, regulations or written agreement, or unless the debts arise from, or involve, fraud or criminal activity, the Secretary will not charge interest on debts arising from payments to beneficiaries under Titles II, XVI and XVIII of Social Security Act. The charging of interest is appropriate on debts arising from section 1862(b) of the Act for Medicare payments for which a beneficiary has been reimbursed by a liable third party, in which case the charging of interest would be appropriate.

(2) The Secretary will charge administrative costs or late payment penalties on debts arising under the Social Security Act where authorized by statute, regulations, or written agreement.

(e) *Other debts not covered by 31 U.S.C. 3717.* The Secretary will charge administrative costs or late payment penalties on debts arising under a contract executed prior to, and in effect on October 25, 1982, or debts owed by State or local governments where authorized by statute, regulation, or written agreement.

(f) *Allocation of payments.* Partial or installment payments will be applied first to outstanding administrative cost charges and late payment penalties, second to accrued interest and third to outstanding principal.

(g) *Inactive claims.* Interest, but not administrative cost charges or late payment penalties, will continue to accrue when collection of a debt is suspended under § 30.33(a).

(h) *Waivers.* The Secretary may waive collecting all or part of interest, administrative costs or late payment penalties, if—

45 CFR Subtitle A (10–1–03 Edition)

(1) The debt or the charges resulted from the agency's error, action or inaction (other than normal processing delays), and without fault on the part of the debtors; or

(2) Collection in any manner authorized under this regulation would defeat the overall objectives of a Departmental program.

§ 30.14 Interest and charges pending waiver or review.

(a) *Rule.* A debtor may either pay the debt, or be liable for interest on the uncollected debt, while a waiver determination, a bona fide dispute or a formal or informal review of the debt is pending. If a final determination is to the effect that any amount was properly a debt to HHS and the debtor chose to retain the amount in dispute, the Secretary shall collect or offset from any future payments to the debtor, an amount equal to the amount of the debt plus interest (as calculated under § 30.13(a)) on such debt amount starting from the date the debtor was first made aware of the debt and ending when such debt is repaid. The debtor will also be assessed administrative cost charges and late payment penalties on the unpaid debt for this period if the reviewing or hearing officer determines in writing that the request for a waiver, a hearing or other form of review was spurious.

(b) *Exception.* Interest, late payment penalties and administrative cost charges will not be assessed pending consideration of waiver or review under a statute which prohibits collection of the debt during this period, unless the reviewing or hearing officer determines in writing that the request for a waiver, a hearing or other form of review was spurious.

§ 30.15 Administrative offset.

(a) *Rule.* The Secretary will collect debts owed to the Department by administrative offset if—

(1) The debt is liquidated or certain in amount;

(2) Offset is not expressly or implicitly prohibited by statute or regulation;

(3) Offset is cost-effective or has significant deterrent value;

(4) Offset does not substantially impair or defeat program objectives; and

(5) Overall, offset is best suited to further and protect the Government's interest.

The Secretary may consider financial impact of the proposed offset on the debtor in determining the method and amount of the offset.

(b) *Definitions.* (1) "Administrative Offset" means satisfying a debt by withholding money payable by the Department to, or held by the Department for a debtor. Amounts available for offset include, for example, benefit payments to a program beneficiary overpaid under the same or a different program, amounts due a defaulting or overpaid contractor or grantee under the same or a different agreement, salaries of Federal employees, Federal income tax refunds and judgments held by the debtor against the United States. (Offset against judgments will be effected through the Comptroller General pursuant to 31 U.S.C. 3728.)

(2) "Hearing" means either a review of the record or an oral hearing. A review of the record means a review of the documentary evidence by a designated hearing officer. An oral hearing means an informal conference before a designated hearing officer.

(3) "Hearing officer" is an individual appointed by the Secretary to review and issue a final decision on an employee's dispute of a debt. In the case of an employee debt subject to 5 U.S.C. 5514, the hearing officer may not be an individual under the supervision of the Secretary; will normally be an independent contractor of the Department or an employee of another Federal agency, see 4 CFR 102.1 and 5 CFR 550.1107; and may be an administrative law judge if appointment of an independent contractor or an employee of another Federal agency is not feasible.

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

(5) "Disposable pay" means the amount that remains from an employee's Federal pay after withholding of all deductions listed in 5 CFR 581.105(b) and any other deductions required by law (including, but not limited to, Fed-

eral, State, and local income taxes; Social Security taxes, including Medicare taxes; and Federal retirement programs).

