

OVERTIME FOR FLAT RATE USER FEES<sup>1 2</sup>—Continued

	Outside of the employee's normal tour of duty	Overtime rates (per hour)				
		Aug. 11, 2002–Sept. 30, 2002	Oct. 1, 2002–Sept. 30, 2003	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Beginning Oct. 1, 2005
	Sundays .....	48.00	49.00	51.00	53.00	55.00

<sup>1</sup> Minimum charge of 2 hours, unless performed on the employee's regular workday and performed in direct continuation of the regular workday or begun within an hour of the regular workday.

<sup>2</sup> When the 2-hour minimum applies, you may need to pay commuted travel time. (See § 97.1(b) of this chapter for specific information about commuted travel time.)

<sup>3</sup> See § 97.1(a) of this chapter or 7 CFR 354.3 for details.

<sup>4</sup> See § 97.1(a)(3) of this chapter for details.

\* \* \* \* \*

Done in Washington, DC, this 19th day of July, 2002.

**Peter Fernandez,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

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**BILLING CODE 3410–34–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 313

**RIN 3064–AC40**

### Procedures for Corporate Debt Collection

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Final rule.

**SUMMARY:** The FDIC is issuing a new regulation governing procedures for corporate debt collection. The Debt Collection Improvement Act of 1996 requires agencies to promulgate regulations on this subject. The regulation sets forth the procedures the FDIC will follow in collecting debts owed to the United States. These procedures include collection of debts through administrative offset, salary offset, administrative wage garnishment and tax refund offset.

**EFFECTIVE DATE:** August 26, 2002.

**FOR FURTHER INFORMATION CONTACT:** Manuel A. Palau (202) 898–8829 of the Legal Division; Connie Brindle (202) 416–7224 of the Division of Finance; or David Harrington (202) 942–3396 of the Division of Administration. The FDIC's main office is located at 550 17th Street, NW., Washington, DC 20429.

#### SUPPLEMENTARY INFORMATION:

#### I. Background

This rule implements changes to the law made by the Debt Collection Improvement Act of 1996 (DCIA). The DCIA requires federal agencies to collect debts owed to the United States under

regulations prescribed by the head of the agency, and standards prescribed by the Department of Justice and the Department of the Treasury. 31 U.S.C. 3711. These standards, known as the Federal Claims Collection Standards (FCCS), became effective on December 22, 2000. 31 CFR chapter IX and parts 900 through 904.

The DCIA also requires agencies, prior to collecting debts owed to the United States by administrative offset, to: (1) adopt without change regulations on collecting debts by administrative offset promulgated by the Department of Justice or Department of the Treasury (FCCS); or (2) prescribe agency regulations for collecting such debts by administrative offset, which are consistent with the FCCS. 31 U.S.C. 3716. The agency regulations protect the minimum due process rights that must be afforded to the debtor when an agency seeks to collect a debt by administrative offset, including the ability to verify, challenge, and compromise claims, and access to administrative appeals procedures which are both reasonable and protect the interests of the United States.

The FDIC has decided to issue its own agency regulations for debt collection and administrative offset, in part to account for the FDIC's status as an independent regulatory agency. The regulations are, however, consistent with the FCCS, as required by the DCIA. The salary offset portion of the regulations has been submitted to and approved by the Office of Personnel Management (OPM), as required by 5 U.S.C. 5514. In addition, the tax refund offset provisions of the regulations satisfy the requirement in 31 CFR 285.2(c) that the FDIC adopt agency regulations authorizing its collection of debts by administrative offset in general and tax refund offset in particular. The administrative wage garnishment provisions of the regulations satisfy the requirement in 31 CFR 285.11(f) that the FDIC adopt regulations for the conduct

of administrative wage garnishment hearings consistent with 31 CFR 285.11.

In addition to these legal authorities, the FDIC is issuing these regulations pursuant to 12 U.S.C. 1819(a), which authorizes the FDIC to adopt such reasonable regulations as it deems necessary to carry out its corporate functions and duties.

#### II. Discussion of the Rule

##### A. Subpart A—Scope, Purpose, Definitions and Delegations of Authority

The regulations apply only to debts owed to the United States which arise out of FDIC transactions and functions in its corporate capacity, including, but not limited to: employee or former employee matters such as travel-related claims, claims arising out of the travel card program, and erroneous overpayments; agency contracting activities involving corporate operations; and debts related to requests for documents under the Freedom of Information Act (FOIA). These regulations do not apply to debts owed to or payments made by the FDIC in connection with the FDIC's receivership, liquidation, supervision, enforcement, or insurance responsibilities, nor do they limit or affect the FDIC's authority pursuant to 12 U.S.C. 1819(a) and 1820(a).

When the FDIC Director of the Division of Administration (DOA) or Director of the Division of Finance (DOF) determines that it is appropriate to initiate debt collection or seek administrative offset to collect that debt, the Director shall conform to the procedural standards for collecting debts set forth in the FCCS. 31 CFR parts 900 through 904. The FCCS establish standards governing the following areas of the debt collection process: prompt demand of payment of the claim from the debtor; review of the existence or amount of a debt claimed, upon the debtor's demand for a final agency determination; standards for collecting debts in installment payments; the required assessment of

interest, penalties and administrative costs on debts claimed; standards for compromise of claims due; standards to be followed in determining whether to suspend or terminate collection action; the required referral of delinquent debts to the Secretary of the Treasury, for collection by means of centralized administrative offset under the Treasury Offset Program; the reporting of debts to consumer reporting agencies and the use of credit reports; and the sale of delinquent debts. In addition, when the Director elects to pursue a specific debt collection remedy such as salary offset, administrative wage garnishment, offset against Civil Service Retirement and Disability Fund payments or offset against tax refunds, the Director shall follow the applicable procedures for that debt collection remedy set forth in the regulations.

#### *B. Subpart B—Administrative Offset*

Pursuant to 31 U.S.C. 3716, the FDIC may collect debts owed to the United States through administrative offset. Under the administrative offset regulations, the FDIC is authorized to collect debts owed to the United States by: (1) withholding money payable by the FDIC to the debtor, or held by the FDIC for the debtor; or (2) by requesting that another federal agency withhold money payable to the debtor, or held by the agency for the debtor. Subpart B of the regulations meets the requirement under 31 U.S.C. 3716(b) that the FDIC promulgate regulations for administrative offset procedures and provide minimum due process rights to the debtor, including the ability to verify, challenge, and compromise claims, and access to administrative appeals procedures which are both reasonable and protect the interests of the FDIC. Subpart B of the regulations also meets the requirement under 4 CFR 901.3 that the FDIC prescribe administrative offset regulations consistent with the FCCS prior to referring delinquent debts to the Secretary of the Treasury for collection by centralized administrative offset.

#### *C. Subpart C—Salary Offset*

Subpart C of the regulations provides that when the FDIC determines it is appropriate to collect a debt by means of deductions from the current pay account of an FDIC employee, or any individual employed by the federal government (including a former FDIC employee), the FDIC shall initiate salary offset under 5 U.S.C. 5514(a)(1). Salary offset is a form of administrative offset governed by statute (5 U.S.C. 5514) and by regulations issued by the OPM (5 CFR part 550, subpart K). Salary offset

may only be used to collect debts owed by persons currently employed by the federal government. As noted above, the statute requires agencies to promulgate regulations to carry out salary offset subject to OPM approval. 5 U.S.C. 5514(b)(1). Subpart C implements those statutory requirements.

#### *D. Subpart D—Administrative Wage Garnishment*

Subpart D of the regulations sets forth procedures that may be used by the FDIC to collect debts by garnishing the wages of individuals employed outside the federal government. This includes persons employed by the private sector, as well as state and local governments. The administrative wage garnishment regulations are issued in compliance with 31 U.S.C. 3720D and 31 CFR 285.11(f). Administrative wage garnishment regulations do not apply to the collection of delinquent debts from the wages of federal employees. Federal pay is subject to the federal salary offset procedures set forth in 5 U.S.C. 5514 and other applicable laws.

#### *E. Subpart E—Tax Refund Offset*

Where collection by salary offset or administrative offset is not feasible, the FDIC may also seek to recover a legally enforceable, past-due debt owed the United States by requesting that the Financial Management Service of the Department of the Treasury offset all or part of a tax refund to a debtor by the amount of the debt and pay such money to the FDIC. 31 U.S.C. 3720A; 26 CFR 301.6402 through 6406. In order to collect a debt by means of tax refund offset, the FDIC is required to promulgate its own regulations on salary offset, administrative offset, and tax refund offset. 31 U.S.C. 3720A(b)(4); 31 CFR 285.2. Subpart E of the regulations implements this requirement.

