

U.S. Department of Energy
Washington, DC

ORDER

DOE O 533.1A

Approved: 10-13-2023

SUBJECT: CURRENT AND FORMER EMPLOYEE DEBTS OWED TO THE UNITED STATES

1. PURPOSE.
 - a. Institute policies and procedures for establishing and collecting debts owed by current and former Department of Energy (DOE) employees to the United States Government, subject to the conditions detailed in paragraph 6, Limitations.
 - b. Establish policies and procedures for compromising, suspending, or terminating debts owed to the United States Government by current and former DOE employees.
 - c. Provide policies and procedures for adjudicating requests for a waiver of claims against employees, former employees, or an employee's surviving beneficiary or estate, consistent with statutory authority.
2. CANCELS/SUPERSEDES. DOE O 533.1, Collection from Current and Former Employees for Indebtedness to the United States, dated 09-26-03. Cancellation of a directive does not, by itself, modify or otherwise affect any contractual obligation to comply with such a directive. Canceled directives that are incorporated by reference in a contract remain in effect until the contract is modified to delete the reference to the requirements in the canceled directives.
3. APPLICABILITY.
 - a. Departmental Applicability.
 - (1) The Administrator of the National Nuclear Security Administration (NNSA) must assure that NNSA employees comply with their responsibilities under this directive. Nothing in this directive will be construed to interfere with the NNSA Administrator's authority under section 3212(d) of Public Law (P.L.) 106-65 to establish Administration specific policies, unless disapproved by the Secretary.
 - (2) In accordance with the responsibilities and authorities assigned by Executive Order 12344, codified at 50 USC sections 2406 and 2511, and to ensure consistency through the joint Navy/DOE Naval Nuclear Propulsion Program, the Deputy Administrator for Naval Reactors (Director) will implement and oversee requirements and practices pertaining to this Directive for activities under the Director's cognizance, as deemed appropriate.

- b. DOE Contractors. This Order does not apply to contractors.
- c. Equivalency. The Bonneville Power Administration is self-financed and operates under selected provisions of the Government Corporation Control Act. It maintains a separate payroll system and shall apply the provisions of this Order as applicable given its unique payroll process. The Bonneville Power Administration will report to the Office of the Chief Financial Officer (OCFO) and the DOE Office of Human Capital Officer (HC) its plans for implementing the requirements of this order.

4. REQUIREMENTS.

- a. Debt Collection. It is the Departmental policy to collect from current and former employees the amount of any indebtedness to the United States.

In addition to the debt, interest and penalty charges and associated administrative costs will be assessed consistent with requirements in Title 31 Code of Federal Regulations (CFR) 901.9.
- b. Establishment of Debts. Once the Department becomes aware of a debt owed by a current or former employee to the United States, DOE must expeditiously establish a debt to enable the recovery of the amounts owed to DOE
 - (1) For current employees, situations creating employee debts must be reported to the OCFO payroll team or the DOE payroll service provider, as appropriate, for establishment of a debt after a 30-day required advance notice to the employee (see section 4.d of this order).
 - (2) For former employees, the situation creating an employee debt must be reported to OCFO within 30 days of the date the employee indebtedness is identified. OCFO establishes debts for former employees and provides due process notification.
- c. Debt Waivers.
 - (1) Waivers of indebtedness may be granted only as authorized by statute. Applicable statutory authorities for debt waivers are detailed in section 8.c.(2) of this order.
 - (2) Waivers may be granted if the individual is without fault and recovery would be against equity and good conscience. Specific considerations for determining fault and assessing equity and good conscience are detailed in section 8.c of this order.
 - (3) A waiver may not be granted unless an application or a request for waiver is received within three years of the date on which the erroneous payment was discovered.

