

(b) Section 3711(i), Title 31, United States Code, requires GSA to sell a delinquent non-tax debt upon termination of collection action if the Secretary determines such a sale is in the best interests of the United States. Since the discharge of a debt precludes any further collection action (including the sale of a delinquent debt), GSA may not discharge a debt until the requirements of 31 U.S.C. 3711(i) have been met.

(c) Upon discharge of a debt of more than \$600, GSA must report the discharge to the Internal Revenue Service (IRS) in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P-1. GSA may request Treasury or Treasury-designated debt collection centers to file such a discharge report to the IRS on the Agency's behalf.

(d) When discharging a debt, GSA will request the GSA Office of General Counsel to release any liens of record securing the debt.

§ 105-55.031 Prompt referral to the Department of Justice.

(a) The General Services Administration (GSA) will promptly refer to the Department of Justice (DOJ) for litigation debts on which aggressive collection activity has been taken in accordance with § 105-55.009 and that cannot be compromised, or on which collection activity cannot be suspended or terminated, in accordance with §§ 105-55.027 and 105-55.028. GSA may refer those debts arising out of activities of, or referred or transferred for collection services to, the Agency. Debts for which the principal amount is over \$1,000,000, or such other amount as the Attorney General may direct, exclusive of interest and penalties, will be referred to the Civil Division or other division responsible for litigating such debts at DOJ, Washington, DC. Debts for which the principal amount is \$1,000,000, or less, or such other amount as the Attorney General may direct, exclusive of interest or penalties, will be referred to DOJ's Nationwide Central Intake Facility as required by the Claims Collection Litigation Report instructions. Debts will be referred as early as possible, consistent with aggressive GSA collection activity and the observance of the standards contained in this part, and, in any event, well within the period for initiating timely lawsuits against the debtors. GSA will make every effort to refer delinquent debts to DOJ for litigation within one year of the date such debts last became delinquent. In the case of guaranteed or insured loans, GSA will make every effort to refer these

delinquent debts to DOJ for litigation within one year from the date the loan was presented to the Agency for payment or re-insurance.

(b) DOJ has exclusive jurisdiction over the debts referred to it pursuant to this section. GSA, as the referring agency, will immediately terminate the use of any administrative collection activities to collect a debt at the time of the referral of that debt to DOJ. GSA will advise DOJ of the collection activities which have been utilized to date, and their result. GSA will refrain from having any contact with the debtor and will direct all debtor inquiries concerning the debt to DOJ, except as otherwise agreed between GSA and DOJ. GSA will immediately notify DOJ of any payments credited by the Agency to the debtor's account after referral of a debt under this section. DOJ will notify GSA of any payments it receives from the debtor.

§ 105-55.032 Claims Collection Litigation Report.

(a) Unless excepted by the Department of Justice (DOJ), the General Services Administration (GSA) will complete the Claims Collection Litigation Report (CCLR) (see § 105-55.019(b)), accompanied by a signed Certificate of Indebtedness, to refer all administratively uncollectible claims to DOJ for litigation. GSA will complete all sections of the CCLR appropriate to each claim as required by the CCLR instructions and furnish such other information as may be required in specific cases.

(b) GSA will indicate clearly on the CCLR the actions DOJ should take with respect to the referred claim. The CCLR permits the Agency to indicate specifically any of a number of litigative activities which DOJ may pursue, including enforced collection, judgment lien only, renew judgment lien only, renew judgment lien and enforce collection, program enforcement, foreclosure only, and foreclosure and deficiency judgment.

(c) GSA also will use the CCLR to refer claims to DOJ to obtain approval of any proposals to compromise the claims or to suspend or terminate Agency collection activity.

§ 105-55.033 Preservation of evidence.

The General Services Administration (GSA) will take care to preserve all files and records that may be needed by the Department of Justice (DOJ) to prove their claims in court. GSA ordinarily will include certified copies of the documents that form the basis for the claim in the packages referring their claims to DOJ for litigation. GSA will

provide originals of such documents immediately upon request by DOJ.

§ 105-55.034 Minimum amount of referrals to the Department of Justice.

(a) The General Services Administration (GSA) will not refer for litigation claims of less than \$2,500, exclusive of interest, penalties, and administrative costs, or such other amount as the Attorney General shall from time to time prescribe. The Department of Justice (DOJ) will notify GSA if the Attorney General changes this minimum amount.

(b) GSA will not refer claims of less than the minimum amount unless—

(1) Litigation to collect such smaller claims is important to ensure compliance with the Agency's policies or programs;

(2) The claim is being referred solely for the purpose of securing a judgment against the debtor, which will be filed as a lien against the debtor's property pursuant to 28 U.S.C. 3201 and returned to GSA for enforcement; or

(3) The debtor has the clear ability to pay the claim and the Government effectively can enforce payment, with due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government.

(c) GSA will consult with the Financial Litigation Staff of the Executive Office for United States Attorneys in DOJ prior to referring claims valued at less than the minimum amount.

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GENERAL SERVICES ADMINISTRATION

41 CFR Part 105-56

[GSPMR Amendment 2003-02; GSPMR Case 2003-105-3]

RIN 3090-AH86

Salary Offset for Indebtedness of Federal Employees to the United States

AGENCY: Office of Finance, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending its regulations to implement the salary offset procedures used to collect debts that are owed to the United States by Federal employees. The change conforms GSA regulations to the legislative changes enacted in the Debt

Collection Improvement Act of 1996 and the amended procedures presented in the Federal Claims Collection Standards jointly issued by the Department of the Treasury (Treasury) and the Department of Justice (DoJ). The change allows GSA to improve its collection of debts due the United States from Federal employees.

DATES: *Effective date:* December 10, 2003.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Michael J. Kosar, (202) 501-2029. Please cite GSPMR Amendment 2003-02, GSPMR case 2003-105-3.

SUPPLEMENTARY INFORMATION:

A. Background

GSA currently has rules for collecting unpaid debts through salary offset under the provisions of the Debt Collection Act of 1982, the Federal Claims Collection Standards (FCCS) of 1966, and other authorities governing the collection of Federal debts. The change incorporates changes that are presented in the amended FCCS issued jointly by Treasury and DoJ, and the Debt Collection Improvement Act of 1996 (DCIA).

A new subpart B, Centralized Salary Offset Procedures (CSO)—GSA as Creditor Agency, is added to include procedures for notifying Treasury of delinquent Federal employee debtors from another agency who owe debts to GSA. A new subpart C, Centralized Salary Offset Procedures (CSO)—GSA as Paying Agency, is added to include procedures for offsetting debts of a GSA employee or a cross-serviced agency employee that owes a debt to another agency. The DCIA of 1996 requires Federal agencies to match their delinquent debtor records with records of Federal employees, at least annually, to identify Federal employees who owe delinquent debt to the United States. This part implements the requirement under 5 U.S.C. 5514(a)(1) that all Federal agencies, using a process known as centralized salary offset computer matching, identify Federal employees who owe delinquent non-tax debt to the United States. Centralized salary offset computer matching is the computerized comparison of delinquent debt records with records of Federal employees. The purpose of centralized salary offset computer matching is to identify those debtors whose Federal salaries should be offset to collect delinquent debts owed to the Federal Government. This

part specifies the delinquent debt records and Federal employee records that must be included in the salary offset matching process. For purposes of this part, delinquent debt records consist of the debt information submitted to Treasury for purposes of administrative offset as required under 31 U.S.C. 3716(c)(6).

