

DEPARTMENT OF THE TREASURY**Fiscal Service****31 CFR Part 285**

RIN 1510-AA70

Salary Offset

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Interim rule with request for comments.

SUMMARY: The Debt Collection Improvement Act of 1996 (DCIA) requires the Federal Government to withhold or reduce certain Federal payments to satisfy the delinquent nontax debts owed to the United States by the payee. This process is known as "administrative offset." In addition, the DCIA requires Federal agencies, using a process known as centralized salary offset computer matching, to identify Federal employees who owe delinquent nontax debt to the United States. This interim rule establishes centralized computer matching procedures for comparing delinquent debt information with Federal salary payment information for the purpose of offsetting the salary payments of those employees who owe debt to the United States once they are identified. This interim rule also establishes the rules governing the administrative offset of Federal salary payments through a centralized offset process operated by the Financial Management Service of the U.S. Department of the Treasury.

DATES: This rule is effective April 28, 1998. Comments must be received on or before May 28, 1998.

ADDRESSES: All comments should be addressed to Gerry Isenberg, Financial Program Specialist, Debt Management Services, Financial Management Service, 401 14th Street SW, Room 151, Washington, D.C. 20227. A copy of this interim rule is being made available for downloading from the Financial Management Service web site at the following address: <http://www.fms.treas.gov>.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Financial Program Specialist, at (202) 874-6859; or Ellen Neubauer or Ronda Kent, Senior Attorneys, at (202) 874-6680.

SUPPLEMENTARY INFORMATION:**Background**

A major purpose of the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104-134, 110 Stat. 1321-358 *et seq.* (April 26, 1996), is to increase the collection of delinquent

nontax debts owed to the Federal Government. Among other things, the DCIA established a centralized process for withholding or reducing eligible Federal payments, including Federal salary payments, to pay the payee's delinquent debt owed to the United States. This process is known as "administrative offset." The DCIA also established a requirement that Federal agencies match their delinquent debtor records with records of Federal employees, at least annually, to identify Federal employees who owe delinquent debt to the Federal Government. This rule establishes centralized procedures for matching delinquent debt records with Federal salary payment records for the purpose of offsetting a debtor's Federal salary payments where a match occurs.

The Financial Management Service (FMS), a bureau of the Department of the Treasury (Treasury), disburses more than 850 million Federal payments annually, including Federal salary payments. As the Treasury disbursing agency, FMS is responsible for the implementation of centralized administrative offset of Federal payments for the collection of delinquent nontax debt. To meet this responsibility, FMS has established the Treasury Offset Program. By participating in the Treasury Offset Program in accordance with the provisions of this rule, Federal agencies will comply with the DCIA requirements regarding Federal employees who owe delinquent nontax debts to the United States.

The Treasury Offset Program works as follows. FMS maintains a delinquent debtor database. The database includes delinquent debtor information submitted and updated by Federal agencies and States. Under the DCIA, Federal agencies are required to notify FMS of all past-due, legally enforceable nontax debts owed to the United States that are over 180 days delinquent for inclusion in this delinquent debtor database.

As part of the Federal payment process, FMS and other Federal disbursing officials compare the payee information with debtor information in the delinquent debtor database operated by FMS. If the payee's name and taxpayer identifying number (TIN) match the name and TIN of a debtor, the payment is offset, in whole or part, to satisfy the debt, to the extent allowed by law. This rule establishes specific procedures for the comparison of information contained in the delinquent debtor database with payee information contained on Federal salary payments

and for the offset of those payments where a match occurs.

Amounts collected are transmitted to the appropriate agencies owed the delinquent debt after the disbursing official deducts a fee charged to cover the cost of the offset program. The authority of disbursing officials to charge fees is found at 31 U.S.C. 3716(c)(4). Additionally, as authorized by 5 U.S.C. 5514, agencies that perform centralized salary offset computer matching services may charge a fee sufficient to cover the full cost for such services. Under 31 U.S.C. 3717(e) the agencies which are owed the delinquent debt may add the fees to the debt as part of the administrative cost, if permitted by law.

