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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1073

[Docket No.: CFPB–2013–0021]

Procedures for Bureau Debt Collection

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule.

SUMMARY: This rule implements the Bureau of Consumer Financial Protection's debt collection regulations. These regulations conform to requirements set forth in laws applicable to the collection of nontax debts owed to the United States.

DATES: This rule is effective July 11, 2013.

FOR FURTHER INFORMATION CONTACT: David Snyder, Attorney-Advisor, Legal Division, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552 at 202–435–7758.

SUPPLEMENTARY INFORMATION:

I. Background

This rule implements the Debt Collection Improvement Act of 1996 (DCIA), which applies to non-tax debts owed to the United States government, with respect to the Bureau of Consumer Financial Protection (CFPB or Bureau). The DCIA requires Federal agencies to collect debts owed to the United States under regulations prescribed by the head of each agency and standards prescribed by the Department of Justice and the Department of Treasury. 31 U.S.C. 3711. These standards, known as the Federal Claims Collection Standards (FCCS), became effective on December 22, 2000. 31 CFR Parts 900 through 904.

The DCIA also requires agencies, prior to collecting debts owed to the United States by administrative offset, to: (1) Adopt without change the FCCS on

collecting debts by administrative offset; or (2) prescribe agency regulations for collecting such debts by administrative offset which are consistent with the FCCS. 31 U.S.C. 3716(b). Those agency regulations must set forth the procedural protections that the agency provides to a debtor when the agency seeks to collect a debt by administrative offset.

The Bureau has decided to issue its own regulations for debt collection and administrative offset. The regulations are consistent with the FCCS, as required by the DCIA. The salary offset portion of the regulations has been submitted to and approved by the Office of Personnel Management (OPM), as required by 5 U.S.C. 5514. In addition, the administrative wage garnishment provisions of the regulations satisfy the prerequisite in 31 CFR 285.11(f) that the Bureau adopt regulations for the conduct of administrative wage garnishment hearings consistent with 31 CFR 285.11. The tax refund offset provisions of the regulations satisfy the prerequisite in 31 CFR 285.2(c) that the Bureau adopt regulations authorizing its collection of debts by tax refund offset.

II. Summary of the Rule

Subpart A—Scope, Purpose, and Definitions

This part establishes Bureau procedures for the collection of certain debts owed to the United States. In addition to the procedures set forth in this rule, the Bureau shall also follow the procedures set forth in 5 CFR part 550, subpart K, for the collection by offset from indebted government employees, and in 31 CFR part 285 and the FCCS (31 CFR parts 900 through 904) for the collection of non-tax debts owed to the United States. These regulations govern the following areas of the debt collection process: Prompt demand of payment of the claim from the debtor; review, upon the debtor's demand for a final agency determination, of whether the amount claimed is accurate; collection of debts in installment payments; assessment of interest, penalties, and administrative costs on debts claimed; compromise of claims; determinations whether to suspend or terminate collection action; referral of delinquent debts to the Secretary of the Treasury for collection by means of centralized administrative offset under the Treasury Offset

Program; reporting of debts to consumer reporting agencies; use of credit reports; and the sale of delinquent debts. When the Bureau elects to pursue a specific debt collection remedy such as salary offset, administrative wage garnishment, or offset against tax refunds, the Bureau shall follow the applicable procedures for that debt collection remedy set forth in these regulations.

Subpart B—Administrative Offset

Pursuant to 31 U.S.C. 3716, the Bureau may, in appropriate circumstances, collect debts owed to the United States through administrative offset. Under the administrative offset regulations, the Bureau is authorized to collect debts owed to the United States by: (1) Withholding money payable by the Bureau to the debtor or held by the Bureau for the debtor; (2) requesting that another Federal agency withhold money payable to the debtor or held by the agency for the debtor; or (3) referring the debts to the Secretary of the Treasury or a designated debt collection center for collection under the Treasury's centralized offset program. Subpart B of the regulations satisfies the prerequisite under 31 U.S.C. 3716(b) that the Bureau promulgate regulations for administrative offset procedures that are consistent with the FCCS. Subpart B of the regulations also satisfies the prerequisite under 31 CFR 901.3 that the Bureau prescribe specified administrative offset regulations prior to conducting administrative offset.