- d. Due Process Rights. Consistent with the requirements of 5 U.S.C. 5514 and 31 CFR 900, DOE or its payroll service provider, as applicable, must provide current and former federal employees owing debts:
- (1) A minimum of 30 days written notice, informing the employee of the nature and amount of the indebtedness, DOE's intention to collect the debt through deductions from pay (for current employees), and an explanation of the individual's rights. Debtors will receive written notice via mail to their permanent address of record, unless a debtor has specifically approved electronic notifications for debt letters. The notice will comply with current requirements specified in Chapter 8 of the DOE Financial Management Handbook, "Receivables and Debt Collection," and Department of Treasury Guidance for Managing Federal Receivables.
 - (2) An opportunity to access Government records relating to the debt.
 - (3) An opportunity to enter into a written agreement to establish a schedule for repayment of the debt.
 - (4) An opportunity for a hearing on the existence and validity of the debt determined by DOE, as specified in section 7 of this order.
 - (5) An opportunity to request a waiver of debts if the validity of or amount of the debt is not in dispute or has been upheld after a hearing or review.
- Exception. As permitted by 5 U.S.C. 5514, DOE's payroll service provider may collect debts immediately through salary offset if the debt is either less than \$50 or the debt is processed within four pay periods of a salary overpayment.
- e. De minimis amounts for collection. The Chief Financial Officer (CFO) establishes de minimis amounts for collection of public debts in accordance with 31 CFR 901.10 and the applicable provisions of the DOE Financial Management Handbook. The DOE payroll service provider may collect debts below the DOE de minimis amount through salary offset when consistent with the current operating procedures of the payroll service provider.

5. RESPONSIBILITIES

- a. The Chief Financial Officer (CFO):
- (1) Develop and maintain Departmental policies and re-delegations of authority, as needed, for:
 - (2) The collection of current and former DOE employees' indebtedness to the United States.

- (3) The compromise, suspension, or termination of collection actions involving employee debt under Federal Claims Collection Standards, 31 CFR 902 and 903.
- (4) Hearings concerning the existence or the amount of an employee or former employee debt.
- (5) The waiver of claims against employees, including debts resulting from erroneous payment of wages or allowances, or erroneous payment of travel, transportation, or relocation expenses and allowances (5 U.S.C. 5584).
- (6) Confirm the existence and amount of employee debt.
- (7) In coordination with the affected Departmental Element, establish debts when an Inspector General investigation or finding indicates the need for the establishment of a debt and the Office of Inspector General provides sufficient documentary evidence of the debt.
- (8) Promote voluntary repayment of employee debts, whenever possible.
- (9) Ensure that current and former employees are provided with due process procedures consistent with the requirement specified in section 4.d of this Order.
- (10) Coordinate requests for hearings on the validity of employee debt with the Office of Hearings and Appeals or the Civilian Board of Contract Appeals, as specified in sections 5.c and 7 of this Order.
- (11) To protect the Government's interest, be mindful of the 10-year statute of limitations for commencement of administrative offset action against a debtor [31 CFR 901.3(a)(4)].
- (12) Certify debt amounts collected.
- (13) Compromise, suspend, or terminate collection action on employee debts that do not exceed \$100,000 in accordance with 31 CFR 902 and 903.
- (14) Recommend compromise, suspension, or termination of collection action on employee debts that exceed \$100,000 to the Department of Justice (DOJ), in accordance with 31 CFR 904.
- (15) Act upon current and former employee requests for waiving collection of claims.
- (16) Ensure refunds are provided for any amounts collected for debts that are later waived.

- (17) Seek resolution for employees disputing the existence or amount of a debt, including referring employees to the Office of Hearings and Appeals or the Civilian Board of Contract Appeals, as specified sections 5.c and 7 of this Order.
- (18) In coordination with the General Counsel, promptly refer claims for which there is indication of fraud, presentation of a false claim, or misrepresentation on the part of the debtor to the Inspector General (IG) as directed in DOE O 221.1B, Reporting Fraud, Waste and Abuse to the Office of Inspector General, dated 09-27-2016, or successor policy.
- (19) Request a legal review of proposed debt waiver decisions when appropriate. Legal review may be appropriate when the amount of the debt amount proposed to be waived is in excess of \$50,000, when waivers may apply to classes or groups of employees, and when the waiver request presents novel legal questions.
- (20) Maintain a standard template for debt notifications and make the template available to HC, BPA, and others as needed.

b. Designated Financial Officers (DFO) or Equivalents:

- (1) Promptly forward all requests for current and former DOE employee debt waivers, hearings, or appeals to the OCFO for resolution.
- (2) Communicate outcome of OCFO decisions to the initiator of the request as required.
- (3) As necessary, coordinate with OCFO to establish debts if warranted by the findings of the Office of Inspector General or other applicable audit or review organization.
- (4) Makes decisions regarding requests for installment payments, compromise, suspension, termination, and close-out for debts under \$100,000, consistent with procedures specified in the DOE Financial Management Handbook. These decisions have a budgetary impact and thus are made by the DFO with responsibility for the relevant program or office.

c. Office of Hearings and Appeals (OHA).