Information about a delinquent debt remains in the debtor database and offsets of eligible Federal salary and other payments will continue until debt collection activity for the debt is terminated because of full payment, establishment of a repayment plan, compromise, write-off or other reasons justifying termination. In centralizing offset through the Treasury Offset Program, FMS will consolidate and simplify offset procedures for the Federal Government.

Other rules and procedures reflect requirements for other types of payments or debts, as well as the general rules applicable to collection of debts by offset. FMS has promulgated or will promulgate other rules governing the centralized offset of Federal payments (other than Federal salary payments) for the collection of debts owed to Federal agencies, for the collection of debts owed to States, and for the collection of past-due child support. FMS anticipates that Part 285 of this title will contain all of the provisions relating to the centralized offset of Federal payments for the collection of debts owed to the Federal Government and to State governments, including past-due child support.

Section Analysis

(a) *Purpose and Scope.* Paragraph (a) explains that this rule establishes procedures for matching records of delinquent debtors with Federal employee records as required under 5 U.S.C. 5514(a)(1) and, where a match occurs, for offsetting Federal salary payments through centralized administrative offset under 31 U.S.C. 3716. Nothing in this rule precludes an agency from pursuing collection remedies in addition to salary offset.

(b) *Definitions.* This rule includes the following definitions.

Administrative offset. The term "administrative offset" or "offset" as

defined in this rule has the same meaning as found in 31 U.S.C. 3701(a)(1).

Agency. The term "agency" as defined in this rule has the same meaning as found in 31 U.S.C. 3701(a)(4) and includes all agencies required by 5 U.S.C. 5514(a)(1) to participate in centralized salary offset computer matching. The term refers to an agency in the executive, judicial or legislative branches of the Government, including government corporations, that administers the program that gave rise to the debt.

Centralized salary offset computer matching. The phrase "centralized salary offset computer matching" describes the computerized process used to match delinquent debt records with Federal salary payment records when the purpose of the match is to identify Federal employees who owe debt to the Federal Government.

Debt. For the purposes of this rule, the term "debt" has the same meaning as found in 31 U.S.C. 3701(b)(1) and does not include tax debt.

Delinquent debt record. For purposes of this rule, the term "delinquent debt record" refers to the information about a debt that an agency submits to FMS when the agency refers the debt for collection by offset in accordance with the provisions of 31 U.S.C. 3716.

Disbursing official. "Disbursing official" means an official who has authority to disburse Federal salary payments pursuant to 31 U.S.C. 3321 or another law. It includes disbursing officials of the Department of the Treasury, the Department of Defense, the United States Postal Service, or any other government corporation, any disbursing official of the United States designated by the Secretary of the Treasury, or any disbursing official of any other executive department or agency that disburses Federal salary payments.

Disposable pay. "Disposable pay" has the same meaning as prescribed by the Office of Personnel Management (OPM) in 5 CFR 550.1103. As defined by OPM, "disposable pay" means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of (a) any amount required by law to be withheld; (b) amounts properly withheld for Federal, state or local income tax purposes; (c) amounts deducted as health insurance premiums; (d) amounts deducted as normal retirement contributions, not including amounts deducted for supplementary coverage; and (e) amounts deducted as normal life

insurance premiums not including amounts deducted for supplementary coverage.

Federal employee. The term "Federal employee" is intended to cover any individual who is employed by any agency of the Federal Government, including temporary and seasonal employees.

Federal employee records. "Federal employee records" are the Federal salary payment records. To request salary payments for their employees, Federal agencies prepare and certify payment vouchers. Disbursing officials of the Federal Government issue salary payments upon receipt of certified payment vouchers. To identify Federal employees who owe debt to the United States, the Federal salary payment records will be compared with the delinquent debt records submitted to FMS.

Paying agency. The "paying agency" is the employing agency or the payroll agency (e.g., the United States Department of Agriculture's National Finance Center). The paying agency prepares and certifies payment vouchers pursuant to which disbursing officials issue salary payments.