(c) *Scope.* This section satisfies the standards in 4 CFR 102.3 and 102.4 and 5 CFR Part 550, for offset under the common law, 31 U.S.C. 3716, 5 U.S.C. 5514 and any other statute under which standards and procedures for offset have not otherwise been promulgated, including:

(1) Offset of debts owed or to amounts payable, under a grant or contract; except that paragraphs (j)-(p) of this section do not apply. See §30.4.

(2) Offset of debts owed by former employees from final salary and lump sum payments; and from the Civil Service Retirement and Disability Fund (which also requires compliance with 5 CFR Part 831, Subpart R);

(3) Offset of salary overpayments and other debts under statutes such as 5 U.S.C. 5514 (or 31 U.S.C. 3716 in the case of commissioned officers), travel advances under 5 U.S.C. 5705, training expenses under 5 U.S.C. 4108, debts of employees removed for cause under 5 U.S.C. 5511 and amounts owed by accountable officers under 5 U.S.C. 5512, from the current pay of Federal employees, including employees of the Social Security Administration and other offices administering a Social Security Act program;

(4) Offset of debts owed by state or local governments;

(5) Offset of debts arising, or from amounts payable, under the Social Security Act, except that unless specifically authorized by statute, regulation, or written agreement, or unless the debts arise from, or involve, fraud or criminal activity, administrative offset will not be applied to recover debts arising from, or to withhold, payments to beneficiaries under Titles II, XVI, and XVIII of the Social Security Act with the exception of debts arising from section 1862(b) of the Act for Medicare payments for which a beneficiary has been reimbursed by a liable third party.

(d) *Exceptions.* (1) So long as the conditions listed in paragraphs (a) (2)-(5) and (e) are met, offset may be effected

§ 30.15

45 CFR Subtitle A (10-1-03 Edition)

with the debtor's consent without regard to the other provisions in this section.

(2) This section does not apply to debts reduced to judgment, debts already subject to a written repayment or settlement agreement, or debts with respect to which the specified procedures have already been otherwise afforded. Debts reduced to judgment may be offset from the current pay of a Federal employee under Federal Personnel Manual Supplement 552-1.

(3) This section does not apply to any adjustment to a Federal employee's pay arising out of the employee's request for, or change in, coverage under a Federal benefits program such as health or life insurance, which requires periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less. Employees consent to deductions from pay whenever they elect or change coverage. Affected employees will receive a notice informing them of these retroactive adjustments to pay and the office to contact if the employee disputes the amount of the adjustment.

(e) *Advance payments.* Under many programs, the Department advances funds to pay for a recipient's anticipated costs. Before offsetting such an advance payment in order to collect a debt, the Secretary may request an assurance that the recipient will incur additional allowable costs whose Federal share is at least equal to the amount of the offset plus the amount of funds actually advanced. If the Secretary believes that the recipient will not incur sufficient costs, the advance will not be offset. In such case, the Secretary may request cash payment or convert the method of paying the recipient from an advance to a reimbursement basis and collect the debt by offsetting payments for costs already incurred.

(f) *Multiple debts.* Amounts available for offset will be applied to multiple debts in accordance with the best interests of the Department and the Government as determined on a case-by-case basis. Other factors being equal, recovery will be equally apportioned, except that debts owed to the Department will be satisfied before debts owed to other Federal agencies.

(g) *Statutory bar to offset.* (1) Administrative offset will not be initiated more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the officer responsible for discovering or collecting the debt. For this purpose, a debt accrues when it is administratively determined to exist, when it is affirmed by an administrative appeals board or a court having jurisdiction, or when a debtor defaults on a repayment agreement, whichever is later. Offset is initiated when the notice of the proposed offset is mailed to the debtor under paragraph (i) of this section or under other agency procedures, when money payable to the debtor is first withheld, or when the Department requests offset from money held by another agency, whichever is first.

(2) The 10 year statutory bar does not apply to offset of a debt arising out of the Social Security Act. However, offset against such debts will generally not be initiated more than 10 years after the debt accrued unless the Secretary did not previously have the necessary information or the means by which to collect the debt by administrative offset.

(h) *Offset against assigned claims.* The Assignment of Claims Act of 1940, 31 U.S.C. 3727, 41 U.S.C. 15, strictly limits the conditions under which a contractor or any other person or entity entitled to receive payments from the United States may assign his or her rights to the payments to a third party. The Federal Acquisition Regulations implement at 48 CFR Part 32, Subpart 32.8, the statutory conditions to assignment of a contractor's right to be paid by the United States for performance under a Federal procurement contract. A contractor may assign his or her right to payment by the United States only to a bank, trust company, or other financing institution, as security for a loan to the contractor.

