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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Procedures To Offset Debts Due the United States From Benefits Payable to a Debtor From the Civil Service Retirement and Disability

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations describing procedures to offset debts due the United States from benefits payable to a debtor from the Civil Service Retirement and Disability Fund (Fund). These regulations are necessary, in part, because of amendments in the Debt Collection Act of 1982 (Pub. L. 97-365, enacted October 25, 1982) and the revised Federal Claims Collection Standards (FCCS) published jointly by the General Accounting Office and the Department of Justice (4 CFR 101.1 *et seq.*, 49 FR 8889, dated March 9, 1984).

EFFECTIVE DATE: January 20, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia A. Rochester, (202) 632-1265.

SUPPLEMENTARY INFORMATION: On January 4, 1985, we published (50 FR 473) proposed amendments to our interim regulations (August 25, 1981, 46 FR 42835) for offsetting other Federal agencies' debts from the Fund. Interested parties were given until March 5, 1985, to submit comments.

We received comments from five Federal agencies and two labor organizations. The following summarizes the comments, suggestions, and actions taken.

1. Section 831.1803—Definitions

a. The definition of "debt" includes examples of items included in the scope

of the term. One commenter suggested that we expand the list to include advanced sick or annual leave, travel advances, equipment not returned to the agency upon separation, and repayment of moving expenses if an employee doesn't stay with the agency for 1 year. We did not adopt the suggestion. The list is not intended to be exhaustive; and, we do not want to give the impression that we will reject a claim when the source of the debt is not specifically named. The controlling phrase in the definition is "an amount owed to the United States." A debt owed to the United States will be collected, if possible, regardless of its source.

b. The definition of "agency" is revised to be consistent with the definition of "agency" in 5 CFR 550.1104.

2. Section 831.1804—Conditions for requesting an offset

Paragraph (a) of this section formerly required that an agency's debt claim total at least \$100 (unless it accrues because of an individual's failure to pay health benefits premiums while he or she is in nonpay status or while his or her salary is not sufficient to cover premiums) before we would make an offset from the Fund. A commenter suggested that we reduce the minimum to \$50. After further consideration, we eliminated the \$100 minimum. A debt claim will not be rejected because of the amount.

3. Section 831.1805—Creditor agency processing for non-fraud claims

a. Section 831.1805(b)(2) describes procedures for submitting a nonfraud claim that has been partially collected under the salary offset procedures in 5 U.S.C. 5514. One commenter requested that we specifically identify the "debt claim" mentioned in paragraph (b)(2)(ii). We amended the paragraph to show that Standard Form 2805 (Request for Recovery of Debt Due the United States) must be used.

b. Section 831.1805(b)(3) describes the normal procedures agencies must use to submit a debt claim, unless the claim is based on a court's judgment for a specified amount, was partially collected under section 5514, or is excepted from normal procedures by 5 CFR 831.1805(b)(4).

Another commenter noticed that the supplementary information says a claim

can be filed even if the debtor does not respond to the notice that an offset will be made and suggested that this information be included in the regulatory text. We agree. The information is now included at paragraph (b)(3)(ii).

c. Section 831.1805(b)(34) lists debt claims that are excepted from the procedures described in § 831.1805 (b)(3). A commenter suggested that collections to which the debtor has consented in writing should be exempted from the procedures described in paragraph (b)(3) by including them in paragraph (b)(4).

We cannot agree with this suggestion. In our opinion, to have a valid consent, the creditor agency must inform the debtor of the intended action to offset his or her retirement and describe any available rights. Once informed, the debtor's election to waive these rights constitutes "consent." Therefore, the requirements described in § 831.1805(b)(3) (i.e., that the agency notify the debtor of the intended collection and submit an SF 2805 with the necessary certifications) still apply, but there is less information to be certified if the agency submits the debtor's signed consent.

d. Proposed paragraph (b)(5) concerning the notice of debt is renumbered as paragraph (b)(6) and a new paragraph (b)(5) is inserted to cover general certification requirements for all debt claims against the Fund that have not been given special treatment under § 831.1805(b)(4). One commenter noted that some of the items required by our regulations are not required by the FCCS at 4 CFR 102.4(b). The commenter suggested that an agency should only certify that all procedures have been followed.

