

## § 1450.20

## 29 CFR Ch. XII (7-1-06 Edition)

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).

(2) *Waiver requests and claims to the General Accounting Office.* This subpart does not preclude an employee from requesting waiver of a salary overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with procedures prescribed by the General Accounting Office. Similarly, in the case of other types of debts, it does not preclude an employee from requesting waiver, if waiver is available under any statutory provision pertaining to the particular debt being collected.

(c) *Time limit.* Under 4 CFR 102.3(b)(3), offset may not be initiated more than 10 years after the Government's right to collect the debt first accrued, unless an exception applies as stated in § 102.3(b)(3).

### § 1450.20 Definitions.

For purposes of this subpart—

*Agency* means the Federal Mediation and Conciliation Service (FMCS) or means any other agency of the U.S. Government as defined by section 105 of title 5 U.S.C., including the U.S. Postal Service, and the U.S. Postal Rate Commission, a military department as defined by section 102 of title 5 U.S.C., an agency or court of the judicial branch, and an agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives.

*Creditor agency* means the agency to which the debt is owed.

*Debt* means an amount owed to the United States from sources which include 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, interests, fines and forfeitures (except those arising under the Uniform Code Military Justice), and all other similar sources.

*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. FMCS will exclude deductions described in 5 CFR 581.105 (b) through (f) to determine disposable pay subject to salary offset.

*Employee* means a current employee of FMCS or of another agency, including a current member of the Armed Forces or a Reserve of the Armed Forces

*FCCS* means the Federal Claims Collection Standards jointly published by the Justice Department and the General Accounting Office at 4 CFR parts 101-105.

*Paying agency* means the agency employing the individual and authorizing the payment of his or her current pay.

*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 required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 710, 5 U.S.C. 8346(b), or any other law.

### § 1450.21 Notification.

(a) Salary offset deductions shall not be made unless the Director of the Financial Management Staff of FMCS, or such other official as may be named in the future by the Director of FMCS, provides to the employee—at least 30 days before any deduction—a written notice stating at a minimum:

(1) The agency's determination that a debt is owed, including the origin, nature, and amount of the debt;

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

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

(4) An explanation of the agency's policy concerning interest, penalties,

and administrative costs (subpart D of this regulation), a statement that such assessment must be made unless excused in accordance with the FCCS;

(5) The employee's right to inspect and copy Government records relating to the debt or, if the employee or his or her representative cannot personally inspect the records, to request and receive a copy of such records;

(6) If not previously provided, the opportunity (under terms agreeable to the agency) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be writing, signed by both the employee and the Director of the Financial Management Staff of FMCS, and documented in agency files (4 CFR 102.11).

(7) The employee's right to a hearing conducted by an official arranged by the agency (an administrative law judge or alternatively, a hearing official not under the control of the head of the agency) if a petition is filed as prescribed by § 1450.22.

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

(9) That the timely filing of a petition for hearing will stay the commencement of collection proceedings;

(10) 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) That any knowingly false, misleading, or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under chapter 75 of title 5, U.S.C., part 752 of title 5, CFR, or any other applicable status or regulations;

(ii) Penalties under the False Claims Act sections 3729-3731 of title 31, U.S.C., or any other applicable statutory authority; or

(iii) Criminal penalties under sections 286, 287, 1001, and 1002 of title 18, U.S.C., or any other applicable statutory authority.

(12) Any other right and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owned to the United States will be promptly refunded to the employee.

(b) Notifications under this section shall be hand delivered with a record made of the date and time of delivery, or shall be mailed by certified mail return receipt requested.

(c) No notification, hearing, written responses or final decisions under this regulation are required of FMCS for any adjustment to pay arising out of an employee's election of coverage under a Federal benefit program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

#### § 1450.22 Hearing.

(a) *Petition for hearing.* (1) A hearing may be requested by filing a written petition with the Director, Financial Management Staff of FMCS, or such other official as may be named in the future by the Director of FMCS, stating why the employee believes the determination of the agency concerning the existence or the amount of the debt is in error.

(2) The employee's petition must be signed by the employee and fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, which the employee believes support his or her position.

(3) The petition must be filed no later than fifteen (15) calendar days from the date that the notification was hand delivered or the date of delivery by certified mail, return receipt requested.

(4) If a petition is received after the fifteen (15) calendar day deadline referred to above, FMCS will nevertheless accept the petition if the employee can show that the delay was because of circumstances beyond his or her control, or because of failure to receive notice of the time limit (unless otherwise aware of it).