(1) The Secretary normally may not collect a debt owed by a contractor by offset from payments due the contractor if the contractor has properly assigned his or her rights to such payments to a financing institution, the

assigned payments are due under a contract with a “no setoff” provision, and—

(i) The contractor’s debt to the United States arose independently of the contract; or

(ii) The debt arose under the contract because of renegotiation, fines, penalties (other than penalties for non-compliance with the terms of the contract), taxes or social security contributions, or withholding or nonwithholding of taxes or social security contributions. Notwithstanding the satisfaction of all the conditions of this paragraph, offset may be appropriate under certain circumstances, for example: If the financing institution has made neither a loan nor a firm commitment to make a loan under the assignment; or to the extent that the amount due on the contract exceeds the amount of any loans made or expected to be made under a firm commitment.

(2) The Secretary may not offset a debt from payments due any debtor if the debtor has properly assigned his or her right to such payments and the debt arose after the effective date of the assignment.

(3) The Secretary may not attempt to satisfy the assignor’s indebtedness by recovering payments already made to the assignee.

(i) *Amount of offset.* Whenever feasible debts will be offset in one lump sum, except that deductions from an employee’s current pay pursuant to 5 U.S.C. 5514 may not exceed 15 percent of the employee’s disposable pay for any pay period, unless the employee agrees in writing to a larger deduction. However, if the employee retires, resigns, or is discharged, or if his or her employment or active duty otherwise ends, an amount necessary to satisfy the debt may be offset immediately from payments of any nature due the individual.

(j) *Pre-offset requirements.* Before effecting offset, the Secretary will send the debtor written notice of the following—

(1) The nature and amount of the debt;

(2) The agency intention to collect the debt by offsetting the lump sum or installments (stating the amount, fre-

quency, proposed beginning date and duration of the installments) unless the debtor pays the debt or responds within 30 days from the date the notice was mailed to the debtor;

(3) The interest, administrative cost charges and penalties that will or may be assessed under §§ 30.13 and 30.14 if the debt is not paid, or the debtor has not consented to a lump sum offset, within 30 days from the date the notice was mailed to the debtor;

(4) The debtor’s right, if a previous opportunity was not provided, to request within 15 days (unless otherwise provided by statute or regulation) from the date of mailing of the notice—

(i) Copies of agency records pertaining to the debt;

(ii) An alternative repayment schedule; or

(iii) A hearing if the debtor contends no debt is owed, the debt is for a different amount, or the proposed offset does not comply with this section;

(5) The debtor’s right, if any, to request waiver of the debt, interest or charges, citing the applicable statutory authority, request procedures and waiver conditions and the effect of the waiver request on collection of the debt, interest and charges by offset;

(6) The office, address and telephone number of whom the debtor should address any inquiries or requests;

(7) The requirement that the hearing officer issue a decision at the earliest practical date; except that under 5 U.S.C. 5514, the decision may be issued no later than 60 days after the request for the hearing was filed unless the employee requested and was granted an extension;

(8) That any knowingly false or frivolous statements, representations or evidence may subject the debtor to criminal or civil penalties under 18 U.S.C. 286, 287, 1001 and 1002 or 31 U.S.C. 3729–3731; or also disciplinary action under 5 CFR Part 752 or any other applicable authority if the debtor is an employee;

(9) Any other rights and remedies available to the debtor under the statutes or regulations governing the program under which the debt is being collected; and

§ 30.15

(10) That, unless otherwise provided by statute or contract, amounts collected and later waived or found not owed will be promptly refunded.

(k) *Alternative repayment proposal.* A debtor may propose a different offset schedule or repayment by cash installments pursuant to § 30.19.

(l) *Request for hearing.* A debtor may submit to the address specified in the notice letter a written request for a hearing to dispute the administrative determination of the existence or amount of the debt, or whether the proposed offset schedule complies with this section, before the initiation of collection by offset. The request must be postmarked no later than 15 days (unless otherwise provided by statute or regulation) from the date the notice was mailed to the debtor. The debtor must sign the request and briefly state each agency conclusion being disputed and the reasons for the dispute. Supporting facts, witnesses, and documents must be identified in the request. The request, with supporting documents, must, on its face, sufficiently raise a genuine issue of fact or law. Receipt of the request will be acknowledged. The Secretary may grant an extension or excuse a delay if the debtor shows good cause for late filing of a request for a hearing. A reasonable extension will be granted only if the debtor shows that the delay was caused by circumstances beyond the debtor's control or because the debtor did not receive notice, and was not otherwise aware of the time limit. A debtor who fails to meet the filing deadline or to request an extension waives the right to a hearing and will be immediately subject to offset.

