

§ 1201.19

36 CFR Ch. XII (7-1-08 Edition)

not subject to 31 U.S.C. 3717 to the extent authorized under common law or other applicable statutory authority.

(f) *Waiver.* (1) The Archivist may (without regard to the amount of the debt) waive collection of all or part of accrued interest, penalty charges, or administrative costs, if he or she determines that collection of these charges would be against equity and good conscience or not in the best interest of NARA.

(2) A decision to waive interest, penalty charges, or administrative costs may be made at any time before a debt is paid. However, and unless otherwise stated in these regulations, where these charges have been collected before the waiver decision, they will not be refunded. The Archivist's decision to waive or not waive collection of these charges is final and is not subject to further review.

§ 1201.19 How can I resolve my debt through voluntary repayment?

(a) In response to a notice of debt, you may propose to NARA that you be allowed to repay the debt through a voluntary repayment agreement in lieu of NARA taking other collection actions under this part.

(b) Your request to enter into a voluntary repayment agreement must:

- (1) Be in writing;
- (2) Admit the existence of the debt; and
- (3) Either propose payment of the debt (together with interest, penalty charges, and administrative costs) in a lump sum, or set forth a proposed repayment schedule.

(c) NARA will collect claims in one lump sum whenever feasible. However, if you are unable to pay your debt in one lump sum, NARA may accept payment in regular installments that bear a reasonable relationship to the size of the debt and your ability to pay.

(d) NARA will consider a request to enter into a voluntary repayment agreement in accordance with the FCCS. The Archivist may request additional information from you, including financial statements if you request to make payments in installments, in order to determine whether to accept a voluntary repayment agreement. It is within the Archivist's discretion to ac-

cept a repayment agreement instead of proceeding with other collection actions under this part, and to set the necessary terms of any voluntary repayment agreement. No repayment agreement will be binding on NARA unless it is in writing and signed by both you and the Archivist. At NARA's option, you may be required to provide security as part of the agreement to make payments in installments. Notwithstanding the provisions of this section, 31 U.S.C. 3711 will govern any reduction or compromise of a claim.

§ 1201.20 What is the extent of the Archivist's authority to compromise debts owed to NARA, or to suspend or terminate collection action on such debts?

(a) The Archivist may compromise, suspend, or terminate collection action on those debts owed to NARA that do not exceed \$100,000 excluding interest, in conformity with the Federal Claims Collection Act of 1966, as amended. NARA will follow the policies in § 902.2 of the FCCS.

(b) The uncollected portion of a debt owed to NARA that is not recovered as the result of a compromise will be reported to the Internal Revenue Service (IRS) as income to the debtor in accordance with IRS procedures if the debt is at least \$600.00.

§ 1201.21 May NARA's failure to comply with these regulations be used as a defense to a debt?

No, the failure of NARA to comply with any standard in the FCCS or these regulations will not be available to any debtor as a defense.

Subpart C—Salary Offset

§ 1201.30 What debts are included or excluded from coverage of these regulations on salary offset?

(a) The regulations in this subpart provide NARA procedures for the collection by salary offset of a Federal employee's pay to satisfy certain debts owed to NARA or to other Federal agencies.

(b) The regulations in this subpart do not apply to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(c) Nothing in the regulations in this subpart precludes the compromise, suspension, or termination of collection actions under the Federal Claims Collection Act of 1966, as amended, or the FCCS.

(d) A levy imposed under the Internal Revenue Code takes precedence over a salary offset under this subpart, as provided in 5 U.S.C. 5514(d).

§ 1201.31 May I ask NARA to waive an overpayment that otherwise would be collected by offsetting my salary as a Federal employee?

Yes, the regulations in this subpart do not preclude you from requesting waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or other statutory provisions pertaining to the particular debts being collected.

§ 1201.32 What are NARA's procedures for salary offset?

(a) NARA will coordinate salary deductions under this subpart as appropriate.

(b) If you are a NARA employee who owes a debt to NARA, NARA's payroll office will determine the amount of your disposable pay and will implement the salary offset.

(c) Deductions will begin within three official pay periods following receipt by NARA's payroll office of certification of debt from the creditor agency.

(d) The Notice provisions of these regulations do not apply to certain debts arising under this section (*see* §1201.14(c)).

(e) Types of collection. (1) *Lump-sum offset*. If the amount of the debt is equal to or less than 15 percent of disposable pay, the debt generally will be collected through one lump-sum offset.

(2) *Installment deductions*. Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and your ability to pay. However, the amount deducted from any period will not exceed 15 percent of the disposable pay from which the deduction is made unless you have agreed in writing to the deduction of a greater amount.

If possible, installment payments will be sufficient in size and frequency to liquidate the debt in three years or less.

(3) *Deductions from final check*. A deduction exceeding the 15 percent of disposable pay limitation may be made from any final salary payment under 31 U.S.C. 3716 and the FCCS in order to liquidate the debt, whether the employee is being separated voluntarily or involuntarily.

(4) *Deductions from other sources*. If an employee subject to salary offset is separated from NARA and the balance of the debt cannot be liquidated by offset of the final salary check, NARA may offset later payments of any kind against the balance of the debt, as allowed by 31 U.S.C. 3716 and the FCCS.

(f) *Multiple debts*. In instances where two or more creditor agencies are seeking salary offsets, or where two or more debts are owed to a single creditor agency, NARA's payroll office may, at its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

§ 1201.33 How will NARA coordinate salary offsets with other agencies?

(a) *Responsibilities of NARA as the creditor agency (i.e. when the debtor owes a debt to NARA and is an employee of another agency)*. Upon completion of the procedures established in this subpart and pursuant to 5 U.S.C. 5514 and 31 U.S.C. 3716, NARA must submit a claim to a paying agency or disbursing official.

(1) In its claim, NARA must certify, in writing, the following:

(i) That the employee owes the debt;

(ii) The amount and basis of the debt;

(iii) The date NARA's right to collect the debt first accrued;

(iv) That NARA's regulations in this subpart have been approved by OPM under 5 CFR part 550, subpart K; and

(v) That NARA has met the certification requirements of the paying agency.

(2) If the collection must be made in installments, NARA's claim will also advise the paying agency of the amount or percentage of disposable pay to be collected in each installment. NARA may also advise the paying