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(4) The private collection contractor is required to account for all amounts collected.

(b) Although the Commission will use government-wide debt collection contracts to obtain debt collection services provided by private collection contractors, the Commission may refer debts to private collection contractors pursuant to a contract between the Commission and the private collection contractor in those situations where the Commission is not required to transfer debt to the Secretary of the Treasury for debt collection.

(c) Agencies may fund private collection contractor in accordance with 31 U.S.C. 3718(d), or as otherwise permitted by law.

(d) The Commission may enter into contracts for locating and recovering assets of the United States, such as unclaimed assets, but it will first establish procedures that are acceptable to Treasury before entering into contracts to recover assets of the United States held by a state government or a financial institution.

(e) The Commission may enter into contracts for debtor asset and income search reports. In accordance with 31 U.S.C. 3718(d), such contracts may provide that the fee a contractor charges the Commission for such services may be payable from the amounts recovered, unless otherwise prohibited by statute. In that regard, fees for those services will be added to the amount collected and are part of the administrative collection costs passed on to the debtor. *See* § 1.1940.

§§ 1.1920–1.1924 [Reserved]

SALARY OFFSET-INDIVIDUAL DEBT

§ 1.1925 Purpose.

Sections 1.1925 through 1.1939 apply to individuals who are employees of the Commission and provides the standards to be followed by the Commission in implementing 5 U.S.C. 5514; sec. 8(1) of E.O. 11609 (3 CFR, 1971–1975 Comp., p.586); redesignated in sec. 2–1 of E.O. 12107 (3 CFR, 1978 Comp., p.264) to recover a debt from the pay account of a Commission employee. It also establishes procedural guidelines to recover debts when the employee's creditor and paying agencies are not the same.

§ 1.1926 Scope.

(a) *Coverage.* This section applies to the Commission and employees as defined by § 1.1901.

(b) *Applicability.* This section and 5 U.S.C. 5514 apply in recovering certain debts by offset, except where the employee consents to the recovery, from the current pay account of that employee. Because it is an administrative offset, debt collection procedures for salary offset which are not specified in 5 U.S.C. 5514 and these regulations should be consistent with the provisions of the Federal Claims Collection Standards (31 CFR parts 900–904).

(1) *Excluded debts or claims.* The procedures contained in this section do not apply to debts or claims arising under the Internal Revenue Code of 1954, as amended (26 U.S.C. 1 *et seq.*), the Social Security Act (42 U.S.C. 301 *et seq.*) or the tariff laws of the United States, or 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).

(2) Section 1.1926 does not preclude an employee from requesting waiver of an erroneous payment 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, in the manner prescribed by the Commissioner. Similarly, this subpart does not preclude an employee from requesting waiver of the collection of a debt under any other applicable statutory authority.

(c) *Time limit.* Under 31 CFR 901.3(a)(4) 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 section 901.3(a)(4).

§ 1.1927 Notification.

(a) Salary offset deductions will not be made unless the Managing Director of the Commission, or the Managing Director's designee, provides to the employee at least 30 days before any deduction, written notice stating at a minimum:

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

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

(3) The frequency and amount of the intended deduction (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay) and the intention to continue the deductions until the debt is paid in full or otherwise resolved;

(4) An explanation of the Commission's policy concerning interest, penalties, and administrative costs (*See* §§1.1940 and 1.1941), a statement that such assessments 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 Commission) 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 in writing, signed by both the employee and the Managing Director (or designee) of the Commission and documented in Commission files (see the FCCS).

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

(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 the final decision in 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, Code of Federal Regulations, or any other applicable statutes 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 rights 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 owed 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 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 by the Commission for:

(1) Any adjustment to pay arising out of an employee's election of coverage, or change in 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;

(2) A routine intra-Commission adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to \$50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a

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point of contact for contesting such adjustment.

§ 1.1928 Hearing.

(a) *Petition for hearing.* (1) An employee may request a hearing by filing a written petition with the Managing Director of the Commission, or designated official stating why the employee believes the determination of the Commission concerning the existence or the amount of the debt is in error.

(2) The employee's petition must be executed under penalty of perjury 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 fifteenth (15) calendar day deadline referred to paragraph (a) (3) of this section, the Commission will nevertheless accept the petition if the employee can show, in writing, that the delay was due to circumstances beyond his or her control, or because of failure to receive notice of the time limit (unless otherwise aware of it).

(5) If a petition is not filed within the time limit specified in paragraph (a) (3) of this section, and is not accepted pursuant to paragraph (a)(4) of this section, the employee's right to hearing will be considered waived, and salary offset will be implemented by the Commission.

(b) *Type of hearing.* (1) The form and content of the hearing will be determined by the hearing official who shall be a person outside the control or authority of the Commission except that nothing herein shall be construed to prohibit the appointment of an administrative law judge by the Commission. In determining the type of hearing, the hearing officer will consider the nature and complexity of the transaction giving rise to the debt. The hearing may be conducted as an informal conference or interview, in which the Commission and employee will be given a full opportunity to present their respective

positions, or as a more formal proceeding involving the presentation of evidence, arguments and written submissions.

(2) The employee may represent him or herself, or may be represented by an attorney.

(3) The hearing official shall maintain a summary record of the hearing.

(4) The decision of the hearing officer shall be in writing, and shall state:

(i) The facts purported to evidence the nature and origin of the alleged debt;

(ii) The hearing official's analysis, findings, and conclusions, in the light of the hearing, as to—

(A) The employee's and/or agency's grounds,

(B) The amount and validity of the alleged debt, and,

(C) The repayment schedule, if applicable.

(5) The decision of the hearing official shall constitute the final administrative decision of the Commission.

§ 1.1929 Deduction from employee's pay.

(a) Deduction by salary offset, from an employee's current disposable pay, shall be subject to the following conditions:

(1) Ordinarily, debts to the United States will be collected in full, in one lump sum. This will be done when funds are available for payment in one lump sum. However, if the employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments.

(2) The size of the installment deductions will bear a reasonable relationship to the size of the debt and the employee's ability to pay (*see* the FCCS). However, the installments will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount.

(3) Deduction will generally commence with the next full pay interval (ordinarily the next biweekly pay period) following the date: of the employee's written consent to salary offset, the waiver of hearing, or the decision issued by the hearing officer.