Discussion of Comments

In response to its Notice of Proposed Rule (NPR) concerning Salary Offset for Indebtedness of Federal Employees to the United States (68 FR 41093, July 10, 2003), GSA received internal comments from its National Payroll Center (NPC). A review of the comments is provided in the following comment analysis, including a discussion of GSA's determination whether to incorporate specific suggestions in the final rule. The comment analysis is organized by reference to the paragraph in the NPR.

NPR Sec. 105-56.003, Definitions. The final rule incorporates one commenter's suggestion to list the definitions in alphabetical order.

NPR Sec. 105-56.003(j) and NPR Sec. 105-56.015(m), Definitions. One commenter suggested inserting the word Administration after General Services so the definition reads "Administrator of General Services Administration". The commenter's suggestion and the NPR definitions have the same meaning, however, the NPR definition is considered the more grammatically correct. No change is made to the final rule.

NPR Sec. 105-56.005(b), Employee response. One commenter suggested NPR Sec. 105-56.005(b) specify where an employee should submit their waiver request since the other lettered paragraphs specify a point of contact. They recommend that employees send their signed waiver request to the GSA National Payroll Center (NPC). This suggestion is incorporated in the final rule.

B. Executive Order 12866

GSA has determined that this regulation is not a significant regulatory action as defined in Executive Order 12866, and accordingly, this regulation has not been reviewed by the Office of Management and Budget.

C. Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation either (1) results in greater flexibility for GSA to streamline debt collection regulations, or (2) reflects the statutory language contained in the

DCIA. Accordingly, a Regulatory Flexibility Analysis is not required.

D. Executive Order 13132

This regulation will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this regulation does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

E. Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one (1) year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

F. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic or export markets.

G. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

List of Subjects in 41 CFR Part 105-56

Claims, Salary offset, Payments, Administrative practice and procedure, Hearings, Appeals procedures, Debts, Debt collection, Wages, Government employees.

Dated: December 2, 2003.

Stephen A. Perry,
Administrator of General Services.

■ For the reasons set forth in the preamble, GSA amends 41 CFR chapter 105 as follows:

PART 105-56—SALARY OFFSET FOR INDEBTEDNESS OF FEDERAL EMPLOYEES TO THE UNITED STATES

■ 1. Revise part 105-56 to read as follows:

PART 105-56—SALARY OFFSET FOR INDEBTEDNESS OF FEDERAL EMPLOYEES TO THE UNITED STATES

Subpart A—Salary Offset of General Services Administration Employees

Sec.

- 105-56.001 Scope.
- 105-56.002 Excluded debts or claims.
- 105-56.003 Definitions.
- 105-56.004 Pre-offset notice.
- 105-56.005 Employee response.
- 105-56.006 Petition for pre-offset hearing.
- 105-56.007 Pre-offset oral hearing.
- 105-56.008 Pre-offset paper hearing.
- 105-56.009 Written decision.
- 105-56.010 Deductions.
- 105-56.011 Non-waiver of rights.
- 105-56.012 Refunds.
- 105-56.013 Coordinating offset with another Federal agency.

Subpart B—Centralized Salary Offset (CSO) Procedures—GSA as Creditor Agency

- 105-56.014 Purpose and scope.
- 105-56.015 Definitions.
- 105-56.016 GSA participation.
- 105-56.017 Centralized salary offset computer match.
- 105-56.018 Salary offset.
- 105-56.019 Offset amount.
- 105-56.020 Priorities.
- 105-56.021 Notice.
- 105-56.022 Fees.
- 105-56.023 Disposition of amounts collected.

Subpart C—Centralized Salary Offset (CSO) Procedures—GSA as Paying Agency

- 105-56.024 Purpose and scope.
- 105-56.025 Definitions.
- 105-56.026 GSA participation.
- 105-56.027 Centralized salary offset computer match.
- 105-56.028 Salary offset.
- 105-56.029 Offset amount.
- 105-56.030 Priorities.
- 105-56.031 Notice.
- 105-56.032 Fees.
- 105-56.033 Disposition of amounts collected.

Authority: 5 U.S.C. 5514; 31 U.S.C. 3711; 31 U.S.C. 3716; 5 CFR part 550, subpart K; 31 CFR part 5; 31 CFR 285.7; 31 CFR parts 900-904.

Subpart A—Salary Offset of General Services Administration Employees

§ 105-56.001 Scope.

(a) This subpart covers internal GSA collections under 5 U.S.C. 5514. It applies when certain debts to the United States are recovered by administrative offset from the disposable pay of a GSA employee or a cross-serviced agency employee, except in situations where the employee consents to the recovery.

(b) The collection of any amount under this subpart will be in accordance with the standards promulgated pursuant to the Debt Collection Improvement Act of 1996 (DCIA), 31 U.S.C. 3701 *et seq.*, and the Federal Claims Collection Standards, 31 CFR parts 900 through 904 as amended, or in accordance with any other statutory authority for the collection of claims of the United States or any Federal agency.

§ 105-56.002 Excluded debts or claims.

This subpart does not apply to the following:

(a) 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.

(b) Any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute. Debt collection procedures under other statutory authorities, however, must be consistent with the provisions of the Federal Claims Collection Standards, defined at paragraph (h) of § 105-56.003.

(c) An employee election of coverage or of a change of coverage under a Federal benefits program that requires periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less. However, if the amount to be recovered was accumulated over more than four pay periods, the procedures under § 105-56.004 of this subpart will apply.

(d) Routine adjustment in pay or allowances 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 and, at the time of the adjustment, or as soon after as possible, the employee is provided written notice of the nature and amount of the adjustment.

(e) Any adjustment to collect a debt amounting to \$50 or less, if, at the time of the adjustment, or as soon after as possible, the employee is given written notice of the nature and amount of the adjustment and a point of contact for contesting the adjustment.

(f) Debts or claims arising from the accrual of unpaid Health Benefits Insurance (HBI) premiums as the result of an employee's election to continue health insurance coverage during periods of leave without pay (LWOP), or when pay is insufficient to cover premiums. Debt collection procedures for unpaid HBI are covered under 5 CFR part 890, Subpart E.

§ 105-56.003 Definitions.

The following definitions apply to this subpart:

(a) *Administrative offset*, as defined in 31 U.S.C. 3701(a)(1), means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a claim.

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

(c) *Business day* means Monday through Friday, excluding Federal legal holidays. For purposes of computation, the last day of the period will be included unless it is a Federal legal holiday.

(d) *Creditor agency* means any agency that is owed a debt, including a debt collection center when acting on behalf of a creditor agency in matters pertaining to the collection of a debt.