This suggestion was not adopted for several reasons. First, § 102.4(b) does not prohibit a request for certification of additional items. Second, we believe the additional information is required as a result of the class action suit involving our collection of debts for other Federal agencies (*Rhinehart v. Seneca, et al.*, CA No. 78-2472, (D.D.C.)). In 1981, we resolved one of the plaintiff's concerns—that agency certifications of completed notice and due process procedures were sometimes inaccurate—by establishing a procedure for verifying that notice and due process had been provided.

The original verification procedure involved asking the debtor if the certification was correct. If the debtor said no, we then asked the creditor agency to review its records, see that the required due process was indeed given and recertify the claim. This process created a substantial correspondence workload and delayed payment to the creditor agency until we received the requested information or the time period allotted to submit the information expired.

We believe the information now required by § 831.1805(b)(5)(vii) verifies the agency's certification and eliminates the need to ask the debtor for information. The result will be a reduced correspondence workload and prompter payments to creditor agencies.

Because we will provide a temporary form until we can revise Standard Form 2805, the creditor agency will merely have to check one or more boxes and insert a date(s) or attach a copy of the debtor's consent or acknowledgment. We think the end result is well worth the minimal increased effort required from the creditor agency.

e. Another one of the general certification requirements called for creditor agency certification of the number, amount, and commencing date of the installment deductions, and a statement as to whether additional interest accrues. One commenter felt that the creditor agency would not be in a position to know the installment information required. The commenter suggested that this requirement be deleted.

We adopted this suggestion in part. The requirement to specify the number and commencing date of the installments has been eliminated. However, the amount or percentage of the monthly installments must be provided by the creditor agency for all installment collections. We believe the responsibility for establishing and notifying the debtor of the amount of the proposed deduction and considering any claims of financial hardship it causes belong to the creditor agency. The appropriate place to suggest the amount of the intended deduction seems to be in the creditor agency's notice of intention to make the administrative offset. If the deduction will strain the debtor's finances, he or she may then advise the creditor agency and provide the necessary documentation to establish a more satisfactory deduction before the agency sends us the request to commence recovery action.

f. Section 831.1805(c) describes the time limits for submitting records and debt claims or notices. This provision is the same as it was in the proposal. A

commenter suggested that OPM increase the 60-day time limit in paragraph (c)(2) to 90 days to allow agencies sufficient time to perform leave audits and complete closing actions.

We did not adopt this suggestion because we have already increased the time limit to 60 days. We do not feel that we can justify routinely holding the former employee's funds for additional 30 days.

4. Section 831.1806—OPM processing

a. Section 831.1806(b)(2) describes OPM procedures for processing a debt claim when the debtor has not applied for refund. A commenter suggested that we establish procedures for updating a debt claim we have been holding for future recovery. We are adding a new paragraph (b)(3) describing such procedures.

b. Section 831.1806(d) states the procedures for processing complete debt claims against annuities. A commenter was concerned that the provision for beginning annuity offset in the next available annuity payment would not give an annuitant enough time to show that, because of changed financial circumstances, the offset would result in undue hardship, or to offer a satisfactory repayment plan as an alternative to offset.

When an application comes in more than 1 year after OPM receives the creditor agency's claim, we have added § 831.1806(d)(2)(ii) allowing creditor agencies time to allow the debtor an opportunity to show changed financial circumstances or to offer an alternative repayment plan (see 4 CFR 102.3(c)). The agency may then give us revised instructions, if necessary, before we begin processing the claim.

5. Section 831.1807—Limitations on withholdings

Section 831.1807 proposed to limit the amount of the monthly deduction creditor agencies could deduct from an annuitant's benefits unless he or she consented to a larger deduction.

a. One commenter noted that the statutory 15 and 25 percent limitations on salary and judgment offsets, respectively, do not specifically apply to collections from civil service annuity. Further, in some instances, such a limitation will hinder collection of large debts when interest is being charged.