#### *F. Subpart F—Civil Service Retirement and Disability Fund Offset*

Under certain circumstances, the FDIC may also request that money payable from the Civil Service Retirement and Disability Fund be offset by the OPM to recover a valid debt due to the United States. 5 CFR 831.1801 through 831.1808. The regulations governing such offsets provide that creditor agencies may make such requests to OPM upon compliance with the administrative offset procedures required under 31 U.S.C. 3716, or the salary offset procedures required under 5 U.S.C. 5514, and the corresponding regulations. Subpart F of the regulations provides a process for such offset.

#### *G. Subpart G—Mandatory Centralized Administrative Offset*

When the FDIC is the creditor agency, it is required to refer all legally enforceable, non-tax debts that are delinquent (over 180 days past due), as defined in the FCCS, to the Secretary of the Treasury, to enable the Secretary to seek collection by centralized administrative offset. 31 U.S.C. 3716. Subpart G of the regulations implements this requirement.

### **III. Administrative Procedure Act**

No notice of proposed rulemaking is required under the Administrative Procedure Act (APA) because these rules relate solely to agency procedure and practice. 5 U.S.C. 553(b)(3)(A). Furthermore, notice and an opportunity for public comment are not necessary prior to issuance of this final rule because it implements a definitive statutory scheme mandated by the DCIA.

### **IV. Regulatory Flexibility Act**

Pursuant to the Regulatory Flexibility Act, the FDIC hereby certifies that the rules set forth in this notice do not have a significant economic impact on a substantial number of small business entities. The rule applies primarily to federal agencies and employees and a limited number of business entities. 5 U.S.C. 605(b).

### **V. Paperwork Reduction Act**

These rules are not subject to the Paperwork Reduction Act (44 U.S.C. 3501), since they do not contain any new information collection requirements.

### **VI. Assessment of Impact of Federal Regulation on Families**

The FDIC has determined that the rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105–277, 112 Stat. 2681).

### **VII. Small Business Regulatory Enforcement Fairness Act**

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121) provides generally for agencies to report rules to Congress for review. The reporting requirement is triggered when the FDIC issues a final rule as defined by the APA at 5 U.S.C. 551. Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by SBREFA. The Office of

Management and Budget has determined that this final rule does not constitute a "major rule" as defined by SBREFA.

#### List of Subjects in 12 CFR Part 313

Administrative practice and procedure, Claims, Debt collection, Government employees, Hearing procedures, Wages.

For the reasons set forth in the preamble, 12 CFR part 313 is added as follows:

### PART 313—PROCEDURES FOR CORPORATE DEBT COLLECTION

#### Subpart A—Scope, Purpose, Definitions and Delegations of Authority

Sec.

- 313.1 Scope.
- 313.2 Purpose.
- 313.3 Definitions.
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#### Subpart B—Administrative Offset

- 313.20 Applicability and scope.
- 313.21 Definitions.
- 313.22 Collection.
- 313.23 Offset prior to completion of procedures.
- 313.24 Omission of procedures.
- 313.25 Debtor's rights.
- 313.26 Interest.
- 313.27 Refunds.
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- 313.30 Requests for offset from other federal agencies.
- 313.31—313.39 [Reserved]

#### Subpart C—Salary Offset

- 313.40 Scope.
- 313.41 Notice requirement where FDIC is creditor agency.
- 313.42 Procedures to request a hearing.
- 313.43 Failure to timely submit request for hearing.
- 313.44 Procedure for hearing.
- 313.45 Certification of debt by FDIC as creditor agency.
- 313.46 Notice of salary offset where FDIC is the paying agency.
- 313.47 Voluntary repayment agreements as alternative to salary offset where the FDIC is the creditor agency.
- 313.48 Special review of repayment agreement or salary offset due to changed circumstances.
- 313.49 Coordinating salary offset with other agencies.
- 313.50 Interest, penalties, and administrative costs.
- 313.51 Refunds.
- 313.52 Request from a creditor agency for services of a hearing official.
- 313.53 Non-waiver of rights by payments.
- 313.54 Exception to due process procedures.
- 313.55 Salary adjustments.
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#### Subpart D—Administrative Wage Garnishment

- 313.80 Scope and purpose.
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- 313.95 Amounts withheld.
- 313.96 Exclusions from garnishment.
- 313.97 Financial hardship.
- 313.98 Ending garnishment.
- 313.99 Prohibited actions by employer.
- 313.100 Refunds.
- 313.101 Right of action.
- 313.102—313.119 [Reserved]

#### Subpart E—Tax Refund Offset

- 313.120 Scope.
- 313.121 Definitions.
- 313.122 Notification of debt to FMS.
- 313.123 Certification and referral of debt.
- 313.124 Pre-offset notice and consideration of evidence.
- 313.125 Referral of past-due, legally enforceable debt.
- 313.126 Correcting and updating referral.
- 313.127 Disposition of amounts collected.
- 313.128—313.139 [Reserved]

#### Subpart F—Civil Service Retirement and Disability Fund Offset

- 313.140 Future benefits.
- 313.141 Notification to OPM.
- 313.142 Request for administrative offset.
- 313.143 Cancellation of deduction.
- 313.144—313.159 [Reserved]

#### Subpart G—Mandatory Centralized Administrative Offset

- 313.160 Treasury notification.
- 313.161 Certification of debt.
- 313.162 Compliance with 31 CFR part 285.
- 313.163 Notification of debts of 180 days or less.
- 313.164—313.180 [Reserved]

**Authority:** 12 U.S.C. 1819(a); 5 U.S.C. 5514; Pub. L. 104-143, 110 Stat. 1321 (31 U.S.C. 3711, 3716).

#### Subpart A—Scope, Purpose, Definitions and Delegations of Authority

##### § 313.1 Scope.

This part establishes FDIC procedures for the collection of certain debts owed to the United States.

(a) This part applies to collections by the FDIC from:

- (1) Federal employees who are indebted to the FDIC;
- (2) Employees of the FDIC who are indebted to other agencies; and
- (3) Other persons, organizations, or entities that are indebted to the FDIC,

except those excluded in paragraph (b)(3) of this section.

(b) This part does not apply:

(1) To debts or claims arising under the Internal Revenue Code of 1986 (Title 26, U.S. Code), the Social Security Act (42 U.S.C. 301 *et seq.*), or the tariff laws of the United States;

(2) To a situation to which the Contract Disputes Act (41 U.S.C. 601 *et seq.*) applies; or

(3) In any case where collection of a debt is explicitly provided for or prohibited by another statute.

(c) This part applies only to debts owed to and payments made by the FDIC acting in its corporate capacity; that is, in connection with employee matters such as travel-related claims and erroneous overpayments, contracting activities involving corporate operations, debts related to requests to the FDIC for documents under the Freedom of Information Act (FOIA) or where a request for an offset is received by the FDIC from another federal agency. It does not apply to debts owed to or payments made by the FDIC in connection with the FDIC's liquidation, supervision, enforcement, or insurance responsibilities, nor does it limit or affect the FDIC's authority with respect to debts and/or claims pursuant to 12 U.S.C. 1819(a) and 1820(a).

(d) Nothing in this part 313 precludes the compromise, suspension, or termination of collection actions, where appropriate, under: standards implementing the Debt Collection Improvement Act (DCIA) (31 U.S.C. 3711 *et seq.*), the Federal Claims Collection Standards (FCCS) (31 CFR chapter IX and parts 900 through 904); or any other applicable law.

##### § 313.2 Purpose.

(a) The purpose of this part is to implement federal statutes and regulatory standards authorizing the FDIC to collect debts owed to the United States. This part is consistent with the following federal statutes and regulations:

(1) DCIA at 31 U.S.C. 3711 (collection and compromise of claims); section 3716 (administrative offset), section 3717 (interest and penalty on claims), and section 3718 (contracts for collection services);

(2) 5 U.S.C. 5514 (salary offset);

(3) 5 U.S.C. 5584 (waiver of claims for overpayment);

(4) 31 CFR chapter IX and parts 900 through 904 (Federal Claims Collection Standards);

(5) 5 CFR part 550, subpart K (salary offset);

(6) 31 U.S.C. 3720D, 31 CFR 285.11 (administrative wage garnishment);

(7) 26 U.S.C. 6402(d), 31 U.S.C. 3720A and 31 CFR 285.2 (tax refund offset); and

(8) 5 CFR 831.1801 through 1808 (U. S. Office of Personnel Management (OPM) offset).

(b) Collectively, these statutes and regulations prescribe the manner in which federal agencies should proceed to establish the existence and validity of debts owed to the federal government and describe the remedies available to agencies to offset valid debts.