Subpart C—Salary Offset

Subpart C of the regulations provides that when the Bureau collects a debt by means of deductions from the current pay account of a Bureau employee, or any individual currently employed by the Federal Government (including a former Bureau employee), the Bureau shall initiate salary offset under 5 U.S.C. 5514(a)(1). Salary offset is a form of administrative offset governed by statute (5 U.S.C. 5514) and by regulations issued by the Office of Personnel Management (OPM) (5 CFR part 550, subpart K). The statute authorizing salary offset requires agencies to promulgate regulations to carry out salary offset subject to OPM approval. 5 U.S.C. 5514(b)(1). Subpart C implements those statutory requirements.

Subpart D—Administrative Wage Garnishment

Subpart D of the regulations incorporates by reference 31 CFR 285.11, which sets forth procedures that agencies may use to collect debts by garnishing the wages of individuals employed outside the Federal Government. This includes persons employed by the private sector, as well as state and local governments. The administrative wage garnishment regulations do not apply to the collection of delinquent debts from the wages of Federal employees; Federal pay is subject to the Federal salary offset procedures set forth in 5 U.S.C. 5514 and other applicable laws, including Subpart C of these regulations. Subpart D of the regulations meets the requirement under 31 CFR 285.11(f) that the Bureau promulgate regulations governing the conduct of administrative wage garnishment hearings consistent with that section or adopt by reference the section without change.

Subpart E—Tax Refund Offset

Where collection by salary offset or administrative offset is not feasible, the Bureau also may seek to recover a legally enforceable, past-due debt owed to the United States by requesting that the Financial Management Service of the Department of the Treasury offset all or part of a tax refund to a debtor by the amount of the debt and pay such money to the Bureau. 31 U.S.C. 3720A; 26 CFR 301.6402–1 through .6402–6. In order to collect a debt by means of a tax refund offset, the Bureau is required to promulgate its own regulations under 31 U.S.C. 3716 and 31 U.S.C. 3720A, governing its authority to collect debts by administrative offset, including offset of tax refund payments. 31 U.S.C. 3720A(b)(4); 31 CFR 285.2(c). Subpart E of the regulations implements this requirement.

III. Legal Authority and Effective Date

This rule is issued under the DCIA, 31 U.S.C. 3711 *et seq.*, which in part authorizes the Bureau to collect certain debts owed to the United States. It is also issued under 5 U.S.C. 5514, which in part authorizes the Bureau to collect certain debts owed to the United States via salary offset.

This rule is procedural and not substantive and, thus, is not subject to the 30-day delay in effective date required by 5 U.S.C. 553(d). The Bureau is making the rule effective immediately upon publication in the **Federal Register**.

IV. Regulatory Requirements

No notice of proposed rulemaking is required under the Administrative Procedure Act (APA) because this rule relates solely to agency procedure and practice. 5 U.S.C. 553(b). Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603, 604.

The Bureau has determined that the Rule does not impose any new recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

List of Subjects in 12 CFR Part 1073

Administrative practice and procedure, Government employees, Hearing and appeal procedures, Salaries, Wages.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau adds Part 1073 to Chapter X in Title 12 of the Code of Federal Regulations to read as follows:

PART 1073—PROCEDURES FOR BUREAU DEBT COLLECTION

Subpart A—Scope, Purpose, and Definitions

Sec.

- 1073.101 Scope.
- 1073.102 Purpose.
- 1073.103 Definitions.

Subpart B—Administrative Offset

- 1073.201 Applicability and scope.
- 1073.202 Collection.
- 1073.203 Omission of procedures.
- 1073.204 Debtor's rights.
- 1073.205 No requirement for duplicate notice.
- 1073.206 Interest, penalties, and administrative costs.
- 1073.207 Termination or suspension of collection action.
- 1073.208 Refunds.
- 1073.209 Requests for offset to other Federal agencies.
- 1073.210 Requests for offset from other Federal agencies.

Subpart C—Salary Offset

- 1073.301 Scope.
- 1073.302 Notice requirement where CFPB is creditor agency.
- 1073.303 Procedures to request a hearing.
- 1073.304 Failure to timely submit request for a hearing.
- 1073.305 Procedures for hearing.
- 1073.306 Salary offset process.
- 1073.307 Voluntary repayment agreements as alternative to salary offset where the CFPB is the creditor agency.

- 1073.308 Special review of repayment agreement or salary offset due to changed circumstances.
- 1073.309 Interest, penalties, and administrative costs.
- 1073.310 Refunds.
- 1073.311 Non-waiver of rights by payment.
- 1073.312 Exception to procedures.