- (1) Adjudicate appeals of debt waiver decisions made by the CFO or designee for all DOE employees.
- (2) Conduct or arrange for hearings or reviews, as appropriate, regarding the validity of debts assigned to current and former DOE employees. OHA will ensure that hearings or reviews for current employees are compliant with the provisions of 5 USC 5514(a)(2)(D), and thus are not conducted

by an individual under the supervision or control of the head of the agency.

- (3) Develop implementing procedures for appeals of debt waiver decisions and hearings regarding the validity of former employee debts and communicate current procedural requirements to OCFO. Procedures must comply with the minimum standards specified in 31 CFR 901.3, Chapter 6 of the Department of Treasury Guide to Managing Federal Receivables, and applicable provisions of this Order.
- (4) Provide OCFO with a signed copy of its final determination letter to acknowledge the discontinuance of waived debts or, as necessary, continuation of DOE's collections efforts to recover debts owed to the government.

d. Office of the Chief Human Capital Officer (HC):

- (1) Take action to promptly report employee debts when an overpayment of salary, under withholding of employee benefit premiums, or overpayment of training benefits, is identified, consistent with the provisions of section 4.b of this policy.
- (2) Perform an annual assessment of administrative errors made during the course of the year resulting in overpayments to employees and provide the assessment to OCFO. The assessment should identify the cause of the error and identify appropriate process changes that could reduce future errors.
- (3) Establish procedures to verify and confirm whether an employee has any outstanding debts owed to DOE before the official termination of their employment.

e. Office of the General Counsel:

- (1) Review an employee's debt file for legal sufficiency when requested by OCFO or OHA.
- (2) Provide a legal review of proposed debt waiver decisions when requested by OCFO or OHA.
- (3) Make decisions regarding debt waiver requests when necessary to resolve a conflict of interest of the CFO official delegated to make debt waiver decisions.

f. Inspector General will provide to the OCFO and the affected DOE Departmental Element a report and supporting documentation for establishing, per this Order, an employee debt as a result of an IG investigation or audit/inspection finding.

- g. Office of Management will report employee debts relating to official travel to OCFO consistent with section 4.b of this order.

6. EXCLUSIONS.

- a. Excluded Debts or Claims. The procedures contained in this Order do not apply to—
 - (1) debts or claims arising under the Internal Revenue Code (26 U.S.C. 1 et seq.) or the Social Security Act (42 U.S.C. 301 et seq.), except to the extent provided under 42 U.S.C. 404 and 31 U.S.C. 3716(c);
 - (2) claims under the tariff laws of the United States; or
 - (3) any case in which collection of a debt by administrative offset is explicitly provided for or prohibited by statute.
- b. Collection of Undisputed Delinquent Amounts Owed to a Government Travel Charge Card Contractor. Upon written request from DOE's travel charge card contractor and in accordance with Federal Travel Regulation specified in 41 CFR Parts 301-54 and 301-76, DOE may collect undisputed delinquent amounts on an employee's Government travel charge card from the employee's disposable pay.
- c. Employee's Payment of Health Benefits Premiums for Periods of Non-Pay Status or Insufficient Pay.
 - (1) The DOE payroll office or service provider must be able to identify through timekeeping/payroll data all employees on leave without pay and employees with insufficient pay to cover premiums.
 - (2) As soon as the DOE payroll office or service provider becomes aware that premium payments cannot be withheld because the employee is on leave without pay or the employee's pay is insufficient to cover the premiums, the DOE payroll office or service provider must provide the employee with written notice that adequately explains employees' options in accordance with 5 CFR 890.502.
 - (3) The employee must—
 - (a) submit in writing his or her decision to continue health benefits coverage.
 - (b) agree to pay the premium on a current basis or agree upon returning to work or when pay becomes sufficient to cover the premiums that the DOE payroll office will deduct in addition to the current pay period's premiums an amount equal to premiums for a pay period during the time when the employee was on leave without pay.

- (4) The DOE (or BPA, as applicable) payroll office will continue using this method to deduct the accrued unpaid premiums from salary until the debt is recovered in full.
- (5) If the debt cannot be recovered in full from salary, the DOE (or BPA, as applicable) payroll office may recover the debt from whatever other sources are normally available for recovery of a debt to the United States [5 CFR 890.502(b)(2)].

7. HEARINGS OR REVIEWS OF THE VALIDITY OF CURRENT AND FORMER EMPLOYEE DEBT.

a. Requesting a Hearing.

