

**Forest Service Handbook
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**Forest Service Handbook 6509.11h – Service-Wide Claims Management Handbook
Chapter 20 - Administrative Claims for the Government**

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26 - Disposition of Uncollected Claims

26.04 - Responsibility

It is the responsibility of Washington Office, Regions, Stations, and Area Claims Officers to compromise, suspend, or terminate claims, exclusive of interest, penalty, and administrative costs, of \$100,000 or less, and Forest Claims Officers claims of \$25,000 or less. See FSM 6570.4 for additional information.

26.04a - Settlement by Grant of Land

The Department of Justice has the responsibility of accepting or rejecting offers to settle claims by a grant of land to the Government, regardless of the principle amount.

Region and Station Claims Officers are responsible for submitting the case file, along with the Forest Service recommendation to accept or reject the offer.

1. Case File. Send 2 copies of the case file to:
 - a. The Regional Office of the General Counsel (OGC) for referral to the local United States Attorney when the principal amount does not exceed \$200,000.
 - b. The Washington Office, Fiscal and Public Safety Staff, where the principal amount of the claim exceeds \$200,000. The Washington Office will forward the lok through OGC to the Attorney General.

If the claim is settled by land grant, the Forest Service may request, through Federal Property Management Regulations procedures, that the lands be acquired for National Forest purposes.

2. Administrative File. The administrative file on the claim shall include:
 - a. Maps showing the location of the lands offered and their relationship to other National Forest territory.
 - b. Valuation report and discussion of public benefits, problems, liabilities, and possible obligations from acceptance of lands.
 - c. Other pertinent facts supporting the recommendation.

26.2 - Compromise

A claim for the Government for greater than \$100,000 may be compromised only pursuant to authorization by the Department of Justice (DOJ). If the amount does not exceed \$200,000, the local United States Attorney may authorize the compromise; if the amount exceeds \$200,000, the Attorney General must authorize the compromise. Any offer by a debtor to compromise a claim for greater than \$100,000 will be forwarded by the Regional Claims Officer: (1) to the local Office of the General Counsel (OGC) for referral to the local United States Attorney, or (2) to the Washington Office for referral to DOJ.

Enclose two copies of the case report and the Region's recommendation regarding acceptance of the offer in the forwarding memorandum.

Compromise claims within agency authority only under one or more of the circumstances contained in the following sections.

26.21 - Inability to Pay

Consider compromise when the full amount of the claim cannot be collected because of the debtor's inability to pay.

Use Form FS-6500-40, Financial Statement of Debtor, and FSH 6509.18, Financial Analysis Handbook, to determine whether the debtor can pay the full amount within a reasonable amount of time. In determining the debtor's inability to pay, consider the debtor's:

1. Age and health,
2. Present and potential income,
3. Inheritance prospects,
4. Assets or income that might have been concealed or improperly transferred, and
5. Hidden assets or income which might become available through enforced collection action.

26.22 - Doubtful Litigative Probabilities

Advice of the Office of General Counsel (OGC) should be sought when there is real doubt whether the United States can prove its case in court. The Forest Claims Officer will refer claims within their compromise authority to the Regional Claims Officer for transmittal to OGC for advice.

26.23 - Ineffective Cost Recovery

If the cost of collecting the claim does not justify the enforced collection of the full amount, the claim may be compromised. The compromise amount accepted may reflect an appropriate discount for the administrative litigable costs of collection, paying heed to the time it will take to effect collection. Collection costs may be a substantial factor in the settlement of small claims, yet not carry great weight in large claim settlements. The positive effect that enforced collection of some claims may have on the collection of other claims may be considered.

See section 25.12 for information on evaluating the cost of collection efforts, and section 25.3, on using State small claims courts.

26.24 - Restrictions (4 CFR 103.9)

Do not accept a percentage of a debtor's profits or stock in a debtor corporation in compromise of a claim.

26.3 - Suspending Collections

Collection actions for a claim for the government for greater than \$100,000 may be suspended only pursuant to authorization by the Department of Justice (DOJ). If the amount does not exceed \$200,000, the local United States Attorney may authorize the suspension; if the amount exceeds \$200,000, the Attorney General must authorize the suspension. To suspend collections for a claim for greater than \$100,000, the Regional Claims Officer will forward the matter: (1) to the local Office of the General Counsel (OGC) for referral to the local United States Attorney, or (2) to the Washington Office for referral to DOJ.

Enclose two copies of the case report and the Region's/Station's request that suspension of collection actions be authorized, in the forwarding memorandum.

Suspend collection action, within agency authority, only under one or more of the following circumstances:

1. If, despite diligent effort, a debtor cannot be located, and there is reason to believe that future collection action will not be fruitful. Periodically review the case and try to locate the debtor; the following sources may be of assistance: telephone and city directories, postmasters, driver's license records, automobile title and registration records, State and local government agencies, the Internal Revenue Service and other Federal agencies, employers, friends, relatives, and credit agency skip locator reports and bureaus.

