

## **4 FAH-3 H-490 DEBT COLLECTION**

*(TL:FMP-17; 05-05-2003)  
(Office of Origin, A/RPS/DIR)*

### **4 FAH-3 H-491 PURPOSE**

*(TL:FMP-3; 5-30-95)*

The procedures that follow are provided to assist Department officials in the collection of claims of the United States. Mandatory compliance is required unless justification in writing is provided. A complete statement of 22 CFR 34, which the Department has adopted as its policy on Debt Collection, is provided in 4 FAH-3 H-492 below.

### **4 FAH-3 H-492 DEBT COLLECTION (22 CFR 34)**

#### **4 FAH-3 H-492.1 Department Applicability**

*(TL:FMP-3; 5-30-95)*

The numbering of 22 CFR 34 has been given Foreign Affairs Handbook (FAH) numbers so that the numbering of 4 FAH-3 H-492 will be consistent with and compatible with both the Foreign Affairs Manual (FAM) and FAH numbering system.

#### **4 FAH-3 H-492.2 General Provisions (Subpart A)**

##### **4 FAH-3 H-492.2-1 Purpose (22 CFR 34.1)**

*(TL:FMP-3; 5-30-95)*

These regulations prescribe the procedures to be used by the United States Department of State (STATE) in the collection of claims owed to STATE and to the United States.

##### **4 FAH-3 H-492.2-2 Scope (22 CFR 34.2)**

*(TL:FMP-3; 5-30-95)*

a. Applicability of Federal Claims Collection Standards (FCCS). Except as set forth in this part or otherwise provided by law, STATE will conduct administrative actions to collect claims (including offset, compromise, suspension, termination, disclosure and referral) in accordance with the FCCS of the General Accounting Office and Department of Justice, 4 CFR 101-105.

b. This part is not applicable to:

(1) Claims against any foreign country or any political subdivision thereof, or any public international organization; and

(2) Claims where the STATE Chief Financial Officer or his designee determines that the achievement of the purposes of any provision of law administered by STATE require a different course of action.

#### **4 FAH-3 H-492.2-3 Definitions (22 CFR 34.3)**

*(TL:FMP-3; 5-30-95)*

a. A **debt** or **claim** refers to an amount of money which has been determined to be owed to the United States from any person, organization or entity, except another Federal Agency. A debtor's liability arising from a particular contract or transaction shall be considered a single claim for purposes of the monetary ceilings of the FCCS.

b. **Delinquent** means a debt that has not been paid by the date specified in STATE's written notification or applicable contractual agreement, unless other satisfactory arrangements have been made by that date, or that has not been in accordance with a payment agreement with STATE.

c. **Disposable pay** means the amount that remains from an employee's federal pay after required deductions for Federal, State and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; premiums for life and health insurance benefits and such other deductions that are required by law to be withheld including garnishments.

#### **4 FAH-3 H-492.2-4 Interest, Penalty, and Administrative Charges (22 CFR 34.4)**

*(TL:FMP-3; 5-30-95)*

a. Except as otherwise provided by statute, contract or excluded in accordance with FCCS, STATE will assess:

(1) Interest on unpaid claims in accordance with existing Treasury rules and regulations;

(2) Penalty charges at 6 percent a year on any portion of a claim that is delinquent for more than 90 days;

(3) Administrative charges to cover the costs of processing and calculating delinquent claims;

(4) Late payment charges shall be computed from the date of mailing or hand delivery of the notice of the claim and interest requirements;

(5) When a debt is paid in partial or installment payments, amounts received shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and then to the outstanding principal; and

(6) Waiver. STATE shall consider waiver of interest, penalty charges and/or administrative charges in accordance with the FCCS, 4 CFR 102.13(g).

#### **4 FAH-3 H-492.2-5 Exceptions (22 CFR 34.5)**

*(TL:FMP-3; 5-30-95)*

a. Claims arising from the audit of transportation accounts pursuant to 31 U.S.C. 3726 shall be determined, collected, compromised, terminated, or settled in accordance with the regulations published under 31 U.S.C. 3726 (see 41 CFR 101-41).

b. Claims arising out of acquisition contracts subject to the Federal Acquisition Regulation (FAR) shall be determined, collected, compromised, terminated, or settled in accordance with those regulations (see 48 CFR 32).

c. Claims based in whole or in part on conduct in violation of the antitrust laws, or in regard to which there is an indication of fraud, presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, shall be referred to the Department of Justice for compromise, suspension, or termination of collection action.

d. Tax claims are excluded from the coverage of this regulation.

#### **4 FAH-3 H-492.2-6 Use of Procedures (22 CFR 34.6)**

*(TL:FMP-3; 5-30-95)*

Procedures authorized by this regulation (including but not limited to referral to a debt collection agency, administrative offset, or salary offset) may be used singly or in combination.

#### **4 FAH-3 H-492.2-7 Other Procedures or Actions (22 CFR 34.7)**

*(TL:FMP-3; 5-30-95)*

- a. Nothing contained in this regulation is intended to require STATE to duplicate administrative proceedings required by contract or other laws or regulations;
- b. Nothing in this regulation is intended to preclude utilization of informal administrative actions or remedies which may be available.
- c. Nothing contained in this regulation is intended to deter STATE from demanding the return of specific property or from demanding the return of the property or the payment of its value.
- d. The failure of STATE to comply with any provision in this regulation shall not serve as defense to the debt.

#### **4 FAH-3 H-492.3 Administrative Offset and Referral to Collection Agencies (Subpart B)**

##### **4 FAH-3 H-492.3-1 Demand for payment (22 CFR 34.8)**

*(TL:FMP-3; 5-30-95)*

- a. A total of three progressively stronger written demands at approximately 30-day intervals will normally be made, unless a response or other information indicates that additional written demands would either be unnecessary or futile. When necessary to protect the Government's interest, written demand may be preceded by other appropriate actions under the FCCS, including immediate referral for litigation and/or offset.
- b. The initial written demand for payment shall inform the debtor of:
  - The basis of the claim;
  - The amount of the claim;
  - The date when payment is due 30 days from the date of mailing or hand delivery of the initial demand for payment; and
  - The provision for late payment (interest), penalty and administrative charges, if payment is not received by the due date.

#### **4 FAH-3 H-492.3-2 Collection by Administrative Offset (22 CFR 34.9)**

*(TL:FMP-3; 5-30-95)*

a. Offset will be used whenever feasible and not otherwise prohibited. Offset is not required to be used in every instance and consideration should be given to the debtor's financial condition and impact of offset on STATE programs or projects.

b. The procedures for offset in this section do not apply to the offset of Federal salaries under 5 U.S.C. 5514.

c. Before offset is made, STATE will provide the debtor with written notice informing the debtor of:

(1) The nature and amount of the claim;

(2) The intent of STATE to collect by administrative offset, including asking the assistance of other Federal agencies to help in the offset whenever possible, if the debtor has not made payment by the payment due date or has not made an arrangement for payment by the payment due date;

(3) The right of the debtor to inspect and copy STATE's records of the claim;

(4) The right of the debtor to a review of the claim within STATE. If the claim is disputed in full or part, the debtor shall respond to the demand in writing by making a request by the payment due date stated within the notice to the billing office for a review of the claim within STATE. The debtor's written response shall state the basis for the dispute. If only part of the claim is disputed, the undisputed portion must be paid by the date stated in the notice to avoid late payment, penalty and administrative charges. If STATE either sustains or amends its determination, it shall notify the debtor of its intent to collect the claim, with any adjustments based on the debtor's response by administrative offset unless payment is received within 30 days of the mailing of the notification of its decision following a review of the claim.

