

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**45 CFR Part 1150**

RIN 3135-AA01

Collection of Claims**AGENCY:** National Endowment for the Arts.**ACTION:** Interim rule with request for comments.

SUMMARY: The National Endowment for the Arts (Endowment) is issuing interim regulations governing the collection of debts owed to it and other Federal agencies. These regulations describe actions that the Endowment may take to collect such debts. These regulations also provide that the Endowment will enter into a cross-servicing agreement with the U.S. Department of the Treasury (Treasury) under which the Treasury will take authorized action to collect amounts owed to the Endowment. The Endowment requests comments on these regulations.

DATES: These regulations are effective on June 15, 2000. Written comments on these regulations must be received by July 17, 2000.

ADDRESSES: Interested persons should submit written comments concerning these regulations to Hope O’Keeffe; Acting General Counsel; National Endowment for the Arts; 1100 Pennsylvania Avenue, N.W.; Washington, DC 20506. Written comments may also be sent to Ms. O’Keeffe by telefax at (202) 682-5572 or by electronic mail at okeeffeh@arts.endow.gov.

FOR FURTHER INFORMATION CONTACT: Hope O’Keeffe, (202) 682-5418.

SUPPLEMENTARY INFORMATION: Under these regulations, the Endowment may collect debts owed to it through a number of actions, including the following: making offsets against amounts, including salary payments, owed to the debtor by the Endowment or other Federal agencies; making offsets against tax refunds owed to the debtor by the Internal Revenue Service (IRS); referring the debt to a private collection contractor; and referring the matter to the U.S. Department of Justice (DOJ) for initiation of a judicial proceeding against the debtor. In addition, these regulations describe the actions necessary for the Endowment to take collection actions on behalf of another Federal agency. These actions could include making offsets against the salary of an Endowment employee or any other amounts owed by the Endowment to the debtor. These regulations also provide

that the Endowment will enter into a cross-servicing agreement with the Treasury to take all of the above-listed actions to collect debts for the Endowment.

These regulations implement the requirements of the Federal Claims Collection Act of 1966 (Public Law 89-508, 80 Stat. 308) as amended by the Debt Collection Act of 1982 (Public Law 97-365, 96 Stat. 1749) and the Debt Collection Improvement Act of 1996 (Public Law 104-134, 110 Stat. 1321). These regulations are issued in conformity with the Federal Claims Collection Standards (4 CFR Chapter II). Revised Federal Claims Collection Standards have been proposed jointly by the DOJ and the Treasury. The Endowment will amend these regulations, as necessary, after the revised Federal Claims Collection Standards have been issued as final regulations. The regulations in this part are also issued in conformity with the guidelines of the Office of Personnel Management (OPM) on offsets against Federal employee salaries (5 CFR part 550, subpart K).

Effective Date and Request for Comments

The Endowment has determined that these interim regulations pertain to agency practice and procedure and are interpretative in nature. The procedures contained in these regulations for salary offset, tax refund offset, and administrative offset are mandated by law and by regulations promulgated by OPM, the IRS, and jointly by the DOJ and the Treasury. Therefore, under 5 U.S.C. 553 (b)-(d), these regulations are not subject to the Administrative Procedure Act (APA) and the requirements of the APA for a notice and comment period and a delayed effective date. Nonetheless, the Endowment requests comments on these regulations from the public and will take all comments into consideration before promulgating the final regulations.

Regulatory Impact*Executive Order 12866, Regulatory Planning and Review*

These interim regulations are not classified as a significant rule under Executive Order 12866 because they will not result in (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local government agencies; or (3) significant adverse effects on competition, employment, investment,

productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required, and these regulations have not been submitted to the Office of Management and Budget (OMB) for review.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations include an initial regulatory flexibility analysis describing the regulation’s impact on small entities. Such an analysis need not be undertaken if the agency certifies, under 5 U.S.C. 605(b), that the regulation will not have a significant economic impact on a substantial number of small entities. The Endowment has considered the impact of these interim regulations under the Regulatory Flexibility Act and certifies that these interim regulations are not likely to have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Endowment certifies that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Unfunded Mandates Reform Act of 1995

Assessment statements in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) are not required for regulations that incorporate requirements specifically set forth in law. As explained in the preamble, these regulations implement specific statutory requirements. In addition, these regulations do not include a Federal mandate that may result in the expenditure by the private sector or by State, local, and tribal governments (in the aggregate) of \$100 million or more in any one year. Therefore, a statement under 2 U.S.C. 1532 is not required.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), the Endowment submitted a report containing these interim regulations and other required information to the U.S. Senate, the U.S. House of

Representatives, and the Comptroller General of the United States before publication of these regulations in today's **Federal Register**. These regulations are not a "major rule" as defined at 5 U.S.C. 804(2).

List of Subjects in 45 CFR part 1150

Administrative practice and procedure, Claims, Debt collection, Government employees, Grants administration, Income taxes, Penalties, Wages.

For the reasons set out in this preamble, the Endowment amends Title 45, Code of Federal Regulations, chapter X by revising part 1150 to read as follows:

PART 1150—COLLECTION OF CLAIMS

Subpart A—General Provisions

Sec.

