

Treasury 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, the Secretary may not discharge a debt until the requirements of 31 U.S.C. 3711(i) have been met.

(c) Upon discharge of an indebtedness, the Secretary must report the discharge to the IRS in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P-1. The Secretary may request that Treasury or Treasury-designated debt collection centers file such a discharge report to the IRS on the Department's behalf.

(d) When discharging a debt, the Secretary must request that litigation counsel release any liens of record securing the debt.

#### **Subpart E—Referrals to the Department of Justice**

##### **§ 30.33 Prompt referral.**

(a)(1) The Secretary promptly shall refer to Justice for litigation debts on which aggressive collection activity has been taken in accordance with subpart B of this part, and that cannot be compromised, or on which collection activity cannot be suspended or terminated, in accordance with subpart D of this part.

(2) The Secretary may refer to Justice for litigation those debts arising out of activities of, or referred or transferred for collection services to, the Department.

(b)(1) Debts for which the principal amount is over \$1,000,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs shall be referred to the Civil Division or other division responsible for litigating such debts at the Department of Justice, Washington DC.

(2) 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, penalties, and administrative costs shall be referred to the Nationwide Central Intake Facility at Justice as required by the CCLR instructions.

(c)(1) Consistent with aggressive agency collection activity and the standards contained in this part and 31 CFR parts 900 through 904, debts shall be referred to Justice as early as possible, and, in any event, well within the period for initiating timely lawsuits against the debtors.

(2) The Secretary shall make every effort to refer delinquent debts to Justice for litigation within one year of the date such debts last became delinquent. In

the case of guaranteed or insured loans, the Secretary will make every effort to refer these delinquent debts to Justice for litigation within one year from the date the loan was presented to the Department for payment or re-insurance.

(d) Justice has exclusive jurisdiction over debts referred to it pursuant to this subpart. Upon referral of a debt to Justice, the Secretary shall:

(1) Immediately terminate the use of any administrative collection activities to collect the debt;

(2) Advise Justice of the collection activities utilized to date, and their result; and

(3) Refrain from having any contact with the debtor and direct all debtor inquiries concerning the debt to Justice.

(e) After referral of a debt under this subpart, the Secretary shall immediately notify the Department of Justice of any payments credited by the Department to the debtor's account. Pursuant to 31 CFR 904.1(b), after referral of the debt under this subpart, Justice shall notify the Secretary of any payment received from the debtor.

##### **§ 30.34 Claims Collection Litigation Report.**

(a)(1) Unless excepted by Justice, the Secretary will complete the CCLR, accompanied by a signed Certificate of Indebtedness, to refer all administratively uncollectible claims to the Department of Justice for litigation.

(2) The Secretary shall complete all of the sections of the CCLR appropriate to each debt as required by the CCLR instructions, and furnish such other information as may be required in specific cases.

(b) The Secretary shall indicate clearly on the CCLR the actions that the Department wishes Justice to take with respect to the referred debt. The Secretary may indicate specifically any of a number of litigation activities which Justice may pursue, including enforced collection, judgement lien only, renew judgement lien only, renew judgement lien and enforced collection, program enforcement, foreclosure only, and foreclosure and deficiency judgment.

(c) The Secretary also shall use the CCLR to refer a debt to Justice for the purpose of obtaining approval of a proposal to compromise the debt, or to suspend or terminate administrative collection activity of the debt.

##### **§ 30.35 Preservation of evidence.**

The Secretary will maintain and preserve all files and records that may be needed by Justice to prove the Department's claim in court. When

referring debts to Justice for litigation, certified copies of the documents that form the basis for the claim should be provided along with the CCLR. Upon its request, the original documents will be provided to Justice.

##### **§ 30.36 Minimum amount of referrals.**

(a) Except as in paragraph (b) of this section, claims of less than \$2,500 exclusive of interest, penalties, and administrative costs, or such other amount as the Attorney General may prescribe, shall not be referred for litigation.

(b) The Secretary shall not refer claims of less than the minimum amount unless:

(1) Litigation to collect such smaller amount is important to ensure compliance with the policies and programs of the Department;

(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 the Department 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) The Secretary should consult with the Financial Litigation Staff of the Executive Office for United States Attorneys in Justice prior to referring claims valued at less than the minimum amount.

Dated: November 27, 2006.

**Michael O. Leavitt,**  
Secretary.

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## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Office of the Secretary**

#### **45 CFR Part 33**

#### **RIN 0991-AB19**

#### **Salary Offset**

**AGENCY:** Department of Health and Human Services.

**ACTION:** Final rule.

**SUMMARY:** The Department of Health and Human Services (HHS) adds specific rules concerning involuntary salary

offset by adding a new part 33 to title 45 CFR. The rule implements 5 U.S.C. 5514, as amended by the salary offset provisions of the Debt Collection Improvement Act of 1996 (DCIA), as implemented by the Office of Personnel Management at 5 CFR part 550, subpart K. Involuntary salary offset was previously included in the Department's more general claims collection regulations at 45 CFR part 30.