(e) *Cross-serviced agency* means an arrangement between GSA and another agency whereby GSA provides financial support services to the other agency on a reimbursable basis. Financial support services can range from simply providing computer and software timesharing services to full-service administrative processing.

(f) *Disposable pay* means the amount that remains from an employee's Federal pay after required deductions for Federal, State and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs, including contributions to the Thrift Savings Plan (TSP); premiums for life (excluding amounts deducted for supplemental coverage) and health insurance benefits; Internal Revenue Service (IRS) tax levies; and such other deductions that may be required by law to be withheld.

(g) *Employee* means any individual employed by GSA or a cross-serviced agency of the executive, legislative, or judicial branches of the Federal Government, including Government corporations.

(h) *FCCS* means the Federal Claims Collection Standards jointly published by the Department of Justice and the Department of the Treasury at 31 CFR parts 900 through 904.

(i) *Financial hardship* means an inability to meet basic living expenses for goods and services necessary for the survival of the debtor and his or her spouse and dependents.

(j) For the purposes of the standards in this subpart, unless otherwise stated, the term "Administrator" refers to the

Administrator of General Services or the Administrator's delegate.

(k) For the purposes of the standards in this subpart, the terms "claim" and "debt" are synonymous and interchangeable. They refer to an amount of money, funds, or property that has been determined by GSA to be due the United States from an employee of GSA or a cross-serviced agency from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures and all other similar sources, including debt administered by a third party as an agent for the Federal Government. For the purposes of administrative offset under 31 U.S.C. 3716, the terms "claim" and "debt" include an amount of money, funds, or property owed by an employee to a State (including past-due support being enforced by a State), the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico.

(l) For the purposes of the standards in this subpart, unless otherwise stated, the terms "GSA" and "Agency" are synonymous and interchangeable.

(m) *Hearing official* means a Board Judge of the GSA Board of Contract Appeals (GSBCA).

(n) *Pay* means basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an individual not entitled to basic pay, other authorized pay.

(o) *Pre-offset hearing* means a review of the documentary evidence concerning the existence and/or amount of a debt, and/or the terms of a repayment schedule, provided such repayment schedule is established other than by a written agreement entered into pursuant to this subpart. If the hearing official determines that the issues in dispute cannot be resolved solely by review of the written record, such as when the validity of the debt turns on the issue of credibility or veracity, an oral hearing may be provided.

(p) *Program official* means a supervisor or management official of the employee's service, staff office, cross-serviced agency, or other designated Agency officials.

(q) *Reconsideration* means a request by the employee to have a secondary review by GSA of the existence and/or amount of the debt, and/or the proposed offset schedule.

(r) *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.

(s) *Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt or debt-related charge as permitted or required by law.

§ 105-56.004 Pre-offset notice.

An employee must be given written notice from the appropriate program official at least 30 days in advance of initiating a deduction from disposable pay informing him or her of—

(a) The nature, origin and amount of the indebtedness determined by GSA or a cross-serviced agency to be due;

(b) The intention of GSA to initiate proceedings to collect the debt through deductions from the employee's current disposable pay and other eligible payments;

(c) The amount (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay), frequency, proposed beginning date, and duration of the intended deductions;

(d) GSA's policy concerning how interest, penalties, and administrative costs are assessed (*see* 41 CFR part 105-55.017), including a statement that such assessments will be made unless excused under 31 U.S.C. 3717(h) and 31 CFR 901.9(g) and (h);

(e) The employee's right to inspect and copy GSA records relating to the debt, if records of the debt are not attached to the notice, or if the employee or his or her representative cannot personally inspect the records, the right to receive a copy of such records. Any costs associated with copying the records for the debtor will be borne by the debtor. The debtor must give a minimum of three (3) business days notice in advance to GSA of the date on which he or she intends to inspect and copy the records involved;

(f) A demand for repayment providing for an opportunity, under terms agreeable to GSA, for the employee to establish a schedule for the voluntary repayment of the debt by offset or to enter into a written repayment agreement of the debt in lieu of offset;

(g) The employee's right to request a waiver (*see* § 105-56.005(b) of this subpart);

(h) The employee's right to request reconsideration by the Agency of the existence and/or amount of the debt, and/or the proposed offset schedule;

(i) The employee's right to a pre-offset hearing conducted by a hearing official, arranged by the appropriate program

official, if a request is filed as prescribed by § 105-56.006 of this subpart;

(j) The method and time period for requesting a hearing, including a statement that the timely filing of a request for hearing will stay the commencement of collection proceedings;

(k) The issuance of a final decision on the hearing, if requested, at the earliest practicable date, but no later than 60 days after the request for hearing is filed, unless the employee requests and the hearing official grants a delay in the proceedings;

(l) The risk 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. 3729-3731, or any other applicable statutory authority; or

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

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

(n) The employee's right to a prompt refund if amounts paid or deducted are later waived or found not owed, unless otherwise provided by law (*see* § 105-56.012 of this subpart);

(o) The specific address to which all correspondence must be directed regarding the debt.

§ 105-56.005 Employee response.

(a) *Voluntary repayment agreement.* An employee may submit a request to the appropriate program official who signed the pre-offset notice to enter into a written repayment agreement of the debt in lieu of offset. The request must be made within 7 days of receipt of notice under § 105-56.004 of this subpart. The agreement must be in writing, signed by both the employee and the appropriate program official making the notice, and a signed copy must be sent to the appropriate Finance Center serving the program activity. Acceptance of such an agreement is discretionary with the Agency. An employee who enters into such an agreement may, nevertheless, seek a waiver under paragraph (b) of this section.

(b) *Waiver.* An employee may submit a signed waiver request of overpayment of pay or allowances (*e.g.*, 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716) to the GSA National Payroll Center (NPC). When an employee requests waiver

consideration, further collection on the debt may be suspended until a final administrative decision is made on the waiver request. During the period of any suspension, interest, penalties and administrative charges may be held in abeyance. GSA will not duplicate, for purposes of salary offset, any of the notices/procedures already provided the debtor prior to a request for waiver.

(c) *Reconsideration.* (1) An employee may seek a reconsideration of GSA's determination regarding the existence and/or amount of the debt. The request must be submitted to the appropriate program official indicated in the pre-offset notice, within 7 days of receipt of notice under § 105-56.004 of this subpart. Within 20 days of receipt of this notice, the employee must submit a detailed statement of reasons for reconsideration that must be accompanied by supporting documentation.

(2) An employee may request a reconsideration of the proposed offset schedule. The request must be submitted to the appropriate program official indicated in the pre-offset notice, within 7 days of receipt of notice under § 105-56.004 of this subpart. Within 20 days of receipt of this notice, the employee must submit an alternative repayment schedule accompanied by a detailed statement, supported by documentation, evidencing financial hardship resulting from GSA's proposed schedule. Acceptance of the request is at GSA's discretion. GSA will notify the employee in writing of its decision concerning the request to reduce the rate of an involuntary deduction.

§ 105-56.006 Petition for pre-offset hearing.