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- 1150.20 What debts are included or excluded from coverage of these regulations on salary offset?
- 1150.21 May I ask the Endowment to waive an overpayment that otherwise would be collected by offsetting my salary as a Federal employee?

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- 1150.43 When may the Endowment make an offset in an expedited manner?
- 1150.44 Can a judgment I have obtained against the United States be used to satisfy a debt that I owe to the Endowment?

Authority: 31 U.S.C. 3711, 3716–3718, 3720A; 5 U.S.C. 5514

Subpart A—General Provisions

§ 1150.1 What definitions apply to the regulations in this part?

As used in this part:

- (a) *Administrative offset* means the withholding of funds payable by the United States (including funds payable by the United States on behalf of a State government) to any person, or the withholding of funds held by the United States for any person, in order to satisfy a debt owed to the United States.
- (b) *Agency* means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of government, including a government corporation.
- (c) *Chairperson* means the Chairperson of the Endowment, or his or her designee.
- (d) *Creditor agency* means the agency to which the debt is owed.
- (e) *Day* means calendar day. To count days, include the last day of the period unless it is a Saturday, a Sunday, or a Federal legal holiday.

(f) *Debt* and *claim* are deemed synonymous and interchangeable. These terms mean money owed by a person to the United States for any reason, including loans made or guaranteed by the United States, fees, leases, rents, royalties, services, sales of real or personal property, overpayments, damages, interests, penalties, fines, forfeitures, and all other similar sources. For the purpose of administrative offset under 31 U.S.C. 3716 and subpart D of these regulations, the terms debt and claim also include money or property owed by a person to a State, the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico.

(g) *Debtor* means a person who owes a debt. Uses of the terms "I," "you," "me," and similar references to the reader of the regulations in this part are meant to apply to debtors as defined in this paragraph (g).

(h) *Delinquent debt* means a debt that has not been paid within the time limit prescribed by the Endowment.

(i) *Disposable pay* means the part of an employee's pay that remains after deductions that are required to be withheld by law have been made.

(j) *Employee* means a current employee of an agency, including a current member of the Armed Forces or Reserve of the Armed Forces of the United States.

(k) *Endowment* means the National Endowment for the Arts.

(l) *Federal Claims Collection Standards* means the standards currently published at 4 CFR Chapter II. The DOJ and the Treasury have proposed a revision that would move the Federal Claims Collection Standards to 31 CFR parts 900–904. The Endowment will amend these regulations, as necessary, after the revised Federal Claims Collection Standards have been issued as final regulations.

(m) *Paying agency* means the agency that employs the individual who owes a debt to the United States. In some cases, the Endowment may be both the creditor agency and the paying agency.

(n) *Payroll office* means the office in the paying agency that is primarily responsible for payroll records and the coordination of pay matters with the appropriate personnel office.

(o) *Person* includes a natural person or persons, profit or non-profit corporation, partnership, association, trust, estate, consortium, state or local government, or other entity that is capable of owing a debt to the United

States; however, agencies of the United States are excluded.

(p) *Private collection contractor* means a private debt collector under contract with an agency to collect a non-tax debt owed to the United States.

(q) *Salary offset* means a payroll procedure to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee, without his or her consent.

(r) *Tax refund offset* means the reduction of a tax refund by the amount of a past-due legally enforceable debt owed to the Endowment or any other Federal agency.

§ 1150.2 What is the Endowment's authority to issue these regulations?

The Endowment is issuing the regulations in this part under 31 U.S.C. 3711, 3716–3718, and 3720A. These sections reflect the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996. The Endowment is also issuing the regulations in this part in conformity with the Federal Claims Collection Standards, which prescribe standards for the handling of the Federal government's claims for money or property. The Endowment is further issuing the regulations in this part in conformity with 5 U.S.C. 5514 and the salary offset regulations published by the OPM at 5 CFR part 550, subpart K.

§ 1150.3 What other regulations also apply to the Endowment's debt collection efforts?

All provisions of the Federal Claims Collection Standards also apply to the regulations in this part. This part supplements the Federal Claims Collection Standards by prescribing procedures and directives necessary and appropriate for operations of the Endowment.

§ 1150.4 What types of claims are excluded from these regulations?

(a) The regulations in this part do not apply to any claim as to which there is an indication of fraud or misrepresentation, as described in the Federal Claims Collection Standards, unless returned to the Endowment by the DOJ for handling.

(b) The regulations in this subpart, subpart B, and subpart D do not apply to debts arising under the Internal Revenue Code of 1986, as amended (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*); and the tariff laws of the United States.

(c) Remedies and procedures described in this part may be authorized with respect to claims that are exempt from the Debt Collection Act of 1982

and the Debt Collection Improvement Act of 1996, to the extent that they are authorized under some other statute or the common law.

§ 1150.5 What notice will I be provided if I owe a debt to the Endowment?

