

or completed under paragraph (a) of this section, the Secretary will act promptly to modify or terminate the Department's request for offset under paragraph (a) of this section.

**§ 17.116 Procedures for administrative offset: offset of debtor's judgment against the United States.**

Collection by offset against a judgment obtained by a debtor against the United States will be accomplished in accordance with 31 U.S.C. 3728.

**§ 17.117 Procedures for administrative offset: imposition of interest.**

Interest will be charged in accordance with § 17.72.

**§ 17.118 Miscellaneous provisions: correspondence with the Department.**

(a) All correspondence from the debtor to the Secretary shall be addressed to the Department Claims Officer, Office of Finance and Accounting, Department of HUD, Washington, DC 20410.

(b) The Department Claims Officer will deliver any correspondence to the appropriate Deputy Assistant Secretary within four working days.

**Salary Offset Provisions (Refs & Annos)**

**§ 17.125 Scope.**

(a) The provisions set forth in §§ 17.125 through 17.140 are the Department's procedures for the collection by salary offset of a Federal employee's pay to satisfy certain debts owed the government.

(b) These regulations apply to collections by the Secretary from:

(1) Current employees of the Department and other agencies who owe debts to the Department; and

(2) Current employees of the Department who owe debts to other agencies.

(c) These regulations do not apply to debts or claims arising under the Internal Revenue Code of 1954 (26 U.S.C. 1-9602); the Social Security Act (42 U.S.C. 301-1397f); 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.

(d) These regulations identify the types of salary offset available to the Department, as well as certain rights provided to the employee, which include a written notice before deductions begin, the opportunity to petition for a hearing and to receive a written decision if a hearing is granted. These employee rights do not apply to 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.

(e) Nothing in these regulations precludes the compromise, suspension or termination of collection actions where appropriate under the Department's regulations contained elsewhere in this subpart (see 24 CFR 17.60 through 17.77).

**§ 17.126 Coordinating offset with another Federal agency.**

(a) When HUD is owed the debt. When the De-

partment is owed a debt by an employee of another agency, the other agency shall not initiate the requested offset until the Department provides the agency with a written certification that the debtor owes the Department a debt (including the amount and basis of the debt and the due date of the payment) and that the Department has complied with these regulations.

(b) When another agency is owed the debt. The Department may use salary offset against one of its employees who is indebted to another agency if requested to do so by that agency. Such a request must be accompanied by a certification by the requesting agency that the person owes the debt (including the amount) and that the employee has been given the procedural rights required by 5 U.S.C. 5514 and 5 CFR Part 550, Subpart K.

#### § 17.127 Determination of indebtedness.

In determining that an employee is indebted, the Secretary will review the debt to make sure that it is valid and past due.

#### § 17.128 Notice requirements before offset.

Except as provided in § 17.125(d), deductions will not be made unless the Secretary first provides the employee with a minimum of 30 calendar days written notice. This Notice of Intent to Offset Salary (Notice of Intent) will state:

(a) That the Secretary has reviewed the records relating to the claim and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(b) The Secretary's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest are paid in full;

(c) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(d) An explanation of the Department's requirements concerning interest, unless such payments are excused in accordance with § 17.72;

(e) The employee's right to inspect and copy Department records relating to the debt;

(f) The employee's right to enter into a written agreement with the Secretary for a repayment schedule differing from that proposed by the Secretary, so long as the terms of the repayment schedule proposed by the employee are agreeable to the Secretary;

(g) The right to a hearing, conducted by an administrative law judge of the Department or a hearing official of another agency, on the Secretary's determination of the debt, the amount of the debt, or percentage of disposable pay to be deducted each pay period, so long as a petition is filed by the employee as prescribed by the Secretary;

(h) That the timely filing of a petition for hearing will stay the collection proceedings; (See § 17.129).

(i) That a final decision on the hearing will be issued at the earliest practical date, but not later than 60 calendar days after the filing of the petition requesting the hearing, unless the employee requests and the hearing officer grants a delay in the proceedings;

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

(1) Disciplinary procedures appropriate under 5 U.S.C. Ch. 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.