### § 313.3 Definitions.

Except where the context clearly indicates otherwise or where the term is defined elsewhere in this subpart, the following definitions shall apply to this subpart.

(a) *Agency* means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of government, including government corporations.

(b) *Board* means the Board of Directors of the FDIC.

(c) *Centralized administrative offset* means the mandatory referral to the Secretary of the Treasury by a creditor agency of a past due debt which is more than 180 days delinquent, for the purpose of collection under the Treasury's centralized offset program.

(d) *Certification* means a written statement transmitted from a creditor agency to a paying agency for purposes of administrative or salary offset, or to the Secretary of the Treasury for centralized administrative offset. The certification confirms the existence and amount of the debt and verifies that required procedural protections have been afforded the employee. Where the debtor requests a hearing on a claimed debt, the decision by a hearing official or administrative law judge constitutes a certification.

(e) *Chairman* means the Chairman of the FDIC.

(f) *Compromise* means the settlement or forgiveness of a debt under 31 U.S.C. 3711, in accordance with standards set forth in the FCCS and applicable federal law.

(g) *Creditor agency* means an agency of the federal government to which the debt is owed, or a debt collection center when acting on behalf of a creditor agency to collect a debt.

(h) *Debt* means an amount owed to the United States from 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, interest, fines and forfeitures,

and all other similar sources. For purposes of this part, a debt owed to the FDIC constitutes a debt owed to the United States.

(i) *Debt collection center* means the Department of the Treasury or other government agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies in accordance with 31 U.S.C. 3711(g).

(j) *Director* means the Director of the Division of Finance (DOF) or the Director of the Division of Administration (DOA), as applicable, or the applicable Director's delegate.

(k) *Disposable pay* means that part of current adjusted basic pay, special pay, incentive pay, retired pay, retainer pay, and, in the case of an employee not entitled to adjusted basic pay, other authorized pay, remaining for each pay period after the deduction of any amount required by law to be withheld. The FDIC shall allow the following deductions in determining the amount of disposable pay that is subject to salary offset:

- (1) Federal employment taxes;
- (2) Federal, state, or local income taxes to the extent authorized or required by law, but no greater than would be the case if the employee claimed all dependents to which he or she is entitled and such additional amounts for which the employee presents evidence of a tax obligation supporting the additional withholding;
- (3) Medicare deductions;
- (4) Health insurance premiums;
- (5) Normal retirement contributions, including employee contributions to the Thrift Savings Plan or the FDIC 401(k) Plan;
- (6) Normal life insurance premiums (e.g., Serviceman's Group Life Insurance and "Basic Life" Federal Employee's Group Life Insurance premiums), not including amounts deducted for supplementary coverage;
- (7) Amounts mandatorily withheld for the United States Soldiers' and Airmen's Home;
- (8) Fines and forfeiture ordered by a court-martial or by a commanding officer.

(l) *Division of Administration* (DOA) means the Division of Administration of the FDIC.

(m) *Division of Finance* (DOF) means the Division of Finance of the FDIC.

(n) *Federal Claims Collection Standards* (FCCS) means standards published at 31 CFR chapter IX and parts 900 through 904.

(o) *Garnishment* means the process of withholding amounts from the disposable pay of a person employed outside the federal government, and the

paying of those amounts to a creditor in satisfaction of a withholding order.

(p) *Hearing official* means an administrative law judge or other individual authorized to conduct a hearing and issue a final decision in response to a debtor's request for hearing. A hearing official may not be under the supervision or control of the Chairman or FDIC Board when the FDIC is the creditor agency.

(q) *Notice of Intent to Offset or Notice of Intent* means a written notice from a creditor agency to an employee, organization, or entity that claims a debt and informs the debtor that the creditor agency intends to collect the debt by administrative offset. The notice also informs the debtor of certain procedural rights with respect to the claimed debt and offset.

(r) *Notice of Salary Offset* means a written notice from a paying agency to its employee informing the employee that salary offset to collect a debt due to the creditor agency will begin at the next officially established pay interval. The paying agency transmits this notice to its employee after receiving a certification from the creditor agency.

(s) *Paying agency* means the agency of the federal government that employs the individual who owes a debt to an agency of the federal government. The same agency may be both the creditor agency and the paying agency.

(t) *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.

(u) *Waiver* means the cancellation, remission, forgiveness or non-recovery of a debt allegedly owed by an employee to an agency, as authorized or required by 5 U.S.C. 5584 or any other law.

(v) *Withholding order* means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body. For purposes of administrative wage garnishment, the terms "wage garnishment order" and "garnishment order" have the same meaning as "withholding order."

### § 313.4 Delegations of authority.

Authority to conduct the following activities is delegated to the Director of DOA or Director of DOF, as applicable, or the applicable Director's delegate, to:

(a) Initiate and carry out the debt collection process on behalf of the FDIC, in accordance with the FCCS;

(b) Accept or reject compromise offers and suspend or terminate collection actions to the full extent of the FDIC's legal authority under 12 U.S.C. 1819(a)

and 1820(a), 31 U.S.C. 3711(a)(2), and any other applicable statute or regulation, provided, however, that no such claim shall be compromised or collection action terminated, except upon the concurrence of the FDIC General Counsel or his or her designee;

(c) Report to consumer reporting agencies certain data pertaining to delinquent debts, where appropriate;

(d) Use administrative offset procedures, including salary offset, to collect debts; and

(e) Take any other action necessary to promptly and effectively collect debts owed to the United States in accordance with the policies contained herein and as otherwise provided by law.

#### §§ 313.5–313.19 [Reserved]

### Subpart B—Administrative Offset

#### § 313.20 Applicability and scope.

The provisions of this subpart apply to the collection of debts owed to the United States arising from transactions with the FDIC. Administrative offset is authorized under the DCIA. This subpart is consistent with the FCCS on administrative offset issued by the Department of Justice.

#### § 313.21 Definitions.

(a) *Administrative offset* means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt.

(b) *Person* includes a natural person or persons, profit or nonprofit corporation, partnership, association, trust, estate, consortium, or other entity which is capable of owing a debt to the United States Government except that agencies of the United States, or any state or local government shall be excluded.

#### § 313.22 Collection.

(a) The Director may collect a claim from a person by administrative offset of monies payable by the Government only after:

(1) Providing the debtor with due process required under this part; and

(2) Providing the paying agency with written certification that the debtor owes the debt in the amount stated and that the FDIC, as creditor agency, has complied with this part.

(b) Prior to initiating collection by administrative offset, the Director should determine that the proposed offset is within the scope of this remedy, as set forth in 31 CFR 901.3(a). Administrative offset under 31 U.S.C. 3716 may not be used to collect debts more than 10 years after the federal government's right to collect the debt first accrued, except as otherwise

provided by law. In addition, administrative offset may not be used when a statute explicitly prohibits its use to collect the claim or type of claim involved.

(c) Unless otherwise provided, debts or payments not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under common law, or any other applicable statutory authority.

#### § 313.23 Offset prior to completion of procedures.

The FDIC may collect a debt by administrative offset prior to the completion of the procedures described in § 313.25, if:

(a) Failure to offset a payment would substantially prejudice the FDIC's ability to collect the debt; and

(b) The time before the payment is to be made does not reasonably permit completion of the procedures described in § 313.25. Such prior offsetting shall be followed promptly by the completion of the procedures described in § 313.25.

#### § 313.24 Omission of procedures.

The FDIC shall not be required to follow the procedures described in § 313.25 where:

(a) The offset is in the nature of a recoupment (*i.e.*, the FDIC may offset a payment due to the debtor when both the payment due to the debtor and the debt owed to the FDIC arose from the same transaction); or

(b) The debt arises under a contract as set forth in *Cecile Industries, Inc. v. Cheney*, 995 F.2d 1052 (Fed. Cir. 1993), which provides that procedural protections under administrative offset 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, the FDIC first learns of the existence of a debt due when there would be insufficient time to afford the debtor due process under these procedures before the paying agency makes payment to the debtor; in such cases, the Director shall give the debtor notice and an opportunity for review as soon as practical and shall refund any money ultimately found not to be due to the U.S. Government.