Subpart D—Administrative Wage Garnishment

- 1073.401 Administrative wage garnishment.

Subpart E—Tax Refund Offset

- 1073.501 Tax refund offset.

Authority: 5 U.S.C. 301; 5 U.S.C. 5514; 31 U.S.C. 3711, *et seq.*

Subpart A—Scope, Purpose, and Definitions

§ 1073.101 Scope.

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

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

- (1) Federal employees who are indebted to the Bureau;
- (2) Employees of the Bureau who are indebted to other agencies; and
- (3) Other persons, organizations, or entities that are indebted to the United States, except those excluded in paragraph (b) of this section.

(b) This part does not apply:

- (1) To debts or claims arising under the Internal Revenue Code (Title 26, U.S. Code), the Social Security Act (42 U.S.C. 301 *et seq.*), or the tariff laws of the United States;
- (2) To a situation to which the Contract Disputes Act (41 U.S.C. 7101 *et seq.*) applies; or
- (3) To debts arising out of acquisition contracts subject to the Federal Acquisition Regulation. These debts shall be determined, collected, compromised, terminated, or settled in accordance with that regulation (see 48 CFR part 32).

(4) In any other case where collection of a debt is exclusively provided for or prohibited by another statute or applicable regulation.

(c) In addition to the procedures set forth in this part, the Bureau shall also follow the procedures set forth in 5 CFR part 550, subpart K, for the collection by offset from indebted government employees, and in 31 CFR part 285 and the Federal Claims Collection Standards (FCCS) (31 CFR chapter IX and parts 900 through 904) for the collection of debts owed to the United States.

(d) Nothing in this part precludes the compromise, suspension, or termination of collection actions, where appropriate, under standards implementing the Debt Collection Improvement Act (DCIA) (31

U.S.C. 3711 *et seq.*), the FCCS, or any other applicable law.

§ 1073.102 Purpose.

The purpose of this part is to implement Federal statutes and regulatory standards authorizing the Bureau to collect debts owed to the United States. This part is intended to be consistent with the following Federal statutes and regulations:

(1) DCIA at 31 U.S.C. 3711 (collection and compromise of claims), section 3716 (administrative offset), section 3717 (interest and penalty on claims), and section 3718 (contracts for collection services); 31 CFR part 285 (debt collection authorities under the DCIA)

(2) 31 CFR chapter IX and parts 900 through 904 (FCCS);

(3) 5 U.S.C. 5514, 5 CFR part 550, subpart K (salary offset);

(4) 5 U.S.C. 5584 (waiver of claims for overpayment);

(5) 31 U.S.C. 3720D, 31 CFR 285.11 (administrative wage garnishment); and

(6) 26 U.S.C. 6402(d), 31 U.S.C. 3720A, and 31 CFR 285.2 (tax refund offset).

§ 1073.103 Definitions.

Except where the context clearly indicates otherwise, the following definitions shall apply to 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.

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

Bureau or *CFPB* means the Bureau of Consumer Financial Protection.

Centralized administrative offset means an offset initiated by referral to the Secretary of the Treasury, or where applicable a debt collection center designated by the Department of the Treasury, by a creditor agency of a past due debt for the purpose of collection under the Treasury's centralized offset program.

Certification means a written statement transmitted from a creditor agency to a paying agency for purposes of administrative or salary offset, to the Financial Management Service (FMS) for offset or to the Secretary of the Treasury for centralized administrative offset. The certification confirms the existence and amount of the debt and verifies that the creditor agency has afforded the debtor the required procedural protections. Where the debtor requests a hearing on a claimed

debt, the decision by a hearing official or administrative law judge constitutes a certification.

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

Creditor agency means an agency of the Federal Government to which the debt is owed, or a debt collection center when acting on behalf of a creditor agency to collect a debt. An agency may be both the creditor agency and the paying agency.

Debt or claim means an amount of money, funds, or property that has been determined by an agency official to be due the United States from any person, organization, or entity, except another Federal entity. For purposes of this part, a debt or claim owed to the Bureau constitutes a debt or claim owed to the United States.

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 person who owes a debt or a claim. The term "person" includes any individual, organization, or entity, except another Federal agency.

Director means the Director of the Bureau of Consumer Financial Protection or the Director's designee.