After further consideration, we have increased the amount of annuity that creditor agencies may deduct without the debtor's consent to a maximum of 50 percent of net annuity. However, there is no limitation on the deduction if the debt is based upon a civil judgment determining that a debt is due the

United States and a higher percentage of annuity is necessary to recover the amount of the judgment within 3 years.

b. Another commenter asked us to include provisions for offsets authorized by specific laws such as the Internal Revenue Code and the Social Security Act.

We did not adopt this suggestion. The offsets we make under the Internal Revenue Code and the Social Security Act are specifically addressed in § 831.1805(b)(4). For the most part, we handle such collections by procedures specifically designed for the type of claim involved.

c. A third commenter asked us to include provisions for offsetting debts arising from travel, transportation, and training. Because there are special provisions for collecting these debts from pay (5 U.S.C. 4108, 5705, 5723, etc.), the commenter believes that special provisions should also be made for collecting these debts from the Fund.

We do not agree that special provisions are necessary to collect such debts from the Fund. In our regulations, special procedures are provided when a type of debt will be processed differently from normal procedures. Because none of the specific offset statutes the commenter mentioned contain procedures for making the collection, agencies must use the due process procedures in the FCCS (4 CFR 101.4). The majority of debts addressed by these final regulations will also be processed under the due process procedures in the FCCS; therefore, a special processing procedure is not necessary.

6. Section 831.1808—Special processing for fraud claims

Section 831.1808 describes special procedures for processing debts that involve possible fraud. One commenter asked whether we wanted agencies to send all potential fraud claims to the Department of Justice (Justice) regardless of the amount.

Agencies must continue to refer claims to Justice as provided in guidance published by the General Accounting Office and Justice. We have revised paragraph (a) slightly so it is clear that our procedures apply once an agency has decided that a claim must be referred to Justice for consideration as a fraud claim.

7. General editorial changes

In addition to the changes described above, we made general editorial changes throughout the regulatory text to clarify and strengthen its contents.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they concern administrative practices that will affect only the Federal Government.

List of Subjects in 5 CFR Part 831

Administrative practice and procedures, Claims, Disability benefits, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

Constance Horner,
Director.

Accordingly, OPM is revising Subpart R of Part 831 of Title 5 of the Code of Federal Regulations to read as follows:

PART 831—RETIREMENT**Subpart R—Agency Requests to OPM for Recovery of a Debt from the Civil Service Retirement and Disability Fund**

Sec.

831.1801	Purpose.
831.1802	Scope.
831.1803	Definitions.
831.1804	Conditions for requesting an offset.
831.1805	Creditor agency processing for non-fraud claims.
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831.1807	Installment withholdings.
831.1808	Special processing for fraud claims.

Authority: 5 U.S.C. 8347.

Subpart R—Agency Requests to OPM for Recovery of a Debt from the Civil Service Retirement and Disability Fund**§ 831.1801 Purpose.**

This subpart prescribes the procedures to be followed by a Federal agency when it requests the Office of Personnel Management (OPM) to recover a debt owed to the United States by administrative offset against money due and payable to the debtor from the Civil Service Retirement and Disability Fund (the Fund). This subpart also prescribes the procedures that OPM must follow to make these administrative offsets.

§ 831.1802 Scope.

This subpart applies to agencies, employees, and Members, as defined by § 831.1803.

§ 831.1803 Definitions.

For purposes of this subpart, terms are defined as follows—

"Act" means the Federal Claims Collection Act of 1966 as amended by the Debt Collection Act of 1982 and implemented by 4 CFR 101.1 *et seq.*, the Federal Claims Collection Standards (FCCS).

"Administrative offset" means withholding money payable from the Fund to satisfy a debt to the United States under 31 U.S.C. 3716.