#### § 313.25 Debtor's rights.

Unless the procedures described in § 313.23 are used, prior to collecting any claim by administrative offset or referring such claim to another agency for collection through administrative offset, the Director shall provide the debtor with the following:

(a) Written notification of the nature and amount of the claim, the intention

of the Director to collect the claim through administrative offset, and a statement of the rights of the debtor under this paragraph;

(b) An opportunity to inspect and copy the records of the FDIC with respect to the claim, unless such records are exempt from disclosure;

(c) An opportunity to have the FDIC's determination of indebtedness reviewed by the Director:

(1) Any request by the debtor for such review shall be in writing and shall be submitted to the FDIC within 30 calendar days of the date of the notice of the offset. The Director may waive the time limit for requesting review for good cause shown by the debtor;

(2) Upon acceptance of a request for review by the debtor, the FDIC shall provide the debtor with a reasonable opportunity for an oral hearing when the determination turns on an issue of credibility or veracity, or the Director determines that the question of the indebtedness cannot be resolved by review of the documentary evidence alone. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although the Director shall document all significant matters discussed at the hearing. In cases where an oral hearing is not required by this section, the Director shall make his determination based on a documentary hearing consisting of a review of the written record; and

(d) An opportunity to enter into a written agreement for the voluntary repayment of the amount of the claim at the discretion of the Director.

#### § 313.26 Interest.

Pursuant to 31 U.S.C. 3717, the FDIC shall assess interest, penalties and administrative costs on debts owed to the United States. The FDIC is authorized to assess interest and related charges on debts that are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

#### § 313.27 Refunds.

Amounts recovered by administrative offset but later found not to be owed to the Government shall be promptly refunded. Unless required by law or contract, such refunds shall not bear interest.

#### § 313.28 No requirement for duplicate notice.

Where the Director has previously given a debtor any of the required notice and review opportunities with respect to a particular debt, the Director is not required to duplicate such notice and

review opportunities prior to initiating administrative offset.

**§ 313.29 Requests for offset to other federal agencies.**

The Director may request that a debt owed to the FDIC be administratively offset against funds due and payable to a debtor by another federal agency. In requesting administrative offset, the FDIC, as the creditor agency, will certify in writing to the federal agency holding funds payable to the debtor:

- (a) That the debtor owes the debt;
- (b) The amount and basis of the debt; and
- (c) That the FDIC has complied with the requirements of its own administrative offset regulations and the applicable provisions of 31 U.S.C. 3716 with respect to providing the debtor with due process, unless otherwise provided.

**§ 313.30 Requests for offset from other federal agencies.**

Any federal agency may request that funds due and payable to its debtor by the FDIC be administratively offset by the FDIC in order to collect a debt owed to such agency by the debtor. The FDIC shall initiate the requested offset only upon:

- (a) Receipt of written certification from the creditor agency stating:
  - (1) That the debtor owes the debt;
  - (2) The amount and basis of the debt; and
  - (3) That the agency has complied with its own administrative offset regulations and with the applicable provisions of 31 CFR 901.3, including providing any required hearing or review.
- (b) A determination by the creditor agency that collection by offset against funds payable by the FDIC would be in the best interest of the United States and that such offset would not otherwise be contrary to law.

**§§ 313.31—313.39 [Reserved]**

**Subpart C—Salary Offset**

**§ 313.40 Scope.**

These salary offset regulations are issued in compliance with 5 U.S.C. 5514 and 5 CFR part 550, subpart K, and apply to the collection of debts owed by employees of the FDIC or other federal agencies. These salary offset procedures do not apply where an employee consents to the recovery of a debt from his current pay account. These procedures do not apply to debts arising under the Internal Revenue Code, 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 under 5 U.S.C. 5705 and employee training expenses under 5 U.S.C. 4108). These procedures do not preclude an employee from requesting waiver of an erroneous payment under 5 U.S.C. 5584, or in any way questioning the amount or validity of a debt, in the manner specified by law or these agency regulations. This section also does not preclude an employee from requesting waiver of the collection of a debt under any other applicable statutory authority. When possible, salary offset through centralized administrative offset procedures should be attempted before seeking salary offset from a paying agency different than the creditor agency.

**§ 313.41 Notice requirement where FDIC is creditor agency.**

Where the FDIC seeks salary offset under 5 U.S.C. 5514 as the creditor agency, the FDIC shall first provide the employee with a written Notice of Intent to Offset at least 30 calendar days before salary offset is to commence. The Notice of Intent to Offset shall include the following information and statements:

- (a) That the Director has determined that a debt is owed to the FDIC and intends to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest is paid in full or otherwise resolved;
- (b) The amount of the debt and the factual basis for the debt;
- (c) A salary offset schedule stating the frequency and amount of each deduction, stated as a fixed dollar amount or percentage of disposable pay (not to exceed 15%);
- (d) That in lieu of salary offset, the employee may propose a voluntary repayment plan to satisfy the debt on terms acceptable to the FDIC, which must be documented in writing, signed by the employee and the Director or the Director's designee, and documented in the FDIC's files;

(e) The FDIC's policy concerning interest, penalties, and administrative costs, and a statement that such assessments must be made, unless excused in accordance with the FCCS;

(f) That the employee has the right to inspect and copy FDIC records not exempt from disclosure relating to the debt claimed, or to receive copies of such records if the employee or the employee's representative is unable personally to inspect the records, due to geographical or other constraints:

- (1) That such requests be made in writing, and identify by name and address the Director or other designated individual to whom the request should be sent; and

(2) That upon receipt of such a request, the Director or the Director's designee shall notify the employee of the time and location where the records may be inspected and copied;

(g) That the employee has a right to request a hearing regarding the existence and amount of the debt claimed or the salary offset schedule proposed by the FDIC, provided that the employee files a request for such a hearing with the FDIC in accordance with § 313.42 that such a hearing will be conducted by an impartial official who is an administrative law judge or other hearing official not under the supervision or control of the Board;

(h) The procedure and deadline for requesting a hearing, including the name, address, and telephone number of the Director or other designated individual to whom a request for hearing must be sent;

(i) That a request for hearing must be received by the FDIC on or before the 30th calendar day following receipt of the Notice of Intent to Offset, and that filing of a request for hearing will stay the collection proceedings;

(j) That the FDIC will initiate salary offset procedures not less than 30 days from the date of the employee's receipt of the Notice of Intent to Offset, unless the employee files a timely request for a hearing;

(k) That if a hearing is held, the administrative law judge or other hearing official will issue a decision at the earliest practical date, but not later than 60 days after the filing of the request for the hearing, unless the employee requests a delay in the proceedings which is granted by the hearing official;

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

(1) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable statutes or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729 through 3731, or under any other applicable statutory authority; or

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or under any other applicable statutory authority;

(m) That the employee also has the right to request waiver of overpayment pursuant to 5 U.S.C. 5584, and may exercise any other rights and remedies available under statutes or regulations governing the program for which the collection is being made; and

(n) That amounts paid on or deducted from debts that are later waived or found not to be owed to the United States will be promptly refunded to the

employee, unless there are applicable contractual or statutory provisions to the contrary.

**§ 313.42 Procedures to request a hearing.**

(a) To request a hearing, an employee must send a written request to the Director. The request must be received by the Director within 30 calendar days after the employee's receipt of the Notice of Intent.

(b) The request must be signed by the employee and must fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, that the employee believes support his or her position. The request for hearing must state whether the employee is requesting an oral or documentary hearing. If an oral hearing is requested, the request shall explain why the matter cannot be resolved by a review of documentary evidence alone.

**§ 313.43 Failure to timely submit request for hearing.**

If the Director does not receive an employee's request for hearing within the 30-day period set forth in § 313.42(a), the employee shall not be entitled to a hearing. However, the Director may accept an untimely request for hearing if the employee can show that the delay was the result of circumstances beyond his or her control or that he or she failed to receive actual notice of the filing deadline.

**§ 313.44 Procedure for hearing.**

(a) *Obtaining the services of a hearing official.* When the FDIC is the creditor agency and the debtor is an FDIC employee, the FDIC shall designate an administrative law judge or contact any agent of another agency designated in appendix A to 5 CFR part 581 to arrange for a hearing official. When the FDIC is the creditor agency and the debtor is not an FDIC employee (*i.e.*, the debtor is employed by another federal agency, also known as the paying agency), and the FDIC cannot provide a prompt and appropriate hearing before an administrative law judge or a hearing official furnished pursuant to a lawful arrangement, the FDIC may contact an agent of the paying agency designated in appendix A to 5 CFR part 581 to arrange for a hearing official. The paying agency must cooperate with the FDIC to provide a hearing official, as required by the FCCS.

(b) *Notice and format of hearing.* (1) *Notice.* The hearing official shall determine whether the hearing shall be oral or documentary and shall notify the employee of the form of the hearing. If the hearing will be oral, the notice shall set forth the date, time, and location of

the hearing, which must be held within 30 calendar days after the request is received, unless the employee requests that the hearing be delayed. If the hearing will be documentary, the employee shall be notified to submit evidence and written arguments in support of his or her case to the hearing official within 30 calendar days.

