

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206-AH63

Pay Administration (General); Collection by Offset from Indebted Government Employees

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing proposed changes in the salary offset regulations to comply with the Debt Collection Improvement Act of 1996. The principal changes relate to the roles played by disbursing officials and debt collection centers with respect to salary offset. Also included are new expedited salary offset procedures for certain types of recent or small-amount debts.

DATES: Comments must be received on or before June 15, 1998.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415, FAX: (202) 606-0824, or email to payleave@opm.gov.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606-2858, FAX: (202) 606-0824, or email to payleave@opm.gov.

SUPPLEMENTARY INFORMATION: For many years, Federal agencies have made deductions from employees' pay to recover debts owed to the Government. (See 5 U.S.C. 5514.) Office of Personnel Management (OPM) regulations provide specific requirements for collecting debts by offsetting salaries and procedures for employee notification and hearings.

The Debt Collection Improvement Act of 1996 (section 31001 of Public Law 104-134, April 26, 1996) (DCIA) made

changes to maximize the collection of delinquent debts owed to the Government while minimizing the costs of debt collection by consolidating related functions and using interagency teams. The DCIA requires all Federal agencies to which outstanding delinquent debts are owed to participate in an annual computer match of their delinquent debt records with records of Federal employees. The Secretary of the Treasury is required to establish an inter-agency consortium to implement this centralized salary offset computer matching and promulgate regulations for that program.

In addition, the DCIA established mandatory centralized administrative offset. Under 31 U.S.C. 3716, Federal agencies are required to notify the Secretary of the Treasury of all debts which are over 180 days delinquent. Agencies may also notify the Secretary of the Treasury of any debt which is delinquent for 180 days or less. The Secretary of the Treasury and other Federal disbursing officials will match payments to the debtor from the Federal Government, including Federal salary payments, against these debts. Where a match occurs, and all the requirements for offset have been met, the payment will be offset to satisfy the debt in whole or part. Federal agencies must notify Treasury of all debts over 180 days delinquent, including debts owed by Federal employees which the agency seeks to collect from the employee's pay account at another agency. Thus, compliance with the administrative offset provisions of the DCIA will accomplish salary offset and negate the need to follow the procedures under section 550.1109 in these proposed regulations (currently section 550.1108). The procedures outlined in section 550.1109 will continue to apply, however, until salary offset can be accomplished by centralized administrative offset. It is anticipated that the procedures under section 550.1109 will eventually be eliminated.

The DCIA amended the salary offset law for Federal employees covered under 5 U.S.C. 5514 as follows:

(1) Pay adjustments made to correct clerical or administrative errors or delays if the overpayment occurred within the 4 pay periods preceding the adjustment, and collection of a debt amounting to \$50 or less, are excluded from the normally required

administrative procedures (e.g. notice and hearing).

(2) The definition of "agency" is modified to clarify that it includes executive departments and agencies; the United States Postal Service; the Postal Rate Commission; the United States Senate; the United States House of Representatives; any court, court administrative office, or instrumentality in the judicial or legislative branches of the Government; and Government corporations.

(3) In determining the order of deductions from pay, a levy pursuant to the Internal Revenue Code takes precedence over offsets under section 5514.

In response to these changes, OPM proposes regulatory changes needed to implement salary offsets by centralized administrative offset, accommodate the role of debt collection centers, modify definitions, limit the required procedures in some instances for small debts and for clerical or administrative errors or delays, and make other conforming or clarifying changes, including those described below.

OPM proposes to revise section 550.1102(b)(1) to remove the reference to debts arising under the Social Security Act in the listing of debts that are excluded from collection via salary offset. Under subsection (z)(2) of the DCIA, section 204 of the Social Security Act (42 U.S.C. 404) is amended to authorize the Commissioner of Social Security to collect delinquent claims by salary offset under 5 U.S.C. 5514.

OPM proposes to revise section 550.1102(b)(2) to reflect elimination of the General Accounting Office's role in waiving certain overpayment debt claims against Federal employees, consistent with Public Law 104-316 (October 19, 1996) and the Office of Management and Budget "Determination with Respect to the Transfer of Functions Pursuant to Public Law 104-316," dated December 17, 1996.