Salary offset. "Salary offset" is a type of administrative offset. As amended by section 31001(d)(2)(B) of the DCIA, 31 U.S.C. 3716 is applicable to the offset of all Federal payments even if another statute provides for using offset to collect a particular type of debt. See 31 U.S.C. 3716(e) (formerly 31 U.S.C. 3716(c)). Thus, the provisions of 31 U.S.C. 3716 apply to salary offset even though procedures governing the offset of a Federal employee's salary are provided for in 5 U.S.C. 5514. The requirements to provide a Federal employee with notice and an opportunity to dispute the debt are contained in 5 U.S.C. 5514 and implementing regulations. Nothing in this rule is intended to change the prerequisites to salary offset.

Taxpayer identifying number. For an individual the "taxpayer identifying number" is the social security number. An offset of an individual's salary payment will not occur unless the taxpayer identifying number and name of the payee match the taxpayer identifying number and name of the debtor.

(c) *Establishment of the consortium.* Paragraph (c) defines the interagency consortium that the Secretary, by issuance of this rule, establishes in accordance with the requirement contained in 5 U.S.C. 5514(a)(1). The purpose of the interagency consortium is to establish a centralized salary offset computer matching process. Therefore,

paragraph (c) provides that the interagency consortium initially consists of all agencies which disburse Federal salary payments and which are required to offset Federal payments to collect debts. See 31 U.S.C. 3716(c)(1)(A). These agencies have the information necessary to identify all Federal employees who are receiving Federal salary payments. The membership of the consortium may be changed at the discretion of the Secretary, and the Secretary will be responsible for the ongoing coordination of the activities of the consortium.

(d) *Creditor agency participation.* The DCIA requires agencies to notify FMS of all past-due, legally enforceable debt over 180 days delinquent for purposes of administrative offset. See 31 U.S.C. 3716(c)(6). As explained in paragraph (d)(1), by complying with this notification requirement, agencies simultaneously will comply with the salary offset matching requirement under 5 U.S.C. 5514(a)(1). It is anticipated that all Federal disbursing officials will match Federal salary payment records against the debtor records contained in the delinquent debtor database. Currently, however, full implementation of the centralized salary offset computer matching process is not complete. Therefore, until the procedures described in this rule are fully implemented, it is important that agencies continue existing salary matching processes to identify, and collect debt owed from the salaries of, Federal employees who may not be identified through the Treasury Offset Program process.

Debts referred to FMS for purposes of administrative offset will be matched with all Federal payment records, including Federal salary payments. After a match occurs, unless offset is legally prohibited, the payee's payment will be offset to pay the payee's debt after proper notice and opportunity to review and dispute the debt have been provided to the payee (see paragraph (d)(3) of this section). Agencies also may refer debts less than 180 days delinquent so long as the debt is past-due and legally enforceable and all prerequisites to offset have been met.

Paragraph (d)(2) provides that before submitting a debt to FMS for purposes of administrative offset and salary offset matching, agencies must have issued regulations governing the collection of debt by both administrative offset and salary offset. Agency regulations governing the collection of debt by administrative offset must comply with 31 U.S.C. 3716(b) and with the Federal Claims Collection Standards (4 CFR Parts 101-105; see also, Notice of

Proposed Rulemaking concerning revisions to the Federal Claims Collection Standards, 62 FR 68475, Dec. 31, 1997). Agency regulations governing the collection of debt by salary offset must comply with 5 U.S.C. 5514 and with regulations issued by OPM (5 CFR 550.1101 through 550.1108; *see also*, Notice of Proposed Rulemaking concerning revisions to the OPM regulations, 63 FR 18850, April 16, 1998). Although salary offsets under this rule are being conducted through a centralized process under 31 U.S.C. 3716, agencies must nevertheless comply with the requirements for regulations contained in 5 U.S.C. 5514 and OPM regulations. An agency that has already published offset regulations need not publish new regulations except as may be necessary to conform the regulations to DCIA requirements.