(5) The right of the debtor to offer to make a written agreement to repay the amount of the claim.

(6) The notice of offset need not include the requirements of paragraph c (3), (4), or (5) of this section if the debtor has been informed of the requirements at an earlier stage in the administrative proceedings, e.g., if they were included in a final contracting officer's decision.

d. STATE will promptly make requests for offset to other agencies known to be holding funds payable to a debtor and, when appropriate, place the name of the debtor on the "List of Contractors Indebted to the United States". STATE will provide instructions for the transfer of funds.

e. STATE will promptly process requests for offset from other agencies and transfer funds to the requesting agency upon receipt of the written certification that the person owes the debt and that, if a Federal employee, the employee has been given the procedural rights required by 5 U.S.C. 5514 and 5 CFR Part 550, subpart K.

#### **4 FAH-3 H-492.3-3 Administrative Offset Amounts Payable From Retirement and Disability Funds (Civil Service, Foreign Service, etc.) (22 CFR 34.10)**

*(TL:FMP-3; 5-30-95)*

a. Unless otherwise prohibited by law, STATE may request that monies that are due and payable to a debtor from the Civil Service Retirement and Disability Fund, Federal Employee Retirement Fund, or the Foreign Service Retirement Fund be administratively offset in reasonable amounts in order to collect in one full payment or a minimal number of payments, debts owed the United States by the debtor. Such requests shall be made to the appropriate officials of the respective fund servicing agency in accordance with such regulations as may be prescribed by the Director of that agency.

b. When making a request for administrative offset under paragraph a of this section, STATE shall include written statements that:

(1) The debtor owes the United States a debt, including the amount of the debt.

(2) STATE has complied with the applicable statutes, regulations, and procedures of the respective fund servicing agencies.

(3) STATE has complied with the requirements of 22 CFR 34.9 of this part.

c. Once STATE decides to request offset under paragraph a of this section, it will make the request as soon as practical after completion of the applicable procedures in order that the fund servicing agency may identify the debtor's account in anticipation of the time when the debtor requests or becomes eligible to receive payments from the fund. This will satisfy any requirements that offset will be initiated prior to expiration of the applicable statute of limitations.

d. If STATE collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph a of this section, STATE shall act promptly to modify or terminate its request for offset under paragraph a of this section.

e. This section does not require or authorize the fund servicing agency to review the merits of the STATE determination relative to the amount and validity of a debt, its determination on waiver under an applicable statute, or its determination whether to provide an oral hearing.

#### **4 FAH-3 H-492.3-4 Collection in Installments (22 CFR 34.11)**

*(TL:FMP-3; 5-30-95)*

Whenever feasible, and except as required otherwise by law, debts owed to the United States, together with interest, penalties, and administrative costs as required by this regulation, should be collected in one lump sum. This is true whether the debt is being collected under administrative offset or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments. If STATE agrees to accept payment in installments, it will obtain a legally enforceable written agreement from the debtor that specifies all of the terms of the arrangement and which contains a provision accelerating the debt in the event the debtor defaults. The size and frequency of the payments should bear a reasonable relation to the size of the debt and ability of the debtor to pay. If possible the installment payments should be sufficient in size and frequency to liquidate the Government's claim within 3 years.

#### **4 FAH-3 H-492.3-5 Exploration of Compromise (22 CFR 34.12)**

*(TL:FMP-3; 5-30-95)*

STATE may attempt to effect a compromise in accordance with the standards set forth in Part 103 of the FCCS (4 CFR Part 103).

#### **4 FAH-3 H-492.3-6 Suspending or Terminating Collection Action (22 CFR 34.13)**

*(TL:FMP-3; 5-30-95)*

The suspension or termination of collection action shall be made in accordance with the standards set forth in Part 104 of the FCCS (4 CFR Part 104).

#### **4 FAH-3 H-492.3-7 Referrals to the Department of Justice or the General Accounting Office (22 CFR 34.14)**

*(TL:FMP-3; 5-30-95)*

Referrals to the Department of Justice or the General Accounting Office shall be made in accordance with the standards set forth in Part 105 of the FCCS (4 CFR Part 105).

#### **4 FAH-3 H-492.3-8 Collection Services (22 CFR 34.15)**

*(TL:FMP-3; 5-30-95)*

a. STATE has authority to contract for collection services to recover delinquent debts in accordance with 31 U.S.C. 3718(c) and Part 102 of the FCCS (4 CFR 102).

b. STATE may disclose delinquent debts, other than delinquent debts of current Federal employees, to consumer reporting agencies in accordance with 31 U.S.C. 3711(f) and the FCCS.

c. STATE will not use a collection agency to collect a debt owed by a currently employed or retired Federal employee, if collection by salary or annuity offset is available.

#### **4 FAH-3 H-492.4 Salary Offset (Subpart C)**

##### **4 FAH-3 H-492.4-1 Scope (22 CFR 34.16)**

*(TL:FMP-3; 5-30-95)*

a. This subpart sets forth STATE's procedures for the collection of a Federal employee's pay by salary offset to satisfy certain valid and past due debts owed the United States Government.

b. This subpart applies to:

—Current employees of STATE and other agencies who owe debts to STATE;

—Current employees of STATE who owe debts to other agencies.

c. This subpart does not apply to debts or claims arising under the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.); the Social Security Act (42 U.S.C. 301 et seq.); 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).

d. This subpart does not apply to 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 or ministerial adjustments in pay, if the amount to be recovered was accumulated over four pay periods or less.

e. These regulations do not preclude an employee from:

(1) Requesting waiver of erroneous payment of salary, travel, transportation or relocation expense and allowances;

(2) Requesting waiver of any other type of debt, if waiver is available by statute; or

(3) Questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office.

f. Nothing in these regulations precludes the compromise, suspension or termination of collection actions where appropriate under Subpart A or other regulations.

#### **4 FAH-3 H-492.4-2 Coordinating Offset With Another Federal Agency (22 CFR 34.17)**

*(TL:FMP-3; 5-30-95)*

a. When STATE is owed a debt by an employee of another agency, the other agency shall not initiate the requested offset until STATE provides the agency with a written certification that the debtor owes STATE a debt (including the amount and basis of the debt and the due date of payment) and that STATE has complied with these regulations.

b. When another agency is owed the debt, STATE may use salary offset against one of its employees who is indebted to another agency, if requested to do so by that agency. Such request must be accompanied by a certification that the person owes the debt (including the amount and basis of the debt and the due date of payment) and that the agency has complied with its regulations as required by 5 U.S.C. 5514 and 5 CFR Part 550, subpart K.