OPM proposes to revise section 550.1104(d)(3) to clarify that, in a salary offset notice to an employee, the "amount" of a deduction may be expressed as a percentage of pay, not to exceed 15 percent of disposable pay. The requirements to include the commencement date and duration of deductions in the salary offset notice are removed, since this information is not

required by law and its inclusion can pose an unnecessary administrative burden. Also, when the deduction amount is expressed as a percentage of disposable pay, which can change over a period of time, the duration of deductions cannot be specified. However, debtor employees can easily estimate the duration of deductions by dividing the total debt amount by the initial dollar amount of the initial deduction.

OPM proposes a new section 550.1107(c) to clarify that a determination of a hearing official that a debt may not be collected via salary offset under 5 U.S.C. 5514 does not preclude the creditor agency from seeking collection of a debt it considers to be valid through other appropriate means, since the hearing official's determination pertains only to salary offset. This is consistent with Comptroller General opinion B-211626, December 19, 1984.

When final regulations are published, covered agencies will be required to make necessary conforming changes in their agency salary offset regulations. Under 5 CFR 550.1105(b), significant proposed changes in creditor agency regulations must be submitted to OPM for review and approval. However, as long as these changes in agency regulations are made merely to conform with the changes made in OPM regulations, no OPM review will be required.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would only apply to Federal agencies and employees.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

Office of Personnel Management.

Janice R. Lachance,
Director.

Accordingly, OPM is proposing to amend part 550 of title 5 of the Code of Federal Regulations as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart K—Collection by Offset From Indebted Government Employees

1. The authority citation for subpart K of part 550 continues to read as follows:

Authority: 5 U.S.C. 5514; sec. 8(1) of E.O. 11609; redesignated in sec. 2-1 of E.O. 12107.

2. In § 550.1102, paragraph (b) is revised to read as follows:

§ 550.1102 Scope.

* * * * *

(b) *Applicability.* This subpart and 5 U.S.C. 5514 apply in recovering certain debts by administrative offset, except where the employee consents to the recovery, from the current pay account of the employee. Because salary offset is a type of administrative offset, debt collection procedures for salary offset which are not specified in 5 U.S.C. 5514 and this subpart should be consistent with the provisions of the Federal Claims Collections Standards (FCCS, as defined in § 550.1103) (dealing with administrative offset generally) and 31 CFR part 285 (dealing with centralized administrative offset under 31 U.S.C. 3716). Section 550.1108 addresses the use of centralized administrative offset procedures to effect salary offset. Generally, the procedures under § 550.1109 should apply only when centralized administrative offset cannot be accomplished.

(1) *Excluded debts.* The procedures contained in this subpart do not apply to debts arising under the Internal Revenue Code (26 U.S.C. 1 *et seq.*) or the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

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

3. In § 550.1103, the definitions of *agency*, *creditor agency*, *disposable pay*, and *FCCS* are revised, and the definition of *debt collection center* is added in alphabetical order, to read as follows:

§ 550.1103 Definitions.

* * * * *

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

Creditor Agency means the agency to which the debt is owed, including a debt collection center when acting in behalf of a creditor agency in matters pertaining to the collection of a debt (as provided in § 550.1110).

* * * * *

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

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 any amount required by law to be withheld (other than deductions to execute garnishment orders in accordance with parts 581 and 582 of this chapter). Among the legally required deductions that must be applied first to determine disposable pay are levies pursuant to the Internal Revenue Code (Title 26, United States Code) and deductions described in § 581.105 (b) through (f) of this chapter.

* * * * *

FCCS means the Federal Claims Collection Standards published in 4 CFR 101 through 105.

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4. Section 550.1104 is amended, in paragraph (d), in the second sentence of the introductory text, by removing "or his designee" and adding in its place "(or authorized designee)"; in paragraph (d)(4), by adding "as defined in § 550.1103" after "FCCS"; in paragraph (d)(6), by removing "(4 CFR 102.2(e))" and adding in its place "(see the FCCS)"; in paragraph (e)(1), by adding the word "creditor" before the second appearance of the word "agency"; in paragraph (g)(2), by removing "4 CFR 102.3(c)" and adding in its place "the FCCS"; in paragraph (m), by removing "4 CFR 102.3" and adding in its place "the FCCS"; in paragraph (n), by removing "4 CFR 102.13" and adding in its place "the FCCS"; and by revising paragraphs (c) and (d)(3) to read as follows:

§ 550.1104 Agency regulations.