"Agency" means (a) an Executive agency as defined in section 105 of title 5, United States Code, including the U.S. Postal Service and the U.S. Postal Rate Commission; (b) a military department, as defined in section 102 of title 5, United States Code; (c) an agency or court in the judicial branch, including a court as defined in section 610 of title 28, United States Code, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation; (d) an agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and (e) other independent establishments that are entities of the Federal Government.

"Annuitant" has the same meaning as in section 8331(9) of title 5, United States Code.

"Annuity" means the monthly benefit payable to an annuitant or survivor annuitant.

"Compromise" has the same meaning as in 4 CFR Part 103.

"Consent" means the debtor has agreed in writing to administrative offset after receiving notice of all rights under 31 U.S.C. 3716 and this subpart.

"Creditor agency" means the agency to which the debt is owed.

"Debt" means an amount owed to the United States on account of loans insured or guaranteed by the United States, and other amounts due the United States from fees, duties, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interests, taxes, forfeitures, etc.

"Debt claim" means an agency request for recovery of a debt in a form approved by OPM.

"Debtor" means a person who owes a debt, including an employee, former employee, Member, former Member, or the survivor of one of these individuals.

"Employee" has the same meaning as in section 8331(1) of title 5, United States Code, and includes reemployed annuitants and employees of the U.S. Postal Service.

"Fraud claim" means any debt designated by the Attorney General (or designee) as involving an indication of

fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim.

"Fund" means the Civil Service Retirement and Disability Fund established under 5 U.S.C. 8348.

"Lump-sum credit" has the same meaning as in section 8331(8) of title 5, United States Code.

"Member" has the same meaning as in section 8331(2) of title 5, United States Code.

"Net annuity" means annuity after excluding amounts required by law to be deducted. For example, Federal income tax is excluded up to the maximum amount that the individual is entitled to for all dependents. Other examples of exclusions are group health insurance premiums (including amounts deducted for Medicare) and group life insurance premiums.

"Paying agency" means the agency that employs the debtor and authorizes the disbursement of his or her current pay account.

"Refund" means the payment of a lump-sum credit to an individual who meets all requirements for payment and files application for it.

§ 831.1804 Conditions for requesting an offset.

An agency may request that money payable from the Fund be offset to recover any valid debt due the United States when all of the following conditions are met:

(a) The debtor failed to pay all of the debt on demand, or the creditor agency has collected as much as possible from payments due the debtor from the paying agency; and

(b) The creditor agency sends a debt claim to OPM (under § 831.1805(b) (1), (2), (3), or (4), as appropriate) after doing one of the following:

(1) Obtaining a court judgment for the amount of the debt;

(2) Following the procedures required by 31 U.S.C. 3716 and 4 CFR 102.4;

(3) Following the procedures required by 5 U.S.C. 5514 and § 550.1107 of this title; or

(4) Following the procedures agreed upon by the creditor agency and OPM, if it is excepted by § 831.1805(b)(4) from the completion of procedures prescribed by § 831.1805(b)(3).

§ 831.1805 Creditor agency processing for non-fraud claims.

(a) *Where to submit the debt claim, judgment or notice of debt—*(1) *Creditor agencies that are not the debtor's paying agency.* (i) If the creditor agency knows that the debtor is employed by

the Federal Government, it should send the debt claim to the debtor's paying agency for collection.

(ii) If some of the debt is unpaid after the debtor separates from the paying agency, the creditor agency should send the debt claim to OPM as described in paragraph (b) of this section.

(2) *Creditor agencies that are the debtor's paying agency.* Ordinarily, debts owed the paying agency should be offset under 31 U.S.C. 3716 from any final payments (salary, accrued annual leave, etc.) due the debtor. If a balance is due after offsetting the final payments or the debt is discovered after the debtor has been paid, the paying agency may send the debt claim to OPM as described in paragraph (b) of this section.

(b) *Procedures for submitting a debt claim, judgment or notice of debt to OPM—(1) Debt claims for which the agency has a court judgment.* If the creditor agency has a court judgment against the debtor specifying the amount of the debt to be recovered, the agency should send the debt claim and two certified copies of the judgment to OPM.