Make every reasonable effort to locate the debtor sufficiently before expiration of the applicable statute of limitations to permit the timely filing of suit if warranted.

Interest and penalty charges continue to accrue during the period of suspended collection activity unless specifically waived (section 24.4).

2. If future prospects justify retention of the claim because of the debtor's current financial condition, and:

- a. The applicable statute of limitations has been tolled or has started running anew; or

- b. Regardless of the statute of limitations (although with due regard to the 10-year limitation prescribed by 31 USC 3716(c)(1)), future collection can be effected by offset.

- c. The debtor agrees to pay interest on the amount of the debt on which collection action will be temporarily suspended, and such temporary suspension is likely to enhance the debtor's ability to pay the full principal and interest amount of the debt at a later date.

3. The debtor has requested a waiver or administrative review.
 - a. If the statute under which waiver or administrative review is sought is "mandatory," that is, if it prohibits collection of the debt before consideration of the waiver or review request (California v. Yamasaki, 422 U.S.C 682 (1979)), then suspend collection action until the waiver/review is considered or the time limit for making the waiver/review request, as prescribed in the regulations, has expired and the debtor, upon proper notice, has not made such a request.
 - b. If the applicable waiver/review statute is "permissive" (for example, 5 U.S.C. 5584), that is, if it does not require consideration of all waiver/review requests, and if it does not prohibit collection action pending such consideration, collection may be suspended pending agency action. Agency review must be based upon appropriate, case-by-case consideration of whether:
 - (1) Waiver is a reasonable possibility, or the debt (in whole or part) will be found not owing from the debtor.
 - (2) If suspension were granted, the Government's interest would be protected by reasonable assurance that the debt be recovered if the debtor does not prevail; and
 - (3) Collection of the debt will cause undue hardship.
 - c. Suspend collection action if applicable statutes and regulations would not authorize refund to the debtor of amounts collected before (favorable) agency consideration of the waiver/review request with the following exception. If it appears clear, based on the request and the surrounding circumstances, that the request is frivolous and was made primarily to delay collection.

26.4 - Termination of Collections

A claim for the Government for greater than \$100,000 may be terminated only pursuant to authorization by the Department of Justice (DOJ). If the amount is \$200,000 or less, the local United States Attorney may authorize the termination; if the amount exceeds \$200,000, the Attorney General must authorize the termination. To terminate a claim for greater than \$100,000, the Regional Claims Officer will forward the matter: (1) to local Office of the General Counsel (OGC) for referral to the local United States Attorney, or (2) to the Washington Office for referral to DOJ. The forwarding memorandum must enclose two copies of the case report and contain the Region's request that termination be authorized.

A claim for the Government for \$100,000 or less may be terminated pursuant to Agency authority. If the amount is \$25,000 or less, the claim may be terminated by the Forest Claims Officer; otherwise, the Regional Claims Officer must authorize the termination.

In any case, terminate within agency authority, only under one or more of the following circumstances:

1. Inability to collect any substantial amount, as indicated by financial data furnished by the debtor and investigation to verify that information.

2. Inability to locate debtor, and either:
 - a. There is no security remaining to be liquidated, or
 - b. The applicable statute of limitations has expired and the prospects of collecting by offset, notwithstanding the bar of the statute of limitations, are too remote to justify claim retention.
3. Cost will exceed recovery.
4. Claim is without legal merit; terminate collections immediately and cancel the bill.
5. Claim cannot be substantiated by evidence, either because the evidence necessary to prove the claim cannot be produced or necessary witnesses are unavailable and efforts to induce voluntary payment are unavailing.
6. The court has accepted or ruled on a petition for bankruptcy. Discontinue collections and remove the debt from the Accounts Receivable. Terminate collections and cancel the debt.

Section 29, exhibit 14 is a sample justification for writing off a debt and exhibit 15 is a sample request to the Region for authorization to terminate collection actions.

26.5 - Debtors Discharged in Bankruptcy

When an organization or person indebted to the Government declares bankruptcy, the best interests of the Government must be protected by immediately filing a proof of claim with the Bankruptcy Court. The proof of claim identifies the Forest Service to the Bankruptcy Court as a creditor of the debtor. The amount owed and the basis for the claim are officially set forth in the proof of claim, and a copy of the initial bill for collection to the debtor should be provided.

When a debtor declares bankruptcy, discontinue all collection and referral action immediately. Collection actions against a debtor in bankruptcy could result in a contempt-of-court citation from the Bankruptcy Court.

Timing is vital; therefore immediately report any bankruptcy reported to the Regional Claims Officer. Upon notice, the Regional Claims Officer in consultation with the Office of the General Counsel, if necessary, will assist in preparing and filing the Forest Service's proof of claim with the Bankruptcy Court.

The proof of claim will not be defective because of failure to issue previously to the debtor an initial bill for collection or, the final contracting officer's decision (in the case of a contract default). In such cases, however, the final contracting officer's decision and/or an initial bill for collection shall be prepared for inclusion with the proof of claim materials forwarded to the Bankruptcy Court.