- (1) The process for requesting a hearing review must be specified in the notice of debtor rights included with the debt notice provided to the employee. The debt notice will be consistent with due process requirements specified in section 7 of this policy and DOE Financial Management Handbook, Chapter 8, "*Receivables and Debt Collection*."
- (2) Debt hearings or reviews for current and former employees must normally be requested within 15 days of receipt of the debt notice. DOE may accept late requests when there are extenuating circumstances that would prevent an employee from requesting a hearing or review within the normal 15- day time period.
- (3) Prior to requesting a formal hearing, employees may also request a de novo review by OCFO if they can demonstrate that the decision to establish a debt was in error.

b. Hearing Officials.

- (1) Normal process.

OHA conducts hearings or reviews, as appropriate, for current and former employees. Hearings or reviews for current employees must be compliant with the provisions of 5 USC 5514(a)(2)(D), and thus may not be conducted by an individual under the supervision or control of the head of the agency.
- (2) Optional process for travel and relocation debts.

When a debt occurs because of the denial of an employee claim for travel or relocation expenses, the employee may choose to file an appeal to the Civilian Board of Contract Appeals in lieu of a review or hearing conducted by OHA. Employees may not request both a review or hearing from OHA and file an appeal to the Civilian Board of Contract Appeals.

- (3) Procedural questions for filing an appeal should be directed to the Civilian Board of Contract Appeals.

c. Stay of Collection Activities.

- (1) Collection activities will be suspended when a hearing request is received in accordance with the instructions provided in the debt notice.
- (2) Employees are responsible for informing the OCFO Payroll team (or BPA, for BPA personnel) if the stay of debt collection activity is not processed in a timely manner.
- (3) DOE will continue to accrue interest, penalties, and administrative costs during the period collection activity is suspended. Upon completion of the hearing official's review, interest, penalties, and administrative cost related to the portion of the debt found to be without merit will be waived.

d. Hearing Process and Requirements.

Hearings must comply with the minimum standards specified in 31 CFR 901.3, Chapter 6 of the Department of Treasury Guide to Managing Federal Receivables, and applicable provisions of this order.

8. DEBT WAIVER PROCESS AND REQUIREMENTS.

a. Authorities.

- (4) The waiver of claims of the United States against a person arising out of an erroneous payment of pay and allowances; travel, transportation, and relocation expenses; and other allowances to an employee is governed by the standards set forth in 5 U.S.C. 5584. The waiver authority provided in 5 U.S.C. 5584 also provides authority to waive debts created by under- withholding for amounts due for Federal benefits programs that result in overpayment of salary and overpayment of allowances to employees for training programs.
- (5) The General Accounting Office Act of 1996 (P.L. 104-316), Title I, Sec. 103(d) as amended, transferred authority to waive claims for erroneous payments exceeding \$1,500 from the Comptroller General of the United States to the OMB. OMB subsequently re-delegated this waiver authority to the executive agency that made the erroneous payment.
- (6) The authority to waive claims not exceeding \$1,500, which was vested in the head of each agency prior to the enactment of PL 104-316, was unaffected by the General Accounting Office Act.
- (7) Waiver of debts arising out of an advance payment of pay, allowances, and differentials of up to 30 days when employee or dependent

relocations are ordered from international locations, or from other locations when there is imminent danger to the life of employees or dependents, as authorized by 5 U.S.C. 5522.

- (8) Waiver of debts arising out of advances in pay as authorized by 5 U.S.C. 5524a.
 - (9) Waiver of debts arising out of advances of allowances and differentials for employees stationed abroad, as authorized by 5 U.S.C. 5922.
 - (10) Waiver of debts arising out of overpayment of employee training expenses as authorized by 5 U.S.C. 4108 and 5 CFR 410.309(c).
 - (11) Waiver of debts arising out of under-withholding of insurance premiums due to the Federal Employees' Group Life Insurance Program, as authorized by 5 U.S.C. 8707(d).
 - (12) Waiver of debts arising from excess recruitment and relocation incentives, as authorized by 5 U.S.C. 5753, 5 CFR 575.111, and 5 CFR 575.211.
 - (13) Waiver of debts arising from an employee's failure to complete a service agreement governing student loan repayments, as authorized by 5 U.S.C. 5379(c)(3) and 5 CFR 537.109(e).
- b. Delegations and Authorizations. The following officials are delegated or authorized to approve debt waivers as authorized by the authorities specified in section 8.a. of this order, or other applicable DOE employee debt waiver authority:
- (1) The Chief Financial Officer;
 - (2) The Director, Office of Financial Policy and Audit Resolution, or successor position;
 - (3) The Director of the Office of Hearings and Appeals, for appeals of debt waiver decisions previously denied;
 - (4) The Chief Financial Officer of the Bonneville Power Administration, for debts owned by employees of the Bonneville Power Administration; and
 - (5) The Deputy General Counsel for General Law, or successor position, for employee debt matters that may represent a conflict of interest for other officials with delegated authority to waive employee debts. Delegated authorities may be redelegated.

c. Requirements.