(a) The employee may request a pre-offset hearing by filing a written petition with the appropriate program official indicated in the pre-offset notice, within 15 days of receipt of the written notice. The petition must state why the employee believes GSA's determination concerning the existence and/or amount of the debt is in error, set forth any objections to the involuntary repayment schedule, and, if the employee is seeking an oral hearing, set forth reasons for an oral hearing. The timely filing of a petition will suspend the commencement of collection proceedings.

(b) The employee's petition or statement must be signed and dated by the employee.

(c) Petitions for hearing made after the expiration of the 15-day period may be accepted if the employee can show that the delay was because of circumstances

beyond his or her control or because of failure to receive notice of the time limit.

(d) If the employee timely requests a pre-offset hearing or the timeliness is waived, the appropriate program official must—

(1) Promptly notify the GSBCA and arrange for a hearing official (*see* § 105-56.003(m) of this subpart). The hearing official will notify the employee whether he or she may have an oral or a "paper hearing," *i.e.*, a review on the written record (*see* 31 CFR 901.3(e)); and

(2) Provide the hearing official with a copy of all records on which the determination of the debt and any involuntary repayment schedule are based.

(e) If an oral hearing is to be held, the hearing official will notify the appropriate program official and the employee of the date, time, and location of the hearing. The debtor may choose to have the hearing conducted in the hearing official's office located at GSA Central Office, 1800 F St., NW., Washington, DC 20405, at another location designated by the hearing official, or by telephone. The debtor and any witnesses are responsible for any personal expenses incurred to arrive at a hearing official's office or other designated location (*see* § 105-56.007(c)). All telephonic charges incurred during a hearing will be the responsibility of GSA.

(f) If the employee later elects to have the hearing based only on the written submissions, notification must be given to the hearing official and the appropriate program official at least 3 days before the date of the oral hearing. The hearing official may waive the 3-day requirement for good cause.

(g) If either party, without good cause as determined by the hearing official, does not appear at a scheduled oral hearing, the hearing official will make a determination on the claim which takes into account that party's position as presented in writing only.

§ 105-56.007 Pre-offset oral hearing.

(a) The Agency, represented by the appropriate program official or a representative of the Office of General Counsel, and the employee, and/or his or her representative, will explain their case in the form of an oral presentation with reference to the documentation submitted. The employee may testify on his or her own behalf, subject to cross-examination. Other witnesses may be called to testify when the hearing official determines the testimony to be relevant and not redundant. All witnesses will testify under oath, with

the oath having been administered by the hearing official. A written transcript of the hearing will be kept and made available to either party in the event of an appeal under the Administrative Procedure Act, 5 U.S.C. 701-706. Arrangements for the taking of the transcript will be made by the hearing official, and all charges associated with the taking of the transcript will be the responsibility of GSA.

(b) The hearing official will—

(1) Conduct a fair and impartial hearing; and

(2) Preside over the course of the hearing, maintain decorum, and avoid delay in the disposition of the hearing.

(c) The employee may represent himself or herself or may be represented by another person of his or her choice at the hearing. GSA will not compensate the employee for representation expenses, including hourly fees for attorneys, travel expenses, and costs for reproducing documents.

(d) Oral hearings are open to the public. However, the hearing official may close all or any portion of the hearing when doing so is in the best interests of the employee or the Agency.

(e) Oral hearings may be conducted by telephone at the request of the employee. All telephonic charges incurred during a hearing will be the responsibility of GSA.

(f) The hearing official may request written submissions and documentation from the employee and the Agency, in addition to considering evidence offered at the hearing.

§ 105-56.008 Pre-offset paper hearing.

If a hearing is to be held only upon written submissions, the hearing official will issue a decision based upon the record and responses submitted by both the Agency and the employee. *See* § 105-56.006 of this subpart. If either party, without good cause as determined by the hearing official, does not provide written submissions and documentation requested by the hearing official, the hearing official will make a determination on the claim without reference to such submissions and documentation.

§ 105-56.009 Written decision.

(a) Within 60 days of the employee's filing of a petition for a pre-offset hearing, the hearing official will issue a written decision setting forth—

(1) The facts supporting the nature and origin of the debt;

(2) The hearing official's analysis, findings and conclusions as to the employee's or Agency's grounds;

(3) The amount and validity of the debt; and

(4) The repayment schedule, if applicable.

(b) The hearing official's decision will be the final Agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).

§ 105-56.110 Deductions.

(a) *When deductions may begin.*

Deductions may begin upon the issuance of an Agency decision on a request for reconsideration or waiver (except as provided in § 105-56.005(b) of this subpart) or the issuance of a decision in a pre-offset hearing. In no event will deductions begin sooner than thirty days from the date of the notice letter. If the employee filed a petition for hearing with the appropriate program official before the expiration of the period provided for in § 105-56.006 of this subpart, then deductions will begin after the hearing official has provided the employee with a hearing and the final written decision. The appropriate program official will coordinate with the National Payroll Center to begin offset in accordance with the final written decision.

(b) *Retired or separated employees.* If the employee retires, resigns, or is terminated before collection of the indebtedness is completed, the remaining indebtedness will be offset from any subsequent payments of any nature. If the debt cannot be satisfied from subsequent payments, then the debt will be collected according to the procedures for administrative offset pursuant to § 105-55.011 of this subpart.

(c) *Types of collection.* A debt may be collected in one lump sum or in installments. Collection will be by lump sum unless the employee is able to demonstrate to the program official who signed the notice letter that he or she is financially unable to pay in one lump sum. In these cases, collection will be by installment deductions. Involuntary deductions from pay may not exceed 15 percent of disposable pay.

(d) *Methods of collection.* If the debt cannot be collected in one lump sum, the debt will be collected by deductions at officially established pay intervals from an employee's current pay account, unless the employee and the appropriate program official agree to an alternative repayment schedule. The alternative arrangement must be in writing and signed by both the employee and the appropriate program official.

(1) *Installment deductions.* Installment deductions will be made over the shortest period possible. The size and frequency of installment

deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period 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. The installment payment normally will be sufficient in size and frequency to liquidate the debt in three (3) years or less, unless circumstances warrant a longer period. Installment payments of less than \$100 per pay period will be accepted only in the most unusual circumstances.

(2) *Sources of deductions.* GSA will make salary deductions only from basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay.

(e) *Non-Salary payments.* The receipt of collections from salary offsets does not preclude GSA from pursuing other debt collection remedies, including the offset of other Federal payments to satisfy delinquent non-tax debt owed to the United States. GSA will pursue, when appropriate, such debt collection remedies separately or in conjunction with salary offset.

(f) *Interest, penalties and administrative costs.* Interest, penalties and administrative costs on debts under this subpart will be assessed according to the provisions of § 105-55.016 of this subpart.

§ 105-56.011 Non-waiver of rights.

An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 will not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law unless there are statutory or contractual provisions to the contrary.

§ 105-56.012 Refunds.

(a) GSA will promptly refund to the employee any amounts offset under these regulations when a debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation), or GSA is directed by an administrative or judicial order to refund amounts deducted from the employee's current pay or withheld from non-salary payments.

(b) Unless required by Federal law or contract, refunds under this subpart will not bear interest.

§ 105-56.013 Coordinating offset with another Federal agency.