**DATES:** *Effective Date:* March 8, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey S. Davis, Associate General Counsel, General Law Division, Office of the General Counsel, Department of Health and Human Services, Room 4760 Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

**SUPPLEMENTARY INFORMATION:**

**Background**

Current HHS regulations at 45 CFR part 30 provide standards and procedures for the collection and disposition of debts owed the United States, including collection by administrative offset. Standards and procedures for collection of debts from the current pay of federal employees by involuntary salary offset had been included in the administrative offset provisions of part 30. Those regulations, which this final rule replaces, are based on the Debt Collection Act of 1982 (DCA), Public Law No. 97-365, and were implemented on a government-wide basis by the Federal Claims Collection Standards (FCCS), set forth at 4 CFR part 101, issued by the Department of Justice and General Accounting Office on March 9, 1984 (49 FR 8889 (1984)), and the salary offset regulations set forth at 5 CFR part 550, subpart K, issued by the Office of Personnel Management on July 3, 1984 (49 FR 27472). The current HHS rules are in the process of being amended to comply with the Debt Collection Improvement Act of 1996 (DCIA), Public Law No. 104-134, as implemented by the Department of Treasury and the Department of Justice at 31 CFR 900-904. Since there are specific rules that apply to salary offset that go beyond those applicable to administrative offset generally, and because salary offset has a separate statutory basis, the Department takes this opportunity to segregate the salary offset provisions and provide separate guidance to specifically address the standards and procedures applicable to salary offset.

**Basic Provisions**

This rule prescribes the Department's standards and procedures for the collection of debts owed by Federal

employees to the United States through involuntary salary offset, including changes made by the DCIA. Briefly, such changes provide for centralized computer matching through the Department of Treasury, an exclusion from the prior notice and hearing requirements for certain pay adjustments, and a priority for Federal tax levies. This regulation is inapplicable to U.S. Public Health Service Commissioned Corps officers and retirees, as, pursuant to 37 U.S.C. 1001, the U.S. Public Health Service Commissioned Corps follows regulations relating to active duty and retired pay and allowances, including the collection of indebtedness, set forth in the Department of Defense Financial Management Regulation, DOD 7000.14-R.

**Authority: 5 U.S.C. 5514**

This rule was published as a proposed rule on July 13, 2004 (69 FR 42022) and provided for a 60-day comment period ending on September 13, 2004. We received no comments concerning the proposed rule and are finalizing the rule as proposed with only minor clarifying changes to § 33.10. In § 33.10(b), we clarify that the employee can agree in writing to a greater deduction, as outlined in § 33.8. In § 33.10(c)(2), we inserted the word "deemed" in front of "financially unable to pay."

**Reporting and Recordkeeping Requirements**

For purposes of the Paperwork Reduction Act, 44 U.S.C. chapter 35, this rule will impose no new reporting or recordkeeping requirements on any member of the public.

**Economic Impact**

We have examined the impact of this rule as required by Executive Order (EO) 12866 (September 1993, Regulatory Planning and Review), as amended by EO 13258 (February 2002, Amending EO 12866 on Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980; Pub. L. No. 96-354); the Unfunded Mandated Reform Act of 1995 (UMRA, Pub. L. No. 104-4); and EO 13132 (August 1999, Federalism). EO 12866, as amended by EO 13258, directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize the benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects (\$100

million or more in 1 year). We have determined that the rule is consistent with the principals set forth in the EO, and we find that the rule would not have an effect on the economy that exceeds \$100 million in any one year. In addition, this rule is not a major rule as defined at 5 U.S.C. 804(2). In accordance with the provisions of the EO, the rule has been reviewed by the Office of Management and Budget.

Under the RFA, 5 U.S.C. 605(b), if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities and determined it will not have any effect. This rule only affects Federal employees. The agency has considered the effect that this rule would have on small entities. I hereby certify, under 5 U.S.C. 605(b), that the rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizations and small local governments. Therefore, a regulatory flexibility analysis is not required by 5 U.S.C. 603. Section 202 of the UMRA also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million. As noted above, we find that the rule would not have an effect of this magnitude on the economy. Therefore, no further analysis is required under the UMRA. EO 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. We have reviewed the rule under the threshold criteria of EO 13132 and have determined that this proposed rule would not have substantial direct impact on States, or on the distribution of power and responsibilities among the various levels of government. As there are no federalism implications, a federalism impact statement is not required.