- (1) Financial Liability. Debt waivers for current and former employees granted represent a salary and benefit expense of the current (or most recent) DOE Departmental Element employing the individual requesting the waiver, unless CFO directs costs sharing between multiple DOE Departmental Elements.
- (2) When the debt waiver creates the need for additional payments to a non-DOE entity, the payment is made using funds available to the Departmental Element for the purpose of employee salary and benefits. Payments to non-DOE entities may be required when waivers are granted for under-withheld Federal health, retirement, or life insurance benefits.
- (3) Advance Waiver Requests. The delegated official may approve employee debt waiver requests in advance of the establishment of a debt for an individual employee (or former employee) or a class of employees (or former employees) under the following circumstances:
 - (a) The request is provided in writing from the Office of the Chief Human Capital Officer or the Resource Manager (or equivalent position) of the affected Departmental Element. When requesting an advance waiver, the rationale for the waiver request and supporting documentation will be included, as well as a point of contact.
 - (b) The request meets the guidelines specified in section 8.c. of this Order.
 - (c) The delegated official determines that no additional information is needed from the affected individual or individuals to make an informed decision regarding the waiver request.
 - (d) If additional information is needed directly from the affected employees or former employees, the delegated official will decline the advance debt waiver request, but the employee or former employees retains the ability to request a waiver in accordance with normal procedures.
 - (e) When the request is provided directly from a Departmental Element, the Delegated Official will consult with the Office of the Chief Human Capital Officer prior to making a decision on the request.
 - (f) If a waiver is granted, the notice of potential tax liability is provided to the employee(s) or former employee(s) by the office requesting the advance waiver, consistent with the

information provided by OCFO in its decision letter to the requesting Departmental Element.

- (4) Statute of Limitations. A request for waiver must be received within three years of the establishment of the debt.
- (5) Format and Content of Debt Waiver Requests. The OCFO defines current process requirements for debt waiver requests by employees and former employees. CFO will utilize the forms developed by DOE's payroll service provider when appropriate.

Specific instructions must be provided in the notice of debtor rights to be provided with the debt notification, to include the location of current forms utilized by DOE to process debt waiver requests.

- (6) Stay of Debt Collection Activity Pending Waiver Decisions. When a debtor requests a debt waiver or appeals a debt waiver decision, DOE will suspend collection activities. Employees are responsible for informing the OCFO Payroll team if the stay of debt collection activity is not processed in a timely manner.

DOE will continue to accrue interest, penalties, and administrative costs during the period collection activity is suspended. If a decision is not made in a timely manner by the official deciding the debt waiver, consistent with the timelines established in this policy, the debt waiver official must waive any interest, penalties, and administrative costs accrued after the debt waiver was requested.

- (7) Waiver of Interest and Penalty Charges and Administrative Costs. Any accrued interest, penalties, and administrative costs related to a waived debt will also be waived. See DOE Financial Management Handbook, Chapter 8, "*Receivables and Debt Collection*," or successor policy.
- (8) Notification of Waiver Action. Written notification of waiver determination will be sent to the employee by the delegated official (see section 8.c of this policy).
- (9) Refund of Amounts Waived. As appropriate, the Department will refund the amount of any debts waived that have already been repaid by the employee.
- (10) Notice of Potential Tax Liability. Waived debts may be a taxable benefit.

If a waived debt amount was not already reported as taxable salary income on the form W2 (or equivalent) of the employee or former employee, OCFO must disclose the debt waiver amount to the Internal Revenue Service and the employee using current IRS forms.

OCFO (or OHA, for appeals granted) must ensure that the employee or former employee is notified of a potential tax liability when providing an approved debt waiver for debts not already reported as taxable income.

(11) Appeals.