Once the proof of claim is filed with the Bankruptcy Court, numerous notices and other mailings regarding the progress of the bankruptcy proceedings shall be received and may require timely

response. Consult with the Regional Office, Fiscal and Accounting Staff, when in doubt regarding how to respond.

26.51 - Types of Bankruptcies

There are three main types of bankruptcies under the Federal Bankruptcy Code, and they are generally referred to by the chapter in the code defining the rights and procedures attendant to each:

1. Chapter 7. Chapter 7 bankruptcies involve liquidation of a business or estate, and the selling of all assets to satisfy creditors, according to priorities and in amounts determined pursuant to chapter 7 of the code. Upon sale and distribution of assets, all debts of the bankrupt are discharged.

2. Chapter 11. Chapter 11 bankruptcies involve reorganization of a failing business so it may continue commercial operations and pay off creditors pursuant to a reorganization plan approved by the Bankruptcy Court. Except as the reorganization plan provides for their repayment, all debts of the business are discharged.

3. Chapter 13. Chapter 13 bankruptcies allow a debtor to adjust debts by proposing a plan providing for monthly payments to the debtor's creditors over a 3-year period. This is an alternative to liquidation and is designed for consumers. However, small business may also file under chapter 13.

26.52 - Termination of Debt

When a debtor has been discharged of all debts and assets have been distributed, terminate collections pursuant to Title 4, Code of Federal Regulations, section 104.3(d) (4 CFR 104.3(d)) and close the file. See section 26.4, paragraph 6 for additional information on termination of debt.

27 - Administrative Offset and Salary Offset Procedures

Administrative offset and salary offset are collection actions whereby money payable by the Forest Service to, or held by the Forest Service for, a debtor, is withheld from the debtor and applied to reduce or liquidate the debt (31 U.S.C. 3701).

The notice and review procedures contained in this section and the hearings procedures in section 28 must be followed in order to provide the debtor with due process before effecting an offset. Any administrative or salary offset effected without first providing the debtor with due process is subject to reversal if the debtor challenges the offset in court.

27.1 - Administrative Offset Procedures

Follow administrative offset procedures when the debtor is not a current or former Forest Service employee; or the debtor is a current or former Forest Service employee and the debt does not involve a salary overpayment, a fiscal liability, or damages to Forest Service property.

1. Feasibility of Administrative Offset. Offset is not necessary in every instance where there is an available source of funds. Curing one problem by creating another does not protect the Government's interest. Therefore, before collecting a debt by administrative offset determine whether such collection is feasible. Determine feasibility on a case-by-case basis using the criteria in Title 4, Code of Federal Regulations, section 102.3(a)(2) (4 CFR 102.3(a)(2)) and 7 CFR 3.23(b).

2. Notice to Debtor of Intent to Offset. At least 30 calendar days before initiating administrative offset, send a Notice of Intent to Collect by Administrative Offset by personal delivery or certified mail. The notice shall state the following, in accordance with 7 CFR 3.25(b).

- a. Amount of the debt, the date incurred, the name and address of the offsetting agency, and the program under which the debt was incurred.
- b. The rate of interest, the date interest accrues from, and the amount of any penalties or administrative costs added to the principal.
- c. The Forest Service intention to collect by administrative offset against any funds that might become available, until the principal debt and all interest, penalties, and administrative costs are paid in full.
- d. The date administrative offset will be effected, unless determined by the claims officer that immediate action is necessary under 7 CFR 3.26 or the debtor enters into a repayment agreement.
- e. The debtors right to inspect and copy Forest Service or other Department records related to the debt, provided the debtor pays the cost of copying unless waived by the Freedom of Information Officer.
- f. The debtor may enter into a written agreement to repay the debt, provided the agreement is approved by the creditor agency.
- g. The debtor has a right to obtain review of the determination that the debt exists and the propriety of administrative offset.
- h. That a repayment agreement or request for review may only be sought from the creditor agency, not the offsetting agency.
- i. Time limitations and any other procedures or conditions imposed by the Forest Service.
- j. The address where the debtor must send all correspondence related to the offset.

When collecting debts owed by an employee, the notice must include the amount, frequency, beginning date, and duration of deductions if the debt is not collected in one lump sum.

Advance notice need not be given if failure to execute the administrative offset immediately would harm the Forest Service's ability to collect the debt, and the time before payment is due would not reasonably permit completion of the procedures specified in the notice (7 CFR 3.26).

If an administrative offset is effected without providing advance notice, promptly notify the debtor of the offset action and provide the debtor an opportunity for a review of the debt determination and an opportunity to inspect and copy pertinent records. Promptly refund all amounts recovered by administrative offset later found not owed the Forest Service.

Deliver the notice of intent to offset to the debtor by certified mail or by hand.

3. Debtor Review of Forest Service Debt Records. A debtor who wishes to inspect or copy Forest Service records relating to a debt must make a request to do so within 20 calendar days after delivery of the written notice of intent to offset. Notify the debtor of the location and time when the debtor may inspect or copy the records. Stay the offset no longer than 10 calendar days beyond the date set for record inspection.