(2) *Debt claims previously processed under 5 U.S.C. 5514.* If the creditor agency previously processed the debt claim under section 5514, it should—

(i) Notify the debtor that the claim is being sent to OPM to complete collection from the Fund; and

(ii) Send the debt claim (on SF 2805) to OPM with two copies of the paying agency's certification of the amount collected and one copy of the notice to the debtor that the claim was sent to OPM.

(3) *Debt claims not processed under 5 U.S.C. 5514, reduced to court judgment, or excepted by paragraph (b)(4) of this section.* (i) If the debt claim was not processed under § 5514, reduced to court judgment or excepted by paragraph (b)(4) of this section, the creditor agency must—

(A) Comply with the procedures required by 4 CFR 102.4—issuing written notice to the debtor of the nature and amount of the debt, the agency's intention to collect by offset, the opportunity to inspect and copy agency records pertaining to the debt, the opportunity to obtain review within the agency of the determination of indebtedness, and the opportunity to enter into a written agreement with the agency to repay the debt; and

(B) Complete the appropriate debt claim

(ii) If the debtor does not respond to the creditor agency's notice within the allotted time and there is no reason to believe that he or she did not receive the notice, the creditor agency may submit

the debt claim to OPM after certifying that notice was issued and the debtor failed to reply.

(iii) If the debtor responds to the notice by requesting a review (or hearing if one is available), the review (or hearing) must be completed before the creditor agency submits the debt claim.

(iv) If the debtor receives the notice and responds by consenting to the collection, the creditor agency must send a copy of the debtor's consent along with the debt claim.

(4) *Debt claims excepted from procedures described in paragraph (b)(3) of this section.* Creditor agencies follow specific procedures approved by OPM, rather than those described in paragraph (b)(3) of this section, for the collection of—

(i) Debts due because of the individual's failure to pay health benefits premiums while he or she was in nonpay status or while his or her salary was not sufficient to cover the cost of premiums;

(ii) Unpaid Federal taxes to be collected by Internal Revenue Service levy;

(iii) Premiums due because of the annuitant's election of Part B, Medicare coverage (retroactive collection limited to 6 months of premiums); or

(iv) Overpaid military retired pay an annuitant elects in writing to have withheld from his or her annuity.

(5) *General certification requirements for debt claims.* Creditor agencies submitting debt claims must certify—

(i) That the debt is owed to the United States;

(ii) The amount and reason for the debt and whether additional interest accrues;

(iii) The date the Government's right to collect the debt first accrued;

(iv) The agency has complied with the applicable statutes, regulations, and OPM procedures;

(v) That if a competent administrative or judicial authority issues an order directing OPM to pay a debtor an amount previously paid to the agency (regardless of the reasons behind the order), the agency will reimburse OPM or pay the debtor directly within 15 days of the date of the order (NOTE: OPM may, at its discretion, decline to collect other debt claims sent by an agency that does not abide by this certification.);

(vi) If the collection will be in installments, the amount or percentage of net annuity in each installment; and,

(vii) If the debtor does not (in writing) consent to the offset, or does not (in writing) acknowledge receipt of the required notices and procedures, or the creditor agency does not document a

judgment offset or a previous salary offset, the action(s) taken to comply with 4 CFR 102.3, including any required hearing or review, and the date(s) the action(s) was taken.

(6) *Notice of debt.* When a creditor agency cannot send a complete debt claim, it should notify OPM of the existence of the debt so the lump-sum will not be paid before the debt claim arrives.

(i) The notice to OPM must include a statement that the debt is owed to the United States, the date the debt first accrued, and the basis for and amount of the debt, if known. If the amount of the debt is not known, the agency must establish the amount and notify OPM in writing as soon as possible after submitting the notice.

(ii) The creditor agency may either notify OPM by making a notation in column 8 [Remarks] under "Fiscal Record" on the Standard Form 2806 (Individual Retirement Record), if the SF 2806 is in its possession, or if not, by submitting a separate document identifying the debtor by name, giving his or her date of birth, social security number, and date of separation, if known.