(a) When the Chairperson determines that you owe a debt to the Endowment, he or she will send you a written notice (Notice). The Notice will be hand-delivered or sent to you by certified mail, return receipt requested at the most current address known to the Endowment. The Notice will inform you of the following:

(1) The amount, nature, and basis of the debt;

(2) That a designated Endowment official has reviewed the claim and determined that it is valid;

(3) That payment of the debt is due as of the date of the Notice, and that the debt will be considered delinquent if you do not pay it within 30 days of the date of the Notice;

(4) The Endowment's policy concerning interest, penalty charges, and administrative costs (see § 1150.7), including a statement that such assessments must be made against you unless excused in accordance with the Federal Claims Collection Standards and this part;

(5) That you have the right to inspect and copy Endowment records pertaining to your debt, or to receive copies of those records if personal inspection is impractical;

(6) That you have the opportunity to enter into an agreement, in writing and signed by both you and the Chairperson, for voluntary repayment of the debt (see § 1150.9); and

(7) The address, telephone number, and name of the Endowment official available to discuss the debt.

(b) Notice of possible collection actions. The Notice provided by the Chairperson under paragraph (a) of this section will also advise you that, if your debt (including any interest, penalty charges, and administrative costs) is not paid within 60 days of the date of the Notice, or you do not enter into a voluntary repayment agreement within 60 days of the date of the Notice, then the Endowment may enforce collection of the debt by any or all of the following methods:

(1) By referral to a credit reporting agency (see § 1150.12), a collection agency (see § 1150.13), or the DOJ (see § 1150.14);

(2) By transferring any debt delinquent for more than 180 days to the Treasury for collection under a cross-servicing agreement with the Treasury (see § 1150.15);

(3) If you are an Endowment employee, by deducting money from your disposable pay account (in the amount and with the frequency, approximate beginning date, and duration specified by the Endowment) until the debt (and all accumulated interest, penalty charges, and administrative costs) is paid in full (see subpart B). Such proceedings are governed by 5 U.S.C. 5514;

(4) If you are an employee of a Federal agency other than the Endowment, by initiating certification procedures to implement a salary offset by that Federal agency (see subpart B). Such proceedings are governed by 5 U.S.C. 5514;

(5) By referring the debt to the Treasury for offset against any refund of overpayment of tax (see subpart C);

(6) By administrative offset (see subpart D); or

(7) By liquidation of security or collateral. When the Endowment holds security or collateral that may be liquidated and the proceeds applied to your debt through the exercise of a power of sale in the security instrument or a nonjudicial foreclosure, such procedures may be followed unless the cost of disposing of the collateral will be disproportionate to its value or special circumstances require judicial foreclosure.

(c) Notice of opportunity for review. The Notice provided by the Chairperson under paragraph (a) of this section will also advise you of the opportunity to obtain a review within the Endowment concerning the existence or amount of the debt, the proposed schedule for offset of Federal employee salary payments, or whether the debt is past due or legally enforceable. The Notice shall also advise you of the following:

(1) The name, address, and telephone number of an officer or employee of the Endowment whom you may contact concerning procedures for requesting a review;

(2) The method and time period for requesting a review;

(3) That the filing of a request for a review on or before the 60th day following the date of the Notice will stay the commencement of collection proceedings;

(4) The name and address of the officer or employee of the Endowment to whom you should send the request for a review;

(5) That a final decision on the review (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the receipt of the request for a review, unless you request, and the review official grants, a delay in the proceedings;

(6) That any knowingly false or frivolous statements, representations, or evidence may subject you to:

(i) Disciplinary procedures appropriate under 5 U.S.C. Chapter 75, 5 CFR part 752, or any other applicable statute or regulations;

(ii) Penalties under the False Claims Act (31 U.S.C. 3729–3733) or any other applicable statutory authority; and

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

(7) Any other rights available to you to dispute the validity of the debt or to have recovery of the debt waived, or remedies available to you under statutes or regulations governing the program for which the collection is being made; and

(8) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt that are later waived or found not owed will be promptly refunded to you.

(d) The Endowment will respond promptly to communications from you.

§ 1150.6 What opportunity do I have to obtain a review of my debt within the Endowment?

(a) *Request for review.* If you desire a review within the Endowment concerning the existence or amount of your debt, the proposed schedule for offset of Federal employee salary payments, or whether the debt is past due or legally enforceable, you must send such a request to the officer or employee of the Endowment designated in the Notice (see § 1150.5(c)(4)).

(1) Your request for review must carry your signature and fully identify and explain with reasonable specificity all the facts and evidence that support your position. Your request for review should be accompanied by available evidence to support your contentions.

(2) Your request for review must be received by the designated officer or employee of the Endowment on or before the 60th day following the date of the Notice. Timely filing will stay the commencement of collection procedures. If you file a request for a review after the 60-day period provided for in this section, the Endowment will accept the request if you can show that the delay was the result of circumstances beyond your control or because you did not receive notice of the filing deadline (unless you had actual notice of the filing deadline).

(b) *Inspection of Endowment records related to the debt.* (1) In accordance with § 1150.5, if you want to inspect or copy Endowment records related to the debt, you must send a letter to the Endowment official designated in the

Notice stating your intention. Your letter must be received within 30 days of the date of the Notice.

