

that the payor will make a showing of good cause under § 91.13(a).

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the issuance of a certificate of entitlement under § 91.9(e) or the distribution to U.S. flag air carriers of funds collected under this part shall be with prejudice to any claim for refund under this section.

PART 92—RECOVERING DEBTS TO THE UNITED STATES BY SALARY OFFSET

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AUTHORITY: 5 U.S.C. 5514, as amended; 5 CFR part 550, subpart K; 4 CFR parts 101-105.

SOURCE: 53 FR 4171, Feb. 12, 1988, unless otherwise noted.

§ 92.1 Purpose.

This part implements 5 U.S.C. 5514 (Installment Deduction for Indebtedness to the United States), as amended by the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749, 1751). It supplements 5 CFR part 550, subpart K, and the Federal Claims Collections Standards (4 CFR parts 101-105) issued jointly by the Comptroller General of the

United States and the Attorney General of the United States under 31 U.S.C. 3711(e)(2). It sets forth the procedures by which the Department of Transportation (DOT), including its operating elements (see 49 CFR 1.3):

(a) Collects debts owed to the United States by current and former DOT employees;

(b) Determines and collects interest and other charges on that indebtedness.

(c) Offsets the salary of DOT employees to collect debts owed to the United States by those employees; and,

(d) Obtains salary offset to collect debts owed to the United States by employees of other agencies under programs administered by DOT.

§ 92.3 Scope.

The provisions of this part are applicable to the indebtedness of a current or former employee of DOT incurred under any program administered by DOT. The provisions of this part do not apply to the collection of indebtedness by authority other than 5 U.S.C. 5514.

§ 92.5 Definitions.

As used in this part:

(a) *Agency* means an Executive Agency as defined by section 105 of title 5, United States Code, the U.S. Postal Service, the U.S. Postal Rate Commission, a Military Department as defined by section 102 of title 5, United States Code, an agency or court in the judicial branch, an agency of the legislative branch, and any other independent establishments which are entities of the Federal Government. In DOT each operating element will act for the agency in collecting debts under this rule.

(b) *Creditor agency* means the agency to which the debt is owed.

(c) *Debt* means an amount owed to the United States from sources which include, but are not necessarily limited to, erroneous payments made to employees, overpayments of benefits, salary or other allowances, loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures

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(except those arising under the Uniform Code of Military Justice) and all other similar sources. This term does not include a Government claim arising under the Internal Revenue Code of 1954 (26 U.S.C. 1-9602) as amended; the Social Security Act (42 U.S.C. 301-1397f); the tariff laws of the United States; or any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., emergency and travel advances under 5 U.S.C. 5522, 5705 or 5724 and employee training expenses under 5 U.S.C. 4108).

(d) *Debt Claim Form* means the form used by DOT when requesting that an agency, other than DOT, assist in the recovery of funds.

(e) *Delinquent debt* means a debt which has not been paid by the date specified in the agency's initial written notification or applicable contractual agreement, unless other satisfactory payment arrangements have been made by that date, or if, at any time thereafter, the debtor fails to satisfy obligations under a payment agreement with the creditor agency.

(f) *Disposable pay* means that part of current 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 remaining after the deduction of any amount 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).

(g) *DOT operating element* (see 49 CFR 1.3) means a DOT Operating Administration including—

- (1) U.S. Coast Guard.
- (2) Federal Aviation Administration.
- (3) Federal Highway Administration.
- (4) Federal Railroad Administration.
- (5) National Highway Traffic Safety Administration.
- (6) Urban Mass Transportation Administration.
- (7) St. Lawrence Seaway Development Corporation.
- (8) Maritime Administration.
- (9) Research and Special Program Administration.
- (10) The Office of the Secretary.

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(h) *Employee* means a current or former employee of a Federal agency, including a member of the Armed Forces (including retired members) or a Reserve of the Armed Forces (Reserves). However, employees paid from non-appropriated funds are not included.

(i) *FCCS* means the Federal Claims Collection Standards, 4 CFR Ch. II, jointly published by the Department of Justice and the General Accounting Office.

(j) *Hearing* means an informal conference before a hearing official in which the employee and the DOT operating element are given an opportunity to present evidence, witnesses, and argument. The hearing official shall be either an administrative law judge or an individual not under the supervision or control of the Department.

(k) *Paying agency* means the agency authorizing the payment of the employee's current pay.

(l) *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 a present or former employee with or without his or her consent. It includes a single offset from the final salary of an employee whose employment ends.

(m) *Waiver* means the cancellation, remission, forgiveness or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 5 U.S.C. 8346(b), 10 U.S.C. 2774, or 32 U.S.C. 716, or any other law.

§ 92.7 Notice, hearing, written response and decision.

(a) Except as provided in § 92.9 of this part, each employee from whom the department proposes to offset a debt against the Federal pay of an employee who is indebted to the United States under a program administered by DOT under these regulations is entitled to receive a minimum of 30 days written notice as described in § 92.11 of this part (see also § 92.21(a)).

(b) Each employee owing a debt to the United States which will be collected by salary offset is entitled to petition for a hearing before collection