#### **4 FAH-3 H-492.4-3 Notice Requirements Before Offset (22 CFR 34.18)**

*(TL:FMP-3; 5-30-95)*

Except as provided in 22 CFR 34.16, salary offset deductions will not be made unless STATE first provides the employee with a written notice that he/she owes a debt to the Federal Government at least 30 calendar

days before salary offset is to be initiated. When STATE is the creditor agency, this notice of intent to offset an employee's salary shall be hand-delivered or sent by certified mail to the most current address that is available to the Department and will state:

(1) That STATE has reviewed the records relating to the debt and has determined that the debt is owed, its origin and nature, and the amount due;

(2) The intention of STATE to collect the debt by means of deduction from the employee's current disposable pay until the debt and all accumulated interest are paid in full;

(3) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(4) The requirement to assess and collect interest, penalties, and administrative costs in accordance with 22 CFR 34.4 (see 4 FAH-3 H-492.2-4 ), unless excused in accordance with 22 CFR 34.4(a)(6);

(5) The employee's right to inspect and copy any STATE records relating to the debt, or, if the employee or their representative cannot personally inspect the records, to request and receive a copy of such records;

(6) The opportunity (under terms agreeable to STATE) to enter into a written agreement establishing a repayment schedule of the debt in lieu of offset;

(7) The right to a hearing conducted by an official (administrative law judge or a hearing official not under the control of STATE) with respect to the existence of the debt, the amount of the debt, or the repayment schedule (i.e. percentage of disposable pay to be deducted each pay period), so long as a request for a hearing is filed by the employee as prescribed in 22 CFR 34.19;

(8) That the timely filing of a request for hearing within 30 calendar days after receipt of the notice of intent to offset will stay the commencement of collection proceedings;

(9) That the Department will initiate procedures to implement a salary offset, as appropriate, (which may not exceed 15 percent of the employee's disposable pay) not less than 30 days from the date of receipt of the notice of debt, unless the employee files a timely petition for a hearing;

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

(11) That any knowingly false or frivolous statements, representation, or evidence may subject the employee to disciplinary procedures (5 U.S.C. Chapter 75, 5 CFR Part 752 or other applicable statutes or regulations); penalties (31 U.S.C. 3729-3731 or other applicable statutes or regulations); or criminal penalties (18 U.S.C. 286, 287, 1001, and 1002 or other applicable statutes or regulations);

(12) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

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

(14) The method and time period for requesting a hearing; and

(15) The name and address of the STATE official to whom communications should be directed.

#### **4 FAH-3 H-492.4-4 Request for a hearing (22 CFR 34.19)**

*(TL:FMP-3; 5-30-95)*

a. Except as provided in paragraph c of this section, an employee must file a request for a hearing that is received by STATE not later than 30 calendar days from the date of STATE's notice described in 22 CFR 34.18 if an employee wants a hearing concerning:

—The existence or amount of the debt; or

—STATE's proposed offset schedule.

b. The request must be signed by the employee and should identify and explain with reasonable specificity and brevity the facts, evidence, and witnesses which the employee believes support his or her position. If the employee objects to the percentage of disposable pay to be deducted from each check, the request should state the objection and the reasons for it.

c. The employee must also specify whether an oral or paper hearing is requested. If an oral hearing is desired, the request should explain why the matter cannot be resolved by review of the documentary evidence alone.

d. If the employee files a request for a hearing later than the required 30 calendar days as described in paragraph a of this section, the hearing officer may accept the request if the employee can show that the delay was because of circumstances beyond his or her control or because

of failure to receive notice of the filing deadline (unless the employee has actual notice of the filing deadline).

e. An employee waives the right to a hearing and will have his or her disposable pay offset if the employee fails to file a petition for a hearing as prescribed in paragraph a of this section or fails to appear at the scheduled hearing.

#### **4 FAH-3 H-492.4-5 Hearings (22 CFR 34.20)**

*(TL:FMP-3; 5-30-95)*

a. If an employee timely files a request for a hearing under 22 CFR 34.19, STATE shall select the time, date, and location of the hearing.

b. Hearings shall be conducted by a hearing official not under the control or authority of STATE.

c. Procedure.

(1) After the employee requests a hearing, the hearing official or administrative law judge shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, notice shall set forth the date, time and location of the hearing. If the hearing will be paper, the employee shall be notified that he or she should submit arguments in writing to the hearing official or administrative law judge by a specified date after which the record shall be closed. This date shall give the employee reasonable time to submit documentation.

(2) **Oral hearing.** An employee who requests an oral hearing shall be provided an oral hearing if the hearing official or administrative law judge determines that the matter cannot be resolved by review of documentary evidence alone (e.g. when an issue of credibility or veracity is involved). The hearing is not an adversarial adjudication and need not take the form of an evidentiary hearing. Oral hearings may take the form of but are not limited to:

(a) Informal conferences with the hearing official or administrative law judge, in which the employee and agency representative will be given full opportunity to present evidence, witnesses and argument;

(b) Informal meetings with an interview of the employee; or

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

(3) **Paper hearing.** If the administrative law judge or hearing official determines that an oral hearing is not necessary, he or she will make the

determination based upon a review of the available written record (5 U.S.C. 5514).

(4) **Record.** The hearing official must maintain a summary record of any hearing provided by this subpart. See 4 CFR 102.3. Witnesses who testify in oral hearings will do so under oath or affirmation.

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

—A statement of the facts presented to support the origin, nature, and amount of the debt;

—The hearing official's findings, analysis and conclusions; and

—The terms of any repayment schedules, if applicable.

(6) **Failure to appear.** In the absence of good cause shown (e.g. excused illness), an employee who fails to appear at a hearing shall be deemed, for the purpose of this subpart, to admit the existence and amount of the debt as described in the notice of intent. The hearing official shall schedule a new hearing date upon the request of the creditor agency representative when good cause is shown. Both parties shall be given reasonable notice of the time and place of the new hearing.

#### **4 FAH-3 H-492.4-6 Review of STATE Records Related to the Debt (22 CFR 34.21)**

*(TL:FMP-3; 5-30-95)*

a. **Notification by employee.** An employee who intends to inspect or copy agency records related to the debt must send a letter to the official designated in 22 CFR 34.18(15) stating his or her intention. The letter must be received by STATE within 30 calendar days after receipt of the notice of intent to offset.

b. **STATE's response.** In response to a timely notice submitted by the debtor as described in paragraph a of this section, STATE will notify the employee of the location and time when the employee may inspect and copy STATE records related to the debt.

#### **4 FAH-3 H-492.4-7 Written Agreement to Repay as Alternative to Salary Offset (22 CFR 34.22)**

*(TL:FMP-3; 5-30-95)*

a. **Notification by employee.** The employee may propose, in response to the notice of intent to offset, a written agreement to repay the debt as an alternative to salary offset. The proposal shall admit the existence of the debt and set forth a proposed repayment schedule. Any employee who wishes to do this must submit a proposed written agreement to repay the debt which is received by STATE within 30 calendar days of the notice.

b. **STATE's response.** STATE will notify the employee whether the proposed written agreement for repayment is acceptable. It is within STATE's discretion to accept a repayment agreement instead of proceeding by offset.

c. **Procedures.** If the employee and STATE enter into a written agreement to repay instead of salary offset, the debt will be repaid in accordance with the agreement provisions and the procedures of 22 CFR 34.23 will not apply.