GSA participates in the Centralized Salary Offset (CSO) program (*see*

subparts B and C of this part). In those instances when CSO cannot be utilized (*i.e.*, when another agency does not participate in the program), the following procedures apply:

(a) *When GSA is the creditor agency.* When GSA is owed a debt by an employee of another agency, GSA will provide the paying agency with a written certification that the debtor owes GSA a debt and that GSA has complied with these regulations. This certification will include the amount and basis of the debt, the due date of the payment, or the beginning date of installment payments, if any.

(b) *When another agency is the creditor agency.* (1) GSA may use salary offset against one of its employees or cross-serviced agency employees who is indebted to another agency if requested to do so by that agency. Any such request must be accompanied by a certification from the requesting agency that the person owes the debt, the amount of the debt and that the employee has been given the procedural rights required by 5 U.S.C. 5514 and 5 CFR part 550, subpart K.

(2) The creditor agency must advise GSA of the number of installments to be collected, the amount of each installment, and the beginning date of the first installment if it is not the next established pay period.

(3) If GSA receives an improperly completed request, the creditor agency will be requested to supply the required information before any salary offset begins.

(4) If the claim procedures in paragraph (b)(1) of this section have been properly completed, deductions will begin on the next established pay period unless a different period is requested by the creditor agency.

(5) GSA will not review the merits of the creditor agency's determinations with respect to the amount and/or validity of the debt as stated in the debt claim certification.

(6) If the employee begins separation action before GSA collects the total debt due the creditor agency, the following actions will be taken:

(i) When possible, the balance owed the creditor agency will be liquidated from subsequent payments of any nature due the employee from GSA in accordance with 41 CFR part 105-55.011;

(ii) If the total amount of the debt cannot be recovered, GSA will certify the total amount collected to the creditor agency and the employee;

(iii) If GSA is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, such

information will be provided to the creditor agency so a certified claim can be made against the payments.

(7) If the employee transfers to another Federal agency before GSA collects the total amount due the creditor agency, GSA will certify the total amount collected to the creditor agency and the employee. It is the responsibility of the creditor agency to ensure that collection action is resumed by the new employing agency.

Subpart B—Centralized Salary Offset (CSO) Procedures—GSA as Creditor Agency

§ 105–56.014 Purpose and scope.

(a) This subpart establishes procedures for the offset of Federal salary payments, through the Financial Management Service's (FMS) administrative offset program, to collect delinquent debts owed to the Federal Government. This process is known as centralized salary offset. Rules issued by the Office of Personnel Management contain the requirements Federal agencies must follow prior to conducting salary offset and the procedures for requesting offsets directly from a paying agency. *See* 5 CFR parts 550.1101 through 550.1108.

(b) This subpart implements the requirement under 5 U.S.C. 5514 (a)(1) that all Federal agencies, using a process known as centralized salary offset computer matching, identify Federal employees who owe delinquent non-tax debt to the United States. Centralized salary offset computer matching is the computerized comparison of delinquent debt records with records of Federal employees. The purpose of centralized salary offset computer matching is to identify those debtors whose Federal salaries should be offset to collect delinquent debts owed to the Federal Government.

(c) This subpart specifies the delinquent debt records and Federal employee records that must be included in the salary offset matching process. For purposes of this subpart, delinquent debt records consist of the debt information submitted to FMS for purposes of administrative offset as required under 31 U.S.C. 3716(c)(6). Since GSA submits debts to FMS for purposes of administrative offset, the Agency is not required to submit duplicate information for purposes of centralized salary offset computer matching under 5 U.S.C. 5514(a)(1) and this subpart.

(d) An interagency consortium was established to implement centralized salary offset computer matching on a Governmentwide basis as required

under 5 U.S.C. 5514(a)(1). Federal employee records consist of records of Federal salary payments disbursed by members of the consortium.

(e) The receipt of collections from salary offsets does not preclude GSA from pursuing other debt collection remedies, including the offset of other Federal payments to satisfy delinquent non-tax debt owed to the United States. GSA will pursue, when appropriate, such debt collection remedies separately or in conjunction with salary offset.

§ 105–56.015 Definitions.

The following definitions apply to this subpart:

(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 owed by the payee.

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

(c) *Centralized salary offset computer matching* means the computerized comparison of Federal employee records with delinquent debt records to identify Federal employees who owe such debts.

(d) *Consortium* means an interagency group established by the Secretary of the Treasury to implement centralized salary offset computer matching. The group includes all agencies that disburse Federal salary payments.

(e) *Creditor agency* means any agency that is owed a debt, including a debt collection center when acting on behalf of a creditor agency in matters pertaining to the collection of a debt.

(f) *Debt* means any amount of money, funds, or property that has been determined by an appropriate official of the Federal government to be owed to the United States by a person, including debt administered by a third party acting as an agent for the Federal Government. For purposes of this subpart, the term "debt" does not include debts arising under the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*).

(g) *Delinquent debt record* means information about a past-due, legally enforceable debt, submitted by GSA to FMS for purposes of administrative offset (including salary offset) in accordance with the provisions of 31 U.S.C. 3716(c)(6) and applicable regulations. Debt information includes the amount and type of debt and the debtor's name, address, and taxpayer identifying number.

(h) *Disbursing official* means an officer or employee designated to

disburse Federal salary payments. This includes all disbursing officials of Federal salary payments, including but not limited to, disbursing officials of the Department of the Treasury, the Department of Defense, the United States Postal Service, any government corporation, and any disbursing official of the United States designated by the Secretary.

(i) *Disposable pay* means the amount that remains from an employee's Federal pay after required deductions for Federal, State and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs, including contributions to the Thrift Savings Plan (TSP); premiums for life (excluding amounts deducted for supplemental coverage) and health insurance benefits; Internal Revenue Service (IRS) tax levies; and such other deductions that are required by law to be withheld.

(j) *Federal employee* means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves), employees of the United States Postal Service, and seasonal and temporary employees.

(k) *Federal employee records* means records of Federal salary payments that a paying agency has certified to a disbursing official for disbursement.

(l) *FMS* means the Financial Management Service, a bureau of the Department of the Treasury.

(m) For the purposes of the standards in this subpart, unless otherwise stated, the term "Administrator" refers to the Administrator of General Services or the Administrator's delegate.

(n) For the purposes of the standards in this subpart, unless otherwise stated, the terms "GSA" and "Agency" are synonymous and interchangeable.

(o) *Pay* means basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an individual not entitled to basic pay, other authorized pay.

(p) *Paying agency* means the agency that employs the Federal employee who owes the debt and authorizes the payment of his or her current pay. A paying agency also includes an agency that performs payroll services on behalf of the employing agency.

(q) *Salary offset* means administrative offset to collect a debt owed by a Federal employee from the current pay account of the employee.

(r) *Secretary* means the Secretary of the Treasury or his or her delegate.

(s) *Taxpayer identifying number* means the identifying number described under section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109).

For an individual, the taxpayer identifying number is the individual's social security number.

§ 105–56.016 GSA participation.