(m) *Denial of request.* The Secretary will summarily deny a request for an oral hearing pursuant to a written finding that the request raises no genuine issue of fact or law, or is otherwise spurious or frivolous. In addition, if the Secretary finds that the request raises issues which may properly constitute grounds for waiver of the debt under 5 U.S.C. 5584 or any other statute, the request will be deemed to be a request for a waiver and will be so handled with notification to the debtor.

(n) *Hearings*—(1) *Type of hearing.* The hearing will normally be a review of

45 CFR Subtitle A (10–1–03 Edition)

the record, unless the hearing officer determines that a decision cannot be made without resolving an issue of credibility or veracity, in which case the hearing officer will provide for an oral hearing.

(2) *Date and place of oral hearing.* The oral hearing will normally be held no later than 30 days from the date of receipt by the agency of the request for a hearing. The hearing officer will give the debtor and the Secretary at least 10 days prior notice of the hearing date, time, place, procedures and issues. The hearing officer, for good cause, may grant the parties each one request to change the hearing date and reschedule the hearing for the earliest practical date. To the extent feasible the hearing will be held at a location convenient to the debtor, and will be open to the public.

(3) *Oral hearing procedures.* The hearing officer will:

(i) Make a summary record of the hearing;

(ii) Decide the order of hearing the evidence;

(iii) Allow the debtor and the agency to introduce relevant evidence not previously submitted and informally call and cross examine witnesses;

(iv) Question parties and witnesses as appropriate;

(v) Allow the debtor and the agency to be represented by counsel; and

(vi) Limit review of the case to the particulars of the agency determination challenged by the debtor.

(o) *Decision of hearing officer.* The hearing officer will issue a written decision at the earliest practical date; but not later than 60 days after a request for a hearing or extension is filed under 5 U.S.C. 5514. The decision will, at a minimum, state the relevant facts, include the hearing officer's analysis, findings and conclusions based on the issues and, if unfavorable to the debtor, inform the debtor of any available rights or remedies.

(p) *Employee waiver requests.* Requests for waiver of overpayments of pay under 5 U.S.C. 5584 will continue to be handled under 4 CFR parts 91-93 and Chapter 4-40 of the HHS General Administration Manual, except that a waiver request made simultaneously

with, or during the pendency of a request for review under this section may be referred for a decision under the waiver standards to the hearing officer reviewing the debt under this section.

(q) *Deductions.* Unless an alternative repayment arrangement has been accepted, the Secretary may initiate offset 30 days after the date that notice of the proposed action was mailed to the debtor if no review or hearing is pending, or as soon as practical after a hearing officer's decision affirming the debt.

(r) *Protection of the Government's interest.* Notwithstanding the provisions of paragraphs (j) through (q) of this section, the Secretary may take immediate action to delay a lump sum or final payment to the debtor whenever such action is necessary to protect the Government's ability to recover the debt by offset. The amount withheld may not exceed the amount of the debt plus any accrued or anticipated interest, administrative cost charges and penalties. The Secretary shall promptly send the debtor the notice specified in paragraph (j) of this section. The Secretary may not take final action to effect offset of the debt from the withheld amount until the procedures required by paragraphs (j) through (l) of this section have been exhausted. The appropriate amount will be paid to the debtor as soon as practical after the debt, or a portion of the debt, is found not to be owed.

(s) *Interagency offsets.* The Secretary may offset a debt owed to another Federal agency from amounts due or payable by the Department to the debtor; or request another Federal agency to offset a debt owed to the Department. Pursuant to 31 U.S.C. 3720a, Department of the Treasury regulations, 26 CFR part 301, and HHS' implementing regulations, 45 CFR part 31, the Secretary may seek to offset an overdue debt from a Federal income tax refund due the debtor where reasonable attempts to obtain payment from the debtor have failed.