The debtor must pay the cost of copying the records, unless this fee is waived by the Freedom of Information Officer. See FSH 6209.13, section 17, for the conditions for inspecting and copying records. See FSH 6209.13, section 14, for the schedule of fee charges for copying records.

4. Written Agreement to Repay the Debt. A debtor who wishes to propose a written agreement to repay the debt as an alternative to administrative offset must do so within 20 calendar days after delivery of the written notice of intent to offset. In determining whether or not to accept the proposed repayment agreement, evaluate the debtor's ability to repay the debt.

Also, consider other obligations of the debtor to the Forest Service that could jeopardize other obligations or be jeopardized by the request under consideration. See section 21.3 for sources of information necessary to make the analysis and for acceptable terms for the repayment agreement. Stay the offset until the debtor is notified in writing whether the proposed agreement is acceptable.

If the debt is delinquent and the debtor has not disputed its existence or amount, accept a repayment agreement only if the debtor is able to establish that offset would result in extreme financial hardship or would be against equity or good conscience. Equity and good conscience are generally satisfied when the indebtedness resulted from an administrative error and there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the debtor.

5. Hearing on the Existence or Amount of the Debt. A debtor who wishes a hearing on the existence or amount of the debt must request a hearing within 20 calendar days after delivery of the written notice of intent to offset. Waive the 20-day requirement if the debtor shows that the delay was beyond the debtor's control or because of failure to receive notice and lack of knowledge of the time limit.

The request for a hearing must be in writing and state why the debtor contests the existence or amount of the debt.

If the debtor timely requests a hearing:

- a. Arrange to have a hearing officer appointed.

- b. Notify the debtor of the name and address of the hearing officer and request that the debtor submit all documents pertinent to the case to the hearing officer with a copy to the claims officer.
- c. Provide the hearing officer with a copy of all records on which the Forest Service's debt determination is based.
- d. Stay the offset until the hearing officer issues a final written decision.

See section 28 for additional information related to hearings.

27.11 - Administrative Offset Limitations Under Specific Forest Service Activities

27.11a - Timber Sale Contracts (Form FS-2400-6 and FS-2400-6T)

1. Debts due the Government may generally be offset against any amounts held by the Government that become excess to the contract. For example, if default damages are less than contract deposits or if an operating sale generates excess cash, as defined in the contract, at the end of an operating season, these funds are available for offset. Likewise, any amounts held by the Government after contract termination (for default or convenience) are available for offset.

2. Excess funds may be generated from:

- (a) Downpayments, extension deposits, periodic payments;
- (b) Cash, negotiable securities, letters of credit, assigned savings accounts, or certificates of deposit used to secure bid, payment or performance bonds; or
- (c) Any other payment made by the purchaser under the contract.

3. If contract provision B(BT)4.226, Use of Deposits, has not been made inapplicable, the use of excess funds to offset debts owed the Government by the purchaser is prohibited unless authorized by the purchaser.

4. Purchaser credit may not be used for offset. If, however, purchaser credit is used to replace cash deposits, and the cash is excess, as defined in the contract, offset may be made against the excess cash.

27.11b - Mineral Materials Contracts

(Form FS-2800-9). Use only excess funds for offset. Funds deposited for mineral materials, damages, or other reasons under the contract are not available for offset unless the purpose for the funds no longer exists. For example, advance payments deposited for mineral materials yet to be removed under contract are not excess and are not available for offset until the contract is terminated or is removed and there are excess funds, that is, when a refund is due the purchaser.

27.11c - Special-Use Authorizations and Grazing Permits

Only use funds for offset that are excess to the purpose intended by the permit. For example, deposits made for payment of fees under a recreation residence or grazing permit are not subject to offset unless there was an excessive payment made as through mistake.

27.11d - Offset Against Bond Guarantees

Use contract, permit, or license security in the form of cash, deposited securities, letter of credit, or assigned savings account for offset only if the security for the performance and/or payment required under the contract, permit, or license, or the settlement of any claim incident thereto, is no longer necessary. See FSH 6509.11k, section 82.32 for additional information related to offset against security deposits.

27.12 - Administrative Offset and Credit Reporting Clause

The Department of Agriculture debt collection regulation at Title 7, Code of Federal Regulations, section 3.31(a) (7 CFR 3.21(a)) requires that the following administrative offset clause be included in all contracts and other agreements, including procurement and timber sale contracts:

Pursuant to 31 U.S.C. 3716 and 7 CFR Part 3, Subpart B, any monies that are payable or may become payable from the United States under this (contract, grant, agreement, special-use authorization, permit, license) to any person or legal entity not an agency or subdivision of a State or local government may be subject to administrative offset for the collection of a delinquent debt the person or legal entity owes to the United States. Information on the person's or legal entity's responsibility for a commercial debt or delinquent consumer debt owed the United States may be disclosed to consumer or commercial credit reporting agencies.