**Alternatives Considered**

Title 5 CFR part 550, subpart K, provides the standards to be used by Federal agencies to prepare regulations implementing 5 U.S.C. 5514. There is little room for us to consider alternatives, but where the Department has discretion (i.e., in § 33.1, specifying that the regulations cover Government-wide collections and in § 33.6, specifying that if the petition for hearing

is untimely, the Secretary may grant the request if the employee can establish that the delay was the result of circumstances beyond the employee's control, or that the employee failed to receive actual notice of the filing deadline), we drafted the rule to maximize the Department's debt collection ability and make the process fair as possible to debtors.

These regulations were submitted to the Office of Personnel Management for review prior to publication of this final rule, as required by 5 CFR part 550, subpart K.

### List of Subjects in 45 CFR Part 33

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

■ For the reasons set forth in the preamble, HHS adds 45 CFR part 33 as follows:

### PART 33—SALARY OFFSET

Sec.

- 33.1 Purpose, authority, and scope.
- 33.2 Definitions.
- 33.3 General rule.
- 33.4 Notice requirements before offset.
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- 33.6 Hearings.
- 33.7 Obtaining the services of a hearing official.
- 33.8 Voluntary repayment agreement in lieu of salary offset.
- 33.9 Special review.
- 33.10 Procedures for salary offset.
- 33.11 Salary offset when the Department is the creditor agency but not the paying agency.
- 33.12 Salary offset when the Department is the paying agency but not the creditor agency.
- 33.13 Interest, penalties, and administrative costs.
- 33.14 Non-waiver of rights.
- 33.15 Refunds.
- 33.16 Additional administrative collection.

**Authority:** 5 U.S.C. 5514; 5 CFR Part 550, Subpart K.

#### § 33.1 Purpose, authority, and scope.

(a) *Purpose.* This part prescribes the Department's standards and procedures for the collection of debts owed by Federal employees to the United States through involuntary salary offset.

(b) *Authority.* 5 U.S.C. 5514; 5 CFR Part 550, subpart K.

(c) *Scope.* (1) This part applies to internal and Government-wide collections of debts owed by Federal employees by administrative offset from the current pay account of the debtor without his or her consent.

(2) The procedures contained in this part do not apply to any case where an

employee consents to collection through deduction(s) from the employee's pay account, or to debts arising under the Internal Revenue Code or the tariff laws of the United States, or where another statute explicitly provides for, or prohibits, collection of a debt by salary offset (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(3) This part does not preclude an employee from requesting waiver of an erroneous payment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt, in the manner prescribed by the Secretary. Similarly, this part does not preclude an employee from requesting waiver of the collection of a debt under any other applicable statutory authority.

(4) Nothing in this part precludes the compromise of the debt, or the suspension or termination of collection actions, in accordance with part 30 of this title.

#### § 33.2 Definitions.

In this part—

*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.

*Agency* means an executive department or agency; a military department; the United States Postal Service; the Postal Rate Commission; the United States Senate; the United States House of Representatives; and court, court administrative office, or instrumentality in the judicial or legislative branches of the Government; or a Government Corporation.

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

*Day* means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, Sunday, or a Federal holiday, in which case the next business day will be considered the last day of the period.

*Debt* means an amount determined by an appropriate official to be owed to the United States 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 (except those arising under the Uniform Code of Military Justice), and all other similar sources.

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

*Debtor* means a Federal employee who owes a debt to the United States.

*Delinquent debt* means a debt which the debtor does not pay or otherwise resolve by the date specified in the initial demand for payment, or in an applicable written repayment agreement or other instrument, including a post-delinquency repayment agreement.

*Department* means the Department of Health and Human Services, its Staff Divisions, Operating Divisions, and Regional Offices.

*Disposable pay* means that part of the debtor's current basic, special, incentive, retired, and retainer pay, or other authorized pay, remaining after deduction of amounts required by law to be withheld. For purposes of calculating disposable pay, legally required deductions that must be applied first include: Tax levies pursuant to the Internal Revenue Code (title 26, United States Code); properly withheld taxes, FICA, Medicare; health and life insurance premiums; and retirement contributions. Amounts deducted under garnishment orders, including child support garnishment orders, are not legally required deductions for calculating disposable pay.

*Employee* means any individual currently employed by an agency, as defined in this section, including seasonal and temporary employees and current members of the Armed Forces or a Reserve of the Armed Forces (Reserves).

*Evidence of service* means information retained by the Department indicating the nature of the document to which it pertains, the date of mailing the document, and the address and name of the debtor to whom it is being sent. A copy of the dated and signed written notice of intent to offset provided to the debtor pursuant to this part may be considered evidence of service for purposes of this part. Evidence of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

*Hearing* means a review of the documentary evidence to confirm the existence or amount of a debt or the terms of a repayment schedule. If the Secretary determines that the issues in dispute cannot be resolved by such a review, such as when the validity of the claim turns on the issue of credibility or

veracity, the Secretary may provide an oral hearing.