(a) As required under 5 U.S.C. 5514(a)(1), GSA must participate at least annually in centralized salary offset computer matching. To meet this requirement, GSA will notify FMS of all past-due, legally enforceable debts delinquent for more than 180 days for purposes of administrative offset, as required under 31 U.S.C. 3716(c)(6). Additionally, GSA may notify FMS of past-due, legally enforceable debts delinquent for less than 180 days for purposes of administrative offset.

(b) Prior to submitting a debt to FMS for purposes of collection by administrative offset, including salary offset, GSA will provide written certification to FMS that—

(1) The debt is past-due and legally enforceable in the amount submitted to FMS and that GSA will ensure that collections (other than collections through offset) are properly credited to the debt;

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

(3) GSA has complied with the provisions of 31 U.S.C. 3716 (administrative offset) and related regulations including, but not limited to, the provisions requiring that GSA provide the debtor with applicable notices and opportunities for a review of the debt; and

(4) GSA has complied with the provisions of 5 U.S.C. 5514 (salary offset) and related regulations including, but not limited to, the provisions requiring that GSA provide the debtor with applicable notices and opportunities for a hearing.

(c) FMS may waive the certification requirement set forth in paragraph (b)(4) of this section as a prerequisite to submitting the debt to FMS. If FMS waives the certification requirement, before an offset occurs, GSA will provide the Federal employee with the notices and opportunities for a hearing as required by 5 U.S.C. 5514 and applicable regulations, and will certify to FMS that the requirements of 5 U.S.C. 5514 and applicable regulations have been met.

(d) GSA will notify FMS immediately of any payments credited by GSA to the debtor's account, other than credits for amounts collected by offset, after submission of the debt to FMS. GSA will notify FMS once the debt is paid in its entirety. GSA will also notify FMS immediately of any change in the status

of the legal enforceability of the debt, for example, if the Agency receives notice that the debtor has filed for bankruptcy protection.

§ 105–56.017 Centralized salary offset computer match.

(a) Delinquent debt records will be compared with Federal employee records maintained by members of the consortium or paying agencies. The records will be compared to identify Federal employees who owe delinquent debts for purposes of collecting the debt by administrative offset. A match will occur when the taxpayer identifying number and name of a Federal employee are the same as the taxpayer identifying number and name of a debtor.

(b) As authorized by the provisions of 31 U.S.C. 3716(f), FMS, under a delegation of authority from the Secretary, has waived certain requirements of the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. 552a, as amended, for administrative offset, including salary offset, upon written certification by the Administrator, or the Administrator's delegate, that the requirements of 31 U.S.C. 3716(a) have been met. Specifically, FMS has waived the requirements for a computer matching agreement contained in 5 U.S.C. 552a(o) and for post-match notice and verification contained in 5 U.S.C. 552a(p). GSA will provide certification in accordance with the provisions of § 105–56.016(b)(3) of this subpart.

§ 105–56.018 Salary offset.

When a match occurs and all other requirements for offset have been met, as required by the provisions of 31 U.S.C. 3716(c), the disbursing official will offset the Federal employee's salary payment to satisfy, in whole or part, the debt owed by the employee. Alternatively, the paying agency, on behalf of the disbursing official, may deduct the amount of the offset from an employee's disposable pay before the employee's salary payment is certified to a disbursing official for disbursement.

§ 105–56.019 Offset amount.

(a) The minimum dollar amount referred for offset under this subpart is \$100.

(b) The amount offset from a salary payment under this subpart will be the lesser of—

(1) The amount of the debt, including any interest, penalties and administrative costs; or

(2) Up to 15 percent of the debtor's disposable pay.

(c) Alternatively, the amount offset may be an amount agreed upon, in writing, by the debtor and GSA.

(d) Offsets will continue until the debt, including any interest, penalties, and administrative costs, is paid in full or otherwise resolved to the satisfaction of GSA.

§ 105–56.020 Priorities.

(a) A levy pursuant to the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*) takes precedence over other deductions under this subpart.

(b) When a salary payment may be reduced to collect more than one debt, amounts offset under this subpart will be applied to a debt only after amounts offset have been applied to satisfy past due child support debts assigned to a State pursuant to the Social Security Act under 42 U.S.C. 602(a)(26) or 671(a)(17).

§ 105–56.021 Notice.

(a) Before offsetting a salary payment, the disbursing official, or the paying agency on behalf of the disbursing official, will notify the Federal employee in writing of the date deductions from salary will commence and of the amount of such deductions.

(b)(1) When an offset occurs under this subpart, the disbursing official, or the paying agency on behalf of the disbursing official, will notify the Federal employee in writing that an offset has occurred including—

(i) A description of the payment and the amount of offset taken;

(ii) The identity of GSA as the creditor agency requesting the offset; and

(iii) A contact point within GSA that will handle concerns regarding the offset.

(2) The information described in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section does not need to be provided to the Federal employee when the offset occurs if such information was included in a prior notice from the disbursing official or paying agency.

(c) The disbursing official will advise GSA of the names, mailing addresses, and taxpayer identifying numbers of the debtors from whom amounts of past-due, legally enforceable debt were collected and of the amounts collected from each debtor for GSA. The disbursing official will not advise GSA of the source of payment from which the amounts were collected.

§ 105–56.022 Fees.

Agencies that perform centralized salary offset computer matching services may charge a fee sufficient to cover the full cost for such services. In addition, FMS, or a paying agency acting on behalf of FMS, may charge a fee

sufficient to cover the full cost of implementing the administrative offset program. FMS may deduct the fees from amounts collected by offset or may bill GSA. Fees charged for offset will be based on actual administrative offsets completed and may be added to the debt as an administrative cost.

§ 105–56.023 Disposition of amounts collected.

(a) The disbursing official conducting the offset will transmit amounts collected for debts, less fees charged under § 105–56.022 of this subpart, to GSA.

(b) If an erroneous offset payment is made to GSA, the disbursing official will notify GSA that an erroneous offset payment has been made.

(1) The disbursing official may deduct the amount of the erroneous offset payment from future amounts payable to GSA; or

(2) Alternatively, upon the disbursing official's request, GSA will promptly return to the disbursing official or the affected payee an amount equal to the amount of the erroneous payment (without regard to whether any other amounts payable to GSA have been paid).

(i) The disbursing official and GSA will adjust the debtor records appropriately.

(ii) Unless required by Federal law or contract, refunds under this subpart will not bear interest.

Subpart C—Centralized Salary Offset (CSO) Procedures—GSA as Paying Agency

§ 105–56.024 Purpose and scope.

(a) This subpart establishes procedures for the offset of Federal salary payments, through the Financial Management Service's (FMS) administrative offset program, to collect delinquent debts owed to the Federal Government. This process is known as salary offset. Rules issued by the Office of Personnel Management contain the requirements Federal agencies must follow prior to conducting salary offset and the procedures for requesting offsets directly from a paying agency. See 5 CFR parts 550.1101 through 550.1108.