Paragraph (d)(3) describes agency certification requirements when submitting a debt to FMS for offset, including salary offset. Nothing in the DCIA modified the pre-offset due process notices and opportunities afforded to debtors, in general, and Federal employees, in particular. Therefore, a debt may not be submitted to FMS for offset and salary offset matching unless the creditor agency certifies, in writing, that the debtor has been afforded the legally required due process. Paragraph (d)(3)(iv) explains that, with the approval of FMS, the specific notices and opportunities required as a prerequisite to salary offset may be provided to the debtor after the debt is submitted to FMS, but must be provided prior to the offset of an employee's salary.

Paragraph (d)(4) explains that the creditor agency is responsible for notifying FMS of any changes to the debt amount (other than offset collections) and any changes to the status of the legal enforceability of the debt. For example, unless the creditor agency determines that the automatic stay imposed at the time of a bankruptcy filing pursuant to 11 U.S.C. 362 has been lifted or is no longer in effect, in most cases collection activity against the debtor should stop immediately. Therefore, it is imperative that the creditor agency notify FMS immediately upon learning that a bankruptcy petition has been filed with respect to a debtor.

(e) *Centralized salary offset computer match.* Paragraph (e) explains that the delinquent debt records submitted by creditor agencies will be compared with the Federal employee records (salary payment records) maintained by the members of the consortium described in paragraph (c). A match will occur when the taxpayer identifying number and

name of a payee match the taxpayer identifying number and name of a debtor. For purposes of the computer matching process, the "name" will be a portion of the name, known as a "name control," designed to ensure accurate matching. The purpose of the computer matching process is to identify those Federal employees who owe delinquent debt and, once identified, to offset the employee's salary to pay the employee's delinquent debt. As noted above, salary offset is a type of administrative offset.

Although generally such computer matches are subject to the Computer Matching and Privacy Protection Act of 1988, Pub. L. No. 100-503 (Computer Matching Act), the DCIA authorizes the Secretary to waive certain provisions of the Computer Matching Act for administrative offset. *See* 31 U.S.C. 3716(f). Specifically, the Secretary is authorized to waive the Computer Matching Act requirements of completing matching agreements (contained in 5 U.S.C. 552a(o)) and post-match notification to the individual and verification of the resulting data (contained in 5 U.S.C. 552a(p)). The waiver is authorized upon the written certification by the head of the creditor agency that the requirements of 31 U.S.C. 3716(a) have been met. The waiver authority has been delegated by the Secretary to FMS. The certification that agencies are required to submit when referring their debts to FMS for offset, as described in paragraph (d)(3)(iii) of the rule, meets the certification requirement for waiver. Section 3716(a) requires that, prior to collecting a debt by administrative offset, agencies shall provide the debtor with written notice of the nature and amount of the debt and an opportunity to inspect and copy records, for review of the debt determination, and to enter into a repayment agreement. Agencies also must notify the debtor that the agency intends to collect the debt by administrative offset. FMS will not accept any debts into the debtor database (and therefore will not conduct any computer matches for offset purposes) unless the debts are accompanied by the written certification required by paragraph (d)(3)(iii) of this rule. In addition to certifying that the agency has complied with the requirements of 31 U.S.C. 3716 for offset, prior to offset of an employee's salary, the creditor agency must certify that the prerequisites to salary offset also have been met.

(f) *Salary offset.* Paragraph (f) states that when a match occurs, and all other requirements for offset have been met, Federal disbursing officials will offset the Federal employee's salary payment

to satisfy, in whole or in part, the debt. As discussed in paragraph (e)(1), a match occurs when the taxpayer identifying number and name of a payee match the taxpayer identifying number and name of a debtor.

Under 5 U.S.C. 5514 and as described in paragraph (g), the amount that may be offset from a Federal employee's salary payment is limited to 15% of the employee's disposable pay. Since disbursing officials may not have the information necessary to calculate 15% of an employee's disposable pay, disbursing officials may request that the paying agency deduct the amount to be offset before payment is certified to a disbursing official for payment.