#### **4 FAH-3 H-492.4-8 Procedures for Salary Offset (22 CFR 34.23)**

*(TL:FMP-3; 5-30-95)*

Unless STATE agrees and regulations do not provide otherwise, the following procedures apply:

a. **Method.** Salary offset will be made by deduction at one or more officially established pay intervals from the current pay account of the employee without his or her consent.

b. **Source.** The source of salary offset is current disposable pay which is that part of current basic pay, special pay, retainer pay, or in the case of an employee not entitled to pay, other authorized pay remaining after the deduction of any amount required by law to be withheld.

c. **Types of collection.**

(1) Lump sum payment. Ordinarily debts will be collected by salary offset in one lump sum if possible. However, if the employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, the collection by salary offset must be made in installment deductions.

(2) Installment deductions.

(a) The size of installment deductions must bear a reasonable relation to the size of the debt and the employee's ability to pay. If possible the size of the deduction will be that necessary to liquidate the debt in no more than 1 year. However, the amount deducted for any period must not exceed 15 percent of the disposable pay from which the deduction is made, except as provided by other regulations or unless the employee has agreed in writing to a greater amount.

(b) Installment payments of less than \$25 per pay period will be accepted only in the most unusual circumstances.

(c) Installment deductions will be made over a period of not greater than the anticipated period of employment.

d. **When deductions may begin:**

(1) Salary offset will begin on the date stated in the notice as provided in 22 CFR 34.18 unless a hearing is requested.

(2) If there has been a timely request for a hearing, salary offset will begin as of the date stated in the written decision.

e. **Additional offset provisions.**

(1) Liquidation from final check. If employment ends before salary offset is completed, the remaining debt will be liquidated by offset from payment of any nature due the employee from STATE (e.g. final salary payment, lump-sum leave, etc.).

(2) Offset from other payments. If the debt cannot be liquidated by offset from any final check, the remaining debt will be liquidated by offset from later payments of any kind due the former employee from the United States, inclusive of retirement or disability funds pursuant to 22 CFR 34.10 of this regulation.

#### **4 FAH-3 H-492.4-9 Nonwaiver of rights (22 CFR 34.24)**

*(TL:FMP-3; 5-30-95)*

So long as there are no statutory or contractual provision to the contrary, no employee payment (of all or a portion of a debt) collected under this subpart will be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514.

## **4 FAH-3 H-492.4-10 Refunds (22 CFR 34.25)**

*(TL:FMP-3; 5-30-95)*

a. STATE will refund promptly to the appropriate individual amounts offset under this regulation when:

—A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

—STATE is directed by an administrative or judicial order to make a refund.

b. Refunds do not bear interest unless required or permitted by law or contract.

## **4 FAH-3 H-493 CLAIMS ADMINISTRATION**

### **4 FAH-3 H-493.1 Claims Determination**

*(TL:FMP-17; 05-05-2003)*

The **management officer** of a post, bureau, or office is responsible for:

- (1) Determining whether a claim exists;
- (2) Undertaking appropriate initial collection measures pursuant to 4 FAH-3 H-494 ; and when necessary, requesting:
  - (a) Referral of the claim to GAO or the Department of Justice through the Director FMP/F/DFS (see 4 FAH-3 H-496.4 );
  - (b) The Accounts Receivable Division (FMP/F/DFS/FO/AR) FMP/F/DFS or the Committee for the Settlement of Claims compromise, suspend or terminate collection of the claim (write off); or
  - (c) Action be taken by the Committee of Inquiry into Fiscal Irregularities with respect to claims involving fiscal irregularity over \$1,000 (see 3 FAM ).

### **4 FAH-3 H-493.2 Types**

*(TL:FMP-3; 5-30-95)*

Examples of claims, as defined in 4 FAH-3 H-492.2-3 (22 CFR 34.3a), include but are not limited to:

(1) Loss and damage to shipments of supplies and equipment (see 6 FAM );

(2) Loss, damage, or destruction of Government owned personal property (see 6 FAM );

(3) Overpayment to an employee of pay or allowances (5 U.S.C. 5584 and Part 91, Title 4, Code of Federal Regulations);

(4) Overpayment or refund of travel, transportation and relocation expenses or allowances (5 U.S.C. 5705 and 5724 or in 22 U.S.C. 4081);

(5) Contract claims, such as an overpayment, as provided in a contract and determined by a contracting officer, where no added review may be granted, and any interest, administrative charge, or penalty charge is subject to the limitation, if any, in the contract from which the claim arose (41 U.S.C. 601);

(6) Any returned negotiable instrument (i.e. check) for any reason (i.e. accommodation exchange, loan or advance repayment, refund or reimbursement of services, simple check cashing, etc.) returned as nonacceptable by a banking institution or that creates a debit voucher to USDO accountability;

(7) Any claim against an individual (U.S. citizen, Government employee, contractor, etc.) for a service, advance, overpayment or loan (i.e. nonpayment of rent, utilities, telephone charges, medical payments or services, repatriation loans, emergency evacuation assistance to private citizens, etc.) provided to, on behalf of, or incurred by an individual where payment has been made by the government that requires a refund or reimbursement to the government; or

(8) Any claim based on a fiscal irregularity within the jurisdiction of the Committee of Inquiry into Fiscal Irregularities (3 FAM ).

## **4 FAH-3 H-493.3 Accounting**

### **4 FAH-3 H-493.3-1 Receivable Accounts**

*(TL:FMP-3; 5-30-95)*

a. The post is responsible for establishing and maintaining all receivable accounts at their location. Forward any repatriation or evacuation loans to FMP/F/DFS/FO/AR which is responsible for establishing and maintaining such receivable accounts.

b. Bureaus and offices will advise FMP/F/DFS/FO/AR by memorandum of any debts to be established and the account to be charged and credited. FMP/F/DFS/FO/AR is responsible for establishing

and maintaining receivable accounts of indebtedness incurred domestically.

#### **4 FAH-3 H-493.3-2 Charges Collected**

*(TL:FMP-3; 5-30-95)*

Amounts collected for interest, administrative, and penalty charges are credited as follows:

(1) Interest to 193220, "Miscellaneous Interest Collections Not Otherwise Classified;" and

(2) Penalty and Administrative Charges to 191099, "Fines, Penalties, and Forfeitures Not Otherwise Classified."

#### **4 FAH-3 H-493.4 Notification and Assessment of Charges**

##### **4 FAH-3 H-493.4-1 Interest and Penalties**

*(TL:FMP-3; 5-30-95)*

a. Debtors with obligations covered by contracts, agreements, or other formal arrangements must be notified of charges for late payments. Such notice must specify that interest and penalty will accrue and is payable from a stipulated due date in accordance with 4 FAH-3 H-492.2-4 . For example, at the end of the 30 day period the parties billed for a fiscal irregularity will be subject to interest payments and penalties, pursuant to 31 U.S.C. 3717.

b. Debtors with obligations not covered by contracts, agreements, or other formal arrangements should be informed of the requirement concerning charges for late payments on the initial notification of amounts due. Interest accrues from the date the initial notification of debt is first mailed or hand delivered to the debtor, but must be waived if the debt is paid within 30 days from that date.