(2) In response to the timely request described in paragraph (b)(1) of this section, the designated Endowment official will notify you of the location and time when you may inspect and copy records related to the debt.

(3) If personal inspection of Endowment records related to the debt is impractical, reasonable arrangements will be made to send you copies of those records.

(c) *Review official.* The Chairperson shall designate an officer or employee of the Endowment (who was not involved in the determination of the debt) as the review official. When required by law or regulation, the Endowment may request an administrative law judge to conduct the review, or may obtain a review official who is an official, employee, or agent of the United States, but who is not under the supervision or control of the Chairperson. However, unless the review is conducted by an official or employee of the Endowment, any unresolved dispute you have regarding whether all or part of the debt is past due or legally enforceable (for purposes of collection by tax refund offset under § 1150.31) must be referred to the Chairperson for ultimate administrative disposition, and the Chairperson must notify you of his or her determination.

(d) *Review procedure.* After you request a review, the review official will notify you of the form of the review to be provided. The review official shall determine whether an oral hearing is required, or if a review of the written record is sufficient, in accordance with the Federal Claims Collection Standards. In either case, the review official shall conduct the review in accordance with the Federal Claims Collection Standards. If the review will include an oral hearing, the notice sent to you by the review official will set forth the date, time, and location of the hearing.

(e) *Date of decision.* The review official will issue a written decision, based upon either the written record or documentary evidence and information developed at an oral hearing, as soon as practical, but not later than 60 days after the date on which the Endowment received your request for a review, unless you request, and the review official grants, a delay in the proceedings.

(f) *Content of review decision.* The review official will prepare a written decision that includes:

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

(2) The review official's findings, analysis, and conclusions; and

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

(g) *Interest, penalty charge, and administrative cost accrual during review period.* Interest, penalty charges, and administrative costs authorized by law will continue to accrue during the review period.

§ 1150.7 What interest, penalty charges, and administrative costs will I have to pay on a debt owed to the Endowment?

(a) *Interest.* (1) The Endowment will assess interest on all delinquent debts unless prohibited by statute, regulation, or contract.

(2) Interest begins to accrue on all debts from the date that the debt becomes delinquent. The Endowment will not recover interest if you pay the debt within 30 days of the date on which interest begins to accrue. The Endowment shall assess interest at the rate established annually by the Secretary of the Treasury under 31 U.S.C. 3717, unless a different rate is either necessary to protect the interests of the Endowment or established by a contract, repayment agreement, or statute. The Endowment will notify you of the basis for its finding when a different rate is necessary to protect the interests of the Endowment.

(3) The Chairperson may extend the 30-day period for payment without interest where he or she determines that such action is in the best interest of the Endowment. A decision to extend or not to extend the payment period is final and is not subject to further review.

(b) *Penalty.* The Endowment will assess a penalty charge, not to exceed 6 percent a year, on any portion of a debt that is delinquent for more than 90 days.

(c) *Administrative costs.* The Endowment will assess charges to cover administrative costs incurred as a result of your failure to pay a debt before it becomes delinquent. Administrative costs include the additional costs incurred in processing and handling the debt because it became delinquent, such as costs incurred in obtaining a credit report or in using a private collection contractor, or service fees charged by a Federal agency for collection activities undertaken on behalf of the Endowment.

(d) *Allocation of payments.* A partial or installment payment by a debtor will be applied first to outstanding penalty assessments, second to administrative costs, third to accrued interest, and fourth to the outstanding debt principal.

(e) *Additional authority.* The Endowment may assess interest, penalty charges, and administrative costs on

debts that are not subject to 31 U.S.C. 3717 to the extent authorized under common law or other applicable statutory authority.

(f) *Waiver.* (1) The Chairperson may (without regard to the amount of the debt) waive collection of all or part of accrued interest, penalty charges, or administrative costs, if he or she determines that collection of these charges would be against equity and good conscience or not in the best interest of the Endowment.

(2) A decision to waive interest, penalty charges, or administrative costs may be made at any time before a debt is paid. However, where these charges have been collected before the waiver decision, they will not be refunded. The Chairperson's decision to waive or not waive collection of these charges is final and is not subject to further review.

§ 1150.8 Will failure to pay my debt affect my eligibility for Endowment programs?

In the event that you fail to pay your debt to the Endowment within a reasonable period of time after the date of the Notice of debt, the General Counsel of the Endowment shall place your name on the Endowment's list of debarred, suspended, and ineligible contractors, grantees, and other participants in programs sponsored by the Endowment. You will be advised of this action.

§ 1150.9 How can I resolve the Endowment's claim through a voluntary repayment agreement?

In response to a Notice of debt, you may propose to the Endowment that you be allowed to repay the debt through a voluntary repayment agreement in lieu of the Endowment taking other collection actions under this part.

(a) Your request to enter into a voluntary repayment agreement must:

- (1) Be in writing;
- (2) Admit the existence of the debt; and
- (3) Either propose payment of the debt (together with interest, penalty charges, and administrative costs) in a lump sum, or set forth a proposed repayment schedule.