(c) *Time limits for sending records and debt claims to OPM—(1) Time limits for submitting debt claims.* Unless there is an application for refund pending, there is no specific time for submitting a debt claim or notice of debt to OPM. Generally, however, agencies must file a debt claim before the statute of limitations expires (4 CFR 102.4(c)) or before a refund is paid. Time limits are imposed (see § 831.1806(a)) when the debtor is eligible for a refund and OPM receives his or her application requesting payment. In the latter situation, creditor agencies must file a complete debt claim within 120 days (or 180 days if the agency requests an extension of time before the refund is paid) of the date OPM requests a complete debt claim.

(2) *Time limit for submitting retirement records to OPM.* A paying agency must send an individual's SF 2806 to OPM no later than 60 days after the separation, termination, or entrance on duty in a position in which the employee is not covered by the Civil Service Retirement System. § 831.1806 OPM processing for non-fraud claims.

(a) *Refunds—incomplete debt claims.*

(1) If a creditor agency sends OPM a notice of debt or an incomplete debt claim against a refund OPM is processing for payment, OPM will withhold the amount of the debt but will not make any payment to the creditor agency. OPM will notify the creditor

agency that the procedures in this subpart and 4 CFR 102.4 must be completed; and a debt claim must be completed and returned to OPM within 120 days of the date of OPM's notice to the creditor agency. Upon request, OPM will grant the creditor agency one extension of up to 60 days if the request for extension is received before the lump-sum payment has been made. The extension will commence on the day after the 120-day period expires so that the total time OPM holds payment of the refund will not exceed 180 days.

(2) During the period allotted the creditor agency for sending OPM a complete debt claim, OPM will handle the debtor's application for refund under section 8342(a) of title 5, United States Code, in one of two ways:

(i) If the amount of the debt is known, OPM will notify the debtor of the debt claim against his or her lump-sum credit, withhold the amount of the debt, and pay the balance to the debtor, if any.

(ii) If the amount of the debt is not known, OPM will not pay any amount to the debtor until the creditor agency certifies the amount of the debt, submits a complete debt claim, or the time limit for submission of the debt claim expires, whichever comes first.

(b) *Refunds—complete debt claims—*
(1) *If OPM receives an application from the debtor prior to or at the same time as the agency's debt claim.* (i) If a refund has been paid, we will notify the creditor agency there are no funds available for offset. Except in the case of debts due because of the employee's failure to pay health benefits premiums while he or she is in nonpay status or while his or her salary was not sufficient to cover the cost of premiums, creditor agencies should refer to the instructions in the FCCS for other measures to recover the outstanding debt; however, OPM will retain the SF 2805 on file in the event the debtor is once again employed in a position subject to retirement deductions.

(ii) If a refund is payable, and the creditor agency submits a complete debt claim in accordance with § 831.1805(b) (1), (2), (3), or (4), the debt will be collected from the refund and any balance paid to the debtor. OPM will send the debtor a copy of the debt claim, judgment, consent, or other document, and notify him or her that the creditor agency was paid.

(2) *If OPM has not received an application from the debtor when the agency's debt claim is received.* If a debtor has not filed application for a refund, OPM will retain the debt claim for future recovery. OPM will make the collection whenever an application is received, provided the creditor agency

initiated the administrative offset before the statute of limitations expired. (See 4 CFR 102.3(b)(3) and 102.4(c).) OPM will notify the creditor agency that it does not have an application from the debtor so that the agency may take other action to recover the debt. (Note: If the recovery action is successful, the creditor agency must notify OPM so it can void the debt claim).

(3) *Future recovery.* (i) If OPM receives an application for refund within 1 year of the date the agency's debt claim was received and the creditor agency does not indicate that interest is accruing on the debt, the debt will be processed as stated in paragraph (b)(1)(ii) of this section.