##### **4 FAH-3 H-493.4-2 Administrative Charges**

*(TL:FMP-3; 5-30-95)*

Debtors must be notified that the administrative cost of processing and handling a delinquent claim (those over 30 days past due) are calculated upon the actual costs incurred and will be added to the debt. Such costs may include:

—The obtaining of a credit report;

—Telephone or cable costs; or

—A fee paid to a collection service.

## **4 FAH-3 H-494 COLLECTION ACTIONS**

### **4 FAH-3 H-494.1 Notices to Debtors**

#### **4 FAH-3 H-494.1-1 Initial (First) Notices (Overseas and Domestic)**

*(TL:FMP-17; 05-05-2003)*

a. Initial collection effort shall be taken by the post, bureau or office **management officer** for any debt identified as a receivable to their allotment or cashier advance. All debtors must be notified of the indebtedness. Notices by post should conform to local law for debts owed by local entities. The promissory note of repatriation or an evacuation loan must be immediately forwarded to FMP/F/DFS/FO/AR for processing and collection. The notice given under 4 FAM 463.5-3 is to be regarded as the first notice with respect to travel advances. The Committee of Inquiry into Fiscal Irregularities will send the first notice with respect to claims over which it exercises jurisdiction (claims over \$500 involving fiscal irregularities).

b. The first notice to the debtor should include the provisions of 4 FAH-3 H-492.3-1 (22 CFR 34.8b), as well as stating:

(1) That payment in full (one lump sum) is expected, within 30 days of the notice;

(2) The Department's intention, if necessary, to collect by offset, or ask the assistance of other Federal agencies to effect collection from the debtor on behalf of the Department or an agency serviced by the Department;

(3) The debtor's right to inspect the records of the debt and/or how to seek review of the debt;

(4) The debtor's right to offer to make a written agreement to repay the debt in installments, subject to acceptance at post by the chief of mission or domestically by the Chief Financial Officer or designee; and

(5) The debtor's rights, if any, to seek a waiver of the indebtedness.

c. When the debt is over \$750 and the Department accepts a written installment repayment schedule, the responsible office should ensure that the written arrangement reflects an acknowledgment of the debt and a promise to pay it in full in accordance with the installment schedule.

#### **4 FAH-3 H-494.1-2 Follow-Up Action (Second Notice)**

(TL:FMP-17; 05-05-2003)

a. Overseas, if payment has not been recovered within 30 days, the second notice should be sent. In addition, the debtor may be contacted by telephone, or personal visit. When making contact by personal visit or telephone, a follow-up letter should be sent to the debtor stating the interest due. The follow-up action should be firm in tone. All contacts with the debtor must be documented, as the post **management officer** may refer the debt to FMP/F/DFS/FO if third notice is not acknowledged.

b. Domestically, and with respect to overseas claims within the exclusive jurisdiction of the Committee of Inquiry into Fiscal Irregularity, the second notice is sent by FMP/F/DFS/FO/AR. Bureau and office **management officers** are responsible for the timely recording of the debt as an account receivable and for providing FMP/F/DFS/FO/AR with the necessary documents for the second notice to be sent.

#### **4 FAH-3 H-494.1-3 Referral for Further Action (Third Notice)**

(TL:FMP-17; 05-05-2003)

a. Overseas, if the debtor does not respond to either letters or telephone calls, normally within 60 days of the initial notice, the post **management officer** sends a third notice to the debtor restating the information previously provided, including the cumulative interest, administrative charges and penalty charges on the third notice. The **management officer** should make an added statement that all further collection action will be undertaken by FMP/F/DFS/FO/AR which may utilize the services of a collection agency. If the debtor has not responded within 10 days after the third notice, the post **management officer** should forward the debt to FMP/F/DFS/FO/AR to begin further collection action.

b. Domestically, and with respect to overseas claims within the exclusive jurisdiction of the Committee of Inquiry into Fiscal Irregularity, if the debtor does not respond to either letters or telephone calls within 60 days of the initial notice, FMP/F/DFS/FO/AR sends a third notice to the debtor restating the information previously provided. The third notice will include the cumulative interest, administrative charges and penalty charges and the other collection actions that may be taken (see 4 FAH-3 H-494.2 ). The notice will also include, if applicable, the notification that this debt is currently with a collection agency who will handle all subsequent collection efforts.

#### **4 FAH-3 H-494.2 FMP/F/DFS/FO Collection Actions**

(TL:FMP-3; 5-30-95)

Only FMP/F/DFS/FO/AR may use the methods of collection set forth in 4 FAH-3 H-494.2-1 to 4 FAH-3 H-494.2-6 to collect a debt.

#### **4 FAH-3 H-494.2-1 Work-Out Group**

*(TL:FMP-3; 5-30-95)*

FMP/F/DFS/FO/AR is responsible for determining whether previous collection attempts should be repeated or if other options are to be used (see 4 FAH-3 H-492.3-4 , 22 CFR 34.11).

#### **4 FAH-3 H-494.2-2 Consumer Reporting Agencies**

*(TL:FMP-3; 5-30-95)*

a. Referral to a consumer reporting agency (credit bureau) is to encourage repayment by setting forth the same expectations of the debtor as are routinely used in business, within the Privacy Act requirements as set forth in 31 U.S.C. 7311 (f) and FCCS 102.3(c). The notification of a debtor's failure to meet prior commitments adversely impacts on efforts to obtain additional credit.

b. Upon written request from FMP/F/DFS/FO, the Internal Revenue Service (IRS) may disclose the mailing address of a taxpayer for purposes of locating a debtor to collect or compromise a Federal Claim (see 4 CFR 102.18, and 4 FAH-3 H-492.3-8 , 22 CFR 34.15).

#### **4 FAH-3 H-494.2-3 Collection Services**

*(TL:FMP-3; 5-30-95)*

a. Only FMP/F/DFS/FO may contract with a person or organization to recover a debt owed to the U.S. (See 4 FAH-3 H-492.3-8 , 22 CFR 34.15). Any such contract shall include provisions which specify that the Department retains authority to resolve disputes, compromise claims, terminate collection action, or refer the matter to the Justice Department to initiate further legal action.

b. The contractor must maintain a system of records and observe Federal and State laws and regulations pertaining to debt collection practices consistent with 5 U.S.C. 552a(m) and 15 U.S.C. 1692.

c. The contractor must account for all amounts collected. Except as authorized, all amounts recovered must be deposited as miscellaneous receipts pursuant to 31 U.S.C. 3302.

d. The contractor must agree to provide any data contained in its files relating to 4 CFR 195.2(a) (1), (2), and (3) of the FCC's upon returning

an account to the creditor agency for subsequent referral to the Department of Justice for litigation.

#### **4 FAH-3 H-494.2-4 Other Collection Actions**

*(TL:FMP-3; 5-30-95)*

FMP/F/DFS/FO may institute other collection actions including but not limited to:

- (1) Referrals to the Department of Justice or GAO for litigation or guidance (see 4 FAH-3 H-492.3-7 , 22 CFR 34.14, and 102.6(a) (4) of the FCCS);
- (2) Administrative Offset (see 4 FAH-3 H-492.3-2 , 22 CFR 34.9) including salary deduction for travel advances;
- (3) Retirement Offset (See 4 FAH-3 H-492.3-3 , 22 CFR 34.10);
- (4) Salary Offset (See 4 FAH-3 H-492.4 , 4 FAM 557, and 64 Comp. Gen. 144, Decision B-215128); or
- (5) Other actions as provided by the contract with the debtor.

