

§ 20.22

(c) Whether collection by administrative offset is feasible is a determination to be made by the creditor agency on a case-by-case basis, in the exercise of sound discretion. Agencies shall consider not only whether administrative offset can be accomplished, both practically and legally, but also whether offset is best suited to further and protect all of the Government's interests. In appropriate circumstances, agencies may give due consideration to the debtor's financial condition, and are not required to use offset in every instance in which there is an available source of funds. Agencies may also consider whether offset would substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated.

(d) Before advising the debtor that the delinquent debt will be subject to administrative offset, the agency head (or designee) responsible for administering the program under which the debt arose shall review the claim and determine that the debt is valid and overdue. In the case where a debt arises under the programs of two or more Department of Labor agencies, or in such other instances as the Chief Financial Officer, or his or her designee, may deem appropriate, the Chief Financial Officer, or his or her designee, may determine which agency (or agencies), or official (or officials), shall have responsibility for carrying out the provisions of this subpart.

(e) Administrative offset shall be considered by agencies only after attempting to collect a claim under Section 3(a) of the Federal Claims Collection Act, except that no claim under this Act that has been outstanding for more than 10 years after the Government's right to collect the debt first accrued may be collected by means of administrative offset, unless facts material to the right to collect the debt were not known and could not reasonably have been known by the official of the Agency who was charged with the responsibility to discover and collect such debts. When the debt first accrued should be determined according to existing laws regarding the accrual of debts, such as under 28 U.S.C. 2415.

29 CFR Subtitle A (7-1-06 Edition)

§ 20.22 Notifications.

(a) The agency head (or designee) responsible for carrying out the provisions of this subpart with respect to the debt shall send appropriate written demands to the debtor in terms which inform the debtor of the consequences of failure to cooperate. In accordance with guidelines established by the Chief Financial Officer, a total of three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that a further demand would be futile and the debtor's response does not require rebuttal. In determining the timing of the demand letters, agencies should give due regard to the need to act promptly so that, as a general rule, if necessary to refer the debt to the Department of Justice for litigation, such referral can be made within one year of the final determination of the fact and the amount of the debt. When the agency head (or designee) deems it appropriate to protect the government's interests (for example, to prevent the statute of limitations, 28 U.S.C. 2415, from expiring), written demand may be preceded by other appropriate actions, including immediate referral for litigation.

(b) In accordance with guidelines established by the Chief Financial Officer, the agency official responsible for collection of the debt shall send written notice to the debtor, informing such debtor as appropriate:

(1) Of the nature and amount of the indebtedness;

(2) That the agency intends to collect, as appropriate, interest, penalties and administrative costs; and, in accordance with guidelines of the Chief Financial Officer, of the applicable standards for collecting such payments;

(3) Of the date by which payment is to be made (which normally should be not more than 30 days from the date that the initial notification was mailed or hand-delivered);

(4) Of the agency's intention to collect by administrative offset and of the debtor's rights in conjunction with such an offset;

(5) Of the debtor's entitlement to waiver, where applicable, and of the

debtor's rights in conjunction with waiver;

(6) Of the debtor's opportunity to enter into a written agreement with the agency to repay the debt;

(7) Of the rights of such debtor to a full explanation of the claim, of the opportunity to inspect and copy the agency records with respect to the claim and to dispute any information in the records of the agency concerning the claim;

(8) Of the debtor's right to administrative appeal or review with respect to the claim and how such review shall be obtained; and

(9) Of the date on which or after which an administrative offset will begin.

(c) Agencies shall also include in their demand letters the notice provisions to debtors required by other regulations of the Labor Department, pertaining to disclosures to credit reporting agencies, salary offset, and assessment of interest, penalties and administrative costs, to the extent inclusion of such is appropriate and practicable.

(d) The responsible agency head (or designee) shall exercise due care to insure that demand letters are mailed or hand-delivered on the same day that they are actually dated. If evidence suggests that the debtor is no longer located at the address of record, reasonable action shall be taken to obtain a current address.

(e) The agency responsible for collecting the claim shall, in the initial demand letter to the debtor, provide the name of an agency employee who can provide a full explanation of the claim.

§ 20.23 Examination of records relating to the claim; opportunity for full explanation of the claim.

Following receipt of the initial demand letter specified in § 20.22, the debtor may request to examine and copy agency records pertaining to the debt.

§ 20.24 Opportunity for repayment.

(a) The Department of Labor agency responsible for collecting the claim shall afford the debtor the opportunity to repay the debt or enter into a repayment plan which is agreeable to the

agency head (or designee) and is in a written form signed by such debtor. The head of the agency (or designee) may deem a repayment plan to be abrogated if the debtor should, after the repayment plan is signed, fail to comply with the terms of the plan.

(b) Agencies have discretion and should exercise sound judgment in determining whether to accept a repayment agreement in lieu of offset. The determination should balance the Government's interest in collecting the debt against fairness to the debtor. If the debt is delinquent and the debtor has not disputed its existence or amount, an agency should effect an offset unless the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

§ 20.25 Review of the obligation.

(a) The debtor shall have the opportunity to obtain review by the responsible agency of the determination concerning the existence or amount of the debt.

(b) The debtor seeking review shall make the request in writing to the reviewing official or employee, not more than 15 days from the date the initial demand letter was received by the debtor. The request for review shall state the basis for challenging the determination. If the debtor alleges that the agency's information relating to the debt is not accurate, timely, relevant or complete, such debtor shall provide information or documentation to support this allegation.

(c) The review shall ordinarily be based on written submissions and documentation by the debtor. However a reasonable opportunity for an oral hearing shall be provided an individual debtor when the responsible agency determines that:

(1) An applicable statute authorizes or requires the agency to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or

(2) An individual debtor requests reconsideration of the debt and the agency determines that the question of the