(2) *Oral hearing.* The hearing official may grant a request for an oral hearing if he or she determines that the issues raised by the employee cannot be resolved by review of documentary evidence alone (*e.g.*, where credibility or veracity are at issue). An oral hearing is not required to be an adversarial adjudication, and the hearing official is not required to apply rules of evidence. Witnesses who testify in oral hearings shall do so under oath or affirmation. Oral hearings may take the form of, but are not limited to:

(i) Informal conferences with the hearing official in which the employee and agency representative are given full opportunity to present evidence, witnesses, and argument;

(ii) Informal meetings in which the hearing examiner interviews the employee; or

(iii) Formal written submissions followed by an opportunity for oral presentation.

(3) *Documentary hearing.* If the hearing official determines that an oral hearing is not necessary, he or she shall decide the issues raised by the employee based upon a review of the written record.

(4) *Record.* The hearing official shall maintain a summary record of any hearing conducted under this section.

(c) *Rescheduling of the hearing date.* The hearing official shall reschedule a hearing if requested to do so by both parties, who shall be given reasonable notice of the time and place of this new hearing.

(d) *Failure to appear.* In the absence of good cause, an employee who fails to appear at a hearing shall be deemed, for the purpose of this subpart, to admit the existence and amount of the debt as described in the Notice of Intent. If the representative of the creditor agency fails to appear, the hearing official shall proceed with the hearing as scheduled, and issue a decision based upon the oral testimony presented and the documentation submitted by both parties.

(e) *Date of decision.* The hearing official shall issue a written decision based upon the evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than 60 calendar days after the date on which the request for hearing

was received by the FDIC, unless the hearing was delayed at the request of the employee. In the event of such a delay, the 60-day decision period shall be extended by the number of days by which the hearing was postponed. The decision of the hearing official shall be final.

(f) *Content of decision.* The written decision shall include:

(1) A summary of the facts concerning the origin, nature, and amount of the debt;

(2) The hearing official's findings, analysis, and conclusions; and

(3) The terms of the repayment schedule, if applicable.

(g) *Official certification of debt.* The hearing official's decision shall constitute an official certification regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514. Where the FDIC is the creditor agency but not the current paying agency, the FDIC may make a certification regarding the existence and amount of the debt owed to the FDIC, based on the hearing official's certification. The FDIC may make this certification to: the Secretary of the Treasury so that Treasury may offset the employee's current pay account by means of centralized administrative offset (5 CFR 550.1108); or to the current paying agency (5 CFR 550.1109). If the hearing official determines that a debt may not be collected through salary offset but the FDIC as the creditor agency determines that the debt is still valid, the FDIC may seek collection of the debt through other means, including administrative offset of other federal payments or litigation.

**§ 313.45 Certification of debt by FDIC as creditor agency.**

The Director may also issue a certification of the debt where there has not been a hearing, if the employee has admitted the debt, or failed to contest the existence and amount of the debt in a timely manner (*e.g.*, by failing to request a hearing). The certification shall be in writing and shall state:

(a) The amount and basis of the debt owed by the employee;

(b) The date the FDIC's right to collect the debt first accrued;

(c) That the FDIC's debt collection regulations have been approved by OPM pursuant to 5 CFR part 550, subpart K;

(d) If the collection is to be made by lump-sum payment, the amount and date such payment will be collected;

(e) If the collection is to be made in installments through salary offset, the number of installments to be collected, the amount of each installment, and the date of the first installment, if a date



other than the next officially established pay period; and

(f) The date the employee was notified of the debt, the action(s) taken pursuant to the FDIC's regulations, and the dates such actions were taken.

**§ 313.46 Notice of salary offset where FDIC is the paying agency.**

(a) Upon issuance of a proper certification by the Director for debts owed to the FDIC, or upon receipt of a proper certification from a creditor agency, the Director shall send the employee a written notice of salary offset. Such notice shall advise the employee:

(1) That certification has been issued by the Director or received from another creditor agency;

(2) Of the amount of the debt and of the deductions to be made; and

(3) Of the initiation of salary offset at the next officially established pay interval or as otherwise provided for in the certification.

(b) Where appropriate, the Director shall provide a copy of the notice to the creditor agency and advise such agency of the dollar amount to be offset and the pay period when the offset will begin.

**§ 313.47 Voluntary repayment agreements as alternative to salary offset where the FDIC is the creditor agency.**

(a) In response to a Notice of Intent, an employee may propose to voluntarily repay the debt through scheduled voluntary payments, in lieu of salary offset. An employee who wishes to repay a debt in this manner shall submit to the Director a written agreement proposing a repayment schedule. This proposal must be received by the Director within 30 calendar days after receipt of the Notice of Intent.

(b) The Director shall notify the employee whether the employee's proposed voluntary repayment agreement is acceptable. It is within the discretion of the Director whether to accept or reject the debtor's proposal, or whether to propose to the debtor a modification of the proposed repayment agreement:

(1) If the Director decides that the proposed repayment agreement is unacceptable, he or she shall notify the employee and the employee shall have 30 calendar days from the date he or she received notice of the decision in which to file a request for a hearing on the proposed repayment agreement, as provided in § 313.42; or

(2) If the Director decides that the proposed repayment agreement is acceptable or the debtor agrees to a modification proposed by the Director, the agreement shall be put in writing

and signed by both the employee and the Director.

**§ 313.48 Special review of repayment agreement or salary offset due to changed circumstances.**

(a) An employee subject to a voluntary repayment agreement or salary offset payable to the FDIC as creditor agency may request a special review by the Director of the amount of the salary offset or voluntary repayment, based on materially changed circumstances, including, but not limited to, catastrophic illness, divorce, death, or disability. A request for special review may be made at any time.

(b) In support of a request for special review, the employee shall submit to the Director a detailed statement and supporting documents for the employee, his or her spouse, and dependents indicating:

(1) Income from all sources;

(2) Assets;

(3) Liabilities;

(4) Number of dependents;

(5) Monthly expenses for food, housing, clothing, and transportation;

(6) Medical expenses; and

(7) Exceptional expenses, if any.

(c) The employee shall also file an alternative proposed offset or payment schedule and a statement, with supporting documents, showing why the current salary offset or payments result in extreme financial hardship to the employee.

(d) The Director shall evaluate the statement and supporting documents and determine whether the original salary offset or repayment schedule imposes extreme financial hardship on the employee, for example, by preventing the employee from meeting essential subsistence expenses such as food, housing, clothing, transportation, and medical care. The Director shall notify the employee in writing within 30 calendar days of his or her determination.

(e) If the special review results in a revised salary offset or repayment schedule, the Director shall provide a new certification to the paying agency.

**§ 313.49 Coordinating salary offset with other agencies.**

(a) *Responsibility of the FDIC as the creditor agency.* Upon completion of the procedures established in § 313.40 through § 313.45, the Director shall take the following actions:

(1) Submit a debt claim to the paying agency, containing the information described in paragraphs (a)(2) and (a)(3) of this section, together with the certification of debt or an installment agreement (or other instruction

regarding the payment schedule, if applicable).

(2) If the collection must be made in installments, inform the paying agency of the amount or percentage of disposable pay to be collected in each installment. The Director may also inform the paying agency of the commencement date and number of installments to be paid, if a date other than the next officially established pay period is required.

(3) Unless the employee has consented to the salary offset in writing or has signed a statement acknowledging receipt of the required procedures and the written consent or statement is forwarded to the paying agency, the Director must also advise the paying agency of the actions the FDIC has taken under 5 U.S.C. 5514 and state the dates such action was taken.

(4) If the employee is in the process of separating from employment, the Director shall submit the debt claim to the employee's paying agency for collection by lump-sum deduction from the employee's final check. The paying agency shall certify the total amount of its collection and furnish a copy of the certification to the FDIC and to the employee.

(5) If the employee is already separated and all payments due from his or her former paying agency have been paid, the Director may, unless otherwise prohibited, request that money due and payable to the employee from the federal government, including payments from the Civil Service Retirement and Disability Fund (5 CFR 831.1801), be administratively offset to collect the debt.

(6) In the event an employee transfers to another paying agency, the Director shall not repeat the procedures described in § 313.40 through § 313.45 in order to resume collecting the debt. Instead, the FDIC shall review the debt upon receiving the former paying agency's notice of the employee's transfer and shall ensure that collection is resumed by the new paying agency. The FDIC must submit a properly certified claim to the new paying agency before collection can be resumed.