#### **4 FAH-3 H-494.2-5 Tax Refund Offset**

*(TL:FMP-3; 5-30-95)*

Pursuant to the Deficit Reduction Act of 1984 (Pub. L. 98-369, 98 Stat. 1153), the Department may refer past-due legally enforceable debts owed the Department to the IRS for collection by tax refund offset in the manner prescribed in 22 CFR 139 and the Memorandum of Understanding between the Department, IRS, and Treasury, FMS.

#### **4 FAH-3 H-494.2-6 Notifying the Department of the Army**

*(TL:FMP-3; 5-30-95)*

When a claim is against a contractor, FMP/F/DFS/FO may notify the Department of the Army to include the contractor on the "List of Contractors Indebted to the United States" (commonly known as the Army Holdup List) (See 4 FAH-3 H-492.3-2 paragraph d, 22 CFR 34.9), published quarterly by the U.S. Army Finance and Accounting Center, Indianapolis, Indiana 46249. Such referral procedures are contained in the list. FMP/F/DFS/FO/AR retains copies of the list. Notwithstanding such notification, collection efforts are continued, including referral to GAO, if appropriate.

## 4 FAH-3 H-495 COMPROMISE, SUSPENSION, OR TERMINATION OF CLAIMS

(TL:FMP-3; 5-30-95)

Each request for compromise, suspension or termination will be made by memorandum which contains:

- The debtor's name;
- Amount of the claim;
- Brief statement of collection efforts; and
- Reason why compromise, suspension, or termination has been approved.

### 4 FAH-3 H-495.1 Overseas

(TL:FMP-17; 05-05-2003)

a. Claims Not in Excess of \$500. Post **management officers** re delegated authority to approve the compromise, suspension, or termination of a claim not in excess of \$500 in accordance with the standards set forth in this section when normal collection action under 4 FAH-3 H-494 has proved futile (see 1 FAM ). The post will maintain a permanent record of all such claims with a summary report being provided to FMP/F/DFS at the end of each fiscal year. The post financial management officer (or other officer familiar with the debt) must submit a memorandum containing:

- The debtor's name;
- Amount of the claim;
- Brief statement of collection efforts; and
- Reason why compromise, suspension, or termination has been approved.

b. Claims in Excess of \$500. If normal collection action has proved futile, the post **management officer** forwards such claims to FMP/F/DFS/FO/AR with complete documentation and recommendation for settlement.

## **4 FAH-3 H-495.2 Domestically**

*(TL:FMP-17; 05-05-2003)*

a. For claims originating in the United States when collection has proved futile, the bureau or office **management officer** may recommend by memorandum to FMP/F/DFS/FO/AR the compromise, suspension, or termination of the debt, as prescribed in this section. Such memorandum should include complete documentation.

b. FMP/F/DFS/FO/AR has the authority to approve the compromise, suspension or termination of claims of \$500 or less, in accordance with the standards set out in this section when normal collection action under 4 FAH-3 H-494 has proved futile.

c. FMP/F/DFS/FO/AR must prepare a memorandum to FMP/F/DFS containing:

- The debtor's name;
- Amount of the claim;
- Brief statement of collection efforts; and
- Reason why compromise, suspension, or termination has been approved.

d. A copy of all such referrals shall also be provided as notification to the Office of Inspector General, Office of Investigations.

## **4 FAH-3 H-495.3 Compromise**

### **4 FAH-3 H-495.3-1 Reasons for Compromise**

*(TL:FMP-3; 5-30-95)*

A debt may be compromised when the full amount of a debt cannot be collected due to the:

- (1) Inability to pay by the debtor;
- (2) Refusal of the debtor to pay the full amount and the inability to enforce collection in full within a reasonable time;
- (3) Existence of a real doubt that the debt can be proved in court on the legal issues involved or a bona fide dispute of the facts; and
- (4) Cost of collecting the claim does not justify the enforced collection of the full amount.

#### **4 FAH-3 H-495.3-2 Inability to Pay Factors**

*(TL:FMP-3; 5-30-95)*

The following factors are considered in determining the debtor's inability to pay:

- Age and health of the debtor;
- Present and potential income;
- Inheritance prospects;
- The possibility that assets have been concealed or improperly transferred by the debtor; and
- Availability of assets or income which may be realized.

#### **4 FAH-3 H-495.4 Suspending or Terminating Collection Action**

*(TL:FMP-3; 5-30-95)*

a. All Debts placed in suspense must be reviewed periodically, keeping in mind the administrative costs of such a review against the amount to be collected.

b. A debt may be considered closed if one or more of the following exists:

(1) It becomes clear that the Department cannot collect or enforce collection of any significant amount from the debtor, taking into consideration the available judicial remedies and the future financial prospects of the debtor;

(2) The debtor cannot be located and the applicable statute of limitation has expired;

(3) It appears that the cost of collection will exceed the amount recovered;

(4) The claim is legally without merit; or

(5) The evidence necessary to prove the claim cannot be produced, or knowledgeable witnesses are unavailable; and efforts to induce voluntary payment are unsuccessful.

c. FMP/F/DFS/FO/AR shall retain permanent records of all terminated debts in order to:

- Prescreen future debtors;
- Use previously unavailable collection actions; or
- Initiate offset against future payments.

## **4 FAH-3 H-496 DEPARTMENT REVIEW AND SETTLEMENT OF CLAIMS**

### **4 FAH-3 H-496.1 FMP/F/DFS Review**

*(TL:FMP-17; 05-05-2003)*

a. FMP/F/DFS, or designee will review claims originating at post or domestically in excess of \$500 but less than \$2,500 that are being recommended by post, bureau or office **management officers** for compromise, suspension, or termination.

b. The review is to ascertain that prior recovery actions taken were consistent with 4 CFR Chapter II, 22 CFR 34 (4 FAH-3 H-492 ) and these regulations. After review, FMP/F/DFS may approve or disapprove a recommendation to compromise, suspend, or terminate collection of claims not exceeding \$2,500. Disapproved claims are referred in accordance with 4 FAH-3 H-496.3 . FMP/F/DFS notifies the applicable bureau, office, or post of either action to properly adjust its files.

### **4 FAH-3 H-496.2 Claims Settlement Committee**

*(TL:FMP-3; 5-30-95)*

a. After review, the Claims Settlement Committee may compromise, suspend or terminate collection of such claims. The committee may seek the advice of GAO through the Chief Financial Officer, FMP, on any decision to be taken.

b. Claims should be forwarded to the FMP/F/DFS representative, who as chairperson assembles the committee when required, records the committee actions, and performs other such duties as necessary.

## 4 FAH-3 H-496.3 Referral of Unresolved Claims

(TL:FMP-3; 5-30-95)

a. Unresolved claims are referred to GAO or the Department of Justice for:

- (1) All claims in excess of \$100,000 for which collection action has been unsuccessful;
- (2) Any claim arising from a GAO audit exception to payments made by the Department; or
- (3) Any other claim when the basis of the Government's claim, the amount owed on the claim, or the propriety of acceptance of a proposed compromise, suspension or termination are in doubt.

b. Claims must be referred through FMP/F/DFS as soon as possible, including the debtor's current address, credit status (if available), and a brief summary of the case and actions previously taken by the Department. FMP/F/DFS/FO/AR retains all files, records, and exhibits of the referred claim.