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

(l) Unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee; and

(m) The method and time period for requesting a hearing.

#### § 17.129 Request for a hearing.

(a) Except as provided in paragraph (d) of this section, an employee must file a petition for a hearing, that is received by the Secretary not later than 20 calendar days from the date of the Department's notice described in § 17.128 if an employee wants a hearing concerning--

(1) The existence or amount of the debt; or

(2) The Secretary's proposed offset schedule.

(b) The petition must be signed by the employee

and should admit or deny the existence of or the amount of the debt, or any part of the debt, briefly setting forth any basis for a denial. If the employee objects to the percentage of disposable pay to be deducted from each check, the petition should state the objection and the reasons for it. The petition should identify and explain with reasonable specificity and brevity the facts, evidence and witnesses which the employee believes support his or her position.

(c) Upon receipt of the petition, the Department will send the employee a copy of the Salary Offset Hearing Procedures Manual of the Department of Housing and Urban Development.

(d) If the employee files a petition for hearing later than the 20 calendar days as described in paragraph (a) of this section, the hearing officer may accept the request 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 filing deadline (unless the employee has actual notice of the filing deadline).

#### § 17.130 Result if employee fails to meet deadlines.

An employee waives the right to a hearing, and will have his or her disposable pay offset in accordance with the Secretary's offset schedule, if the employee:

(a) Fails to file a petition for a hearing as prescribed in § 17.129; or

(b) Is scheduled to appear and fails to appear at the hearing.

#### § 17.131 Written decision following a hearing.

Written decisions provided after a request for a

hearing will include:

- (a) A statement of the facts presented to support the nature and origin of the alleged debt;
- (b) The hearing officer's analysis, findings and conclusions, in light of the hearing, concerning the employee's or the Department's grounds;
- (c) The amount and validity of the alleged debt; and
- (d) The repayment schedule, if applicable.

**§ 17.132 Review of departmental records related to the debt.**

- (a) Notification by employee. An employee who intends to inspect or copy departmental records related to the debt must send a letter to the Secretary stating his or her intention. The letter must be received by the Secretary within 20 calendar days of the date of the Notice of Intent.
- (b) Secretary's response. In response to timely notice submitted by the debtor as described in paragraph (a) of this section, the Secretary will notify the employee of the location and time when the employee may inspect and copy Department records related to the debt.

**§ 17.133 Written agreement to repay debt as alternative to salary offset.**

- (a) Notification by employee. The employee may propose, in response to a Notice of Intent, a written agreement to repay the debt as an alternative to salary offset. Any employee who wishes to do this must submit a proposed written agreement to repay the debt which is received by the Secretary within 20 calendar days of the date of the Notice

of Intent.

- (b) Secretary's response. In response to timely notice by the debtor as described in paragraph (a) of this section, the Secretary will notify the employee whether the employee's proposed written agreement for repayment is acceptable. It is within the Secretary's discretion to accept a repayment agreement instead of proceeding by offset. In making this determination, the Secretary will balance the Department's interest in collecting the debt against hardship to the employee. If the debt is delinquent and the employee has not disputed its existence or amount, the Secretary will accept a repayment agreement instead of offset only if the employee is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

**§ 17.134 Procedures for salary offset: when deductions may begin.**

- (a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the Secretary's Notice of Intent to collect from the employee's current pay.
- (b) If the employee filed a petition for hearing with the Secretary before the expiration of the period provided for in § 17.129, then deductions will begin after the hearing officer has provided the employee with a hearing, and the final written decision is in favor of the Secretary.

- (c) If an employee retires or resigns before collection of the amount of the indebtedness is completed, the remaining indebtedness will be collected according to the procedures for administrative offset (see §§ 17.100 through 17.118).

**§ 17.135 Procedures for salary offset: types of**

**collection.**

A debt will be collected in a lump-sum or in installments. Collection will be by lump-sum collection unless the employee is financially unable to pay in one lump-sum, or if the amount of the debt exceeds 15 percent of disposable pay. In these cases, deduction will be by installments.

