

CHAPTER 8. OFFSET

8-1 OVERVIEW. Generally, all offset actions discussed in this Handbook are administrative offsets, as opposed to offsets asserted in litigation or the offset provisions under FAR 32.6. Administrative offsets are further classified into three separate categories: federal income tax refund offsets or Internal Revenue Service (IRS) offsets, salary offsets, and administrative offsets.

Offset provisions of the Debt Collection Act of 1982 do not apply to local governments. Therefore, these procedures do not apply to certain debts arising under the Public and Indian Housing Program or Community Development Block Grants.

The questions of whether or not a Public Housing Agency or Indian Housing Authority is considered an agency of a State or local government -- or is considered a special purpose government and thus is susceptible to the "local government" classification -- must be decided by legal counsels in consultation with the appropriate Headquarters Program Office, on a case-by-case basis.

** a. Salary Offsets. Salary offsets involve withholding a portion of pay of:

- o Current HUD employees who owe debts to HUD;
- o Current employees of other agencies who owe debts to HUD; and
- o Current HUD employees who owe debts to other agencies.

Retired military personnel are treated as current employees for salary offset purposes. Offsets for retired military are deducted from "retired pay" rather than from current salary. Debtors who are subject to salary offset are entitled to have their cases reviewed by HUD's Administrative Law Judge.

b. Administrative Offsets. Administrative offsets entail debts owed to HUD by anyone other than another government agency or by the recipients of a grant that requires advance funding rather than reimbursable funding. Generally, administrative offsets will not be used for HUD's mortgage insurance programs, provided the debt is secured at the time of collection. Administrative offsets are available for interagency use; thus, if HUD owes money to a contractor who is delinquent on a payment Department of Labor, the Labor Department could request that HUD withhold monies due the contractor.

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** Debtors who are subject to administrative offset are entitled to have their cases reviewed by a Department official designated by a program office. It is prudent for the official designated by a program office. It is prudent for the reviewing official to occupy a position at least one level above the official who initiated the offset recommendation and notice.

- c. IRS Offsets. IRS offsets involve withholding federal tax refunds from taxpayers who owe debts to a Federal Agency. If the debt may also be collected by salary or administrative offset, that option must be pursued first, since the IRS permits offsets only after all other collection options have been exhausted. Debtors who are subject to IRS offsets are entitled to have their cases reviewed by the Department of Housing and Urban Development (HUD) Board of Contract Appeals.

Claims Collection Officers (CCO) are not responsible for IRS offsets; this is done only by the Departmental Claims Officer (DCO).

- d. Statute of Limitations. The statute of limitations for all three types of offsets is 20 years, as provided by 31 USC 3716. Therefore, no offset may be initiated more than 10 years after the Secretary's right to collect first accrued, unless facts material to the right to collect were not known -- and could not reasonably have been known -- by the HUD collection officials responsible for discovering and collecting such debts.

8-2. SALARY OFFSET.

- a. Application. Salary offset may be used to collect certain debts owed the government by:
- o Current employees of HUD or of other agencies who owe debts to HUD;
 - o Current employees of HUD who owe debts to other agencies; and
 - o Retired military employees.
- b. Regulations. HUD's salary offset regulations are described in 24 CFR 17.125 through 17.140. These regulations identify the types of salary offset available to HUD, as well as certain rights provided to the employee.

Nothing in these regulations precludes compromising, suspending, or terminating a claim where appropriate.

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- c. Coordination with Another Federal Agency. When HUD is owed money by an employee of another agency, that agency will not initiate the requested offset until the DCO provides written notice certifying that the employee owes HUD a debt and that HUD has complied with its salary offset regulations. This notice should include the amount and basis of the debt and the due date of the payment. (See Appendix 17 for an example of this certification.)

When another agency is owed the debt, HUD may use salary offset against one of its employees if requested to do so by that agency. This request must be accompanied by a written notice certifying that the employee owes the debt, the amount of the debt, and that the employee has been given the procedural rights required by 5 USC 5514 and 5 CFR Part 530, Subpart K.