(g) *Offset amount.* Under 5 U.S.C. 5514, the amount that may be offset from an employee's salary payment is limited to 15% of the employee's disposable pay. A disbursing official, after notifying the creditor agency or at the request of a creditor agency, may offset less than 15%. In addition, the debtor may agree to the offset of an amount greater than 15%.

(h) *Priorities.* As required by 5 U.S.C. 5514(d), paragraph (h)(1) of this section provides that tax levies imposed by the Internal Revenue Service take precedence over deductions from an employee's salary to pay a nontax debt owed to the United States.

Paragraph (h)(2) states that amounts offset from a Federal employee's salary will be applied first to the employee's past-due child support obligations which have been assigned to a State before being applied to the nontax debts owed by the employee to the United States. As currently set forth in this rule, only those child support debts which have been assigned to a State as reimbursement for public assistance paid to a family are given priority over debts owed to the Federal government. Amounts offset from a Federal employee's salary will be applied to child support obligations that have not been assigned to a State (and are owed directly to the custodial family) after payment of assigned child support debts and Federal debts owed by the employee. The priorities set forth in this interim rule parallel the statutory priorities that govern the offset of a debtor's tax refund payment. *See* 26 U.S.C. 6402(c) and 6402(d)(2). The public is invited to comment specifically on the priorities set forth in this rule and whether, for salary offset purposes, child support debts assigned to a State should have priority over debts owed to the Federal government. In addition, the public is invited to comment specifically on whether debts owed to the Federal government should

have priority over child support debts which have not been assigned to a State.

(i) *Notice.* Before offsetting a salary payment, the disbursing official, or the paying agency on behalf of the disbursing official, must notify the Federal employee in writing of the date deductions from salary will begin and of the amount of such deductions. The amount of the deductions may be stated as a percentage of pay. Additionally, once an offset of a salary payment has occurred, the disbursing official, or the paying agency on behalf of the disbursing official, must provide written notice to the Federal employee that the offset has occurred. This written notice may appear on a Leave and Earnings Statement (or similar statement) provided to the Federal employee. The disbursing official also will inform the creditor agency that an offset has occurred but will not inform the creditor agency of the payment source of the amounts collected. Since disbursing agencies will be conducting offsets of various payment types, debt repayment may result from any one of a number of payment sources.

(j) *Fees.* Agencies that perform salary offset matching services may charge fees pursuant to 5 U.S.C. 5514(a)(1). FMS, or a paying agency acting on behalf of FMS, may charge a fee sufficient to cover the full cost of implementing the offset program pursuant to 31 U.S.C. 3716(c)(4). The creditor agency may add any fees to the debt as an administrative cost pursuant to 31 U.S.C. 3717(e), if permitted by law. Fees may be deducted from the amount offset before that amount is transmitted to the creditor agency. The amount of the fee may be adjusted annually to ensure that the fee adequately covers the administrative costs of the offset program.

(k) *Disposition of amounts collected.* Paragraph (k) describes how amounts collected from salary payments will be transmitted to creditor agencies.

Regulatory Analysis

This interim rule is not a significant regulatory action as defined in Executive Order 12866. Because no notice of proposed rulemaking is required for this interim rule, the provisions of the Regulatory Flexibility Act do not apply.

Special Analyses

FMS is promulgating this interim rule without opportunity for prior public comment pursuant to the Administrative Procedure Act, 5 U.S.C. 553 (the "APA"), because FMS has determined, for the following reasons, that a comment period would be unnecessary, impracticable and contrary

to the public interest. A comment period is unnecessary because this interim rule does not change how the Federal salary offset process affects the Federal employee who owes delinquent nontax debt. The interim rule reflects changes to the procedures as to how creditor agencies will identify Federal employees who owe delinquent nontax debt for purposes of offsetting the salary payments of the identified Federal employees. Under this interim rule, creditor agencies are required to provide to the debtor the same pre-offset notice, opportunities, and rights to dispute the debt and seek waiver as currently required under 5 U.S.C. 5514 and implementing regulations.