The clause does not apply to, and is not necessary for, the offset of claims arising from a single contract. Rather, the clause applies to claims that arise:

1. Under a contract that is separate from the contract in which offset is taken, or
2. From a non-contractual source outside of the contract in which offset is taken.

The clause does not apply to contracts or other agreements executed before October 25, 1982, that are in effect on October 25, 1982; however, the remedy of administrative offset under the common law is available for those contracts or other agreements (4 CFR 102.3(b)(4)). With respect to contracts or other agreements executed after this date, the use of administrative offset is made permissive by the Debt Collection Act itself (31 U.S.C. 3716). Therefore, it is not necessary to amend existing contracts or other existing agreements to include this clause.

27.13 - Coordinating Administrative Offset with Other Agencies and Within the Forest Service

27.13a - With Other Agencies

1. When the Forest Service is Owed the Debt. When the Forest Service is owed a debt, but another Federal agency is responsible for making payment to the debtor against which offset is sought, provide the agency with written certification that the debtor owes the Forest Service a debt (including the amount and basis of the debt and the payment due date) and that the procedural rights required by Title 31, United States Code, section 3716 (31 U.S.C. 3716) and Title 4, Code of Federal Regulations, section 102 (4 CFR 102) were provided.

2. When Another Agency is Owed the Debt. The Forest Service may offset money it owes to a person who is indebted to another agency if requested to do so by that agency. Such a request must be accompanied by a certification by the requesting agency that the person owes the debt (including the amount) and that the person received the rights required by 31 U.S.C. 3716 and 4 CFR 102.

The Forest Service may decline an offset request from another agency if there is good cause to do so. Good cause includes either direct or indirect disruption of program operations that might result from the offset. Determine good cause on a case-by-case basis in consultation with the affected program staff. If offset is refused, provide the requesting agency with a written explanation of the refusal.

27.13b - Within the Forest Service

If the unit has no money of the debtor on account and direct collection actions have failed, request other units within the Region or Station to review their unit's accounts to determine if they have money of the debtor on hand. Advise your Region or Station and the Washington Office Claims Officer at the same time. If an offset opportunity is available on another unit, that unit must determine the feasibility of the offset; however, the requesting unit must provide the debtor with due process pursuant to the administrative offset procedures specified in this section and section 28.

27.2 - Salary Offset Procedures

Follow salary offset procedures when the debtor is a current or former Forest Service employee and the debt involves a salary overpayment, a fiscal liability, or damages to Forest Service property.

27.21 - Exclusions

Do not use salary offset procedures:

1. To offset an indebtedness to the United States by an employee to satisfy a judgment obtained by the United States against that employee;

2. To offset any payment due an employee which is expressly allowed under statutes other than Title 5, United States Code, section 5514 (5 U.S.C. 5514); or

3. To offset an overpayment to an employee from a Federal benefits program which requires periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

27.22 - Notification to Employee

At least 30 calendar days before offset deductions begin, send a written notice to the employee by certified mail, return receipt requested. This Notice of Intent to Offset Salary must state:

1. The origin, nature, and amount of the debt.
2. That the Forest Service intends to deduct 15 percent from the employee's disposable pay to recover the debt until the debt and any accrued interest, penalty, and administrative costs are recovered.
3. The amount, frequency, proposed beginning date, and duration of the intended deductions.
4. How interest, penalty, and administrative costs are charged.
5. If the Forest Service records on which the debt determination is based are not attached, how the records will be made available to the employee for inspection and copying.
6. A demand for repayment, providing for an opportunity for the employee to enter into a written repayment agreement with the Forest Service.
7. The employee's right to a pre-offset hearing concerning the existence or amount of the debt or the repayment schedule planned by the Forest Service.
8. The applicable hearing procedures and requirements, including a statement that the timely filing of a petition for a hearing stays the collection proceedings and that a final decision on the hearing must be issued no later than 60 calendar days after the hearing petition is filed unless a delay is requested and granted.
9. That any knowingly false or frivolous statements, representations, or evidence may subject the employee to applicable disciplinary procedures, civil penalties, or criminal penalties.
10. Where a waiver of repayment is authorized by law, such as under Title 5, United States Code, section 5584 (5 U.S.C. 5584), the employee's right to request a waiver and the employee's right to question the amount or validity of the debt by submitting a claim to the Comptroller General in accordance with General Accounting Office procedures.
11. That where amounts paid or deducted which are later waived or found not owed shall be promptly refunded to the employee unless there are applicable contractual or statutory provisions prohibiting refund.

12. Any other rights and remedies the employee may have under statutes or regulations governing the program for which the collection is made.

13. The name and address of the claims officer or personnel officer to whom communications should be directed.

See exhibit 16 for a sample Notice of Intent to Collect by Salary Offset.

In every case, the Forest Service is responsible for providing the employee with the required notification. If the debt is discovered by the National Finance Center (NFC), the NFC will notify the Forest Service that a debt exists. The Forest Service however, is responsible for notifying the employee of the intent to collect the debt by salary offset.