- d. Determination of Indebtedness. The first step in initiating a salary offset is for the CCO to review the debt to ensure that it is valid and past due. The CCO should also locate and review the documents that prove the debt is legally enforceable. If a legal determination must be made concerning the debt's enforceability, the Chief Counsel should be consulted.
- e. Notice Requirements. When it has been determined that the debt is valid and past due, the CCO should send a Notice of Intent to Collect by Salary Offset (Notice of Intent) to the employee at least 30 days before deductions from salary may begin. A copy of the Notice of Intent shall be sent to the Chief Administrative Law Judge. (See Appendix 17 for a sample Notice of Intent.)
- f. Hearings. Generally, an employee must file a petition for a hearing within 20 calendar days from the date of the Notice of Intent. The only issues that may be decided at a hearing are the existence or amount of the debt and/or HUD's proposed offset schedule.

Upon receiving the petition, the Clerk, Office of the Chief Administrative Law Judge, sends the employee a copy of the Salary Offset Hearing Procedures.

The Office of General Counsel (OGC) advises the CCO of the Administrative Law Judge's written decision after a hearing.

If the employee does not file a petition for a hearing according to the requirements of the Notice of Intent or fails to appear at a scheduled hearing,

the employee waives the right to a hearing.

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- g. Employee Review of Departmental Records. An employee who intends to inspect or copy Departmental records related to the debt must send a letter to the CCO within 20 calendar days of the date of the Notice of Intent. The CCO will then notify the employee of the location and the time when the employee may inspect or copy the records. If it is inconvenient for the employee to go to the HUD office, the CCO should arrange to send a copy of the records to the employee.
- h. Written Repayment Agreements. In response to a Notice of Intent, an employee may propose a repayment agreement as an alternative to salary offset. This proposal must be in writing and be received within 20 calendar days of the Notice of Intent. The CCO will notify the employee if the proposal is accepted. The decision on whether to accept a repayment agreement is made at the CCO's discretion. In making this determination, the CCO balances HUD's interest in collecting the debt against hardship to the employee.

Credit reporting may not be used as long as the employee is current under the repayment agreement.

- i. Deductions. If the employee has not requested a hearing, deductions may begin 31 days after the date of the Notice of Intent. If the employee made a timely request for a hearing, deductions will begin after the Administrative Law Judge has issued a final written decision in favor of HUD.

The amount deducted for any period may not exceed 15 percent of the employee's disposable pay unless:

- o The employee has agreed in writing to the deduction of a greater amount; or
 - o HUD has a judgment against the employee and, according to Public Law 97-276, may deduct 25 percent from the employee's pay.
- j. Interest. Interest on the debt will be charged in accordance with 24 CFR 17.72, as discussed in paragraph 3-4.

The Department will promptly refund to the employee any amounts improperly offset from the employee's salary.

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8-3. ADMINISTRATIVE OFFSET.

- a. Application. Administrative offset may be used:
- o To collect claims that are certain in amount; and
 - o Where collection by offset is determined to be feasible and not prohibited by law.

The feasibility of offset is to be determined on a case-by-case basis, considering:

- o The debtor's financial condition;
- o Whether offset would substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated; and
- o Whether offset best serves to further and protect the interests of the government.

When the basis for withholding funds arises solely under an existing single contract, and a balance of funds remains unpaid to the contractor, a withholding of unpaid funds or a price reduction is not debt collection for purposes of the Debt Collection Act. Such recoveries may be made and not treated as an "offset" within the meaning of the Act.

- b. Regulations. HUD's administrative offset regulations are set forth in 24 CFR 17.100 through 17.118. These regulations apply to the collection of debts as authorized by common law, 31 USC Section 3716, or under other statutory authority.

The procedures contained in the Department's administrative offset regulations will not be used under the following circumstances:

- o When a statute provides its own collection procedures;
- o For grant reduction as a remedial action in grant programs;
- o When explicitly prohibited by statute;
- o To collect a debt owed by an agency of the U.S. Government, a State government, or unit of a local government; and
- o To collect debts arising under the IRS Code of 1954,

the Social Security Act, or the tariff laws of the United States.

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- c. Coordination with Another Federal Agency. When HUD is owed the debt but another Federal Agency is responsible for making the payment against which administrative offset is sought, the DCO will provide that other agency with written notice certifying that the debtor owes HUD a debt and that HUD has complied with its administrative offset regulations. This notice should include the amount and basis of the debt, and when the payment is due.

When another agency is owed the debt, HUD may administratively offset money against the debtor if requested to do so by that agency. This request must be accompanied by a written notice certifying that the person owes the debt, the amount of the debt, and that the person has been given the procedural rights required by 31 USC 3716 and 4 CFR 102.