- (a) Employees may appeal debt waiver decisions made by the CFO or Delegated Official to the Office of Hearing and Appeals (OHA).
- (b) Appeals must be made within 30 days of the original waiver decision.
- (c) Appeals decisions must follow the guidelines for debt waiver decisions define in section 8.c. of this Order.
- (d) OHA should grant deference to decisions made by OCFO. Appeals may generally be granted when OHA determines that the appeal provides new information that was unavailable to OCFO, or that OCFO did not correctly assess the information provided against the relevant criteria defined in subsection 8.c. of this order.
- (e) The process for adjudicating appeals will be defined by OHA. OCFO will notify employees of current appeal instructions and processes when communicating a negative debt waiver decision.
- (f) OHA will alert OCFO when it has received a request for an appeal of a OCFO decision prior to performing any work on the case. This notification is necessary to place a hold on DOE's collection of the outstanding debt owed to the government.
- (g) OCFO will provide OHA with all pertinent background information on the debtor's initial request, including documentation provided to support any hearings completed by DOE's payroll service provided on DOE's behalf. OHA will establish and follow standard written procedures for maintaining contact with the debtor throughout the duration of their case.
- (h) OHA will track and actively monitor appeal cases performed for current DOE employees and provide regular status updates to OCFO, as requested.

- (i) OHA will provide OCFO with a signed copy of its final determination letter so that OCFO can take appropriate actions regarding debt collection.

d. Guidelines for Debt Waiver Decisions.

- (1) Debt waivers requests must be considered on a case-by-case basis and decisions must be based on an assessment of the individual circumstances causing an employee debt. Debt waivers are not automatically granted because of an administrative error.
- (2) Debts arising from erroneous payments, including overpayments that result from under-withholding for employee benefit costs or other required payroll deductions.

(a) Determination of Employee Fault.

Waivers may **not** be granted if the deciding official finds indication that fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim exists. If the deciding official finds an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim, then the request for a waiver must be denied. There are no exceptions to this rule for financial hardship or otherwise.

Fault exists if in light of all the circumstances, it is determined that the employee knew or should have known that an error existed but failed to take action to have it corrected. Unlike fraud, fault does not require a deliberate intent to deceive.

The following considerations may indicate a finding of fault include:

- 1 The payment resulted from an incorrect but not fraudulent statement that the employee should have known was incorrect.
- 2 The payment resulted from the employee's failure to disclose material facts which he or she possessed and should have known to be material.
- 3 The employee accepted a payment which he or she knew or should have known to be erroneous.

Determining whether an employee should have known about an overpayment requires an assessment of whether the employee

could have identified the error through a reasonable amount of due diligence.

Examination of every case must be based on fact. For example, where an employee is promoted to a higher grade but the step level for the employee's new grade is miscalculated, it may be appropriate to conclude that there is no fault on the employee's part because employees are not typically expected to be aware of and understand the rules regarding determination of step level upon promotion. On the other hand, a different conclusion as to fault potentially may be reached if the employee in question is a personnel specialist or an attorney who concentrates on personnel law.

(b) Assessment of Equity and Good Conscience

If the deciding official finds no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim, the employee is **not** automatically entitled to a waiver. Before a waiver can be granted, the deciding official must also determine that collection of the claim against an employee would be against equity and good conscience and not in the best interests of the United States.

Factors to consider when assessing equity and good conscience for erroneous payments include, but are not limited to, the following.

- 1 Collection of the claim would cause serious financial hardship to the employee from whom collection is sought.
- 2 The employee relied upon receipt of the overpayment(s) when making financial decisions.
- 3 The cost of collecting or resolving the claim or debt waiver request is excessive.
- 4 The time elapsed between the erroneous payment and discovery of the error and notification of the employee is excessive.
- 5 Debts caused by similar circumstances were waived for other employees.
- 6 Recovery of the claim would be unconscionable under the circumstances.

- (3) Debts arising from valid payments, including allowable advances, training expenses, and recruitment and relocation incentives.

Debts may be waived when a specific authority applies and it is shown that recovery would be against equity and good conscience or against the public interest. Factors to be considered when determining if recovery of

an advance payment would be against equity and good conscience or against the public interest include, but are not limited to:

- (a) Death of the employee;
- (b) Retirement of the employee for disability;
- (c) Documented inability of the employee to return to duty because of disability;
- (d) Whether the debt derives from an action taken in furtherance of the interests of the United States, such as early termination of a service agreement when such early termination is in the interests of the United States; and
- (e) Whether failure to repay would result in unfair gain to the employee.