FMS has determined that good cause exists to make this interim rule effective upon publication without providing the 30 day period between publication and the effective date contemplated by 5 U.S.C. 553(d). The purpose of a delayed effective date is to afford persons affected by a rule a reasonable time to prepare for compliance. However, in this case, as required by the DCIA which was effective on April 26, 1996, agencies already participate in the Treasury Offset Program. Many agencies have collected debts by salary offset over the last 15 years. Procedures affecting debtors remain unchanged in this rule.

Centralized salary offset computer matching for offset purposes will improve the efficiency of Treasury's government-wide collection of nontax delinquent debts owed by Federal employees. This rule provides critical guidance that will facilitate creditor agencies' participation in centralized salary offset computer matching as required by the DCIA. Therefore, FMS believes that good cause exists and that it is in the public interest to issue the interim rule without opportunity for prior public comment.

The public is invited to submit comments on the interim rule in general and on the specific points mentioned above which will be taken into account before a final rule is issued.

List of Subjects in 31 CFR Part 285

Administrative practice and procedure, Claims, Debt, Federal employees, Salaries, Wages.

Authority and Issuance

For the reasons set forth in the preamble, part 285 of 31 CFR chapter II, subchapter A, is amended as follows:

PART 285—DEBT COLLECTION AUTHORITIES UNDER THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

1. The authority citation for part 285 is revised to read as follows:

Authority: 5 U.S.C. 5514; 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3720A; E.O. 13019; 3 CFR, 1996 Comp., p. 216.

2. Section 285.7 is added to Subpart A to read as follows:

§ 285.7 Salary offset.

(a) *Purpose and scope.* (1) This section establishes procedures for the offset of Federal salary payments, through FMS' administrative offset program, to collect delinquent debts owed to the Federal Government. This process is known as salary offset. Rules issued by the Office of Personnel Management contain the requirements Federal agencies must follow prior to conducting salary offset and the procedures for requesting offsets directly from a paying agency. See 5 CFR 550.1101 through 550.1108.

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

(3) This section specifies the delinquent debt records and Federal employee records that must be included in the salary offset matching process. For purposes of this section, delinquent debt records consist of the debt information submitted to the Financial Management Service for purposes of administrative offset as required under 31 U.S.C. 3716(c)(6). Agencies that submit their debt to FMS for purposes of administrative offset are not required to submit duplicate information for purposes of centralized salary offset computer matching under 5 U.S.C. 5514 and this section.

(4) This section establishes an interagency consortium to implement centralized salary offset computer matching on a government-wide basis as required under 5 U.S.C. 5514(a)(1). Federal employee records consist of records of Federal salary payments disbursed by members of the consortium.

(5) The receipt of collections from salary offsets does not preclude a creditor agency from pursuing other debt collection remedies, including the offset of other Federal payments to satisfy delinquent nontax debt owed to the United States. A creditor agency should pursue, when deemed appropriate by such agency, such debt collection remedies separately or in conjunction with salary offset.

(b) *Definitions.* For purposes of this section:

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

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

Creditor agency means any agency that is owed a debt.

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

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

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

Disposable pay has the same meaning as that term is defined in 5 CFR 550.1103.

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

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

FMS means the Financial Management Service, a bureau of the Department of the Treasury.

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

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

Secretary means the Secretary of the Treasury or his or her delegate.

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

(c) *Establishment of the consortium.* As required by the provisions of 5 U.S.C. 5514(a)(1), by issuance of this section, the Secretary establishes an interagency consortium to implement centralized salary offset computer matching. The consortium initially includes all agencies that disburse Federal salary payments, including but not limited to, FMS, the Department of Defense, the United States Postal Service, government corporations, and agencies with Treasury-designated disbursing officials. The membership of the consortium may be changed at the discretion of the Secretary, and the Secretary will be responsible for the ongoing coordination of the activities of the consortium.