- d. Determination of Indebtedness. When it has been determined that administrative offset is feasible, the CCO must determine that the debt is valid and past due. The CCO should also locate and review the documents that prove the debt is legally enforceable. If a legal determination must be made concerning the debt's enforceability, the Chief Counsel should be consulted.
- e. Notice Requirements. After it has been determined that the debt is valid and past due, the CCO should send a Notice of Intent to Collect by Administrative Offset (Notice of Intent) to the debtor at least 30 calendar days before deductions by administrative offset may begin. (See Appendix 17 for a sample Notice of Intent.)

When the debtor has been provided with notice requirements in connection with the same debt under some other proceeding (i.e., where HUD holds a judgment for the debt), those requirements do not have to be repeated before effecting administrative offset. Rather, the debtor should be notified of the nature and amount of the debt, the Department's intent to collect it by administrative offset, the payment to be offset, and the date deductions will begin.

Administrative offset may begin before completion of the procedures set forth in the Notice of Intent if:

- o Failure to make The offset would substantially prejudice HUD's ability to collect the debt; and

- o The time before the payment is to be made does not reasonably permit the completion of those procedures.

Such prior offset, however, must be followed by completing those procedures.

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- f. Hearings. A debtor must send a letter within 20 calendar days from the date of the Notice of Intent to request a review of the determination of indebtedness.

In response to the request for review, the Deputy Assistant Secretary or designee will notify the debtor whether the review will be a review of the record or by hearing. If by hearing, the Response Letter will state the date, location, and procedures to be used at the hearing.

The OGC advises the CCO of the Deputy Assistant Secretary's or designee's written decision following the hearing or review of the record.

Administrative offset is stayed while the debt is under review or while a repayment agreement proposal (see paragraph 8-3h) is being considered if the request for review or the proposal was submitted in a timely fashion. The stay lasts until a written decision is issued. Interest continues to accrue during the stay.

- g. Debtor's Review of Departmental Records. A debtor who intends to inspect or copy Departmental records related to the debt must send a letter to the CCO within 20 calendar days of the date of the Notice of Intent. The CCO will then notify the debtor of the location and time when the debtor may inspect or copy the records. If it is inconvenient for the debtor to go to the HUD office, the CCO should arrange to send a copy of the records to the debtor.
- h. Written Repayment Agreements. In response to a Notice of Intent, a debtor may propose a repayment agreement as an alternative to administrative offset. This proposal must be in writing and received within 20 calendar days of the date of the Notice of Intent. The CCO will notify the debtor if the proposal is accepted. The decision on whether to accept a repayment agreement is made at the CCO's discretion. In making this determination, the CCO balances HUD's interest in collecting the debt against hardship to the debtor.

Credit reporting may not be used as long as the

debtor is current under the repayment agreement.

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- i. Offsetting. If the debtor has not requested a review or entered into a repayment agreement, administrative offset will begin 31 days after the date of the Notice of Intent. If the debtor made a timely request for review, offset will begin after the Deputy Assistant Secretary or designee has issued a written decision and a copy of the decision is received by the Office of Finance and Accounting.

The CCO may ask the DCO to offset a judgment that a debtor has obtained against the U.S. Such an offset must be accomplished in accordance with 31 USC 3728.

- j. Interest. Interest on the debt will be charged in accordance with 24 CFR 17.72, as discussed in paragraph 3-4.
- k. Offset Against the Civil Service Retirement and Disability Fund. This specialized form of administrative offset requires preparation of written certification that:
- o The debtor owes HUD a specified amount;
 - o The Secretary (DCO) has complied with the applicable statutes, regulations, and procedures of the Office of Personnel Management (OPM); and
 - o The Secretary (DCO) has complied with the Department's regulations.

On the recommendation of a CCO, the DCO may request administrative offset against a debtor's Civil Service Retirement and Disability Fund. This request should be made to OPM when OPM-required procedures have been completed. OPM must have sufficient information to identify the debtor's account and to add a notation in the debtor's file in anticipation of the time when the debtor requests or becomes eligible to receive payments from the fund.

As with regular administrative offset, a satisfactory payment plan instead of offset can be offered and accepted if changed financial conditions would make the offset unjust.

If the Department collects part or all of the debt by other means before deductions are made or completed, the DCO will act promptly to modify or terminate the Department's request for offset.