(l) In attempting to collect a debt from an employee of another Federal agency by deduction from the debtor's pay, the Secretary will follow the procedures set forth in this section. When those procedures are exhausted, a writ-

ten request for offset will be submitted to the employing agency. The request will—

- (i) Certify that the debt is valid;
- (ii) Certify the amount and basis of the debt;
- (iii) Certify the date the Government's right to collect the debt first accrued;
- (iv) Certify that this section has been approved by OPM;
- (v) Either—
 - (A) Certify that the procedures required by this section have been complied with;
 - (B) Include the employee's written consent to the offset or acknowledgment of receipt of the required procedures; or
 - (C) If the debt is reduced to judgment, include a copy of the court judgment; and
 - (vi) Indicate whether collection is to be made in a lump sum or by installments and the number, amount and beginning date of the installments.
- (2)(i) The Secretary may deduct from an employee's pay a debt owed to another Federal agency in accordance with this section. The creditor agency must submit the properly certified claim form described in paragraph (s)(1) of this section. No deductions will be made until a properly completed claim form is received.
 - (ii) Before initiating deductions, the Secretary must send the employee a letter:
 - (A) Transmitting a copy of the creditor agency's request;
 - (B) Notifying the employee of the proposed action;
 - (C) Instructing the employee to contact the creditor agency regarding payment or any dispute of the debt, the certification or the proposed collection; and
 - (D) Informing the employee of the date that deduction will begin (which should be at the next officially established pay interval) and that deductions will continue until the debt is paid unless the creditor agency directs otherwise.
 - (iii) The creditor agency must resolve any disputes concerning the debt or the offset and promptly inform the Department of any circumstances affecting the collection by offset. The

§ 30.16

Department may not review the merits of the creditor agency's decisions.

(iv) The Secretary may temporarily withhold lump sum or final leave payments to the employee who is in the process of separating or to a former employee for no more than 30 days beyond normal processing time periods pending certification.

(v) If the employee subject to salary offset is in the process of separating, and is entitled to payment from the Civil Service Retirement and Disability Fund, the Secretary will send OPM a copy of the creditor agency's original offset request. If the employee transfers to another Federal agency, the Secretary will certify in writing the total amount collected on the debt and send one copy of the certification to the employee and another to the creditor agency, with notice of the transfer. A copy of the certification, along with the creditor agency's original offset request will be inserted in the employee's official personnel folder.

(vi) When a new Department employee transfers from another Federal agency and the employee's official personnel folder contains a creditor agency's offset request to the former employing agency and the former employing agency's certification of the amount of the debt already collected, the Secretary will resume collection by offset. If either item is missing, the creditor agency must comply with paragraph (s)(1).

(t) *Non-waiver of debtor rights by payment.* Unless a statute or contract provides otherwise, a debtor does not waive any rights under law or contract by paying all or part of a debt by offset or cash payment.

(Approved by the Office of Management and Budget under control number 0990-0148)

§ 30.16 Use of credit reporting agencies.

(a) *Overdue debts.* (1) The Secretary will report overdue debts over \$100 owed by individuals and all debts over \$100 owed by business concerns and private non-profit organizations to consumer or commercial credit reporting agencies. Except as provided in paragraph (a)(3) of this section, beneficiary debts which arise under the Social Se-

45 CFR Subtitle A (10-1-03 Edition)

curity Act may be reported under this section.

(2) Debts owed by individuals, except debts arising under the Social Security Act, will be reported to consumer reporting agencies as defined in 31 U.S.C. 3701(a)(3) pursuant to 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(f). The Secretary must first give the individual, but not the corporate debtor at least 60 days' written notice that the debt is overdue and will be reported to a credit reporting agency (including the specific information that will be disclosed); that the debtor may dispute the accuracy and validity of the information being disclosed; and, if a previous opportunity was not provided, that the debtor may request review of the debt or rescheduling of payment. The Secretary may disclose only the individual's name, address and Social Security number, and the nature, amount, status and history of the debt.

(3) Unless specifically authorized by statute, regulation or written agreement, or unless the debts arise from, or involve, fraud or criminal activity, overdue debts arising from payments to beneficiaries under Titles II, XVI and XVIII of the Social Security Act will not be reported to credit reporting agencies. All other overdue debts of individuals which arise under the Social Security Act may be reported to credit reporting agencies subject to the conditions stated in paragraph (a)(2) of this section, except that such disclosure would be as a routine use under 5 U.S.C. 552a(b)(3), rather than a disclosure under 552a(b)(12).

(b) *Credit reports and locator services.* The Secretary may also use credit reporting agencies to obtain credit reports to evaluate the financial status of loan applicants and potential contractors and grantees; to obtain credit reports when collecting or disposing of debts to determine a debtor's ability to repay a debt; and to locate debtors. In the case of an individual, the Secretary may disclose, as a routine use under 5 U.S.C. 552a(b)(3), only the individual's name, address, Social Security number and the purpose for which the information will be used.

(c) Disclosures pertaining to individuals may be made to credit reporting agencies generally from the primary