27.23 - Installment Deductions

Make installment deductions over a period not greater than the anticipated period of employment. The size and frequency of installment deductions must bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period may not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee agrees in writing to the deduction of a greater amount. If possible, the installment payment should be sufficient in size and frequency to liquidate the debt in no more than 3 years. Accept installment payments of less than \$25 per pay period or \$50 a month only in the most unusual circumstances. Make deductions only from basic pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay. If there is more than one salary offset, the maximum deduction for all salary offsets against an employee's disposable pay is 15 percent unless the employee agrees in writing to a greater amount.

Employees must notify either the claims officer or personnel officer of their intentions on their indebtedness. If evidence exists, for example, return receipt requested card, that the employee received the Notice of Intent to Offset but did not respond within 30 days, deduction of 15 percent of disposable pay begins with the next pay period following the 30-day response period.

27.23a - Adjustment in Rate of Repayment

When an indebted employee receives a reduction in basic pay which causes the current deductions to exceed 15 percent of disposable pay and the employee has not consented in writing to a greater amount, reduce the amount of the deductions to 15 percent of the new amount of disposable pay. When an increase in basic pay causes current deductions to be less than the specified percentage, increase the amount of the deductions accordingly. In either case, notify the employee in writing when a change is made.

27.24 - Interest, Penalty, and Administrative Costs

Charge interest, penalty, and administrative costs in accordance with section 24.

27.25 - Employee Review of Debt Records

An employee who wishes to inspect or copy Forest Service records relating to the debt must make a request to do so within 30 calendar days of the date of the Notice of Intent to Offset. Notify the employee of the location and the time the employee may inspect or copy the records. Do not charge employees for copying the records (7 CFR 3.55).

27.26 - Employee Repayment Agreement

1. Voluntary Repayment Agreement. No later than 30 calendar days after the date of the Notice of Intent to Offset, an employee may submit a request to the Forest Service to arrange for a voluntary repayment schedule. To arrange for a voluntary repayment schedule, the employee must submit a financial statement and sign a written repayment agreement. In determining whether to accept the proposed repayment agreement, evaluate the employee's ability to repay the debt. (See paragraph 3, for the criteria for making this evaluation.) Stay the offset until the employee is notified in writing whether the proposed agreement is acceptable to the Forest Service.

2. Involuntary Repayment Agreement. If the employee claims that the Forest Service's intention to deduct 15 percent of disposable pay would cause extreme financial hardship and should be reduced, the employee must submit a written explanation and a financial statement to the Forest Service within 30 calendar days after the date of the Notice of Intent to Offset. An employee who fails to submit this financial information in a timely manner waives the right to object to the involuntary repayment schedule at an offset hearing. Notify the employee in writing whether the Forest Service will reduce the rate of the involuntary deduction.

3. Determining Extreme Financial Hardship for Employees. An offset produces extreme financial hardship for an employee if it prevents the employee from meeting the costs necessarily incurred for essential subsistence expenses of the employee and the employee's spouse and dependents. These essential expenses include costs incurred for food, housing, clothing, transportation, and medical care.

In determining whether an offset prevents an employee from meeting essential expenses consider:

- a. The income from all sources of the employee and the employee's spouse and dependents.
- b. The extent to which the assets of the employee and the employee's spouse and dependents are available to meet the offset and the essential subsistence expenses.
- c. Whether these essential subsistence expenses have been minimized to the greatest extent possible.
- d. The extent to which the employee and the employee's spouse and dependents can borrow money to meet the offset and other essential expenses.

- e. The extent to which the employee and the employee's spouse and dependents have other exceptional expenses that should be taken into account, and whether these expenses have been minimized.

27.27 - Coordinating Salary Offset with Other Agencies

27.27a - When the Forest Service is Owed the Debt

1. Intra-Departmental Transfers. When an employee who is indebted to the Forest Service transfers to another agency within the Department, forward a copy of the repayment schedule to the new employing agency's personnel office. Ensure that the National Finance Center continues to make deductions until full recovery is effected.

2. Non-Forest Service Employees. Certify in writing to the employing agency that its employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, the actions taken under the salary offset regulation (7 CFR, Part 3, Subpart C), the date the actions were taken, and that the Department's regulation implementing 5 U.S.C. 5514 were approved by the Office of Personnel Management. Include a copy of the debt claim, repayment agreement, or other instruction on the payment schedule.

If installment payments are being made, advise the employing agency of the number of installments to be collected, the amount of each installment, and the starting date of the first installment, if a date other than the next officially established pay period is required.

27.27b - When the Debt is Owed by a Forest Service Employee to Another Agency

1. Current Employees. Verify that all documentation has been received from the creditor agency. The required documentation is the same as that listed in section 27.27a, paragraph 1. Process the documents through Personnel Management who notifies the employee and the National Finance Center when deductions begin.