** 8-4 IRS OFFSETS:

a. Application. Internal Revenue Service (IRS) tax refund offset procedures may be used to collect claims which are:

- o Certain in amount and totaling more than \$100.00 (exclusive of interest and other charges);
- o At least 90 days past due at time of referral;
- o No more than 10 years old at time of offset, except in the case of judgment debts;
- o Valid and legally enforceable;
- o Obligations of debtors who are natural persons; and
- o Eligible under regulations issued by the Secretary of the Treasury.

Debts will not be reported to IRS except for the purpose of the offset procedures described herein.

b. Regulations. HUD's IRS offset regulations are provided in 24 CFR 17.150 through 17.161. These regulations are authorized under the Deficit Reduction Act of 1984 (31 U.S.C. 3720A) and apply to the collection of debts as authorized by common law, by 31 U.S.C. 3716, or under other statutory authority.

c. Coordination with Department of Treasury. Before each referral of any debt to the IRS for income tax refund offset, the Assistant Secretary for Administration must sign an interagency Memorandum of Understanding with the IRS and Financial Management Service agreeing to comply with the regulations and procedures issued by the Department of Treasury. Treasury requires as prerequisites to referral:

- o A description of the Department's inventory of delinquent debt including a summary of the prior collection efforts related thereto and the quality controls used to assure that the debts referred are valid and enforceable; **

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- o That the debt cannot be collected using salary offsets or administrative offsets;
 - o That the account be reported to credit reporting agencies; and
 - o That the debtor be given at least 60 days notice of HUD's intention to refer the account to IRS for tax refund offset. This notification gives the debtor the opportunity to contest the validity of the debt or resolve it.
- d. Determination of Indebtedness. As a first and primary step, the DCO must review the account and ensure that it is valid and past due. In this regard the DCO should:
- o Locate and review the documents that prove the debt is legally enforceable;
 - o Determine that the delinquency exceeds 90 days;
 - o Ascertain that the debt is no more than 10 years old (except for judgment debts which may be longer); and
 - o Assure that the debtor:
 - Has not been legally declared bankrupt;
 - Is not negotiating or has not negotiated a compromise for settling the debt;
 - Is not experiencing a financial hardship (as determined by the DCO based on a review of the financial statement of the debtor);
 - Has not been referred to the Department of Justice;
 - Has not made special payment arrangements; or
 - Is not deceased or suffering from a terminal illness.

If a legal determination must be made concerning concerning the debt's enforceability, General Counsel should be consulted.

- e. Notice Requirements. In September of each year and after the DCO has determined that the debt is valid and past due, the DCO shall send to the debtor a

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** written Notice of intent to offset any IRS tax refund due the debtor (Notice of Intent). An example is provided in Appendix 18. The Notice shall be sent by "Certified Mail-Return Receipt Requested" and shall advise the debtor of:

- o The nature and amount of the debt; and
- o The intention of HUD to proceed with collection of the debt through offset against any tax refund due to the debtor, unless payment arrangements are made within 65 calendar days of the date of notice.

The Notice of Intent shall provide the debtor with the following options:

- Repay the account within 65 days of the date of the notice;
- Provide evidence that the debt is not past due or legally enforceable (For instance, that the debtor has negotiated a compromise or special payment arrangements, is deceased, or has been legally declared bankrupt.)
- File a petition with the DCO invoking the right to inspect and copy HUD's records related to the debt; or
- File an appeal with the HUD Board of Contract Appeals contesting HUD's determination that the debt is past due and legally enforceable.

The Notice of Intent shall also provide instructions for the debtor's spouse who does not owe the debt to file Form 8379, Injured Spouse Allocations, with the IRS to receive his or her portion of a joint refund.

- f. Inspection of Records by Debtor. If the debtor intends to inspect or copy Department records related to the debt, he or she must send a letter to the DCO within 20 calendar days of the date of HUD's Notice of Intent. The DCO will then have 5 work days upon receipt of letter to notify the debtor of the location and time when the debtor may inspect or copy the records. If it is inconvenient for the debtor to go to the HUD office, the DCO should arrange to send a copy of the records to the debtor. **

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- ** g. Appeals. If the debtor or his agent does not agree with HUD's determination, he/she should send a letter challenging the validity of the debt along with a copy of the HUD Notice of Intent to the HUD Board of Contract Appeals within 25 calendar days of receipt of the Notice. This letter should include evidence, (or indicate the debtor's intent to present evidence) that all or part of the debt is not past due or not legally enforceable. Such evidence would include cancelled checks, court orders declaring bankruptcy, death notices, HUD letters, etc.. Failure to provide this notice will not jeopardize the debtor's right to present evidence within the 65 days provided for in HUD's Notice of Intent. However, failure to submit evidence within the 65 days will result in dismissal of the request for review.