(b) This subpart implements the requirement under 5 U.S.C. 5514(a)(1) that all Federal agencies, using a process known as centralized salary offset computer matching, identify Federal employees who owe delinquent non-tax debt to the United States. Centralized salary offset computer matching is the computerized comparison of delinquent debt records with records of Federal employees. The purpose of centralized

salary offset computer matching is to identify those debtors whose Federal salaries should be offset to collect delinquent debts owed to the Federal Government.

(c) This subpart specifies the delinquent debt records and Federal employee records that must be included in the salary offset matching process. For purposes of this subpart, delinquent debt records consist of the debt information submitted to FMS for purposes of administrative offset as required under 31 U.S.C. 3716(c)(6).

(d) An interagency consortium was established to implement centralized salary offset computer matching on a Governmentwide basis as required under 5 U.S.C. 5514(a)(1). Federal employee records consist of records of Federal salary payments disbursed by members of the consortium.

§ 105–56.025 Definitions.

The following definitions apply to this subpart:

(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 owed by the payee.

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

(c) *Centralized salary offset computer matching* means the computerized comparison of Federal employee records with delinquent debt records to identify Federal employees who owe such debts.

(d) *Consortium* means an interagency group established by the Secretary of the Treasury to implement centralized salary offset computer matching. The group includes all agencies that disburse Federal salary payments.

(e) *Creditor agency* means any agency that is owed a debt, including a debt collection center when acting on behalf of a creditor agency in matters pertaining to the collection of a debt.

(f) *Cross-serviced agency* means an arrangement between GSA and another agency whereby GSA provides financial support services to the other agency on a reimbursable basis. Financial support services can range from simply providing computer and software timesharing services to full-service administrative processing.

(g) *Debt* means any amount of money, funds, or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person, including debt administered by a third party acting as an agent for the Federal

Government. For purposes of this subpart, the term “debt” does not include debts arising under the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*).

(h) *Delinquent debt record* means information about a past-due, legally enforceable debt, submitted to GSA by FMS for purposes of administrative offset (including salary offset) in accordance with the provisions of 31 U.S.C. 3716(c)(6) and applicable regulations. Debt information includes the amount and type of debt and the debtor's name, address, and taxpayer identifying number.

(i) *Disbursing official* means an officer or employee designated to disburse Federal salary payments. This includes all disbursing officials of Federal salary payments, including but not limited to, disbursing officials of the Department of the Treasury, the Department of Defense, the United States Postal Service, any government corporation, and any disbursing official of the United States designated by the Secretary.

(j) *Disposable pay* means the amount that remains from an employee's Federal pay after required deductions for Federal, State and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs, including contributions to the Thrift Savings Plan (TSP); premiums for life (excluding amounts deducted for supplemental coverage) and health insurance benefits; Internal Revenue Service (IRS) tax levies; and such other deductions that are required by law to be withheld.

(k) *Employee* means any individual employed by GSA or a cross-serviced agency of the executive, legislative, or judicial branches of the Federal Government, including Government corporations.

(l) *Federal employee records* means records of Federal salary payments that a paying agency has certified to a disbursing official for disbursement.

(m) *FMS* means the Financial Management Service, a bureau of the Department of the Treasury.

(n) *Pay* means basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an individual not entitled to basic pay, other authorized pay.

(o) *Paying agency* means the agency that employs the Federal employee who owes the debt and authorizes the payment of his or her current pay. A paying agency also includes an agency that performs payroll services on behalf of the employing agency.

(p) *Salary offset* means administrative offset to collect a debt owed by a

Federal employee from the current pay account of the employee.

(q) *Secretary* means the Secretary of the Treasury or his or her delegate.

(r) *Taxpayer identifying number* means the identifying number described under section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109). For an individual, the taxpayer identifying number is the individual's social security number.

§ 105–56.026 GSA participation.

(a) As required under 5 U.S.C. 5514(a)(1), creditor agencies must participate at least annually in centralized salary offset computer matching. To meet this requirement, creditor agencies will notify FMS of all past-due, legally enforceable debts delinquent for more than 180 days for purposes of administrative offset, as required under 31 U.S.C. 3716(c)(6). Additionally, creditor agencies may notify FMS of past-due, legally enforceable debts delinquent for less than 180 days for purposes of administrative offset.

(b) Prior to submitting a debt to FMS for purposes of collection by administrative offset, including salary offset, creditor agencies will provide written certification to FMS that—

(1) The debt is past-due and legally enforceable in the amount submitted to FMS and that the creditor agency will ensure that collections (other than collections through offset) are properly credited to the debt;

(2) 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 creditor agency's right of action accrues;

(3) The creditor agency has complied with the provisions of 31 U.S.C. 3716 (administrative offset) and related regulations including, but not limited to, the provisions requiring the creditor agency to provide the debtor with applicable notices and opportunities for a review of the debt; and

(4) The creditor agency has complied with the provisions of 5 U.S.C. 5514 (salary offset) and related regulations including, but not limited to, the provisions requiring the creditor agency to provide the debtor with applicable notices and opportunities for a hearing.

(c) FMS may waive the certification requirement set forth in paragraph (b)(4) of this section as a prerequisite to submitting the debt to FMS. If FMS waives the certification requirement, before an offset occurs, the creditor agency will provide the Federal employee with the notices and opportunities for a hearing as required by 5 U.S.C. 5514 and applicable

regulations, and will certify to FMS that the requirements of 5 U.S.C. 5514 and applicable regulations have been met.

(d) The creditor agency will notify FMS immediately of any payments credited by the agency to the debtor's account, other than credits for amounts collected by offset, after submission of the debt to FMS. The creditor agency will notify FMS once the debt is paid in its entirety. The creditor agency will also notify FMS immediately of any change in the status of the legal enforceability of the debt, for example, if the agency receives notice that the debtor has filed for bankruptcy protection.

§ 105–56.027 Centralized salary offset computer match.

(a) Delinquent debt records will be compared with Federal employee records maintained by members of the consortium or paying agencies. The records will be compared to identify Federal employees who owe delinquent debts for purposes of collecting the debt by administrative offset. A match will occur when the taxpayer identifying number and name of a Federal employee are the same as the taxpayer identifying number and name of a debtor.

(b) As authorized by the provisions of 31 U.S.C. 3716(f), FMS, under a delegation of authority from the Secretary, has waived certain requirements of the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. 552a, as amended, for administrative offset, including salary offset, upon written certification by the creditor agency, that the requirements of 31 U.S.C. 3716(a) have been met. Specifically, FMS has waived the requirements for a computer matching agreement contained in 5 U.S.C. 552a(o) and for post-match notice and verification contained in 5 U.S.C. 552a(p).

§ 105–56.028 Salary offset.

When a match occurs and all other requirements for offset have been met, as required by the provisions of 31 U.S.C. 3716(c), the disbursing official will offset the GSA employee's or cross-serviced agency employee's salary payment to satisfy, in whole or part, the debt owed by the employee. Alternatively, the GSA National Payroll Center, serving as the paying agency, on behalf of the disbursing official, may deduct the amount of the offset from an employee's disposable pay before the employee's salary payment is certified to a disbursing official for disbursement.

§ 105–56.029 Offset amount.

(a) The minimum dollar amount of salary offset under this subpart is \$100.