*Hearing official* means a Departmental Appeals Board administrative law judge or appropriate alternate as outlined in § 33.7(a)(2).

*Paying agency* means the agency employing the individual and authorizing the payment of his or her current pay.

*Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 owed by a federal employee through deductions at one or more officially established pay intervals from the current pay account of the employee without his or her consent.

*Secretary* means the Secretary of Health and Human Services, or the Secretary's designee within any Staff Division, Operating Division or Regional Office.

*Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt owed by an employee to this Department or another agency as required or permitted by 5 U.S.C. 5584, 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or any other law.

### § 33.3 General rule.

(a) Whenever a delinquent debt is owed to the Department by an employee, the Secretary may, subject to paragraphs (b) through (d) of this section, involuntarily offset the amount of the debt from the employee's disposable pay.

(b) Unless provided by another statute pertaining to a particular type of debt (e.g., 42 U.S.C. 292r, Health professionals education, 42 U.S.C. 297b, Nurse education), the Department may not initiate salary offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts.

(c) Except as provided in paragraph (d) of this section, prior to initiating collection through salary offset under this part, the Secretary must first provide the employee with the following:

(1) Written notice of intent to offset as described in § 33.4; and

(2) An opportunity to petition for a hearing, and, if a hearing is provided, to receive a written decision from the hearing official within 60 days on the following issues:

(i) The determination of the Department concerning the existence or amount of the debt; and

(ii) The repayment schedule, unless it was established by written agreement between the employee and Department.

(d) The provisions of paragraph (c) of this section do not apply to:

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

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

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

### § 33.4 Notice requirements before offset.

(a) At least 30 days before the initiation of salary offset under this part, the Secretary shall mail, by first class mail, to the employee's last known address, a written notice informing the debtor of the following:

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

(2) 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, penalties, and administrative costs are paid in full;

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

(4) An explanation of the Department's policies concerning the assessment of interest, penalties, and administrative costs, stating that such assessments must be made unless waived in accordance with 31 CFR 901.9 and § 30.18 of this title;

(5) The employee's right to inspect and copy all records of the Department pertaining to the debt or, if the employee or the employee's representative cannot personally inspect the records, to request and receive copies of such records;

(6) If not previously provided, the opportunity to establish a schedule for the voluntary repayment of the debt through offset, or to enter into an agreement to establish a schedule for repayment of the debt in lieu of offset, provided the agreement is in writing, signed by both the employee and the Department, and documented in the Department's files;

(7) The right to a hearing conducted by an impartial hearing official with respect to the existence and amount of the debt, or the repayment schedule, so long as a petition is filed by the employee as prescribed in § 33.6;

(8) Time limitations and other procedures or conditions for inspecting Department records pertaining to the debt, establishing an alternative repayment agreement, and requesting a hearing;

(9) The name, address, and telephone number of the person or office within the Department who may be contacted concerning the procedures for inspecting Department records, establishing an alternative repayment agreement, and requesting a hearing;

(10) The name and address of the office within the Department to which the petition for a hearing should be sent, which generally will be the Operating Division or Staff Division responsible for collecting the debt;

(11) A timely and properly filed petition for a hearing will stay the commencement of the collection proceeding;

(12) The Department will initiate action to effect salary offset not less than 30 days from the date of mailing the notice of intent, unless the employee properly files a timely petition for a hearing.

(13) A final decision on a hearing, if one is requested, will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceeding;

(14) Knowingly false or frivolous statements, representations or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under chapter 75 of title 5, United States Code; part 752 of title 5, Code of Federal Regulations; or any other applicable statutes or regulations;

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

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

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

(16) Unless there are applicable contractual or statutory provisions to the contrary, 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

(17) Proceedings with respect to such debt are governed by 5 U.S.C. 5514.

(b) The Secretary will retain evidence of service indicating the date of mailing of the notice.

### § 33.5 Review of department records relating to the debt.

(a) To inspect or copy Department records relating to the debt, the employee must send a written request to the Department official or office designated in the notice of intent to offset stating his or her intention. The written request must be received by the Department within 15 days from the employee's receipt of the notice.

(b) In response to a timely request as described in paragraph (a) of this section, the designated Department official shall notify the employee of the location and time when the employee may inspect and copy such records. If the employee or employee's representative is unable to personally inspect such records as the result of geographical or other constraints, the Department shall arrange to send copies of such records to the employee.

### § 33.6 Hearings.

(a) *Petitions for hearing.* (1) To request a hearing concerning the existence or amount of the debt or the offset schedule established by the Department, the employee must send a written petition to the office designated in the notice of intent to offset, see § 33.4(a)(10), within 15 days of receipt of the notice.