Disposable pay means that part of current adjusted basic pay, special pay, incentive pay, retired pay, retainer pay, and, in the case of an employee not entitled to adjusted basic pay, other authorized pay, remaining for each pay period after the deduction of any amount required by law to be withheld.

Federal Claims Collection Standards (FCCS) means standards published at 31 CFR Parts 900 through 904.

Financial Management Service (FMS) is a Bureau of the Department of the Treasury.

Garnishment means the process of withholding amounts from the disposable pay of a person employed outside the Federal Government, and the paying of those amounts to a creditor in satisfaction of a withholding order.

Non-centralized administrative offset means offsets that an agency conducts, at the agency's discretion, internally or in cooperation with the agency certifying or authorizing payment to the debtor.

Notice of Intent to Offset or *Notice of Intent* means a written notice from a creditor agency to an employee, organization, entity, or restitution

debtor that claims a debt and informs the debtor that the creditor agency intends to collect the debt by administrative or salary offset. The notice also informs the debtor of certain procedural rights with respect to the claimed debt and respective offset procedure.

Paying agency means the agency of the Federal Government that withholds funds payable to a person who owes a debt to an agency of the Federal Government. The term "person" includes any individual, organization, or entity, except another Federal agency. An agency may be both the creditor agency and the paying agency.

Recoupment means a special method of adjusting debts arising under the same transaction or occurrence.

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 a Federal employee without his or her consent.

Withholding order means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body.

Subpart B—Administrative Offset

§ 1073.201 Applicability and scope.

(a) *Applicability.* The provisions of this subpart apply to the collection of debts owed to the United States arising out of the activities of, or referred to, the Bureau. This subpart is intended to be consistent with the Federal Claims Collection Standards (31 CFR chapter IX and parts 900 through 904) on administrative offset issued by the Department of Treasury and the Department of Justice.

(b) *Centralized administrative offset.*

(1) The Director will refer any eligible debt over 180 days delinquent to the Department of the Treasury or a designated debt collection center for collection by centralized administrative offset. The Director may also refer any eligible debt less than 180 days delinquent to the Department of the Treasury for offset.

(2) At least 60 days prior to referring a debt to the Department of the Treasury in accordance with paragraph (b)(1) of this section, the Director will send notice to the debtor in accordance with the requirements of § 1073.204 of this subpart.

(c) *Non-centralized administrative offset.* (1) When centralized administrative offset is not available or appropriate, the Director may collect past-due, legally enforceable debts through non-centralized administrative offset. In these cases, the Director may

offset a payment internally or make an offset request directly to a paying agency.

(2) At least 30 days prior to offsetting a payment internally or requesting a paying agency to offset a payment in accordance with paragraph (c)(1) of this section, the Director will send notice to the debtor in accordance with the requirements of § 1073.204 of this subpart.

§ 1073.202 Collection.

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

(1) Providing the debtor with the procedures of this subpart; and

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

(b) The Director will initiate collection by administrative offset of only those debts for which that remedy is permissible under 31 CFR 901.3(a).

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

§ 1073.203 Omission of procedures.

The Bureau shall not be required to follow the procedures described in § 1073.204 where:

(a) The offset is in the nature of a recoupment;

(b) The debt arises under a contract as set forth in *Cecile Industries, Inc. v. Cheney*, 995 F.2d 1052 (Fed. Cir. 1993); or

(c) In the case of non-centralized administrative offsets, the Bureau first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity to review. When prior notice and an opportunity to review are omitted, the Director shall give the debtor such notice and an opportunity for review as soon as practicable and shall promptly refund any money ultimately found not to be due to the U.S. Government.

§ 1073.204 Debtor's rights.

(a) *Debtor's rights prior to collection or referral.* Prior to collecting any claim by administrative offset or referring such claim to another agency for collection through administrative offset, the Director shall provide the debtor with the following:

(1) A Notice of Intent to Offset, which shall include written notice of the type

and amount of the debt, the intention of the Director to use administrative offset to collect the debt, and an explanation of the debtor's rights under 31 U.S.C. 3716;

(2) An opportunity to inspect and copy Bureau records related to the debt, unless such records are exempt from disclosure;

(3) An opportunity for review within the Bureau of the determination of indebtedness; and

(4) An opportunity to enter into a written agreement to repay the debt.