Procedures governing the review process are prescribed by the HUD Board of Contract Appeals. The Board will notify the debtor of additional requirements, if any, after his/her request for review is received and docketed by the Board.

- h. Department Review. An Administrative Law Judge from the HUD Board of Contract Appeals will review the evidence presented by the Department and will usually make a determination based upon the written record. An oral hearing may be ordered if the Administrative Judge finds that:
- o An applicable statute authorizes or requires consideration of a waiver of the indebtedness based on credibility or veracity; or
 - o The question of indebtedness cannot be resolved by review of the documentary evidence.

The debtor is not entitled to appeal a previous decision of the Board of Contract Appeals unless the debt has become legally unenforceable since the issuance of the prior decision. The debtor can submit newly discovered evidence that the debt is presently not legally enforceable.

Upon completion of the review (or hearing), the Administrative Judge issues a written decision together with supporting rationale. Copies are

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- ** distributed to General Counsel, the Office of Finance and Accounting, the debtor and debtor's attorney or other representative, if any.
- i. Written Repayment Agreements. In response to a Notice of Intent, a debtor may propose a repayment agreement as an alternative to the offset of an IRS tax refund. Such proposal must be in writing and received within 20 calendar days of the date of the Notice of Intent. The DCO will notify the debtor if the proposal is accepted. The decision on whether to accept a repayment agreement is made at the DCO's discretion. In making this determination, the DCO balances HUD's interest in collecting the debt against hardship to the debtor.
- j. Universe to be Reported. The final universe of loans to be reported (i.e., loans that meet IRS offset requirements) will usually be sent to IRS in late December. A description of each of the individual accounts (e.g. full name, social security number, amount of debt, date debt became delinquent, program designation, etc.) will be included. Basically, this listing will be made up of the accounts which were originally designated for referral less those which are in the following categories:
- o The debtor has made a timely request for a department review and a decision has been made that the debt is not past due or legally enforceable or the review has not been completed by the referral due date;
 - o A written repayment agreement (or settlement arrangement) has been proposed in a timely fashion by the debtor and has been accepted or is still being considered by the Department;
 - o Systemic or procedural slippages have occurred which could have adversely affected the debtor's "due process" rights;
 - o The Department's data for the account has proven to be incompatible with the data on the IRS Master File; or
 - o Inclusion of the debtor could interfere with the continued efficient operation of other HUD activities. **

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** All data is to be transmitted to IRS via magnetic tape or other electronic media.

k. Accounting Flow of Offset Activity. IRS will enter the material contained in the tape into its computer base and match this data against its own file of taxpayers. When a "matched" debtor claims a refund, the IRS offsets up to the amount due and sends these funds (less a small servicing fee) to HUD. Normally, HUD will apply the offset amount to the debt, first to any special charges authorized by HUD regulations/contracts, then to interest and finally to the principal. If multiple debts are owed, the recovered amount will be applied against the debts in the order in which they occurred.

l. "Injured Spouse" Claim. "Injured spouse" is a term used by the IRS to describe a person who is not responsible for a debt but filed a joint Federal income tax return with a responsible party with the result that the portion of the refund due to the non-responsible party is offset and credited to the requesting agency. After an offset has occurred, an injured spouse may file a claim with the IRS (using IRS Form 8379, "Injured Spouse Allocation") to recover the portion of the refund attributable to income he or she earned. Injured spouse must also file an amended tax return.

Decisions on payment of injured spouse claims rest solely with the IRS. The IRS does not communicate with HUD prior to the release of funds on such claim and there is no action required by the DCO with respect to handling such claims.

m. Regarding "Forgiven" Debt on Form 1099G. Valid debt which is beyond the ten year period allowed for offset or not deemed to be collectible by conventional means or offset should be written off. Such account balances should be reported to IRS as forgiven debt on Form 1099G. A copy should be provided to the debtor. IRS will consider the amount involved as income to the taxpayer and will pursue collection of any tax due. Debt reported on Form 1099G cannot be reported for IRS offset and should be closed out from any other active collection processes. **