(2) The petition must:

(i) Be signed by the employee;

(ii) Fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, that the employee believes support his or her position; and

(iii) Specify whether an oral or paper hearing is requested. If an oral hearing is requested, the request should explain why the matter cannot be resolved by

review of the documentary evidence alone.

(3) The timely filing of a petition for hearing shall stay any further collection proceedings.

(b) *Failure to timely request.* (1) If the petition for hearing is filed after the 15-day period provided for in paragraph (a)(1) of this section, the Secretary may grant the request if the employee can establish that the delay was the result of circumstances beyond the employee's control, or that the employee failed to receive actual notice of the filing deadline.

(2) An employee waives the right to a hearing, and will have his or her disposable pay offset in accordance with the offset schedule established by the Department, if the employee:

(i) Fails to file a timely request for a hearing, unless such failure is excused; or

(ii) Fails to appear at an oral hearing, of which the employee was notified, unless the hearing official determines that the failure to appear was due to circumstances beyond the employee's control.

(c) *Form of hearings.* (1) *General.* After the employee requests a hearing, the hearing official shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, the notice shall set forth the date, time, and location of the hearing. If the hearing will be a review of the written record, the employee shall be notified that he or she should submit evidence and arguments in writing to the hearing official by a specified date, after which the record shall be closed. The date specified shall give the employee reasonable time to submit documentation.

(2) *Oral hearing.* An employee who requests an oral hearing shall be provided an oral hearing if the hearing official determines that the matter cannot be resolved by review of documentary evidence alone because an issue of credibility or veracity is involved. Where an oral hearing is appropriate, the hearing is not an adversarial adjudication and need not take the form of an evidentiary hearing, i.e., the rules of evidence need not apply. *Oral hearings may take the form of, but are not limited to:*

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

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

(iii) Formal written submissions with an opportunity for oral presentations.

(3) *Paper hearing.* If the hearing official determines that an oral hearing is not necessary, the hearing official will make the determination based upon a review of the available written record.

(4) *Record.* The hearing official shall maintain a summary record of any hearing conducted under this part. Witnesses who testify in oral hearings will do so under oath or affirmation.

(d) *Written decision.* (1) Date of decision. The hearing officer shall issue a written opinion stating his or her decision, based upon documentary evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than sixty (60) days after the date on which the hearing petition was received by the creditor agency, unless the employee requested a delay in the proceedings, in which case the 60-day decision period shall be extended by the number of days by which the hearing was postponed. The recipient of an employee's request for a hearing must forward the request expeditiously to the Departmental Appeals Board so as to not jeopardize the Board's ability to issue a decision within this 60-day period.

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

(i) A statement of the facts presented to support the origin, nature, and amount of the debt;

(ii) The hearing official's findings, analysis, and conclusions, including a determination whether the employee's petition for hearing was baseless and resulted from an intent to delay creditor agency collection activity; and

(iii) The terms of any repayment schedule, if applicable.

(e) *Failure to appear.* In the absence of good cause shown, an employee who fails to appear at a hearing shall be deemed, for the purpose of this part, to admit the existence and amount of the debt as described in the notice of intent. If the representative of the creditor agency fails to appear, the hearing official shall proceed with the hearing as scheduled and make a determination based upon oral testimony presented and the documentary evidence submitted by both parties. With the agreement of both parties, the hearing official shall schedule a new hearing date, and both parties shall be given reasonable notice of the time and place of the new hearing.

### § 33.7 Obtaining the services of a hearing official.

(a)(1) When the Department is the creditor agency, the office designated in § 33.4(a)(10) shall schedule a hearing, if one is requested by an employee, before a hearing official.

(2) When the Department cannot provide a prompt and appropriate hearing before an administrative law judge or a hearing official furnished pursuant to another lawful arrangement, the office designated in § 33.4(a)(10) may:

(i) When the debtor is not an employee of the Department, contact an agent of the employee's paying agency designated in 5 CFR part 581, Appendix A, to arrange for a hearing official; or

(ii) When the debtor is an employee of the Department, contact an agent of any agency designated in 5 CFR part 581, Appendix A, to arrange for a hearing official.

(b)(1) When another agency is the creditor agency, it is the responsibility of that agency to arrange for a hearing if one is requested. The Department will provide a hearing official upon the request of a creditor agency when the debtor is employed by the Department and the creditor agency cannot provide a prompt and appropriate hearing before a hearing official furnished pursuant to another lawful arrangement.

(2) Services rendered to a creditor agency under paragraph (b)(1) of this section will be provided on a fully reimbursable basis pursuant to the Economy Act of 1932, as amended, 31 U.S.C. 1535.

