

§ 708.2

(b) This procedure does not apply to debts or claims arising under:

(1) The Internal Revenue Code (26 U.S.C. 1 *et seq.*);

(2) The Social Security Act (42 U.S.C. 301 *et seq.*);

(3) The tariff laws of the United States; or

(4) To any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (*e.g.*, travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(c) The Commission shall except from salary offset provisions any adjustments to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits programs requiring periodic payroll deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

(d) These procedures do not preclude an employee or former employee from requesting a waiver of a salary overpayment under 5 U.S.C. 5584 or 10 U.S.C. 2774 or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the General Accounting Office (GAO) in accordance with procedures prescribed by the GAO. In addition, this procedure does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

§ 708.2 Policy.

It is the policy of the Commission to apply the procedures in the regulations in this part uniformly and consistently in the collection of internal debts from its current and former employees.

§ 708.3 Definitions.

For the purposes of the regulations in this part the following definitions apply:

(a) *Agency* means:

(1) An Executive agency as defined in 5 U.S.C. 105, including the U.S. Postal Service and the U.S. Postal Rate Commission;

(2) A military department as defined in 5 U.S.C. 102;

(3) An agency or court in the judicial branch, including a court as defined in 28 U.S.C. 610, the District Court for the

45 CFR Ch. VII (10–1–05 Edition)

Northern Mariana Islands, and the Judicial panel on Multidistrict Litigation;

(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(5) Other independent establishments that are entities of the Federal Government.

(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 loans insured or guaranteed by the United States and amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

(d) *Deputy Staff Director* means the Deputy Staff Director of the Commission or in his or her absence, or in the event of a vacancy in the position or its elimination, the Director of Human Resources.

(e) *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 from an employee's Federal pay after required deductions for social security, Federal, state or local income tax, health insurance premiums, retirement contributions, life insurance premiums, Federal employment taxes, and any other deductions that are required to be withheld by law.

(f) *Employee* means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

(g) *Former employee* means an employee who is no longer employed with the Commission but is currently employed with another Federal agency.

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

(i) *Hearing official* means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and who

Commission on Civil Rights

§ 708.5

renders a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Deputy Staff Director of the Commission.

(j) *Paying agency* means the agency employing the individual who owes the debt and is responsible for authorizing the payment of his or her current pay.

(k) *Pay interval* will normally be the biweekly pay period but may be some regularly recurring period of time in which pay is received.

(l) *Retainer pay* means the pay above the maximum rate of an employee's grade that he or she is allowed to keep in special situations rather than having the employee's rate of basic pay reduced.

(m) *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.

(n) *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, 10 U.S.C. 2774, or 5 U.S.C. 8346(b), or any other law.

§ 708.4 Applicability.

The regulations in this part are to be followed when:

(a) The Commission is owed a debt by an individual who is a current employee of the Commission; or

(b) The Commission is owed a debt by an individual currently employed by another Federal agency; or

(c) The Commission employs an individual who owes a debt to another Federal agency.

§ 708.5 Notice.

(a) Deductions shall not be made unless the employee who owes the debt has been provided with written notice signed by the Deputy Staff Director or in his or her absence, or in the event of a vacancy in that position or its elimination, the Director of Human Resources (or the U.S. Department of Agriculture, National Finance Center acting on behalf of the Commission) of the debt at least 30 days before salary offset commences.

(b) The written notice from the Deputy Staff Director, acting on behalf of the Commission, as the creditor agency, shall contain:

(1) A statement that the debt is owed and an explanation of its origin, nature, and amount;

(2) The agency's intention to collect the debt by deducting from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date, and duration of the intended deduction(s);

(4) An explanation of the requirements concerning the current interest rate, penalties, and administrative costs, including a statement that such charges will be assessed unless excused in accordance with the Federal Claims Collections Standards (4 CFR chapter I);

(5) The employee's right to inspect, request, or receive a copy of the government records relating to the debt;

(6) The employee's right to enter into a written repayment schedule for the voluntary repayment of the debt in lieu of offset;

(7) The right to a hearing conducted by an impartial hearing official (either an administrative law judge or an official who is not under the control of the Commission);

(8) The method and time period for petitioning for a hearing;

(9) A statement that the timely filing (*i.e.*, within 15 calendar days) of a petition for a hearing will stay the commencement of collection proceedings;

(10) A statement that a final decision on the hearing (if one is requested) 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.

(11) A statement that an employee knowingly submitting false or frivolous statements (5 CFR 550.1101), representations, or evidence may subject the employee to disciplinary procedures under 5 U.S.C. 7501 *et seq.* and 5 CFR part 752; penalties under the False Claims Act, 31 U.S.C. 3729-3731; or criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002;

(12) A statement of other rights and remedies available to the employee