

debtor and payments of other agencies available for offset may be frozen until relief from the automatic stay can be obtained from the bankruptcy court. DOE also will seek legal advice from counsel to determine whether recoupment is available.

§ 1015.203 Collection by administrative offset.

(a) *Scope.* (1) The term “administrative offset” has the meaning provided in 31 U.S.C. 3701(a)(1).

(2) This section does not apply to:

(i) Debts arising under the Social Security Act (42 U.S.C. 301, *et. seq.*) except as provided in 42 U.S.C. 404;

(ii) Payments made under the Social Security Act (42 U.S.C. 301, *et. seq.*) except as provided for in 31 U.S.C. 3716(c) (see 31 CFR 285.4, Federal Benefit Offset);

(iii) Debts arising under, or payments made under, the Internal Revenue Code (see 31 CFR 285.2, Tax Refund Offset) or the tariff laws of the United States;

(iv) Offsets against Federal salaries to the extent these standards are inconsistent with regulations published to implement such offsets under 5 U.S.C. 5514 and 31 U.S.C. 3716 (see 5 CFR part 550, subpart K, and 31 CFR 285.7, Federal Salary Offset);

(v) Offsets under 31 U.S.C. 3728 against a judgment obtained by a debtor against the United States;

(vi) Offsets or recoupments under common law, state law, or Federal statutes specifically prohibiting offsets or recoupments of particular types of debts; or

(vii) Offsets in the course of judicial proceedings, including bankruptcy.

(3) Unless otherwise provided for by contract or law, debts or payments that are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority.

(4) Unless otherwise provided by law, administrative offset of payments under the authority of 31 U.S.C. 3716 to collect a debt may not be conducted 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 reason-

ably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts. This limitation does not apply to debts reduced to a judgment.

(5) In bankruptcy cases, DOE will seek legal advice from appropriate legal counsel concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 106, 362, and 553, on pending or contemplated collections by offset.

(b) *Mandatory centralized administrative offset.* (1) As described in § 1015.201(e), under the DCIA, DOE is required to refer all debts over 180 days delinquent to Treasury for purposes of debt collection (*i.e.*, cross-servicing). Administrative offset is one type of collection tool used by Treasury to collect debts referred under 31 CFR 285.12. Thus, by transferring debts to Treasury, DOE will satisfy the requirement to notify Treasury of debts for the purposes of administrative offset and duplicate referrals are not required. A debt, which is not transferred to Treasury for purposes of debt collection, however, may be subject to the DCIA requirement of notification to Treasury for purposes of administrative offset.

(2) The names and taxpayer identifying numbers (TINs) of debtors who owe debts referred to Treasury as described in paragraph (b)(1) of this section shall be compared to the names and TINs on payments to be made by Federal disbursing officials. Federal disbursing officials include disbursing officials of Treasury, the Department of Defense, the United States Postal Service, other Government corporations, and disbursing officials of the United States designated by the Secretary of the Treasury. When the name and TIN of a debtor match the name and TIN of a payee and all other requirements for offset have been met, the payment will be offset to satisfy the debt.

(3) Treasury will notify the debtor/payee in writing that an offset has occurred to satisfy, in part or in full, a past due, legally enforceable delinquent debt. The notice shall include a description of the type and amount of the payment from which the offset was taken, the amount of offset that was

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taken, the identity of DOE as the creditor agency requesting the offset, and a contact point within DOE who will respond to questions regarding the offset.

(4) As required in 31 CFR 901.3(b)(4), DOE will refer a delinquent debt to Treasury for administrative offset, only after the debtor:

(i) Has been sent written notice of the type and amount of the debt, the intention of DOE to use administrative offset to collect the debt, and an explanation of the debtor's rights under 31 U.S.C. 3716; and

(ii) Has been given:

(A) The opportunity to inspect and copy DOE records related to the debt;

(B) The opportunity for a review within DOE of the determination of indebtedness; and

(C) The opportunity to make a written agreement to repay the debt.

(iii) DOE may omit the procedures set forth in paragraph (a)(4) of this section when:

(A) The offset is in the nature of a recoupment;

(B) The debt arises under a contract as set forth in *Cecile Industries, Inc. v. Cheney*, 995 F.2d 1052 (Fed. Cir. 1993) (notice and other procedural protections set forth in 31 U.S.C. 3716(a) do not supplant or restrict established procedures for contractual offsets accommodated by the Contracts Disputes Act); or

(C) In the case of non-centralized administrative offsets conducted under paragraph (c) of this section, DOE first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. When prior notice and an opportunity for review are omitted, DOE shall give the debtor such notice and an opportunity for review as soon as practicable and shall promptly refund any money ultimately found not to have been owed to the Government.