(b) *Opportunity for review.* (1) Any request by the debtor for such review shall be in writing and shall be submitted to the Bureau within 30 calendar days of the date of the Notice of Intent to Offset. The Director may waive the time limit for requesting review for good cause shown by the debtor;

(2) Upon receipt of a request for review by the debtor, the Director shall provide the debtor with a reasonable opportunity for an oral hearing when the Director determines that the question of the indebtedness cannot be resolved by review of the documentary evidence alone (e.g., when the determination turns on an issue of credibility or veracity). Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although all significant matters discussed at the hearing shall be documented.

(3) In cases where an oral hearing is not required by this section, the Bureau shall make its determination based on a documentary hearing consisting of a review of the written record.

§ 1073.205 No requirement for duplicate notice.

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

§ 1073.206 Interest, penalties, and administrative costs.

(a) Pursuant to 31 U.S.C. 3717, the Director shall assess interest, penalties, and administrative costs on debts owed to the United States. Interest, penalties, and administrative costs will be assessed in accordance with 31 CFR 901.9.

(b) The Director shall waive collection of interest on a debt or any portion of the debt which is paid in full within 30 days after the date on which the interest began to accrue.

(c) The Director may waive interest accrued during a period a disputed debt is under investigation or review by the Bureau, *i.e.*, from the date the Bureau receives a request for review until the date the Bureau issues a final agency decision. The Director may only grant this waiver for good cause shown by the debtor. This waiver must be requested by the debtor before the expiration of the 30-day waiver period described in paragraph (b) of this section.

(d) The Director may at any time waive collection of interest, penalties, or administrative costs if he or she finds that one or more of the following conditions exists:

(1) The Debtor is unable to pay any significant sum toward the debt within a reasonable period of time;

(2) Collection of interest, penalties, or administrative costs will jeopardize collection of the principal of the debt;

(3) The Bureau is unable to enforce collection in full within a reasonable period of time through collection proceedings; or

(4) Collection is against equity and good conscience or is not in the best interest of the United States.

(e) The Director is authorized to assess interest, penalties, administrative costs, or other related charges on debts that are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

§ 1073.207 Termination or suspension of collection action.

The Director may suspend or terminate collection action on a claim not in excess of \$100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. Any such termination or suspension shall be conducted in accordance with the requirements of 31 U.S.C. 3711 under the procedures established in 31 CFR part 903.

§ 1073.208 Refunds.

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

§ 1073.209 Request for offset to other Federal agencies.

The Director may request that a debt owed to the Bureau be administratively offset against funds due and payable to a debtor by another Federal agency. In requesting administrative offset, the

Bureau, as the creditor agency, will provide written certification to the Federal agency holding funds payable to the debtor, stating:

- (a) That the debtor owes the debt;
- (b) The amount and basis of the debt; and
- (c) That the Bureau has fully complied with the requirements of its own administrative offset regulations and the applicable provisions of 31 U.S.C. 3716.

§ 1073.210 Request for offset from other Federal agencies.

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

- (a) Receipt of written certification from the creditor agency stating:
 - (1) That the debtor owes the debt;
 - (2) The amount and basis of the debt; and
 - (3) That the creditor agency has fully complied with its own administrative offset regulations and with the applicable provisions of 31 U.S.C. 3716; and
- (b) A determination that collection by offset against funds payable by the Bureau would be in the best interest of the United States and that such offset would not be contrary to law.

Subpart C—Salary Offset

§ 1073.301 Scope.

(a) These salary offset regulations should be read in conjunction with 5 U.S.C. 5514 and 5 CFR part 550, subpart K, and apply to the collection of debts owed by employees of the Bureau or other Federal agencies.

(b) These salary offset procedures do not apply:

- (1) Where an employee consents to the recovery of a debt from his current pay account;
- (2) To debts arising under the Internal Revenue Code (Title 26, U.S. Code), the tariff laws of the United States, or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(c) These procedures do not preclude an employee from requesting a waiver of an erroneous payment under 5 U.S.C. 5584, or from questioning the amount or validity of a debt, in the manner specified by law or these agency regulations. This subpart also does not preclude an employee from requesting waiver of the collection of a debt under any other applicable statutory authority.

(d) When possible, salary offset through centralized administrative

offset procedures should be attempted before seeking salary offset from a paying agency different than the creditor agency.

§ 1073.302 Notice requirement where CFPB is creditor agency.