(b) The Endowment will collect claims in full or one lump sum whenever feasible. However, if you are unable to pay your debt in one lump sum, the Endowment may accept payment in regular installments that bear a reasonable relationship to the size of the debt and your ability to pay.

(c) The Endowment will consider a request to enter into a voluntary repayment agreement in accordance with the Federal Claims Collection Standards. The Chairperson may request

additional information from you, including financial statements if you request to make payments in installments, in order to make a determination of whether to accept a voluntary repayment agreement. It is within the Chairperson's discretion to accept a repayment agreement instead of proceeding with other collection actions under this part, and to set the necessary terms of any voluntary repayment agreement. No repayment agreement will be binding on the Endowment unless it is in writing and signed by both you and the Chairperson. At the Endowment's option, you may be required to enter into a confession-judgment note or bond of indemnity with surety as part of an agreement to make payments in installments. Notwithstanding the provisions of this section, any reduction or compromise of a claim will be governed by 31 U.S.C. 3711.

§ 1150.10 What is the extent of the Chairperson's authority to compromise debts owed to the Endowment, or to suspend or terminate collection action on such debts?

(a) The Chairperson may exercise his or her authority to compromise, or to suspend or terminate collection action on, those debts owed to the Endowment and not exceeding \$100,000, excluding interest, in conformity with the Federal Claims Collection Act of 1966, as amended; the Federal Claims Collection Standards issued thereunder; and this part, except where standards are established by other statutes or authorized regulations issued pursuant to them.

(b) The portion of a debt owed to the Endowment that is unrecovered as the result of a compromise shall be reported to the Internal Revenue Service (IRS) as income to the debtor.

§ 1150.11 How does subdividing or joining debts owed to the Endowment affect the Chairperson's compromise, suspension, or termination authority?

A debtor's liability arising from a particular transaction or contract will be considered as a single claim in determining whether the claim is one of not more than \$100,000, excluding interest, for the purpose of compromise or suspension or termination of collection action. Such a claim may not be subdivided to avoid the monetary ceiling established by the Federal Claims Collection Act of 1966, as amended. Joining two or more claims in a demand upon a debtor for payment of more than \$100,000 does not preclude compromise or suspension or termination of collection action with

regard to any one claim not exceeding \$100,000, excluding interest.

§ 1150.12 How will the Endowment use credit reporting agencies to collect its claims?

(a) The Endowment may report delinquent debts to appropriate credit reporting agencies by providing the following information:

- (1) A statement that the debt is valid and overdue;
- (2) The name, address, taxpayer identification number, and any other information necessary to establish the identity of the debtor;
- (3) The amount, status, and history of the debt; and
- (4) The program or pertinent activity under which the debt arose.

(b) Before disclosing debt information to a credit reporting agency, the Endowment will:

- (1) Take reasonable action to locate the debtor if a current address is not available;
- (2) Provide the notice required under § 1150.5 if a current address is available; and
- (3) Obtain satisfactory assurances from the credit reporting agency that it complies with the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*) and other Federal laws governing the provision of credit information.

(c) At the time debt information is submitted to a credit reporting agency, the Endowment will provide a written statement to the reporting agency that all required actions have been taken. In addition, the Endowment will, thereafter, ensure that the credit reporting agency is promptly informed of any substantive change in the conditions or amount of the debt, and promptly verify or correct information relevant to the debt.

(d) If a debtor disputes the validity of the debt, the credit reporting agency will refer the matter to the appropriate Endowment official. The credit reporting agency will exclude the debt from its reports until the Endowment certifies in writing that the debt is valid.

(e) The Endowment may disclose to a commercial credit bureau information concerning a commercial debt, including the following:

- (1) Information necessary to establish the name, address, and employer identification number of the commercial debtor;
- (2) The amount, status, and history of the debt; and
- (3) The program or pertinent activity under which the debt arose.

§ 1150.13 How will the Endowment contract for collection services?

The Endowment will use the services of a private collection contractor where it determines that such use is in the best interest of the Endowment. When the Endowment determines that there is a need to contract for collection services, it will:

- (a) Retain sole authority to:
 - (1) Resolve any dispute with the debtor regarding the validity of the debt;
 - (2) Compromise the debt;
 - (3) Suspend or terminate collection action;
 - (4) Refer the debt to the DOJ for litigation; and
 - (5) Take any other action under this part which does not result in full collection of the debt;

(b) Require the contractor to comply with the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m); with the Fair Debt Collection Practices Act (15 U.S.C. 1692–1692o) and other applicable Federal and State laws pertaining to debt collection practices; and with the applicable regulations of the Endowment in this chapter;

(c) Require the contractor to account accurately and fully for all amounts collected; and

(d) Require the contractor to provide to the Endowment, upon request, all data and reports contained in its files related to its collection actions on a debt.

§ 1150.14 When will the Endowment refer claims to the DOJ?

The Chairperson will refer to the DOJ for litigation claims on which aggressive collection actions have been taken but which could not be collected, compromised, suspended, or terminated. Referrals will be made as early as possible, consistent with aggressive Endowment collection action, and within the period for bringing a timely suit against the debtor.

§ 1150.15 Will the Endowment use a cross-servicing agreement with the Treasury to collect its claims?