(b) *Responsibility of the FDIC as the paying agency.* (1) *Complete claim.* When the FDIC receives a properly certified claim from a creditor agency, the employee shall be given written notice of the certification, the date salary offset will begin, and the amount of the periodic deductions. The FDIC shall schedule deductions to begin at the next officially established pay interval or as otherwise provided for in the certification.



(2) *Incomplete claim.* When the FDIC receives an incomplete certification of debt from a creditor agency, the FDIC shall return the debt claim with notice that procedures under 5 U.S.C. 5514 and 5 CFR 550.1104 must be followed and that a properly certified debt claim must be received before action will be taken to collect from the employee's current pay account.

(3) *Review.* The FDIC is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(4) *Employees who transfer from one paying agency to another agency.* If, after the creditor agency has submitted the debt claim to the FDIC, the employee transfers to a different paying agency before the debt is collected in full, the FDIC must certify the total amount collected on the debt. One copy of the certification shall be furnished to the employee, and one copy shall be sent to the creditor agency along with notice of the employee's transfer. If the FDIC is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that the requirements set forth herein and in the OPM's regulation (5 CFR part 550, subpart K) have been fully met.

#### **§ 313.50 Interest, penalties, and administrative costs.**

Where the FDIC is the creditor agency, it shall assess interest, penalties, and administrative costs pursuant to 31 U.S.C. 3717 and 31 CFR parts 900 through 904.

#### **§ 313.51 Refunds.**

(a) Where the FDIC is the creditor agency, it shall promptly refund any amount deducted under the authority of 5 U.S.C. 5514 when the debt is compromised or otherwise found not to be owing to the United States, or when an administrative or judicial order directs the FDIC to make a refund.

(b) Unless required by law or contract, such refunds shall not bear interest.

#### **§ 313.52 Request from a creditor agency for services of a hearing official.**

(a) The FDIC may provide a hearing official upon request of the creditor agency when the debtor is employed by the FDIC and the creditor agency cannot provide a prompt and appropriate hearing before a hearing official furnished pursuant to another lawful arrangement.

(b) The FDIC may provide a hearing official upon request of a creditor agency when the debtor works for the creditor agency and that agency cannot arrange for a hearing official.

(c) The Director shall arrange for qualified personnel to serve as hearing officials.

(d) Services rendered under paragraph (a) of this section shall be provided on a fully reimbursable basis pursuant to 31 U.S.C. 1535.

#### **§ 313.53 Non-waiver of rights by payments.**

A debtor's payment, whether voluntary or involuntary, of all or any portion of a debt being collected pursuant to this section shall not be construed as a waiver of any rights that the debtor may have under any statute, regulation, or contract except as otherwise provided by law or contract.

#### **§ 313.54 Exception to due process procedures.**

(a) The procedures set forth in this subpart shall not apply to routine intra-agency salary adjustments of pay, including the following:

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less;

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

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

(b) The procedure for notice to the employee and collection of such adjustments is set forth in § 313.55.

#### **§ 313.55 Salary adjustments.**

Any negative adjustment to pay arising out of an employee's election of coverage, or a change in coverage, under a federal benefits program requiring periodic deductions from pay shall not be considered collection of a "debt" for the purposes of this section if the

amount to be recovered was accumulated over four pay periods or less. In such cases, the FDIC shall not apply this subpart C, but will provide a clear and concise statement in the employee's earnings statement advising the employee of the previous overpayment at the time the adjustment is made.

#### **§§ 313.56—313.79 [Reserved]**

### **Subpart D—Administrative Wage Garnishment**

#### **§ 313.80 Scope and purpose.**

(a) These administrative wage garnishment regulations are issued in compliance with 31 U.S.C. 3720D and 31 CFR 285.11(f). The subpart provides procedures for the FDIC to collect money from a debtor's disposable pay by means of administrative wage garnishment. The receipt of payments pursuant to this subpart does not preclude the FDIC from pursuing other debt collection remedies, including the offset of federal payments. The FDIC may pursue such debt collection remedies separately or in conjunction with administrative wage garnishment. This subpart does not apply to the collection of delinquent debts from the wages of federal employees from their federal employment. Federal pay is subject to the federal salary offset procedures set forth in 5 U.S.C. 5514 and other applicable laws.

#### **§ 313.81 Notice.**

At least 30 days before the initiation of garnishment proceedings, the Director will send, by first class mail to the debtor's last known address, a written notice informing the debtor of:

(a) The nature and amount of the debt;

(b) The FDIC's intention to initiate proceedings to collect the debt through deductions from the debtor's pay until the debt and all accumulated interest penalties and administrative costs are paid in full;

(c) An explanation of the debtor's rights as set forth in § 313.82(c); and

(d) The time frame within which the debtor may exercise these rights. The FDIC shall retain a stamped copy of the notice indicating the date the notice was mailed.

#### **§ 313.82 Debtor's rights.**

The FDIC shall afford the debtor the opportunity:

(a) To inspect and copy records related to the debt;

(b) To enter into a written repayment agreement with the FDIC, under terms agreeable to the FDIC; and

(c) To the extent that a debt owed has not been established by judicial or

administrative order, to request a hearing concerning the existence or amount of the debt or the terms of the repayment schedule. With respect to debts established by a judicial or administrative order, a debtor may request a hearing concerning the payment or other discharge of the debt. The debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement.

#### **§ 313.83 Form of hearing.**

(a) If the debtor submits a timely written request for a hearing as provided in § 313.82(c), the FDIC will afford the debtor a hearing, which at the FDIC's option may be oral or written. The FDIC will provide the debtor with a reasonable opportunity for an oral hearing when the Director determines that the issues in dispute cannot be resolved by review of the documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity.

(b) If the FDIC determines that an oral hearing is appropriate, the time and location of the hearing shall be established by the FDIC. An oral hearing may, at the debtor's option, be conducted either in person or by telephone conference. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during the hearing will be the responsibility of the agency.

(c) In cases when it is determined that an oral hearing is not required by this section, the FDIC will accord the debtor a "paper hearing," that is, the FDIC will decide the issues in dispute based upon a review of the written record.

#### **§ 313.84 Effect of timely request.**

If the FDIC receives a debtor's written request for hearing within 15 business days of the date the FDIC mailed its notice of intent to seek garnishment, the FDIC shall not issue a withholding order until the debtor has been provided the requested hearing, and a decision in accordance with § 313.88 and § 313.89 has been rendered.

#### **§ 313.85 Failure to timely request a hearing.**

If the FDIC receives a debtor's written request for hearing after 15 business days of the date the FDIC mailed its notice of intent to seek garnishment, the FDIC shall provide a hearing to the debtor. However, the FDIC will not delay issuance of a withholding order unless it determines that the untimely filing of the request was caused by

factors over which the debtor had no control, or the FDIC receives information that the FDIC believes justifies a delay or cancellation of the withholding order.

#### **§ 313.86 Hearing official.**

A hearing official may be any qualified individual, as determined by the FDIC, including an administrative law judge.

#### **§ 313.87 Procedure.**

After the debtor requests a hearing, the hearing official shall notify the debtor of:

- (a) The date and time of a telephonic hearing;
- (b) The date, time, and location of an in-person oral hearing; or
- (c) The deadline for the submission of evidence for a written hearing.

#### **§ 313.88 Format of hearing.**

The FDIC will have the burden of proof to establish the existence or amount of the debt. Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must prove by a preponderance of the evidence that no debt exists, or that the amount of the debt is incorrect. In addition, the debtor may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to the debtor, or that collection of the debt may not be pursued due to operation of law. The hearing official shall maintain a record of any hearing held under this section. Hearings are not required to be formal, and evidence may be offered without regard to formal rules of evidence. Witnesses who testify in oral hearings shall do so under oath or affirmation.

#### **§ 313.89 Date of decision.**

The hearing official shall issue a written opinion stating his or her decision as soon as practicable, but not later than sixty (60) days after the date on which the request for such hearing was received by the FDIC. If the FDIC is unable to provide the debtor with a hearing and decision within sixty (60) days after the receipt of the request for such hearing:

- (a) The FDIC may not issue a withholding order until the hearing is held and a decision rendered; or
- (b) If the FDIC had previously issued a withholding order to the debtor's employer, the withholding order will be suspended beginning on the 61st day after the date the FDIC received the hearing request and continuing until a hearing is held and a decision is rendered.

#### **§ 313.90 Content of decision.**

The written decision shall include:

- (a) A summary of the facts presented;
- (b) The hearing official's findings, analysis and conclusions; and
- (c) The terms of any repayment schedule, if applicable.

#### **§ 313.91 Finality of agency action.**

Unless the FDIC on its own initiative orders review of a decision by a hearing official pursuant to 17 CFR 201.431(c), a decision by a hearing official shall become the final decision of the FDIC for the purpose of judicial review under the Administrative Procedure Act.