(ii) If OPM receives an application for refund within 1 year of the date the agency's debt claim was received and the creditor agency indicates that interest accrues on the debt, when necessary, OPM will contact the creditor agency to confirm that the debt is outstanding and request submission in writing, of the total additional accrued interest. OPM will not make interest computations for creditor agencies.

(iii) When OPM receives an application for refund more than 1 year after the creditor agency's debt claim was received, whether interest accrues or not, OPM will contact the creditor agency to see if the debt is still outstanding and, when necessary, request an update of the interest charges. If the debt is still due, the creditor agency must give the debtor an opportunity to establish that his or her changed financial circumstances, if any, would make the offset unjust. (See 4 CFR § 102.4(c).) If the creditor agency determines that offset as requested in the debt claim would be unjust because of the debtor's changed financial circumstances, the agency should permit the debtor to offer a satisfactory repayment plan in lieu of offset. If the agency decides to pursue the offset, it must submit to OPM the requested information and any new instructions within 60 days of the date of OPM's request or the claim may be voided and the balance paid to the individual.

(c) *Annuities—incomplete debt claims.* If a creditor agency sends OPM notice of a debt or an incomplete debt claim against a debtor who is receiving an annuity, OPM will not offset the annuity. OPM will notify the creditor agency that the procedures in this subpart and 4 CFR 102.4 must be completed; and a debt claim must be completed and sent to OPM. No time limit will be given for the submission of a debt claim against an annuity; however, a complete debt claim must be received within 10 years of the date the

Government's right to collect first accrued (4 CFR 102.3(b)(3)).

(d) *Annuities—complete debt claims—*(1) *General—*(i) *Notice.* When OPM receives a complete debt claim and an application for annuity, OPM will offset the annuity, pay the creditor agency, and mail the debtor a copy of the debt claim along with notice of the payment to the creditor agency.

(ii) *Beginning deductions.* If OPM has already established the debtor's annuity payment, deductions will begin with the next available annuity payment. If OPM is in the process of establishing the annuity payments, deductions will not be taken from advance annuity payments, but will begin with the annuity payable on the first day of the month following the last advance payment.

(iii) *Updating accrued interest.* Once OPM has completed a collection, if there are additional accrued interest charges, the creditor agency must contact OPM regarding any additional amount due within 90 days of the date of the final payment.

(2) *Claims held for future recovery.* (i) If OPM receives an application for annuity within 1 year of the date the agency's debt claim was received, the debt will be processed as stated in paragraph (d)(1) of this section.

(ii) If OPM receives an application for annuity more than 1 year after the agency's debt claim was submitted, OPM will contact the creditor agency to see if the debt is still outstanding. If the debt is still due, the creditor agency should permit the debtor to offer a satisfactory repayment plan in lieu of offset if the debtor establishes that his or her changed financial circumstances would make the offset unjust. (See 4 CFR 102.4(c).) If the agency decides to pursue the offset, it must submit the requested information and any new instructions about the collection to OPM.

(3) *Limitations on OPM review.* In no case will OPM review—

(1) The merits of a creditor agency's decision with regard to reconsideration, compromise, or waiver; or

(2) The creditor agency's decision that a hearing was not required in any particular proceeding.

§ 831.1807 Installment withholdings.

(a) When possible, OPM will collect a creditor agency's full claim in one payment from the debtor's refund or annuity.

(b) If collection must be made from an annuity and the debt is large, the creditor agency must generally accept payment in installments. The

responsibility for establishing and notifying the debtor of the amount of the installments belongs to the creditor agency (see § 831.1805(b)(5)). However, OPM will not make an installment deduction for more than 50 percent of net annuity, unless a higher percentage is needed to satisfy a judgment against a debtor within 3 years or the annuitant has consented to the higher amount in writing. All correspondence concerning installment deductions received by OPM will be referred to the creditor agency for consideration.

§ 831.1808 Special processing for fraud claims.