(a) The Endowment will enter into a cross-servicing agreement that authorizes the Treasury to take the collection actions described in this part on behalf of the Endowment. These debt collection services will be provided to the Endowment in accordance with 31 U.S.C. Chapter 37.

(b) The Endowment shall transfer to the Treasury any past due, legally enforceable, non-tax debt that has been delinquent for a period of 180 days or more so that the Secretary of the Treasury may take appropriate action in

accordance with 31 U.S.C. 3716, 5 U.S.C. 5514, the Federal Claims Collection Standards, 5 CFR 550.1108, and 31 CFR part 285. The categories of debts described in 31 U.S.C. 3711(g)(2) are excluded from transfer under this paragraph (b).

§ 1150.16 May I use the Endowment's failure to comply with these regulations as a defense?

No. The failure of the Endowment to comply with any standard prescribed in the Federal Claims Collection Standards or these regulations shall not be available to any debtor as a defense.

Subpart B—Salary Offset

§ 1150.20 What debts are included or excluded from coverage of these regulations on salary offset?

(a) The regulations in this subpart provide Endowment procedures for the collection by salary offset of a Federal employee's pay to satisfy certain debts owed to the Endowment or to other Federal agencies.

(b) The regulations in this subpart do not apply to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(c) Nothing in the regulations in this subpart precludes the compromise, suspension, or termination of collection actions under the Federal Claims Collection Act of 1966, as amended, or the Federal Claims Collection Standards.

(d) A levy pursuant to the Internal Revenue Code takes precedence over a salary offset under this subpart, as provided in 5 U.S.C. 5514(d).

(e) This subpart does not apply to any adjustment to pay arising out of your 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 or fewer pay periods.

§ 1150.21 May I ask the Endowment to waive an overpayment that otherwise would be collected by offsetting my salary as a Federal employee?

Yes. The regulations in this subpart do not preclude you from requesting waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or other statutory provisions pertaining to the particular debts being collected.

§ 1150.22 What are the Endowment's procedures for salary offset?

(a) The Endowment will coordinate salary deductions under this subpart as appropriate.

(b) If you are an Endowment employee, the Endowment's payroll office will determine the amount of your disposable pay and will implement the salary offset.

(c) Deductions will begin within three official pay periods following receipt by the Endowment's payroll office of certification of debt from the creditor agency.

(d) Types of collection.

(1) *Lump-sum offset.* If the amount of the debt is equal to or less than 15 percent of disposable pay, the debt generally will be collected through one lump-sum offset.

(2) *Installment deductions.*

Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and your ability to pay. However, the amount deducted from any period will not exceed 15 percent of the disposable pay from which the deduction is made unless you have agreed in writing to the deduction of a greater amount. If possible, installment payments will be sufficient in size and frequency to liquidate the debt in three years or less.

(3) *Deductions from final check.* A deduction exceeding the 15 percent of disposable pay limitation may be made from any final salary payment under 31 U.S.C. 3716 and the Federal Claims Collection Standards, in order to liquidate the debt, whether the employee is being separated voluntarily or involuntarily.

(4) *Deductions from other sources.* If an employee subject to salary offset is separated from the Endowment, and the balance of the debt cannot be liquidated by offset of the final salary check, then the Endowment may offset later payments of any kind against the balance of the debt, as allowed by 31 U.S.C. 3716 and the Federal Claims Collection Standards.

(e) Multiple debts. In instances where two or more creditor agencies are seeking salary offsets, or where two or more debts are owed to a single creditor agency, the Endowment's payroll office may, at its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

§ 1150.23 How will the Endowment coordinate salary offsets with other agencies?

(a) *Responsibilities of the Endowment as the creditor agency.* Upon completion of the procedures established in this subpart and pursuant to 5 U.S.C. 5514,

the Endowment must submit a claim to a paying agency.

(1) In its claim, the Endowment must certify, in writing, the following:

- (i) That the employee owes the debt;
- (ii) The amount and basis of the debt;
- (iii) The date the Endowment's right to collect the debt first accrued; and
- (iv) That the Endowment's regulations in this subpart have been approved by OPM under 5 CFR part 550, subpart K.

(2) If the collection must be made in installments, the Endowment's claim will also advise the paying agency of the amount or percentage of disposable pay to be collected in each installment. The Endowment may also advise the paying agency of the number of installments to be collected and the date of the first installment, if that date is other than the next officially established pay period.

(3) The Endowment shall also include in its claim:

- (i) The employee's written consent to the salary offset;
- (ii) The employee's signed statement acknowledging receipt of the procedures required by 5 U.S.C. 5514; or
- (iii) Information regarding the completion of procedures required by 5 U.S.C. 5514, including the actions taken and the dates of those actions.