* * * * *

(c) *Exception to entitlement to notice, hearing, written responses, and final decisions.* In regulations covering internal collections, an agency shall except from the provisions of paragraph (b) of this section—

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal

benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over 4 pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the 4 pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for such adjustment; or

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

(d) * * *

(3) The frequency and amount of the intended deduction (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay) and the intention to continue the deductions until the debt is paid in full or otherwise resolved;

* * * * *

§ 550.1106 [Amended]

5. Section 550.1106 is amended by removing "4 CFR 102.3(b)(3)" and adding "the FCCS as defined in § 550.1103" in its place.

§ 550.1107 Obtaining the services of a hearing official.

6. Section 550.1107 is amended, in paragraph (a), by removing "4 CFR 102.1" and adding "the FCCS as defined in § 550.1103" in its place; in paragraph (b), by removing "4 CFR 102.1" and adding "the FCCS" in its place; and by adding a new paragraph (c) to read as follows:

* * * * *

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

through other means, such as offset of other Federal payments, litigation, etc.

7. Section 550.1108 is redesignated as § 550.1109 and is amended by removing the "(b)" after "5514" in paragraph (a)(3), adding "claim" after the first appearance of "debt" in paragraph (b)(2), removing "creditor agency's" in paragraph (b)(3), and adding introductory text at the beginning of the section; and a new § 550.1108 is added to read as follows:

§ 550.1108 Requesting recovery through centralized administrative offset.

Under 31 U.S.C. 3716, creditor agencies must notify the Secretary of the Treasury of all debts over 180 days delinquent (as defined in the FCCS, see § 550.1103) so that recovery may be made by centralized administrative offset. This includes those debts the agency seeks to recover from the pay account of an employee of another agency via salary offset. The Secretary of the Treasury and other Federal disbursing officials will match payments, including Federal salary payments, against these debts. Where a match occurs, and all the requirements for offset have been met, the payment will be offset to satisfy the debt in whole or part. Prior to offset of the pay account of an employee, an agency must comply with the requirements of 5 U.S.C. 5514, this subpart, and agency regulations issued thereunder. Specific procedures for notifying the Secretary of the Treasury of debt for purposes of collection by centralized administrative offset are contained in 31 CFR part 285 and the FCCS. At their discretion, creditor agencies may notify the Secretary of the Treasury of debts that have been delinquent for 180 days or less, including debts the agency seeks to recover from the pay account of an employee via salary offset.

§ 550.1109 Requesting recovery from the paying agency.

When possible, salary offset through the centralized administrative offset procedures in § 550.1108 should be attempted before applying the procedures in this section.

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8. A new section § 550.1110 is added to read as follows:

§ 550.1110 Debt collection centers.

A debt collection center may act in behalf of a creditor agency to collect claims via salary offset consistent with this section, subject to any limitations on its authority established by the creditor agency it represents or by the U.S. Department of the Treasury.

(a) A debt collection center may be authorized to enter into a written agreement with the indebted employee regarding the repayment schedule or, in the absence of such agreement, to establish the terms of the repayment schedule.

(b) A debt collection center may make certifications to the Secretary of the Treasury under § 550.1108 or to a paying agency under § 550.1109 based on the certifications it has received from the creditor agency or a hearing official.

(c) A debt collection center responsible for collecting a particular debt may not act in behalf of a creditor agency for the purpose of making determinations regarding the existence or amount of that debt.

(d) A debt collection center responsible for collecting a particular debt may arrange for a hearing on the existence or amount of the debt or the repayment schedule by an administrative law judge or, alternatively, another hearing official not under the supervision or control of the head of the creditor agency or the debt collection center.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-87-AD]

RIN 2120-AA64

Airworthiness Directives; British Aerospace Model BAe 146-200A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146-200A series airplanes. This proposal would require a one-time inspection of the gust damper of the elevator control system to determine if the gust damper is properly charged, and of the horizontal stabilizer to detect cracking of elevator hinge rib 1; and corrective action, if necessary. This proposal is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct cracking