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

(2) Prior to submitting debts to FMS for purposes of administrative offset (including salary offset) and centralized salary offset computer matching, Federal agencies shall prescribe regulations in accordance with the requirements of 31 U.S.C. 3716 (administrative offset) and 5 U.S.C. 5514 (salary offset).

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

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

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

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

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

(4) FMS may waive the certification requirement set forth in paragraph (d)(3)(iv) of this section as a prerequisite to submitting the debt to FMS. If FMS waives the certification requirement, before an offset occurs, the creditor agency shall provide the Federal employee with the notices and opportunities for a hearing as required by 5 U.S.C. 5514 and applicable regulations, and shall certify to FMS that the requirements of 5 U.S.C. 5514 and applicable regulations have been met.

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

(e) *Centralized salary offset computer match.* (1) Delinquent debt records will

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

(2) As authorized by the provisions of 31 U.S.C. 3716(f), FMS, under a delegation of authority from the Secretary, has waived certain requirements of the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. 552a, as amended, for administrative offset, including salary offset, upon written certification by the head of the creditor agency that the requirements of 31 U.S.C. 3716(a) have been met. Specifically, FMS has waived the requirements for a computer matching agreement contained in 5 U.S.C. 552a(o) and for post-match notice and verification contained in 5 U.S.C. 552a(p). The creditor agency will provide certification in accordance with the provisions of paragraph (d)(3)(iii) of this section.

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

(g) *Offset amount.* (1) The amount offset from a salary payment under this section shall be the lesser of:

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

(ii) An amount up to 15% of the debtor's disposable pay.

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

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

(h) *Priorities.* (1) A levy pursuant to the Internal Revenue Code of 1986 shall take precedence over other deductions under this section.

(2) When a salary payment may be reduced to collect more than one debt, amounts offset under this section will be applied to a debt only after amounts offset have been applied to satisfy past due child support debts assigned to a State pursuant to 402(a)(26) or section 471(a)(17) of the Social Security Act.

(i) *Notice.* (1) Before offsetting a salary payment, the disbursing official, or the paying agency on behalf of the disbursing official, shall notify the Federal employee in writing of the date deductions from salary will commence and of the amount of such deductions.

(2)(i) When an offset occurs under this section, the disbursing official, or the paying agency on behalf of the disbursing official, shall notify the Federal employee in writing that an offset has occurred including:

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

(B) The identity of the creditor agency requesting the offset; and,

(C) A contact point within the creditor agency that will handle concerns regarding the offset.

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

(3) The disbursing official will advise each creditor agency of the names,

mailing addresses, and taxpayer identifying numbers of the debtors from whom amounts of past-due, legally enforceable debt were collected and of the amounts collected from each debtor for that agency. The disbursing official will not advise the creditor agency of the source of payment from which such amounts were collected.

(j) *Fees.* Agencies that perform centralized salary offset computer matching services may charge a fee sufficient to cover the full cost for such services. In addition, FMS, or a paying agency acting on behalf of FMS, may charge a fee sufficient to cover the full cost of implementing the administrative offset program. FMS may deduct the fees from amounts collected by offset or may bill the creditor agencies. Fees charged for offset shall be based on actual administrative offsets completed.

(k) *Disposition of amounts collected.* The disbursing official conducting the offset will transmit amounts collected for debts, less fees charged under paragraph (j) of this section, to the appropriate creditor agency. If an erroneous offset payment is made to a creditor agency, the disbursing official will notify the creditor agency that an erroneous offset payment has been made. The disbursing official may deduct the amount of the erroneous offset payment from future amounts payable to the creditor agency. Alternatively, upon the disbursing official's request, the creditor agency shall return promptly to the disbursing official or the affected payee an amount equal to the amount of the erroneous payment (without regard to whether any other amounts payable to such agency have been paid). The disbursing official and the creditor agency shall adjust the debtor records appropriately.

Dated: April 22, 1998.

Richard L. Gregg,

Commissioner.

[FR Doc. 98-11203 Filed 4-27-98; 8:45 am]

BILLING CODE 4810-35-P