(4) If the employee is in the process of separating and has not received a final salary check or other final payment(s) from the paying agency, the Endowment must submit its claim to the paying agency for collection under 31 U.S.C. 3716. The paying agency will (under its regulations adopted under 5 U.S.C. 5514 and 5 CFR part 550, subpart K), certify the total amount of its collection on the debt and notify the employee and the Endowment. If the paying agency's collection does not fully satisfy the debt, and the paying agency is aware that the debtor is entitled to payments from the Civil Service Retirement and Disability Fund or other similar payments that may be due the debtor employee from other Federal government sources, then (under its regulations adopted under 5 U.S.C. 5514 and 5 CFR part 550, subpart K), the paying agency will provide written notice of the outstanding debt to the agency responsible for making the other payments to the debtor employee. The written notice will state that the employee owes a debt, the amount of the debt, and that the provisions of this section have been fully complied with. However, the Endowment must submit a properly certified claim under this paragraph (a)(4) to the agency responsible for making the payments before the collection can be made.

(5) Separated employee. If the employee is already separated and all

payments due from his or her former paying agency have been paid, the Endowment may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be administratively offset to collect the debt.

(6) Employee transfer. When an employee transfers from one paying agency to another paying agency, the Endowment will not repeat the due process procedures described in 5 U.S.C. 5514 and this subpart to resume the collection. The Endowment will submit a properly certified claim to the new paying agency and will subsequently review the debt to ensure that the collection is resumed by the new paying agency.

(b) *Responsibilities of the Endowment as the paying agency.* (1) Complete claim. When the Endowment receives a certified claim from a creditor agency (under the creditor agency's regulations adopted under 5 U.S.C. 5514 and 5 CFR part 550, subpart K), deductions should be scheduled to begin within three officially established pay intervals. Before deductions can begin, the employee will receive a written notice from the Endowment including:

(i) A statement that the Endowment has received a certified claim from the creditor agency;

- (ii) The amount of the claim;
- (iii) The date salary offset deductions will begin; and
- (iv) The amount of such deductions.

(2) Incomplete claim. When the Endowment receives an incomplete certification of debt from a creditor agency, the Endowment will return the claim with a notice that the creditor agency must comply with the procedures required under 5 U.S.C. 5514 and 5 CFR part 550, subpart K, and must properly certify a claim to the Endowment before the Endowment will take action to collect from the employee's current pay account.

(3) The Endowment is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(4) Employees who transfer from the Endowment to another paying agency. If, after the creditor agency has submitted the claim to the Endowment, the employee transfers from the Endowment to a different paying agency before the debt is collected in full, the Endowment will certify the total amount collected on the debt and notify the employee and the creditor agency in writing. The notification to the creditor

agency will include information on the employee's transfer.

§ 1150.24 Under what conditions will the Endowment make a refund of amounts collected by salary offset?

(a) If the Endowment is the creditor agency, it will promptly refund any amount deducted under the authority of 5 U.S.C. 5514, when:

(1) The debt is waived or all or part of the funds deducted are otherwise found not to be owed (unless expressly prohibited by statute or regulation); or

(2) An administrative or judicial order directs the Endowment to make a refund.

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

§ 1150.25 Will the collection of a claim by salary offset act as a waiver of my rights to dispute the claimed debt?

Your involuntary payment of all or any portion of a debt under this subpart will not be construed as a waiver of any rights that you may have under 5 U.S.C. 5514 or other provisions of a law or written contract, unless there are statutory or contractual provisions to the contrary.

Subpart C—Tax Refund Offset

§ 1150.30 Which debts can the Endowment refer to the Treasury for collection by offsetting tax refunds?

(a) The regulations in this subpart implement 31 U.S.C. 3720A, which authorizes the Treasury to reduce a tax refund by the amount of a past-due, legally enforceable debt owed to a Federal agency.

(b) For purposes of this section, a past-due, legally enforceable debt referable to the Treasury for tax refund offset is a debt that is owed to the Endowment and:

- (1) Is at least \$25.00;
- (2) Except in the case of a judgment debt, has been delinquent for at least three months and will not have been delinquent more than 10 years at the time the offset is made;
- (3) Cannot currently be collected under the salary offset provisions of 5 U.S.C. 5514;
- (4) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2) or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the Endowment against amounts payable to the debtor by the Endowment;
- (5) With respect to which the Endowment has

(i) given the debtor at least 60 days to present evidence that all or part of the debt is not past due or legally enforceable,

(ii) considered evidence presented by the debtor, and

(iii) determined that an amount of the debt is past due and legally enforceable;

(6) Has been disclosed by the Endowment to a credit reporting agency as authorized by 31 U.S.C. 3711(e) and § 1150.12 of this part, unless the credit reporting agency would be prohibited from reporting information concerning the debt by reason of 15 U.S.C. 1681c;

(7) With respect to which the Endowment has notified or has made a reasonable attempt to notify the debtor that:

(i) The debt is past due, and

(ii) Unless repaid within 60 days of the date of the Notice, the debt may be referred to the Treasury for offset against any refund of overpayment of tax; and

(8) All other requirements of 31 U.S.C. 3720A and the Treasury regulations relating to the eligibility of a debt for tax return offset (31 CFR 285.2) have been satisfied.

§ 1150.31 What are the Endowment's procedures for collecting debts by tax refund offset?

(a) The Chairperson will be the point of contact with the Treasury for administrative matters regarding the offset program.