#### **§ 313.92 Failure to appear.**

In the absence of good cause shown, a debtor who fails to appear at a scheduled hearing will be deemed as not having timely filed a request for a hearing.

#### **§ 313.93 Wage garnishment order.**

(a) Unless the FDIC receives information that it believes justifies a delay or cancellation of the withholding order, the FDIC will send by first class mail a withholding order to the debtor's employer within 30 days after the debtor fails to make a timely request for a hearing (*i.e.*, within 15 business days after the mailing of the notice of the FDIC's intent to seek garnishment) or, if a timely request for a hearing is made by the debtor, within 30 days after a decision to issue a withholding order becomes final.

(b) The withholding order sent to the employer will be in the form prescribed by the Secretary of the Treasury, on the FDIC's letterhead, and signed by the head of the agency or delegate. The order will contain all information necessary for the employer to comply with the withholding order, including the debtor's name, address, and social security number, as well as instructions for withholding and information as to where payments should be sent.

(c) The FDIC will keep a stamped copy of the order indicating the date it was mailed.

#### **§ 313.94 Certification by employer.**

Along with the withholding order, the FDIC will send to the employer a certification in a form prescribed by the Secretary of the Treasury. The employer shall complete and return the certification to the FDIC within the time frame prescribed in the instructions to the form. The certification will address matters such as information about the debtor's employment status and disposable pay available for withholding.

**§ 313.95 Amounts withheld.**

(a) Upon receipt of the garnishment order issued under this section, the employer shall deduct from all disposable pay paid to the debtor during each pay period the amount of garnishment described in paragraphs (b) through (d) of this section.

(b) Subject to the provisions of paragraphs (c) and (d) of this section, the amount of garnishment shall be the lesser of:

(1) The amount indicated on the garnishment order up to 15% of the debtor's disposable pay; or

(2) The amount set forth in 15 U.S.C. 1673(a)(2). The amount set forth at 15 U.S.C. 1673(a)(2) is the amount by which the debtor's disposable pay exceeds an amount equivalent to thirty times the minimum wage. See 29 CFR 870.10.

(c) When a debtor's pay is subject to withholding orders with priority, the following shall apply:

(1) Unless otherwise provided by federal law, withholding orders issued under this section shall be paid in the amounts set forth under paragraph (b) of this section and shall have priority over other withholding orders which are served later in time. However, withholding orders for family support shall have priority over withholding orders issued under this section.

(2) If amounts are being withheld from a debtor's pay pursuant to a withholding order served on an employer before a withholding order issued pursuant to this section, or if a withholding order for family support is served on an employer at any time, the amounts withheld pursuant to the withholding order issued under this section shall be the lesser of:

(i) The amount calculated under paragraph (b) of this section; or

(ii) An amount equal to 25% of the debtor's disposable pay less the amount(s) withheld under the withholding order(s) with priority.

(3) If a debtor owes more than one debt to the FDIC, the FDIC may issue multiple withholding orders. The total amount garnished from the debtor's pay for such orders will not exceed the amount set forth in paragraph (b) of this section.

(d) An amount greater than that set forth in paragraphs (b) and (c) of this section may be withheld upon the written consent of the debtor.

(e) The employer shall promptly pay to the FDIC all amounts withheld in accordance with the withholding order issued pursuant to this section.

(f) An employer shall not be required to vary its normal pay and disbursement

cycles in order to comply with the withholding order.

(g) Any assignment or allotment by the employee of the employee's earnings shall be void to the extent it interferes with or prohibits execution of the withholding order under this section, except for any assignment or allotment made pursuant to a family support judgment or order.

(h) The employer shall withhold the appropriate amount from the debtor's wages for each pay period until the employer receives notification from the FDIC to discontinue wage withholding. The garnishment order shall indicate a reasonable period of time within which the employer is required to commence wage withholding.

**§ 313.96 Exclusions from garnishment.**

The FDIC will not garnish the wages of a debtor it knows has been involuntarily separated from employment until the debtor has been re-employed continuously for at least 12 months. The debtor has the burden of informing the FDIC of the circumstances surrounding an involuntary separation from employment.

**§ 313.97 Financial hardship.**

(a) A debtor whose wages are subject to a wage withholding order under this section, may, at any time, request a review by the FDIC of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.

(b) A debtor requesting a review under this section shall submit the basis for claiming that the current amount of garnishment results in a financial hardship to the debtor, along with supporting documentation.

(c) If a financial hardship is found, the FDIC will downwardly adjust, by an amount and for a period of time agreeable to the FDIC, the amount garnished to reflect the debtor's financial condition. The FDIC will notify the employer of any adjustments to the amounts to be withheld.

**§ 313.98 Ending garnishment.**

(a) Once the FDIC has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs consistent with the FCCS, the FDIC will send the debtor's employer notification to discontinue wage withholding.

(b) At least annually, the FDIC will review its debtors' accounts to ensure that garnishment has been terminated for accounts that have been paid in full.

**§ 313.99 Prohibited actions by employer.**

The DCIA prohibits an employer from discharging, refusing to employ, or taking disciplinary action against the debtor due to the issuance of a withholding order under this subpart.

**§ 313.100 Refunds.**

(a) If a hearing official determines that a debt is not legally due and owing to the United States, the FDIC shall promptly refund any amount collected by means of administrative wage garnishment.

(b) Unless required by federal law or contract, refunds under this section shall not bear interest.

**§ 313.101 Right of action.**

The FDIC may sue any employer for any amount that the employer fails to withhold from wages owed and payable to its employee in accordance with this subpart. However, a suit will not be filed before the termination of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations. For purposes of this subpart, "termination of the collection action" occurs when the agency has terminated collection action in accordance with the FCCS (31 CFR 903.1 through 903.5) or other applicable standards. In any event, termination of the collection action will have been deemed to occur if the FDIC has not received any payments to satisfy the debt from the particular debtor whose wages were subject to garnishment, in whole or in part, for a period of one (1) year.

**§§ 313.102—313.119 [Reserved]****Subpart E—Tax Refund Offset****§ 313.120 Scope.**

The provisions of 26 U.S.C. 6402(d) and 31 U.S.C. 3720A authorize the Secretary of the Treasury to offset a delinquent debt owed to the United States Government from the tax refund due a taxpayer when other collection efforts have failed to recover the amount due. In addition, the FDIC is authorized to collect debts by means of administrative offset under 31 U.S.C. 3716 and, as part of the debt collection process, to notify the Financial Management Service (FMS), a bureau of the Department of the Treasury, of the amount of such debt for collection by tax refund offset.

**§ 313.121 Definitions.**

For purposes of this subpart E:

(a) *Debt* or *claim* means an amount of money, funds or property which has been determined by the FDIC to be due

to the United States from any person, organization, or entity, except another federal agency.

(b) *Debtor* means a person who owes a debt or a claim. The term "person" includes any individual, organization or entity, except another federal agency.

(c) *Tax refund offset* means withholding or reducing a tax refund payment by an amount necessary to satisfy a debt owed by the payee(s) of a tax refund payment.

(d) *Tax refund payment* means any overpayment of federal taxes to be refunded to the person making the overpayment after the Internal Revenue Service (IRS) makes the appropriate credits.

#### **§ 313.122 Notification of debt to FMS.**

The FDIC shall notify FMS of the amount of any past due, legally enforceable non-tax debt owed to it by a person, for the purpose of collecting such debt by tax refund offset. Notification and referral to FMS of such debts does not preclude FDIC's use of any other debt collection procedures, such as wage garnishment, either separately or in conjunction with tax refund offset.

#### **§ 313.123 Certification and referral of debt.**

When the FDIC refers a past-due, legally enforceable debt to FMS for tax refund offset, it will certify to FMS that:

(a) The debt is past due and legally enforceable in the amount submitted to FMS and that the FDIC will ensure that collections are properly credited to the debt;

(b) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred for offset within ten years after the FDIC's right of action accrues;

(c) The FDIC has made reasonable efforts to obtain payment of the debt, in that it has:

(1) Submitted the debt to FMS for collection by administrative offset and complied with the provisions of 31 U.S.C. 3716(a) and related regulations;

(2) Notified, or has made a reasonable attempt to notify, the debtor that the debt is past-due, and unless repaid within 60 days after the date of the notice, will be referred to FMS for tax refund offset;

(3) Given the debtor at least 60 days to present evidence that all or part of the debt is not past-due or legally enforceable, considered any evidence presented by the debtor, and determined that the debt is past-due and legally enforceable; and

(4) Provided the debtor with an opportunity to make a written agreement to repay the debt; and

(d) The debt is at least \$25.