## 4 FAH-3 H-497 COLLECTION WAIVER OF CERTAIN OVERPAYMENTS

### 4 FAH-3 H-497.1 Delegation of Authority to Waive Overpayment of Pay and Allowance Claims

(TL:FMP-17; 05-05-2003)

a. Post Overpayments. The principal officer at the post to which the employee was assigned at the time of the overpayment is delegated authority to act for the Secretary of State in the consideration and waiver in whole or in part of any overpayments aggregating \$1,500.00 or less, subject to the conditions, criteria, and procedures set forth in 4 CFR Parts 91-93, and 4 FAH-3 H-498. The principal officer's authority to waive collection of overpayments may be redelegated in writing to the **management officer** at a post (see 4 FAM 547). Upon receipt of a written recommendation from the post financial management officer, the principal officer may waive collection of an overpayment in whole or in part. Send a copy of the principal officer's decision, together with details of the payment method, to the appropriate payroll office. Send a copy of the decision and supporting papers to FMP/F/DFS subject: Waiver of Overpayment.

b. Domestic Overpayments. The following officers are delegated the authority to approve waivers of overpayments in accordance with the Standards set forth in 4 CFR Parts 91-93 as indicated below:

(1) The Director, FMP/F/DFS/OCP may waive gross overpayments of \$500.00 or less in whole or in part; and

(2) The Director, FMP/F/DFS may waive gross overpayments of more than \$500.00 but not more than \$1,500.00 in whole or in part. A written report of findings and recommendations will be made to the FMP.

(3) FMP/F/DFS upon receipt of written recommendation of the applicable office within FMP/F/DFS may waive collection of the overpayment in whole or in part.

c. Waiver requests in excess of \$1,500 must be referred to the Comptroller General, according to 4 FAH-3 H-496.4 .

## **4 FAH-3 H-497.2 Conditions for Waiver**

*(TL:FMP-3; 5-30-95)*

Claims of the United States arising out of an erroneous payment may be waived in whole or in part in accordance with the provisions of 4 FAH-3 H-497.1 and for the following reasons.

### **4 FAH-3 H-497.2-1 Erroneous Payments**

*(TL:FMP-3; 5-30-95)*

The claim arises out of an erroneous payment of pay and/or allowance, or travel, transportation, relocation expense and/or allowance made to a Department employee, except that a waiver request must be submitted within 3 years from the date when the erroneous payment was discovered as an overpayment.

### **4 FAH-3 H-497.2-2 Administrative Error**

*(TL:FMP-3; 5-30-95)*

a. Overpayments to be waived generally result from an administrative error in which the amount did not cause a reasonable employee to make inquiry concerning its correctness, regardless of the manner of payment (i.e., direct payment to a bank account or by Treasury check). Implementing regulations by the Comptroller General are incorporated in the Code of Federal Regulations, Title 4 Chapter I, Subchapter G, "Standards for Waiver of Claims for Erroneous Payment" (4 CFR 91-93).

b. Waiver may be authorized when collection of the claim would be against equity and good conscience and is not in the best interests of the United States. Generally, these criteria will be met by a finding that the erroneous payment occurred through administrative error and that there is no indication of misrepresentation, fraud, 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. For example, any significant unexplained increase in an employee's pay or allowances, which would cause a reasonable person to believe the payment was incorrect, ordinarily would preclude a waiver when the employee fails to bring the matter to the attention of appropriate officials.

c. Waiver of overpayments under this standard necessarily must depend upon the facts existing in the particular case. The facts upon which a waiver is based should be recorded in detail and made part of the written record.

#### **4 FAH-3 H-497.2-3 Time Limits**

*(TL:FMP-3; 5-30-95)*

a. **Application for Waiver**—An application for refund of an erroneous payment, as described in 4 FAH-3 H-497.2-1, may be considered if received in the Department or in GAO, as appropriate (see 4 FAH-3 H-495.4 within 3 years from the date of discovery. It should be noted that the date of discovery rather than the date of the payment is significant. Cases should be processed promptly to permit a waiver determination to be made within the 3 year time limit.

b. **Application for Refund**—A person who has repaid to the United States all or part of an erroneous payment may apply to the agency which made the erroneous payment during a period of 2 years following the waiver action date in order to be paid a refund (4 CFR 92.5). Persons making inquiry for refund at other than the employing agency will be referred to that agency.

#### **4 FAH-3 H-497.2-4 Limitations to Waive Claims Against Employees**

*(TL:FMP-3; 5-30-95)*

a. Overpayment claims that exceed \$1,500.00 must be referred to GAO for decision.

b. Only GAO may waive an overpayment claim which is the subject of an exception by the Comptroller General. A claim that has been transmitted by the Department to the Attorney General for litigation or to GAO for collection may not be waived by the Department (4 CFR 91.4(c)).

## **4 FAH-3 H-497.3 Request for Waiver**

### **4 FAH-3 H-497.3-1 Initiation of Request for Waiver**

*(TL:FMP-17; 05-05-2003)*

a. When an employee is informed of an indebtedness to the U.S. Government from an overpayment and the Department's intention to pursue collection to full repayment of the overpayment, the employee may submit a request for waiver in writing to either the principal officer at the post to which the employee was assigned when the overpayment was made or to FMP/F/DFS.

b. The request should state the reasons for the employee's request and the amount of the waiver the employee believes is equitable under the circumstances. When the employee's request is received, the **management officer** or FMP/F/DFS will review the circumstances leading to overpayment, document in full the details of overpaid amounts, and based on the Standards set forth in 4 CFR Parts 91-93, recommend whether overpayment should be waived or collected. Forward these recommendations to the principal officer, if at post, or FMP/F/DFS, see 4 FAH-3 H-497.1.

### **4 FAH-3 H-497.3-2 Request for Refund of Repayment**

*(TL:FMP-3; 5-30-95)*

Employees who have previously repaid an overpayment, in whole or in part, may request a refund. Such requests are considered as a request for waiver and should be made within the time limitations in 4 FAH-3 497.2-3 to the above indicated offices. In the absence of such a request, and depending upon the facts, either the GAO or the office making the overpayment for which a request for refund is made may initiate the waiver procedures.

### **4 FAH-3 H-497.3-3 Right of Appeal by Employee**

*(TL:FMP-3; 5-30-95)*

In those cases where the initial decision by the post or FMP/F/DFS has been not to waive collection of the overpayment, the employee may appeal the initial determination to the Claims Division, General Accounting Office (GAO Claims).