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

- (a) That the Director has determined that a debt is owed to the Bureau, and the origin, nature, and amount of the debt;
- (b) That the Director intends to collect the debt by means of deduction from the employee's current disposable pay account;
- (c) The frequency and amount of the intended deduction, stated as a fixed dollar amount or as a percentage of disposable pay, not to exceed 15 percent of disposable pay;
- (d) That the Director intends to continue the deductions until the debt is paid in full or otherwise resolved;
- (e) The opportunity (under terms agreeable to the Director) to establish a schedule for the voluntary repayment of the debt or enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the Director, and documented in the Bureau's files;
- (f) The Bureau's policy concerning interest, penalties, and administrative costs, including a statement that such assessments must be made unless excused in accordance with the FCCS or these regulations;
- (g) That the employee has the right to inspect and copy Bureau records not exempt from disclosure that relate to the debt or, if the employee or his or her representative cannot personally inspect the records, to request and receive a copy of such records;
- (1) Such requests must be made in writing, and identify by name and address the designated individual to whom the request should be sent.
- (2) Upon receipt of such a request, the designated official shall notify the employee of the time and location where the records may be inspected and copied;
- (h) That the employee has a right to a hearing regarding the existence and amount of the debt claimed or the salary offset schedule proposed by the Director, provided that the employee

files a request for such a hearing with the Bureau in accordance with § 1073.303. Such a hearing will be conducted by an impartial official who is an administrative law judge or who is an other hearing official not under the supervision or control of the Director;

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

(j) That a request for hearing must be received by the Bureau within 15 calendar days following receipt of the Notice of Intent, and that filing of a request for hearing will stay the commencement of collection proceedings;

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

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

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

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

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

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

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

(o) That amounts paid on or deducted from the debt which are later waived or found not to be owed to the United States will be promptly refunded to the employee, unless there are applicable contractual or statutory provisions to the contrary.

§ 1073.303 Procedures to request a hearing.

(a) To request a hearing, an employee must send a written request to the designated official indicated in the Notice of Intent stating why the

employee believes the determination concerning the existence or amount of debt is in error. The request must be received by the Bureau within 15 calendar days following the employee's receipt of the Notice of Intent.

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

§ 1073.304 Failure to timely submit request for a hearing.

If the Bureau does not receive an employee's request for hearing within the 15-day period set forth in § 1073.303, the employee shall not be entitled to a hearing, and salary offset may be initiated. However, the Bureau may accept an untimely request for hearing 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 (unless otherwise aware of it).

§ 1073.305 Procedures for hearing.

(a) *Obtaining the services of a hearing official.* The Director must obtain the services of an impartial hearing official who is an administrative law judge or who is an other official not under the supervision or control of the Director. The Director shall designate an administrative law judge or contact an agent of another agency designated in appendix A to 5 CFR part 581 to arrange for a hearing official.

(b) *Notice and format of hearing—(1) Notice.* The hearing official shall determine whether the hearing shall be oral or documentary and shall notify the employee of the form of the hearing. If the hearing will be oral, the notice shall set forth the date, time, and location of the hearing, which must be held within 30 calendar days after the request is received, unless the employee requests that the hearing be delayed. If the hearing will be documentary, the employee shall be notified to submit evidence and written arguments in support of his or her case to the hearing official within 30 calendar days.

(2) *Oral hearing.* The hearing official may grant a request for an oral hearing if he or she determines that the issues raised by the employee cannot be resolved by review of documentary evidence alone (e.g., where credibility or veracity is at issue). Witnesses who

testify in oral hearings shall do so under written or recorded oath or affirmation. An oral hearing is not required to be a formal evidentiary hearing. Oral hearings may take the form of, but are not limited to:

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

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

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

(3) *Documentary hearing.* If the hearing official determines that an oral hearing is not necessary, he or she will make the determination based upon a review of the available written record, including any documentation submitted by the employee in support of his or her position.

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

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

(d) *Failure to appear or submit documentary evidence.* In the absence of good cause shown, an employee who fails to appear at an oral hearing, or fails to submit documentary evidence for a documentary hearing, will have waived the right to a hearing. Furthermore, the employee will have been deemed 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 without good cause shown, the hearing official shall proceed with the hearing as scheduled, and issue a decision based upon the oral testimony presented and the documentation submitted by both parties.