#### **§ 313.124 Pre-offset notice and consideration of evidence.**

(a) For purposes of § 313.123(c)(2), the FDIC has made a reasonable effort to notify the debtor if it uses the current address information contained in its records related to the debt. The FDIC may, but is not required to, obtain address information from the IRS pursuant to 26 U.S.C. 6103(m)(2), (4), (5).

(b) For purposes of § 313.123(c)(3), if evidence presented by a debtor is considered by an agent of the FDIC, or other entities or persons acting on behalf of the FDIC, the debtor must be accorded at least 30 days from the date the agent or other entity or person determines that all or part of the debt is past-due and legally enforceable to request review by an officer or employee of the FDIC of any unresolved dispute. The FDIC must then notify the debtor of its decision.

#### **§ 313.125 Referral of past-due, legally enforceable debt.**

The FDIC shall submit past-due, legally enforceable debt information for tax refund offset to FMS, as prescribed by FMS. For each debt, the FDIC will include the following information:

(a) The name and taxpayer identification number (as defined in 26 U.S.C. 6109) of the debtor;

(b) The amount of the past-due and legally enforceable debt;

(c) The date on which the debt became past-due; and

(d) The designation of FDIC as the agency referring the debt.

#### **§ 313.126 Correcting and updating referral.**

If, after referring a past-due legally enforceable debt to FMS as provided in § 313.125, the FDIC determines that an error has been made with respect to the information transmitted to FMS, or if the FDIC receives a payment or credits a payment to the account of the debtor referred to FMS for offset, or if the debt amount is otherwise incorrect, the FDIC shall promptly notify FMS and make the appropriate correction of the FDIC's records. FDIC will provide certification as required under § 313.123 for any increases to amounts owed. In the event FMS rejects an FDIC certification for failure to comply with § 323.123, the FDIC may resubmit the debt with a corrected certification.

#### **§ 313.127 Disposition of amounts collected.**

FMS will transmit amounts collected for past-due, legally enforceable debts, less fees charged under this section, to the FDIC's account. The FDIC will

reimburse FMS and the IRS for the cost of administering the tax refund offset program. FMS will deduct the fees from amounts collected prior to disposition and transmit a portion of the fees deducted to reimburse the IRS for its share of the cost of administering the tax refund offset program. To the extent allowed by law, the FDIC may add the offset fees to the debt.

#### **§§ 313.128—313.139 [Reserved]**

### **Subpart F—Civil Service Retirement and Disability Fund Offset**

#### **§ 313.140 Future benefits.**

Unless otherwise prohibited by law, the FDIC may request that a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) be administratively offset in accordance with regulations at 5 CFR 831.1801 through 831.1808.

#### **§ 313.141 Notification to OPM.**

When making a request for administrative offset under § 313.140, the FDIC shall provide OPM with a written certification that:

(a) The debtor owes the FDIC a debt, including the amount of the debt;

(b) The FDIC has complied with the applicable statutes, regulations, and procedures of OPM; and

(c) The FDIC has complied with the requirements of 31 CFR parts 900 through 904, including any required hearing or review.

#### **§ 313.142 Request for administrative offset.**

The Director shall request administrative offset under § 313.140, as soon as practical after completion of the applicable procedures in order to help ensure that offset be initiated prior to expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the Fund, if at least a year has elapsed since the offset request was originally made, the debtor shall be permitted to offer a satisfactory repayment plan in lieu of offset upon establishing that changed financial circumstances would render the offset unjust.

#### **§ 313.143 Cancellation of deduction.**

If the FDIC collects part or all of the debt by other means before deductions are made or completed pursuant to § 313.140, the FDIC shall act promptly to modify or terminate its request for such offset.

**Subpart G—Mandatory Centralized Administrative Offset****§ 313.160 Treasury notification.**

(a) In accordance with 31 U.S.C. 3716, the FDIC as a creditor agency must notify the Secretary of the Treasury of all debts that are delinquent (over 180 days past due), as defined in the FCCS, to enable the Secretary to seek collection by centralized administrative offset. This includes debts the FDIC seeks to recover from the pay account of an employee of another agency by means of salary offset.

(b) For purposes of centralized administrative offset, a claim or debt is not delinquent if:

- (1) It is in litigation or foreclosure;
- (2) It will be disposed of under an asset sale program within one year after becoming eligible for sale;
- (3) It has been referred to a private collection contractor for collection;
- (4) It has been referred to a debt collection center;
- (5) It will be collected under internal offset, if such offset is sufficient to collect the claim within three years after the date the debt or claim is first delinquent; and
- (6) It is within a specific class of claims or debts which the Secretary of the Treasury has determined to be exempt, at the request of an agency.

**§ 313.161 Certification of debt.**

Prior to referring a delinquent debt to the Secretary of the Treasury, the Director must have complied with the requirements of 5 U.S.C. 5514, and 5 CFR part 550, subpart K, governing salary offset, and the FDIC regulations. The Director shall certify, in a form acceptable to the Secretary, that:

- (a) The debt is past due and legally enforceable; and
- (b) The FDIC has complied with all due process requirements under 31 U.S.C. 3716 and the FDIC's administrative offset regulations.

**§ 313.162 Compliance with 31 CFR part 285.**

The Director shall also comply with applicable procedures for referring a delinquent debt for purposes of centralized offset which are set forth at 31 CFR part 285 and the FCCS.

**§ 313.163 Notification of debts of 180 days or less.**

The Director, in his discretion, may also notify the Secretary of the Treasury of debts that have been delinquent for 180 days or less, including debts the FDIC seeks to recover by means of salary offset.

**§§ 313.164—313.180 [Reserved]**

Dated at Washington, DC, this 12th day of July, 2002.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

**Valerie J. Best,**

*Assistant Executive Secretary/Supervisory Counsel.*

[FR Doc. 02-18656 Filed 7-24-02; 8:45 am]

**BILLING CODE 6714-01-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

**[Docket No. 2002-NE-02-AD; Amendment 39-12831; AD 2002-15-03]**

**RIN 2120-AA64**

**Airworthiness Directives; Hamilton Sundstrand Corporation Model 568F-1 Propellers.**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule, request for comments.

**SUMMARY:** This amendment supersedes an emergency airworthiness directive (AD) 2002-05-51 that was sent previously to all known U.S. owners and operators of Hamilton Sundstrand Corporation (formerly Hamilton Standard Division) model 568F-1 propellers. That AD requires replacement of propeller blades, part numbers (P/N's) R815505-2 and R815505-3, that have a serial number (SN) of FR1698 or lower, with serviceable propeller blades, a prohibition against installing any propeller blades, P/N's R815505-2 and R815505-3, that have a SN of FR428 or lower, that were previously installed on an ATR-42-400 or an ATR-72 airplane, on any other airplane, and initial and repetitive ultrasonic shear wave inspection of the blade tulip on installed blades P/N's R815505-2 and R815505-3, that have a SN of FR1698 or lower. This amendment requires those same actions, and also requires replacing certain SN blades before further flight. This amendment also requires initial and repetitive ultrasonic shear wave inspections of the blade tulip on installed blades, P/N's R815505-2 and R815505-3, that have a SN of FR1698 or lower until they are replaced. This amendment is prompted by a report of a blade failure that resulted in damage to the airplane. The actions specified in this AD are intended to prevent blade failure due to

corrosion-induced fatigue, which could result in blade separation and possible loss of airplane control.

**DATES:** Effective August 9, 2002. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 9, 2002.

Comments for inclusion in the Rules Docket must be received on or before September 23, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002-NE-02-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line.

The applicable service information may be obtained from Hamilton Sundstrand Propeller Technical Team, One Hamilton Road, Mail Stop 1-3-AB43, Windsor Locks, CT 06096-1010, U.S.A.; Fax 1-860-654-5107. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7158; fax (781) 238-7170.

**SUPPLEMENTARY INFORMATION:** On March 7, 2002, the FAA issued emergency AD 2002-05-51, applicable to Hamilton Sundstrand Corporation (formerly Hamilton Standard Division) model 568F-1 propellers installed with blades, P/N's R815505-2 and R815505-3, that have a SN of FR1698 or lower. That AD requires:

- Replacement of propeller blades, P/N's R815505-2 and R815505-3, that have a SN of FR1698 or lower, with serviceable propeller blades.
- A prohibition against installing any propeller blades, P/N's R815505-2 and R815505-3, that have a SN of FR428 or lower, that were previously installed on an ATR-42-400 or an ATR-72 airplane, on any other airplane.
- Ultrasonic shear wave inspection of the blade tulip on installed blades P/N's