## **4 FAH-3 H-498 WAIVER AND REPAYMENT PROCESS**

## **4 FAH-3 H-498.1 Required Actions**

### **4 FAH-3 H-498.1-1 Overpayments of More Than \$1,500.00**

*(TL:FMP-3; 5-30-95)*

a. If the aggregate amount of the overpayment is more than \$1,500 and waiver is proposed, the post financial management officer at the time the overpayment was certified will obtain all pertinent and factual fiscal details (specific or inclusive dates if a long time period is involved and voucher numbers of the overpayments and repayments involved) and make a report with recommendations through the principal post officer, or designee, to FMP/F/DFS, subject: Waiver of Overpayment (see 4 FAM 547). The waiver request must be submitted to GAO in accordance with 4 CFR parts 91-93. Posts serviced by a fiscal servicing post or from a RAMC or FMC, may request from such post or automated center any supporting or supplementary data.

b. FMP/F/DFS will research and report domestic overpayments. Where appropriate, FMP/F/DFS will review the post's report and recommendations for completeness, including any views of the employee.

### **4 FAH-3 H-498.1-2 Cases Forwarded to GAO**

*(TL:FMP-3; 5-30-95)*

Post and domestic office requests sent to FMP/F/DFS for processing are recorded and maintained in a control register. FMP/F/DFS forwards the case to the GAO Claims Office for consideration. After receipt of the Comptroller General's (CG) decision, FMP/F/DFS will advise the employee's present post of assignment of any actions to be taken pursuant to the CG decision (including instructions for filing a claim for refund if repayments were collected prior to the granting of a waiver).

## **4 FAH-3 H-498.2 Employees Separating From the Government**

*(TL:FMP-3; 5-30-95)*

Employees separating from the government will have withheld from their final salary payment the amount of indebtedness involved in any pending waiver cases. The employee's post of assignment will advise FMP/F/DFS by memorandum of the pending waiver or other indebtedness cases pertaining to employees who are to receive their final salary payment.

## **4 FAH-3 H-498.3 Report of Investigation**

*(TL:FMP-3; 5-30-95)*

Depending upon where the employee was assigned at the time of the overpayment, the post or FMP/F/DFS prepares a written report for each request for waiver of overpayment. The report of the investigation contains:

(1) A statement of the aggregate amount of erroneous payments along with the voucher number(s) (if payments continued for a long period of time, the inclusive dates) upon which the erroneous payments were made, with a notation of the erroneous portion paid on each voucher;

(2) A statement of circumstances showing how the erroneous payment was made, date of discovery, and whether subject to an exception by the CG, GAO;

(3) A statement that there is 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. If evidence of fraud is found at any point in the collection process, the matter should be brought to the attention of the Office of Inspector General;

(4) The action has been taken or is recommended; and

(5) Such other information as may assist the post, FMP/F/DFS, or the CG, GAO, to determine whether a waiver should be granted, based upon the individual facts of the case.

## **4 FAH-3 H-498.4 Employee Notification of Waiver Action**

*(TL:FMP-3; 5-30-95)*

When final action has been taken on a waiver case, FMP/F/DFS provides written notice to the individual involved. Any person who has repaid to the United States all or part of a claim being waived in whole or in part under the provisions of these regulations, or who has not previously made application for refund, in addition to being informed of the waiver action, must also be informed of their right to make application for refund within 2 years following the date of the waiver action. Where a waiver case has been referred to the Department for final action, FMP/F/DFS will advise the employee of such action, either by direct correspondence or through the post, as appropriate.

## **4 FAH-3 H-498.5 Refunds to Employees**

*(TL:FMP-3; 5-30-95)*

Where a refund is made in whole or in part to an employee for repayment of previously collected overpayments, FMP/F/DFS or the post shall make such refund as outlined below:

(1) **Current Employees.** For refunds of overpayments of pay and/or allowances, the office maintaining the employee's pay records shall make the refund on a subsequent regular payroll, or, if more convenient, on a supplemental payroll.

(2) **Separated Employees.** For U.S. employees separated from the Department, FMP/F/DFS makes refund of overpayments of pay and/or allowances.

(3) **Tax Reporting.** In cases described above, the refund (i.e., that part subject to Federal and State income tax) will be included as a part of wages reported on Form W-2, Withholding Statement, for the current taxable year (see 4 FAH-3 H-553 ).

(4) **Other than Pay.** The original payment center (FMP/F/DFS, RAMC or FMC) makes refunds of overpayments of travel, transportation and relocation expenses and allowances.

## **4 FAH-3 H-498.6 Accounting for Waivers and Refunds**

### **4 FAH-3 H-498.6-1 Appropriation Charged with Refund**

*(TL:FMP-3; 5-30-95)*

Refunds must be charged to the appropriation and allotment from which the overpayment was made and collected.

### **4 FAH-3 H-498.6-2 Credit in Accounts**

*(TL:FMP-3; 5-30-95)*

In the audit and settlement of the accounts of any accountable official, full credit is given for any amounts with respect to which collection by the United States is waived under the provisions of these regulations.

#### **4 FAH-3 H-498.6-3 Waived Payment Deemed Valid**

*(TL:FMP-3; 5-30-95)*

An erroneous payment, the collection of which is being waived under these regulations, is deemed a valid payment for all purposes.

#### **4 FAH-3 H-499 UNASSIGNED**

## 4 FAH-3 494 Exhibit H-494 SAMPLE DEBT COLLECTION DECISION STRATEGY

The following exhibit is to assist in determining alternatives or results of actions as required by 4 FAH-3 H-492 for debt collection to be taken at various significant dates.

<b>SIGNIFICANT DATES</b>	<b>ACTION</b>	<b>ALTERNATIVE OR RESULT</b>
<b>BY POSTS</b>		
Debt Determined	Send 1st Notice, set 30 day delinquent date, copy to FO/AR	Collected or re-scheduled and return to current status
Past Due 30 Days	Send 2nd Notice with Accrued Interest from 1st Notice Date	Employee claim/travel advance? send to FO/AR for salary offset
Past Due 60 Days	Send 3rd Notice, inform debtor of referral of debt to FO/AR	Under \$1000, compromise, suspend or terminate otherwise send to FO/AR
<b>BY BUREAUS/OFFICES</b>		
Debt Determined	Send 1st Notice, set 30 day delinquent date, copy to FO/AR	All further action by FO/AR
<b>BY FMP/DFO/FO/AR</b>		
Improper Notice	Send Proper Notice, set 30 day delinquent date	Collected or re-scheduled and returned to current status
Past Due 30 Days or Proper Notice	Send 2nd Notice, add Accrued Interest from 1st Notice date	Collected or rescheduled and returned to current status
Past Due 60 Days	Send 3rd Notice, add Administrative Costs, inform debtor of further collection action	Determine further available action to be taken

Past Due 90 Days	Assess penalty charge, decide to collect or compromise debt	Under \$1,000, compromise, suspend or terminate, other wise take further action
Past Due 180 Days	Further action to be taken by referring debt for:	
	Credit Bureau	Over \$10
	Collection Service	Over \$10
	Administrative Offset including travel advance salary offset	For nonemployee, retiree claim or an employee travel advance
	IRS Tax Refund Offset	Over \$25 and not an employee
	Salary Offset	For a current employee
	Claims Committee	Over \$2,500
	Litigation	Under or equal to \$100,000 to the U.S. Attorney, over to Justice Dept.
Final Action	Justice Dept. to Compromise, Suspend or Terminate	Over \$100,000
	GAO (Compromise, Suspend or Terminate)	In doubt as to existence
	Close Out, prepare Form 1099 with MISC copy to debtor and IRS	Over \$25