(b) The Endowment will ensure that the procedures prescribed by the Treasury are followed in developing information about past-due debts and submitting the debts to the Treasury.

(c) The Endowment will submit to the Treasury a notification of a taxpayer's liability for past-due legally enforceable debt. This notification will contain the following:

(1) The name and taxpayer identification number of the debtor;

(2) The amount of the past-due and legally enforceable debt;

(3) The date on which the original debt became past due; and

(4) A statement certifying that, with respect to each debt reported, all of the requirements of § 1150.30(b) have been satisfied.

(d) For purposes of this section, notice that collection of the debt is affected by a bankruptcy proceeding involving the debtor will bar referral of the debt to the Treasury.

(e) The Endowment shall promptly notify the Treasury to correct data when it:

(1) Determines that an error has been made with respect to a debt that has been referred;

(2) Receives or credits a payment on the debt; or

(3) Receives notice that the person owing the debt has filed for bankruptcy under Title 11 of the United States Code

or has been adjudicated bankrupt and the debt has been discharged.

(f) When advising debtors of an intent to refer a debt to the Treasury for offset, the Endowment will also advise debtors of remedial actions available to defer the offset or prevent it from taking place.

Subpart D—Administrative Offset

§ 1150.40 Under what circumstances will the Endowment collect amounts that I owe to the Endowment (or some other Federal agency) by offsetting the debt against payments that the Endowment (or some other Federal agency) owes me?

(a) The regulations in this subpart apply to the collection of any debts you owe to the Endowment, or to any request from another Federal agency that the Endowment collect a debt you owe by offsetting your debt against a payment the Endowment owes you. Administrative offset is authorized under Section 5 of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3716). The Endowment shall carry out administrative offset in accordance with the provisions of the Federal Claims Collection Standards; the regulations in this subpart are intended only to supplement the provisions of the Federal Claims Collection Standards.

(b) The Chairperson, after attempting to collect a debt you owe to the Endowment under Section 3(a) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(a)), may collect the debt by administrative offset, subject to the following:

(1) The debt you owe is certain in amount; and

(2) It is in the best interest of the Endowment to collect your debt by administrative offset because of the decreased costs of collection and acceleration in the payment of the debt.

(c) No collection by administrative offset will be made on any debt that has been outstanding for more than 10 years unless facts material to the Endowment or a federal agency's right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering and collecting the debt.

(d) The regulations in this subpart do not apply to:

(1) A case in which administrative offset of the type of debt involved is explicitly prohibited by statute; or

(2) Debts owed to the Endowment by Federal agencies.

§ 1150.41 How will the Endowment request that my debt to the Endowment be collected by offset against some payment that another Federal agency owes me?

The Chairperson may request that funds due and payable to you by

another Federal agency instead be paid to the Endowment to satisfy a debt you owe to the Endowment. In requesting administrative offset, the Endowment will certify in writing to the Federal agency that is holding funds for you:

(a) That you owe the debt;

(b) The amount and basis of the debt; and

(c) That the Endowment has complied with the requirements of 31 U.S.C. 3716, its own administrative offset regulations in this subpart, and the applicable provisions of the Federal Claims Collection Standards with respect to providing you with due process.

§ 1150.42 What procedures will the Endowment use to collect amounts I owe to a Federal agency by offsetting a payment that the Endowment would otherwise make to me?

(a) Any Federal agency may request that the Endowment administratively offset funds due and payable to you in order to collect a debt you owe to that agency. The Endowment will initiate the requested offset only upon:

(1) Receipt of written certification from the creditor agency stating:

(i) That you owe the debt;

(ii) The amount and basis of the debt;

(iii) That the agency has prescribed regulations for the exercise of administrative offset; and

(iv) That the agency has complied with its own administrative offset regulations and with the applicable provisions of the Federal Claims Collection Standards, including providing you with any required hearing or review; and

(2) A determination by the Chairperson that offsetting funds payable to you by the Endowment in order to collect a debt owed by you would be in the best interest of the United States as determined by the facts and circumstances of the particular case, and that such an offset would not otherwise be contrary to law.

(b) Multiple debts. In instances where two or more creditor agencies are seeking administrative offsets, or where two or more debts are owed to a single creditor agency, the Endowment may, in its discretion, allocate the amount it owes to you to the creditor agencies in accordance with the best interest of the United States as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

§ 1150.43 When may the Endowment make an offset in an expedited manner?

The Endowment may effect an administrative offset against a payment to be made to you before completion of the procedures required by §§ 1150.41

and 1150.42 if failure to take the offset would substantially jeopardize the Endowment's ability to collect the debt and the time before the payment is to be made does not reasonably permit the completion of those procedures. An expedited offset will be followed promptly by the completion of those procedures. Amounts recovered by

offset, but later found not to be owed to the Endowment, will be promptly refunded.

§ 1150.44 Can a judgment I have obtained against the United States be used to satisfy a debt that I owe to the Endowment?

Collection by offset against a judgment obtained by a debtor against

the United States will be accomplished in accordance with 31 U.S.C. 3728.

Dated: June 12, 2000.

Hope O'Keeffe,

Acting General Counsel.

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