(e) *Date of decision.* The hearing official shall issue a written decision based upon the evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than 60 calendar days after the date on which the request for hearing was received by the Bureau, unless the hearing was delayed at the request of the employee. In the event of such a delay, the 60-day decision period shall be extended by the number of days by which the hearing was postponed. The decision of the hearing official shall be final.

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

(1) The facts purported to evidence the nature and origin of the proposed debt;

(2) The hearing official's analysis, findings and conclusions, in light of the hearing, as to the employee's and/or Bureau's grounds, the amount and validity of the alleged debt and, where applicable, the repayment schedule.

§ 1073.306 Salary offset process.

(a) *Method and source of deductions.* Salary offsets under this subpart shall be deducted from current disposable pay, except as provided in paragraph (e) of this section.

(b) *Determination of disposable pay.* The Bureau's Office of the Chief Financial Officer will consult with the Bureau's Office of Human Capital to determine the amount of a Bureau employee's disposable pay and will implement the salary offset. If the debtor is not employed by the Bureau, the agency employing the debtor will determine the amount of the employee's disposable pay and will implement the salary offset.

(c) *When salary offset may begin.* Deductions shall begin within three official pay periods following, as applicable, the initiation of salary offset without a hearing under § 1073.304, the decision of the hearing official under § 1073.305, or receipt of the creditor agency's request for offset where the Bureau is not the creditor agency.

(d) *Amount of salary offset.* The amount to be offset from each salary payment will be up to 15 percent of a debtor's disposable pay, as follows:

(1) If the amount of the debt is equal to or less than 15 percent of the disposable pay, such debt generally will be collected in one lump sum payment;

(2) If the employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection will be made in installments. Installment deductions will be made over a period of no greater than the anticipated period of employment, except as provided in paragraph (e) of this section. Installment deductions must ordinarily bear a reasonable relationship to the size of the debt and the employee's ability to pay. An installment deduction 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 creditor agency may determine that smaller deductions are appropriate based on the employee's ability to pay.

(e) *Final salary or other payment.* After the employee has separated either

voluntarily or involuntarily from the payment agency, the payment agency may, pursuant to 31 U.S.C. 3716, make a lump sum deduction exceeding 15 percent of disposable pay from any final salary or other payments in order to satisfy a debt. If the debt cannot be liquidated by offset from any final payment due the former employee as of the date of separation, it may be offset under 31 U.S.C. 3716 from later payments of any kind due the former employee from the United States, unless prohibited by law.

§ 1073.307 Voluntary repayment agreements as alternative to salary offset where the CFPB is the creditor agency.

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

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

(1) If the Director decides that the proposed repayment agreement is unacceptable, he or she shall notify the employee and the employee shall have 30 calendar days from the date he or she received notice of the decision in which to file a request for a hearing on the proposed repayment agreement, as provided in § 1073.303; or

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

§ 1073.308 Special review of repayment agreement or salary offset due to changed circumstances.

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

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

- (1) Income from all sources;
- (2) Assets;
- (3) Liabilities;
- (4) Number of dependents;
- (5) Monthly expenses for food, housing, clothing, and transportation;
- (6) Medical expenses; and
- (7) Exceptional expenses, if any.

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

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

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

§ 1073.309 Interest, penalties, and administrative costs.

Where the Bureau is the creditor agency, it shall assess interest, penalties, and administrative costs pursuant to the procedures set forth in § 1073.206 and in accordance with 31 U.S.C. 3717 and 31 CFR parts 900 through 904.

§ 1073.310 Refunds.

(a) Where the Bureau is the creditor agency, it shall promptly refund any amount deducted under the authority of 5 U.S.C. 5514 when the debt is waived or otherwise found not to be owing to the United States (unless expressly prohibited by statute or regulation), or when an administrative or judicial order directs the Bureau to refund amounts deducted from the employee's current pay.

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

§ 1073.311 Non-waiver of rights by payment.

An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 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 contract or law, unless there are statutory or contractual provisions to the contrary.

§ 1073.312 Exception to procedures.

(a) The procedures set forth in this subpart shall not apply to the following:

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

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

(b) In the event of a negative adjustment to pay, as described in subsection (a)(1), the Bureau will provide a clear and concise statement in the employee's earnings statement advising the employee of the previous overpayment at the time the adjustment is made.

Subpart D—Administrative Wage Garnishment

§ 1073.401 Administrative wage garnishment.