(c) The determination of a hearing official designated under this section is considered to be an official certification regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514 and this part. A creditor agency may make a certification to the Secretary of the Treasury under 5 CFR 550.1108 or a paying agency under 5 CFR 550.1109 regarding the existence and amount of the debt based on the certification of a hearing official. If a hearing official determines that a debt may not be collected via salary offset, but the creditor agency finds that the debt is still valid, the creditor agency may still seek collection of the debt through other means, such as offset of other Federal payments or litigation.

### § 33.8 Voluntary repayment agreement in lieu of salary offset.

(a)(1) In response to the notice of intent to offset, the employee may propose to establish an alternative schedule for the voluntary repayment of the debt by submitting a written request to the Department official designated in the notice of intent to offset. An employee who wishes to repay the debt without salary offset shall also submit a proposed written repayment agreement. The proposal shall admit the existence of the debt, and the agreement must be

in such form that it is legally enforceable. The agreement must:

- (i) Be in writing;
- (ii) Be signed by both the employee and the Department;
- (iii) Specify all the terms of the arrangement for payment; and
- (iv) Contain a provision accelerating the debt in the event of default by the employee, but such an increase may not result in a deduction that exceeds 15 percent of the employee's disposable pay unless the employee has agreed in writing to deduction of a greater amount.

(2) Any proposal under paragraph (a)(1) of this section must be received by the Department within 30 days of the date of the notice of intent to offset.

(b) In response to a timely request as described in paragraph (a) of this section, the designated Department official shall notify the employee whether the proposed repayment schedule is acceptable. It is within the Secretary's discretion to accept a proposed alternative repayment schedule, and to set the necessary terms of a voluntary repayment agreement.

(c) No voluntary repayment agreement will be binding on the Secretary unless it is in writing and signed by both the Secretary and the employee.

### § 33.9 Special review.

(a) A Department employee subject to salary offset or a voluntary repayment agreement may, at any time, request a special review by the Secretary of the amount of the salary offset or voluntary repayment installments, based on materially changed circumstances, such as, but not limited to, catastrophic illness, divorce, death, or disability.

(b)(1) In determining whether an offset would prevent the employee from meeting essential subsistence expenses, e.g., food, housing, clothing, transportation, and medical care, the employee shall submit a detailed statement and supporting documents for the employee, his or her spouse, and dependents indicating:

- (i) Income from all sources;
- (ii) Assets and liabilities;
- (iii) Number of dependents;
- (iv) Food, housing, clothing, transportation, and medical expenses; and
- (v) Exceptional and unusual expenses, if any.

(2) When requesting a special review under this section, the employee shall file an alternative proposed offset or payment schedule and a statement, with supporting documents as described in paragraph (b)(1) of this section, stating why the current salary offset or payments result in an extreme financial hardship to the employee.

(c)(1) The Secretary shall evaluate the statement and supporting documents, and determine whether the original offset or repayment schedule imposes extreme financial hardship on the employee.

(2) Within 30 calendar days of the receipt of the request and supporting documents, the Secretary shall notify the employee in writing of such determination, including, if appropriate, a revised offset or repayment schedule.

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

### § 33.10 Procedures for salary offset.

(a) *Method and source of deductions.* Unless the employee and the Secretary have agreed to an alternative repayment arrangement under § 33.8, a debt shall be collected in lump sum or by installment deductions at officially established pay intervals from an employee's current pay account.

(b) *Limitation on amount of deduction.* Ordinarily, the size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay. However, the amount deducted for any pay period must 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, as outlined in § 33.8.

(c) *Duration of deductions.* (1) Lump sum. If the amount of the debt is equal to or less than 15 percent of the employee's disposable pay for an officially established pay interval, the debt generally will be collected in one lump-sum deduction.

(2) If the employee is deemed financially unable to pay in one lump-sum or the amount of the debt exceeds 15 percent of the employee's disposable pay for an officially established pay interval, the debt shall be collected in installments. Except as provided in paragraphs (e) and (f) of this section, installment deductions must be made over a period not greater than the anticipated period of active duty or employment.

(d) *When deductions may begin.* (1) Deductions will begin on the date stated in the notice of intent, unless an alternative repayment agreement under § 33.8 has been accepted or the employee has filed a timely request for a hearing.

(2) If the employee files a timely petition for hearing as provided in § 33.6, deductions will begin after the hearing official has provided the employee with a hearing and a final

written decision has been rendered in favor of the Department.

(e) *Liquidation from final check.* If an employee retires, resigns, or the period of employment ends before collection of the debt is completed, the remainder of the debt will be offset under 31 U.S.C. 3716 from subsequent payments of any nature (e.g., final salary payment or lump-sum leave) due the employee from the paying agency as of the date of separation.