**§ 17.136 Procedures for salary offset: methods of collection.**

(a) General. A debt will be collected by deductions at officially-established pay intervals from an employee's current pay account, unless the employee and the Secretary agree to alternative arrangements for repayment. The alternative arrangement must be in writing, signed by both the employee and the Secretary.

(b) Installment deductions. Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and 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. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in three years. Installment payments of less than \$25 per pay period or \$50 a month will be accepted only in the most unusual circumstances.

(c) Sources of deductions. The Department will make 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.

**§ 17.137 Procedures for salary offset: imposition of interest.**

Interest will be charged in accordance with § 17.72.

**§ 17.138 Non-waiver of rights.**

So long as there are no statutory or contractual provisions to the contrary, no employee involuntary payment (of all or a portion of a debt) collected under these regulations will be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514.

**§ 17.139 Refunds.**

The Department will refund promptly to the appropriate individual amounts offset under these regulations when:

(a) A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

(b) The Department is directed by an administrative or judicial order to refund amounts deducted from the employee's current pay.

**§ 17.140 Miscellaneous provisions: correspondence with the Department.**

The employee shall file an original and one copy of a request for a hearing with the Clerk, Office of Hearings and Appeals, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Room B-133, Washington, DC 20410, on official work days between the hours of 8:45 a.m. and 5:15 p.m. All other correspondence shall be submitted to the Department Claims Officer, Office of the Chief Financial Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Documents

may be filed by personal delivery or mail. All documents shall be printed, typewritten, or otherwise processed in clear, legible form and on letter-size paper.

**IRS Tax Refund and Federal Payment Offset Provisions and Administrative Wage Garnishment (Refs & Annos)**

**§ 17.150 Scope.**

(a) The standards set forth in §§ 17.150 through 17.161 are the Department's procedures for requesting the Department of the Treasury to offset Federal payments due debtors who have a past-due debt obligation to the Department. These procedures apply to the collection of debts under common law, 31 U.S.C. 3716 or other statutory authority.

(b) The Secretary will use the Department of the Treasury's Federal payment offset to collect claims which are certain in amount, past due and legally enforceable, and which are eligible for tax refund or Federal payment offset under regulations issued by the Secretary of the Treasury.

(c) The Secretary will report debts to the Department of the Treasury for the purpose of using the offset procedures described in §§ 17.150 through 17.161. Debts of less than \$100.00, exclusive of interest and other charges, will not be reported.

(d) If not legally enforceable because of lapse of statute of limitations but otherwise valid, the debt will be reported to the IRS as a cancelled debt on Form 1099C. (Form 1099C is an information return which Government agencies file with the IRS and the Department of the Treasury to report forgiven debt, and the forgiven amount is considered income to the taxpayer.) (See § 17.159.)

**§ 17.151 Notice requirements before offset.**

A request for deduction from a Federal payment will be made only after the Secretary makes a determination that an amount is owed and past due and provides the debtor with 65 calendar days written notice. This Notice of Intent will state:

(a) The nature and amount of the debt;

(b) That unless the debt is repaid within 65 days from the date of the Notice, the Secretary intends to collect the debt by requesting the Department of Treasury to reduce any amounts payable to the debtor by an amount equal to the amount of the debt and all accumulated interest and other charges;

(c) That the debtor has a right to obtain review within the Department of the Secretary's initial determination that the debt is past due and legally enforceable (see § 17.152);

(d) That the debtor has a right to inspect and copy departmental records related to the debt as determined by the Secretary and will be informed as to where and when the inspection and copying can be done after the Department receives notice from the debtor that inspection and copying are requested. (See § 17.155.)

**§ 17.152 Review within the Department of a determination that an amount is past-due and legally enforceable.**

(a) Notification by debtor. A debtor who receives a Notice of Intent has the right to present evidence that all or part of the debt is not past-due or not legally enforceable. The debtor should send a copy of the Notice of Intent with a letter notifying the Office of Appeals within 25 calendar days from the date of the Department's Notice of Intent that he or she intends to present evidence.