(iv) When DOE previously has given a debtor any of the required notice and review opportunities with respect to a particular debt (see §1015.202), DOE need not duplicate such notice and review opportunities before administrative offset may be initiated.

(5) When DOE refers delinquent debts to Treasury, DOE must certify, in a form acceptable to Treasury, that:

(i) The debt(s) is (are) past due and legally enforceable; and

(ii) DOE has complied with all due process requirements under 31 U.S.C. 3716(a) and DOE regulations.

(6) Payments that are prohibited by law from being offset are exempt from centralized administrative offset. Treasury may exempt classes of DOE payments from centralized offset upon the written request of the Secretary of DOE.

(7) In accordance with 31 U.S.C. 3716(f), Treasury may waive the provisions of the Computer Matching and Privacy Protection Act of 1988 concerning matching agreements and post-match notification and verification (5 U.S.C. 552a(o) and (p)) for centralized administrative offset upon receipt of a certification from DOE that the due process requirements enumerated in 31 U.S.C. 3716(a) have been met. The certification of a debt in accordance with paragraph (b)(5) of this section will satisfy this requirement. If such a waiver is granted, only the Data Integrity Board of Treasury is required to oversee any matching activities, in accordance with 31 U.S.C. 3716(g). This waiver authority does not apply to offsets conducted under paragraphs (c) and (d) of this section.

(c) *Non-centralized administrative offset.* (1) Generally, non-centralized administrative offsets are ad hoc case-by-case offsets that DOE conducts, at DOE's discretion, internally or in cooperation with the agency certifying or authorizing payments to the debtor. Unless otherwise prohibited by law, when centralized administrative offset is not available or appropriate, past due, legally enforceable non-tax delinquent debts may be collected through non-centralized administrative offset. In these cases, DOE may make a request directly to a payment-authorizing agency to offset a payment due a debtor to collect a delinquent debt. For example, it may be appropriate for DOE to request that the Office of Personnel Management (OPM) offset a Federal employee's lump sum payment upon leaving Government service to satisfy an unpaid advance.

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(2) DOE shall comply with offset requests by creditor agencies to collect debts owed to the United States, unless the offset would not be in the best interest of the United States with respect to the program of DOE, or would otherwise be contrary to law. Appropriate use will be made of the cooperative efforts of other agencies in effecting collection by administrative offset.

(3) When collecting multiple debts by non-centralized administrative offset, DOE generally will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, particularly the applicable statute of limitations.

(d) *Requests to OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund.* Upon providing OPM written certification that a debtor has been afforded the procedures provided in paragraph (b)(4) of this section, DOE may request OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) in accordance with regulations codified at 5 CFR 831.1801–831.1808. Upon receipt of such a request, OPM will identify and “flag” a debtor's account in anticipation of the time when the debtor requests, or becomes eligible to receive, payments from the Fund. This will satisfy any requirement that offset be initiated prior to the expiration of the time limitations referenced in paragraph (a)(4) of this section.

(e) *Review requirements.* (1) For purposes of this section, whenever DOE is required to afford a debtor a review within the agency, DOE shall provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and DOE determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity.

(2) Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although DOE will carefully

document all significant matters discussed at the hearing.

(3) This section does not require an oral hearing with respect to debt collection systems in which a determination of indebtedness rarely involves issues of credibility or veracity and DOE has determined that review of the written record is ordinarily an adequate means to correct prior mistakes.

(4) In those cases when an oral hearing is not required by this section, DOE will accord the debtor a “paper hearing,” that is, a determination of the request for reconsideration based upon a review of the written record.

§ 1015.204 Reporting debts.

(a) DOE may disclose delinquent debts to consumer reporting agencies in accordance with 31 U.S.C. 3711(e), the DCIA, the revised Federal Claims Collection Standards (31 CFR parts 900–904) published November 22, 2000, and other applicable authorities. DOE will ensure that all of the rights and protections afforded to the debtor under 31 U.S.C. 3711(e) have been fulfilled. Additional guidance is contained in Treasury's “Guide to the Federal Credit Bureau Program,” revised October 2001.

(b) As described in § 1015.201(e), under the DCIA (31 U.S.C. 3711(g)), DOE is required to transfer all debts over 180 days delinquent to Treasury for purposes of debt collection (*i.e.*, cross-servicing). As part of its regular debt collection procedures, Treasury will report debts it is collecting to the appropriate designated credit reporting agencies on behalf of DOE. A debt not transferred to Treasury for purposes of debt collection, however, may be subject to the DCIA requirement to report all non-tax delinquent consumer debts to credit reporting agencies.

§ 1015.205 Credit reports.

(a) In order to aid DOE in making appropriate determinations as to the collection and compromise of claims; the collection of interest, penalties, and administrative costs; and the likelihood of collecting the claim, DOE may institute a credit investigation of the debtor at any time following receipt of knowledge of the claim.