9. REFERENCES.

- a. Public Law (P.L.) 104-316, the General Accounting Office Act of 1996, set out in detail, the authority given to the Director of the Office of Management and Budget (OMB) and other heads of agencies to settle the accounts formerly subject to settlement by the Comptroller General. OMB's "Determination with Respect to Transfer of Functions Pursuant to Public Law 104-316," dated December 17, 1996, delegated the authority to waive collection of erroneous payments from civilian employees under 5 U.S.C. Section 5584 from the Director of OMB to the head of the Executive Branch agency that made the erroneous payment.
- b. P.L. 104-134, Debt Collection Improvement Act of 1996 (DCIA), centralized the government-wide collection of delinquent debt and gave the Department of the Treasury (Treasury) significant new responsibilities in this area. Treasury's FMS is responsible for Treasury's implementation of the debt collection provisions of the DCIA.
- c. P.L. 104-53, the Legislative Branch Appropriations Act of 1996, transferred certain authorities of the Comptroller General to settle claims and accounts to the OMB, and provided for the Director of OMB to delegate this authority to other appropriate agencies.
- d. P.L. 97-365, Debt Collection Act of 1982, which required increased efficiency of Government-wide efforts to collect debts and provides additional procedures for the collection of debts owed the United States.
- e. Title 5 United States Code (U.S.C.) Section 5584 prescribed the standards for waiver of claims for erroneous payment of pay and allowances, and of travel, transportation and relocation expenses and allowances, and grants the authorized

official or agency head the authority to waive collection of erroneous payments made to civilian employees and members of the armed services. The authority encompasses salary overpayments made to employees because of under-withholding for required employee benefit payments, including health insurance, retirement, and life insurance.

- f. Title 31 Code of Federal Regulations (CFR) 285.7, Salary Offset, established procedures for the offset of Federal salary payments through the Department of Treasury administrative offset program to collect delinquent debts owed to the Federal Government.
- g. 31 CFR 900-904, Federal Claims Collection Standards, issued jointly by the Treasury and the Department of Justice (DOJ) under 31 U.S.C. 3711, prescribed standards for the administrative collection, compromise, termination of agency collection, and referral of debts to the Office of Personnel Management (OPM), or the DOJ for litigation of civil claims for money or property by the Federal Government.
- h. 10 CFR 1015, Collection of Claims Owed the United States, adopted for DOE the provisions of the Federal Claims Collection Standards, 31 CFR 900-904.
- i. 5 U.S.C. 5514, as amended, and 5 CFR 550.1101-1110, subpart K, authorized collection by installments, with proper notification, of amounts that an employee owes the United States Government after a determination is made by the head of a department or agency, or a designee, that a debt is valid and due.
- j. 31 U.S.C. 3711 and 3716 thru 3718 specified the standards for the collection of claims of the United States or any agency thereof.
- k. 5 CFR 178, Procedures for Settling Claims, prescribed general procedures applicable to claims against the United States that may be settled by the Director of the OPM. In general, these claims involve Federal employee's compensation and leave, and claims for proceeds of canceled checks.
- l. 5 U.S.C. 5524a, which provides authority for waiving in whole or in part a debt arising out of an advance in pay if it is shown that recovery would be against equity and good conscience or against the public interest.
- m. 5 U.S.C. 5522, which provides authority for waiving in whole or in part a debt arising out of an advance payment of pay, allowances, and differentials of up to 30 days when employee or dependent relocations are ordered from international locations, or from other locations when there is imminent danger to the life of employees or dependents, if it is shown that recovery would be against equity and good conscience or against the public interest.
- n. 5 U.S.C. 5922, which provides authority for waiving in whole or in part a debt arising out of an advance of allowances and differentials that are made in accordance with the authority of subchapter III of Chapter 59 of 5 USC, if it is

shown that recovery would be against equity and good conscience or against the public interest.

- o. 5 U.S.C. 4108, as implemented by 5 CFR 410.309, which provides authority to waive debts deriving from early termination of a service agreement required for agency-paid training.
- p. 5 U.S.C. 8707(d), which provides authority for waiving the collection of unpaid deductions resulting from under-withholding of Federal Employees' Group Life Insurance Program premiums if the individual is without fault and recovery would be against equity and good conscience.
- q. 5 U.S.C. 5753, which authorizes the regulations at 5 C.F.R. 575.111 and 5 CFR
- r. 575.211. Consistent with 5 CFR 575.111 and 5 CFR 575.211, an authorized agency official may waive the requirement to repay excess recruitment and relocation incentives when, in the judgment of the official, collection of the excess amount would be against equity and good conscience and not in the best interest of the United States.
- s. 5 U.S.C. 5379(c)(3), which authorizes the regulations at 5 CFR 537.109(e). Consistent with 5 CFR 537.109(e), an authorized agency official may waive debts arising from an employee's failure to complete a service agreement governing student loan repayments.
- t. DOE Financial Management Handbook, Chapter 8, *Receivables and Debt Collection*, addresses the collection of debts owed to DOE.