(f) *Recovery from other payments due a separated employee.* If the debt cannot be satisfied by offset from any final payment due the employee on the date of separation, the Secretary will liquidate the debt, where appropriate, by administrative offset under 31 U.S.C. 3716 from later payments of any kind due the former employee (e.g., lump sum leave payment).

**§ 33.11 Salary offset when the Department is the creditor agency but not the paying agency.**

(a) *Centralized administrative offset.* (1) Under 31 U.S.C. 3716, the Department shall notify the Secretary of the Treasury of all past-due, legally enforceable debts which are 180 days delinquent for purposes of collection by centralized administrative offset. This includes debts which the Department seeks to recover from the pay account of an employee of another agency via salary offset. The Secretary of the Treasury and other Federal disbursing officials will match payments, including Federal salary payments, against these debts. Where a match occurs, and all the requirements for offset have been met, the payments will be offset to collect the debt.

(2) Prior to offset of the pay account of an employee, the Department must comply with the requirements of 5 U.S.C. 5514; 5 CFR part 550, subpart K, and this part. Specific procedures for notifying the Secretary of the Treasury of a debt for purposes of collection by administrative offset, including salary offset, are contained in 31 CFR parts 285 and 901 and part 30 of this title.

(b) *Non-centralized administrative offset.* When salary offset through centralized administrative offset under paragraph (a) of this section is not possible, the Department may attempt to collect a debt through non-centralized administrative offset in accordance with part 30 of this title.

(1) *Format of the request.* Upon completion of the procedures established in this part and pursuant to 5 U.S.C. 5514, the Department shall:

(i) Certify in writing to the paying agency that the employee owes the debt, the amount and basis of the debt, the

date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that the Departmental regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management.

(ii) If the collection is to be made in installments, advise the paying agency of the number of installments to be collected, the amount or percentage of disposable pay to be collected in each installment, and the commencement date of the installments, if a date other than the next officially established pay period is required.

(iii) Unless the employee has consented in writing to the salary deductions or signed a statement acknowledging receipt of the required procedures and this written consent or statement is forwarded to the paying agency, advise the paying agency of the action(s) taken under 5 U.S.C. 5514 and this part, and give the date(s) the action(s) was taken.

(2) *Requesting recovery from current paying agency.* (i) Except as otherwise provided in this paragraph, the Department shall submit a certified debt claim containing the information specified in paragraph (a) of this section, and an installment agreement, or other instruction on the payment schedule, if applicable, to the employee's paying agency.

(ii) If the employee is in the process of separating from the Federal Government, the Department shall submit the certified debt claim to the employee's paying agency for collection as provided in § 33.10(e). The paying agency must certify the total amount of its collection on the debt and send a copy of the certification to the employee and another copy to the Department. If the paying agency's collection does not fully satisfy the debt, and the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments that may be due the employee from other Federal Government sources, the paying agency will provide written notification of the outstanding debt to the agency responsible for making such payments to the employee, stating the employee owes a debt, the amount of the debt, and that the provisions of this section have been fully complied with. The Department must submit a properly certified claim to the agency responsible for making such payments before the collection can be made.

(iii) If the employee is already separated and all payments due from the employee's former paying agency have been paid, the Department may request, unless otherwise prohibited,

that money due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR 831.1801 or 5 CFR 845.401) or other similar funds, be administratively offset to collect the debt. See 31 U.S.C. 3716 and 31 CFR 901.3.

(iv) If the employee transfers to another paying agency, the Department must submit a properly certified debt claim to the new paying agency before collection can be resumed; however, the Department need not repeat the due process procedures described in 5 U.S.C. 5514 and this part. The Department shall review the debt to ensure that collection is resumed by the new paying agency.

**§ 33.12 Salary offset when the Department is the paying agency but not the creditor agency.**

(a) *Format of the request.* (1) When the Department is the paying agency and another agency is the creditor agency, the creditor agency must certify, in writing, to the Department that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that the creditor agency's regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management.

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

(3) Unless the employee has consented in writing to the salary deductions or signed a statement acknowledging receipt of the required procedures and the written consent or statement is forwarded to the Department, the creditor agency must advise the Department of the action(s) taken under 5 U.S.C. § 5514, and give the date(s) the action(s) was taken.

(b) *Requests for recovery.* (1) Complete claim. When the Department receives a properly certified debt claim from a creditor agency, deductions should be scheduled to begin prospectively at the next officially established pay interval. The employee must receive written notice as described in § 33.10 that the Department has received a certified debt claim from the creditor agency, including the amount, and written notice of the date deductions from salary will commence and the amount of such deductions.



(2) *Incomplete claim.* When the Department receives an incomplete debt claim from a creditor agency, the Secretary shall return the debt claim with a notice that procedures under 5 U.S.C. 5514 and 5 CFR part 550, subpart K, must be provided and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

(c) *Review.* The Secretary is not required or authorized to review the merits of the determination with respect to the amount or validity of the debt certified by the creditor agency.