(b) The amount offset from a salary payment under this subpart will be the lesser of—

(1) The amount of the debt, including any interest, penalties and administrative costs; or

(2) Up to 15 percent of the debtor's disposable pay.

(c) Alternatively, the amount offset may be an amount agreed upon, in writing, by the debtor and the creditor agency.

(d) Offsets will continue until the debt, including any interest, penalties, and administrative costs, is paid in full or otherwise resolved to the satisfaction of the creditor agency.

§ 105–56.030 Priorities.

GSA, acting as the paying agency, on behalf of the disbursing official, will apply the order of precedence when processing debts identified by the centralized salary offset computer match program as follows:

(a) A levy pursuant to the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*) takes precedence over other deductions under this subpart.

(b) When a salary payment may be reduced to collect more than one debt, amounts offset under this subpart will be applied to a debt only after amounts offset have been applied to satisfy past due child support debts assigned to a State pursuant to the Social Security Act under 42 U.S.C. 602(a)(26) or 671(a)(17).

§ 105–56.031 Notice.

(a) The disbursing official will provide GSA an electronic list of the names, mailing addresses, and taxpayer identifying numbers of the debtors from whom amounts of past-due, legally enforceable debt are due other Federal agencies. The disbursing official will identify the creditor agency name and a point of contact that will handle concerns regarding the debt.

(b) Before offsetting a salary payment, the GSA National Payroll Center, acting as the paying agency on behalf of the disbursing official, will notify the debtor in writing of the date deductions from salary will commence and of the amount of such deductions.

(c)(1) When an offset occurs under this subpart, the disbursing official, or the GSA National Payroll Center on behalf of the disbursing official, will notify the debtor in writing that an offset has occurred including—

(i) A description of the payment and the amount of offset taken;

(ii) The identity of the creditor agency identified by the disbursing official requesting the offset; and

(iii) A contact point at the creditor agency identified by the disbursing official that will handle concerns regarding the offset.

(2) The information described in paragraphs (c)(1)(ii) and (c)(1)(iii) of this section does not need to be provided to the debtor when the offset occurs if such information was included in a prior notice from the disbursing official or the creditor agency.

§ 105–56.032 Fees.

GSA, while performing centralized salary offset computer matching services, may charge a fee sufficient to cover the full cost for such services. In addition, FMS, or GSA acting as the paying agency on behalf of FMS, may charge a fee sufficient to cover the full cost of implementing the administrative offset program. FMS may deduct the fees from amounts collected by offset or may bill the creditor agency. Fees charged for offset will be based on actual administrative offsets completed.

§ 105–56.033 Disposition of amounts collected.

(a) The disbursing official conducting the offset will transmit amounts collected for debts, less fees charged under § 105–56.032 of this subpart, to the creditor agency.

(b) If an erroneous offset payment is made to the creditor agency, the disbursing official will notify the creditor agency that an erroneous offset payment has been made.

(1) The disbursing official may deduct the amount of the erroneous offset payment from future amounts payable to the creditor agency; or

(2) Alternatively, upon the disbursing official's request, the creditor agency will promptly return to the disbursing official or the affected payee an amount equal to the amount of the erroneous payment (without regard to whether any other amounts payable to the creditor agency have been paid). The disbursing official and the creditor agency will adjust the debtor records appropriately.

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GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–57

[GSPMR Amendment 2003–03; GSPMR Case 2003–105–2]

RIN 3090–AH85

Administrative Wage Garnishment

AGENCY: Office of Finance, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending its regulations to implement the administrative wage garnishment provisions contained in the Debt Collection Improvement Act of 1996 (DCIA). Wage garnishment is a process whereby an employer withholds amounts from an employee's wages and pays those amounts to the employee's creditor in satisfaction of a withholding order. The DCIA authorizes Federal agencies to administratively garnish the disposable pay of an individual to collect delinquent non-tax debts owed to the United States in accordance with regulations issued by the Secretary of the Treasury.

This part was previously titled Collection of Debts by Tax Refund Offset. Effective January 1, 1999, the Department of the Treasury started to conduct the tax refund offset program as part of the centralized offset program, known as the Treasury Offset Program (TOP), operated by the Financial Management Service (FMS), a bureau of the Department of the Treasury. Since GSA has a cross-servicing agreement with FMS, which includes the TOP, the Collection of Debts by Tax Refund Offset is no longer valid and is rescinded and replaced with the new part, Administrative Wage Garnishment.

DATES: *Effective date:* December 10, 2003.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 208–7312 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Michael J. Kosar, General Services Administration, Office of Finance (BCD), Office of the Chief Financial Officer, Room 3121, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–2029; electronic mail at mike.kosar@gsa.gov. Please cite GSPMR Amendment 2003–03, GSPMR case 2003–105–2.

SUPPLEMENTARY INFORMATION:

A. Background

This rule implements the wage garnishment provision in section 31001(o) of the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104–134, 110 Stat. 1321–358 (Apr. 26, 1996), codified at 31 U.S.C. 3720D. Wage garnishment is a process whereby an employer withholds amounts from an employee's wages and pays those amounts to the employee's creditor in satisfaction of a withholding order. The DCIA authorizes Federal agencies to

administratively garnish up to 15 percent of the disposable pay of a debtor to satisfy delinquent non-tax debt owed to the United States. Prior to the enactment of the DCIA, agencies were required to obtain a court judgment before garnishing the wages of non-Federal employees. Section 31001(o) of the DCIA preempts State laws that prohibit wage garnishment or otherwise govern wage garnishment procedures.

As authorized by the DCIA, a Federal agency collecting delinquent non-tax debt may administratively garnish a delinquent debtor's wages in accordance with regulations promulgated by the Secretary of the Treasury. The Financial Management Service (FMS), a bureau of the Department of the Treasury, is responsible for promulgating the regulations implementing this and other debt collection tools established by the DCIA.

In accordance with the requirements of the DCIA, this rule establishes the following rules and procedures:

1. *Notice.* At least 30 days before GSA initiates garnishment proceedings, the Agency will give the debtor written notice informing him or her of the nature and amount of the debt, the intention of GSA to collect the debt through deductions from pay, and an explanation of the debtor's rights regarding the proposed action.

2. *Rights of the Debtor.* GSA will provide the debtor with an opportunity to inspect and copy records related to the debt, to establish a repayment agreement, and to receive a hearing concerning the existence and/or amount of the debt and/or the terms of a repayment schedule. A hearing will be held prior to the issuance of a withholding order if the debtor's request is received timely. For hearing requests that are not received in the specified time frame, GSA will not delay issuance of the withholding order prior to conducting a hearing. GSA will not garnish the wages of a debtor who has been involuntarily separated from employment until that individual has been reemployed continuously for at least 12 months. The debtor bears the burden of informing GSA of the circumstances surrounding an involuntary separation from employment.

3. *Employer's Responsibilities.* GSA will send to the employer of a delinquent debtor a wage garnishment order directing that the employer pay a portion of the debtor's wages to GSA. This rule requires the debtor's employer to certify certain payment information about the debtor. Employers will not be required to vary their normal pay cycles