2. Employees Who Transfer to Another Agency During Deduction. If, after the creditor agency has submitted the debt claim to the Forest Service, the employee transfers to another agency before the debt is collected in full, the Forest Service must certify the total amount of the collection made on the debt. Furnish the employee and the creditor agency with a copy of the certification along with a notice of the employee's transfer. Insert the original debt claim in the employee's official personnel folder along with a copy of the certification of the amount which has been collected. Upon receiving the official personnel folder, the new employing agency resumes the collection from the employee's current pay account and notifies the employee and the creditor agency of the resumption.

3. Processing the Debt Claim. If an incomplete claim package is received, return it to the creditor agency with a notice that procedures under 5 U.S.C. 5514 must be followed and a completed claim received before action is taken to collect from the employee's current pay.

If the claim package is complete, schedule deductions to begin with the next pay period. Give a copy of the claim to the employee along with a notice of the date deductions will begin. See exhibit 17 for an example of the notice to give the employee.

The Forest Service is not required or authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the certified debt.

27.28 - Recovery of Debts from a Retired, Resigned, or Separated Employee

If an employee retires or resigns before collection of the amount of indebtedness is completed, notify the National Finance Center (NFC) in writing that the employee is retiring or resigning and advise NFC to collect the balance due from subsequent payments of any nature, such as, final salary payment or lump-sum leave payment. If the employee is entitled to payments from the Civil Service Retirement and Disability Fund, notify the Office of Personnel Management of the debt along with a properly certified claim (sec. 27.27(b)).

If the employee is already separated, and all payments due the employee have been made, request the Office of Personnel Management to offset the debt against any payments due from the Civil Service Retirement and Disability Fund. Before requesting the offset, provide the separated employee due process through the administrative offset procedures specified in chapter 20 and section 28.

28 - Administrative Offset and Salary Offset Hearings

28.03 - Policy

The hearings procedures contained in this chapter and the notice and review procedures in section 27 must be followed in order to provide the debtor with due process before effecting an offset. Any administrative or salary offset effected without first providing the debtor with due process is subject to reversal if the debtor challenges the offset in court.

28.1 - Information Common to Both Types of Hearings

The following direction applies to both administrative and salary offset hearings.

1. Hearing Officer Qualifications. The hearing officer shall not have served as a contracting officer, claims officer, or subordinate of either for the matter under consideration. The hearing officer shall have suitable experience to conduct the hearing and render a decision in an equitable manner. The hearing officer for salary offset must be from outside the Department of Agriculture or an Administrative Law Judge of the Department. A hearing officer may not compromise a claim, or terminate or suspend claims collections.

2. Time, Date, and Place of Hearing. The hearing officer notifies the claims officer and the debtor of the time, date, and place of the hearing. Hearings are held:

- a. Not less than 10-calendar days and no more than 45 calendar days after receipt of the request for review for administrative offset.

- b. Not more than 60-calendar days after receipt of the request for review for salary offset unless the employee requests, and the hearing officer grants, an extension.

The hearing officer gives due regard in setting a hearing date to:

- a. Allow the debtor and the Forest Service to prepare properly; and
- b. Provide the debtor and the Forest Service a fair, impartial, and expeditious hearing.

Administrative offset hearings on sensitive and/or substantial dollar amount debts may be held at the next higher organizational level.

3. Representation. Debtors may represent themselves or may be represented by another person at the hearing. Employee debtors may designate another employee as their representative. However, the employee may not be represented by another employee whose presence creates an actual or apparent conflict of interest.

Allow employees and/or their employee representative a reasonable amount of official time to prepare for a hearing.

4. Type of Hearing. The hearing is based on written submissions and documentation provided by the debtor and the Forest Service unless:

- a. A statute authorizes or requires consideration of waiving the debt, the debtor requests waiver of the debt, and the waiver determination turns on an issue of credibility or veracity.
- b. The debtor requests reconsideration of the debt and the hearing officer determines that the question of the indebtedness cannot be resolved by a review of the documentary evidence; for example, when the validity of the debt turns on an issue of credibility or veracity.
- c. The hearing officer determines that an oral hearing is appropriate.

Oral hearings may be conducted by conference call at the request of the debtor or at the discretion of the hearing officer.

The hearing officer's determination that the offset hearing is on the written record is not subject to a hearing.

5. Rights of Parties at Hearing. Oral hearings are informal in nature. The Forest Service and the debtor, through their representatives, and by reference to the submitted documentation, explain their case. These presentations are in the form of an oral argument. The debtor may testify on the debtor's own behalf, subject to cross examination. Other witnesses are called to testify only where the hearing officer determines that their testimony is relevant and not redundant.

6. Rules of Evidence. Rules of evidence shall not be adhered to, but the hearing officer shall exclude irrelevant or repetitious evidence. Either party to the hearing may offer evidence such as copies of financial records, telephone memoranda, or agreements provided the other party is notified at least 5-calendar days before the hearing. Formal discovery between the parties is not provided. This does not relieve management of its obligations under 5 U.S.C. 7114(b)(4). The Freedom of Information Act and Privacy Act may apply to at least portions of the evidence used in both documentary and oral hearings. The hearing officer must coordinate with the local Freedom of Information Act and Privacy Act Officer to determine applicability on a case-by-case basis (FSM 6270).