10. DEFINITIONS.

- b. Agency. An executive department or agency; a military department; the United States Postal Service; the Postal Rate Commission; the United States Senate; the United States House of Representatives; any court, court administrative office, or instrumentality in the judicial or legislative branches of the Government; or a Government corporation.
- c. Administrative Costs. Those amounts assessed by DOE to cover the processing and handling delinquent debt due the Government.
- d. Contingency Fees. Administrative costs resulting from fees paid from amounts collected from a debtor for collection services rendered by federal agencies or private collection contractors.
- e. Creditor Agency. The agency to which a debt is owed (including a debt collection center) when acting on behalf of a creditor agency in matters pertaining to the collection of a debt.

- f. Current Pay Account. Includes basic pay, special pay, incentive pay, retainer pay, or in the case of an individual not entitled to basic pay, other authorized pay.
- g. Debt. An amount owed to the United States from sources that include loans insured or guaranteed by the United States; fees, leases, rents, royalties, services, and sales of real or personal property; overpayments, penalties, damages, interest, fines, and forfeitures; and other similar sources.
- h. Debt Collection Center. 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).
- i. Delinquent Debt. A debt that has not been paid by the date specified in DOE's initial written notification or applicable contractual agreement, unless other satisfactory payment arrangements have been made by that date. A debt is delinquent if the debtor fails to satisfy obligations under a payment agreement with the DOE.
- j. Disposable Pay. That part of current basic pay; special pay; incentive pay; retirement pay; retainer pay; or in the case of an employee not entitled to basic pay, other authorized pay remaining after deduction of any amount required by law to be withheld (e.g., deductions other than those required to execute garnishment orders in accordance with 5 CFR 581-582). Agencies must exclude deductions described in 5 CFR 581.105(b) through (f) to determine disposable pay subject to salary offset.
- k. Employee. An individual currently employed in a Federal Agency including a current member of the Armed Forces or a Reserve of the Armed Forces.
- l. Interest Rate. The Treasury Current Value of Funds Rate (CVFR) used to calculate interest on overdue Federal Government receivables (Treasury Financial Manual (TFM), I TFM 6-8040.40). Interest charged is at the rate of simple interest in effect at the time the debt becomes overdue (unless a different rate is prescribed in a repayment schedule). The rate of interest remains fixed for the duration of the indebtedness [31 CFR 901.9(3)]. The CVFR is available on the Treasury website at <http://www.fms.treas.gov>. Treasury also provides a recorded message with the current rate at 202-874-6995, accessible 24 hours a day. DOE may assess a higher interest rate if it is reasonably determined that a higher rate is necessary to protect the interests of the United States. The reasons for a higher rate must be documented.
- m. Other Administrative Offset Collections. Amounts offset against payments due a former employee from lump-sum leave payment, severance pay, the Civil Service Retirement and Disability Fund, and the Federal Employee

Retirement System under 31 U.S.C. 3716 and amounts offset under a preexisting statute which authorizes offset in particular situations but does not provide its own due process procedures.

- n. Penalties. Assessments of not more than 6 percent per annum, in addition to interest, for failure to pay any portion of a debt more than 90 days past due [31 U.S.C. 3717(e)(2)].
- o. Salary Offset. A type of administrative cost or compensation set aside to balance the cost of a claim. 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 [31 U.S.C. 3716(e)]. 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 requirement 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.
- p. Waiver. Cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

11. Acronyms.

BPA	Bonneville Power Administration
CFO	Chief Financial Officer
CFR	Code of Federal Regulations
CVFR	Current Value of Funds Rate
DCIA	Debt Collection Improvement Act
DOE	Department of Energy
DOJ	Department of Justice
FMS	Financial Management Service
GC	Office of the General Counsel
HC	Office of the Chief Human Capital Officer
IRS	Internal Revenue Service
NNSA	National Nuclear Security Administration
OCIO	Office of the Chief Financial Officer

OHA	Office of Hearings and Appeals
OMB	Office of Management and Budget
OPM	Office of Personnel Management
PL	Public Law
TFM	Treasury Financial Manual
USC	United States Code

12. CONTACTS. For questions or comments, contact the Office of Management, Budget and Evaluation/Chief Financial Officer at 301-903-4666.

BY ORDER OF THE SECRETARY OF ENERGY:



DAVID M. TURK
Deputy Secretary