The Director may collect debts from a debtor's wages by means of administrative wage garnishment in accordance with the requirements of 31 U.S.C. 3720D under the procedures established in 31 CFR 285.11.

Subpart E—Tax Refund Offset

§ 1073.501 Tax refund offset.

The provisions of 26 U.S.C. 6402(d) and 31 U.S.C. 3720A authorize the Secretary of the Treasury to offset a debt owed to the United States Government from the tax refund due a taxpayer. The Director may administer tax refund offsets in accordance with the requirements of 31 U.S.C. 3720A under the procedures established in 31 CFR 285.2.

Dated: July 1, 2013.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2013-16470 Filed 7-10-13; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA-2012-0260; Special Conditions No. 25-494-SC]

Special Conditions: Embraer S.A. Model EMB-550 Airplanes, Sudden Engine Stoppage

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Embraer Model EMB-550 airplane. This airplane has novel or unusual design features as compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. These design features include engine size and the potential torque loads imposed by sudden engine stoppage. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* August 12, 2013.

FOR FURTHER INFORMATION CONTACT: Cindy Ashforth, FAA, International Branch, ANM-116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone (425) 227-2768; facsimile (425) 227-1320.

SUPPLEMENTARY INFORMATION:

Background

On May 14, 2009, Embraer applied for a type certificate for their new Model EMB-550 airplane. The Model EMB-550 airplane is the first of a new family of jets designed as a corporate jet, and for fractional, charter, and private-owner operations. The airplane is a conventional configuration with a low wing and T-tail empennage. The primary structure is metal with composite empennage and control surfaces. The Model EMB-550 airplane is designed for eight passengers, with a maximum of 12 passengers (including

toilet seat). It is equipped with two Honeywell HTF7500-E medium-bypass-ratio turbofan jet engines mounted on aft-fuselage pylons. Each engine produces approximately 6,540 lb of thrust for normal takeoff. The primary flight-control systems are electronically controlled using fly-by-wire (FBW) technology.

The Model EMB-550 airplane incorporates novel or unusual design features involving engine size and torque load that affect the airframe as it relates to sudden engine-stoppage conditions.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Embraer must show that the Model EMB-550 airplane meets the applicable provisions of part 25, as amended by Amendments 25-1 through 1-127.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model EMB-550 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model.

In addition to the applicable airworthiness regulations and special conditions, the Model EMB-550 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise-certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92-574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Model EMB-550 airplane incorporates a novel or unusual design:

The Embraer Model EMB-550 airplane will incorporate a medium-bypass-ratio turbofan jet engine that will neither seize nor produce transient torque loads in the same manner that is envisioned by current § 25.361(b)(1) regarding "load that affect sudden engine stoppage" conditions.

Discussion of Comments

Notice of Proposed Special Conditions No. 25-12-05-SC, for the Embraer Model EMB-550 airplane, was published in the **Federal Register** on September 25, 2012 (77 FR 58970). No comments were received, and the special conditions are adopted as proposed.

Discussion

The size, configuration, and failure modes of jet engines have changed considerably from those envisioned by 14 CFR 25.361(b), when the engine-seizure requirement was first adopted. Engines have become larger and are now designed with large bypass fans capable of producing much larger and more complex dynamic loads. Relative to the engine configurations that existed when the rule was developed in 1957, the present generation of engines is sufficiently different and novel to justify issuance of a special condition to establish appropriate design standards for the Embraer Model EMB-550 airplane type design.

Consideration of the limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure (such as compressor jamming) has been a specific requirement for transport-category airplanes since 1957. In the past, the design torque loads associated with typical failure scenarios have been estimated by the engine manufacturer and were provided to the airframe manufacturer as limit loads. These limit loads were considered simple and pure torque static loads.

It is evident from service history that the engine-failure events that tend to cause the most severe loads are fan-blade failures, which occur much less frequently than the typical "limit" load condition.

The regulatory authorities and industry have developed a standardized requirement in the Aviation Rulemaking Advisory Committee (ARAC) forum. The technical aspects of this requirement have been agreed upon and have been accepted by the ARAC Loads and Dynamics Harmonization Working Group, and incorporated in EASA CS-25. The proposed special conditions outlined below reflect the ARAC recommendation and CS-25. In addition, the ARAC recommendation includes corresponding advisory material that is considered an acceptable means of compliance to the proposed special conditions outlined below.

To maintain the level of safety envisioned in § 25.361(b), more