7. Open Hearings. Oral hearings are open to the public. However, the hearing officer may close all or any portion of the hearing where to do so is in the best interests of the debtor or the Government.

8. Ex Parte Communications. At no stage in the hearing process shall the debtor or the Forest Service discuss ex parte the merits of the issue under review with the hearing officer. Procedural matters, however, are not included within this limitation. If the hearing officer receives an ex parte communication, the hearing officer must advise all parties about the communication, document such communication, and provide the other party and the official hearing record a copy of the documentation.

9. Burden of Proof.

- a. The Forest Service has the burden of going forward to prove the existence of the debt.
- b. The employee requesting the hearing bears the ultimate burden of proof.
- c. The evidence presented by the employee must prove that no doubt exists or cast sufficient doubt such that reasonable minds could differ as to the existence of the debt.

10. Failure to Appear. If a debtor fails to appear at the oral hearing, without showing a legitimate reason, the request for a hearing is dismissed and the Forest Service's debt determination is affirmed.

11. Transcript. The hearing officer must record the substance of all significant matters discussed at the hearing. No official record or transcript of the hearing, however, need be created. If a debtor requests that a transcript be made, it is made at the debtor's expense.

12. Decision. The hearing officer issues a written decision stating:

- a. The facts supporting the nature and origin of the debt.
- b. The hearing officer's analysis, findings, and conclusions as to the amount and validity of the debt, and the repayment schedule if applicable.
- c. The hearing officer's determination of the feasibility of offset.

For salary offset, the hearing officer decides whether the Forest Service's determination of the existence and the amount of the debt or the financial hardship caused by the involuntary repayment schedule is clearly erroneous. A determination is clearly erroneous if although there is evidence to support the determination, the hearing officer, considering the record as a whole, is left with a definite and firm conviction that a mistake was made.

The hearing officer's decision is the final Forest Service action on the offset.

The written decision must be issued:

- a. No later than 30-calendar days after the hearing for administrative offset. Except the hearing officer may, for good cause, extend this deadline for an additional 30-calendar days. Any further extension must be approved by the debtor.
- b. No later than 60-calendar days after the employee's request for a hearing for salary offset. The employee may request, and the hearing officer may grant, an extension of this deadline.

13. Hearing Record. Hearing records must be legible, well organized and complete. A single identifiable set of documents comprise the record and must be bound so that they do not become disorganized. The records must contain a detailed index matching the format, contents, and supporting material of the hearing officer's decision. The original decision must be part of this record. Maintain the file at the unit where the debt originated.

28.2 - Salary Offset Hearings

The following direction applies to salary offset hearings.

No later than 30 calendar days from the date of the Notice of Intent to Offset, an employee may file with the claims officer or personnel officer who issued the offset notification, a written request for a hearing on the existence or amount of the debt, or the proposed offset schedule.

The employee's request must:

1. State why the employee contests the existence or amount of the debt, or why the repayment schedule causes extreme financial hardship.
2. Bear the employee's original signature.
3. Be submitted to the designated claims officer or personnel officer.

If a reciprocal agreement is made with another agency, it will be between a Forest Service Regional Office or the Washington Office and a State, regional, or Washington Office or a large Department of Defense facility that has, for example, an employee relations or fiscal staff similar to our Regional staff to ensure that they can provide qualified hearing officers as described in section 28.1, paragraph 1.

Determine whether the employee's request for a hearing was submitted in a timely fashion. Accept requests received from employees after the 30-day time limitation expires only if the employee can show the delay was because of circumstances beyond the employee's control or because of failure to receive notice and lack of knowledge of the time limitation.

If the employee timely requests a hearing:

1. Notify the employee of the name and address of the hearing officer.
2. Request that the employee submit all documents on which the employee is relying to the designated hearing officer with a copy to the claims officer or personnel officer as appropriate.
3. Provide the hearing officer with a copy of all records on which the Forest Service's debt determination is based.

The hearing officer notifies the employee and the Forest Service of the time, date, and place of the hearing.

Make any arrangements for a hearing officer that are feasible for the workload and resources of the unit. Examples of such arrangements include reciprocal agreements with another agency to exchange employees to hold offset hearings, contracts for these services, or use of labor arbitrators.

If such arrangements have not been made and a hearing officer is needed before offset can be effectuated:

1. When an Employee of Another Agency Owes a Debt to the Forest Service. If a prompt and appropriate hearing before a hearing officer cannot be provided, then contact an agent of the employing agency designated in Appendix A to Part 581 of Title 5, Code of Federal Regulations, to arrange for a hearing officer. The employing agency must cooperate, as provided by 4 CFR 102.1, and provide a hearing officer.

2. When a Forest Service Employee Owes a Debt to the Forest Service. Contact any agent of another agency (other than Department of Agriculture agents) designated in Appendix A to Part 581 of Title 5, Code of Federal Regulations, to arrange for a hearing officer. Agencies must cooperate, as provided by 4 CFR 102.1, and provide a hearing officer.