When an agency sends a claim indicating fraud, presentation of a false claim, misrepresentation by the debtor or any other party interested in the claim, or any claim based in whole or part on conduct violating the antitrust laws, to the Department of Justice (Justice) for possible treatment as a fraud claim (4 CFR 101.3), the following special procedures apply.

(a) *Agency processing.* If the debtor is separated or separates while Justice is reviewing the claim, the paying agency must send the SF 2806 to OPM, as required by § 831.1805(c)(2). The agency where the claim arose must send OPM notice that a claim is pending with Justice. (See § 831.1805(b)(6) for instructions on giving OPM a notice of debt.)

(b) *Department of Justice processing.*
(1) The Attorney General or a designee will decide whether a debt claim sent in by an agency will be reserved for collection by Justice as a fraud claim. Upon receiving a possible fraud claim to be collected by offset from the Fund, the Attorney General or a designee must notify OPM. The notice to OPM must contain the following:

- (i) The name, date of birth, and social security number of the debtor;
- (ii) The amount of the possible fraud claim, if known;
- (iii) The basis of the possible fraud claim; and
- (iv) A statement that the claim is being considered as a possible fraud claim, the collection of which is reserved to Justice.

(2) When there is a pending refund application, the Attorney General or designee must file a complaint seeking a judgment on the claim and send a copy of the complaint to OPM; or as provided in 4 CFR 101.3, refer the claim to the agency where the claim arose and submit a copy of the referral to OPM within 180 days of the date of either notice from the agency that a claim is pending with Justice (paragraph (a) of this section) or notice from Justice that it

has received a possible fraud claim (paragraph (b)(1) of this section) whichever is earlier. When the claim is referred to the agency where it arose, the agency must begin administrative collection action under 4 CFR 102.4 and send a complete debt claim to OPM as required in § 831.1805.

(c) *OPM processing against refunds.*
(1) Upon receipt of a notice under paragraph (a) or (b)(1) of this section, whichever is earlier, OPM will withhold the amount of the debt claim, if known; notify the debtor that the amount of the debt will be withheld from the refund for at least 180 days from the date of the notice that initiated OPM processing; and pay the balance to the debtor. If the amount of the debt claim is not known, OPM will notify the debtor that a debt claim may be offset against his or her refund and that OPM will not pay any amount until either the amount of the debt claim is established, or the time limit for filing a complaint in court or submitting the debt claim expires, whichever comes first.

(2) If the Attorney General files a complaint and notifies OPM within the applicable 180-day period, OPM will continue to withhold payment of the lump-sum credit until there is a final judgment.

(3) If the Attorney General refers the claim to the agency where the claim arose (creditor agency) and notifies OPM within the applicable 180-day period, OPM will notify the creditor agency that the procedures in this subpart and 4 CFR 102.4 must be completed; and a debt claim must be sent to OPM within 120 days of the date of OPM's notice to the creditor agency. At the request of the creditor agency, one extension of time of not more than 60 days will be granted, as provided by § 831.1806(a).

(4) If OPM is not notified that a complaint has been filed or that the claim has been referred to the creditor agency within the applicable 180-day period, OPM will pay the balance of the refund to the debtor.

(d) *OPM processing against annuities.* If the debtor has filed an annuity claim, OPM will not take action against the annuity. OPM will continue to pay the annuity unless and until there is a final judgment for the United States or submission of a complete debt claim.

(e) *OPM collection and payment of the debt.* (1) If the United States obtains a judgment against the debtor for the amount of the debt or the creditor agency submits a complete debt claim, OPM will collect and pay the debt to the creditor agency as provided in §§ 831.1806 and 831.1807.

(2) If the suit or the administrative proceeding results in a judgment for the debtor without establishing a debt to the United States, OPM will pay the balance of the refund to the debtor upon receipt of a certified copy of the judgment or administrative decision.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 639]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 639 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period December 19-25, 1986. Such action is needed to balance the supply of fresh navel oranges with the demand for such period, due to the marketing situation confronting the orange industry.

DATE: Regulation 639 (§ 907.939) is effective for the period December 19-25, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202-447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both