(d) *Employees separating.* If an employee begins separation action before the Department collects the total debt due the creditor agency, the following actions will be taken:

(1) To the extent possible, the balance owed the creditor agency will be liquidated from a final salary check, or other final payments of any nature due the employee from the Department;

(2) The Secretary will certify the total amount of the Department's collection on the debt and send a copy of the certification to the employee and another copy to the creditor agency; and

(3) If the Department's collection does not fully satisfy the debt, and the Secretary is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments that may be due the employee from other Federal Government sources, the Secretary will provide written notification of the outstanding debt to the agency responsible for making such payments to the employee. The written notification shall state that the employee owes a debt, the amount of the debt, and that the provisions of this section have been fully complied with. The Department shall furnish a copy of this written notification to the creditor agency so that it can file a properly certified debt claim with the agency responsible for making such payments.

(e) *Employees who transfer to another paying agency.* If, after the creditor agency has submitted a debt claim to the Department, the employee transfers from the Department to a different paying agency before the debt is collected in full, the Secretary shall:

(1) Certify the total amount of the collection made on the debt; and

(2) Furnish a copy of the certification to the employee and another copy to the creditor agency along with notice of the employee's transfer.

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

Debts owed to the Department shall be assessed interest, penalties and

administrative costs in accordance with 45 CFR 30.18.

### **§ 33.14 Non-waiver of rights.**

An employee's involuntary payment of all or any portion of a debt collected under this part shall 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 law or contract, unless there are statutory or contractual provisions to the contrary.

### **§ 33.15 Refunds.**

(a) The Secretary shall promptly refund any amounts paid or deducted under this part when:

(1) A debt is waived or otherwise found not owing to the United States; or

(2) The employee's paying agency is directed by administrative or judicial order to refund amount deducted from the employee's current pay.

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

### **§ 33.16 Additional administrative collection action.**

Nothing contained in this part is intended to preclude the use of any other appropriate administrative remedy.

Dated: November 27, 2006.

**Michael O. Leavitt,**

*Secretary.*

[FR Doc. E7-4005 Filed 3-7-07; 8:45 am]

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

[Docket No. 060606150-6240-02; I.D. 030107A]

### **Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Modification of the Gear Restrictions and Georges Bank Yellowtail Flounder Trip Limits for the U.S./Canada Management Area**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; gear restriction, trip limit.

**SUMMARY:** NMFS announces that the Administrator, Northeast (NE) Region, NMFS (Regional Administrator), is eliminating the haddock separator trawl

requirement, which was temporarily implemented on June 19, 2006, for all limited access NE multispecies vessels fishing with trawl gear on a NE multispecies day-at-sea (DAS), and is reducing from 10,000 lb (4,536 kg) to 5,000 lb (2,268 kg) the trip limit for Georges Bank (GB) yellowtail flounder for all NE multispecies vessels fishing without a haddock separator trawl on a NE multispecies DAS in the Eastern U.S./Canada Area. This temporary reduction in the GB yellowtail flounder trip limit is effective through April 30, 2007. A projection based on available catch and discard information indicates that removal of the haddock separator trawl requirement and establishment of a 5,000-lb (2,268 kg) trip limit for GB yellowtail flounder in the Eastern U.S./Canada Area will help vessels achieve the total allowable catch (TAC) limits established for the shared U.S./Canada stocks of cod, haddock, and yellowtail flounder while preventing the GB yellowtail flounder TAC from being exceeded before the end of the 2006 fishing year on April 30, 2007. This action is therefore intended to provide increased opportunities to harvest the healthy Eastern GB haddock TAC and maximize the harvest of the GB yellowtail flounder. This action is authorized by the regulations implementing Framework 42 to the NE Multispecies Fishery Management Plan (FMP) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Effective March 5, 2007, through April 30, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mark Grant, Fishery Management Specialist, (978) 281-9145, fax (978) 281-9135.

**SUPPLEMENTARY INFORMATION:** The U.S. portion of the U.S./Canada Area TACs for GB cod, GB haddock, and GB yellowtail flounder for the 2006 fishing year (May 1, 2006-April 30, 2007) were specified at 374 mt, 7,480 mt, and 2,070 mt, respectively, on April 28, 2006 (71 FR 25095). Pursuant to § 648.85(a)(3)(iv)(E), once the available TAC for GB cod, GB haddock, or GB yellowtail flounder is projected to be caught, the Regional Administrator is required to close the Eastern U.S./Canada Area to all NE multispecies DAS vessels for the remainder of the fishing year. The FMP requires trawl vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS in the Eastern U.S./Canada Area to fish with either a haddock separator trawl or a flounder net. Prohibitions governing the gear